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PROTECTING COMMUTERS: ENSURING ACCOUNTABILITY AND OVERSIGHT IN TOLLING

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE INFRASTRUCTURE, SAFETY, AND SECURITY

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

APRIL 18, 2012

Printed for the use of the Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

80–594 PDF WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
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ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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PROTECTING COMMUTERS: ENSURING ACCOUNTABILITY AND OVERSIGHT IN TOLLING

WEDNESDAY, APRIL 18, 2012

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND
MERCHANT MARINE INFRASTRUCTURE, SAFETY, AND SECURITY,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:06 a.m. in room SR–253, Russell Senate Office Building, Hon. Frank R. Lautenberg, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Good morning and welcome all of you, and I appreciate the fact that our witnesses have joined us this morning. We've got a lot to think about in terms of how toll revenues are derived. What's the effect on them on the present infrastructure? Does it enable us to maintain a currency in the functioning of these facilities? So, I'm pleased that you're here, and our Subcommittee on Surface Transportation is the subcommittee that's holding this hearing, and the purpose is examining toll policies throughout the country.

With budgets tight and transportation infrastructure crumbling, states are desperately seeking revenues to fund transportation programs. For as long as highways have existed, tolling has been a source of funding for projects and states are increasingly looking to tolling to support new infrastructure projects. Tolling, if done in an open and fair manner, can have economic benefits for a region; however, as we have seen recently, when authorities are not serving the public interest, drivers and the public pay dearly.

We've seen tolling authorities in Maine, Florida, and Pennsylvania involved in various scandals and cases of corruption, and in my home state, in our home state of New Jersey, we have reached crisis levels.

Now, I'm not against tolling, nor am I against tolling authorities. I am proud to be a former commissioner of the Port Authority of New York and New Jersey. The Port Authority has built some of the greatest transportation projects in our country. These projects changed the Northeast, and New Jersey would not be the vibrant state it is today if we failed to make these investments. But when I was a commissioner, the toll to cross our bridges and tunnels was

$2. In today's money, it would be slightly more than $5. But today, the Port Authority tolls are out of control. It now costs $12 to cross between New Jersey and New York, and it's short of a mile long, the George Washington Bridge.

When it costs $12 to drive your car across a bridge in America, something is wrong. Now, the toll increase that we've just seen from the Port Authority took the toll from $8 to $12. Now, if one goes to work every day, crossing that bridge, it's an $80 a month, roughly, increase in costs, besides the fact that people, when they get there have the cost of parking, et cetera. It's an enormous cost on those who are working and commuting to their jobs.

Worse yet, there are allegations of patronage and dysfunction at the Port Authority that leaves drivers wondering what they're paying for. And the process that led to these toll hikes took place largely behind closed doors. The public was given conflicting information about the reason for the toll increase, and at the very least, people deserve to know exactly what their money's going for, and that it will be spent well.

Questions were also raised about who was involved in the decision to raise tolls and when they approved the toll increase. Voters can't hold elected leaders accountable for their unpopular decisions when those leaders are hiding behind closed doors.

There has also been an allegation of out-of-control political patronage at the Port Authority where substantial positions, with six-figure salaries, were given to former political bloggers, local mayors, and others with questionable credentials. No wonder an independent auditor called the Port Authority of New York and New Jersey, and I quote him, "a challenged and dysfunctional organization."

Unfortunately, this isn't the end of the bad news for New Jersey commuters. A recent New Jersey comptroller investigation revealed major abuses at the Delaware River Port Authority in South Jersey. According to the State comptroller, DRPA wasted millions of toll revenues by allowing the Authority to be used like a personal ATM for those with connections to the commissioners. Half a million dollars of toll money went to an insurance brokerage firm that did no work for the Authority. Half a million dollars, for no work. And millions more were directed to economic development projects that provided no transportation or economic benefits. As interest in tolling expands across the country, we've got to examine the practices of these authorities and ensure proper oversight.

Now, whether it's the ability of commuters to get to work or the ability of freight to move on our highways, these tolls have an enormous impact on our lives, and should face rigorous scrutiny. It's our job to ensure that the tolls are just and reasonable, and that future tolls are imposed with proper protections in place for commuters. And that's why I called for a GAO study to examine the practices of intrastate tolling authorities and introduced the Commuter Protection Act to restore Federal oversight of tolling practices.

I look forward to hearing from our witnesses on current tolling practices, and what we can do to take steps to improve oversight and accountability. And I'm pleased to be joined here today with our colleague, Senator Wicker.

