H.R. 1907, THE FEDERAL-AID FACILITY PRIVATIZATION ACT OF 1995

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

H.R. 1907

TO PERMIT STATE AND LOCAL GOVERNMENTS TO TRANSFER—BY SALE OR LEASE—FEDERAL-AID FACILITIES TO THE PRIVATE SECTOR WITHOUT REPAYMENT OF FEDERAL GRANTS, PROVIDED THE FACILITY CONTINUES TO BE USED FOR ITS ORIGINAL PURPOSE, AND FOR OTHER PURPOSES

NOVEMBER 15, 1995

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H.R. 1907, THE FEDERAL-AID FACILITY PRIVATIZATION ACT OF 1995

WEDNESDAY, NOVEMBER 15, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 2247, Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Flanagan, Bass, Maloney, and Peterson.

Ex officio Present: Representative Clinger.

Staff present: J. Russell George, staff director and counsel; Mark Brasher, professional staff member; Andrew G. Richardson, clerk; Donald Goldberg, minority assistant to counsel; Miles Q. Romney, minority professional staff; and Elisabeth Campbell, minority staff assistant.

Mr. HORN. A quorum being present, the Subcommittee on Government Management, Information, and Technology will come to order. Today we review the proposed Federal-Aid Facility Privatization bill. If enacted, this new law would make it easier for State and local governments to raise private capital for maintaining the Nation's airports, waste facilities, and other infrastructure assets.

Our Constitution gave Congress power to regulate and maintain post offices, post roads, and canals, besides the commerce clause, in general. The Federal role in infrastructure investment grew dramatically in the 1930's and remained large until recently. With downsizing has come reduced Federal funding of State and local services, including the infrastructure. We hope to reverse that trend.

But as this trend continues, local governments have sought alternative financing mechanisms. Some have explored public-private partnerships as a means of bringing in private capital and management skill as the Federal presence has decreased.

Many federally financed infrastructure facilities are maintained by States and localities. If privatized, prior to Executive Order 12803, States which had been used to paying back some of the amount on the particular structure in which Federal funds had been involved now had a change in policy.

Under President Bush, this Executive Order 12803—known as the Common Rule—because it was common to all agencies—changed it so that only the undepreciated part had to be paid off.

An infrastructure facility fully depreciated could be privatized. The bill before us, H.R. 1907, would ease restrictions such as the ones I've mentioned.

While that sounds encouraging, there are other issues that need review as public control of many of our facilities transitions to private ownership and operation. We'll look at some of those issues this afternoon.

With us now are private experts who manage formerly government-owned infrastructure facilities, officials from professional groups which use them, administration representatives from the Environmental Protection Agency, and two Members of Congress.

Mr. Klug of Wisconsin, our acknowledged privatization expert, heads the Speaker's panel on privatization, and Mr. McIntosh of Indiana, who comes to Congress with a rich experience in the executive branch and is the sponsor of the legislation before us.

We thank you all for joining us, and we look forward to your testimony. We would appreciate it if all witnesses limit their testimony to 5 minutes. The written statement you have submitted will be put in right after the introduction of you as a speaker. That's automatic for all witnesses, and since we have a large number of witnesses, we do hope to hear from all of them during the next 3 hours.

I would like to ask the ranking member, a distinguished colleague, Mrs. Maloney of New York, if she has an opening statement. Mrs. Maloney.

[The text of H.R. 1907 follows:]

I

104TH CONGRESS
1ST SESSION

H. R. 1907

To permit State and local governments to transfer—by sale or lease—Federal-aid facilities to the private sector without repayment of Federal grants, provided the facility continues to be used for its original purpose, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 21, 1995

Mr. MCINTOSH (for himself and Mr. HORN) introduced the following bill; which was referred to the Committee on Government Reform and Oversight, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To permit State and local governments to transfer—by sale or lease—Federal-aid facilities to the private sector without repayment of Federal grants, provided the facility continues to be used for its original purpose, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Federal-aid Facility
5 Privatization Act of 1995".

SEC. 2. DEFINITIONS.

For purposes of this title:

(a) "Privatization" means the disposition or transfer of an infrastructure asset, whether by sale, lease, or similar arrangement, from a State or local government to a private party.

(b) "Infrastructure asset" means any asset financed in whole or in part by the Federal Government and needed for the functioning of the economy. Examples of such assets include, but are not limited to: roads, tunnels, bridges, electricity supply facilities, mass transit, rail transportation, airports, ports, waterways, water supply and delivery facilities, recycling and wastewater treatment facilities, solid waste disposal facilities, housing, schools, prisons, and hospitals.

(c) "Originally authorized purposes" means the general objectives of the original grant program; however, the term is not intended to include every condition required for a grantee to have obtained the original grant.

(d) "State and local governments" means the government of any State of the United States, the District of Columbia, any commonwealth, territory or possession of the United States, and any county, municipality, city, town, township, local public au-

thority, school district, special district, intrastate district, regional or interstate government entity, council of governments, and any agency of instrumentality of a local government, and any federally recognized Indian Tribe.

SEC. 3. PRIVATIZATION INITIATIVES BY STATE AND LOCAL GOVERNMENTS.

The head of each executive department and agency shall undertake the following actions:

(a) Assist State and local governments in their efforts to privatize their infrastructure assets.

(b) Approve requests from State and local governments to privatize infrastructure assets and waive or modify any grant assurance, consistent with section 4.

SEC. 4. CRITERIA.

The head of an executive department or agency shall approve a request if—

(a) the State or local government demonstrates that a market mechanism, legally enforceable agreement, or regulatory mechanism will ensure that the infrastructure asset or assets continue to be used for their originally authorized purposes, so long as needed for those purposes; and

(b) the private party purchasing or leasing the infrastructure asset agrees to comply with all applicable grant assurances.

SEC. 5. NO OBLIGATION TO REPAY FEDERAL GRANT MONIES.

A State or local government shall have no obligation to repay to any agency of the Federal government any federal grant monies received by the State or local government in connection with the infrastructure asset that is being privatized.

SEC. 6. USE OF PROCEEDS.

A State or local government may use proceeds from the privatization of an infrastructure asset to the extent permitted under applicable grant assurances and provisions. Notwithstanding any other provision of law, the State or local government shall be permitted to recover its capital investment, an amount equal to its unreimbursed operating expenses in any infrastructure asset, and a reasonable rate of return.

○

Mrs. MALONEY. Yes, I do. Thank you, Mr. Chairman, and thank you for holding this hearing on H.R. 1907. I think all of us support efforts to give more resources to State and local governments for infrastructure improvements. As we all know, money is scarce for much-needed roads, bridges, waste treatment plants, and other municipal facilities. However, I am skeptical that this legislation is the best approach to reaching this goal.

I also question whether this is an essential hearing. As you know, the Federal Government shut down yesterday, and only essential Federal Government employees are working and collecting a paycheck today. In my district alone, thousands of Federal employees have been idled, and my staff has been reduced by over half. It seems to me that all of our time would be better spent in trying to resolve the current budget impasse rather than spending hours on this hearing. But since I won't win that argument, let me address the issue at hand.

There is currently in place a mechanism for transferring Government assets to private parties—Executive Order 12803, signed April 30, 1992. It provides important guidelines and procedures for selling these assets. We are fortunate to have as the first witness today our colleague from Indiana, Mr. McIntosh, who contributed substantially to the development of that Executive order while serving under the Vice President.

Unfortunately, your legislation drops many essential safeguards from the Executive order which insure that when Government assets built with Federal funds are sold to the private sector, important standards are maintained. For example, the Executive order requires that any funds obtained from the sale of an asset must be used for either additional infrastructure or for debt reduction or tax relief.

Debt reduction and tax relief, at least in theory, would help a local government obtain additional funds for infrastructure improvements through better bond ratings. H.R. 1907 does not include that requirement, and thus the proceeds could go to such unrelated items as bonuses for local executives.

The Executive order requires that the public purpose of the asset be maintained and that conditions be met that protect users and the public by limiting the charges for the asset. The bill drops these limitations. That means that this bill—for example, Virginia could sell its part of the beltway to a private company, who could put up toll booths and charge $10 a car.

Finally, the Executive order requires that the State or local government reimburse the Federal Government for the portion of the asset that it funded, minus the accelerated depreciation. This is to ensure that State and local governments do not take Federal grant money for a road or treatment facility and, then, the next year, sell the asset to a private company and pocket the proceeds. This important provision is dropped from H.R. 1907.

Mr. Chairman—uh-oh, we're being called. Privatization of infrastructure assets is certainly an important trend in this country, as well as in several foreign nations.

Although it may warrant support as a general policy, the implementation must be carefully controlled to assure that the objectives for which Federal funds have been awarded are not forgone and

that impacts of such transfers will not adversely affect other major Federal policies and interests.

It is good, Mr. Chairman, that you are providing this opportunity for exploration of these matters. I look forward to the testimony. Thank you.

[The prepared statement of Hon. Carolyn B. Maloney follows:]

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COMMITTEES
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GOVERNMENT REFORM AND OVERSIGHT

Congress of the United States
House of Representatives
Washington, DC 20515–3214

REP. CAROLYN B. MALONEY
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY

HEARING ON HR 1907, THE FEDERAL-AID FACILITY PRIVATIZATION ACT OF 1995

NOVEMBER 15, 1995

Mr. Chairman, thank you for holding this hearing on H.R. 1907. I think all of us support efforts to give more resources to State and local governments for infrastructure improvements. As we all know, money is scarce for much needed roads, bridges, waste treatment plants, and other municipal facilities. However, I am skeptical that this legislation is the best approach to reaching that objective.

I also question whether this is an "essential" hearing. The Federal government shut down yesterday, and only essential Federal government employees are working and collecting a paycheck today. In my district alone, thousands of Federal workers have been idled and my staff has been reduced by over half. It seems to me that all of our time would be better spent in trying to resolve the current budget impasse, rather than spending hours at this hearing. But since I won't win that argument, let me address the issues at hand.

There is currently in place a mechanism for transferring government assets to private parties, Executive Order 12803, signed April 30, 1992. It provides important guidelines and procedures for selling theses assets, and we are fortunate to have as the first witness today our colleague from Indiana, Mr. McIntosh, who contributed substantially to the development of that order while serving under the Vice President.

Unfortunately, your legislation drops many of the essential safeguards from the executive order that insure that when government assets built with Federal funds are sold to the private sector, important standards are maintained.

For example, the executive order requires that any funds obtained from the sale of an asset must be used for either additional infrastructure or for debt reduction or tax relief. Debt reduction and tax relief, at least in theory would help a local government obtain additional funds for infrastructure improvements through better bond ratings. H.R. 1907 does not include that requirement, and thus the proceeds could go to such unrelated items as bonuses for local executives.

The executive order requires that the public purpose of the asset be maintained, and that conditions be met that protect users and the public by limiting the charges for the asset. The bill drops these limitations. That means that under this bill, Virginia could sell its part of the beltway to a private company who could put up toll booths and charge $10 dollars a car.

(over)

Finally the executive order requires that the state or local government reimburse the Federal government for the portion of the asset that it funded, minus the accelerated depreciation. This is to insure that state and local governments do not take Federal grant money for a road or treatment facility and then the next year sell the asset to a private company and pocket the proceeds. This important provision is dropped for H.R. 1907.

Mr. Chainman, privatization of infrastructure assets is certainly an important trend in this country, as well as in several foreign nations. Although it may warrant support as a general policy, the implementation must be carefully controlled to assure that the objectives for which Federal funds have been awarded are not foregone and that impacts of such transfers will not adversely affect other major Federal policies and interests.

It is good, Mr. Chairman, that your are providing this opportunity for exploration of these matters. I look forward to the testimony.

Mr. HORN. I thank the gentlewoman from New York, and we're honored to have the chairman of the full committee, Mr. Clinger of Pennsylvania here. Is there an opening statement you would like to make?

Mr. CLINGER. Thank you, no, Mr. Chairman.

Mr. HORN. If not, I'm delighted to introduce the author of the bill, and, as I said, a person who comes to Congress with great experience in the executive branch dealing with these problems. Mr. McIntosh, the gentleman from Indiana.

Mr. MCINTOSH. Thank you.

Mr. HORN. You're welcome to join us afterwards on the hearing, if you would like to question some of the witnesses.

STATEMENT OF HON. DAVID M. McINTOSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. MCINTOSH. Thank you very much, Mr. Chairman, and thank you for giving me this opportunity to testify today on H.R. 1907, the Federal-Aid Facility Privatization Act of 1995. I appreciate your attention to the important issue of infrastructure privatization, and I commend you for your continuing effort and involvement in this area.

One of the issues during this 104th Congress, and particularly with my colleagues in the freshman class, is the need to revive the principles of the 10th amendment that says, essentially, we should get back to the original structure of relationships between the Federal Government and State and local governments.

For decades, power has flowed toward the Federal Government and away from States and local governments and, in many ways, has abrogated the constitutional structure that our Founding Fathers envisioned. As a result, the people most capable of efficiently providing Government services—dedicated local government officials—have often had their hands tied by overbearing Federal directives, both regulatory and funding directives.

In the first term of this Republican-controlled Congress, we have aggressively fought to reverse the concentration of power in Washington. From ending the unfunded mandates, which Mr. Clinger, our chairman, took through as the first contract provision, and reforming the welfare system that we are going to be taking up as part of the Reconciliation bill, this Congress has steadfastly sought to return authority to the State and local governments. The bill we are considering today is a modest but vital step forward in continuing this effort.

Prior to 1992, a Federal regulation—known as the "Common Rule"—which was administered by the Office of Management and Budget, required State and local governments to fully reimburse the Federal Government for all grants received upon the transfer of a facility to the private sector.

Now, many of the cities had sought to engage in privatization of local facilities and services, but were finding that this 100-percent repayment requirement was a prohibitive economic disincentive toward that privatization, preventing local officials from realistically considering public-private partnerships as a means for improving infrastructure services.

Now, as the Director of Vice President Quayle's Competitiveness Council, we worked with OMB to revise that Common Rule, and we fought to give States and localities the freedom to consider a full range of infrastructure development and management arrangements.

As a result, President Bush issued Executive Order 12803, which asserted, "the States and local governments shall have greater freedom to privatize infrastructure assets." The Executive order eased the repayment requirement by permitting the repayment of the depreciated value of the Federal grants received.

Now, unfortunately, experience has shown in the years since Executive Order 12803 that we did not go far enough. The modified repayment requirement continues to prevent State and local privatization efforts, and despite the enthusiasm of a growing number of Governors and mayors for privatizing or competing, whatever the term they use, of various infrastructure assets and services, only one transaction—a small wastewater facility in Franklin, OH—has been formally completed during that time; and it was only completed after months and months of delay caused by Federal scrutiny of the transaction.

Now, H.R. 1907 removes this unnecessary burden on community controls of infrastructure assets. Specifically, the bill allows the State and local governments to transfer an infrastructure asset to a private entity either by sale or long-term lease, with no repayment of Federal grants so long as the asset continues to be used for its original purpose. So we see, the purposes of the Federal grant for building this infrastructure at the State and local government level will continue to be maintained.

Now, defenders of the status quo here in Washington continue to try to stand by the old form of legislation and the Common Rule, but I think it's time that we move forward and change this to encourage more innovative approaches at the local government level, to allow mayors and Governors to have the freedom to decide how their infrastructure should be managed, and not have a fairly prohibitive formula of reimbursement stand in the way of these efforts.

Mr. Chairman, I will submit the rest of my testimony for the formal record and would be glad to answer any questions people might have.

[The prepared statement of Hon. David M. McIntosh follows:]

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ONE HUNDRED FOURTH CONGRESS

Congress of the United States

House of Representatives

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Testimony of Rep. David M. McIntosh
Before the Subcommittee on Government Managment,
Information and Technology
November 15, 1995, 2:00 p.m.

Thank you, Mr. Chairman, for the opportunity to testify today on H.R. 1907, the Federal-aid Facility Privatization Act of 1995. I appreciate your attention to the important issue of infrastructure privatization, and I commend you for your continuing involvement in the effort to enact this needed regulatory reform.

One of the issues driving the 104th Congress, and particularly my colleagues in the freshman class, is the need to revive the principles of the 10th Amendment to the Constitution by reordering the relationship between the federal government and state and local governments. For decades the federal government has accumulated power, depriving states and localities of their constitutional authority over matters not explicitly reserved for federal oversight. As a result, the people most capable of efficiently providing government services -- dedicated local government officials -- often have their hands tied by overbearing federal directives.

In the first term of this Republican-controlled Congress, we have aggressively fought to reverse the concentration of power in Washington. From ending unfunded mandates and reforming the welfare system to our efforts to save the Medicare and Medicaid programs, this Congress has steadfastly sought to return authority and discretion to the states and local governments. The bill we are considering today is a modest, but vital, step forward in this continuing effort.

Prior to 1992, a federal regulation -- known as the "Common Rule" -- required state and local governments to fully reimburse the federal government for all grants received for any federal-aid infrastructure facility upon the transfer of such facilities to the private sector. This 100 percent repayment requirement was a prohibitive economic disincentive to privatization transactions, preventing local officials from realistically considering public-private partnerships as a means for improving infrastructure services.

As Executive Director of President Bush's Competitiveness Council, I fought to give states and localities the freedom to consider a full range of infrastructure

development and management arrangements by eliminating this barrier to public-private partnerships. As a result, President Bush issued Executive Order 12803, which asserted that "State and local governments shall have greater freedom to privatize infrastructure assets." The Executive Order eased the repayment requirement by permitting the repayment of the depreciated value of federal grants received.

Unfortunately, the intervening years have shown that Executive Order 12803 did not go far enough. The modified repayment requirement continues to prevent state and local governments from implementing innovative infrastructure management arrangements. Despite the enthusiasm of many governors and mayors for privatizing infrastructure assets, only one transaction -- a small wastewater facility in Franklin, Ohio -- has been formally completed. And it was only completed after months and months of delay caused by federal scrutiny of the transaction.

H.R. 1907 removes this unnecessary burden on community control of infrastructure assets. Specifically, the bill allows a state or local government owner to transfer an infrastructure asset to a private party, either by sale or long-term lease, with no repayment of federal grants, so long as the asset continues to be used for its original purpose. This needed reform returns decision making power to state and local governments while preserving the federal interest by requiring that the asset continue to meet the needs for which it was intended.

Defenders of the status quo in Washington will continue to try to stand in the way of legislation, like H.R. 1907, which returns authority and discretion to state and municipal governments. They will claim that these proposals are too complex or have unanticipated consequences in order to delay action. But these claims are often motivated by a paternalistic belief that the federal government must protect local governments from themselves.

Local governments should have the freedom to employ innovative infrastructure management arrangements, including public-private partnerships, without interference from Washington. H.R. 1907 is narrowly crafted to remove the primary federal policy restricting such privatization transactions, without otherwise altering federal oversight of these facilities.

H.R. 1907 is an important first step in this Congress' privatization efforts. If we can remove existing barriers to privatization through enacting this legislation, we will untie the hands of state and local governments and encourage private investment in infrastructure. This privatization will generate revenue and improve state and local facilities across the nation.

Thank you, again, Mr. Chairman for considering this important piece of legislation.

Mr. HORN. Thank you. I will yield first to the ranking minority member, Mrs. Maloney.

Mrs. MALONEY. Thank you, Mr. McIntosh. In developing the Executive Order 12803, what consideration was given to releasing grantees from any repayment to the Federal Government? Why was that not adopted? Were there statutory obstacles?

Mr. MCINTOSH. When we looked at it, the original proposal that went forward to the Competitiveness Council had that option as one of the things to consider, that there would be no repayment.

Some of the people, particularly Director Darman at OMB, felt that it was important that the Government receive some part of the repayment of those grants and agreed that, rather than 100 percent, a depreciated schedule would be acceptable to him.

So the Council considered all of the options, felt they all could be legally done, but declined to go the entire way in recommending that to the President, and then the President signed it with the depreciation schedule that was put into the Executive order.

Mrs. MALONEY. The bill's definition of "originally authorized purpose" excludes certain types of grant conditions. Could you give us some examples of some of the exclusions?

Mr. MCINTOSH. That would be considered? Part of the problem you want to address is, you don't want to tie the hands of local government, as they are continuing to provide the service to the private sector, with some of the conditions that may have been part of the original grant, but the Federal Government no longer feels it has an interest in maintaining.

And so the effort there in the statute was to provide flexibility so that as the infrastructure was privatized, the local government could come back and say, "This grant restriction is preventing us from bringing in a private sector manager." We need some flexibility there.

Mrs. MALONEY. Does the bill only cover grant type assistance?

Mr. MCINTOSH. That's my understanding, yes, that it's limited to grants.

Mrs. MALONEY. To what extent have agencies reviewed barriers and recommended statutory changes? And how does H.R. 1907 relate to and modify such barriers?

Mr. MCINTOSH. I would have to look at the record from the agencies. I couldn't give you that detailed information at this point.

Mrs. MALONEY. A witness which will follow you, a John T. Dowd of Wheelabrator Clean Water Systems made this technical comment on H.R. 1907, and I would like you to comment on it. Could I read it to you?

"The definition of 'infrastructure assets' may be too broad. It refers to any asset financed by the Federal Government. We suggest that, with respect to wastewater treatment facilities, the legislation only apply to assets owned by State or local governments, or governmental agencies or authorities, for the construction or improvement of which Federal funds can be used. * * * "Furthermore, the definition should clearly state that projects constructed with Federal financing via no-interest or low-interest loan, such as use of a State revolving fund, are eligible assets for partnerships, but SRF loans should not be forgiven. The provision in section 5 which voids

requirements for repayment of Federal funds should apply only to construction grants in the case of wastewater treatment facilities."

Do you have any comment on that?

Mr. MCINTOSH. As to the first one, I think the key there would be to hear from the folks, particularly at the Environmental Protection Agency, who, at least when we were working on this, welcomed the effort to give them more flexibility. I think it applies mainly in cases where they have already developed a private sector involvement, and it may be an effort to create even greater flexibility to maintain that arrangement. I would defer to the technical experts in that area.

On the loans, I do think it's important that we go ahead and include the provision there for giving the loans, and the reason is, essentially, that I think the purpose of that original loan has been maintained in building the infrastructure project and that, oftentimes, the value of the asset doesn't justify the continued payment of the loan, so you can't get a private sector party to actually take that on, and the effect of maintaining the loan is that the city has to continue to own the asset.

So I would urge us to keep that provision, regarding the second comment from that gentleman.

Mr. HORN. We're going to have to recess for about 10 minutes so we can vote. There's a vote on the floor, and we have 5 minutes to go. Usually the Democratic buzzer does five, but I didn't hear it.

[Recess.]

Mr. HORN. All right. We will call the first panel forward now—or, technically, the second. That includes Mr. Poole and Mr. Roth, if you would come forward. We have a tradition of swearing all witnesses but a Member of Congress. I was swearing them in for about 5 months, but the chairman said it's inelegant to swear in your colleagues. But so be it.

[Witnesses sworn.]

Mr. HORN. All right, the clerk will note that both witnesses affirmed. We're delighted to have Mr. Robert Poole, the president of the Reason Foundation as the first witness. Mr. Poole.

STATEMENTS OF ROBERT W. POOLE, JR., PRESIDENT, REASON FOUNDATION; AND ALLEN ROTH, EXECUTIVE DIRECTOR, NEW YORK STATE RESEARCH COUNCIL ON PRIVATIZATION

Mr. POOLE. Thank you very much, Mr. Chairman, members of the committee. I'm Robert Poole, president of Reason Foundation. We have been researching privatization for 17 years, and have advised the Reagan, Bush, and Clinton administrations on this subject.

My focus today is the privatization of State and local infrastructure. We all know that funding for infrastructure is not keeping pace with needs and that Federal assistance is going to shrink, not grow.

Other countries face similar problems. Their response is to turn to the private sector and private capital for infrastructure. The latest global survey from Public Works Financing, which is being released this week, reports there are 356 privatized infrastructure projects around the world, worth $146 billion.

These have been financed and are under construction in 42 countries in the past decade, but only a handful of all of these projects are in the United States. USAID is telling foreign governments why they should privatize infrastructure, but the United States relies primarily on Government ownership and operation of some of these very same types—airports, highways, seaports, water supply, and waste disposal facilities.

There's strong evidence that private ownership leads to greater efficiency, wiser investment decisions, and greater user friendliness. Those types of infrastructure where this country has relied primarily on investor ownership—namely electricity and telephones—are recognized as the standard of the world.

But we can't say the same thing about our U.S. airports, highways, seaports, water supply, and waste disposal facilities. Those are not the world's standard. There actually are better ones in many other countries.

Why does the United States lag behind others in this field? This study that we produced in May found that the Federal law today is biased against private capital and private ownership and infrastructure. There are tax code barriers, regulatory barriers, and grant-related barriers. It's only the latter that are the subject of today's hearing, which I'll talk about today.

In 1991, the Reason Foundation identified the grant repayment requirement as a problem, which essentially amounts to a transfer tax on privatization transactions, which makes those transactions more costly and, therefore, discourages them from occurring.

That study was helpful in aiding the Vice President's office to bring about Executive Order 12803. As Congressman McIntosh mentioned, there was actually some internal tension within the Bush administration, and the compromise with OMB was this partial repayment requirement that ended up being in the final wording.

But I maintain today that that compromise was misguided. Elimination of the repayment requirement is the appropriate policy for three reasons.

First, the Federal Government did indeed make grants, not loans, to the cities and States to help create infrastructure to serve a public purpose. As long as there is a guarantee that the facility remains in service to the public for the original purpose, then the Federal objective has already been served, regardless of ownership.

Second, both economic theory and worldwide evidence say that privatization of infrastructure is a good thing. It has served this country well for electricity and telephones, and would serve us equally well for other kinds of infrastructure. Investor-owned firms have strong incentives for high performance. Both the Bush and Clinton Executive orders—Clinton's Order, 12893—endorsed this view in principle. But if they mean it, why should Federal policy extract the equivalent of a transfer tax when someone actually seeks to bring about this result? If Congress finds privatization to be sound public policy, as the Bush and Clinton administrations do, Congress should be neutral or even encourage cities and States to adopt it. It should not impose a tax on their decisions.

The third reason is that grant repayment is ill-advised on fiscal grounds. The Federal Government, in fact, will benefit handsomely

if privatizations like this occur, but will reap no fiscal benefits if no transactions take place.

Let me give you some numbers that are drawn from my written testimony. We have previously estimated in a study that, if there were a truly level playing field, cities and States might sell as much as $227 billion worth of user fee-funded infrastructure. That would mean a one-time infusion of capital to those cities and States—about $114 billion to cities and counties and $113 billion to States.

The Congress, of course, could open the door to this major infusion of capital without having to spend a dime by just getting the barriers out of the way. But, in addition to this one-time windfall, every level of government would begin to receive new annual tax revenues as these privatized facilities became ordinary investor-owned businesses.

The table in my written testimony shows there would be about $3.4 billion in new local property taxes; $2.6 billion in new State income taxes; and over $8 billion per year in new Federal taxes. That's orders of magnitude more than the Federal Government would ever make via grant repayments.

Finally, let me just close with a few words about bipartisanship. For the past 2½ years, I've been discussing these issues with people at DOT, at EPA, at the National Performance Review, and at the National Economic Council, as well as Members of Congress from both parties.

What has really impressed me in all this is that there is a large amount of agreement on the basic principles, agreement that we can't modernize America's infrastructure with business as usual—it's going to require significant private capital; that shifting to user fees is wise public policy—it brings about benefits like congestion relief and conservation of resources; and that many of these infrastructure projects are inherently monopolies, and there does have to be some kind of control over the possible exploitation of consumers.

We can haggle a bit over the details and the conditions, but, I would submit, let's not get bogged down by those details. Rather, let's seize the opportunity to remove this Federal barrier to private investment and give cities and States the option to use this important new tool.

That concludes my remarks. I would be happy to answer any questions at the appropriate time.

[The prepared statement of Mr. Poole follows:]

REMOVING FEDERAL OBSTACLES TO PRIVATIZATION

Testimony of
Robert W. Poole, Jr.

Presented before House Subcommittee on
Government Management, Information & Technology

November 15, 1995

Reason Foundation
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My name is Robert W. Poole, Jr. I am president of the Reason Foundation, a nonprofit public policy research institute based in Los Angeles. For 17 years we have been researching privatization on a worldwide basis. I have done research on this subject under the auspices of the U.S. Agency for International Development and the World Bank, and I have advised, among others, the President's Commission on Privatization, the White House Office of Policy Development, the U.S. Department of Transportation, and in the current Administration, both the National Economic Council and the National Performance Review.

My testimony today focuses on the privatization of infrastructure facilities at the state and local level: facilities such as airports, bridges and highways, electric and gas utilities, seaports, and water and wastewater systems. The bad news is that funding for such vital infrastructure is not keeping pace with recognized needs. The growth of our population and economy require expansion of the infrastructure used for energy, environmental, and transportation purposes. The deterioration of major highways and environmental infrastructure requires substantial investments in reconstruction and modernization. And increasingly stringent environmental standards will require additional investments in water quality and waste disposal.

While the need is evident, federal funding is becoming less and less available, due to the overriding need to balance the federal budget. Moreover, there is a growing recognition, from OMB Director Alice Rivlin and numerous members of Congress, that with few exceptions, infrastructure is a state and local rather than a federal responsibility.

Other countries face similar infrastructure problems. Increasingly, their response is to turn to the private sector and private capital to meet these needs for new and modernized infrastructure. The latest global survey of major privatized infrastructure projects is being released this week by the newsletter *Public Works Financing*. It reports that 356 privatized infrastructure projects worth $146 billion have been financed and put under construction in 42 countries during the past decade. They include:

- 58 water/wastewater facilities worth nearly $11 billion
- 124 toll roads, bridges, and tunnels worth almost $70 billion
- 18 rail projects worth $7 billion
- 10 airport terminal and runway projects worth $21 billion
- 18 seaport projects worth $2.1 billion
- 57 (non-U.S.) power projects worth $29 billion.

Overall, including both financed and planned projects, some 980 specific projects with an aggregate value of almost $700 billion are in some stage of active consideration by governments in 95 countries.

Unfortunately, only a handful of these projects--and only a small fraction of this massive investment--is taking place in the United States. While the World Bank and USAID are telling governments worldwide why they should privatize major infrastructure, the United States itself relies primarily on government finance, ownership, and operation for airports, highways,

seaports, water supply, and waste disposal facilities.

Based on our 17 years of researching privatization, I believe there is a very powerful case that private ownership of major infrastructure will generally lead to greater efficiency, wiser investment decisions, and greater customer-friendliness. Those types of infrastructure where the United States *has* relied primarily on the private sector--electricity and telecommunications--are the world-standard in their field. But the same *cannot* be said about the quality of our airports, our highways, our seaports, our water supply, or our waste disposal facilities. The most-advanced infrastructure in these fields is in countries such as Britain, France, Italy, Japan, and Hong Kong, where long-term private franchises or outright private ownership are becoming standard practice.

There are several reasons why the United States lags well behind other developed countries in making use of the private sector for infrastructure. The Reason Foundation published a policy study in May explaining the many ways in which federal law is biased against private capital and private ownership in infrastructure.[1] There are tax-code barriers, regulatory barriers, and grant-related barriers. The purpose of today's hearing, and this proposed legislation, is to address only the grant-related barriers.

This is an issue first identified by the Reason Foundation in 1991. In looking into the potential for privatization of airports, highways, and wastewater facilities, we noted that many of the larger and more attractive candidates for privatization had been built in part with federal grants, and that many federal strings were attached to these grants. Attorney John Giraudo, former general counsel to the President's Commission on Privatization, pointed out in a Reason Foundation paper that although OMB's Common Rule permits grantees to terminate federal grant agreements unilaterally (in order to privatize), the granting agency could generally require the repayment of the federal grants in question.[2] The repayment requirement would serve, in effect, as a "transfer tax" on privatization transactions, making them more costly and therefore discouraging them from occurring.

Giraudo's paper attracted the interest of Vice President Quayle's Council on Competitiveness, which began to research some kind of federal reform that would reduce or eliminate this federal barrier to privatization of state and local infrastructure. The ultimate result, in April 1992, was President Bush's Executive Order 12803, which is the starting point for the legislation under discussion today. In the internal White House debate over the provisions of

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[1] Robert W. Poole, Jr., "Revitalizing State and Local Infrastructure: Empowering Cities and States to Tap Private Capital and Rebuild America," Policy Study No. 190, Los Angeles: Reason Foundation, May 1995.

[2] John P. Giraudo, "Breaking Free of Federal Grant Restrictions: Making Infrastructure Privatization a Real Option," Policy Study No. 127, Los Angeles: Reason Foundation, February 1991.

12803, OMB took the view that the federal government should still recover its investment when ownership of the facility changed hands. The final wording of 12803, calling for repayment only of the undepreciated portion of the grant funds, was an uneasy compromise.

What I would like to suggest to you today is that the compromise was misguided, and that the elimination of any repayment requirement, as proposed in this legislation, is the appropriate federal policy. Three factors lead me to this conclusion.

First, the fact is that the federal government made *grants* to cities and states, not loans. The purpose of the grants was to help create infrastructure that would serve a public purpose. As long as there is a guarantee that the facility remains in service to the public for that purpose, for as long as it is needed, then the federal purpose has been served.

Second, both economic theory and the overwhelming weight of evidence from around the world suggest that privatization of infrastructure is a good thing. It has served this country well for electricity and telephones, and it would serve this country equally well for airports, highways, seaports, water supply, and waste disposal. Investor-owned firms have stronger incentives for top-flight performance than government agencies. Both the Bush and Clinton executive orders on privatization endorse this view in principle. But if they mean it, why should federal policy extract a transfer tax when someone actually seeks to bring about such privatizations? If Congress finds privatization to be sound public policy, it should at worst be neutral about the decision of state and local governments to adopt it. It should not impose a tax on their decision, which is what any amount of grant repayment amounts to.

Third, grant repayment is also ill-advised on fiscal grounds, because the federal government will benefit handsomely if privatizations occur, but will reap no fical benefits if they do not occur. Let me give you a brief quantitative example.

At the request of the Bush White House, in 1992 we put together an estimate of what dollar volume of privatizations might take place if there was a truly level playing field, and cities and states took full advantage of it to sell user-fee-funded infrastructure facilities to investors. Our widely quoted estimate was that cities and states, over a period of years, might sell some $227 billion worth of enterprises and facilities.[3] A summary of those assets and enterprises is included here as Table 1.

What OMB and other advocates of grant repayment tend to forget is the enormous fiscal benefits of this kind of privatization--to all three levels of government. First of all, there would be a one-time infusion of capital for the local and state governments selling these facilities--about $114 billion to cities and counties and $113 to states. In other words, without having to spend

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[3] Robert W. Poole, Jr., David Haarmeyer, and Lynn Scarlett, "Mining the Government Balance Sheet: What Cities and States Have to Sell," Policy Study No. 139, Los Angeles: Reason Foundation, April 1992.

a single dollar of federal funds, Congress could open the door to this major infusion of capital into state and local governments.

In addition, every level of government would begin receiving new streams of annual tax revenues as the privatized facilities became ordinary investor-owned businesses. Local governments would benefit to the tune of about $3.4 billion per year (making the conservative assumption that property taxes would average 1.5 percent of market value; in many places it would be more than that).

Federal and state governments would get three new streams of tax revenue. First, they would collect ordinary corporate income taxes from these newly privatized businesses. Second, they would tax the dividends earned by investors in the stock of these businesses. Third, they would tax the interest paid to investors in the bonds of these businesses. Table 2 lays out these projected fiscal impacts, assuming the entire $227 billion worth of infrastructure in Table 1 were to be sold. You will note that the federal government would receive over $8 billion *per year* in net new tax revenue. That is orders of magnitude more than it is making today via grant repayments!

In conclusion, I want to say a few words on behalf of bipartisanship. For the past two and a half years I have been discussing these issues of public-private partnerships in infrastructure with people at DOT, at EPA, at the National Performance Review, and at the National Economic Council--as well as with members of Congress from both parties. What has impressed me in all this is how much agreement there is in principle on these issues.

- We cannot modernize America's infrastructure via business-as-usual; it is going to require significant amounts of private capital.
- Shifting to direct user fees produces many benefits, among them congestion-relief and conservation of resources, thanks to the incentives provided by pricing.
- For inherently monopolistic infrastructure, users must be protected from exploitation.

There is far more common ground than there is disagreement. To be sure, we can haggle a bit over the details--exactly what conditions should be put on privatization transactions, to protect the public interest. But let us not get bogged down in those details. Rather, let us seize the opportunity to remove this federal barrier to private investment in this country's infrastructure, giving cities and states the option to use this important new tool.

I would be pleased to answer any questions you may have.

Table 1: Salable State and Local Infrastructure ($ Billions)

	Local	State
Airports*	25.0	4.0
Electric Utilities*	13.0	3.7
Gas Utilities	2.0	---
Highways/Bridges	---	95.0
Parking Structures	6.6	---
Ports*	9.0	2.4
Turnpikes	---	7.4
Water	23.9	---
Wastewater	30.5	---
Waste-to-Energy	4.0	---
	$114.3	$112.5

* Local/state breakdown estimate

Table 2: Fiscal Benefits of Infrastructure Sales ($ Billions)

	Local	State	Federal
One-Time Proceeds	$114.3	$112.5	---
New Annual Revenues			
• Property Taxes	3.40	---	---
• Corp. Income Taxes	---	0.681	2.30
• Dividend Taxation	---	0.340	1.02
• Bond Interest Taxation	---	1.600	4.80
Total Annual	$3.40	$2.621	$8.12

Assumptions:
1. Sale price equals 5 times gross annual revenue.
2. Net taxable income equals 15 percent of gross revenue.
3. Federal corporate tax rate equals 34 percent of net taxable income.
4. State corporate tax rate equals 10 percent of net taxable income.
5. Local property tax equals 1.5 percent of market value.
6. Dividends equal 50 percent of net taxable income.
7. Dividends taxed at 30 percent federal, 10 percent state.
8. Fifty percent of purchase price financed with taxable bonds.
9. Modernization investment equals 1/3 of market value, financed with taxable bonds.
10. Taxable bond interest rate equals 8.5 percent.
11. Interest earnings taxed at 30 percent federal, 10 percent state.

Mr. HORN. Well, they're very helpful. We'll have questions after we've finished with Mr. Roth's testimony. Allen Roth is executive director of the New York State Research Council on Privatization.

Mr. Roth.

Mr. ROTH. Thank you, Mr. Chairman, and I would like to also thank my fellow New Yorker, Mrs. Maloney.

I am testifying as the executive director of the New York State Research Council on Privatization. The council was created by Executive order of New York's Governor Pataki.

My appearance is an indication of the importance we place on removing Federal barriers to State and local privatization initiatives. It is our belief that in this era of empowering State and local governments to put their own houses in order, the Federal Government should allow the States to make maximum use of all their assets, even those that have benefited from Federal grants.

I believe that H.R. 1907 goes a long way toward giving States like New York the option of realizing the full benefits of privatization. In New York, we are seriously considering the outright sale of airports and the privatization of wastewater treatment facilities that have received Federal grants. Given this agenda, we understand the need to eliminate Federal impediments to these efforts.

Since the issuance of Executive Order 12803—we were involved in helping to draft that particular Executive order—our fears that it didn't go far enough have been realized. The failure to adequately address the grant payback and grant restriction issues have resulted in the completion of just one local federally backed asset privatization, the sale of Franklin, OH's wastewater treatment facility.

As I've analyzed H.R. 1907, I applaud the provision that exempts State and local governments from paying back Federal grants if the asset continues to be used for the same purpose. The Federal Government has a right to require that its investment of tax dollars be used to maintain an asset for its original purpose.

Another issue which needs addressing is grant restrictions that govern the use of funds generated from that particular asset. Lifting restrictions would increase the value of assets to buyers, therefore increasing sales proceeds for State and local governments.

I know there are opponents of allowing private investors to invest profits in activities not directly related to the assets. For instance, some have asserted that such a provision would undermine the economic well-being of airports. They maintain, revenues realized from airports should remain there. The rational justification of this position is that, if permitted, the private sector owners will neglect the needs of airports by investing proceeds in other areas.

I beg to differ. Private investors who commit considerable sums to purchasing an airport will invest the necessary capital and operating expenses to maintain and improve the facility. There is no incentive to devalue the worth of their significant investment.

For example, BAA did not abandon the capital or operating needs of Heathrow and its other airports when it privatized. On the contrary, it has expanded and improved the level of service at its privatized facilities, and, in addition, BAA's investments have included paying dividends to its shareholders, expansion of its airport businesses, such as the organization of BAA USA, and invest-

ments in related businesses that are restricted by our Federal policies, such as constructing a rail line between Heathrow and London.

Moreover, here in the United States, the Port Authority of New York and New Jersey, which operates the largest airport system in the country, is permitted to invest its profits from Kennedy, LaGuardia, and Newark Airports in other operations, including making lease payments to New York City and Newark. What is permitted for some airports should be permitted for all. This significant exemption of general Federal restrictions is an excellent example of how moving profits off airports is not tantamount to decapitalizing these assets.

In conclusion, I want to say that, as we are proceeding in New York, it has become very, very clear that New York's State and local governments—including the city of New York—the mayor of the city of New York has clearly indicated that he would like the opportunity to put Kennedy and LaGuardia Airports up for sale so that the city can maximize its revenues from those facilities.

Right now, from Kennedy and LaGuardia Airports, the city realizes about $10 million a year. If these airports were in private hands, and they were paying property taxes, it would be worth upward of $200 million a year. That's a considerable difference.

So on the State and on our local levels, the Pataki administration is very much in favor of eliminating Federal barriers that are preventing the private sector from investing the billions of dollars that we need to build the infrastructure in this country. Thank you.

[The prepared statement of Mr. Roth follows:]

H.R. 1907
The Federal-Aid Facility Privatization Act of 1995

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Testimony of
Allen Roth
Executive Director,
New York State Research Council on Privatization

Presented before the House Government Management, Information and Technology Subcommittee

November 15, 1995

TESTIMONY OF ALLEN ROTH

I want to thank Chairman Horn and members of the House Government Management, Information & Technology Subcommittee for granting me the opportunity to testify on H.R. 1907, the Federal-Aid Facility Privatization Act.

I am testifying as Executive Director of the New York State Research Council on Privatization. The Council was created by Executive Order of New York's Governor George Pataki. The Council is chaired by Ronald S. Lauder, who could not be here today because of a scheduling conflict.

My appearance is an indication of the importance we place on removing federal barriers to state and local privatization initiatives. It is our belief that in this era of empowering state and local governments to put their own houses in order, the federal government should allow the states to make maximum use of all their assets – even those that benefitted from Federal grants. Therefore, I strongly support the passage of H.R. 1907. If enacted, it will go a long way toward giving states like New York the option of realizing the full benefits of privatization. In New York, we are seriously considering the outright sale of airports and it supports the privatization of wastewater treatment facilities that have received federal grants. Given this agenda, we understand the need to eliminate federal impediments to these efforts.

In 1992, Ronald Lauder and I became active participants in changing federal privatization policy when Mr. Lauder hosted a meeting at which Vice President Quayle discussed the proposed Bush Administration Executive Order to facilitate state-initiated privatizations. While all the people in the room applauded the thrust of the proposed order, we did express the sentiment that it probably did not go far enough.

Since the issuance of Executive Order 12803, our fears have turned into reality. The failure to adequately address the grant payback and grant restrictions issues have resulted in the completion of just one local, federally-backed asset privatization - the sale of Franklin, Ohio's wastewater treatment facility.

As I've analyzed H.R. 1907, I applaud the provision that exempts state and local governments from paying back federal grants if the asset continues to be used for the same purpose. This is a rational public policy. The Federal Government has a right to require that its investment of tax dollars be used to maintain an asset for its original purpose.

Another issue which should be addressed by Congress in the near future are grant restrictions that govern the use of funds generated from the asset. Lifting restrictions would increase the value of the assets to buyers, therefore, increasing sales proceeds for state and local governments.

I know there are opponents of allowing private investors to invest profits to activities not directly related to the assets. For instance, some have asserted that such a provision would undermine the economic well being of airports. They maintain revenues realized from airports should remain there. The rational justification of this position is that if permitted, the private sector owners will neglect the needs of airports by investing proceeds in other areas.

I beg to differ. Private investors who commit considerable sums to purchasing an airport will invest the necessary capital and operating expenses to maintain and improve the facility. There is no incentive to devalue the worth of their significant investment.

For example, BAA did not abandon the capital or operating needs of Heathrow and its other airports when it privatized. On the contrary, it has expanded and improved the level of service at its privatized facilities and in addition, BAA's investments have included paying dividends to its shareholders, expansion of its airport businesses – such as the organization of BAA USA, and investments in related businesses that are restricted by our federal policies – such as constructing a rail line between Heathrow and London.

Moreover, here in the United States, the Port Authority of New York and New Jersey, which operates the largest airport system in the country, is permitted to invest its profits from Kennedy, LaGuardia, and Newark Airports in other operations, including making lease payments to N.Y.C. and Newark. What is permitted for some airports should be permitted for all.

This significant exception to general federal restrictions is an excellent example of how moving profits off the airports is not tantamount to decapitalizing these assets.

It is my belief that the federal government should eliminate federal barriers to privatization so that state and local governments can maximize the value of assets in their communities. This is the only way we are going to tap the private sector funds that are waiting for the opportunities to invest in roads, airports, and wastewater treatment facilities, and other critical public infrastructure assets.

Thank you for considering this testimony in your evaluation of H.R. 1907, The Federal-Aid Facility Privatization Act.

Mr. HORN. Thank you. Let me ask one question, then I'm going to ask the ranking member to begin the questioning. Have each of you had an opportunity to look at the legislation, H.R. 1907, before us?

Mr. ROTH. Yes.

Mr. HORN. Do either of you have any specific suggestions as to language in the legislation?

Mr. POOLE. I'm comfortable with it as it is. I know that there are concerns that have been raised, including by Congresswoman Maloney, about things like stronger provisions to protect consumers and so forth. It seems to me that it's very strong in the interests of the municipality or State government that would sell or lease an asset to protect its own constituents in those ways and that it doesn't need to be micromanaged from Washington. I think as minimal as necessary is all that's really required here, and to let the private sector incentives and the incentives of local governments handle the details.

Mr. HORN. Yes, Mr. Roth.

Mr. ROTH. In section 4, paragraph (b), wording there, "The private party purchasing or leasing the infrastructure assets agrees to comply with all applicable grant assurances," is something that, as I've testified, I think that there are some grant assurances—for example, of taking profits away from the particular asset is something that would be desirable, and this particular legislation doesn't address that.

But I do agree that if this legislation was passed as is, it would be a major step forward in the right direction.

Mr. HORN. Do you have any specific language you want to add to subsection (b) in section 4?

Mr. ROTH. Not at the moment, but I'll be glad to submit some.

Mr. HORN. Why don't you write them to me. Mark it "personal and confidential." I would like to take a look at it. We're open to suggestion, and I say that to the other witnesses that are in the room. If you have had a chance to read the bill—it's a very simple, precise, and to-the-point piece of legislation, not a lot of gobbledygook—so we would welcome your comments after you testify.

We're interested, obviously, in the broad picture, as to need, as to how successful experiences or unsuccessful experiences have been; and then we would like your best language. Don't feel you have to hire a lawyer to give us sensible language. We find we have sensible language whether there are lawyers or not lawyers. So we would welcome that.

Now I yield to the ranking member from New York, Mrs. Maloney; 5 minutes.

Mrs. MALONEY. First, I would like to welcome Mr. Roth from the great State of New York.

Mr. ROTH. Thank you.

Mrs. MALONEY. And just ask you, if the proceeds from these sales can be used for anything that a local official wants to spend it on, isn't it just another form of revenue sharing, and wouldn't a general revenue-sharing bill be a more efficient way of getting funds to the State and local governments for unrestricted uses?

Mr. ROTH. I happen to believe that every time you take money from a locality and you send it either to a State—like in New York,

take from New York City, sending it to Albany—or sending it to Washington and then getting the money back, that a good amount of that revenue seems to get eaten up along the way. It's not the most efficient way of doing things.

I think it would be far more efficient to allow localities to actually get the maximum value out of their assets, and privatization is the way to do that. It leaves the money there, in the locality, and lets local governments determine how they think it is best to spend.

Mrs. MALONEY. And what about the provision protecting users from price gouging? How do you ensure that a private enterprise, which would then be in a monopoly position—with an airport or a waste treatment plant or whatever—act in a responsible manner to keep charges reasonable to the public?

Mr. ROTH. In New York City, as an example, if you sold one airport—let's say you sold Kennedy—you have a minimum of two other airports, really three other airports. You have Stewart, LaGuardia, and Newark airports, so it would not be a monopoly. There is nothing that says that you should sell all of them to one entity.

Mrs. MALONEY. But we're not—this legislation is for the whole country.

Mr. ROTH. No, I understand.

Mrs. MALONEY. There will be areas where they could sell—I understand not for New York—but say in New York or in Chicago or wherever.

Mr. ROTH. OK.

Mrs. MALONEY. In Norfolk, you only had one airport. What's going to provide that people don't gouge prices and really abuse it once they've got a monopoly?

Mr. ROTH. And the British example, I think, addresses this directly. When they privatized their airports—seven airports total, the major airport being Heathrow—part of that privatization included a limit on how much prices could be increased.

Mrs. MALONEY. But this bill doesn't limit.

Mr. ROTH. Oh, but this bill—like I said, I think this bill can say more in different areas, but I think that the general grant issue has to be addressed, in this bill or in another bill, and that as it stands, the grant payback issue makes this bill a valuable bill.

The city of New York sells Kennedy Airport, as an example, it can build into that contract an agreement that prices cannot increase above a certain amount. But in Great Britain, when they did that, prices not only never reached that level, they have always been lower than that particular level.

Mrs. MALONEY. Well, Mr. Roth, do you think we should consider sort of a local utility commission type of process to review charges and profits?

Mr. ROTH. Absolutely not. No.

Mrs. MALONEY. It just should be part of the contract of sale.

Mr. ROTH. I think that we have elected officials who will enter into contracts as they enter into thousands of contracts every single year, and this would be one other contract, which would be the sale of an asset under terms that are best for the people who have elected them to office.

Mrs. MALONEY. Well, what is keeping the mayor from selling Kennedy Airport if he wanted to?

Mr. ROTH. In this particular case, there are many things. First off, it is owned—it is not owned. It is being leased by the port authority, so he doesn't have direct control over it. The land is New York City's land, but the port authority, under what is really a sweetheart deal, makes use of that particular land—meaning Kennedy and LaGuardia Airports.

Mrs. MALONEY. Couldn't you pass—the city council—a law that took it out of the port authority?

Mr. ROTH. No, because there is a contract that goes on for another 20 to 25 years. Now, that doesn't mean that there can't be pressure from the State—the port authority commissioners are appointed by the Governors of the States of New York and New Jersey—to either break that contract or to refine that particular contract so that the city has more control over it.

But even if we got over that hurdle on the Federal level, we have the grant payback issue. We have grant restrictions. Who's going to purchase an airport when, in fact, they have to invest all that money back into the airport? They're going to invest enough money to keep that airport—if they're going to spend $2 billion for Kennedy Airport, trust me, they are going to invest enough money to keep that asset valuable and to make it even more valuable.

I think that all the airport people in the world would agree that Kennedy Airport can be made a lot better than it presently is. And the private sector would have an incentive, because the bottom line would drive them to doing things in a way that would benefit passengers, airlines, as well as the people of the city of New York.

The Government has demonstrated over a long period of time—in this case, in terms of the port authority—that it is not motivated by those particular needs of the people. That airport is in serious jeopardy, and if something positive doesn't happen to Kennedy Airport, it will affect the whole economic region, not just New York City.

Mr. HORN. We'll have another round of questions. Let me follow up on that, Mr. Roth. As I remember, and you sort of confirmed, the port authority is a creature of the State because of its interstate nature. What is the goal of the port authority in its operation of Kennedy Airport? If it isn't to make a profit, what is it?

Mr. ROTH. Well, the reason why the port authority does not have to make—and it does make a profit. Any airport in that particular area will make a profit. I mean you're coming in with cargo, et cetera. You're going to make a profit. Studies have shown that they can make a lot more, and the people of the city of New York are definitely being shortchanged, as I mentioned before, the difference between $200 million and $10 million a year in tax revenues.

The port authority's major purpose—and it has wandered from that particular purpose—was to improve transportation, primarily the movement of goods within the region, meaning the New Jersey-New York region.

Now, through a very broad interpretation of that mission, they built the largest office complex in the history of the country, the World Trade Center. It has more office space than the entire city of Cincinnati. Why it's in the real estate market is a great mystery.

Our Governor has publicly announced that he would like to see that sold off and turn the port authority back to its core business.

Right now, we are dealing with a bureaucracy, like any other bureaucracy, which has not been challenged over the years, and the port authority has the ability to float bonds. If it's not making money in a particular area, it's able to float bonds to finance whatever it is that they want to finance.

They don't have to go to the voters for approval. They have a financing mechanism that most people don't have, no private sector people have. And their incentive, clearly, has been to perpetuate themselves, and they've done a great job.

Mr. HORN. Robert Moses lives.

Mr. ROTH. Robert Moses lives.

Mr. HORN. Yes.

Mr. ROTH. That's true.

Mr. HORN. Appointed by every Governor, regardless of party, and appointed by every mayor, regardless of party.

Mr. ROTH. Right.

Mr. HORN. For what—50 years—almost?

Mr. ROTH. The better part of 50 years, and as long as he was willing to spend money and build, they were willing to hire him.

Mr. HORN. Now, you mentioned Cincinnati, and it reminds me that Cincinnati's airport is over the river in Kentucky, and, of course, if that was privatized, it might be great, but Kentucky's going to get the property tax.

Mr. ROTH. It will get the property tax, but there are other revenues and other financial benefits. In Pittsburgh, when Pittsburgh contracted out its retail sales to BAA, it contracted with BAA to in fact develop its retail sales. The retail sales increased tremendously. That led to more corporate taxes; which led to more economic development in terms of real jobs for people in the private sector.

In Indianapolis, which is the first major privatization in the United States of America for the management of an entire airport, again, there was a very vigorous competition between BAA, Lockheed, and several other groups, including the members of the Indianapolis Airport Commission—people like the port authority—who were operating that airport. They actually joined in and competed for the management contract.

That contract has the winner of that contract—and the others were also willing to go down this particular route—saying, "We will save X number of dollars every single year." They actually put down that it would cost less to operate this airport, plus they believe that it's going to develop in a way that the economic development of the entire region will benefit.

So property taxes are important, but, in fact, there is, I think, an equal importance in terms of creating real private sector jobs.

Mr. HORN. Does the Port Authority in New York provide funds to the State of New York and the State of New Jersey at all?

Mr. ROTH. Not directly. What it does is—for example, in New Jersey—New Jersey has a train system called the Path system, which goes between New York and New Jersey—lower Manhattan, primarily—and it brings people in from Hoboken, and they tend to be Wall Street types who use it. Port Authority subsidizes Path.

It's the most heavily subsidized train system in the country. It is outrageously subsidized, as a matter of fact. So, in that way, the State of New Jersey benefits.

Some of New York City's buses, through a lease arrangement that it's using New York City streets by the Transit Authority, are leased through the Port Authority; and it's beneficial. They could not do that directly. It would cost more if they were purchasing the buses themselves.

But, overall—there are individual examples that I can cite—I go back to the World Trade Center. The World Trade Center is 20 percent of the real estate market in lower Manhattan. Lower Manhattan's real estate market has gone down economically. Having the Government driving the private sector out of business is not something that I think that rational people would want.

Mr. HORN. How much money does the port authority give the State of New York outside the limits of the city of New York?

Mr. ROTH. It's very, very difficult to assume. It's not a great deal of money. The Governor of the State of New York is willing to take on the Port Authority because it really isn't that much.

Mr. HORN. So if this law was passed, if the mayor said, "I would like to privatize John F. Kennedy Airport," does he have the power to get the port authority to go with him, or is that strictly up to the two Governors?

Mr. ROTH. It's up to the two Governors and the commissioners that they have appointed. There is one bright star. Last Thursday, the port authority, through the pressure of the Governor of New York and the Governor of New Jersey, agreed to sell a hotel that it owns. That's the first major privatization.

The Vista Hotel went into contract last Thursday, and that deal should be completed in a month. The two Governors agree that privatization is better than keeping the entity as it is, and we see the first step in that direction with the actions that were taken last Thursday.

So I think there would be support from both Governors to get their commissioners to at least bring the World Trade Center to sale, if the Federal Government allowed them to.

Mr. HORN. This is our second round. Mrs. Maloney.

Mrs. MALONEY. Thank you. Mr. Roth, on page 2 of your testimony, you agree that no payback should be conditioned on continuing the asset's use for the same purpose.

Then you mention an issue Congress should address in the near future, namely that Government restrictions on use of funds generated from the assets should be lifted. This, you say, would increase the value of the asset to buyers and yield more proceeds. Please explain the funds you refer to. Are you talking about the sales proceeds?

Mr. ROTH. I am saying that if the Federal Government—and the one area where I'm particularly concerned about it, presently, the Federal Government says that if you sold these—the sales proceeds—no, I'm not speaking about the sale proceeds.

Mrs. MALONEY. You're not talking about the sale proceeds?

Mr. ROTH. No. If you sold this particular airport, and a private entity bought the airport, that the proceeds that the sale generates from the airport, the profits it generates, cannot be used for any-

thing other than reinvesting in the airport. That, I think, devalues the worth of that particular asset.

Mrs. MALONEY. You're not talking about restrictions on sales.

Mr. ROTH. No, I'm not talking about the sale proceeds.

Mrs. MALONEY. You're talking about restrictions on the proceeds.

Mr. ROTH. Right, the proceeds of the private owner, what it can do with its profits, once it takes over the asset.

Mrs. MALONEY. This bill doesn't restrict the proceeds of the private owner.

Mr. ROTH. No, but presently, Government policy does. That's what I'm saying.

Mrs. MALONEY. It doesn't restrict in the bill. This bill doesn't address that.

Mr. ROTH. No, this bill does not.

Mrs. MALONEY. Only to bring the discussion down to a concrete example, you gave the example of Kennedy Airport, yet this bill, if it were enacted, would have absolutely no impact on the sale of Kennedy Airport, because that is leased land.

Mr. ROTH. Correct, except that it would permit right now—I know that the Governor of the State of New York and the Governor of the State of New Jersey both look positively upon privatization.

Mrs. MALONEY. But this bill would not affect the sale of Kennedy.

Mr. ROTH. No, it will not affect, but it's a step in the right direction. That's what my testimony said.

Mrs. MALONEY. But it would not in any way affect the sale there, which is leased land, to the Port Authority.

Mr. ROTH. Right, but it would permit the Governors of the States of New York and New Jersey to move ahead if they so desired.

Mrs. MALONEY. But not with Kennedy Airport, but with maybe some other.

Mr. ROTH. Well, there are. In New York, we have two other airports. We actually have three other airports.

Mrs. MALONEY. But aren't they all leased?

Mr. ROTH. No. Stewart Airport is owned outright by the State of New York. It is a rather large airport. It is an airport that has the longest runway on the east coast of the United States. It is an airport that is an alternate site for the landing of the space shuttle. Stewart Airport, right now, the Governor of the State of New York is moving toward issuing an RFP for Stewart Airport.

Mrs. MALONEY. And this bill would have no impact on that.

Mr. ROTH. Yes, sure it would.

Mr. POOLE. It certainly would.

Mr. ROTH. It certainly would. If the prospective buyers did not have to pay back the Federal Government grants, the airport becomes more valuable in terms of what they would pay for it.

Mrs. MALONEY. But it's not the prospective buyers who pay back the Government.

Mr. ROTH. Well, it would be—it would calculate that.

Mrs. MALONEY. In other words, it would be Governor Pataki and the State of New York paying back.

Mr. ROTH. True. Technically true.

Mrs. MALONEY. So it has no impact on the sales price.

Mr. ROTH. Correct.

Mrs. MALONEY. If I'm buying it, I don't care what they do with the money.

Mr. ROTH. You're right.

Mrs. MALONEY. I'm giving them the money; I'm getting the asset. It doesn't in any way precede or help with that sale.

Mr. ROTH. Correct. But that sale—let's say the sale was $200 million. If Governor Pataki then has to give the Federal Government $10 million—because that's what the grants total—it's less valuable to the State of New York.

Mrs. MALONEY. But it does not increase the value of the asset.

Mr. ROTH. At the end of the day, I think it does.

Mrs. MALONEY. Not really.

Mr. ROTH. Well, if he can take home $200 million, rather than $190 million, I think it does.

Mrs. MALONEY. If I'm going to buy it, whatever Governor Pataki decides to do with the money is not going to influence the value of the asset.

Mr. ROTH. Right. I'm talking about the State. To the State, the value of the asset is less because an amount of that proceed has got to go to the Federal Government.

Mrs. MALONEY. Well, is Pataki not going to sell?

Mr. ROTH. I don't know. I'm meeting with him tomorrow. I think he's going to move ahead under any circumstances, but it would make it more valuable. To him, it would make it more valuable.

Mrs. MALONEY. It would make it more valuable.

Mr. ROTH. To him and to the State of New York, the people of the State of New York.

Mrs. MALONEY. But not the value of the asset.

Mr. ROTH. No, the proceeds.

Mrs. MALONEY. And whether or not this is passed, it will not have any effect on whether he decides to sell. Let's just make that point.

Mr. ROTH. Well—no. I don't think it will. I don't think it will. I have not spoken to him specifically about this for about 2 months. I think he will go ahead in any event, but if he, as an elected official, could keep that money in New York State, that $10 million in New York State, it is more valuable to him. That's what I'm saying.

Mrs. MALONEY. Well, I would like to ask Mr. Poole some questions. Mr. Poole, your testimony cites the requirement in the Executive order that State and local government reimburse the Federal Government for the undepreciated value of the assets as the stumbling block to selling these assets. That certainly would not affect the private sector's interest in this asset. Why would it discourage State and local governments from selling these assets?

Mr. POOLE. Because, precisely, there's a lot of inertia in government. Selling an enterprise that has traditionally been operated by a city or State is difficult to do. You have to change a lot of people's minds. And so, if a city or State can realize a significant amount of revenue by a privatization, it's more likely to be a strong enough incentive to actually go to all the trouble of making the transaction happen.

If a significant amount of what they could potentially raise from the transaction has to be turned over to the Federal Government,

it is, in effect, a transfer tax. It makes them less likely to exert the amount of effort of overcoming the opposition of all those who favor the status quo to actually bring about this useful transaction.

Mrs. MALONEY. Well, I don't have my opening statement here, but in it I was talking about the comparison between this bill and the Executive order.

Mr. POOLE. Yes.

Mrs. MALONEY. Where the Executive order required the funds, really, to go into the infrastructure of the State, to help with the debt.

Mr. POOLE. Or tax reduction.

Mrs. MALONEY. To help with tax relief.

Mr. POOLE. Right.

Mrs. MALONEY. To help with, really, the infrastructure of the whole State or city or whoever owns the asset. But by lifting this total restriction—of course, this wouldn't happen with our Governor—but possibly there could be another Governor who decides he wants to give a million dollar bonus to all of his top aides.

Mr. POOLE. Sure.

Mrs. MALONEY. And there's really room for abuse. I mean most people are honest public servants, but every now and then we have someone. What's wrong with keeping the restrictive language that was in the Executive order that the money go for tax relief or debt restructuring?

Mr. POOLE. I don't have a fundamental problem with that. I think those are reasonable kinds of restrictions.

Mrs. MALONEY. I spoke to Mr. McIntosh on the way over, by the way, and he said he would accept that change. He didn't feel strongly about it.

Mr. POOLE. I don't feel strongly about it either. I do believe, though, that the spirit today, as he said in his opening statement, of respecting the principles of the 10th amendment would say to keep this as free of a lot of micromanaging strings as possible because, I think, it is very much in the interest of the State and local governments to make these kinds of transactions happen, and it's in the interests of the country that we have better management of these infrastructure assets.

Mrs. MALONEY. But this is an asset that's owned by the people of a State or the people of a city. Their tax dollars have helped build it, and, then, shouldn't they be ensured of receiving the benefits, either in reducing the debt or in the tax relief or in some way that helps the people?

Mr. POOLE. As I say, I think that's probably not unreasonable.

Mrs. MALONEY. And then it would remove the possibility for abuse. But my time is up.

Mr. HORN. I am reminded that money is fungible, and Governors do what they wish with money they find, and they simply cut it out of the budget somewhere else. So who knows if the entities that have been responsible for the growth of the airport, good or bad, might not get any of it. Governors can just have it disappear somewhere.

At least, Governors of California have had that tendency. But, of course, the New York Governors would never act like that, I'm sure.

Mrs. MALONEY. Never.

Mr. HORN. Never. Mr. Roth, I was very interested in this book, "Privatization for New York: Competing for a Better Future." Just to lay it on the record, I wonder if you could sort of identify some of the Federal barriers faced by State and local governments as they privatize. I think you've done it in here, and just so we have it in this record. While we want to make you a rich author, we want to also get the facts on the record.

Mr. ROTH. We're giving it away for free. Basically, it has been covered here by Congressman McIntosh and by Bob Pode. The grant restrictions where the—if there is no profit motive other than reinvesting your money back into a particular asset, there's going to be that much less interest in terms of the private sector taking over the particular asset. I think that that is a very, very important restriction, and it is a Federal policy.

We also have, depending on the agency, whether it's the FAA or the EPA—and, with the EPA, there is on record a great success story, but it took quite a bit of time, which was the privatization of the wastewater treatment facility in Franklin, OH.

Here it is; it's really walking people, government officials, through, into a policy, to adopt a policy that relinquishes Federal control. So there are many Federal regulations that, until you bring something up to privatize, you're not even quite sure what they are.

But last night I had the opportunity to meet—I don't know if any of you are familiar with the book, "The Death of Common Sense", which was a bestseller—Philip Howard.

Mr. HORN. It's on the Speaker's reading list.

Mr. ROTH. Oh, OK. Great, great. I had an opportunity to spend a couple of hours with Philip Howard last night. And here is a Democrat, here's a liberal Democrat who said that the regulations, you don't know quite what they are, except that they're restrictive. They don't want to give up power.

If the Federal Government can dictate what a local government can do with the asset of a sale, that is something that is not, in fact, encouraging the sale of an asset. And that type of a restriction, I believe, has to be eliminated and also the grant paybacks, simply because, as Bob said, politically, the people want to know.

If you're going to sell an airport, a wastewater treatment facility, or a highway, the people would like to know where that money is going to. And if you're able to tell them that $50 million is going to go to fighting crime, that could be the all-popular issue, fulfilling need for the State of New York. But if the Federal Government is telling you, "No, you can only spend it on debt reduction or on tax relief," tying that hand, in fact, changes the political dynamic of that particular privatization, and I don't really see the need.

I think that if a local government entity gets the money, again, the people who elected those people to office, who empowered them to—in the case of the city of New York, empowered the mayor to spend billions upon billions, far more, even if he sold both airports—they had the confidence in him to spend that money correctly.

Why should the Federal Government say, "Well, wait a minute. If you get $2 billion from Kennedy, you really don't know how to

spend it. We're going to tell you how to do it." I think, then, in terms of the 10th amendment, in terms of empowering local governments to fend for themselves, those types of restrictions have got to be eliminated.

Mr. HORN. Yes. I think the current majority in the House will agree with.

Let me ask you, Mr. Poole, in Mr. Roth's book, you were the author of the section on the airports. I was impressed by your analysis of the economics of privatizing those New York City airports. I was curious if the analysis assumed that the rates charged for using the airport would be unchanged. Was there any assumption?

Mr. POOLE. There was not an explicit assumption. The implicit assumption was that they would probably go up at the rate of inflation.

Mr. HORN. The rate of inflation. Not like the rate of medical healthcare inflation.

Mr. POOLE. No, no. Just the CPI.

Mr. HORN. Good. Well, this has been very helpful. You've both been major architects of these ideas, and you've explained them very well, and we thank you for coming before us.

Mr. ROTH. Thank you for having us.

Mrs. MALONEY. Could I just add?

Mr. HORN. Sure.

Mrs. MALONEY. You did, I believe both of you—I know that Mr. Poole did, on page 4 of your testimony—you seem to say that if repayment is forgiven after privatization, there should be a guarantee that the facility remain serving the public for the same purpose, as long as it is needed. But, you're supporting—and do you also support—that part of the bill, that it serve the purpose as long as it's needed. So you're supporting that caveat. Why wouldn't you then support that the money go back to the taxpayers or go back to the total common good?

Now, long before our present mayors and other mayors in recent history, some of them haven't supported the private good. I mean some of them have given multi-billion-dollar contracts to their cronies on companies that didn't exist and services that didn't exist.

Corruption, unfortunately, in New York State has been written about at great length, based on the decisions made by some of our grand elected officials. Granted, they're voted out of office, but if they make poor decisions with taxpayers' funds, then they're out of office, but the people living in the city pay the price.

You know, just for argument's sake, you had a mayor who decided to use the proceeds on the Parking Violations Bureau contract—that's an example—$28 to a company that didn't exist, owned by Stanley Friedman. The citizens are out that money.

Wouldn't it be a safer way to have it go for tax relief? Certainly one of the things the Governor is standing for very firmly, and certainly the mayor. Why not designate it, since it is a publicly-owned utility?

You've been arguing against that, yet you argue that you should use the facility as long as it's needed. So I'm just throwing that out, but I would also like to specifically have a question on "as long as it's needed." I mean what is that? How long is that? And who is going to decide how long "as needed" is?

Mr. POOLE. Well, I think you face a choice of either saying "forever" or putting in some kind of potential qualification, because times change. I mean if something comes along, if we invent something that makes air travel obsolete, you don't want to be bound forever to maintain that land as an airport.

Mr. HORN. We could be beamed up.

Mr. POOLE. Right, right. So, I mean, I think you just—to be realistic, you should not tie the hands of future generations forever. But again, it's left to the good sense of the people of the State and municipality to recognize that, as long as they define that they still need an airport there or a wastewater facility there, it should continue to operate for that purpose.

But if times change so radically 100 years from now that that's no longer needed, they wouldn't be absolutely bound by the dead hand of Congress.

Mrs. MALONEY. And, second, do you think the legislation should address having a competitive process for such sale?

Mr. POOLE. I don't think it's required, because, again, I think we're talking not about hundreds of thousands of little transactions. We're talking about probably, at most, a few hundred quite significant and very visible transactions that clearly are going to be done by a competitive process in any city or State that I can imagine.

And again, I think we don't really need to have Congress spell out all the details about how these get done. I think this is a good example of federalism in action to divest that responsibility to the people that are directly concerned with the assets.

Mrs. MALONEY. Well, I think that to spell out that it be a competitive process is not tying people's hands. I think it's common sense.

Mr. POOLE. I would agree with you. The common sense says, "Yes." The principle of federalism says it's not necessary to micromanage.

Mrs. MALONEY. I wouldn't call a competitive process micromanaging. It's setting a principle. Anyway, my time is up.

Mr. HORN. My distinguished colleague believes in the competitive process. She just hasn't quite believed in the Republican process. We're getting there; we're getting there.

Mrs. MALONEY. It's not competitive; that's why.

Mr. HORN. We have a Governor that wants to speak on this subject right now, and so, without objection, I would like to include at this point in the hearing record a letter from Governor Frank Keating of Oklahoma in support of H.R. 1907. Governor Keating apparently wants to privatize the local airport, among other things, so he's a very enthusiastic supporter of the bill.

We now call in the next panel, panel III. If you will have your places, Mr. Cook, Mr. Barr, Mr. Dowd.

[Witnesses sworn.]

Mr. HORN. All three witnesses affirmed. We will begin with Mr. Michael B. Cook, the Director of the Office of Wastewater Management, Office of Water, Environmental Protection Agency. Welcome, Mr. Cook.

STATEMENTS OF MICHAEL B. COOK, DIRECTOR, OFFICE OF WASTEWATER MANAGEMENT, OFFICE OF WATER, ENVIRONMENTAL PROTECTION AGENCY; JOHN T. DOWD, SENIOR VICE PRESIDENT, WHEELABRATOR CLEAN WATER SYSTEMS, INC.; AND J. JAMES BARR, CHAIRMAN OF THE BOARD, NATIONAL ASSOCIATION OF WATER COMPANIES

Mr. COOK. Thank you very much, Mr. Chairman. I'm delighted to be here to testify on wastewater and water financing and privatization. The administration expects to have a position on H.R. 1907 within a week of resuming active Government.

Mr. HORN. We think the water people are essential, so hang in there.

Mr. COOK. There is an essential aspect to what we do, particularly on the water and wastewater side.

What I wanted to do to lead off was to talk a little about historical funding in the program. The Clean Water Act of 1972 established both regulatory and financial incentives for publicly owned treatment work construction.