[The prepared statement of Senator Lautenberg follows:]

PREPARED STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY

Good morning. I'd like to thank you all for joining us this morning for a hearing of the Senate Subcommittee on Surface Transportation to examine tolling practices in the United States.

With budgets tight and transportation infrastructure crumbling, states are desperately seeking revenues to fund transportation projects.

For as long as highways have existed, tolling has been a source of funding for projects, and states are increasingly looking to tolling to support new infrastructure projects.

Tolling, if done in an open and fair manner, can have economic benefits for a region. However, as we have seen recently, when authorities are not serving the public interest, drivers and the public pay dearly.

We have seen tolling authorities in Maine, Florida, and Pennsylvania involved in various scandals and cases of corruption. And in my home state of New Jersey, we have reached crisis levels.

Don't get me wrong: I am not against tolling, nor am I against tolling authorities. I am proud to be a former Commissioner of the Port Authority of New York and New Jersey.

The Port Authority has built some of the greatest transportation projects in our country.

These projects changed the Northeast, and New Jersey would not be the vibrant state it is today if we had failed to make those investments.

But when I was commissioner, the toll to cross our bridges and tunnels was two dollars. In today's money, that would be slightly more than five dollars.

But today, Port Authority tolls are out of control. It now costs twelve dollars to cross between New Jersey and New York.

When it costs twelve dollars to drive your car across a bridge in America, something is wrong.

Worse yet, there are allegations of patronage and dysfunction at the Port Authority that leave drivers wondering what they are paying for.

And the process that led to these toll hikes took place largely behind closed doors, and the public was given conflicting information about the reason for the toll increase.

At the very least, people deserve to know exactly what their money is paying for, and that it will be spent well.

Questions were also raised about who was involved in the decision to raise tolls, and when they approved the toll increase.

Voters can't hold elected leaders accountable for their unpopular decisions when those leaders are hiding behind bureaucrats.

There have also been allegations of out-of-control political patronage at the Port Authority, where substantial positions with six-figure salaries were given to former political bloggers, local mayors, and others with questionable credentials.

No wonder an independent audit called the Port Authority of New York and New Jersey a "challenged and dysfunctional organization."

Unfortunately, this isn't the end of the bad news for New Jersey commuters—a recent New Jersey Comptroller investigation revealed major abuses at the Delaware River Port Authority in Southern New Jersey.

According to the State Comptroller, DRPA wasted millions of toll revenue by allowing the Authority to be used like a personal ATM for those with connections to the commissioners.

Half a million dollars of toll money went to an insurance brokerage firm that did no work for the Authority, and millions more were directed to economic development projects that provided no transportation or economic benefits.

As the interest in tolling expands across the country, we must examine the practices of these authorities and ensure proper oversight.

Whether it's the ability of commuters to get to work or the ability of freight to move on our highways, these tolls have an immense impact on our lives and should face rigorous scrutiny.

It is our job to ensure that existing tolls are just and reasonable, and that future tolls are imposed with proper protections in place to protect commuters.

This is why I have initiated a GAO study to examine the practices of interstate tolling authorities, and introduced the Commuter Protection Act to restore Federal oversight of tolling practices.

I look forward to hearing from our witnesses on current tolling practices and how we can take steps to improve oversight and accountability.

Senator Wicker, your opening statement, please.

STATEMENT OF HON. ROGER F. WICKER, U.S. SENATOR FROM MISSISSIPPI

Senator WICKER. Thank you very much, Mr. Chairman. And thank you to our distinguished panelists today. Tolling is an issue that deserves the attention of this subcommittee, particularly as we continue to push for a long-term transportation reauthorization. Tolling should be part of this discussion, as it is an important part of how we fund and maintain some of the nation's most critical transportation projects.

This committee has historic jurisdiction with regard to the tolling of bridges and tunnels, and that will be the focus of today's hearing. But, clearly tolling and user fees have a much wider application in funding transportation infrastructure. With an economy that is still struggling to regain its footing, it is of the utmost importance that the nation's drivers not be subject to unfair or overly burdensome toll rate increases. Likewise, our nation's trucking industry has an interest in ensuring that toll rates are set at an appropriate level, especially as the trucking sector seeks to remain competitive, with gas prices continuing to climb upwards.

I think it's also important that we maintain the states' prerogative to set proper toll rates. So, I'm interested in hearing perspectives from all the witnesses on this morning's panel about the various proposals for tolling regulation.