In probably one of the most successful programs in environmental history, we have laid out over $66 billion since 1972 for construction grants and for loans under the State Revolving Loan Fund, which was capitalized beginning in 1987.

Our ultimate aim, the aim of this administration, is to have a revolving loan fund that will revolve at about $2 billion a year. To do that, we have to double the capitalization in it from the current $11 billion to somewhere around $22 billion of Federal, State, and local moneys.

With this Federal investment and very, very substantial local investment, we now have 15,000 treatment plants and 3 or 4 billion linear feet of sewers in place across the country with a current value that probably reaches toward a trillion dollars right now.

Keeping that up, maintaining it, plus additional investments, are clearly requiring a very, very substantial investment of Federal funds on a continuing basis. We've done biennial surveys of needs just for the capital aspects of construction, and that most recent needs survey said $137 billion is needed for wastewater facilities.

Out of this, we have had very substantial gains that the Agency is quite jealous of protecting, as you can imagine. We measure our ultimate objectives in terms of water bodies that meet the uses that have been designated, primarily fishing and swimming. In 1972, we estimate, about a third of the water bodies in the United States met their designated uses, and now we estimate that's nearer two-thirds. We still have quite a way to go, but we've made enormous progress since 1972.

Just a few comments on the drinking water side. There are a lot more community water supplies across the country than wastewater facilities. They tend to be very, very small, for the most part. There are about 60,000. They, too, have improved steadily in quality.

The sources of funding, though, are quite different, for the most part. There have been some Federal subsidies, but most of the money has come from State and local governments and from the private sector, and there are a substantial number of private drink-

ing water supplies that operate, and many of them operate very well, particularly the larger ones across the country.

The administration has requested that the State revolving fund concept be expanded to drinking water facilities, and, indeed, the bill now being considered in the Senate—the reauthorization of the Safe Drinking Water Act—would set up a new drinking water State revolving fund.

The notion there is to ultimately capitalize that at a level where it would revolve at about $500 million a year, basically targeted at helping out those communities, and in this case it could be used to help out private facilities which are marginal from a financial point of view. It's evident that the available Federal and State subsidies are not enough, and, as we all know, local governments are often facing financial difficulties; so innovative financing techniques are obviously desirable and one of those is from the private sector.

The Agency has had a number of projects going on to encourage innovative financing. At last count, I think we had 47 such projects that we had financed, and we also have set up Environmental Finance Centers across the country to give advice and assistance on financial issues related to the environmental infrastructure.

Now, in the course of working on these projects, we have taken quite an interest in privatization of the publicly owned treatment works and have worked closely with the Miami Conservancy District in Ohio, which successfully sold a large share of its treatment plant assets to Wheelabrator. I think you will hear more from Wheelabrator about that, but I just wanted to discuss a few aspects of this sale that are of particular interest, I think, to the Federal Government and the EPA.

First, our overall concern here, I think, was that a project of this kind benefit the community while protecting the public interest. To talk about a few of the features that relate to that, the negotiated agreement actually resulted in reduced user charges, 15-percent reduction with a guarantee for 20 years that user charges would only be raised to take account of inflation.

Wheelabrator put up a bond and, also, they had a parent company guarantee that there would be continuing service; even in the case of a failure on the part of Wheelabrator for some reason. There was a transfer of funds associated with this—about $6.8 million in total—much of which went to retire the debt on the facility. The rest was distributed and, as I understand it, is primarily earmarked for sewer improvements, which is something that we're delighted to see.

The communities have retained a significant role in these privatized facilities. First of all, they're collecting the user charges, and there obviously is an attractive aspect to having the police power available to collect money from people.

Second, they will continue to administer the pretreatment program, which insures that industrial contributors to the sewers meet certain pretreatment requirements before just charging into the sewers. Finally, they have actually retained title to a small part of the plant so that the facility can be treated as a public-owned treatment works under the law for regulatory purposes. That means that they are subject to secondary treatment require-

ments that they follow the pretreatment program requirements that we have in place and industry benefits from what's called the domestic sewage exemption for hazardous waste.

President Clinton has actually suggested a modification to the definition of publicly owned treatment works, so facilities that serve the general public would not have to retain ownership of some small part of the facility in order to privatize and yet be considered POTW's for regulatory purposes.

So that's some of the background on what happened, and we really feel that in this case, given the inclusions that I have outlined on how this deal was struck in the end, that the public interest has been protected and the users have benefited substantially.

In conclusion, just let me say that the Agency remains committed to helping State and local governments with as many financing options as possible that serve the public interest, and public-private partnerships can be a viable option and can result in a net increase in environmental infrastructure investments, and certainly we need such an increase.

[The prepared statement of Mr. Cook follows:]

TESTIMONY OF
MICHAEL B. COOK
DIRECTOR
OFFICE OF WASTEWATER MANAGEMENT
OFFICE OF WATER
BEFORE THE
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY
OF THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

November 15, 1995

Good afternoon Mr. Chairman and Members of the Subcommittee. I am pleased to be here today to represent the Office of Water in EPA and to offer our comments on ways the federal government can contribute to improving the Nation's environmental infrastructure.

This administration has strived to promote not only increased investment in infrastructure but also to permit enhanced flexibility for our State and local partners in their role of protecting our environment. We see public-private partnerships as another financing option available for communities to meet their infrastructure needs.

THE NEED FOR INCREASED INVESTMENT

The Clean Water Act (CWA) of 1972, contained provisions to address two important sources of water pollution. These provisions, which include both regulation and financial incentives, were directed at the massive problems associated with industrial and municipal sources of pollution. The CWA established regulatory limits for the discharge of pollutants from industrial and municipal "point sources." It also established the Construction Grants

program to assist communities in meeting requirements of the Act, particularly in the form of financial assistance to construct wastewater treatment systems.

In 1987, Congress elected to phase-out the Grants program in favor of a system of State revolving loans funds (the "SRF") to be capitalized in cooperation with the States. These revolving loans funds were seen as a more efficient way to invest funds for the long-term and would provide localities with permanent, low-cost sources of financing for a wide variety of environmental infrastructure needs (beyond traditional wastewater treatment.)

Since 1972, the Nation has made significant investments in wastewater infrastructure. Today, the U.S. enjoys what is probably the most advanced network of sewage treatment facilities in the world. Over $66 billion in federal funds have been invested in this vast network since 1972. Many more dollars have also been contributed by local and governments both for capital investment and for operation and maintenance costs.

The Construction Grants and SRF programs have been major driving forces behind extending modern sewage treatment to more and more of the population. Since 1972, the number of people served by secondary or better levels of sewage treatment has nearly doubled, from 85.6 million to 158.9 million in 1992. In 1972, only 42% of the population was served by adequate levels of sewage treatment. By 1992, that number had increased to 62% of the population.

Pollutant loads to surface waters have also decreased dramatically during this time, in spite of increases in the population served by municipal sewage treatment plants and the corresponding increase in the volume of pollution being treated by those facilities. For instance, since 1972, net pollutant discharges of BOD5 from municipal sewage treatment

facilities to surface waters have decreased by approximately 40%, from 5.4 billion pounds to 3.2 billion pounds per year.

Our investments in secondary treatment have resulted in very real, even dramatic, water quality improvements. While there are few good sources from which to make estimates of long-term improvements in water quality, we can examine the relative level of progress from 1972 to 1992. Based on information from the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and from the *1992 National Water Quality Inventory*, we estimate that the number of waterbodies meeting their designated uses nearly doubled, from approximately 1/3 in 1972 to roughly 60% in 1992. Again, let me reiterate that while these two reports are not strictly comparable, they do give us an indication of the relative magnitude of progress we have made over the last twenty years.

While we, as a Nation, have an impressive record of accomplishment in the water arena and in particular, in dealing with the pollution problems caused by municipal sewage treatment facilities, significant challenges remain. While approximately 60% of our water resources are in good shape today, 40% are not and are still in need of our attention. Of the waters that were impaired (*1992 National Water Quality Inventory*), municipal sources are still responsible for 15% of the impairments to our rivers, 21% to our lakes, and 53% to our estuaries.

EPA publishes a *Clean Water Act Needs Survey* every two years to document traditional wastewater needs as well as non-traditional ones, such as combined sewer overflows (CSOs), storm water, and nonpoint sources. The latest survey (1992) includes

estimates of total needs at just over $137 billion, including needs of $31 billion for secondary treatment projects, $15 billion for advanced treatment, and $41 billion for CSOs.

EPA is currently in the process of conducting the first national needs survey for drinking water related capital needs. The Agency plans to provide the results of this effort to you in February, 1996. At present the federal government provides very little support to communities to meet those important human health needs. The Administration has continued to urge Congress to create a drinking water SRF, similar to the wastewater SRF to maximize the potential impact of federal investments in this area and to ensure that the States have independent and permanent sources of funding for these needs.

INNOVATIVE FINANCING

In addition to this Administration's request for substantial funding levels for the Clean Water State Revolving Fund program, EPA is working hard to spur greater investment from non-federal sources. EPA has sponsored 47 demonstration projects to identify the most promising financing concepts for improving environmental compliance. We have created a State Capacity Task Force that has developed a catalog of alternative financing mechanisms. Our Environmental Finance Centers, located at major universities across the country, train State, local, and other official on environmental financing principles, techniques and issues. EPA is currently working with the Environmental Finance Center at Syracuse University to conduct a study of alternative funding approaches for water and wastewater projects. One of the key features of the study has been a series of four public meetings with key stakeholders to get input on a variety of options for funding these

projects. EPA's public-private partnership effort is just one component of the overall strategy to facilitate investment in environmental infrastructure.

EPA considers the use of private resources, including public-private partnerships, to finance construction and expansion of wastewater treatment facilities to be a viable option for community decision makers. This option allows the private sector to participate in the financing, construction, ownership, operation, and/or maintenance of the facility. Public-private partnerships produce flexible solutions that can benefit both the community -- by providing capital for expansion without necessarily lowering its debt capacity -- as well as the private partner, by offering an equity stake in the facility.

The Miami (Ohio) Conservancy District

As you are all aware, this past July, EPA approved the first public-private partnership deal involving a federally-funded wastewater treatment plant since the "Infrastructure Privatization" Executive Order (E.O.12803) was signed in April of 1992.

The Miami (Ohio) Conservancy District's Franklin Area Wastewater Treatment Plant was designated in December of 1992 as one of three U.S. EPA pilot projects as part of the Agency's implementation of E.O. 12803. EPA staff in the Office of Wastewater Management (OWM) worked closely with the State of Ohio, the Miami Conservancy District, and the communities served by the Franklin plant to identify and address the many issues surrounding the sale.

EPA had several different roles in the transaction as result of E.O. 12803, these included:

- providing waivers to the regulations governing the original federal Construction Grant;
- approving, along with OMB, the sale price of the asset (this was a negotiated rather than a competitive sale.), and
- insuring that the public will continue to benefit from the operation of the facility, and protecting the interests of the rate payers.

It is also noteworthy, in the context of today's discussion, to point out that a small part of the plant (the oxidation pond) is still owned by the public sector. This was done so that the facility would continue to be classified as a publicly-owned treatment works (POTW) under the Clean Water Act and other environmental laws. If the facility were no longer to be regulated as a POTW, the private partner would be subject to unintended regulatory consequences that might otherwise have discouraged the privatization efforts. This plant would no longer be a POTW subject to secondary treatment limitations and pretreatment requirements under the CWA, or the domestic sewage exclusion under the Resource Conservation and Recovery Act. This is an obstacle that needs statutory relief. In fact, President Clinton's Clean Water Initiative, which was released last year, recommended that POTWs be defined, for non-financing purposes, as wastewater facilities that serve the general public, regardless of ownership.

Overall we feel that this project is an excellent example of one of the Administration's "Principles for Federal Infrastructure Investments," established by Executive Order 12893 on January 26, 1994, which states that "Agencies shall seek private sector participation in infrastructure investment and management .... and should work with State and local entities to minimize legal and regulatory barriers to private sector participation in the provision of infrastructure facilities and services."

The City of Indianapolis and the City of Silverton, Oregon are involved in the two other public/private pilot projects sponsored by EPA.

Indianapolis conducted a comprehensive study of the operations and financial management of its wastewater system to identify and analyze issues associated with the possible transfer of the facilities to the private sector. After reviewing results of the study, the City decided to request proposals for private management of its wastewater treatment plants. Indianapolis selected a private firm in November 1993 to manage the facilities under a five-year contract. The Environmental Finance Center at Cleveland State University is preparing a case study on the decision-making process and financial outcomes of the City of Indianapolis' 1993 decision to contract for private management of the City's two advanced wastewater treatment plants.

The City of Silverton wishes to attract a private equity investor in its wastewater system. The City intends to maintain a 51 percent majority interest in its facilities and invest the resulting equity in capital improvements. The community has crafted a creative proposal that provides for economic development, wetlands mitigation, and wetlands treatment of wastewater flows. We look forward to helping Silverton achieve the financial and environmental successes it seeks through this innovative project.

CONCLUSION

Given the Nation's tremendous environmental infrastructure needs, EPA remains committed to providing State and local governments with as many financing options as possible that serve the public interest. Public-private partnerships can be a viable option

for communities and can result in a net increase in environmental infrastructure investments.

Thank you again and I look forward to your questions.

* * *

Mr. HORN. Thank you very much, Mr. Cook. That has been very helpful. I'm going to call next on Mr. Dowd, since that's the relationship with the EPA, so we'll have the testimony in one place. Mr. John Dowd is the senior vice president of Wheelabrator Clean Water Systems, Inc. Welcome.

Mr. DOWD. Thank you Congressman, and thank you for inviting me to share some thoughts of Wheelabrator and myself on public-private partnerships and specifically on H.R. 1907.

I'll start off by saying we support H.R. 1907. We prefer to see this become a matter of law rather than just a matter of policy. We also want to see grants forgiven, rather than just depreciating.

Rather than go through my whole testimony, let me just hit some highlights of what we addressed. First of all, why are we even here? Why is Wheelabrator here, speaking on this subject?

Our involvement in environmental matters and our involvement in water and wastewater goes back more than two decades. Our company was the first to contract operate a wastewater treatment plant, the first private industry to contract operate out in Burlingame, CA, and we operate that plant to this day; we did that back in 1972.

As you've already heard, we are the first to privatize, under Executive Order 12803, a wastewater treatment plant, namely the one in Franklin, OH. So our credentials seem to be in order.

What are the numbers in this business? EPA, back in 1992, estimated that the needs were $127 billion to modernize and build new wastewater treatment plants over the next 20 years, so the need is very significant.

If you look at what is there today and you put a value on it—in other words, of the fixed wastewater assets in place that could be converted into cash for the municipalities—that is a number between $30 and $35 billion. So we're talking about considerable possibilities here if we can move faster toward privatization.

The comment was made before, a question about would there be rate gouging, would there be concerns? The Franklin contract is a 20-year contract—and this, by the way, would be typical of other contracts. The service fee is set. It goes up by CPI over 20 years. You actually have more control over the rates in the future after the contract is signed than you did before the contract was signed.

It hasn't been mentioned yet, but let me just bring into this discussion, employees. It is not the purpose of privatization to do away with the public employees and bring in our own. Most of the people that work in the plant today will work in the plant the day after it's privatized.

If, in fact, we modernize the plant and don't have to have as many employees, what we have committed to in Wilmington—the second project that we're involved with—that we'll take care of retraining. We'll take care of finding them another position in one of our other plants, or, in some cases, the municipality may have other uses for them. It's not about cutting back on employees and hurting them.

Franklin, itself, is a 4½-MGD plant south of Dayton, OH. We paid $6.8 million for it. Their rates went down. All that's repeating what someone else said here, what Mr. Cook said. We have a 20-year service agreement. We are on the NPDES permit, so we are

environmentally responsible for that plant. This is not about getting out of responsibility.

The second one that we're involved with—and it's not finished yet, I would hasten to point out—is Wilmington, DE, a 90-MGD plant, one of the larger plants in the country. We will pay, if the deal goes through, $53 million. The service fee again goes down, and I would point out again, this is one of the larger plants in the country and perhaps typical of what can be done with privatization.

There's a number of specific subjects I talked about in my testimony. I will just mention two. We would ask the Congress to encourage municipalities—and I don't know the exact language here, and maybe we can help on it—but I would encourage them to first go to the private sector and see if you can't get your wastewater or water treatment problem solved, and only if you can't for whatever reason, then turn to the Federal Government for assistance. But sort of turn it around from the way it has been over the last number of years.

The second thing that I would like to see would be a, I use the phrase, "threshold of competency." This is a very competitive business. There's lot's of good companies in this business, and we don't mean to preclude any of them.

What we are concerned about is incompetent companies becoming part of this, somehow, some way getting a contract and kind of messing the whole thing up, because there is talent involved in this. It's technical; it needs to be done right. So there should be some qualifications in our package here.

So, in closing, Mr. Chairman, we're very interested in seeing that public-private partnerships succeed in this country. It's good for business; it's good for us. Otherwise, we wouldn't be chasing it. But it's good for business in general, lots of construction opportunities and other opportunities.

Our belief is that it's good for municipalities, the $30 billion I mentioned of new-found money, so to speak, and I actually believe it's good for the Federal Government. It's a way to get the infrastructure taken care of without new taxes and without increasing the deficit. So we would encourage this bill. We would encourage, perhaps, a somewhat more comprehensive approach. Those suggestions are contained in my testimony. I thank you very much.

[The prepared statement of Mr. Dowd follows:]

STATEMENT OF JOHN T. DOWD, SENIOR VICE-PRESIDENT,
WHEELABRATOR CLEAN WATER SYSTEMS INC.

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION
AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
UNITED STATES HOUSE OF REPRESENTATIVES

REGARDING
H.R. 1907, THE FEDERAL-AID FACILITY PRIVATIZATION ACT

NOVEMBER 15, 1995

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to testify on behalf of Wheelabrator Clean Water Systems Inc. and to share my thoughts on Wheelabrator's experience with privatization, which we prefer to call public/private partnerships, and H.R. 1907, The Federal-Aid Facility Privatization Act.

I will start by telling you who Wheelabrator Clean Water Systems Inc. is, then explain Wheelabrator's views on public/private partnerships and our experience with the Franklin Area Wastewater Treatment Plant and the Wilmington Wastewater Treatment Plant. I will then turn to some of the impediments to privatization and our recommendations on how the Congress can stimulate public/private partnerships. I will end with Wheelabrator's comments on H.R. 1907.

At the outset, I want to make it clear that Wheelabrator supports the concept behind the Federal-Aid Facility Privatization Act. First, it will put into law what is today only an executive order. That Executive Order, 12803, was signed by President Bush in 1992. Today the current Administration supports the executive order and has seen first hand that positive impact it can have. Future administrations, however, may not feel compelled to support it. Wheelabrator would like to see privatization a matter of law as well as policy.

More importantly, H.R. 1907 improves on Executive Order 12803 (E.O. 12803) by freeing up additional capital for states and local governments to use by forgiving rather than depreciating the federal grant. The local governments are really the best ones to decide how to recycle the money the federal government has given them. The original purpose of the wastewater construction grants was to build needed public purpose infrastructure. Today the private sector can provide that assistance and service. It only seems logical to me that those funds remain in the hands of the local government instead of being returned to the federal government.

My comments about H.R. 1907 stem from Wheelabrator's experience in forging a public/private partnership with some Ohio communities. There the publicly owned wastewater treatment plant was purchased by Wheelabrator and we entered into a 20 year service agreement to provide high quality wastewater management services at stable rates. We know these are complicated transactions and are learning what some of the unforeseen problems and consequences are. But neither are they too difficult to properly structure so that the users of the system enjoy the benefits of cost reductions. This is why the efforts of Congress are so important to us and the communities that find public/private partnership approaches both practical and necessary. We as a company believe that E.O. 12803 provides a basis upon which H.R. 1907, and other legislative initiatives, can substantially improve. My experience in this area leads me to comment that H.R. 1907 provides greater incentives for public and private sector entities to make decisions about public/private partnerships . It also, however, raises the level of uncertainty about how beneficial it may or may not be based on its linkage to federally imposed grant assurances.

Speaking for Wheelabrator, we applaud the time and effort the Subcommittee has, and continues to devote to the subject of privatization. It is important that Congress address this area with legislation to clear away impediments and stimulate the revitalizing of the nation's infrastructure.

Let me introduce you to my company.

WHEELABRATOR CLEAN WATER SYSTEMS INC.

Wheelabrator Clean Water Systems is a wholly owned subsidiary of Wheelabrator Technologies Inc., an American Fortune 500 company traded publicly on the New York Stock Exchange. One of the world's largest multifaceted environmental services companies, Wheelabrator Technologies owns and operates trash-to-energy and independent power facilities, supplies air quality control systems for a broad range of industrial and utility applications, and provides a comprehensive range of water and wastewater treatment products and services to municipal and industrial customers.

Our commitment to the water and wastewater industry spans more than two decades. Wheelabrator Clean Water Systems pioneered the contract operation and maintenance of water and wastewater treatment facilities in 1972; this contract with the City of Burlingame, California was recently renewed into the 21st century. Today we're pioneering a new form of public/private partnership as the first private firm to purchase a municipal wastewater treatment plant under Executive Order 12803.

We're very proud of our successful track record. Our goal is to ensure that the facilities we operate go unnoticed in the communities we serve, quietly providing safe, efficient, and economical services. But our performance has not gone unnoticed by the U.S. EPA and other agencies and associations. We have earned more awards for safety and performance excellence than any other contractor in the field. A list of the communities we serve as well as a list some of our awards is attached.

Wheelabrator is a founding sponsor of the U.S. Conference of Mayors' Urban Water Institute (UWI). The UWI's primary purpose is to assist local government in providing high quality water resources in a cost effective manner. Wheelabrator is also a member of the Water Development Council. The Council was created to advise local governments in the maintenance and development of cost effective infrastructure. The Council will provide the mayors with expert advice and information on water resource issues. The U.S. Conference intends to develop and pursue policy designed to advance the ability of local government to provide long-term water service delivery.

Wheelabrator has international experience as well. Our Mexican subsidiary, Wheelabrator Mexicana S.A. de C.V., has partnered with Companie Mexicana de Aguas to rehabilitate and operate wastewater treatment plants. This watershed collaboration is one of the first launched since the introduction of the North American Free Trade Agreement (NAFTA). Wheelabrator Clean Water Systems is eager to contribute vital environmental technologies and services to support Mexico's need for infrastructure development and environmental restoration, and to help Canada meet its commitment to environmental protection. We support the environmental goals endorsed by NAFTA, and will continue to seek international investment opportunities in the spirit of free trade and to contribute to economic growth in Mexico, Canada and the United States.

Mr. Chairman, We think this says a lot about our ability to keep up with changing times and the changing needs of our clients. Now I would like to give you Wheelabrator's view of privatization

which, as I mentioned, we prefer to call public/private partnerships, and our experiences in Franklin, Ohio and Wilmington, Delaware.

PUBLIC /PRIVATE PARTNERSHIPS

Throughout the United States, municipalities are faced with the problem of balancing community needs with available funding. There is increasing pressure to provide quality municipal services while holding the line on operating costs and complying with changing government regulations. This challenge becomes increasingly difficult as funding sources from the state and federal governments dwindle. Many communities have partnered with the private sector to help address these unique challenges.

In the past, barriers in federal regulations and the Tax Reform Act of 1986 have combined to slow private investment in municipal wastewater treatment facilities. When President Bush signed E.O. 12803 in 1992, it increased the interest in public/private partnership options. The Executive Order states that infrastructure is critical to economic growth. It goes on to acknowledge that state and local governments understand their own needs and how to satisfy them. The order protects the public investment. It requires the privatized facilities to remain committed to a long-term partnership and continue to operate within environmental compliance and budget. As outlined in E.O. 12803, proceeds from a sale or lease of a publicly-owned wastewater treatment facility must first repay state and local government investments in the project. Thus, after the facility debt is defeased, the municipalities will have funds left over to invest in infrastructure or to reduce taxes or other debt. Proceeds attributable to the federal grant less depreciation are returned to the federal government. H.R. 1907, the Federal-Aid Facility Privatization Act, is intended to address this last step thereby providing additional proceeds to the municipalities.

Public/private partnerships are an important financial opportunity for a community to explore. The U.S. EPA estimates that publicly owned treatment works will need $127 billion in capital investment over the next 20 years to meet Clean Water Act regulations. A wastewater treatment plant can be a hidden source of cash that can be used for needed services through public/private partnerships. The amount of money that could be freed up if the private sector were to acquire current wastewater infrastructure is estimated at more than $30 billion from some 15,000 facilities.

Public/private partnerships should be tailored to meet the community's specific needs. There are various arrangements that allow a municipality to free up badly needed funds that are tied up in it's wastewater treatment works. Property and income tax rolls would be expanded as tax-exempt public properties become tax paying properties. Privately owned facilities may even cost less to operate, as communities in Ohio and Delaware are finding out.

One of the biggest issues with public/private partnerships comes from a concern about what will happen to employees when a publicly owned facility is transferred to a private sector owner. In Wheelabrator's case we want to be very specific about what it means. It make no sense to us to approach a fundamental change in public policy, such as public/private partnerships, and then go about making that change in such a way as to hurt people and alienate them to that change in the

process. Wheelabrator intends to find jobs for all employees in any facility we privatize. Let me emphasize that: all employees! Wheelabrator intends to operate the facilities it owns with the number of people it takes to operate that facility safely, efficiently, and in an environmentally responsible manner. If all the people at facility are not needed at that facility we will find them a job at one of our other facilities, retrain them or work with the municipality to employ them elsewhere.

Since Executive Order 12803, public/private partnerships have become an economically attractive and sound alternative for municipalities. Two case studies are highlighted below.

CASE STUDY ONE: FRANKLIN, OHIO

History

Located 25 miles south of Dayton, Ohio, the Franklin Area Wastewater Treatment Plant is a 4.5 million-gallon-per-day regional facility serving 25,000 residents. Wheelabrator EOS, a subsidiary of Wheelabrator Clean Water Systems Inc., has operated the Franklin Area Wastewater Treatment Plant under a contract with the Miami Conservancy District (MCD) since 1987. The plant serves the municipalities of Franklin, Germantown, and Carlisle. In August of this year, Wheelabrator, MCD, and the municipalities completed the historic first wastewater treatment plant public/private partnership, which includes a 20-year service agreement. It was the culmination of a two year effort by MCD, the communities and Wheelabrator, ultimately requiring approvals from the U.S. EPA and the Office of Management and Budget. The following highlights the major points of the transaction:

Purchase Price and Rates

The $6.8 million purchase price for the facility exceeded the outstanding debt on the facility. Thus, after the facility debt was defeased, the municipalities had funds left over to invest in infrastructure or to reduce taxes or other debt. The annual service fee to be paid by the municipalities for wastewater service was agreed to in conjunction with the purchase price and was approximately 20 percent lower than the fee paid to MCD.

Ownership Structure

The ownership structure is designed to allow private ownership under municipal control. The plant is owned by Wheelabrator, who will be responsible for operations and maintenance (O&M) and replacement of capital equipment at the facility. The collection system and interceptors are owned by the municipalities who continue to be responsible for rate setting and new connections to the system as well as enforcement of the industrial pretreatment program. The plant site is owned by the municipalities and leased to Wheelabrator.

Expansions

Plant expansions will be determined by the municipalities since Wheelabrator does not have the ability to add new customers to the system. Wheelabrator will manage and finance the expansion and be responsible for its implementation. Wheelabrator will design the expansion and provide a fixed price to the municipalities based upon bids solicited from qualified bidders. Any necessary increase in the service fee for the expansion will not occur until the expansion comes on line.

Environmental Regulation
During the approval process, Wheelabrator pioneered a new concept for National Pollutant Discharge Elimination System (NPDES) permitting. The NPDES permit is jointly held by Wheelabrator and the municipalities. Wheelabrator will be responsible for plant operations; for monitoring and sampling services for industrial pretreatment programs; and for proper regulatory reporting. The municipalities will be responsible for enforcing the industrial pretreatment program. The Service Agreement details the components of the industrial pretreatment program along with specific procedures for enforcement. The joint responsibility for the NPDES permit gives all parties the incentive to ensure compliance for both plant influent and effluent.

Purchase Option/Extension
The municipalities have the option to purchase the facility or extend the Service Agreement at the end of the 20-year term. The option price in year 20 will be the fair market value.

CASE STUDY TWO: WILMINGTON, DELAWARE

History
Wheelabrator EOS has operated the City of Wilmington's biosolids dewatering facility since 1985. In May of this year, the City issued a Request for Proposal for professional services for the purchase, management, operation and maintenance of the Wilmington Wastewater Treatment Plant (WWTP). The City's 90-million gallon per day advanced wastewater treatment facility serves 400,000 residents in the City and New Castle County. In August of this year, the City selected Wheelabrator for the project and entered into negotiations which are still in progress.

Purchase Price and Rates
Wilmington predetermined the price for the facility in it's request for proposal at $53 million. The City will be paid their purchase price after receiving state and federal approvals. The service fee bid by Wheelabrator is less than the City's current operating cost.

Ownership Structure
The City of Wilmington will retain significant control through the structure of the purchase. The facility will be owned by Wheelabrator, which will be responsible for management; operations and maintenance (O&M) and replacement of capital equipment at the facility. The City will retain ownership of the collection and interceptor systems. The City will also be responsible for all rate structures and the enforcement of the industrial pretreatment program. The WWTP site will also be owned by the City and leased to Wheelabrator under a ground lease.

Expansions
Plant expansion needs will be determined by the City. Wheelabrator will manage, design and finance the scheduled expansions, provide the City with fixed cost for the expansion and be responsible for on schedule completion and start-up. Any necessary service fee increase will not occur until the expansion has been completed and operational.

Environmental Regulations
As noted above, Wheelabrator pioneered the implementation of a new arrangement for NPDES permitting. The arrangement identifies both the private owner and municipal service client as joint holders of the permits. This relationship satisfies the U.S. EPA and will be the recommended approach for the WWTP transaction. The City will remain the enforcement agency for the industrial pretreatment program. The service agreement will detail the components of the industrial pretreatment program along with specific procedures for compliance and enforcement. The joint permit responsibility provides incentives for both parties to ensure influent and effluent compliance.

Purchase Option/Extension
The City will have the option to purchase the facility or extend the Service Agreement at the end of the 20-year term. The option price in year 20 will be the fair market value.

Mr. Chairman, let me now turn to what Wheelabrator sees as some of the impediments to privatization and what Congress can do to stimulate public/private partnerships for wastewater treatment infrastructure.

PROMOTING WASTEWATER TREATMENT INFRASTRUCTURE REVITALIZATION

As discussed earlier, in order to maintain, expand and build new wastewater treatment infrastructure, local and state governments are dependent on their ability to finance such projects. Federal funding of wastewater treatment infrastructure assets in the form of grants, loans or tax exempt treatment of municipal financing has reached the limit of effectiveness in supporting these activities. In many ways it serves as a barrier to the achievement of economic efficiencies and new construction. Private enterprise provides economic efficiencies via competitively driven improvements, but these efficiencies are inaccessible to local and state government because existing laws, regulations and policies prevent or severely limit their application where federal financing has been the traditional option.

To allow for the building, revitalization and maintenance of our wastewater treatment infrastructure with minimal impact on the federal budget, Congress should turn to the economic efficiencies that can be achieved by encouraging public/private partnerships. This can be accomplished by facilitating financing for, and eliminating barriers to private ownership and operation. Private sector investment can provide the necessary equity for capital improvements, expansions and upgrades which are desperately needed by local government to meet public health and environmental standards. The traditional model of federal financing and public ownership and operation of infrastructure must be subjected to the competitive practices of the private sector if we are to provide for economic growth.

If Congress is to achieve the most cost effective revitalization of the Nation's wastewater treatment infrastructure, federal policy must provide:

1) the encouragement for the public sector to first consider the private sector to finance, construct, own and operate wastewater treatment infrastructure assets before making use of federally assisted financing;

2) the elimination of statutory and regulatory barriers to privatization; and

3) the opportunity for the private sector to compete on an equal footing with subsidized public financing.

Providing federally assisted financing to the public sector without requiring a cost comparison with the private sector's ability to provide the service at the same or lower total net cost is inconsistent with a fully competitive market. If the private sector can finance, construct, own and operate wastewater treatment infrastructure assets while assuming the same, if not higher, level of service and environmental protections, on a cost effective basis, then the private sector should be given the opportunity to do so. Anything less leads to inefficiencies and further dependence on old solutions which have proven, over time, to be inadequate.

Providing the private sector with an opportunity to compete with subsidized public financing will require that Congress level the playing field. Federal policy should, in order to encourage public/private partnerships, raise the tax-exempt bond cap allocation or allow access to tax exemptions, deductions, credits or accelerated depreciation for private sector investments in wastewater treatment infrastructure construction, ownership, and operation. This will allow the public sector to harness the financial strength of the private sector, and offer alternative financing options that are currently ignored by the public sector because of the availability of federally assisted subsidies.

As a direct result of this change in federal policy, an increasingly significant portion of the Nation's wastewater treatment infrastructure will be financed, built, owned and operated by the private sector. This, in turn, will break the gridlock of waiting for federal grants and other loan programs, and accelerate investment in infrastructure. Such investment will create jobs and promote economic growth.

The House has already taken steps to address some of these points. H.R. 961 The Clean Water Act Amendments of 1995, passed by the House on May 16, 1995, includes provisions in sections 504 and 603 that redefine Publicly Owned Treatment Works (POTW) and allows states or other relevant agencies to transfer POTWs to qualified private sector entities, and generally codifies E.O. 12803. H.R. 1907 the Federal-Aid Facility Privatization Act builds on a key element of the Sale of Treatment Works provision in Section 603 by allowing total forgiveness of those grants.

As explained below, a comprehensive bill combining the elements of both bills would be a tremendous assistance to local communities and the private sector's efforts to pursue public/private partnerships.

SUGGESTED ELEMENTS FOR LEGISLATION ON WASTEWATER TREATMENT INFRASTRUCTURE PRIVATIZATION

I. Local and state government should be encouraged to evaluate privatizing the wastewater treatment infrastructure to pay for construction and improvements before utilizing federally assisted financing for such projects.

Revitalizing the Nation's infrastructure will require increased private sector involvement. Local and state government can either finance projects themselves, or seek to privatize the infrastructure, before utilizing federally assisted financing for such projects. The public/private partnership approach allows the public sector to take advantage of the equity that is in existing infrastructure assets and work with the private sector to use that equity and other private financing to pay for new construction and upgrades. In order to encourage and promote a transition to public/private partnerships, before a local or state government seeks federally assisted financing for infrastructure projects, they should determine (using the least burdensome process practicable) whether:

A. There is a private sector entity willing and able to undertake the project; and

B. The total net cost of allowing a public/private partnerships to do so would be equally or more cost effective than public financing, ownership and operation of the project or service.

II. As envisioned in H.R. 1907, the requirement for repayment of federal construction grants for wastewater treatment infrastructure should be forgiven.

There is a substantial need for new and refurbished wastewater treatment infrastructure in the Nation. There is also a substantial amount of equity in existing infrastructure that can be tapped in addition to private sector investment, to help pay for new construction, expansion and system upgrades. The opportunities to achieve real cost efficiencies should be made available to communities with existing infrastructure projects that do not require, at the present time, financing for new construction or upgrades. To this end, the following provisions should be included in legislation:

A. Legislation should allow public sector wastewater treatment infrastructure assets to be transferred to the private sector by sale, and the requirement for repayment of federal construction grant or grants used for that project should be forgiven. All proceeds from the sale of such assets should go to the local and state governments; and

B. The process followed by local and state government to transfer wastewater treatment infrastructure assets to the private sector should consider total net cost, and allow processes such as competitive bidding, direct contract negotiation, or whatever is required by state law.

In order to ensure that such activities do not adversely impact the local or state government and users of the infrastructure system or facility, the principles guiding such asset utilization and transfer embodied in E.O. 12803 should be followed.

III. Appropriate qualifications criteria for private sector participation should be established.

Private sector entities who intend to participate in the privatization of wastewater treatment infrastructure assets must be "qualified" to undertake the responsibilities accompanying the public/private partnership arrangements so as not to jeopardize the performance of the infrastructure facilities and to ensure uninterrupted service. To this end, legislation should require that the following "qualifications" be demonstrated by the private entity in order to be eligible to participate in an asset transfer arrangement, or to be eligible for preferred federal tax treatment:

A. Private sector entities must demonstrate sufficient experience and financial strength to address problems associated with the ownership and long-term operation of wastewater treatment infrastructure assets, and the ability to satisfy requirements to meet any guarantees agreed to as the result of a transfer of assets;

B. Private sector entities must demonstrate the ability to assure protection against insolvency and interruption of services through appropriate contractual and financial guarantees; and

C. Private sector entities that intend to enter into public/private partnerships by taking ownership of a transferred public infrastructure asset, to the extent consistent with GATT and NAFTA, must be majority owned and controlled by citizens of the United States, and does not receive foreign government subsidies since the fate of the service provided by that transferred asset may be influenced by foreign government decisions.

IV. Federal statutory, regulatory and policy barriers to privatization should be removed.

Each executive department and agency should be required to review those procedures, legislative and regulatory provisions, and policies affecting the management and disposition of current and future wastewater treatment infrastructure assets owned by local and state governments, and modify them, where possible, to remove barriers to privatization of such assets. Where the barriers are of a statutory nature, each agency should recommend necessary modifications.

V. Create parity between public and private investment in public purpose wastewater treatment infrastructure

The Internal Revenue Code currently recognizes that certain private sector capital projects contribute to the public good, and so provides a special method for extending the availability of tax exempt financing to qualifying projects. This access, however, requires that projects compete for limited financing under a bond cap in each state, which is usually awarded on a first-come, first-served basis. While certain projects may qualify, the granting of tax-exempt bond cap

allocations is often subject to rationing or a lottery system designed to allocate limited funds among competing public sector demands that far exceed the cap.

It is essential to create parity between public and private sector investment in public purpose infrastructure. Federal policy intended to subsidize public financing of wastewater treatment infrastructure should be extended to private sector investment in the same types of capital projects by providing changes in the tax code such as increases in the tax-exempt bond cap or tax exemptions, deductions, credits or accelerated depreciation for private sector investments in wastewater treatment infrastructure. I want to make the point that we are not asking for an advantage over public financing only that we be treated in the same fashion.

Mr. Chairman, I will now turn to the legislation before the Subcommittee, the Federal-Aid Facility Privatization Act. As I noted at the start of my remarks, Wheelabrator supports your efforts to stimulate privatization and this legislation makes an important contribution to that process.

COMMENTS ON H. R. 1907

1. The use of proceeds from a privatization effort (i.e., asset sale proceeds) are limited in section 6 of the legislation to uses consistent with applicable grant assurances and provisions. This essentially extends federal oversight onto subsequent use of proceeds, even though the executive agency or department would no longer be involved with providing grants for such assets. Moreover, compliance with many of the grant assurances will not and should not be appropriate for public/private partnerships. Local government and private partners will continue to be regulated for environmental purposes, but such regulations are generally outside the grant assurances requirements.

2. There appears to be a conflict between two provisions concerning consistency with grant assurances and provisions. In Section 3(b), the text states that executive agencies and departments can waive or modify any grant assurance consistent with Section 4. Section 4, however, indicates that private parties purchasing or leasing the infrastructure asset will comply with all applicable grant assurances, although such assurances were originally intended for the public sector. On the face of it, it is not clear where federal grant assurances end or if they could even be modified. We believe, and think that local government will concur, that when an infrastructure asset is sold, and the federal repayment requirement is waived, the asset should not have all grant assurances and provisions tied to it. The important assurances such as those contemplated by E.O. 12803 should be covered in the service agreement between the parties.

This, in particular, is an example of why the unique conditions surrounding a wastewater public/private partnership project need to be carefully reviewed, in light of how grant assurances will or will not apply after the asset transfer. Wastewater treatment infrastructure and related federal construction grant assurances are unique compared to the plethora of grant assurances attached to other types of infrastructure. The provision, as it currently stands in H.R. 1907, masks such distinctions and is perhaps too broad and all encompassing.

3. The bill does not address the need to set a threshold of "competency" for private sector entities who are allowed to participate in partnership arrangements. For example, it is important to ensure that private entities have a proven track record for efficient service delivery, have operating expertise, can provide financial assurance to guarantee that services and operations would not be disrupted if the entity encountered financial or technical difficulties, and has a successful record of compliance with federal and state regulatory programs, especially environmental regulations.

4. The definition of "infrastructure assets" may be too broad. It refers to any asset "financed" by the federal government. We suggest that, with respect to wastewater treatment facilities, the legislation only apply to assets owned by state or local government, or governmental agencies or authorities, for the construction or improvement of which federal funds have been used. Furthermore, the definition should clearly state that projects constructed with Federal financing via no-interest or low-interest loans, such as use of the State Revolving Fund (SRF), are eligible assets for partnerships, but SRF loans should not be forgiven. The provision in section 5 which voids requirements for repayment of federal funds should apply only to construction grants in the case of wastewater treatment facilities.

5. Section 6 of the proposed legislation, provides for state and local government recovery of its capital investment in the affected asset. The provision also specifies the ability to recovery "unreimbursed operating expenses", and "a reasonable rate of return". These two items are not defined. It is important to define what is meant by these items so that any public/private partnership projects following the principles set forth by the legislation does not become unduly complicated and impossible to complete.

Mr. Chairman, that concludes my statement. I will be happy to answer any questions.

WHEELABRATOR EOS AWARDS

▪1995

Environmental Protection Agency, Region IV - Best Tasting Water in Georgia
Atlanta-Fulton County Water Treatment Plant, Alpharetta, Georgia

Arizona Water & Pollution Control Association - Safety Award - Treatment and Collections
Colorado River Joint Venture-Wheelabrator EOS Inc., Parker, Arizona

National Council for Public-Private Partnerships - Project Award
Franklin Area Wastewater Treatment Plant, Franklin, Ohio

Ohio Water Environment Association - Safety Award
Springboro Wastewater Treatment Plant, Springboro, Ohio

Pacific Northwest Pollution Control Association - Safety Award - Division B Lost-time Free Accidents and Five Years of Lost-time Free Accidents
Vancouver Wastewater Treatment Plant, Vancouver, Washington

▪1994

Georgia Water Pollution Control Association - George W. Burke Safety Award
Albany Wastewater Treatment Plant, Albany, Georgia

Environmental Protection Agency, Region VI - Regional Administrator's Environmental Excellence State Award
Beneficial Use of Biosolids Operating Project Greater Than 5 MGD
Chickasaw Wastewater Treatment Plant, Bartlesville, Oklahoma

California Water Pollution Control Association - Safety Award
Burlingame Wastewater Treatment Plant, Burlingame, California

Ohio Water Environment Association - Safety Award
MCD Dayton Wastewater Treatment Plant, Dayton, Ohio

Pacific Northwest Pollution Control Association - Safety Award, Division B, Zero Lost-time Accident Award
Vancouver Wastewater Treatment Plant, Vancouver, Washington

▪1993

Georgia Water Pollution Control Association - Plant of the Year Award/Operations & Maintenance Excellence Award
Albany Wastewater Treatment Plant, Albany, Georgia

Environmental Protection Agency, Region IV - Award of Excellence for Beneficial Sewage Sludge Utilization
Albany Wastewater Treatment Plant, Albany, Georgia

Environmental Protection Agency, Region IV - Operations & Maintenance Excellence Award, Second Place
Albany Wastewater Treatment Plant, Albany, Georgia

Environmental Protection Agency, Region III - Operations & Maintenance Excellence Award
Oaks Wastewater Treatment Plant, Oaks, Pennsylvania

Ohio Water Environment Association - Safety Award - Plant Operations
Springboro Wastewater Treatment Plant, Springboro, Ohio

Ohio Water Environment Association - Safety Award - Collections Systems
Springboro Wastewater Treatment Plant, Springboro, Ohio

Environmental Protection Agency, Region VI - Operations & Maintenance Excellence Award Finalist
Vancouver Wastewater Treatment Plant, Vancouver, Washington

Pacific Northwest Pollution Control Association - Safety Award - Division B, Zero Lost-time Accidents
Vancouver Wastewater Treatment Plant, Vancouver, Washington

Pacific Northwest Pollution Control Association - Operations Challenge - First Place Overall
Vancouver Wastewater Treatment Plant Team, Vancouver, Washington

▪1992

Georgia Water Pollution Control Association - Plant of the Year Award/Operations & Maintenance Excellence Award
Albany Wastewater Treatment Plant, Albany, Georgia

Environmental Protection Agency, Region IV - Operations & Maintenance Excellence Award
Albany Wastewater Treatment Plant, Albany, Georgia

Georgia Water Pollution Control Association - Best Operated Plant in Georgia - Greater than 15 MGD
Atlanta-Fulton County Water Treatment Plant, Alpharetta, Georgia

Chrysler Corporation - Quality Excellence Award
Chrysler Canada LTD, Wastewater Treatment Plant, Bramalea, Ontario, Canada

Ohio Water Pollution Control Association - State Safety Award
MCD North Regional Wastewater Treatment Plant, Dayton, Ohio

Ohio Water Pollution Control Association - State Safety Certificate
MCD North Regional Wastewater Treatment Plant, Dayton, Ohio

Montana Water Pollution Control Association - George W. Burke Safety Award
Great Falls Wastewater Treatment Plant, Great Falls, Montana

▪1991

Environmental Protection Agency, Region IV - Operations & Maintenance Excellence Award
Albany Wastewater Treatment Plant, Albany, Georgia

Georgia Water Pollution Control Association - Plant of the Year Award/Operations & Maintenance Excellence Award
Albany Wastewater Treatment Plant, Albany, Georgia

Environmental Protection Agency, Region VIII - Operations & Maintenance Excellence Award
Great Falls Wastewater Treatment Plant, Great Falls, Montana

Environmental Protection Agency, Region VIII - National Operations & Maintenance Excellence Award
Great Falls Wastewater Treatment Plant, Great Falls, Montana

Ohio Water Pollution Control Association - Safety Award
Springboro Wastewater Treatment Plant, Springboro, Ohio

Pacific Northwest Pollution Control Association - Division B, Zero Lost-time Accident Award
Vancouver Wastewater Treatment Plant, Vancouver, Washington

▪1990

Georgia Water Pollution Control Association - Plant of the Year Award
Albany Wastewater Treatment Plant, Albany, Georgia

Environmental Protection Agency, Region VI - Award for Environmental Excellence - Pretreatment Programs
Chickasaw Wastewater Treatment Plant, Bartlesville, Oklahoma

Ohio Water Pollution Control Association - George W. Burke Safety Award
Franklin Area Wastewater Treatment Plant, Franklin, Ohio

Zimpro/Passavant Company - Plant of the Year Award
Great Falls Wastewater Treatment Plant, Great Falls, Montana

Pacific Northwest Pollution Control Association - Division B, Zero Lost-time Accident Award
Vancouver Wastewater Treatment Plant, Vancouver, Washington

▪1989

Georgia Water Pollution Control Association - Plant of the Year Award/Operations & Maintenance Excellence Award
Albany Wastewater Treatment Plant, Albany, Georgia

Environmental Protection Agency, Region IV - Award of Excellence for Beneficial Sewage Sludge Utilization
Albany Wastewater Treatment Plant, Albany, Georgia

Ohio Water Pollution Control Association - George W. Burke Safety Award
MCD North Regional Wastewater Treatment Plant, Dayton, Ohio

Massachusetts Water Pollution Control Association - Operations & Maintenance Excellence Award - Honorable Mention
Leominster Wastewater Treatment Plant, Leominster, Massachusetts

Department of Ecology - Washington State - Operations & Maintenance Excellence Award
Vancouver Wastewater Treatment Plant, Vancouver, Washington

▪1988

Environmental Protection Agency, Region IV - Operations & Maintenance Excellence Award Finalist
Albany Wastewater Treatment Plant, Albany, Georgia

Ohio Water Pollution Control Association - Safety Certificate
MCD North Regional Wastewater Treatment Plant, Dayton, Ohio

Ohio Water Pollution Control Association - State Safety Award
MCD North Regional Wastewater Treatment Plant, Dayton, Ohio

Ohio Water Pollution Control Association - State Safety Award
Franklin Area Wastewater Treatment Plant, Franklin, Ohio

Ohio Water Pollution Control Association - Safety Certificate
Franklin Area Wastewater Treatment Plant, Franklin, Ohio

Environmental Protection Agency, Region I - Operations & Maintenance Excellence Award
Leominster Wastewater Treatment Plant, Leominster, Massachusetts

Pacific Northwest Pollution Control Association - Division B, Safety Award
Vancouver Wastewater Treatment Plant, Vancouver, Washington

Pacific Northwest Pollution Control Association - Division B, Zero Lost-time Accident Award
Vancouver Wastewater Treatment Plant, Vancouver, Washington

▪1987

Environmental Protection Agency, Region IV - Operations & Maintenance Excellence Award
Albany Wastewater Treatment Plant, Albany, Georgia

Georgia Water Pollution Control Association - Plant of the Year Award/Operations & Maintenance Excellence Award
Albany Wastewater Treatment Plant, Albany, Georgia

Georgia Water Pollution Control Association - George W. Burke Safety Award
Albany Wastewater Treatment Plant, Albany, Georgia

Ohio Water Pollution Control Association - Safety Certificate
MCD North Regional Wastewater Treatment Plant, Dayton, Ohio

Ohio Water Pollution Control Association - Safety Certificate
Franklin Area Wastewater Treatment Plant, Franklin, Ohio

Massachusetts Department of Environmental Quality Engineering - Operations & Maintenance Excellence Award
Leominster Wastewater Treatment Plant, Leominster, Massachusetts

Pacific Northwest Pollution Control Association - Division B, Zero Lost-time Accident Award
Vancouver Wastewater Treatment Plant, Vancouver, Washington

▪1986

Georgia Water Pollution Control Association - Plant of the Year Award/Operations & Maintenance Excellence Award
Albany Wastewater Treatment Plant, Albany, Georgia

San Francisco/San Mateo County Safety Council - Award of Merit, Program for the Achievement of Outstanding Ratio of Hours Worked to Lost-time Accidents
Burlingame Wastewater Treatment Plant, Burlingame, California

New York Water Pollution Control Association - Safety Award
Poughkeepsie Wastewater Treatment Plant, Poughkeepsie, New York

Pacific Northwest Pollution Control Association - Division B, Zero Lost-time Accident Award
Vancouver Wastewater Treatment Plant, Vancouver, Washington

▪1985

Georgia Water Pollution Control Association - Plant of the Year Award/Operations & Maintenance Excellence Award
Albany Wastewater Treatment Plant, Albany, Georgia

San Francisco/San Mateo County - Safety Council Award of Honor
Burlingame Wastewater Treatment Plant, Burlingame, California

San Francisco/San Mateo County - Safety Council Award of Merit, Program for the Achievement of Outstanding Ratio of Hours Worked to Lost-time Accidents
Burlingame Wastewater Treatment Plant, Burlingame, California

New York Water Pollution Control Association - Regional Safety Award
Poughkeepsie Wastewater Treatment Plant, Poughkeepsie, New York

Pacific Northwest Pollution Control Association - Division B, Zero Lost-time Accident Award
Vancouver Wastewater Treatment Plant, Vancouver, Washington

▪1984

San Francisco/San Mateo County - Safety Council Award of Merit, Program for the Achievement of Outstanding Ratio of Hours Worked to Lost-time Accidents
Burlingame Wastewater Treatment Plant, Burlingame, California

Pacific Northwest Pollution Control Association - Division B, Zero Lost-time Accident Award
Vancouver Wastewater Treatment Plant, Vancouver, Washington

▪1983

Pacific Northwest Pollution Control Association - Safety Award
Eastside Wastewater Treatment Plant, Vancouver, Washington

Pacific Northwest Pollution Control Association - Safety Award
Westside Wastewater Treatment Plant, Vancouver, Washington

▪1982

Georgia Water Pollution Control Association - Operations & Maintenance Excellence Award
Albany Wastewater Treatment Plant, Albany, Georgia

California Water Pollution Control Association - Safety Award
Burlingame Wastewater Treatment Plant, Burlingame, California

Pacific Northwest Pollution Control Association - Regional Safety Award
Westside Wastewater Treatment Plant, Vancouver, Washington

Pacific Northwest Pollution Control Association - Division B, Zero Lost-time Accident Award
Vancouver Wastewater Treatment Plant, Vancouver, Washington

▪1981

California Water Pollution Control Association - Safety Award - First Place Program
California Wastewater Treatment Plants

Pacific Northwest Pollution Control Association - Safety Award
Eastside Wastewater Treatment Plant, Vancouver, Washington

▪1978

Georgia Water Pollution Control Association - Operations & Maintenance Excellence Award
Albany Wastewater Treatment Plant, Albany, Georgia

▪1977

Georgia Water Pollution Control Association - Operations & Maintenance Excellence Award
Albany Wastewater Treatment Plant, Albany, Georgia

WHEELABRATOR EOS WATER AND WASTEWATER FACILITIES

Facility	Client Name & Address	Phone No.	MGD	Facility Type	Start Date	Project Type
Albany, GA	Robert Merton Director for Public Works City of Albany, City Hall P.O. Box 447 Albany, GA 31703	(912) 883-6950	2.[illegible]	WWTP Secondary	1985	Maintenance
Atlanta-Fulton County Water Resources Commission Atlanta, GA	Michael Leonard, General Manager Atlanta Fulton County WRC 9750 Spruill Road Alpharetta, GA 30201	(404) 664-7455	5[illegible]	Water	1991	Full O&M
Bartlesville, OK	John H. Miller, City Engineer City of Bartlesville P.O. Box 609 Bartlesville, OK 74005	(918) 337-5235	[illegible]	WWTP Secondary	1986	Full O&M
Bedford Hills Correctional Facility, Bedford Hills, NY	David Vella, Contract Manager Hueber Breuer and Vella P. O. Box 59 Bedford Hills, NY 10507	(914) 244-3428	[illegible].50	Trickling Filter	1994	Full O&M
Burlingame, CA	Ralph Kirkup, P.E. Public Works Director City of Burlingame, CA 94[illegible] 501 Primrose Road Burlingame, CA 94010	(415) 696-7230	[illegible]	WWTP Secondary	1972	Full O&M
Colorado River Sewage System Joint Venture Parker, AZ	Lawanda Lathrop, Chairman Colorado River Sewage System Joint Venture P. O. Box 625 Parker, AZ 85344	(520) 669-[illegible]21	[illegible].2	WWTP	1994	Full O&M
East Aurora, NY	Jerry Hiller, Village Manager Village of East Aurora 571 Main Street East Aurora, NY 14052	(716) 652-6000	[illegible].5	WWTP	1995	Full O&M
Fort Devens, MA	Phyllis M. Loiselle Contracting Officer Directorate of Contracting Building 227 Fort Devens, MA 01433-5340	(508) 796-2025	[illegible].18	Water	1995	Full O&M
Fort Dix, NJ	Monica Heitz, Contract Administrator Department of the Army AFTZ-DOC (Building 5418) Fort Dix, NJ 08640-6150	(609) 562-5271	4.6	WWTP Secondary	1995	Full O&M
Franklin, OH	James L. Rozelle General Manager & Chief Engineer Miami Conservancy District 38 East Monument Avenue Dayton, OH 45402	(513) 223-1271	4.5	WWTP	1987	Own and Operate

WHEELABRATOR EOS WATER AND WASTEWATER FACILITIES (Continued)

Facility	Client Name & Address	Phone No.	MGD	Facility Type	Start Date	Project Type
Great Falls, MT	John Lawson, City Manager City of Great Falls, Civic Center P.O. Box 5021 Great Falls, MT 59403	(406) 771-1180	10	WWTP (AWT)	1977	Full O&M
Lechería, MX	Ing. Jorge Molina Ramírez General Director Compañía Mexicana de Aseos Montes Urales No. 760 Piso 1 Lomas de Chapultepec, MX, D.F. 11000	(011) 525-986-1652	9.13	WWTP Water Reclamation	1994	Own and Operate
Leominster, MA	The Honorable Dean J. Mazzarella Mayor of the City of Leominster City Hall, 25 West Street Leominster, MA 01453	(508) 534-7500	6.3	WWTP (AWT)	1983	Full O&M
Lynn, MA	Robert Ezra Contract Administrator Lynn Water & Sewer Commission 400 Parkland Avenue Lynn, MA 01905	(617) 592-7728	26	WWTP Secondary	1985	Full O&M
Massachusetts Water Resources Authority (MWRA) Deer Island, MA	Dave Ferguson, Project Manager Healy Modern Continents 190 Taft Avenue Winthrop, MA 02152	(617) 539-0150	20.8	Water	1995	Full O&
MCD - Dayton, OH	James L. Rozelle General Manager & Chief Engineer Miami Conservancy District 38 East Monument Avenue Dayton, OH 45402	(513) 223-1271	11.2	WWTP	1985	Full O&M
North Haven, CT	Richard Branican Director of Public Works Town Hall, 18 Church Street North Haven, CT 06473	(203) 239-5321	4.5	WWTP (AWT)	1991	Full O&M
Oaks, PA	Fred Walker, Chairman LPVRSA, 5 River Road Oaks, PA 19456	(610) 666-0623	8.7	WWTP (AWT)	1994	Full O&M
Petaluma, CA	Tom Hargis, P.E. Director of Engineering City Hall, 11 English Street P.O. Box 61 Petaluma, CA 94955	(707) 778-4345	5.2	WWTP Secondary	1979	Full O&M
Poughkeepsie, NY	Richard Marino, City Engineer City of Poughkeepsie Department of Public Works Civic Center Plaza Poughkeepsie, NY 12601	(914) 451-4100	10	WWTP Secondary	1980	Full O&M

WHEELABRATOR EOS WATER AND WASTEWATER FACILITIES (Continued)

Facility	Client Name & Address	Phone No.	MGD	Facility Type	Start Date	Project Type
[illegible] MA	Lene [illegible] Manager Atlantic Management [illegible] 40 Speen Street Framingham, MA [illegible]	(508) 626-[illegible]	[illegible]	Water	1990	Full O&M
[illegible]	Paul [illegible] City of Sioux City P.O. Box 447 Sioux City, IA [illegible]	(712) 279-6222	[illegible]	WWTP	1995	Full O&M
[illegible]	Brad [illegible] Assistant City Manager City of Springboro 320 West Central Avenue Springboro, OH [illegible]	(513) 748-1047	2.16	Water	1990	Full O&M
[illegible]	Brad [illegible] Assistant City Manager City of Springboro 320 West Central Avenue Springboro, OH [illegible]	(513) 748-1041	2	WWTP	1990	Full O&M
Sturbridge, MA	James Malloy, [illegible] Town of Sturbridge P.O. Box 227 308 Main Street [illegible] Sturbridge, MA [illegible]	(508) 347-25[illegible]	[illegible]5	WWTP Secondary	1989	Full O&M
Sturbridge, MA	James Malloy, [illegible] Town of Sturbridge P.O. Box 227 308 Main Street [illegible] Sturbridge, MA [illegible]	(508) 347-25[illegible]	[illegible]	Water	1989	Full O&M
[illegible] MS	Denise [illegible] Contract Administrator Northeast Mississippi Regional Water Supply District P.O. Box 7318 Tupelo, MS 38802	(601) 844-[illegible]	2	Water	1991	Full O&M
Vancouver, WA	Victor [illegible], P.E., City Engineer Vancouver City Hall, P.O. Box 1995 Vancouver, WA 98660	(206) 696-8008	15.2	WWTP (AWT)	1978	Full O&M
Westborough, MA	Raymond E. Weiss Chairman, Westborough Treatment Plant Board 238 Turnpike Road Westborough, MA [illegible]	(508) 366-7615	[illegible]	WWTP (AWT)	1990	Full O&M
Wilmington, DE	James [illegible] Commissioner Department of Public Works City of Wilmington 800 French Street Wilmington, DE [illegible]	(302) 571-4220	[illegible]	WWTP Secondary	1985	Solids Handling, Maintenance

WHEELABRATOR EOS WATER AND WASTEWATER FACILITIES (Continued)

Facility	Client Name & Address	Phone No.	MGD	Facility Type	Start Date	Project Type
Woodmere, OH	Randy Kerresz, President Woodbran Realty, Inc. 3439 West Brainard Street Suite 260 Woodmere, OH 44122	(216) 831-9110	0.5	WWTP (AWT)	1989	Full O&M

WHEELABRATOR EOS GROUNDWATER TREATMENT FACILITIES

Facility	Client Name & Address	Phone No.	GPM	Facility Type	Start Date	Project Type
[illegible] Wastes, Inc. Darlington, [illegible]	Randolph Harper Manor Care, Inc. 10770 Columbia Pike Silver Springs, MD [illegible]	301-593-9600	[illegible]	Leachate Treatment	1982	Full O&M
[illegible] Landfill [illegible], NJ	Richard Karr Waste Management, Inc. Three Greenwood Square 3329 Street Road Ben Salem, PA [illegible]	(215) 244-9514	300	Groundwater Treatment	1995	Full O&M
Mill Creek Superfund [illegible]	Gary Lang, P.E. U.S. Army Corps of Engineers Baltimore District Greater Pittsburgh [illegible] 316 Defense Avenue Coraopolis, PA [illegible]	(412) 474-8134	100	Groundwater Remediation	1991	Full O&M
[illegible] Transport Company Ashtabula, OH	Joseph DelPrince Pinney Dock & Transport Company 1149 E. Fifth Street Ashtabula, OH 44004	(216) 964-7186	[illegible]	Leachate Treatment	1990	Full O&M
[illegible] MI	Ray Lang, P.E. U.S. Army Corps of Engineers Badger Area Office Sub-Leader Madison, WI 49843	(608) 269-7491	1500	Groundwater Remediation	1994	Full O&M
[illegible]	Michael [illegible] U.S. Army Corps of Engineers Savannah District P.O. Box 889 Savannah, GA [illegible]	(912) 652-5653	[illegible]	Groundwater Remediation	1992	Full O&M
U.S. Steel Supernacle [illegible] Site [illegible], NJ	Tony Nuzzo U.S. Steel Company 600 Grant Street Pittsburgh, PA 15219	(412) 433-6336	[illegible]	Groundwater Treatment	1993	Full O&M

WHEELABRATOR EOS INDUSTRIAL FACILITIES

Facility	Client Name & Address	Phone No.	MGD	Facility Type	Start Date	Project Type
Caterpillar, Inc., Mossville, IL	Jack Hippen, Purchasing Caterpillar, Inc. Mossville, IL 61552-0600	(309) 578-8313	0.80	WWTF	1995	O&M
Chrysler Canada, LTD, Bramalea, Ontario, Canada	Doug Casselman Environmental Coordinator Chrysler Canada, LTD 2000 Williams Parkway East P.O. Box 2500, Bramalea, Ontario CANADA L6T 4Y6	(905) 458-2770	0.80	Metals Removal Plant	1987	Full O&M
General Motors Corporation Oshawa, Ontario Canada	Jerry Kehoe, Manager Wastewater Environmental Affairs General Motors Corporation 1908 Colonel Sam Drive Oshawa, Ontario CANADA L1H 8P7	(905) 644-5407	2.00	Metals Removal Plant	1992	Full O&M
IBM Southbury, CT	Susan Callaghan AXIOM Real Estate Management 150 Kettletown Road Southbury, CT 06488	(203) 262-3596	0.08	Tertiary WWTP	1988	Full O&M
Pepsi Cola Somers, NY	Cesare Corte Facility Services Manager Pepsi Cola Company Routes 35 & 100 Somers, NY 10589	(914) 767-7331	0.08	Tertiary WWTP	1988	O&M
Ricky Glen Mall Newtown, CT	Sandra Wright The Glen Mall Corp 75 Glen Road Sandy Hook, CT 06482	(203) 674-5639	0.02	Tertiary WWTP	1986	Full O&M
United Airlines San Francisco Airport, CA	Bobby Vance Engineering Staff Representative United Airlines MOC, Bldg. 49 San Francisco Airport, CA 94128	(415) 634-4551	0.70	Metals Removal Plant	1991	Full O&M
Vancouver, WA	Victor Ehrlich, P.E. City Engineer Vancouver City Hall P.O. Box 1995 Vancouver, WA 98660	(206) 696-8008	3.20	IPP	1978	Full O&M

Mr. HORN. Well, we thank you. Our third witness, and our last witness on this panel, is Mr. James Barr, who is chairman of the board of the National Association of Water Companies and a member of the executive committee of that group. He also is senior vice president, treasurer, chief financial officer of the American Water Works Co., which, he notes, is the largest investor-owned water utility in the Nation. We welcome you, Mr. Barr.

Mr. BARR. Thank you very much, Mr. Chairman, and good afternoon to you and members of the subcommittee. It's certainly a privilege for me to have the opportunity to address you for just a couple of minutes, as well, on this important subject.

At the risk of highlighting it just too much, I want to emphasize that the National Association of Water Companies represents 360 privately owned, if you will, or investor-owned water utility companies that serve 22 million Americans in 41 States. I say that so that you know that my perspective here is that of a water and/or wastewater service provider.

H.R. 1907 is an important bill which NAWC supports, endorses, and believes should be passed into law, because we believe it addresses one of several necessary legislative and administrative provisions that are required to encourage and facilitate much needed privatization in this Nation. We have submitted a statement on that matter. I'll try to briefly summarize it here for you in a couple of key points.

The sale of a water or wastewater service facility to a professional, regulated, investor-owned utility does not convert that asset to private use nor does it change the original purpose of the facility that was constructed with Federal funding. Frankly, the only reason a professional regulated, investor-owned utility would purchase that asset would be for the purpose to continue its use as a public service facility.

As you've already heard, the process of meeting both the water and wastewater service requirements of the Nation is a highly capital-intensive enterprise. I think it's fair to say even more so than virtually any other utility service in this country.

The necessity to replace existing facilities, to expand them to serve economic growth and development, and to upgrade them to comply with environmental standards requires enormous amounts of new capital investment every year. A significant portion of the burden to attract this continued flow of capital into both the water and wastewater business falls on local government.

That's because about 80 percent of the population in this country receives its water service from municipal entities, and about 95 percent of those that have public wastewater service receive that service from municipal entities. More so than ever before, these municipal entities are seeking alternative ways to meet these capital requirements that they face to maintain that service.

One of these alternatives that communities throughout the country are examining today involves the conversion, if you will, of the equity that has accumulated in certain municipal assets into cash which can be used to provide other vital services for which there is no other alternative or, frankly, simply to reduce the economic burden on taxpayers.

There are professional enterprises that have access to capital and that possess the technical know-how to ensure proper water and wastewater service to the public that are willing to invest in these municipal assets. The requirement to repay grants made by the Federal Government to build the asset in the first place, in the event that that asset is either sold or otherwise privatized, interferes with the ability of municipalities to tap the private sector capital resources that are available in the marketplace.

Given the fact that the public service purpose of these assets is not altered by privatization, the disincentive, either real or perceived, that grant repayment represents, we would respectfully suggest is counterproductive, and we therefore support and encourage the passage of H.R. 1907. Thank you very much.

[The prepared statement of Mr. Barr follows:]

DRAFT

TESTIMONY OF

THE NATIONAL ASSOCIATION OF WATER COMPANIES

BEFORE

THE SUBCOMMITTEE ON GOVERNMENT MANAGEMENT
INFORMATION AND TECHNOLOGY

CONCERNING

H.R. 1907
THE FEDERAL-AID FACILITY PRIVATIZATION ACT OF 1995

PRESENTED BY

J. JAMES BARR

CHAIRMAN OF THE BOARD
NATIONAL ASSOCIATION OF WATER COMPANIES

AND

SENIOR VICE-PRESIDENT, TREASURER, CHIEF FINANCIAL OFFICER
AMERICAN WATER WORKS COMPANY

NOVEMBER 15, 1995

Good afternoon. Mr. Chairman and members of the Subcommittee, my name is Jim Barr. I am the Chairman of the Board of the National Association of Water Companies and a member of its Executive Committee. The National Association of Water Companies is the trade association representing the nation's investor-owned water utilities. Our 360 water utility members provide safe, reliable and affordable drinking water daily to over 22 million Americans in 41 states.

I am also Senior Vice-President, Treasurer, and Chief Financial Officer of the American Water Works Company. Which is the largest investor owned water utility in the nation. American owns and invests in 23 regulated water utilities which provide water service to more than 6 million Americans in over 700 communities in 21 states throughout the country.

We commend this Subcommittee for holding this hearing today. H.R. 1907 the Federal-Aid Facility Privatization Act of 1995, introduced by Congressman McIntosh and this Subcommittee's Chairman, Congressman Horn, is an important bill which the NAWC supports, endorses, and believes should be passed into law as soon as possible. It addresses one of several necessary legislative and administrative provisions required to encourage and facilitate much needed privatization efforts in this nation.

The Effect of H.R. 1907 on the Water and Wastewater industry

H.R. 1907 is a modified codification of Executive Order 12803. The Order

itself modifies current federal regulation, called the "Common Rule", which requires the repayment of federal grants if the grant-funded facility is sold or leased to a non-government entity. The theory behind this policy is that the facility's use would change with private ownership. However, in the case of water and wastewater facilities funded by federal grants, the use of a facility is not impacted by ownership.

Instead of requiring full grant repayment, Executive Order 12803 requires that the local government only repay the undepreciated portion of the grant. Also, the local government is allowed to recover its costs before any funds are used for grant payback, and the order places restrictions on the use of proceeds received by the city as a result of the sale or lease.

The Executive Order directs federal agencies to adopt rules to carry out its requirements. To date, implementation has been very disappointing and has clearly not achieved the order's intent of encouraging privatization efforts.

H.R. 1907 seeks to realize the Order's thus far unattained goal of increased privatization by first codifying the order, and second, making some important changes which will remove a significant impediment to privatization.

The major change the bill makes is to eliminate all grant repayment obligations which now fall on localities, provided the grant-funded facility continues to be used for its original purpose. This change is highly desirable. If a water or wastewater facility is privatized, yet still serving the public as originally intended, the purpose of the federal funding when made is still realized. The benefit the community enjoys from the funding - that being enhanced public service - has not changed, even though

ownership of the facility has.

The Need for Greater Private Sector Involvement in Water and Wastewater

Passage of this bill will remove a significant disincentive to greater flow of private capital to basic infrastructure assets, and help satisfy a growing need in our country today.

Today, approximately 80% of Americans receive their water service from various governmental agencies and municipal utilities. For wastewater services, the percentage of public or governmental ownership is above 95%. The cost to the public of repairing and upgrading the aged infrastructure of water and wastewater systems in combination with the expense of complying with the mandates of both the Safe Drinking Water Act and the Clean Water Act is enormous and challenges the funding and technical capabilities of all systems. EPA's 1992 needs survey estimates that the Clean Water Act will cost federal, state and local governments $137 **billion** over the next 20 years. This was $57 **billion** more than the 1990 estimate.

In order to address these growing financial responsibilities it makes sense to remove impediments to expanded private capital investment.

There are concerns with the privatization of basic vital utilities, such as water and wastewater facilities. However, it must be remembered that investor-owned water companies are regulated by professionals at the state level. These regulators have a long history of distinguished service in economic regulation and are respected

professionals in their field. Their work assures the public that only those costs which are legitimately incurred as part of our providing water service are reflected in the rates we can charge. It is the continued vigorous oversight by state regulators which is key to assuring the American people that private investment in infrastructure is fair and not abusive. And we welcome that oversight.

Closing

The current grant repayment requirement, which H.R. 1907 would alleviate, is but one obstacle localities face toward much needed privatization. My company and the other members of the NAWC have demonstrated that we have the experience and resources to professionally operate water and wastewater facilities. Our members provide service to residence in cities such as San Jose, CA, Indianapolis, IN, and the Suburbs of Philadelphia, PA, amongst others. It may also be of interest to this Subcommittee that NAWC members provide service in the Congressinal districts of many of the members of this Subcommittee, including yours, Mr. Chairman. This attests to the capability of the private sector to provide safe, reliable and affordable drinking water to the public.

Mr. Chairman, what I do for living is provide the public with some of their most basic needs, that being both safe, reliable drinking water and wastewater service. Ironically, I think it is because these services are so fundamental, that they are often taken for granted by the public. However, it is clear that continued economic growth cannot be attained if aging government infrastructure concerns remain unresolved.

Mr. Chairman, on behalf of the NAWC, we stand ready to assist this subcommittee in its endeavors to promote privatization activities, and I am grateful for this opportunity to testify before you today.

Mr. HORN. Thank you very much. I am now delighted to welcome the very able colleague from New Hampshire, Mr. Bass. I believe Mr. Dowd's firm is headquartered in his area.

Mr. BASS. That's correct.

Mr. HORN. He has been one of the most constructive Members of Congress, less senior or more senior. So I'm delighted to welcome him here.

Mr. BASS. Thank you very much, Mr. Chairman. I appreciate your kind introduction, and I wish to apologize for having not been here on time. These are busy times, as we all well know, here in Washington right now, as is indicated by the two bells, which are starting a vote.