I supported the Senate's bipartisan transportation reauthorization bill, and I look forward to going to conference with the House, we hope, on this critical legislation. Not only do major transportation projects generate economic activity for decades to come, but they also put people to work immediately in the construction industry, an industry that is suffering the effects of our slow economic recovery.

Looking ahead, we must start thinking about a longer term bill that will take transportation funding beyond 2013. Historically, transportation bills have been 6 years in length, and I'm hopeful we will move back to that longer model in the next Congress, so that states can once again have the certainty for planning that comes with a longer term reauthorization. This approach will present challenges and difficult choices for lawmakers, particularly, as revenues flowing to the highway trust fund flatten and even decline.

I expect we will continue to have hearings in this subcommittee that will inform the many decisions that must be made to pass a longer term bill, and today's hearing on tolling is a good start.

Thank you, Mr. Chairman.

Senator LAUTENBERG. So, we have today's witnesses. We are pleased that you're here, and look forward to hearing from you.

Mr. Bill Baroni has a significant position in the management of the Port Authority of New York and New Jersey. It's a great agency. And we're expecting that we'll have a chance to discuss the Port Authority's tolling practices. Chris Plaushin, Vice President of Public Affairs for AAA, and he'll be discussing the impact of tolling on

the traveling public. Steve Grabell, Chief Financial Officer, National Freight. We look to you, sir, for the trucking industry's perspective. And Mr. Conti, Eugene Conti, is North Carolina's Secretary of Transportation. And we look forward to your testimony on behalf of the American Association of State Highway and Transportation officials.

And with that, Mr. Baroni, please.

STATEMENT OF BILL BARONI, DEPUTY EXECUTIVE DIRECTOR, PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Mr. BARONI. Thank you, Chairman, and thank you, Senator Wicker. Senator Wicker, I have to apologize. It is very rare to come to the U.S. Senate and be able to address the Chairman with a title even greater than Senator, and that is, of course, Commissioner Lautenberg. It is good to see you. Commissioner Lautenberg spent 4 years at our great Port Authority. And Senator, thank you for giving me the opportunity to be here, and I look forward to our discussion on a number of topics that you raised.

But, as you said, back in the summer of 2011, the Port Authority did, indeed, face a crisis. We faced a crisis, because over the years preceding that, decisions were made and the economy reached a point where the revenues at the Port Authority were down $2.6 billion. Our activity levels at our crossings were down. We had decades of wasteful spending that preceded us. Our cost of borrowing was up.

We'd invested in the decades leading up to my arrival at the Port Authority. We'd invested in real estate investments that, quite frankly, were either losing money or certainly a drain on the agency, and we had a series of Federal mandates, largely unfunded, that caused the Port Authority to get to the point where we were facing a crisis. And we did everything we could to push that decision back.

We had three straight flat operating budgets. In fact, since Governor Christie came into office, the actual operating expenses year to year, since I got the Port Authority, is down $33 million. We've the lowest number of full-time employees at the Port Authority since the 1940s. Since I came into office with Governor Christie and Chairman Sampson, we have 243 less people working at the Port Authority. We've cut $10 million out of the salary line in the—but even with all those decisions, we still face looming transportation questions.

We had a Bayonne Bridge. We have a Bayonne Bridge. And Senator, you and Senator Menendez, Senator Schumer, and Senator Gillibrand jointly signed a letter urging the Federal Government to help us raise that Bayonne Bridge. The Goethals Bridge, linking Elizabeth and Staten Island, anybody's who's ever driven it knew we needed to work to spend well more than $1 billion.

The Lincoln Tunnel Helix that takes people into the Lincoln Tunnel each and every day needed to be rehabbed. It hadn't happened in 70 years. The George Washington Bridge, the most iconic bridge, perhaps, certainly, in the world, the suspender ropes, and the project needed $1.8 billion of capital spending.

The Harrison PATH station built in 1930s, anyone who's traveled—in fact Mayor McDunn and I were there in Harrison. You look at that train station. We need to build a new one.

We are a state of good repair projects. Christopher Street PATH Station needed a new substation. We had to do all that. And at the same time, we had thousands of men and women, construction workers, iron workers, bricklayers, operators, laborers who needed jobs. And the projects that we were prepared to do, that we didn't have the money to do, would employ 16,000 people. So, we were forced to propose a toll increase.