But I'm really pleased to be participating in this process because, clearly, there is a need to codify the efforts that have been made by Executive order to assist in public-private partnerships.

Mr. HORN. Let me just interrupt. I'm going to go and vote, and Mr. Bass will run the hearing.

Mr. BASS. Sure.

Mr. HORN. And then he will leave at 5 minutes before the end of the vote, and, hopefully, I will be back here.

Mr. BASS. Very well.

Mr. HORN. And after his 5 minutes, Mrs. Maloney is recognized.

Mr. BASS [presiding]. I would just like to ask a couple of questions of the panel. I'm going to start with you, Mr. Dowd, and what your opinion—and these are general questions and may reflect the fact that I wasn't here for some of the testimony. What could we do to stimulate wastewater facility privatization?

Mr. DOWD. What's contained in the bill stimulates it by dropping the requirement for any grant repayment at all. What would further stimulate it is to, with language in this bill or some other bill, actually give priority, be preferential—first go to the private sector as I said—and seek to have your wastewater treatment plant problems solved through sale of that asset or some other similar way. And only after that, if for whatever reason, it can't be done, go to the Federal Government for support there.

The second thing would be to get rid of regulations and things that exist in the statutes right now—and some were referred to by Mr. Cook—and the language that exists in regulations about, really, definitions—POTW definitions and other things like that. Those things need to be and could be changed.

And the third thing that we haven't talked about much is leveling the playing field between private financing and public sector-type financings, but whether it be a public financing or a private financing, level the playing field. It's not now level.

Mr. BASS. Excuse me. I'll get to you, Mr. Barr, in a second. I think what you're referring to in the playing field is the tax-exempt nature of municipal bonds versus private bonds. Do you have any thoughts about that, what we could do?

Mr. DOWD. Right, two possibilities. One would be to lift the cap. A cap now exists in all the States, based on per capita and all that sort of stuff, but it becomes a limit in and of itself, because there are lots of uses for these private activity bonds, one of which we're talking about today. But there's other uses, too. So it becomes a competitive thing; OK?

Another solution would be a form of accelerated depreciation, which would make the economics better. I would hasten to add that, because these will almost always be competitive processes—that being the nature of the municipal beast, if you will—the ultimate beneficiary of that will be the municipalities, because companies like ours will be competing.

And, to the extent those things are made available to us, we will weigh how much we have to pass on so we make sure we get the job. We will compete. So, in the end, even that will benefit the municipalities.

Mr. BASS. Anybody else have any observations?

Mr. BARR. I think, Congressman, you've heard a fine list of a number of what I would like to refer to as the "disincentives" that we confront from time to time with respect to privatization. Certainly, this grant repayment provision is one.

There have been a number of provisions over time that tend to prohibit privatization or interfere with it in the Internal Revenue Code related to contracting the services that tend to interfere with the tax-exempt nature of debt that has been issued to fund municipal facilities.

Again, I would look at that as a disincentive, if you will, as contrasted to what others might call an incentive to private enterprise. But the distinctions that are made based on ownership are typically the issues that are troublesome.

Mr. BASS. In your opinion, is there a significant amount of interest on the part of private industry in this country in participating in these sort of public-private partnerships, or is this something that's focused in just a few businesses—it would be some narrow interests, rather than broad?

Mr. BARR. From my vantage point in both the water and the wastewater industry, I think it's fair to say there is more serious consideration of privatization today than we've ever seen before.

But I think it is at the leading edge of the curve, if you will, looking for some of these disincentives to be removed for it to ultimately take hold. I think there are ample capital resources in the marketplace ready to invest, given just a little bit of encouragement to move forward.

Mr. BASS. Thank you very much. The chair will recognize the gentlelady, Congresswoman Maloney.

Mrs. MALONEY. Thank you. Mr. Dowd, you are certainly to be complimented on your testimony and, really, the thoroughness of the prepared statement that you've put before us.

I would like to ask you; you state on page 2 that "The bill does not address the need to set a threshold of 'competency' for private sector entities . . . allowed to participate in partnership arrangements." How would you suggest that we change that to insure that only competent companies are able to participate?

Mr. DOWD. There's language in the Clean Water Act that the House passed this summer which talks to financial responsibility or, you know, financial thresholds and technical thresholds, qualifications in the business.

It doesn't spell out precisely, but it says that those things need to be established so that we have companies that are able to do it because they've done it before and have been proven qualified and

are financially in a position to take this risk. I mean there are risks involved with anything.

Mrs. MALONEY. I would like to see that language, if maybe the counsel could get it to me, or someone. I would just like to see what the Clean Water Act, how they solved the problem, or how they tried to.

On page 1 of your statement, you mentioned how complicated these privatization transactions can be and that you're learning from some of the unforeseeable problems and consequences. Could you elaborate on these problems and consequences?

And also on page 1, you state that although H.R. 1907 provides greater incentives for public and private sector entities to make decisions about partnerships, it raises the level of uncertainty about how beneficial it may or may not be, based on its linkage to federally imposed grant assurances. Would you discuss this uncertainty for us?

And I must say, I've got to go vote, but it will be in the record, and he can tell me. But if you'll excuse me, we're in the middle of a vote, and we've got a long way to go.

Mr. DOWD. Should I just wait? Would that be better?

Mrs. MALONEY. Why don't you just wait, then.

Mr. BASS. Yes let's call a 10-minute recess. We'll reconvene in 10 minutes.

[Recess.]

Mr. HORN [presiding]. If we might begin now. Gentlemen, I hear Mrs. Maloney asked a question. We'll pick up with that when she gets back. Let me just ask a couple of questions here. Mr. Cook, the Clean Water Act will continue to require increasing investments in infrastructure. What other sorts of innovative financing will be available for communities in the absence of grants?

Mr. COOK. Well, I mentioned the State revolving loan funds that we administer at the Federal level. Other than that, it's a matter of private sector and any additional State and local programs that might be available. There has been some discussion here about private activity bonds, and, of course, there are public bonds available; but I guess at this point they're not particularly innovative, since they've been in use for so long.

Mr. HORN. What do you hear people talking about when you meet with them on a regional or State basis? They must be wondering, how do we do this job? Because a lot of small communities are going to have great trouble.

Mr. COOK. Yeah. What I hear is that they feel it's going to be extraordinarily difficult, given the competition for funds at the local level. Thus this administration certainly has a strong commitment to continuing funding for the State revolving fund and setting up even a new one for drinking water.

Mr. HORN. Well, are there any other innovative ways we might stimulate private capital?

Mr. COOK. Well, while you were out, there was some discussion of the tax code. I am certainly not authorized to endorse any of those ideas, but obviously, they're relevant.

Mr. HORN. Well, just pass them on. We don't care what the hierarchy does down there. We just want a good idea. A good idea is a good idea. What do you hear?

Mr. COOK. So far as privatization goes, there are limits on private activity bonds on a State basis. What that means is that, given the tremendous amount of competition for such tax-exempt bonds, it's difficult for the private sector to take advantage of those for environmental infrastructure. So one possibility is to be somewhat more relaxed, at least for the environmental infrastructure aspect.

Mr. HORN. Let me move to the Ohio example in which you and Mr. Dowd were involved. Now I am interested in EPA policy, per se. Do you envision any type of continued oversight role with regard to privatized facilities? In other words, does EPA have a responsibility to insure that the Ohio facility will continue to operate as a wastewater treatment plant?

Mr. COOK. We have a responsibility to insure that it meets its obligations in their NPDES permit—that's the permit issued under the Clean Water Act—and also that there is an adequate operating pretreatment program for industrial users. Those are the principal obligations that we would expect to continue.

Mr. HORN. That reminds me of my electronic filing bill. EPA is being very helpful with the California EPA and California industry on both seeking permits and reporting, to do it by electronic transmission. Are we doing that in this area of EPA, too?

Mr. COOK. We're working hard on incorporating electronic transmission into reporting requirements that we have in all of our EPA programs. We have a ways to go, but it's certainly a priority.

Mr. HORN. Now, really, Mr. Dowd and Mr. Barr, the water and wastewater facilities, if they're privatized, will there be a corresponding need for increased economic regulation in those jurisdictions where currently there is none, since it's Government-owned?

Obviously, an investor might hesitate to make a large investment in the presence of a regulatory body without a clearly established regulatory record. How have your companies handled this problem in the past?

Mr. BARR. Mr. Chairman, every operation we have throughout the United States is regulated at the State level from an economic regulatory perspective. Frankly, we're very comfortable with the process.

Mr. HORN. This is as to rates?

Mr. BARR. As to rates; as to the methods and the approaches to financing that we use, and large prescribing service standards that we must meet. And that is not only true of my particular company, it is true of the member companies of the National Association of Water Companies. That regulatory framework is well established in every State throughout the country and responds very effectively.

We attract capital as an industry, essentially every day, under the regulatory framework that I described, so that, in that sense, we do not see that as an impediment or a problem, if you will, to the process going forward in terms of privatization if it involves the acquisition, ownership of the assets and the provision of services.

Mr. HORN. In other words, as far as you're concerned, the public interest is satisfied by the State regulatory apparatus of which there is a long tradition, and we don't need a Washington apparatus to substitute for it.

Mr. BARR. That's exactly the point.

Mr. HORN. Yes. Any comment, Mr. Dowd?

Mr. DOWD. Yes. We satisfy it in a different way, perhaps. We do it through a long-term contract that sets the service fee as of the date that we take over, and it establishes it for the next 20 years. It has CPI increases in it, and that's it.

So, from that standpoint, you're actually better off with that contract than you were just having the responsibility yourself and kind of less control, if you think of it.

The second thing is, we don't really set the rates, and here's where we're different. We are a wholesaler of a wastewater service to Franklin, OH, and to other towns there who, they set their own rates, and they take care of rates, and they deal with us as the wholesaler, and they deal with their customers on the retail level.

Mr. HORN. Your mentioning of the rates related to CPI reminds me that when, in southern California a few years ago, we asked people to voluntarily use less water, they responded so efficiently, effectively, and so greatly, that the water companies had to raise their rates because we were not using enough water. Now, has that situation happened in any of your areas of jurisdiction?

Mr. DOWD. No.

Mr. HORN. I just wonder how the regulatory agency treated it. In our case, they raised the rates. So much for volunteerism. But it was a surprise. Mr. Dowd, your testimony mentioned Federal grant assurances. Are there specific grant assurances associated with wastewater treatment plants that would cause a problem for privatization in the area?

Mr. DOWD. I think the general comment—by the way, the grant assurance thing, we're not clear in reading this—I think it's sections 3(b) and section 4 seem to contradict each other as to how grant assurances are going to be treated. One says one and one says the other, but maybe we're just not reading it right.

What we want to get away from is the specific grant assurances that went along with that grant in the first place that had to do with Federal Government policy at that time, things dealing with employment issues and such as that.

What we would like to get to is, in doing this with a municipality, they have their own requirements. Believe me, they have their own requirements, and if we want to work with them, they're going to put them in the RFP, and if you want to do the job, you're going to comply.

So you're going to be satisfying your real customer—which is Wilmington, DE, or Franklin, OH—as opposed to some nebulous customer back here in Washington. That's a much better way to do it.

Mr. HORN. Let me read that section into the record. This is from H.R. 1907, section 3, subsection (b). "Approve requests from State and local governments to privatize infrastructure assets and waive or modify any grant assurance, consistent with section 4."

When you turn to section 4, which is "Criteria," and you turn to that section (b)—I should read the first part, the section 4—"Criteria. The head of an executive department or agency shall approve a request if"—and then they go into the "(a) The State or local government demonstrates that a market mechanism, legally enforce-

able agreement, or regulatory mechanism will ensure that the infrastructure asset or assets continue to be used for the originally authorized purposes as long as needed for those purposes; and (b) The private party purchasing or leasing the infrastructure asset agrees to comply with all applicable grant assurances." Now, you see a conflict there?

Mr. DOWD. Well, I think we do. I mean one says you have to—the one you just read says you have to comply with everything. The word "applicable" may be some grayness there, you know. Maybe something else is meant than what we interpret it to be; OK? It just sounds like they're going against each other.

Mr. HORN. Well, that's important. You have a general counsel in the firm?

Mr. DOWD. Yes.

Mr. HORN. I hate to ask for lawyers to get into this, but why don't you, with common sense and your general counsel, send us a letter on what your worries are on that language so we can make sure it's very clear what the intent of the authors are.

Mr. DOWD. We'll do that.

Mr. HORN. Thank you. Now, we'll yield to the gentleman from New Hampshire, Mr. Bass.

Mr. BASS. Mr. Chairman, I have no further questions.

Mr. HORN. All right. We thank the panel very much. Mrs. Maloney's question, if we could get that in writing we'll put it in the record.

Mr. DOWD. Do you want me to try and answer it? I mean she suggested. I'll be glad to.

Mr. HORN. Well, fine. Fine. Please, get it on the record, then. I don't know what the question is.

Mr. DOWD. Her point was—somebody help me here if I miss it—but the point was that we talked about the complications of doing privatization. We refer to, of course, the one that we've done, which is Franklin, which was the pacesetter. Everything we came upon, every problem was, "Here's the first time we've seen this one."

That's complicated. We've worked through every one of them, and everybody has approved it, all the way up through EPA and OMB, so we're at the other side of that now, however, it was time-consuming, and it was somewhat complicated. That, I think, was the point of that. Perhaps through this just practice and through this legislation, we can simplify all that. You know, now that we're more used to it.

Mr. HORN. Very good.

Well, we will call our next panel, which is panel IV, Mr. Holdsworth, Mr. Stanley, Mr. Collins.

[Witnesses sworn.]

Mr. HORN. All three witnesses have affirmed. Mr. Holdsworth is the first on my list, president and chief executive officer of Daniel, Mann, Johnson & Mendenhall. Mr. Holdsworth.

STATEMENTS OF RAYMOND HOLDSWORTH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, DANIEL, MANN, JOHNSON & MENDENHALL; RALPH STANLEY, SENIOR VICE PRESIDENT, UNITED INFRASTRUCTURE CO.; AND JOHN J. COLLINS, SENIOR VICE PRESIDENT FOR GOVERNMENT AFFAIRS, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. HOLDSWORTH. Thank you very much, sir. As you said, I'm Ray Holdsworth, the president and CEO of Daniel, Mann, Johnson & Mendenhall, known as DMJM, and we're headquartered in Los Angeles. I commend you personally, Chairman Horn, and the members of the subcommittee for their attention to this important issue.

Privatization will happen. It's more prevalent overseas. It's happening at a rapid pace internationally, and I guess the big challenge that this committee is faced with is how do you focus the U.S. talent and the U.S. capital to be proactive in the United States and not have it run overseas, as it's currently doing.

As one of the Nation's largest architectural, engineering, and construction services firms, we've provided those kinds of services both here in the United States and internationally for the last 50 years, and we have over 55 offices throughout the country. We strongly support H.R. 1907 as a means to grant State and local governments the discretion to consider public-private partnerships to develop and manage the needed infrastructure for facilities.

Existing Federal policy contained in Executive Order 12803 requires State and local governments to repay the depreciated value of Federal grants received for an infrastructure facility when that facility is transferred to the private sector. This repayment requirement presents an economic disincentive for the privatization of infrastructure facilities without any apparent policy rationale.

Federal grants are issued to help State and local governments construct or improve a facility that provides a specific needed service to the community. As the word "grant" implies, there is no expectation that these funds will ever be repaid to the Federal Government. Therefore, so long as the facility continues to operate as it was intended at the time the Federal funds were provided, the expectation of the Federal Government is fully realized.

H.R. 1907 explicitly ensures that assets privatized pursuant to the terms of the bill will be used "for their original authorized purposes until such time as the asset or assets are no longer needed for those purposes." Let me give you an example. Two adjoining communities can virtually have identical wastewater treatment facilities which need additional capital improvement and for that funds are not available. Both communities may wish to enter into a public-private partnership to raise the funds necessary to make the capital improvement. Yet one community could find that the repayment requirement makes it virtually impossible to complete the needed privatization arrangement while the other can do so simply because of the different histories as to the amounts and to the timing of previous Federal grants. I believe a Federal policy that leads to such an outcome is a defensible policy.

While the Federal grant repayment requirement is by no means the only barrier to the widespread use of public-private partnerships, the deleting of this policy is a necessary step in permitting State and local governments to explore and experiment with privat-

ization transactions. Opponents of private-public partnerships incorrectly will argue that privatization will necessarily lead to higher costs. Exactly the opposite is true.

To begin with, the private sector can build and operate infrastructure assets in a more cost-effective manner, reducing costs to the community. DMJM is already demonstrating these savings by performing out-source work to many Government agencies, including the Department of Labor, the GSA, the IRS, and the Postal Service in a much more effective manner.

Private management can also better develop the revenue potential for a facility without raising user fees. For example, many existing airport facilities have expansive unmet potential to develop retail operations across the United States that would be run by private firms.

In the context of bridge and highway construction, there are several examples all over the world of private capital being invested in new facilities. Just locally here, we have the Virginia Dulles Greenway. Often this is the only way sufficient capital can be acquired to permit a project to go forward.

H.R. 1907 will give State and local government an additional tool—and this is an important part—to meet the ever-growing need for infrastructure in our national economy. Right now, with all the focus being placed on budgets and financing, we think this tool will very, very significantly help the State and local governments.

I think also that the innovative privatization transaction will reduce day-to-day operating costs and provide a means for infusion of capital that today is going offshore. Thank you very much for this opportunity. I will look forward to answering questions.

[The prepared statement of Mr. Holdsworth follows:]

Hearing regarding

H.R. 1907

THE FEDERAL-AID FACILITY PRIVATIZATION ACT OF 1995

Before the

SUBCOMMITTEE ON

GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY

Statement of

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I. INTRODUCTION

I am Ray Holdsworth, President and C.E.O. of Daniel, Mann, Johnson, & Mendenhall, also known as "DMJM," headquartered in Los Angeles. Thank you for the opportunity to testify this afternoon on H.R. 1907, The Federal-aid Facility Privatization Act of 1995. I commend Chairman Horn, and the members of the Subcommittee, for their attention to the important issue of infrastructure privatization.

As one of the nation's largest architectural, engineering and construction services firms, DMJM has provided professional consulting services to both public and private clients for over 50 years. With 50 offices worldwide, 1500 employees, and revenues in excess of $225 million per year, DMJM is a leader in meeting today's multimodal transportation demands, designing, and managing the construction of public transit systems, highways and roadways, bridges, railroads, airport and aviation facilities, and ports and harbors. We also provide a wide range of professional services for the many types of infrastructure required to support today's urban environment, including water and wastewater systems, flood control channels, dams, and power generation facilities. In the Washington area, for example, we are managing the capital improvement projects at both National and Dulles airports, the Pentagon Renovation Program, the development of the Air Force One Maintenance Complex at Andrews Air Force Base, and the construction of the Washington Metro Green Line. In Los Angeles, DMJM is providing preliminary engineering and design services for the $1.8 billion Alameda Corridor project representing a partnership of local, state and private interests. We also designed the Los Angeles Hyperion water facility, the largest such facility in the western U.S..

II. H.R. 1907 -- PERMITTING LOCAL GOVERNMENTS TO EMPLOY PRIVATIZATION

DMJM strongly supports H.R. 1907, the Federal-aid Facility Privatization Act of 1995, as a means to grant state and local governments the discretion to consider public-private partnerships to develop and manage needed infrastructure facilities.

Existing Federal policy, contained in Executive Order 12803, requires state and local governments to repay the depreciated value of Federal grants received for an infrastructure facility when that facility is transferred to the private sector. This repayment requirement presents a severe economic disincentive to the privatization of infrastructure facilities, without any apparent policy rationale.

Federal "grants" are issued to help state and local governments construct or improve a facility which provides a specific needed service to a community. As the word "grant" implies, there is no expectation that these funds will ever be repaid to the Federal government. Therefore, so long as the facility continues to operate as it was intended at the time the Federal funds were provided, the expectation of the Federal government is fully realized. H.R. 1907 explicitly ensures that assets privatized pursuant to the terms of the bill will be used "for their original authorized purposes, until such time as the asset or assets are no longer needed for those purposes."

H.R. 1907 also solves a problem created by a Federal demand for grant repayment. Two adjoining communities can have virtually identical wastewater treatment facilities, to pick an example, which need additional capital improvements

for which public funds are not available. Both communities may wish to enter into a public-private partnership to raise the funds necessary to make the capital improvements. Yet one community could find that the repayment requirement makes it impossible to complete the needed privatization arrangement, while the other can do so, simply because of different histories as to the amounts and timing of previous Federal grants. I do not believe a Federal policy that leads to such an outcome is defensible.

While the Federal grant repayment requirement is by no means the only barrier to the widespread use of public-private partnerships, deleting this illogical policy is a necessary step in permitting state and local governments to explore, and experiment with, privatization transactions. We believe that this experimentation will demonstrate the benefits of including the private sector in the funding, development and management of infrastructure assets, leading to the full partnership of the private sector in providing the nation's infrastructure.

III. PRIVATIZATION REDUCES COSTS TO THE COMMUNITY

Opponents of public-private partnerships incorrectly argue that privatization will necessarily lead to higher costs. Exactly the opposite is true. To begin with, the private sector can build and operate infrastructure assets in a more cost effective manner, reducing costs to the community. DMJM is already demonstrating these savings by performing work "outsourced" by the Department of Labor, the General Services Administration, the Internal Revenue Service and the U.S. Postal Service in a more cost effective manner.

Private management can also better develop the revenue potential for a facility without raising user fees. For example, many existing airport facilities have expansive unmet potential to develop retail operations. The possibilities for full-service retail facilities are best demonstrated at Pittsburgh airport, where, I am told, local residents now visit the airport just to shop at the adjacent mall.

In the context of bridge and highway construction, there are examples all over the world of private capital being invested in new facilities. Often, this is the only way sufficient capital can be acquired to permit a project to go forward. But we need look no further than northern Virginia, where the Dulles Greenway opened one month ago, to see the real benefits of policies that encourage such investments.

IV. CONCLUSION

H.R. 1907 will give state and local governments an additional tool to attempt to meet the evergrowing need for infrastructure to support our national economy. These innovative privatization transactions will reduce day-to-day operating costs, and provide a means for the infusion of capital.

I again want to thank you for your leadership, Mr. Chairman, and I will be happy to answer any questions.

Mr. HORN. Thank you. Our next witness is Mr. Ralph Stanley. He's the senior vice president of the United Infrastructure Co. I understand it's a development partnership involving the Bechtel Group in San Francisco and Peter Kiewit Sons, still in Omaha, I assume, two diversified engineering construction companies.

You note here that it has combined annual revenues of $11 billion, so you can take care of the problems with the small towns and the wastewater plants.

Mr. STANLEY. Thank you, Mr. Chairman. As I said, I'm a senior vice president at United Infrastructure Co., and I would like the record to show, particularly for Congressman Flanagan, that we're located in Chicago, although our parent is in San Francisco and Omaha and formed this joint venture for the specific purpose of developing and investing in infrastructure projects, which include roads, bridges, water and wastewater projects, as well as aviation facilities. It's important to recognize this, that our interests are a broad category of infrastructure facilities, and the applicability of the legislation before you would apply to all. We're also very committed as a company to working with the Congress, as well as a number of State and local governments, to pass the kind of legislation like H.R. 1907 that will enable increased private sector participation.

Before I joined UIC, I worked for a period as the vice president for infrastructure development at Bechtel, and, as Ray mentioned, we were able to witness first hand enormous progress that has been made from Europe to the Asia Pacific in allowing for private sector investment in infrastructure.

I raise this because those projects are actively seeking capital, and funds are forming from Latin America to Asia with U.S. pension funds, and U.S. life insurance funds, and U.S. investors looking at attractive infrastructure investments worldwide. The capital is out there. I think the steps need to be taken; now that those funds are able to be invested in the United States.

I also have had experience as the founder of the Dulles Toll Road Corp., which completed the Dulles Toll Road extension recently. And I've had experience here in Washington, not only as chief of staff to the Secretary of Transportation, but also was able to be administrator of the Federal Transit Administration, an arena where I actively tried to increase the role of the private sector.

I speak of my background in these variety of incarnations to illustrate to the committee that I've been on the public and private side, as well as a couple of Presidential commissions that are looking at these very same issues that the committee is considering today, and I've been acutely aware from each of these standpoints what kinds of changes in Federal policy would be needed to increase private involvement in infrastructure.

I frankly can think of no simpler and more effective way to accomplish this goal initially than the passage of H.R. 1907. The bill would end the current Federal policy requiring State and local governments to repay their Federal share of the grant and would remove a very, very significant barrier to these public-private partnerships.

As I mentioned, during my tenure as FTA Administrator, I signed thousands of grants a year which were capital investments

in transit infrastructure, none of which we ever intended or were made with the idea that they can get paid back.

Also, I would like to mention that during that time, we were forced on a number of occasions, particularly in the New York metropolitan area, to say "no" to developers who wanted to invest in rail station rehabilitation. In one instance, a highly publicized incident when New York City MTA removed 800 Grumman buses, which were capital assets, from the streets, and private owners wanted to purchase those assets, we were forced to tell the MTA, no, you couldn't take the money because of this provision that you needed to pay us back those proceeds.

I would like the record to illustrate, and I would be glad to follow up with Congresswoman Maloney, those instances in which we deprived needed infrastructure investments from being made. The committee asked us to briefly touch on three areas of concern—the need for increased investment, concerns of the users of these facilities, as well as the concerns of the taxpayers.

The statistics in terms of need don't really need to be repeated. We are 55th worldwide in terms of capital investment in infrastructure as a percentage of our GNP. Earlier witnesses outlined the needs as determined by EPA.

I would add, the Federal Highway Administration has estimated that there's an additional $29 billion a year necessary to just maintain the condition of the Nation's roads and bridges. In addition to H.R. 1907, I'll briefly touch on several other specific steps Congress can take in terms of increasing private sector participation.

First, we're supportive of removing any restrictions on allowing user fees on existing infrastructure. Next, I think I would encourage the committee to take a look at the public benefit bond concept that was outlined in the National Infrastructure Development Act introduced in Congress last year. Finally, there has been talk today of revisions to the Tax Code. This is not the subject of this hearing, but I believe that when the debate about the flat tax takes center stage here in Congress, the two simple provisions—one, leveling the difference between taxable and tax-exempt debt, and removing, if necessary, by codification the limit on operating and maintenance contracts—would be very significant steps forward.

The concerns with regard to users, I think, are very well founded by the committee, and I think that the infrastructure has got to be maintained at a reasonable cost, but I would encourage this legislation, because we need as many resources to be invested in infrastructure as possible, and the increased use of user fees, I think, is inevitable, whether by public or private contract.

It's our experience, in negotiating franchises with local and State governments, that many, if not all, of the issues and concerns raised by the committee and raised by Congresswoman Maloney can be addressed in those franchise agreements.

The final concern mentioned in the committee correspondence was the need to protect the taxpayer. I very firmly believe that that concern should not extend to any requirement whatsoever that the grant be repaid. Practically speaking, these investments have been made, and any repayment basically punishes the local taxpayer by taking funds that might otherwise be available for infra-

structure improvement and paying them back to the Federal Government.

I've said quite often, both in my experience as Administrator and in attempting to develop these projects, the FAA has had a loan program; UMTA had a loan program; I learned a minute ago that the Federal Highway Administration is establishing a State infrastructure bank loan program. These were grants, not loans, and they weren't meant to be repaid when they were made, and that requirement, I think, does not serve any noticeable public policy.

Finally, the one question that came up and that is often raised, the idea that these assets would be sold and suddenly resold by the buyer. I've never seen an instance where our company or others would be interested on that basis.

The fact of the matter is, most of these assets, the sales, take the form of either concession agreements, franchise agreements, that last anywhere from 20 to 30 years and, I can guarantee you, provide provisions that any transfer of that asset—was true in the Dulles Toll Road; it's true in the wastewater concessions being consummated in New Jersey—any transfer of that asset requires the approval of the public entity who is your partner in the project, and those transfers, I think, are simply not going to occur.

Finally, in conclusion, I've seen a number of iterations of H.R. 1907 and with very minor modifications. I cannot emphasize enough the impact it would have (A) toward freeing up the ability of State and localities to transfer some of these assets, and (B) providing an atmosphere with as few restrictions as possible so that entrepreneurial infrastructure developers such as ourselves can help to solve the infrastructure problems that are out there today.

[The prepared statement of Mr. Stanley follows:]

Ralph L. Stanley
Testimony

Subcommittee on Government Management, Information and Technology

United States House of Representatives

November 15, 1995

Good afternoon. My name is Ralph Stanley and I am a Senior Vice President of the United Infrastructure Company, a development partnership involving the Bechtel Group and Peter Kiewit Sons, two diversified engineering and construction companies with significant international operations and combined annual revenues of more than $11 billion.

United Infrastructure is a newly formed development company whose purpose is to develop and invest in needed infrastructure projects such as roads, bridges, water and wastewater plants and aviation facilities. We are also committed as a company to actively working with Congress, as well as state and local governments to pass legislation that will enable the private sector to be involved in infrastructure projects.

Prior to joining UIC, I served as Vice President for Infrastructure Development at Bechtel, and witnessed first hand the enormous progress being made from Europe to the Asia Pacific in allowing the private sector to be truly involved in infrastructure. I have also served as the Founder, Chairman, and Chief Executive Officer of the Toll Road Corporation of Virginia, the company that built the private extension of the Dulles Toll Road, this country's first effort at infrastructure privatization. I have worked here in Washington for six years as Chief of Staff to the Secretary of Transportation and Administrator of the Federal Transportation Administration, where I actively sought to increase the role played by the private sector in providing needed transportation infrastructure. I have also served on two Presidential Commissions which both examined the means by which private resources, from development expertise to private capital, can be involved in the delivery of infrastructure projects.

I speak of my background to illustrate that I have been on both the public and private side of these partnerships, and this experience makes me acutely aware of the need for changes in the

federal policy that will increase private involvement in infrastructure.

This Committee is to be commended for calling this hearing, for I can think of no simpler and more effective way to accomplish this goal than the passage of H.R. 1907. The bill would end the current federal policy requiring state and local governments to repay the federal share of these grant, and by so doing remove a major barrier to public-private partnerships. As FTA Administrator, I signed thousands of grants a year, which were capital investments in transit infrastructure, none of which were made with the idea that they can be paid back. We have been actively involved in this legislation, and have redrafted it recently to address the specific concerns of the trucking industry.

The Committee has asked that we address three areas of concern:

- The need for Increased Investment
- Concerns of the Users
- The Need to Protect the Taxpayer

With regard to the need, the United States is ranked 55th worldwide in capital investment in infrastructure as a percentage of GNP. Estimates of the annual shortfall range from $40 - $80 billion dollars a year. The Environmental Protection Agency alone projects the need for $200 billion in new capital to bring communities into compliance with existing mandates for clean water and clean air. The Federal Highway Administration has estimated that $29 billion dollars a year is needed to merely maintain the conditions of this nation's roads and bridges. There are several specific steps Congress can take. First, pass H.R. 1907. Second, remove any restrictions on allowing user fees on infrastructure, such as the ban on tolls on the Interstate. Third, adopt the public benefit bond concept as outlined in the National Infrastructure Development Act that was introduced in the last Congress. And finally, the tax code should be changed to both level the playing field between taxable and tax-exempt debt and remove the five year limit on operating and maintenance contracts.

The concerns of the Committee regarding users are well founded. While it is important that our Nation's infrastructure be provided at a reasonable cost, an increase in user fees is inevitable. We believe that by allowing longer operating contracts, these user

fees can be negotiated between the local government and the private entity in a manner that minimizes any rate increase.

Finally, the Committee has asked about the need to protect the taxpayer. This concern should not extend to any requirement whatsoever that the grant be repaid, whether on a depreciated basis or not. These grants are a sunk investment, and to have any repayment at all would only further reduce the funds available to state and local governments for infrastructure improvement. If they were really meant to be repaid, why weren't they called loans? There should also be no concern about "churning" because the transfer of these assets is a competitive process, and almost always includes a concession period of a considerable length, such as 20-30 years, which prohibit a "resale" without the public entity approval.

H.R. 1907 can be a major step toward improving our Nation's infrastructure. Its effect would be to attract hundred of millions of dollars in private capital, at no cost to the federal government, to the much needed investment in infrastructure.

Mr. HORN. Well, I thank you for that testimony. I think the line you have on the last page needs to be reemphasized, where you say, in terms of discussion of grants that were made by various Federal agencies, "If they were really meant to be repaid, why weren't they called loans?" I think that says it all.

Our third and last witness on this panel is John J. Collins, the senior vice president for government affairs of the American Trucking Associations. Welcome.

Mr. COLLINS. Thank you very much, Mr. Chairman. In your letter of invitation, you asked us 11 specific questions about your bill; about H.R. 1907. We have provided that as an attachment to our written statement. I won't take your time this afternoon to go through those, but I would be happy to explore those with you afterward.

The trucking industry employs over 7.8 million people. We move about 80 percent of the value of freight around the country, and we use a highway system that's the greatest and safest in the world. The highway system is really our workplace, and even more so as we have new technology to move our trucks safely and effectively and also as the manufacturing system in the country demands more and more just-in-time delivery, some really tight delivery windows. The trucking industry has made a tremendous investment in our highway system. We pay taxes at the Federal level of about $9 billion a year, and so we're vitally concerned about the way that highway system is planned, built, improved, and maintained.

ATA supports cost-effective, innovative financing concepts to create new highway infrastructure and to improve existing highway infrastructure in our country. However, we're opposed to paying tolls on existing free facilities. We don't want to rent what we've already bought.

We believe tolls are not warranted until rehabilitation, reconstruction, or facility capacity increases, and only then if traditional sources of financing aren't available. Furthermore, we want to make sure that the value added by the toll measures is commensurate with the toll revenue generated.

The Federal Aid Highway Program provides right now, generally, that if you get Federal highway money, then you can't put tolls on the facility that has received the Federal highway funds. We're concerned that the bill, as written, would allow this current restriction to be removed if the asset were transferred.

We believe some constraint should be provided when a major public asset is transferred. Following along your lines earlier today, what we've tried to do is draft some specific language, because we believe the bill has strong merit and, with some fixes, with some minor changes, that this problem could be solved. We've offered language and it has been coordinated with proponents of the legislation. I think it has pretty widespread support, and it's attached immediately behind my written statement, behind page 4.

The purpose of the amendment is very simple. What it does is it conforms the privatization options in 1907 for roads, tunnels, and bridges, to the framework that already exists in the Federal highway law for flexible public-private partnerships.

Let me describe to you what that means. What it means is privatization could go forward and tolls could be charged when the effort increases highway capacity or fixes the facility or when there is major reconstruction that needs to be done on roads that aren't on the interstate highway system.

The amendment would preclude, however, efforts to sell free roads and then charge tolls when no improvements are made. Again, otherwise highway users would be paying twice for the same facility. The amendment would also establish a hierarchy on how toll proceeds could be used.

I've been talking about regular bread-and-butter roads like Route 9 in New Jersey, U.S. Route 1, and roads like that. As to interstate system roads, which are the roads with the shield on them, I–95 and so forth, tolls could be placed on bridges and tunnels under the amendment which could be placed on bridges and tunnels that are part of the interstate system, but could not be placed on regular bread-and-butter highway segments on the interstate system.

The reason for that is there are some very special needs in the interstate system right now. It's over 20 years old. There are very high-cost bridges, like the Woodrow Wilson Bridge here in Washington, that, frankly, the Federal Government does not have the billions of dollars available to put the money into that facility.

We need that facility; we need it fixed, and so we recognize that a public-private partnership and a blend of toll proceeds and Federal aid highway funds are what's needed to get that bridge fixed and fixed in a quick way. However, when it comes to bread-and-butter highways, the 40,000 miles of interstate highways around the country, the highway users pay $20 billion a year into the Federal aid highway trust fund. That's a dedicated fund, and we think that the regular roads can be maintained and improved out of that money.

As I said, our system of highways is the cornerstone in just-in-time deliveries, and we're concerned that without the amendment, H.R. 1907 could merely be used as a way to charge people twice for a facility they've already purchased with their highway taxes.

Let me give you an example. I live here in the District of Columbia, and, under the language of H.R. 1907, I'm concerned that the cash-strapped District of Columbia could take the 14th Street bridge and sell it to investors, and the investors would then put tolls on to be able to pay their cost of buying that facility.

The District would get a windfall, but the highway users would be charged twice for the same facility, and the end result would be congestion and pollution from the toll booth without any improvement in the basic highway infrastructure.

We think that our language, coupled with section 5, would take care of the problem of grant repayment. We don't see a need for grant repayment as long as the facility is continued in public use.

That concludes my statement. I would be happy to answer any questions.

[The prepared statement of Mr. Collins follows:]

Before the

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON GOVERNMENT REFORM and OVERSIGHT

SUBCOMMITTEE

ON

GOVERNMENT MANAGEMENT, INFORMATION and TECHNOLOGY

Statement of the

AMERICAN TRUCKING ASSOCIATIONS, INC.

on

H.R. 1907

FEDERAL-AID FACILITY PRIVATIZATION ACT OF 1995

JOHN J. COLLINS

Senior Vice President for Government Affairs

November 15, 1995
Washington, D.C.

SUMMARY OF STATEMENT

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ATA represents the Trucking Industry

The National Highway System

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I. INTRODUCTION

ATA Represents the Trucking Industry

I am John Collins, Senior Vice President for Government Affairs at the American Trucking Associations (ATA). Thank you for this opportunity to testify on the Federal-aid Facility Privatization Act of 1995, H.R. 1907.

ATA is the national trade association of the trucking industry. The ATA federation includes affiliated associations in every state and 14 conferences. In aggregate, ATA represents every type and class of motor carrier in the country. Combined with ATA's direct membership, we are a federation of over 37,000 trucking companies.

ATA wishes to thank Chairman Horn and members of the Subcommittee on Government Management, Information and Technology for holding this hearing. We commend the leadership of this Subcommittee for providing a process for returning power and decision-making authority to states and local governments. In your letter of invitation, you asked a number of questions about privatization. My answers are attached.

The trucking industry employ's 7.8 million people. We generate 80% of the freight revenues of this nation while moving freight safely and efficiently on our nation's highways. The highway system of this nation is the greatest and safest in the world. These highways are the trucking industry's office place, and ever more so with the rapid adoption of high technology for more efficient operations. The trucking industry has made a tremendous investment in the highway system of this country and it is vitally concerned about the way it is planned for, built, improved and maintained.

The National Highway System

We believe it is essential that legislation to designate the National Highway System, the transportation infrastructure system that will move this country into the 21st century, is passed by Congress very soon. The bill has been pending before a Senate/House Conference Committee since late September. Since October 1st, the failure to enact NHS legislation has delayed the distribution of over five billion dollars of funds to the states. The trucking community is paying approximately eight million dollars a day in taxes for the NHS; we now have been paying for it at this rate for over a month while the Conferees deliberate. We hope members of this Subcommittee will add your voices to the call for speedy resolution of issues and enactment of this vital legislation.

II. INNOVATIVE FINANCE OPTIONS

The American Trucking Associations supports cost-effective innovative financing concepts to create new highway infrastructure and to improve existing highway infrastructure capacity and productivity. However, we oppose placing tolls on existing free facilities - we don't want to pay rent on highways that we have already bought. We believe tolls are not warranted until rehabilitation, reconstruction or facility capacity increases are needed and then only if traditional sources of funding are inadequate and the value added by use of toll revenues is commensurate with the toll revenue to be generated.

The Federal-aid Highway grant program generally provides that roads that have been built with Highway Trust Fund monies are free from tolls. We are concerned that the bill as written would allow this current restriction to be removed if the asset were transferred. We believe some constraints should be provided when a major public asset is conveyed.

III. PROPOSED CHANGE

To correct the problem we see, we have offered your staff language to amend Section 4 of H.R. 1907. The suggested amendment is attached.

The purpose of this amendment is to conform the privatization options in H.R. 1907 for roads, tunnels and bridges to the framework that already exists in the Federal highway program for flexible public/private partnerships.

The amendment will allow privatization to go forward and tolls to be charged when the effort increases highway capacity and productivity or pays for a major reconstruction project on roads that are not part of the Interstate Highway System. The amendment would exclude efforts to sell existing free roads and charge tolls when no improvements are made. Otherwise, highway users would be paying twice for roads.

As under current law, as part of a major construction project, tolls could be placed on bridges and tunnels that are on the Interstate System of highways, but could not be placed on roads that are part of the Interstate System. This, we believe, recognizes the special opportunity for innovative financing of high cost bridge and tunnel projects - like the Woodrow Wilson Bridge crossing the Potomac. However, improvements to highways on the Interstate Highway System should be able to be adequately funded from the twenty billion plus dollars per year that highway users pay into the Federal Highway Trust Fund.

Our nation's system of highways is the cornerstone of just-in-time freight deliveries and provides people with mobility and the choices they need to live, work and play. Without this amendment H.R.1907 could be used simply as a means to charge people again for an asset they have already purchased through their highway fuel taxes and registration fees. For example, the cash strapped District of Columbia government could sell the 14th Street bridge

to investors to raise cash. The investors, under current language of H.R. 1907, could put in toll booths to repay their investment. Highway users would see no benefit - all they would get is congestion and air pollution. Privatization that leads to a proliferation of tolls without a corresponding transportation benefit will be a barrier to commerce and the mobility of our society.

Tolls are not needed for routine maintenance of the Federal-aid highway system. Highway users already pay over $114 billion a year in Federal, State and local road user taxes, according to the American Petroleum Institute, Research Study #078, "Estimates of Annual U.S. Road User Payments Versus Annual Road Expenditure", March 1995. These funds can be used to properly maintain the system, provided diversion to non-highway projects are eliminated.

This amendment, coupled with the language in Section 5 of H.R. 1907, ensures that road, tunnel and bridge projects that meet these requirements and are privatized do not trigger grant repayment provisions.

IV. CONCLUSION

With the amendment to Section 4 we have offered, we believe that this legislation has merit. However, it could have sweeping impacts on the construction and maintenance of our nation's infrastructure. We applaud you for providing this hearing today and hope that you will look for additional opportunities to obtain advice on privatization as your bill moves forward.

Thank you for the opportunity to comment. I would be happy to answer any questions.

PROPOSED AMENDMENT TO H.R.1907

Section 4 of H.R. 1907 is amended by adding a new subsection:

1 b). In addition to the above criteria, in the case of a road tunnel or bridge, the
2 Secretary of Transportation shall approve a request to privatize or transfer the asset
3 only if the private party agrees to comply with the provisions of subsections (a)(1),
4 (a)(3) and (a)(8) of 23 U.S.C. 129 that would apply if federal funds and tolls were
5 used to improve the asset. A road, tunnel, bridge or approach thereto that would not
6 be eligible for Federal participation under 23 U.S.C. 129(a)(1) is not eligible to be
7 privatized under this act.

Enclosure 1

ANSWERS FROM THE AMERICAN TRUCKING ASSOCIATIONS
to the
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY
of the
GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

Questions for November 15, 1995 Testimony

The Need for Increased Investment

QUESTION #1: America's crumbling infrastructure needs major improvements. What are the best estimates of experts as to the investment levels required to maintain current levels of quality for roads, bridges and other infrastructure categories?

ANSWER: It is true that America's stock of transportation infrastructure has suffered over the years from neglect: investments in maintenance and improvement of highways and bridges have not kept pace with either the natural rate of decay any facility suffers or the increased demands placed upon it by commerce and the public.

Regarding the "best estimates of experts", ATA believes there is none better than the USDOT. According to the USDOT (in *The Status of the Nation's Highways, Bridges and Transit: Conditions and Performance* - Report of the Secretary of Transportation to the United States Congress; January, 1993, pg 200):

- About 25 percent of the nations federal-aid highways are in poor to mediocre condition. The cost to repair: *$212 billion*. There are approximately 118,000 structurally deficient bridges in the U.S. The cost to upgrade: *$78 billion*. That's a total of *$290 billion* in highways and bridges alone. This does not factor in inflation which, at 3 percent a year, pushes the 1995 cost past *$300 billion*. Nor does it count any other infrastructure needs such as ports.

QUESTION #2: What about future levels of investment needed due to changing needs (such as shifts in population) and legislative mandates (such as the Clean Water Act)?

ANSWER: ATA released a study in April, 1995, performed by DRI/McGraw-Hill, entitled, *U.S. Freight Transportation Forecast ... to 2003*. DRI concluded that, based on it's economic and demographic analyses, the total volume of freight moved in this country will increase *eighteen percent* to over **6 billion** tons. To move the freight:

- The total number of over-the-road tractors and trucks (class 6-8) will increase 14%.
- The total number of miles driven will increase by 34% and total ton miles by 32%.

So, "yes", the economy will place greater demands on our nation's infrastructure.

QUESTION #3. How can capital from the private sector be best deployed to assist these investment needs (for example, taxes, user fees, privatization)?

ANSWER: Experience suggests that if there is no state matching revenue, commitment to projects may change through the election process, resulting in costly delays. The use of tax dollars to create infrastructure banks or revolving loan funds will allow states to leverage private capital and help insure sufficient government support of projects. Additionally, loan repayments can be recycled as seed money for new projects.

Private sector participation in the provision of public infrastructure can be structured to improve the project selection process to maximize the " rate of return on investment". Project selection criteria must include adherence to cost benefit analysis which includes consideration of the benefits to all users including the trucking industry.

The American Trucking Associations do not support the use of tolls on existing Interstate miles except under special circumstances for bridges and tunnels. See the ATA proposed amendment, reproduced here:

b). In addition to the above criteria, in the case of a road tunnel or bridge, the Secretary of Transportation shall approve a request to privatize or transfer the asset only if the private party agrees to comply with the provisions of 23 U.S.C. 129(a) that would apply if federal funds and tolls were used to improve the asset. A road, tunnel, or bridge or approach thereto that would not be eligible for Federal participation under 23 U.S.C. 129(a) is not eligible to be privatized under this act.

On other highway projects, tolls should only be applied after traditional sources of revenue have been exhausted and if the value added to the highway's capacity and safety is proportional to the toll revenue generated. Toll revenues that are recycled through state infrastructure banks or revolving loan funds should only be used as "seed money" for other highway projects.

QUESTION # 4: As the Federal role in infrastructure is reduced, what steps can Congress take to allow others, including States, local governments, and the private sector to increase infrastructure investment?

ANSWER: ATA supports this Committee's efforts to provide a process for returning power and decision making authority to state and local governments.

However, Congress must continue to oversee the responsible distribution of the Highway Trust Fund. Commercial trucks paid $9.1 billion in federal fuel tax in 1993. We believe that the Federal government should not relinquish its authority to use this money wisely to provide a safe and well maintained Interstate and National Highway System; this is the sector of the highway system serving 75% of commercial truck mileage.

The Federal Government is in the process of improving State and local government's access to private capital markets through more flexible grant agreements. ATA supports these innovative financing efforts, with the caution that the project selection process should include full consideration of the freight industry as established in Intermodal Surface Transportation Efficiency Act (ISTEA) and that highway revenues, including tolls, are spent on highway direct construction, reconstruction, rehabilitation, repair, maintenance and improvements.

ATA opposes the diversion of highway program funds for non-highway uses.

<u>Concerns of Users</u>

QUESTION #5. Many infrastructure assets are natural monopolies. Should Congress be concerned about the possibility of increased fees on the users of infrastructure assets?

ANSWER: Congress should be very concerned that cash-strapped state and local governments will view tolls, especially on Interstate bridges and tunnels, as a revenue stream for non-highway purposes.

Highway toll revenue should not be used to subsidize other infrastructure assets. The distortions in the cost of using highways, including the freight costs, could offset the anticipated benefits of private sector participation in providing highway services.

QUESTION # 6: What ways can we ensure that user fees do not increase at an unfairly high rate?

ANSWER: Tolling should only be allowed when more traditional sources of revenue have been exhausted, and then only if the value added to the project is proportional to the revenue collected.

It is important to require that toll revenue used as repayment to be recycled through an infrastructure bank or revolving loan fund be used for highway projects only.

QUESTION #7: Is there a tradeoff between lower levels of service and higher rates?

ANSWER: The trucking industry is currently accepting lower levels of service of the highway system as congestion increases without seeing lower rates of federal, state, and local fuel and vehicle tax. Tax expenditures for reduced service result in higher trucking operating costs.

Need to Protect the Taxpayer

QUESTION #8: H.R. 1907 anticipates ending the requirement that grants are repaid. What, if any, conditions should the Federal Government impose as this repayment requirement is ended?

ANSWER: We have offered an amendment to address the conditions the Federal Government should impose as this repayment requirement is ended.

QUESTION #9: Should the grants be repaid on a depreciated basis? Grants are defined as gifts of money or land for a particular purpose. Should the grants be repaid at all?

ANSWER: If the intent is to make a grant, defined as a gift of money or land for a particular purpose, then the grant should not need to be repaid. However, the asset should continue to be used for the original public purpose.

QUESTION #10: Does any repayment requirement make privatization less attractive?

ANSWER: A repayment requirement would make privatization less attractive to the grantee and should be weighed against the benefits of such a requirement to the grantor.

QUESTION # 11: Should there be some sort of prohibition against "churning" (i.e. obtaining a grant and then selling the asset constructed by the grant within a short period of time)?

ANSWER: Yes. First, it would be contrary to the prior use of the public funds and assets to have them transferred by grant and then quickly sold, with the proceeds used for a purpose unrelated to the original purpose. Second, if the first group of investors sold to a second group at a profit and the second group put the profit in their base costs, the user would be assessed fees for the costs that did nothing to improve the infrastructure. "Churning", therefore, would not improve the infrastructure.

Mr. HORN. Well, let me ask you a question on that very point. Let's say the District of Columbia could privatize the bridge you mentioned on 14th Street. Now, would you prohibit them from charging tolls before construction begins, or would you say, as long as there's a firm commitment contractually, they could start in charging tolls? It seems to me you have a real problem there of the timing, as to when a jurisdiction can put tolls on a bridge that does need substantial upgrading. You've got to also buildup some capital. Granted you might go into the market on that assumption, but would you preclude them, and your association preclude them, from having the tolls prior to the point of beginning construction? And if so, what's the time period in there?

Mr. COLLINS. Mr. Chairman, we would not preclude them. We don't want to get down to that degree of micromanagement. Our concern is just to make sure it's a closed system, that the revenues that are generated are plowed back into the system that's needed.

According to the Federal Highway Administration, there's a $290 billion backlog in highway and bridge needs in the United States, so it's important to keep that a closed system and make sure that the money is put back into the system. As far as the timing, it would depend on the economics of the particular facility.

Mr. HORN. And the toll they would charge, either prospectively or after the fact, would be based on what base of input of resources? The original plus what they did or simply what they've put into it to recoup?

Mr. COLLINS. Under the language that's in the statute that's incorporated in here, which is in the Federal Highway Act, section 129, it would say that the proceeds could be used first to pay debt retirement, then the reasonable profit for the investors, and then, amounts after that could be used for other highway facilities.

Mr. HORN. And the understanding of what is a reasonable profit for the investors, I take it, belongs to the Secretary of Transportation?

Mr. COLLINS. That's right. What we would assume is the Secretary would set general regulations on how this would actually be carried out.

Mr. HORN. OK. I yield 5 minutes to the gentlewoman from New York, the ranking minority member.

Mrs. MALONEY. I'm sorry that I missed some of the testimony. It's a very busy day today. But someone gave the example of Grumman trucks that were bought by the city of New York. I would like to hear what I missed.

Mr. STANLEY. I had mentioned that during my tenure in the 1980's as the FTA Administrator, there were a number of station rehabilitation projects in the New York City subway system, one that was notably successful at 51st and 3d Avenue.

The Grumman issue came up. It was a capital asset of the Authority, as you're well familiar with. They were removed for a variety of reasons. There were initially some proposals from a number of companies and private bus operators who wanted to pay the Transit Authority after they determined that they were no longer going to be in service for them.

We had a very black-and-white restriction that said to the MTA at a point in time when they were very severely restricted in terms

of capital resources, "You cannot accept any payment whatsoever, even for someone who wants to take those buses and take them for parts, take them for whatever reason, because you've got to pay us back."

We came up with a calculation; it was $58 million. Well, with that hurdle, initially, to the MTA, it wasn't a viable proposal.

Mrs. MALONEY. So what happened to the buses? What did they do with them?

Mr. STANLEY. The buses were idled for years. There was later a very complicated negotiation in terms of swapping out what our depreciated grant interest was and trading it for an interest in a variety of transit assets, a transaction which was required by this very prohibition. We had absolutely no interest in taking a 30-percent share in a bus station in Queens, and that's what happened. But we were forced to go through this Kabuki dance of trading it as if we had made some kind of an investment.

The one I will mention, too, that was an arduous process, was the rehabilitation of that station—which I think is one of the most attractive in the system now—at 51st and 3d, which involved Mort Zuckerman at the time, the city, and we were there, having made somebody prior to my tenure a grant to help rehabilitate part of the track.

Well, I was there at the negotiations saying, "I'm sorry, I won't permit you to combine in a public-private partnership to take the money"—it was $8 million that was being offered by the developer, who did a terrific job on the station, eventually—"until you pay me back an interest I made as an investment in 1981 in the track. I need that grant money paid back."

It was a very difficult position to take. That transaction got done, but what we did in the process, Congresswoman, is go through a very ridiculous set of definitions. "OK, I will give up my interest in the track and trade it"—to go through, really, a process that the city didn't want, the MTA didn't want, and it was only the persistence of the mayor at the time and Mr. Zuckerman that got that station done.

Mrs. MALONEY. Who was the mayor then?

Mr. STANLEY. Mayor Koch.

Mrs. MALONEY. Mayor Koch?

Mr. STANLEY. And John Zucotti was the sort of brains behind the whole project. It did get done, and today it stands as one of the finest station rehabilitations. It was done more quickly than any we directly funded.

Mrs. MALONEY. How was Mayor Koch able to push through all the redtape and make it happen?

Mr. STANLEY. It didn't get pushed through as much as I would like to have seen it get pushed through. The city ended up making a contribution and purchasing part of the assets back from us with city funds, not Transit Authority funds. But it stands as the type of sort of convoluted process that we were forced to go through by this very prohibition.

Mrs. MALONEY. So what do you suggest? Do you suggest there be no strings attached, that if you sell a Federal asset that was built with grant money, that you should not have to pay anything back to the Federal treasury?

Mr. STANLEY. I think that requirement—I mentioned earlier, the best way I can sum it up, as having signed thousands of these grants and turned down rehabilitations of stations in Pittsburgh and in Cleveland, cities that were in desperate need of this. I never anticipated, if these were to be loans, we should have called them loans at the time.

Mrs. MALONEY. Do you agree, Mr. Holdsworth?

Mr. HOLDSWORTH. Yes, I do.

Mrs. MALONEY. Do you, Mr. Collins?

Mr. COLLINS. I think that there are needs for restrictions when it comes to highways for two reasons. I can't speak to the other kinds of assets, but when it comes to highways, the first thing that you have is the people who are being charged are probably not the people who were there voting. In a transit system or in a wastewater system, you have the people who are being charged are also the people who are the voters. But with an interstate highway system, the people I represent—who are UPS, bring packages from one end of the country to the other—they need, frankly, Federal oversight to make sure that the use of the highway is maintained and the price that's charged is under the existing Federal rules.

The second thing is interstate commerce. We all want, or there's a general push toward federalism, toward more responsibility to the States, but the Constitution spoke of interstate commerce as one of the major needs, or one of the major focuses, of the Federal Government, and that interstate commerce—or the vehicles, the tourists, travelers, and trucks going across interstate highways—is a need for some special rules.

Mrs. MALONEY. Well, if there was ever an interstate responsibility, it's probably water. I mean if we pollute our water in one State, it flows to another State. It really is intertwined.

Mr. STANLEY. I don't think anybody here or on any of the previous panels is advocating any change in terms of safety standards, regulatory requirements. In the projects and processes we've been involved in, those are to be maintained and not altered at all.

It really is—the idea that was embodied in all of these grants proceeds—and we talked about a couple of airports earlier, one in New York State, which was frustrated that—I hope the subsequent panel discusses—is in Albany, in which there was a consensus of the country, the airport authority, and county executive. That transaction, which made imminent sense, was prohibited by this grant payback provision in large part.

You've had agencies like mine wanting to give that ability to rehabilitate those assets with other capital sources, and we've been standing there, saying, "I'm sorry, you've got to pay me back." I think that restriction makes no common public policy sense I know of.

Mrs. MALONEY. It certainly should have a waiver. The Grumman bus example is an extreme example.

Mr. STANLEY. Those buses were parked on the lower side of Manhattan for 2 years. I had offers from a variety of parts manufacturers, operators, other cities that had successfully maintained and repaired those facilities, and I couldn't let the transactions go forward without putting my hand out and saying, "I need $57 million."

And this is at the same time in the Reagan administration when the other hearing that we would have the next day, we were explaining that we were cutting the capital budget. So it just made no sense in terms of a signal to local and municipal officials. It makes no sense today.

Mrs. MALONEY. All right. Now, Mr. Collins, I would just like to comment on your testimony. I came in at the end, but it was very thoughtful, and you had some amendments and recommendations that seem very thoughtful. Your example suggests that it is inherent in major Federal aid projects that special legislative provisions should be included for these programs, and maybe in all areas, not just roads.

This indicates that a much more complex measure than the present bill may be required. Could you comment further? You don't see other requirements, say, in other areas, besides roads? Like you gave the example of roads having a Federal commitment or a public commitment to maintain them, pay back, et cetera.

Mr. COLLINS. It's the roads that are our major focus, because those are the ones that connect one locality to another locality. Maybe there are analogies in some of the other areas, but, you know, for captive water systems.

Mrs. MALONEY. Water flows from one locality to another. The safety standards at one airport impact on the safety standards in another. I mean we are a Federal Government.

Mr. COLLINS. But what I understood from the earlier speakers, they were talking about like a drinking water distribution system, which would have a certain finite area. So it's not the rivers. It's not the water in the rivers. It's the water that's flowing in a fee system, a drinking water distribution system or sewer collection system. Those people don't move. It's not a new rater-payer coming in every instant and leaving at the other end, the way the highways are.

Mrs. MALONEY. But water moves.

Mr. COLLINS. Yes.

Mrs. MALONEY. If the water isn't treated well in one locality, it can seep and flow to another locality.

Mr. COLLINS. Yes.

Mrs. MALONEY. Thank you for testifying.

Mr. HORN. Let me ask you closing questions here. Obviously, Mr. Stanley, you heard Mr. Collins' comments.

Mr. STANLEY. Yes.

Mr. HORN. Do you agree with some of them? Or where do you agree and disagree with his comments.

Mr. STANLEY. I agree with his comments, and I'm familiar with the amendment attached to his testimony, and we are in complete concurrence with that as applied to surface transportation and roads and bridges.

I do think there are going to be—and, as an example, it was mentioned earlier, the Woodrow Wilson Bridge. We have made a proposal to Federal Highways and the States of Maryland, Virginia, and the District of Columbia, specifically as a public-private partnership for that facility.

I think I can confidently predict, and there has been legislation in the Senate, that is a project in which this type of solution is the

only one that's going to get it accomplished. That's the type of exceptional facility that needs the type of public-private partnership we talked about. I would predict that you're going to see those jurisdictions in Congress very soon, requesting legislative authority to do it on that facility.

There are hundreds of examples of projects, ranging from the bridges in New York State, which are in dire condition, and, I think, the Woodrow Wilson Bridge, which is the only one the Federal Government still owns. It is a perfect working example that every Member of Congress is familiar with, that, even from a safety standpoint, this has to be allowed very, very soon. Otherwise, we are facing a very severe safety problem on that facility.

That's multiplied in a number of States, particularly in the Northeast, where I'm from, on bridges and in terms of compliance with the very standards that Congresswoman Maloney raised on the environmental side, to achieve that compliance, these additional capital resources are necessary, and we are standing willing and able to make that investment.

Mr. HORN. Let me ask you, Mr. Collins. You've got, let's say, three lanes in one direction of an interstate highway, but the traffic volume builds ups. There's a lot of truck traffic. You want to add an extra lane. You've got a choice of the fast lane, or you've got a choice of one on the right side near the shoulder.

Let's say you add one on the right side—or let's say you add the fast lane. Are you going to charge for the use of all those lanes to include the cost of the fast lane? And if a little lady from Pasadena—as we use the example—wearing tennis shoes and having her 1941 Ford, says, "I promise never to go in the fast lane. I simply want to go in the rest of it that was already built." Does she have to go through that toll booth and pay for that fast lane for the hot shots, the trucks and everybody else? How about it?

Mr. COLLINS. I think whatever would be set up would have to be something that would be simple to administer. What we're seeing is, around the country, differential tolls that charge different tolls at different times of the day. And, in some areas, commuters get a price break by being able to buy coupons, you know, across the George Washington Bridge across Manhattan.

So I think there are differential tolls out there, but because vehicles in one lane flow into the other, if you're decreasing the congestion for one vehicle, you're really decreasing it for everyone. So I would say that everybody should be sharing in the benefit if, in fact, there is increased capacity being added to this system.

Mr. STANLEY. I would just like to add, in several weeks, we're involved in a project in California called State Route 91, in which the example you just described is exactly what we have been working on for 4 years. There will be a 100 percent automated lane for toll payers.

Mr. HORN. This is the east-west highway going from Los Angeles to Riverside?

Mr. STANLEY. This is the highway, Riverside in Orange County, a 10-mile stretch.

Mr. HORN. You're doing it in Orange County, not L.A.?

Mr. STANLEY. No, but we're looking to expand the concept. But that will open before the end of this year with this differential pric-

ing. The applicability of that with the choice of the free lanes, everybody is going to end up benefiting, because there will be time-saving all around. It was done with no State or Federal funds involved, and we hope that that will be an example that I know is applicable in highly congested corridors in other parts of the country.

Mr. HORN. Absolutely right. It's about as congested as any corridor in America. Even though the Glenn Anderson Freeway has opened it up in Los Angeles County, in that Orange County segment, they're correct.

Mr. HOLDSWORTH. Congestion is our friend in these projects.

Mr. HORN. Yes, that's right. You promote congestion. Well, any other questions from the minority? We thank you all for coming. I happen to have the Alameda Corridor in my district, Mr. Holdsworth.

Mr. HOLDSWORTH. We're well aware of that, sir.

Mr. HORN. We wish you well.

Mr. HOLDSWORTH. Thank you very much. We're hoping that that goes ahead full speed, since we're the engineer.

Mr. HORN. Now, to my knowledge, there's no Federal money in there at this point. There's a little bit.

Mr. HOLDSWORTH. Correct.

Mr. HORN. But no preexisting infrastructure that you can make use of. You're simply paralleling Alameda Street.

Mr. HOLDSWORTH. Yes, sir.

Mr. HORN. That goes from downtown Los Angeles to the Port of L.A. and the Port of Long Beach.

Mr. HOLDSWORTH. Correct, but we're looking for Federal assistance on that project.

Mr. HORN. I have made that point to a lot of people.

Mr. HOLDSWORTH. We wish you well in that endeavor.

Mr. HORN. We have bipartisan support on that from the subcommittee to the full committee to the leadership of the House and have had it in previous Congresses. What we don't completely have is the clarification of State highway trust funds being used on the overpasses and which ones we can use those on. We have, as you know, heavy truck passage on the Long Beach Freeway.

Mr. HOLDSWORTH. Well, at another opportunity, I would love to talk to you about that. It's a real critical project.

Mr. HORN. Next time you're in town, let me know.

Mr. HOLDSWORTH. I will, sir.

Mr. HORN. OK. Thanks a lot to all of you.

Mr. STANLEY. Thank you.

Mr. HORN. I appreciate it. Very good testimony. I appreciate your addition there, Mr. Collins on the Q&A.

Mr. COLLINS. Thank you, sir.

Mr. HORN. That's helpful.

We're down to panel V, and we have Mr. Butler and Mr. Yodice.

[Witnesses sworn.]

Mr. HORN. Both affirmed. We're going to start with Mr. Viggo Butler, the president of Airport Group International, Inc.; You should have some very intriguing testimony, as I remember. Welcome again.

STATEMENTS OF VIGGO BUTLER, PRESIDENT, AIRPORT GROUP INTERNATIONAL, INC.; AND JOHN YODICE, GENERAL COUNSEL, AIRPORT OWNERS AND PILOTS ASSOCIATION

Mr. BUTLER. Thank you. At this point in the hearing, a number of the songs I was going to sing have already been sung, so I will avoid repeating the statements that I concur with that have been previously made.

If I appear and act a little bit tired, I just returned from China, where I was busily trying to figure out how to spend American capital on their infrastructure.

We are trying to do that in Australia, New Zealand, Mexico, Argentina, Germany, Britain, and a number of other countries. We are very active in taking our capital overseas to develop their airports and would love to have a chance to do that here. It would be a lot easier on my body clock.

We are a 65-year-old company that started out building airports privately in the United States. We built the Burbank Airport privately in 1929. Until recently, we were a wholly-owned subsidiary of Lockheed.

Now we are 50 percent owned by Lockheed-Martin and 50 percent owned by Soros Capital. The purpose of that change in ownership was to create capital to invest in infrastructure. So we have the funds to invest, are willing to invest, and ready to invest in the infrastructure of airports in the United States.

Much of this debate and discussion centers around changing a process; changing things that have been comfortable in the past. In our particular case, in airports, the greatest fear that is discussed is that of cost.

If this hearing was held under a situation where the telephone company was owned by the Government, and we were talking about selling it off, this room would be full of people saying, "It will raise our costs. There's no way we should do this. Somehow the private sector will gouge us." Yet, we have a private phone company that is the cheapest system in the world.

If we were talking about privitizing the airline industry, had it been Government-owned in this country, the same conversation would ensue. The room would be full of people saying, "It costs too much. Ticket prices will go out of sight." But we have a private system that's the cheapest in the world.

So my view is, why isn't that same thought process applicable to the airport business? The airport business is an assemblage of individually-owned airports. It has no consolidation whatsoever. It has no centralized purchasing, no centralized accounting, none of the centralized anything that any other business system has, whether it's Wal-Mart or the phone company or anything else.

It is a very inefficient system of management of facilities, all locally operated, and, with private sector involvement, we believe costs would go down dramatically in how they were operated.

Where private sector involvement in airports is extinct, either through contract management or through overseas private development, the costs are the lowest in their regions. There is no example of the cost being higher where the private sector is involved. So we believe that we can prove and demonstrate that cost is not an issue in operating facilities privately.

Additionally, the private sector can increase revenues and provide more services to the customer, both the airlines and the individual passengers. I think our competitor, BAA, has shown that at Heathrow with the additional services and comfort to the passengers that they've provided.

Our facility in Toronto, Canada, is a great example in North America of how private sector investment can create a new, modern, large facility quickly and cheaply and do it in a design that is effective for the passenger.

The biggest issue before us in this session is creating a vehicle that allows the investment capital that is available to be put to work in the infrastructure development of this country—whether it's wastewater, or roads, or in our particular case, airports.

Allowing the private sector to act quickly to respond to market needs, to add new terminal facilities where they are needed, to add new runway capacity where it is needed, and to convert military facilities to civilian use quickly and effectively, is something that we desperately need.

The demands for money for the air transit system are enormous. This year's aid bill is reduced. Aid will probably continue to be reduced. The airline industry is the most heavily taxed consumer product in the United States, in my opinion, and there is debate regarding increasing their taxes again.

It is a system that has gone awry, but in my view, can be corrected by allowing some private sector involvement. The private sector is ready, willing, and able to do that, has the money, has the expertise, has the long experience, and we think this bill starts the motion to do that, and it's time this motion be begun in this country to allow us to act, because if we don't do it now, things will only get worse.

That's my summation. You can read my statement at your leisure. It just fills in the blanks.

[The prepared statement of Mr. Butler follows:]

H.R. 1907
The Federal-Aid Facility Privatization Act of 1995

Testimony of
Viggo Butler
President, Airport Group International, Inc.

Presented before the House Government Management,
Information and Technology Subcommittee

November 15, 1995

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Thank you Chairman Horn, and members of the Subcommittee, for the opportunity to testify today regarding H.R. 1907, the Federal-aid Facility Privatization Act of 1995. My name is Viggo Butler, and I am the President of Airport Group International, Inc.. Airport Group International, formerly called Lockheed Air Terminal, Inc., is jointly owned by Lockheed Martin Corp. and Soros Capital L.P.. Airport Group International has been managing, developing and operating airports for over 65 years, contributing to the economic growth of many communities across the country. To note just one example, Airport Group International has privately operated Burbank-Glendale-Pasadena Airport since 1929.

A. PRIVATIZATION: A SOLUTION TO AMERICA'S INFRASTRUCTURE NEEDS

The Private Sector Meets Infrastructure Needs Around the World

For years, the governments of both developed and developing countries around the world have relied on the private sector to finance, develop and operate infrastructure assets. Today, private sector involvement in implementing innovative approaches to infrastructure management continues to grow internationally. For example, in Mexico alone, thousands of kilometers of toll roads are being privately built, and significant port projects are being sold to private concerns. In Britain, most of the major airports -- including Heathrow and Gatwick -- are now privately operated.

Airport Group International now maintains 20 operations around the world -- from Guam to Turkmenistan, and governments from Australia to Eastern Europe are at various stages of development of airport privatization projects. In Toronto, Canada, in the early 1990s we developed the $550 million Trillium 3 terminal at Pearson International airport entirely with

private funds, retained a partial ownership interest in the facility, and we are operating the terminal under a 40 year lease with the government. The success of the Trillium 3 project demonstrates how private initiative and ingenuity can provide needed infrastructure capacity, without further burdening the taxpayers. And, in October, 1995, the Jordan Civil Aviation Authority, in the first major joint Israel-Jordanian venture since the signing of the recent peace accord, awarded a contract to conduct a feasibility study for a proposed new international airport to a Lockheed Martin Corp. team which includes Airport Group International.

Unfortunately, Federal policies have prevented a parallel rise in domestic opportunities for public-private partnerships. This has forced many American companies, such as Airport Group International, to pursue privatization projects abroad -- driving U.S. capital and expertise out of the country. Thus, most of our opportunities in the foreseeable future will be abroad, unless Federal policies change.

Public-Private Partnerships are Emerging as a Solution to Domestic Infrastructure Needs

State and local governments are increasingly recognizing the benefits of private management and capital investment in the delivery of basic services to their constituents and in the funding and operation of infrastructure assets. As the Wall Street Journal recently reported, the percentage of local governments contracting out various services, such as janitorial services, solid waste collection, street maintenance, and data processing has risen dramatically since 1987. Academic studies show that these privatization efforts typically reduce costs by approximately 10% to 20%.

These successful public-private partnerships have lead a number of forward-thinking state and local officials to consider aggressively the role the private sector can play in the

financing and operation of infrastructure facilities to meet their constituents' needs. Mayor Stephen Goldsmith of Indianapolis has already cut more than $100 million from the municipal budget by privatizing city infrastructure assets, and by permitting the private sector to bid against the city government for municipal contracts. And, Mayor Roy Bernardi of Syracuse is moving forward with his plans to consider the privatization of the City-owned Hancock airport. In addition, several Governors, including Gov. George Pataki (NY), Gov. Christine Whitman (NJ), Gov. William Weld (MA), Gov. Pete Wilson (CA), and Gov. Frank Keating (OK), are actively seeking to increase the opportunities for public-private partnerships in their states.

These leaders' interest in public-private partnerships is driven by three important factors. First, the demand for domestic infrastructure investment far outstrips available public resources. According to a new U.S. Department of Transportation report, Federal, state and local governments must spend $15.1 billion a year more than current levels just to maintain the existing national highway and bridge system. To improve the system would require an additional $36.6 billion a year in spending over a 20-year period. And, the U.S. Environmental Protection Agency estimates that local governments require $127 billion just to undertake the modifications required by the Clean Water Act. At the same time, the much-needed effort to balance the Federal budget will constrict the availability of Federal funds for infrastructure investment. Public-private partnerships can replace government debt or equity with private capital, at no expense to the government itself. Privatization, therefore, provides a public owner the means to continue existing operations of infrastructure projects and develop new ones, regardless of the availability of Federal, state and local funds.

Second, the private sector, responding to market forces, best allocates infrastructure resources. For example, most public airport authorities do not respond to the market; they respond to civic desires. An airport may, therefore, be located in the wrong place altogether -- where there is little demand -- while another more logical location has no facility. Or, one airport may be overbuilt, while another is underbuilt. The private sector would respond quickly to such inefficiencies.

Third, all infrastructure users will benefit from the increased efficiency and cost savings created by the private sector. Private firms, with their own money on the line, are going to find the best deal and get it done quicker, both to save financing time and to secure the revenue the project is intended to produce. Introducing this market incentive to the delivery of infrastructure facilities will improve the quality of these assets, and therefore contribute to the economic development of the area.