But, we didn't just do a blanket toll increase as agencies, and, quite frankly, the Port Authority had done in the past. We tried to create a progressive tolling structure that valued the things that we look for in New York and New Jersey. We wanted to increase E-ZPass driving. We wanted to encourage carpooling. We wanted to encourage people to drive green cars. We wanted to encourage our truckers to travel off-peak or overnight. So, we created a tolling structure that gave discounts.

Right now, under our tolling structure, if your car, and you drive during peak E-ZPass, you get a 21 percent discount. If you drive off-peak, it's a 37 percent discount. If you've got a green car, 67 percent discount. If you're in a carpool, 71 percent discount. For people who use the Staten Island bridges multiple times, 50 percent. And for our trucks, as we know, trucking drives much of our economy in New York and New Jersey, if you're a truck today, and you've got an E-ZPass, and you drive off-peak, it's a 31 percent discount.

If you drive during peak, 23 percent discount, with an E-ZPass. If you drive overnight with an E-ZPass, it's a 42 percent discount. And if you do more than 100 trips of big business, like my friend here, you're going to get an extra 10 percent. We did that. We did that, because we know how difficult this is, and we built a process for that toll, and I know, Senator, you mentioned it, the most number of public hearings ever for a Port Authority toll increase, we had 10 public hearings, an online public hearing, more than 1,500 people turned out, more than 500 people spoke. And what resulted? A toll plan that's going to put 16,000 people to work, a toll plan that's going to fix that infrastructure, a toll plan that values environmental justice, values E-ZPass, values green pass, values carpool, and we did it in the most open and transparent ever in the history of the Port Authority. That is a process that worked.

It's hard to raise tolls. It's difficult to raise tolls. It is harder to have the George Washington Bridge suspender ropes needing to be replaced. It's harder not to have the Lincoln Tunnel Rehab for the Helix. It's harder to have a Harrison train station that's not disabled accessible. That's what we did, and we did it in an open and transparent manner.

I look forward to the questions.

[The prepared statement of Mr. Baroni follows:]

STATEMENT OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

The Port Authority of New York and New Jersey is a bi-state agency under the leadership of New York Governor Andrew Cuomo and New Jersey Governor Chris Christie. The agency was created in 1921 to build, operate and maintain many of

the busiest and most important transportation facilities in the region, including some of the country's largest airports, the East Coast's largest seaport, six major bridges and tunnels and the PATH rapid transit system linking the two states. The agency also owns the 16-acre World Trade Center site.

As an agency that does not receive tax dollars from either state, our primary source of revenue to operate and maintain this interstate transportation network is through the tolls we collect on our bridges and tunnels, which is the subject of today's hearing along with the transparency and accountability issues that come with being a toll-collecting agency.

In September 2011, at the request of both governors, the Port Authority's Board took unprecedented action by forming a Special Committee to conduct a full review of the authority's past and current governance, management and financial practices. This comprehensive review looked at how this 91-year-old agency could do the public's business better, smarter and more cost efficiently. Its overall goal was to identify ways for the agency to continue to carry out the agency's mission of job creation and economic growth and to meet its responsibilities to maintain and operate its critical transportation facilities.

The results of the first phase of this review were made public in February 2012—during a very open and transparent process—and resulted in significant reforms in how this agency conducts its business.

These reforms, led by our bi-state and bi-partisan Board of Commissioners, have included historic changes in compensation and benefits, which will save the agency and its toll payers $41 million dollars over the next 18 months; a new Freedom of Information code, which streamlines the process of the public receiving information; the creation of the Port Authority Transparency Project, which has already posted more than 20,000 pages of documents online; a pilot program that waives fees for the public to receive public records, something perhaps no other government or public agency in the Nation is doing; a complete review and restructuring of the Port Authority Security structure to ensure our commuters and customers continue to be safe; and the posting of all compensation of employees and retirees.

These and dozens of other reforms are the hallmark of a new Port Authority that values its toll payers' hard earned dollars, while also ensuring we meet our unique and critical role of building the region's infrastructure and providing economic growth and job creation.

The PA is embarking on an extraordinary period of mission critical projects including: a new Goethals Bridge; raising the roadway on the Bayonne Bridge; a rehabilitated Lincoln Tunnel Helix; the replacement of the George Washington Bridge suspender ropes; a new PATH station in Harrison, NJ; a new George Washington Bridge Bus Station in upper Manhattan; hundreds of millions of dollars in road and bridge projects on both sides of the Hudson; and the completion of the World Trade Center.