During this period of increased global competition and decreased Federal resources for infrastructure projects, state and local officials must have the discretion to pursue these innovative public-private partnerships. However, current Federal policy discourages the privatization of infrastructure assets, depriving local governments of the full range of development and management options.

B. H.R. 1907: THE FEDERAL-AID FACILITY PRIVATIZATION ACT OF 1995

Incremental Regulatory Reform to Encourage Public-Private Partnerships

Airport Group International strongly supports H.R. 1907, the Federal-aid Facility Privatization Act of 1995, as an incremental reform measure which removes the primary regulatory barrier to the privatization of state and local infrastructure assets.

Prior to 1992, Federal policy -- known as the "Common Rule" -- required state and local governments to fully reimburse the Federal government for all grants received for a Federal-aid infrastructure asset upon the transfer of that facility to the private sector. This 100% repayment requirement was a prohibitive economic disincentive to privatization transactions. To address this disincentive, and "promote private investment in local infrastructure," President Bush issued Executive Order 12803, which liberalized the 100% repayment requirement by permitting repayment of the depreciated value of Federal grants received.

Notwithstanding the articulated purpose of Executive Order 12803, the modified repayment requirement continues to be a significant disincentive to the use by state and local governments of privatization as a tool to attract more capital for, and improve the management of, infrastructure facilities. Despite the strong interest of many local and state officials in using privatization in appropriate cases, as demonstrated by the surge in privatization of government services, to which I alluded earlier, privatization of Federal-aid infrastructure assets has been almost nonexistent. In fact, the first and only completed privatization transaction of any type pursuant to Executive Order 12803 was the 1995 sale of a $7 million wastewater treatment plant in Franklin, Ohio. It was a facility with fully depreciated Federal grants, obviating the need for any grant repayment. I also understand that the City of Wilmington, Delaware, has just selected

a partnership led by Wheelabrator Technologies, Inc. to buy the city's $53 million wastewater treatment plant, but the deal faces several legal and regulatory hurdles before it is formally completed.

H.R. 1907 repeals this regulatory barrier to privatization by permitting state and local governments to privatize Federal-aid facilities without repayment of Federal grants, provided the private entity is bound by contract or law to operate the facility for the purpose for which Federal aid was given and to abide by Federal grant assurances. This modest regulatory reform will ensure state and local leaders the flexibility to undertake privatization programs, while protecting the Federal government's legitimate interests, and, most importantly, the interests of transportation users.

Protecting Air Transportation Users

H.R. 1907 deletes a regulatory barrier to the privatization of all Federal-aid facilities, while explicitly protecting the users of facilities which are sold or leased to a private party. In the context of airport privatization, we believe that the sale of a U.S. airport in the foreseeable future is highly unlikely, and not generally necessary to achieve the primary benefits of public-private partnerships. Instead, long-term lease arrangements will permit state and local governments to obtain the capital and expertise of the private sector.

Regardless of the form of privatization, H.R. 1907 explicitly ensures that a privatized airport facility will continue to operate as originally intended. Specifically, H.R. 1907, as introduced, requires the state or local entity seeking to privatize an airport to demonstrate that a market mechanism, legally enforceable agreement, or regulatory mechanism will ensure that the infrastructure asset continues to be used for its original authorized purpose until no longer needed

for that purpose. In addition, I understand that the Aircraft Owners and Pilots Association ("AOPA") has suggested that the bill be amended to grant the Secretary of Transportation the sole authority to determine when an airport facility is no longer needed by a community. AOPA has also suggested additional language which explicitly requires that privatized airport facilities "continue to be available for public use on reasonable conditions and without unjust discrimination," grants the Secretary of Transportation the authority to enforce this provision in Federal court, and permits the public to petition the Secretary to investigate possible violations of this additional mandate. Airport Group International believes that these suggested amendments strengthen H.R. 1907, and encourages the sponsors of H.R. 1907 to consider adding these changes during markup of the measure.

Financial Benefits to Federal, State and Local Government

By encouraging the privatization of state and local infrastructure assets, H.R. 1907 will reduce the demand for Federal grant assistance, and generate additional Federal, state and local tax revenues.

- **Creates Trust Fund Savings**

I commend each of you for undertaking to balance the Federal budget, but I think we can all agree that the resulting spending cuts will dramatically increase the pressure on the transportation trust funds as the primary source of infrastructure investment. Private infrastructure development and management companies, like Airport Group International, can help alleviate this pressure by creating savings in the transportation trust funds. For example, the private operation of infrastructure assets will ensure that only fiscally justifiable capital improvements are undertaken, avoiding the "gold plating" which has plagued public capital improvement projects

such as Denver International Airport. Properly managing improvement projects directly results in trust fund savings, since the trust funds typically provide 80%, or more, of the funding required for these projects.

- **Generates Tax Revenues**

The privatization transactions which H.R. 1907 will permit will increase Federal and local tax revenues in three significant ways. First, the income of a privatized infrastructure facility is taxable income for the owner/operator, thereby increasing Federal corporate tax revenues. Second, while public infrastructure owners may finance new facilities and improvements with tax-exempt municipal bonds, private owners/operators seeking to finance improvements must rely largely on taxable bond financing. This shift to taxable bonds will increase Federal and state income tax revenues. Third, privatization of infrastructure assets increases the property tax base by placing public facilities into private hands.

C. WE MUST WORK TO IMPROVE OUR INFRASTRUCTURE FACILITIES

In conclusion, the explosion of international privatization programs demonstrates that public-private partnerships can provide innovative solutions to domestic infrastructure needs. With your leadership, Chairman Horn, passage of H.R. 1907 will enhance the ability of state and local officials to meet the daunting challenges they face in preserving and expanding our vital infrastructure.

Again, I very much appreciate the opportunity to appear before you, and I will be happy to answer any questions you may have.

Mr. HORN. Yes, I have. Well, it's very well said. Mr. Yodice.

Mr. YODICE. Thank you, Mr. Chairman, and members of the subcommittee. With your permission, I would like to submit my written statement for the record.

Mr. HORN. Sure.

Mr. YODICE. And then just take the opportunity to summarize it. I'm general counsel of AOPA Legislative Action, and I'm here representing the general aviation users of the airports.

Mr. HORN. I think you had better spell out AOPA for the record.

Mr. YODICE. That's Aircraft Owners and Pilots Association.

Mr. HORN. A very active group.

Mr. YODICE. Thank you, sir.

Mr. HORN. I sit on Transportation and Infrastructure and did sit on the Aviation Subcommittee for the last Congress.

Mr. YODICE. Those are kind remarks.

Mr. HORN. Yes.

Mr. YODICE. So, essentially, we're here representing the general aviation users of airports that will be affected by this legislation. By our estimate, there are probably 2,400 federally-aided airports owned by State and local government entities, and they include all of the major airports of this country, and probably those 2,400 are the most important airports in our national airports system plan.

I think it's important to note that general aviation uses all of them and, perhaps, to provide a contrast. The scheduled airlines have service at approximately 400 of those airports. And even that, I think, may be a little bit misleading, because there are just 25 or 50 airports at which the air carriers predominate, and it's general aviation which is either the predominant or exclusive user at all of the other airports.

It's hard to arrive at statistics except where we have control towers. There are 700 airports with control towers, which are the busier airports. By our computation, general aviation accounts for 59 percent of the operations at the control-towered airports, and so it's not hard to imagine that they account for a heck of a lot more than 59 percent at the totality of the airports.

Mr. HORN. I think Long Beach, CA, is an example. When I moved there in 1970, it had the second most used airport in America, only behind O'Hare in Chicago. Now, they only had three commercial flights a day; all the rest was general aviation, which was half a million takeoffs and landings a year.

Mr. YODICE. A very good example, Mr. Chairman. So general aviation has a very important interest in preserving access to these airports on fair and reasonable terms and without unjust discrimination. Now, right now, this interest is protected by the Federal Government, principally through the Federal Airport Aid programs.

You've heard about assurances as a condition to receiving Federal airport aid. The airport sponsor must provide certain promises to the Federal Government, and, among those promises is the one that I just cited to you, that the airport will be available on fair and reasonable terms and without unjust discrimination.

The Federal Government, through the Department of Transportation and the Federal Aviation Administration has structured procedures where these kinds of matters can be complained and litigated and assurances can be made that the promise is being ob-

served. We're not sure what will happen to these protections if the airports are privatized under this bill.

We've been studying the bill very carefully, but we're not yet satisfied that we understand all of its ramifications. We do believe that it will have a serious and significant effect on the whole national airport system and on general aviation, and we suggest we really need more time to continue to study the bill and to understand better its ramification.

We also need more time, principally because the Federal Government right now is developing a policy on airport rates and charges. Perhaps some earlier witness may have mentioned that to you. This was pursuant to your legislation. DOT came out with an interim policy and solicited comments.

As a result of those comments, they proposed changes to that policy and again solicited comments, and those comments were due about a week or so ago. There were many comments by airports, as well as by DOT. I think it's important to see the final result of that airport policy and evaluate this bill in light of that policy, because it affects the very same airports and many of the same issues that are addressed in this bill.

So our position here today is not necessarily in opposition to the bill, but rather to suggest to you that the bill is premature and that we would prefer not to see it go forward in this session of Congress, but to give us the opportunity for additional consideration of the bill in light of the new Federal airport policy which will eventuate probably early next year.

In conclusion, let me also say this. The proponents of this bill have been very forthcoming and willing to address the concerns of general aviation. They've met with us; they've worked with us, and I want to acknowledge that.

I particularly want to say that also we will continue to work with them to see if we can find some common ground, common ground that would address the concerns of general aviation and, at the same time, achieve the objectives, the very worthwhile objectives of the bill.

I think if you'll read Mr. Butler's testimony, as I think you've already indicated you have, you will see that we have already come together on some proposed changes which we think the legislation warrants in terms of our consideration for general aviation.

Thank you for the opportunity to appear here today, and I would be happy to try to respond to any questions.

[The prepared statement of Mr. Yodice follows:]

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Statement of John S. Yodice

General Counsel

AOPA Legislative Action

Before the

House Committee on
Government Reform and Oversight

Subcommittee on Government Management,
Information & Technology

The Honorable Stephen Horn, Chairman

Concerning H.R. 1907
The Federal-Aid Facility Privatization Act

November 15, 1995

November 13, 1995

TESTIMONY ON H.R. 1907,
THE "FEDERAL-AID FACILITY PRIVATIZATION ACT OF 1995"

Mr. Chairman and Members of the Subcommittee:

My name is John S. Yodice, and I am General Counsel of AOPA Legislative Action. We appreciate the opportunity to present our views on H.R. 1907, the "Federal-aid Facility Privatization Act of 1995."

STATEMENT OF INTEREST

AOPA Legislative Action is a nonprofit organization formed to foster and promote general aviation in the United States. There are more than 650,000 general aviation pilots nationwide who contribute to our economy by using general aviation aircraft to fulfill their business and personal transportation needs. General aviation pilots operate at all of the more than 2400 airports financed in whole or in part by the Federal Government, and therefore have an interest in legislation that might affect these airports. We promote general aviation for the benefit of all citizens through legislative and other activities at all levels and branches of government.

COMMENT

We appreciate Congress' efforts to address the needs of the nation's infrastructure. Additionally, we appreciate the attempts of the proponents of this bill to address the needs of the aviation community. We particularly appreciate their willingness to work with us during consideration of this legislation. We are concerned, however, that this legislature may not be an appropriate vehicle to address these needs for several reasons. First,

consideration of this topic at this time is premature. Second, airports may not be a candidate for inclusion in this legislation even if other parts of our nation's infrastructure do require new measures to fund their upkeep because of unique funding mechanisms available to airports. Third, we are concerned that privatization of airports might result in unreasonable increases in fees to general aviation users.

Premature Consideration of the Bill

We feel this legislation is premature for two reasons. First, this Bill is being considered at a time when the Department of Transportation and the Federal Aviation Administration have underway the development of a policy on airport rates and charges, as well as rulemaking on procedures for formal complaints against airports. Both of these issues relate to the subject matter of this legislation and are being reviewed and implemented by government bodies who have the collective expertise on this subject matter. There has already been substantial time spent in ironing out these issues before DOT/FAA, including inputs by all of the parties in response to the solicitations of comments. This legislation may negate the considered resolutions of these issues by DOT/FAA.

The second reason consideration of this Bill is premature at this time is based on the major impact to our national system of airports that this legislation could have. While it is a seemingly simple Bill, our initial analysis indicates it could have complicated effects throughout the system, effects that could have a potentially damaging influence on general aviation's access to these airports. We continue to study the Bill to better understand the effects, but more study is needed.

Airports Should not be Included in the Infrastructure Assets Addressed in This Legislation

We are concerned that airports may be less appropriate for privatization than other categories of infrastructure assets. Several mechanisms contribute to the current potential sources for funding the nation's airport infrastructure that may distinguish airports from other assets. Unique to aviation, for instance, is the aviation trust fund, which is funded by taxes imposed on users of the air transportation system. Other mechanisms, such as passenger facilities charges (PFCs) and various means of state support are unique to aviation. While increased funding is an objective, nevertheless, substantial sums are being received from these existing sources. We perceive no generalized degradation of airport assets.

The Bill May Lead to Increases in Fees Paid by Users of the National Airport System

We are concerned that the Bill might have an adverse effect on airport fees, which in turn, would translate into the denial of reasonable access for general aviation to federally funded airports. Although we recognize that several protections have been incorporated into the Bill, these protections do not allay concerns that there will not be a dramatic rise in fees charged to our members. There are several reasons why the cost of use of an airport could increase if this legislation were implemented.

Under the text of the legislation, the state or local government will be "permitted to recover its capital investment, an amount equal to its unreimbursed operating expenses in any infrastructure asset, and a reasonable rate of return." In recovering its capital investment, it is unclear whether the government would be constrained to its historic costs. It may be reasonable to think that the government will be able to include other factors in the recovery of its capital investment. The state or local government will also be allowed to recoup a "reasonable rate of return" as a result of the privatization. It appears that the initial cost to the private entity will involve

funds that the government would not have passed on to the users under the system that existed before this legislation. The private entity will pass this amount on to the users.

Likewise, it seems likely the legislation envisions that the private entity would also be allowed a reasonable rate of return. Just like the economic advantage to the seller, this economic advantage to the buyer must be passed on to someone Ultimately it follows that these costs will fall on the users of the national airspace system. These increased costs may be passed on to aviation users through increased landing fees, or will flow through the new private owner, to the Fixed Base Operators (FBOs) and then be passed on to our membership through increased hanger fees, tie-down fees, and other product and services fees.

The problems of these increased fees are exacerbated when it is considered that airports often represent a monopoly over aircraft access to a location. Even if privatization would theoretically encourage efficiency in some areas, there less of a chance that any efficiencies will be passed on to the users in monopolistic situations.

CONCLUSION

The seven short sections of this Bill hide the complex ramifications that it might imply. Such sweeping changes should not be undertaken without giving thought to all of the implications. Consideration of the Bill at this time does not afford the opportunity for such thought and is premature. Existing mechanisms in aviation address many of the goals of this bill in that they consider the funding of the aviation infrastructure. To alter such a working system, in a way that would potentially impose increased costs on its users, with no corresponding benefit, is to move too quickly in an unmapped direction.

Mr. HORN. Let me ask a couple, and then I'll turn it over to the ranking minority member. What's your understanding of when the FAA will finish its review of airport rates?

Mr. YODICE. The FAA, of course, has not given us any timetable, and they don't intend to be bound by any timetable.

Mr. HORN. In other words, 5 years, or 4 years? How long does it take them down there?

Mr. YODICE. I would expect, I honestly expect that we will have a final policy early next year.

Mr. HORN. Early next year?

Mr. YODICE. Yes, sir.

Mr. HORN. Are we talking January, February, or March?

Mr. YODICE. I couldn't make it any finer than that.

Mr. HORN. Well, let's ask the FAA. Aren't we making them independent of that transportation bureaucracy so they don't have to go through 50 more people? Let's see what they say to that. I understand your association's concern about fees. We always hear from them when there is even a sniff of a 10-cent increase.

Now, it seems to me that if you object to increased fees, we could spell that out in legislation in some way. They've tied it to the cost of inflation, for example. Now, does that seem unreasonable?

Mr. YODICE. No, sir. In fact, I think that probably we could find some methodology to ensure that the fees remained reasonable. But it's not in the bill right now.

Mr. HORN. Yes, but aren't you unhappy with the condition of some airports in which your membership lands? Or is all you guys care about is just a strip, where you can get on whether it's paved or not. I mean I grew up in the ranch country, where we actually have nonpaved strips, so I'm used to bumping along in a private plane.

Mr. YODICE. Well, Mr. Chairman, that's an interesting question, because when I first read the bill, I had visions of what I see very frequently, of roads and bridges and tunnels really in need of repair and some capital infrastructure improvements.

But, in general, that's not true of airports. I don't think you find airports falling apart the way you find these other infrastructure assets falling apart. And I think it may be because of the funding mechanisms that are available in aviation.

Mr. HORN. Maybe.

Mr. YODICE. We have the trust fund, which is funded by user fees, and out of that trust fund comes the money to improve those airports.

Mr. HORN. When the President isn't using it for budget balancing. As you know, we're trying to get those trust funds independent of the appropriations process.

Mr. YODICE. Yes, sir.

Mr. HORN. Because if you pay it in, we think you ought to use it to maintain what you paid it in for, be it highways or airports.

Mr. YODICE. That's correct, sir. We never get out as much as we would like.

Mr. HORN. Yes.

Mr. YODICE. But we do get out a significant amount to make our airports a matter of pride.

Mr. HORN. Mr. Butler, what do you think now? You've heard Mr. Yodice's comments. Is the Canadian situation that you were involved with—weren't you involved with Toronto? Do they have an airport pilots association that worried when you took over Toronto? Or does general aviation go into that airport?

Mr. BUTLER. We did only air carrier work at that airport.

Mr. HORN. Yes.

Mr. BUTLER. But we have, at Burbank, 65 years of general aviation activity with nary a complaint, and most of that under private ownership.

Mr. HORN. Would you say the Burbank Airport fees are similar to the Government-run, if you will, Los Angeles Airport?

Mr. BUTLER. They are likely to be less.

Mr. HORN. Yes. So it doesn't necessarily always mean the fees are higher, your example was earlier, than the Government running something?

Mr. BUTLER. Right.

Mr. HORN. Competition does do something.

Mr. BUTLER. And a system has to work effectively to preserve itself. If you have one airport that is privatized and charges too much, it's not likely you are going to do a second one. The system is self-correcting in that regard.

Mr. HORN. Do you have any questions, Mr. Yodice? Here's an entrepreneur sitting here, and you're representing a lot of concerned members. What would be your basic question to an entrepreneur?

Mr. YODICE. Well, I think, in response to the question that you put to the gentleman—and I would like to address it myself, as well. I'm well aware of the fact that they have done a very good job. That's because there have been other incomes derived from the airport other than fees on the general aviation users of the airport. That has been great.

The problem is with the legislation, as we're looking at it today, or as we see it today, is we do have the Federal Government that now imposes some restrictions on the fees. The fees are limited by the costs that the airport owner expands on the airport that can be recouped in these fees.

If we remove the Federal Government, then we no longer have that assurance, and we're left to the bona fides suggested by Mr. Butler, and it seems to us we're trading off something certain for something that may not be so certain.

Mr. HORN. You've got the mayor of New York and the mayor of Los Angeles that would like to get a decent fee out of the airport. And, in the case of Los Angeles, they're so behind everybody else in the country, raising the fees, you would hardly notice it if you paid fees elsewhere. So we've been through that argument with the Federal Government.

Well, Mrs. Maloney.

Mrs. MALONEY. Well, thank you, Mr. Chairman. Mr. Yodice, you mentioned in your statement that you think this bill may be somewhat premature at this point. I'm wondering, do you think airports should be exempted from the bill altogether for some of the reasons that you raised in your testimony?

Mr. YODICE. That's certainly a solution to the concerns that we have, but it may ignore the benefits of the bill as far as improving

infrastructure, so we don't want to be that obstructionist. If it's important Federal policy that wants to go forward, we would try to accommodate our concerns and, at the same time, achieve those objectives.

Mrs. MALONEY. And you mentioned in your testimony that DOT and FAA are going forward, developing new policies on airport rates and charges. You say that this legislation might negate resolution of these issues which are being considered by DOT and FAA. Could you explain this? How would they negate what these issues are going to be?

Mr. YODICE. What I was trying to say in that statement was that the process that the Federal Government is going through—the Department of Transportation and the Federal Aviation Administration—is inviting input from all segments of the aviation community on all of these issues. And then, as a result of all of that input, they're going to be formulating some ideas on what the policy should be on; airport rates and charges.

I'm not sure that this bill is getting the same consideration, in-depth consideration from the users and the airports, and we ought to at least have an opportunity to see what that process develops before we make any big decisions on this bill.

Mrs. MALONEY. And I understand that GAO is, incidentally, going through a whole review on the same subject, too, which should be out in, I think, a year.

But anyway, Mr. Butler, on page 6 of your statement, you say that this bill, 1907, is "an incremental reform measure" that "removes the primary regulatory barrier to privatization." What other incremental reform measures do you suggest?

Mr. BUTLER. To go to the specifics of this, we approached this bill from the investor's side. This bill removes the investor aspect question, which is this repayment question on the Federal grants.

Mrs. MALONEY. But the repayment of the Federal grants really doesn't affect the private investor.

Mr. BUTLER. Well, I heard that debate earlier.

Mrs. MALONEY. I mean I think some valid points were raised, particularly about the Grumman buses.

Mr. BUTLER. Yes.

Mrs. MALONEY. But I don't think there's a valid point on the private investor point of view. The value of the property is the value of the property.

Mr. BUTLER. Right. The likelihood of a seller selling is influenced by this. The fact that nothing has been privatized in any of these subjects under current rules would imply that it is not happening. The investors have the money and are ready to invest, so something is stopping it. Our view is, from the investor's side, this rule on the grant repayment is the barrier.

That is what we're told by the customers, that if this was not here, they would be in a better position to take the transaction forward. So, from the investor's side, that is the No. 1 question.

For the users and for the sellers, there may be other issues that still need to be developed. We have the questions on rates and charges and questions on diversion. All of these issues are out there which are political issues and Government control issues,

which are different than investor question. We've approached it as the investor, not as the seller or as the user.

Mrs. MALONEY. What other incremental things could make it easier?

Mr. BUTLER. To answer the question raised earlier on rates and charges, I have always assumed that the Government will always be with us; that this is not going to be a free and clear transaction—"Here, you take the airport and do what you want with it" that we are going to have safety regulation, and are likely to have rate regulation of some form. Whether it is local, State, or Federal, it will evolve. Those are the incremental things I am referring to here.

A process will come from this that will allow a transaction to occur that all the parties agree on. This will not happen in a vacuum. The airlines, AOPA, the cities, the FAA, all the parties will have their say, and out of that will come a process that works. But right now, the barrier to actually get people talking about it is contained in this bill.

Mrs. MALONEY. OK. What other incremental things besides that?

Mr. BUTLER. I think those generally cover it.

Mrs. MALONEY. Is that it? You had mentioned also in your testimony—or certainly in your written testimony—in the case of an airport, you do not foresee a sale. You wrote that you thought, in cases of airports, that it would be a lease arrangement. Do you see further Federal sources for capital improvements under lease managements?

Mr. BUTLER. Leasing in the United States, we think, is a more effective method currently, in that you remove the problem of selling the underlying asset, so the Government does have a role. It is still their property. It deals with the environmental issues around the airport, and ensures that the Government will still support the roads coming to the facility. It is part of the community.

The private sector leases the facility, operates it as a business, provides the investment capital to make it grow, and, at some future date, it will revert back if the lease is not extended, so that both parties are protected. It allows, perhaps, the use of tax-exempt money to invest in the facility.

Mrs. MALONEY. Tax-exempt money because you're investing into the capital structure of a city-owned property?

Mr. BUTLER. Into publicly held property for the benefit of the public.

Mrs. MALONEY. Yeah.

Mr. BUTLER. And it leaves open the intriguing question of whether the Federal grant program will continue to support that property. There are a number of issues still to talk about that would allow the investment community to join the Government in what is called a public-private partnership to create new value on the airport, run it as a business, increase revenue potentials, and where the economy is a scale of multiple airports, yet the Government is still a part of the process.

If you do a lease, all these rate issues are dealt with in the lease document.

Mrs. MALONEY. We have to go vote; right?

Mr. HORN. We do. The 10-minute bell hasn't rung yet, though, I don't believe. So go ahead. I'm going to go, but let me just ask one last question of the panel. You mentioned, Mr. Butler, the type of cooperation and regulations you have, but specifically at Toronto, what is the regulatory mechanism with which you have to deal in this area?

Mr. BUTLER. We do not have any. The one unique thing there, though, is that it is a complete terminal complex, roadway, parking garage, taxiways, all of that, but not the runways. So the landing fee is part of the Government's control. We charge rents, user fees, and parking fees to either the customer or the airlines, and those are outside of Government regulation. They are what we negotiate with the user.

Mr. HORN. You've not focused on increasing fees, and it has been mentioned here, at Pittsburgh, for example, the mall that attracts people. What types of additional revenues have you been able to coax out of these airports to justify the large investments that you're making? What are some of the other ideas?

Mr. BUTLER. It is two factors. One is cost management; how to operate them successfully as a professional, low-cost operation, with central management and all central purchasing, and all of those aspects, so your costs are reduced. And then it is good retail, good parking management, and other attractive facilities that are put in that attract people to spend money. It is a business enterprise.

Mr. HORN. So if they shop in the mall at Pittsburgh—and I don't know, do you have a mall at Toronto at all?

Mr. BUTLER. We have a similar situation, a large retail complex, yes.

Mr. HORN. So you try to validate it, then, and they can park free.

Mr. BUTLER. That is part of the attraction, is all of the secondary aspects.

Mr. HORN. True. Well, that's good. It's a very interesting development. We thank you both, and if you have some comments you want to write us on the legislation, please send them to us. We would welcome them.

We now have panel VI, but I'm going to go vote, so we're going to take a 15-minute recess, and then we will have Mr. Grimm and Ms. Kelly, hopefully, if we don't have another vote by 5:35.

Mr. YODICE. Thank you for the opportunity.

Mr. HORN. We're in recess, probably until 5:40, if not sooner.

[Recess.]

Mr. HORN. A quorum once having been established, the committee will resume. We have Ms. Kelly and Mr. Grimm. You know the tradition of the committee to swear the witnesses on under oath. Mr. Grimm, you're on the other side here, at least the way the staff set it up. You're right where you should be, Ms. Kelly.

[Witnesses sworn.]

Mr. HORN. Both witnesses have affirmed. We'll begin with Rodman D. Grimm, the president of Thicksten Grimm Burgum, Inc.; Welcome, Mr. Grimm. As I remember, you were on a privatization commission for President Reagan; is that correct?

STATEMENTS OF RODMAN D. GRIMM, PRESIDENT, THICKSTEN GRIMM BURGUM, INC.; AND PEGGY KELLY, SENIOR POLICY ANALYST, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL–CIO

Mr. GRIMM. Mr. Chairman, it wasn't exactly a privatization commission. What it was was a congressionally mandated panel that looked at alternative ways to manage and finance nuclear waste disposal. What we did is we came to a conclusion that that Government function should be privatized.

Mr. HORN. I see.

Mr. GRIMM. And found in the process—I really hadn't intended to start out this way—but found in the process that it was very hard to do because, in terms of setting it up for privatization, there was so much legislation on the books and regulation that, by the time you got through it, it was a very, very difficult process.

Basically, we made our recommendations, and the Department of Energy opposed those recommendations. At least the program people did there, basically, because of all the legislation on the books, it became very much "too hard to do," which is always the way the Federal bureaucracy stops something that they don't like.

In terms of considering this one piece of legislation, it seems to be very narrowly focused, but I would caution that in terms of the other things that we hear are going on up here, in terms of privatization, FAA has been mentioned.

Mr. HORN. Well, the Patent Office certainly has been mentioned.

Mr. GRIMM. The Patent Office has been mentioned. That what you do here is going to set a precedent, and is going to influence the legislation that's going to come out later.

One of the things that I would like to address is that the way that this bill is written, in my opinion, is, I think, too open-ended and leaves too much to interpretation. I think a good example is, if you look at section 6, and the draft bill states that the local government may use the proceeds from privatization of an infrastructure asset to the extent permitted under applicable grant assurance provisions.

It further states that the State and local government may recover its capital investment, unreimbursed operating expenses, and a reasonable rate of return. I would like to suggest that that be tightened up, because having sat in many, many negotiations on the other side of the table from the Federal program officials, I can foresee a situation where you could argue for 2 or 3 days over what a "reasonable rate of return" is.

I think there are some other inconsistencies in the bill that, basically, are going to cause a problem when you talk about implementation. I would like to go further and talk about a couple of issues here that were brought up before, and I had also looked at those.

For instance, there doesn't seem to be a requirement that State and local governments complete these types of things. I think if it's the intent of the Congress that they should be completed, that that should be written into the legislation.

The other thing is I can see a big controversy in terms of a tendency to favor your larger players over your smaller players. It will take so much money to get into some of these things that some of

the people that are in the game now will end up being out of the game, and I think that this needs to be given some consideration.

I gave, in the testimony that I submitted to the record, some examples that go into the base closure area of impediments to privatization. I don't have any examples at my fingertips of things that could be impediments to implementing this bill, but the way the draft is written, it does not state anywhere in there that I could see that notwithstanding any other section of the law.

I think what you're going to find if you try to implement this is that, going down through the process, you're going to find a whole bunch of other laws and regulations that are going to be in the way of the intent of this bill.

Finally, I guess my final recommendation is that I don't know when this is going to get on the legislative agenda, but I think that further study is certainly warranted. Maybe you would like to get some type of a commission or some type of a study group to look at not only how this legislation would be implemented, but also the effects on through with the other privatization initiatives that are going on. Thank you, Mr. Chairman.

[The prepared statement of Mr. Grimm follows:]

TESTIMONY OF RODMAN D. GRIMM
PRESIDENT, THICKSTEN GRIMM BURGUM, INCORPORATED
Subcommittee on Government Management, Information & Technology
Committee on Government Reform and Oversight

I am pleased to offer my testimony in regard to H.R. 1907, the Federal Aid Facility Privatization Act of 1995, which is a bill to permit state and local governments to transfer - by sale or lease - federal aid facilities to the private sector without repayment of federal grants, provided the facility continues to be used for its original purpose, and for other purposes.

It is my understanding that the intent of this legislation is to foster privatization by empowering state and local governments to transfer infrastructure assets financed in whole or in part by the federal government and needed for the functioning of the economy without an obligation to repay to the federal government any federal grant monies received in connection with the infrastructure asset that is being privatized.

The bill, as presently drafted, appears to have some inconsistencies. For instance, the draft bill is contradictory in terms of compliance with the original grant program. SEC 4B states that the private party must agree to comply with all applicable grant assurances. SEC 2C states that the originally authorized purposes means the general objectives of the original grant program; however the term is not intended to include every condition required for a grantee to have obtained the original grant. This needs to be clarified and defined more explicitly.

The bill has other language which is contradictory. In the TEXT, the bill reads that the facility must "continue to be used for its original purpose, and other purposes." Under SEC 4, the bill reads "continue to be used for their originally authorized purposes, so long as needed for those purposes." This language needs to be clarified. In some cases, the rational for privatization could be to split the use of the asset. Dual uses may be necessary to provide the basis for financing. Adherence to a policy of requiring one hundred percent of the use of the facility for public purposes would therefore in some cases eliminate the basis for cost reduction and financing. This issue needs to be considered in much more depth.

SEC 6 of the draft bill states that a state or local government may use proceeds from the privatization of an infrastructure asset to the extent permitted under applicable grant assurances and provisions. It further states that notwithstanding any other provision of law, the state/local government may recover its capital investment, unreimbursed operating expenses and a reasonable rate of return. This is too ambiguous. Implementation would be difficult because arguments could arise over such issues as the definition of "a reasonable rate of return."

One of the most difficult issues in any privatization initiative is policy in regard to whether federal assets, paid for by taxpayers, should be awarded on a preferential basis to any one entity instead of competitive entities. This begs the question of whether the

public interest is better served by obtaining fair market value for the asset, or whether the asset should be privatized at a reduced cost to the recipient entity due to the potential benefits and cost reductions which will accrue to taxpayers. These issues argue that some kind of a competition should occur for the privatization of any infrastructure asset.

Another issue is the effect on large versus small businesses. There are some instances where the privatization of any federal asset may result in giving a large corporate entity an undue competitive advantage over smaller business entities operating and competing in the market. Safeguards need to be built into this legislation to prevent this from occurring. The solution may be to compete the privatization under a format which levels the playing field among large and small businesses and/or require that competing small businesses be added to the privatization "team."

H.R. 1907, as presently written, deals exclusively with privatizing infrastructure assets which have received federal grants. It does not deal with the privatization of federal facilities and functions. Perhaps some consideration should be given to the entire universe of federal privatization opportunities, instead of only this one narrow area.

My experience in privatization has been acquired through several extensive efforts to facilitate the transfer of federal facilities and functions to the private sector. President Reagan appointed me to the Congressionally mandated Advisory Panel on Alternative Means of Financing and Managing Radioactive Waste Facilities. The Advisory Panel concluded that the function of ultimate disposal of high level nuclear waste should be privatized, and moved from the Department of Energy to a quasi government corporation. The Department of Energy opposed this recommendation, and argued that the legislative and regulatory changes that would be required to privatize this federal function were "to hard to do." The result was that the high level nuclear waste function has remained in the Department of Energy since the Advisory Panel rendered its final report in December 1984; and little progress has been made toward the ultimate solution to this very critical and pressing national problem.

After the Defense Base Closure and Realignment Commission announced its final 1995 military installation closure recommendations and before the President made his final decision to endorse these recommendations, the Department of Defense indicated that it was attempting to structure a concept to privatize the operations conducted at McClellan Air Force Base (Sacramento, California), Kelly Air Force Base (San Antonio, Texas), the Naval Surface Warfare Center, Crane Division Detachment (Louisville, Kentucky), and the Naval Air Warfare Center, Aircraft Division (Indianapolis, Indiana). The process of closing these installations is presently in progress and local officials are attempting to work with the Department of Defense to facilitate privatization. At the Naval Air Warfare Center, the City of Indianapolis with the assistance of the Hudson Institute and Arthur Andersen, LLP, has been attempting to facilitate a privatization effort which would retain as many jobs as possible and contribute to the economic redevelopment which will be required as a result of the defense conversion.

For a cost effective, efficient privatization to occur in a defense conversion environment, the private company must be in a position to attract (a) a strong work force and (b) capital. This requires the following:

1. *A Business with a Strong Likelihood of Success.* Both financial markets and employees seek to minimize risk. In the environment of defense conversion, this translates into determining a reasonable period (3-5 years) of sole source contracting that will allow the new company to establish a track record before entering full and open competition. During this period the company can search out new markets to "hedge" against any possible loss of workload and grow into non-Department of Defense markets to reduce casts to Department of Defense and become more cost competitive. A contracting vehicle that permitted such sole source workload for a limited period would support such a new private enterprise.

2. *A Business that Permits Concurrent Usage of its Facilities and Machinery.* The privatization will result in a company initially contracting with Department of Defense but over time, the company will "spread its wings" and obtain other government and commercial workloads. This will spread overhead over a large base, thus, reducing costs to Department of Defense and all other customers. This business expansion though, assumes that Department of Defense and other work is performed in the same location and on the same equipment with a flexible work schedule that maximizes profitability. Current regulations limit this type of arrangement causing this type of co-location to be unprofitable.

3. *A Business that can be Created Quickly.* Again, employees will avoid risk and seek certainty. As the closure process drags (2 to 6 years) the very best workers will leave for a more certain future. If a private, interim use of the facilities could be commenced prior to closure, some of the employees might be willing to stay. In addition, a "limited" privatization could stand as a test case that would further demonstrate the viability of the private company and support the "likelihood of success." Current regulations make it extremely difficult to begin private workload on a base prior to closure.

4. *Long Term Employees Need Pension Portability.* Currently, public employees who have over approximately 15 years experience hold pensions that are unportable. A private company could not attract these employees with a cost effective rate without the employee losing significant benefits. The benefits can be matched for the younger employees (at Indianapolis they will receive a 10% increase) but vested amounts were assumed to be portable.

In summary, each of these issues needs to be dealt with legislatively in order for Department of Defense facilities to be privatized. The issues raised are extremely complex from a policy standpoint.

Privatization is an extremely complex issue. H.R. 1907, the Federal Aid Facility Privatization Act of 1995, may be extremely beneficial as it could potentially remove one of the biggest impediments to privatization - the requirement to pay back federal grant monies if an infrastructure asset is transferred from a state or local government entity to the private sector. On the other hand, in an environment where many local communities are experiencing severe financial difficulties, a situation could develop where local communities might sell infrastructure assets to meet cash flow requirements, but later approach the federal government for additional funding if the privatization effort fails.

In summary, do to the complexity of this issue, I would recommend that the Congress require a study to consider the issues in more detail. The study should be undertaken by a blue ribbon Commission, similar to the Advisory Panel which was assembled to evaluate the nuclear waste issue. This effort would assure that all of the important issues are adequately considered. The study could be completed in three to six months. The result would be well thought out recommendations for legislative changes.

Mr. Chairman, I agree with the basic premise that privatization has the potential to be extremely beneficial. However, due to the complex issues which are involved, much more thought should be given to legislative changes. Thank you for giving me the opportunity to testify.

Mr. HORN. Well, we thank you. Ms. Kelly, it's a delight to have you here, and glad to see somebody from the female side of the professional ledger testifying this afternoon.

Ms. KELLY. I see you noticed that, as well.

Mr. HORN. I noticed it.

Ms. KELLY. Well, good afternoon, or I should say good evening. I am Peggy Kelly. I'm a senior policy analyst with the Service Employees International Union. Thank you, Chairman Horn and the other members of the subcommittee for the opportunity to present SEIU's views on this legislation.

SEIU represents over 1.1 million members in both the public and the private sectors, including those who work as janitors, highway maintenance workers, airport personnel, wastewater treatment workers, prison guards, nurse aids, and school cafeteria workers. We are deeply concerned over the potential for widescale privatization of public infrastructure that this bill authorizes.

By permitting State and local governments to sell or lease Federal-aid facilities to the private sector, H.R. 1907 encourages the wholesale privatization of such essential Government facilities as roads, bridges, airports, waterways, schools, prisons, and hospitals.

The consequences of privatizing any or all of these assets could be devastating to a community. American taxpayers have invested in the Nation's infrastructure to serve the public interest, not to generate profit for private companies.

Other witnesses have already discussed the erosion of our physical infrastructure, but the solution to this decline is not to hand over Federal responsibility for financing infrastructure to the private sector. We believe, in fact, that the situation will only worsen if States and localities are enticed into selling off major public facilities to private companies in exchange for quick cash to settle debts or pay for other public services.

The bill says that the facility should continue to be used for its original purpose after it has been turned over to the private sector, but the definition of original purpose does not include every original condition of the grant.

This leads to the point that privatization is often used as a way to escape the statutory responsibility to abide by Government standards. As a result of privatization efforts, for example, safety, labor, and other standards could be relaxed, eliminated, or bypassed.

SEIU believes that the privatization of public assets is a recipe for disaster. It is bad policy for Government to turn over public facilities to private operators who place a top priority on making money, not protecting and serving the public. Privatization undermines the provision of quality public services, threatens public employment, and could imperil the public safety. Privatization also raises serious questions about public accountability and oversight.

These concerns are particularly grave when facilities dealing with such sensitive and life-essential matters as water treatment centers, transportation systems, and prisons are involved.

The supporters of this bill argue that public infrastructure needs massive investment, and since the Federal Government won't be forthcoming with the funds, States and localities must turn to the private sector. Private firms will put up the capital as long as they

can obtain a market rate of return, but in order to assure a market rate of return, the private sector will be inclined to raise user fees sky high.

In the event that a private firm cannot make a profit with a public facility, it may be forced into bankruptcy. Under such a circumstance, the Government and, ultimately, the taxpayers will be held liable. We could end up with a situation much like the savings and loans debacle, with the taxpayers forced to bail out the private firm.

When vital public services are at stake, the Government is always ultimately liable for the health and well-being of its citizens, whether or not it technically owns the facility in question.

Putting America's infrastructure on the auction block will only serve to harm ordinary American businesses, shippers, and communities by making public facilities more expensive and less accessible. Low-income households would be particularly harmed by the ensuing higher user fees. Imagine a low-income household whose trip to work could be doubled or tripled in cost if highways or bridge tolls get raised. Another downside to this bill is that States and localities will be tempted to sell off assets as a quick fix to their financial woes without addressing the underlying causes of their fiscal problems.

After years of selling off assets to balance their budgets, States and localities eventually could be faced with severe revenue shortfalls. A fiscal crisis could ensue after these stop-gap gimmicks of selling off assets run their course.

Moreover, this bill fails to address how the sale price for the assets is to be determined. Companies looking to buy these facilities cheap could take advantage of cash-strapped State and local governments and negotiate prices that are below the market value.

Under fiscal pressure, State and local governments may end up selling their assets to private operators for far less than the fair market value, thereby losing a great deal of money in the bargain.

I would like to conclude by saying that SEIU believes that the Federal Government should put a stop to any further efforts to privatize public facilities. We urge President Clinton to rescind Executive Order 12803 and to instruct the Federal departments to grant no waivers regarding Federal rights. This action would be more in the public interest than, we believe, enacting H.R. 1907 into law to expand and codify this Executive order. Thank you.

[The prepared statement of Ms. Kelly follows:]

JOHN J. SWEENEY
INTERNATIONAL PRESIDENT

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INTERNATIONAL SECRETARY-TREASURER

Testimony of

Peggy Kelly

Senior Policy Analyst
Service Employees International Union, AFL-CIO

Before the

Subcommittee on Government Management, Information and Technology

of the

Committee on Government Reform and Oversight

on H.R. 1907

The Federal-aid Facility Privatization Act of 1995

November 15, 1995

Good afternoon. I am Peggy Kelly, a Senior Policy Analyst with the Service Employees International Union (SEIU). Thank you, Chairman Horn and the other members of the subcommittee on Government Management, Information and Technology of the Committee on Government Reform and Oversight for this opportunity to present SEIU's views on H.R. 1907, the "Federal-aid Facility Privatization Act of 1995."

SEIU represents over 1.1 million members in both the public and private sectors, including those who work as janitors, highway maintenance workers, airport personnel, waste water treatment workers, prison guards, nurse aides, and school cafeteria workers. We are deeply concerned over the potential for widescale privatization of vital public infrastructure that this bill authorizes.

By permitting state and local governments to sell or lease federal-aid facilities to the private sector, H.R. 1907 encourages the wholesale privatization of such essential government facilities as roads, bridges, airports, waterways, schools, prisons, and hospitals. The consequences of privatizing any or all of these assets could be devastating to a community. American taxpayers have invested in the nation's infrastructure to serve the public interest, not to generate private profit.

In recent years, the United States has witnessed an unprecedented erosion of our physical infrastructure. Our highways and sewer systems are crumbling, bridges are collapsing, airports are overcrowded, and rail rights-of-way are in a state of disrepair. But the solution to this decline is not to hand over federal responsibility for financing infrastructure to the private sector. We believe, in fact, that the situation will only worsen if states and localities are enticed into selling off major public facilities to private companies in exchange for quick cash to settle debts or pay for other public services.

The bill says that the facility should continue to be used for its original purpose after it has been turned over to the private sector. But the definition of original purpose does not include every original condition of the grant. This leads to the point that privatization is often used as a way to escape the statutory responsibility to abide by government standards. As a result of privatization efforts, for example, safety, labor and other standards could be relaxed, eliminated, or bypassed.

SEIU believes that privatization of public assets is a recipe for disaster. Prior experience demonstrates that it is bad policy for government to turn over public facilities to private operators that place a top priority on making money, not protecting and serving the public. Privatization undermines the provision of quality public services, threatens public employment, and could imperil the public safety. And privatization also raises serious questions about public accountability and oversight. These concerns are particularly grave when facilities dealing with such sensitive or life-essential matters as water treatment centers, transportation systems, and prisons are involved.

The supporters of this bill argue that public infrastructure needs massive investment. The federal government won't be forthcoming with the funds, so states and localities must turn to the private sector. Private firms will put up the capital as long as they can obtain a market rate of return. But in order to assure a market rate of return, the private sector will be inclined to raise user fees sky high.

In the event that a private firm cannot make a profit with a public facility, it may be forced into bankruptcy. Under such a circumstance, the government -- and, ultimately, the taxpayers -- will be held liable. We could end up with a situation much like the savings and loan debacle, with the taxpayers forced to bail out the private firm. When vital public services are at stake, the government is always ultimately liable for the health and well-being of its citizens -- whether or not it technically owns the facility in question.

Putting America's infrastructure on the auction block will only serve to harm ordinary Americans, businesses, shippers and communities by making public facilities more expensive and less accessible. Low-income households would be particularly harmed by the ensuing higher user fees.

Although the bill says that the facility should continue to be used for its original purpose after it has been turned over to the private sector, it doesn't specify who is to determine how long a facility will be needed for its original purpose. Once privatized, facilities such as recycling centers, treatment plants, hospitals, and schools could be converted to other uses once the new owners determined that they are no longer needed for their original purpose.

Another downside to this bill is that states and localities will be tempted to sell off assets as a quick fix to their financial woes -- without addressing the underlying causes of their fiscal problems. After years of selling off assets to balance their budgets, states and localities eventually could be faced with severe revenue shortfalls. A fiscal crisis could ensue after these stop-gap gimmicks of selling off assets run their course.

Moreover, the bill fails to address how the sale price for the assets is to be determined. Companies looking to buy these facilities on-the-cheap could take advantage of cash-strapped state and local governments and negotiate prices that are below the market rate. Under financial pressure, state or local governments may end up selling their assets to private operators for far less than fair market value, thereby losing a great deal of money in the bargain. The statute states: "The state or local government shall be permitted to recover its capital investment, an amount equal to its unreimbursed operating expenses in any infrastructure asset, and a reasonable rate of return." The words "shall be permitted," however, offer no guarantee that the state will actually receive an adequate price for the facility.

As the committee members are aware, the Environmental Protection Agency recently approved the sale of a wastewater treatment plant in Franklin, Ohio to Wheelabrator, a subsidiary of Waste Management, Inc. In this case, the EPA ruled that the city need not reimburse the federal government and Wheelabrator is hoping for similar deals in other wastewater plants. Two major French firms are competing heavily in this field as well.

SEIU believes that the federal government should put a stop to any further efforts to privatize public facilities. We urge President Clinton to rescind Executive Order 12803 and to instruct the federal departments to grant no waivers regarding federal rights. This action would be more in the public interest than enacting H.R. 1907 into law to expand and codify this Executive Order.

Mr. HORN. Well, thank you. Let me start with a few questions here. Ms. Kelly, I take it your union, in its national conventions, has adopted a platform plank against privatization?

Ms. KELLY. Yes. We're certainly against efforts to privatize public services which will ultimately end up hurting public employees, who will end up losing their jobs.

One of the prior panelists talked about how his company made an effort to relocate or retrain or maintain the employees once the facility was privatized, but all too often, in our experience, if a public function is privatized, public workers lose their jobs and there is no accommodation.

And all too often, privatization is an effort for companies, in order to make a profit, they'll either have to raise user fees or cut back on labor costs—reduce wages, cut back on benefits, and so forth.

Mr. HORN. I take it, in the union's overall position on privatization, it's primarily with regard to governmental functions—let's say janitorial service or something—where the city government or county government or the Federal Government has gone in to take a segment of public employees and put their work out for bid. Is that basically the motive for opposing privatization, or have you had specific work with the airport-type or infrastructure-type situation?

Ms. KELLY. Well, as I mentioned, we represent public employees who work at many of these facilities, so they would be directly impacted. We have airport personnel. Many of them are the maintenance workers at those airports, but they would certainly be affected, or wastewater treatment workers or highway maintenance workers. So, in those cases, if this legislation is enacted, they will certainly be directly affected.

Mr. HORN. And that's because they would no longer be public employees, technically.

Ms. KELLY. They could certainly lose their jobs. There's no provision that the private employer would have to maintain those workers or would have to honor their collective bargaining agreements.

Mr. HORN. Yes, I was going to say, if they're privatized, your union would still accept them as members. Isn't that correct?

Ms. KELLY. Oh, certainly. Half of our members, or nearly half of our membership, is private.

Mr. HORN. Is private, right.

Ms. KELLY. We have nothing against private employees.

Mr. HORN. Right. Have you had any opportunity or have members of the Government relations staff had any opportunity to visit Toronto and see what the experience is since they've privatized an airport in Toronto? You cover Canada, as I remember don't you?

Ms. KELLY. We do have some members in Canada, as well.

Mr. HORN. Yes.

Ms. KELLY. Primarily health care workers.

Mr. HORN. Well, you might want to take a look at what they're doing up there and see if it meets some of your criteria, since the workers would be in your union, even though they're privatized.

Ms. KELLY. Although, believe me, we've had quite a bit of experience with the privatizing of public function, and there have been some cases where we've been able to, what we call, "follow the

work" and organize those workers, but all too often, it's too difficult to do, because the private company will cut the wages, cut the benefits. People are afraid for their jobs.

Mr. HORN. Well, but am I correct—you mentioned the repayment requirement in your testimony—your union is unalterably opposed to the idea of privatization, whether or not there's a grant repayment requirement; isn't that true? The idea disturbs you.

Ms. KELLY. Well, yes, we're opposed to this legislation, and, as I also mentioned, we would like to see the Executive order rescinded.

Mr. HORN. So you're just basically against privatization? You don't think it's a good idea, basically.

Ms. KELLY. Certainly in this context, yes.

Mr. HORN. Well, that's the same, in a sense, as the pilots of general aviation. They worry about an increase in fee. Change is dramatic; there's no question, and sometimes it goes awry. But I just wanted to get the philosophical background there.

Now, as I understand it, you're obviously aware of the budgetary restraints—because heaven knows, your members have suffered from some of that—that various governments operate under. Do you have any ideas as to the ways to harness the private sector investment to help build infrastructure, other than privatization?

Ms. KELLY. Well, certainly, we can explore partnerships working with the private sector. We're just opposed to cases where you have Federal taxpayers money, which was used to build these facilities, and now turning them over to the private sector.

Mr. HORN. Often, it's very little, comparatively, Federal money that's involved, and usually the locality has floated bonds or whatever. But there's no question that under the taxes that are levied on airlines like the gasoline tax, goes to the improvement of the airports, so you do have structures that incrementally have been improved by the Federal Government.

I don't know if you were in the room when the Pittsburgh airport was discussed. Now, apparently, they've added a major mall which would have a lot of people working and a lot of people coming there. That might not have happened if the Government were doing it.

So, in a sense, thousands of jobs have been created, and the welfare of the community has benefited. People who could be your members, as a matter of fact. I don't know if they are or they aren't, but have you had a chance to visit the Pittsburgh Airport at all?

Ms. KELLY. Well, yes, I have.

Mr. HORN. Have you? I mean are there some of your members there in some of those shops?

Ms. KELLY. To be honest, I don't know.

Mr. HORN. Well, it would be interesting to know because, again, it seems that there's a need for investment if you're going to have a job. You can't have jobs without somebody building the infrastructure where people work.

Ms. KELLY. I completely agree, but we would like to see that investment—I just don't want to see the Federal Government abdicating its responsibility for the public infrastructure to the private

sector. It still has an obligation, and so do States and localities, to fund these projects.

Mr. HORN. Well, it does, but it has got a $5 trillion debt, and they're cutting everything. Last year, the President wanted to cut out every public works project in the Nation that was not interstate, and it took an awful lot of persuasion from Members of both parties to get him off that kick.

I mean you think of vast States such as Texas, California, New York, where you've got watersheds completely within the State that historically have had Federal assistance, from the 1830's up, with Senator Benton. The railroads to the west wouldn't have been built without Federal assistance and private participation.

But that's what you do, regardless of who's President, Republican or Democrat, liberal or conservative, when you've got a tight budget. You start looking around, saying, "What can we slough off here?"

Ms. KELLY. Well, I'm sure that we could brainstorm with you.

Mr. HORN. Good. Well, I would welcome any suggestions. We'll keep the record open. Go ahead, get all the ideas you want. We welcome them.

So, anyhow, now, Mr. Grimm, you mentioned the possibility of the transfer of an asset to a not-for-profit or quasi-governmental agency. I agree that we ought not to limit the range of choices to the State and local governments.

Mr. GRIMM. Right.

Mr. HORN. How would the transfer to these entities increase the tax base of a local community?

Mr. GRIMM. Well, I don't know that it would increase the tax base to a local community. What I was saying was that there may be some not-for-profit entities that would be interested in taking some of these assets. The way you've written the bill, it appears to be limited just to private sector entities.

I don't know that you're going to do anything different with the tax base, so what you could do is you could transfer it to some type of a quasi-government corporation. What you're going to find in some of these privatization endeavors that may not be strictly applicable to infrastructure assets.

But if you wanted to get into, say, the panel that I served on, you would have had to have had a quasi-government agency because of the requirement for security clearances because you were nuclear.

There is probably some other areas that would be candidates for privatization where you would have to have a quasi-government agency. Where I was going was, this bill seems to be in a position where it could set a precedent, and all of those things in the language should be looked at.

Mr. HORN. Well, it's a good suggestion. I now yield to the gentlewoman from New York.

Mrs. MALONEY. Well, one of the statements that Ms. Kelly made earlier—you said something, to paraphrase, if I got you correctly—is that the central question is whether the Federal Government will abdicate its responsibility for public resources. That is, really, I think, the central question of what we're doing here.

If you think about it, you're taking not-for-profits, transferring them over to for-profits, which then will send some tax money back. But now it's for-profit, must make money, which means the impact on the citizens in our country, theoretically, will have to go up in their user fees or whatever.

So, you know, I have to think—it's the end of the day. I'm thinking philosophically, Mr. Chairman. So I just think that that's a question that needs to be answered, and I think that—well, actually, my good Republican colleague in the back just gave me a comment when I walked in. She said, when I was talking about the water flowing from State to State, one of the things we're trying to accomplish in New York is buying Sterling Forest and preserving a whole watershed area in upstate New York. But what that does is preserve the water for New Jersey.

To the extent that we preserve a whole vast area in New York State, the water stream goes through that down to New Jersey, which, then, New Jersey will sell that water. So, in a sense, we're all, in public resources, very intertwined in a Federal way, whether we like it or not. I just think there are a lot of questions to this that need to be answered.

One question that I have, personally—and you just touched on it earlier, when you talked about the President's reluctance to invest in infrastructure that was just in-state or in one particular State. I think one problem we see in the Federal Government is there's a lack of support for investment, anywhere. Instead of pulling back from the investment, it's making accommodations for ridiculous examples.

For example, the Grumman—I don't know if you were here earlier—Grumman buses. They gave the example where they couldn't sell them because all the money would be recouped to the Federal Government, so therefore they went through years of depreciating it and doing all kinds of things that got like a tenth of the value, eventually, for the city.

But certainly having some provisions that would exempt something such as a Grumman bus sale but not take away the whole theory of investment in infrastructure. For example, all of us watch where Federal dollars go in investment, and they want them to be fairly distributed. But if it was to the point that they were distributed and they weren't recouped back, I think you would have more of a reluctance for any spending of Federal dollars.

For example, I support parks and infrastructure development in other areas, in other States across the country, because I feel that my constituents eventually, when they travel around this world of ours, our country, are going to benefit. They're going to go to the beautiful Federal parks in other States; they're going to travel on their roads; they're going to go to their museums. It's an investment.

But if the investment then becomes an investment that belongs to that State or city which, then, they can just sell, I think there will be more of a reluctance of the Federal Government to invest in that particular area. It got so bad on the city council, before you could spend a dollar, we had formulas. Is it going equally to each district?

And I could see that type of thing happening. Instead of an infrastructure development fund in our country that looked at what was needed, they would say, "Well, we're going to have $10. We're going to divide it evenly with each representative for the infrastructure in their area, because there's going to be no recoupment if it's not used and you can sell it." So I could see that having that type of effect.

I think the hearing was very interesting. A lot of issues were raised, but I have a lot of questions, and I agree, really, with the testimony Mr. Grimm gave, that there are a lot of questions that need to be answered.

One of the things that I think we have to look at is that, philosophically, it's changing, really, the whole way you look at Government—this bill, in many ways—and it may have an unforeseen impact on the investment dollars that the public is willing to put forth.

But just to come back to reality and just ask a specific question, Ms. Kelly, based on your testimony, do you have any suggestions as to how this bill could assure protection of public employees of public facilities being privatized?

Ms. KELLY. Well, again, we're really opposed to the bill, so I'm a little cautious about offering, because I would rather—the one change I would like to see with the bill is that it be withdrawn.

But, in terms of privatization situations in the past that we've dealt with, one of the things that we've done to protect public employees, we have something which we call a right of first refusal, so that once the service, or whatever it happens to be, is now taken over by a private firm, they have to offer a position to the existing employees and allow them the right to refuse or to accept employment and to maintain the terms of the collective bargaining agreement for the remainder of the term of the agreement.

Mrs. MALONEY. On page 2 of your testimony, you state that "Prior experience"—and I'm quoting from your testimony—"demonstrates that it is bad policy to turn public facilities to private operators" that prioritized profits. Could you please discuss these prior experiences that you are talking about.

Ms. KELLY. Well, as I've mentioned, we've had numerous cases where public services have been privatized. I'm most familiar personally with some of our social services. We've had mental health services, welfare caseworkers, and so on, where these functions have been performed by experienced public employees who had years of experience and knew their jobs very well.

And then these functions were privatized, and the people then performing these functions were often very young, had very little experience, were being paid barely above the minimum wage, and would receive no benefits. So the clients also ended up suffering because they no longer got the benefit of having people work for them or providing them services who were experienced and knew what they were doing and also were adequately compensated.

Mrs. MALONEY. Thank you, Mr. Chairman.

Mr. HORN. Ms. Kelly, let me ask you. There's a number of rather innovative groups that we've had in this country for 100 years—some are more obvious now than they were 100 years ago—and that is employee stock ownership plans, both in getting money from

employees and, also, employee takeover of companies. United Airlines and others are good examples of these.

But on the employee stock ownership plans, what would you think of them as possible bidders for the infrastructure projects, where they go use their capital that they have in retirement funds, whatever?

For example, in my State of California—and I'm a 23-year member of it—the California PERS is the largest fund in America—private, public, nonprofit, whatever. They're in the market regularly. What would you think of one of those groups buying some of the infrastructure, taking it over to raise the capital? Would that be considered privatization for you?

Ms. KELLY. Well, I mean, if you were talking about a nonprofit organization, they wouldn't be driven by the profit in the same way that a private company would, although some of the other issues that I raised would still be a concern. I mean, as I said, what would happen if one of these organizations went bankrupt?

If they owned a vital public service, then what would happen to that service? We just can't see water production or something of that nature. So there are still—even though I would see something like that as being far preferable than turning it over to a private company just driven by profit, there are certain problems we would have to work out.

Mr. HORN. Well, what you have, of course, is when, once employees take over a company, they realize if you're going to expand, there must be some way that you get the capital, and you need to repay the cost of the capital. But the workers do rather interesting things when they take over.

I was interested when my colleague from New York mentioned the need to go from nonprofit to profit. That's what, I guess, dozens of health maintenance organizations have done in the last 10 years. They've moved from a nonprofit status to a profit status.

When you do that in California, the Department of Corporations says you must have an accounting firm go out and evaluate, in essence, what was your profit, even as a nonprofit.

And then you need to either get a plane and drop the money out of a plane over where you made it, or there's another option, you can create a foundation. And most of the HMO's have created a foundation to do good deeds and raise the value of health care here and there. Obviously, they also have somewhat of a motive to publicize their HMO.

Now, I don't know. It would be interesting to know whether there are better healthcare services now that nonprofits have gone to be for-profits as HMO's. There might be. They've raised more capital in the market; they can expand.

On the other hand, there might not be, because they might be holding their workers to a tighter standard, which maybe doesn't provide the preventive care that an HMO is supposed to be interested in providing. So it's hard to say. People do strange things, whether they're in governmental context, a corporate context, or a nonprofit context.

One Senator told me years ago—he said, "Steve, nonprofits are simply where they divide the profits among the staff." And I think

there's something to be said for that, they divide the profits among the staff, and we've seen a few cases nationally.

Let me ask you this, Ms. Kelly. You're pretty young, but did you ever have a chance to see East Berlin and West Berlin? Because, in a way, with Government running things—and that's why the infrastructure is a mess in some places—we will look, in a tight budget period, exactly like East Berlin looked for 40 years—drab, dull, bureaucratic, 20 years behind.

And you walk through the wire gates, with their cement blocks and everything else so you couldn't escape to freedom, and you go into West Berlin, and it's a live city. Things are happening. In a sense, it's an example, I think, of Government versus the profit motive. The profit motive was in West Berlin; it wasn't in East Berlin.

East Berlin was the shabbiest, dirtiest, rottenest place I think I've seen almost anywhere in the world, but certainly in Europe. It's too bad you won't have that experience, because, obviously, East Berlin is now trying to catch up with West Berlin. But it's a shock. At least it was a shock to this young person, when he was young.

Mr. Grimm, let's back to some of your testimony. You advocate the creation of a 6-month commission to determine the ramifications of privatization of a State or local asset. Given that there are a wide range of assets and a wide range of jurisdictions covered, what would be the mandate you would give this commission, and could it really do its job?

Mr. GRIMM. Well, the mandate would not be just to look at this particular issue that this bill takes up. I think the commission would, more importantly, look at this issue in context with all the other privatization initiatives that people are talking about.

I don't know that it's a 6-month commission, but I think that what you probably need are people coming from stakeholder groups that would be representative to take a look at this whole particular privatization process.

I mean this bill, I think, came to the forefront because it's probably the most logical first step, and there has been so many cities and counties that have said, "If we could only get rid of the requirement to pay back these grants, we could privatize them."

On the other hand, I don't think that the issues have been fleshed out enough.

Mr. HORN. What do you think some of the issues are?

Mr. GRIMM. Well, I think the first issues are what other legislation are you going to get in the way of? You don't have it saying "notwithstanding any other legislation."

I think what you're going to find is just like in the base closure area, that it looks pretty simple when you start looking at the bill, but you're going to find that there's all kinds of not only Federal but other State and local statutes that are going to be in your way when you try to do this.

I'm not commenting on the policy of the bill, but what I am commenting on is: You should know what those impediments are before you pass something and then find out that it may not be workable.

Mr. HORN. Well, isn't it true, though, that one Federal law that is passed after another Federal law supersedes that law? If there's

a Federal law. Now, you're saying there's also State and local impediments. I agree with you, there might be. Conceivably, Federal law supersedes State and local law. At least that has been the trend in the courts to interpret it.

Mr. GRIMM. Right. And then what you'll do is, yeah, it could supersede that. I'm not going to argue that. But then you might have a whole bunch of mad State and local people because you got into those issues.

I mean I'll comment that the—in something that I think you're familiar with, all of the prior amendment did not eliminate the requirement to take and return money to the base closure account, and you still got that big conflict in transferring property. I see the situation here where you could end up with the same types of things here, even though that was supposed to supersede it.

Mr. HORN. Well, you can also say that human beings can do strange things to buck any Federal mandate, and they start with the human beings in the Department of Defense and the Federal Government.

Mr. GRIMM. Right.

Mr. HORN. So they have an obligation, obviously, to clean the site. One, they don't provide the money, and two, whether they've ever asked Congress for more money, I'm not sure, but I doubt it. And so that, without question, those actions by people, if they aren't in good faith, can wreck any program, if there's no program.

Mr. GRIMM. But my recommendation was that I think that it needs to be looked at much more carefully.

Mr. HORN. Yes. Now, the task force you were on, was that the official name of it?

Mr. GRIMM. It was called the—let me get you the official name of it.

Mr. HORN. And this was the early 80's; right?

Mr. GRIMM. This was in 1983 and 1984, and it was the Congressionally Mandated Advisory Panel on Alternative Means of Financing and Managing Radioactive Waste Facilities.

Mr. HORN. And this panel did its job and made recommendations; right?

Mr. GRIMM. That's correct.

Mr. HORN. And they went to whom?

Mr. GRIMM. And they went to the Secretary of Energy, and then they went back to the Congress. It was a report to the Congress.

Mr. HORN. And what did the Secretary of Energy do about those recommendations?

Mr. GRIMM. The Secretary of Energy—I think if Don Hodel had stayed, he might have tried to do something, but the panel completed its report just as Don Hodel left and John Harrington came in. John Harrington, because of the resistance on the part of the program people and because the program people pointed out how much would have to be changed in legislation and everything else, chose to reject the recommendations of the panel.

Mr. HORN. Would some of the program people also have been put out of work by privatizing some of these facilities?

Mr. GRIMM. Well, I'm sure that some of them might have been put out of work, but, on the other hand, what likely would have happened is you would have hired some of the employees that were

already there. So I don't think it was a certainty that they would be put out of work.

Mr. HORN. You mentioned that the recommendations were also given to Congress, and they were transmitted by this group to the Congress.

Mr. GRIMM. Well, they were transmitted—I don't want to say something that's not true. I think they were transmitted by the Secretary of Energy.

Mr. HORN. I see.

Mr. GRIMM. To the Congress.

Mr. HORN. And did anything ever happen in the Congress?

Mr. GRIMM. Nothing ever happened in the Congress.

Mr. HORN. Nothing ever happened? Well, that's what worries me about commissions and task forces, is nothing happens. The Hoover Commission is one of the exceptions, because the President—President Hoover—was smart enough to set up a nationwide advisory group that kept the heat on by generating citizen interest all over the country and just kept going after Members of Congress.

The Grace Commission didn't have that. The Gore Commission—and I have suggested this to him. He thought it was a good idea, but he hasn't done anything about it. His NPR is not really going anywhere unless the President wants to take pen in hand and start implementing. That's the problem.

I mean it takes somebody to get the ball rolling. You can do it by law; you can do it by Executive order; you can do it by putting the money in the bill at one end of the avenue and the other and paying for people to do something. So I guess I'm not too keen on commissions at this point. It isn't just because it's—what?—6:25 p.m. That doesn't bother me; that's lunchtime.

Now, let me ask you this, Mr. Grimm. Isn't it a State or local responsibility to determine the policy implications of privatization of locally owned Federal-aid facilities at the State or local level? Why shouldn't they? They're the groups closest to the people. Isn't it State or local responsibility to determine the policy implications?

Mr. GRIMM. Yes, it is.

Mr. HORN. I mean if they're worried—for example, Ms. Kelly has a lot of unions there, and they've had a bad experience in terms of privatization of that service. The State might be much more sensitive, if you will, and the local governing officials, than the Federal level, because they're dealing with the problem. They see either people put out of work or people not made better off, and they might be very leery of doing this.

Mr. GRIMM. That is correct, and I think that, at the local level, that's where you'll essentially—I guess what I would say, would be your safeguard. From a public policy point of view and from some of the things that have been presented here would suggest that this may not be good public policy.

Mr. HORN. Now, in your testimony, you suggested that H.R. 1907 should be broadened to include the privatization of other Federal facilities or functions. Do you have any specific suggestions, other than a commission, as to how Congress or the administration ought to identify favorable opportunities for privatization? Or is your thinking only limited to having a commission study it in depth?

Mr. GRIMM. Well, I mean, I think there are certain functions that you could very quickly go through and determine. There are some that have been set up. The depots, such as Kelly Air Force Base and McClellan, have been set up as something that you could probably privatize, and they're right there.

But you need a lot of legislation, as I've pointed out in my testimony, to change a whole number of things in order to do that. Certainly things like, you've mentioned, the Patent Office which is probably one. I don't think it would be too hard, or take a commission, to go through and pretty quickly come up with what the right opportunities might be.

I think there's probably lots of what I guess I would call functions, such as nuclear waste disposal, that would be very conducive to privatization and where privatization would remove a lot of the bureaucracy so you could go forward and implement the program on a much more efficient basis.

I hope that my written testimony and what I've said here doesn't give the idea that I am against privatization. I happen to be very much for it. I just think that it needs to be much more thought out than it seemed to be from the context of this particular bill, based on a lot of the inconsistencies that I saw in it.

Mr. HORN. Well, your main inconsistency, now, you pointed out are between those two sections, I take it.

Mr. GRIMM. Right.

Mr. HORN. Were there some others?

Mr. GRIMM. There are some others, and I would be glad to submit that for the record.

Mr. HORN. Are you familiar with any cases where the reasonable rate of return has been defined, other than by public utility commissions. Which at the State level, when they're looking at rate changes, and they obviously look at the investment, and they want to encourage it to get infrastructure updated and they grant a rate increase to cover that cost of capital? Is there any other process where you've seen where that's defined, other than strictly market conditions?

Mr. GRIMM. I'm not sure. I think, in some instances, you might find water rates that might be subject to that if they're private companies, but I would be guessing. What I was more going to on that reasonable rate of return is the fact that you're going to end up with a Federal bureaucrat, based on the way this is set up, making the decision on what a reasonable rate of return is.

You've got the heads of these agencies that are going to have to make that determination, and what my fear is is that you can end up sitting in a room, as I've done many times, arguing over a very minute detail where a tenth of a point might make the difference between whether somebody is able to privatize something or somebody isn't, and I thought that that particular issue should be more thoroughly dealt with in the legislation.

Mr. HORN. Well, as you suggest, right now, in section 4, we say,

"The head of an executive department or agency shall approve a request if, (a) the state or local government demonstrates that a market mechanism, legally enforceable agreement, or a regulatory mechanism will insure that the infrastructure asset or assets continue to be used for their originally authorized purposes so long as needed for those purposes; and (b) the private party purchasing or leasing the infrastructure asset agrees to comply with all applicable grant assurances."

Then we go on with the use of the proceeds. So it's very separate from what the Secretary considers at the time of the decision, and when you go down to use of the proceeds, which is where you found some problems with the language—and there's no question that sometimes we have euphemisms that leave large filing cabinets for the executive branch to go through and interpret it because we didn't interpret it for one reason or the other.

It says, "The state or local government may use proceeds from the privatization of an infrastructure asset to the extent permitted under applicable grant assurances and provisions." Those would tie back, obviously, to some of the grant assurances that have been made, I assume, by the Federal Government.

Mr. GRIMM. Right.

Mr. HORN. And I see where you're talking about tightening it up, because if they are to be also inclusive of something that the State government might by law declare, since there's a State interest in, for example, the Port of New York authority, between the Governors of New Jersey and New York, or in California, where the San Francisco Port and the railroad, for example, there is a State entity. All of that should have been privatized 100 years ago, and San Francisco wouldn't be last on the Pacific Coast.

But notwithstanding any other provision of law, the State or local government shall be permitted to recover its capital investment, an amount equal to its unreimbursed operating expenses in any infrastructure asset and a reasonable rate of return. Now, I think you're right. Much of that needs to be spelled out, a lot more.

Mr. GRIMM. And going further into the other example that I could really see myself, if I was representing somebody, sitting in a room for 2 weeks arguing over one sentence because it wasn't tight enough. You've got this, under section 4, the bill reads, "Continued to be used for their originally authorized purposes, so lo as needed for those purposes." And the question would become, when you sat in the context in the context of whether you could get a dual use, because it would probably be the other side of the dual use, the private side of the dual use, that would attract the capital to essentially use the asset.

I can see sitting down across the table for a week, arguing about how long it would be needed for those purposes, because I've been through it probably 20 times on the other side with the executive branch agency.

Mr. HORN. Ms. Kelly, if your union ever needs another negotiator, you might think of Mr. Grimm to get into some of those sessions. He's willing to spend weeks on three words. That's what wins contracts.

You raise some good points there, and if either of you, or any of the witnesses, have any other suggestions, we would welcome them. We might as well get all the questions out on the table now.

Mr. Brasher tells me that antitrust economists have a definition of reasonable rate of return at the Federal Trade Commission's Bureau of Competition, so there are a lot of views, I'm sure, with long case histories, both administrative and judicial.

I don't have any more questions. I guess the minority doesn't have any more questions. We thank you both for coming. Sorry to keep you so late, but it has been very useful.

And I want to thank, before we close out the hearing, the majority staff. Russell George, staff director; Mr. Brasher is to my left, the professional staff member that developed the hearing; Mr. Polzak, in his second-to-last hearing with this committee, is a legis fellow from the Department of the Army; Mr. Richardson in his 10,000th hearing to go, from the committee, who sets all these things up very efficiently.

The minority staff—Miles Romney and Don Goldberg, and, then, the official reporter, Jan del Monte. So we thank you all.

With this, the hearing is adjourned.

[Whereupon, at 6:35 p.m., the subcommittee meeting was adjourned.]

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