Our goal is to accomplish these objectives with full transparency to enable our toll payers to measure and judge the progress we are making to create a better travel experience for them. We also will strive to fulfill our mission as an engine for job creation and economic growth, which will benefit the millions of people who live and work in this bi-state region.

This is a new day at the Port Authority, and we will continue our ongoing efforts to keep our customers informed every step of the way as we do the public's business.

Senator LAUTENBERG. You're finished with your testimony?

Mr. BARONI. Senator, the good folks who talked to me said when that five minutes hits, I should stop.

[Laughter.}

Mr. BARONI. And I'm going to listen to the directions I'm told. When Ian tells me five minutes and shut up, I'm going to shut up.

Senator LAUTENBERG. We have not said that yet. Anyway, if you've completed the testimony that you wanted to bring to it.

Mr. BARONI. Well, Senator, I'm happy to continue. I wanted to condense it.

Senator LAUTENBERG. No. I mean, but we——

Mr. BARONI. They instructed me that you have more questions for me.

Senator LAUTENBERG. We just used your extra time, so——

Mr. BARONI. OK. Thank you, Senator.

[Laughter.]

Senator LAUTENBERG. We'll go on now to our next witness.

Mr. Grabell, we'd like to hear from you, and get your view on the trucking industry's perspective.

STATEMENT OF STEVE GRABELL, CHIEF FINANCIAL OFFICER, NFI, ON BEHALF OF THE AMERICAN TRUCKING ASSOCIATIONS (ATA)

Mr. GRABELL. Thank you. And I'll try to subscribe to my five-minute limit as well, Bill.

Chairman Lautenberg, Senator Wicker, thank you for inviting me to testify on behalf of the American Trucking Associations. As the CFO of a diversified trucking company, with extensive operations in the Northeast and the Mid-Atlantic, I'm deeply concerned about the significant increases in toll costs that have been imposed on NFI and other trucking companies over the past few years.

Last year alone, my company paid $14 million in tolls. These added costs have forced us to reroute our trucks to less efficient secondary roads, which raises our costs and increases congestion and safety concerns.

In addition to the impact increased tolls have on logistics providers, the added costs associated with toll increases filter down to the consumer and affect business decisions regarding hiring, and facility locations, and equipment, and expansion.

The trucking industry recognizes that the resources available for highway maintenance and improvement are well short of what is needed, and we are willing to contribute more, provided the money is invested wisely. However, we do not believe that tolls are necessarily an efficient way to fund highway projects, particularly when they're imposed on previously toll-free highways.

We are especially concerned when tolling authorities use toll revenue for projects and programs that contribute little or no value to the motorists who are paying the fees. Unfortunately, some of these authorities have demonstrated a disregard for their customers in terms of rate-setting practices, governance, and expenditure of toll revenue. At least where toll facilities serve interstate traffic, we believe that Federal oversight and possible intervention in determining toll rates is necessary and appropriate.

While there are many examples of irresponsible actions by tolling authorities that merit Federal attention, I would like to cite two examples which have been brought to light by recent state audits: The Port Authority of New York and New Jersey, and the Delaware River Port Authority.

Last year, the Port Authority of New York and New Jersey announced massive increase in toll rates on its six bridges and tunnels connecting New Jersey and New York City. By 2015, the cash truck toll rate will increase by 163 percent, to $105. This is nearly three times greater than the country's next highest bridge toll rate.

Throughout the process of instituting the rate increases, the Port Authority's public involvement and disclosure practices were visible. During its so-called public outreach process, the Port Authority did not disclose how the additional revenue will be spent, and to this date has refused to make that information public. It appears, however, that the vast majority of the revenue will be directed to

projects that have no benefit for toll payers. Instead, most of the money will be used to benefit seaports and airports, and to complete the reconstruction of the World Trade Center office buildings.

Mr. Chairman, a recent audit described the Port Authority as dysfunctional, and questioned management's ability to effectively and prudently operate the organization. It's clear that Federal oversight of the Authority, which is created through interstate compact by Congress, is necessary and appropriate.

If possible, the Delaware River Port Authority, also a federally-authorized body, may be even more dysfunctional, and similarly in need of Federal oversight, of course, until Bill got involved. According to a recent audit, for a period of at least 10 years, the Authority violated many of its own policies and procedures, particularly those related to its spending practices. The audit also suggested that State officials, who were supposed to be providing oversight, were instead benefiting from these violations, and had little incentive to prevent these practices from occurring.

We are most concerned about the expenditure of $440 million in economic development funds at the expense of critical bridge maintenance and improvement projects. These expenditures are in direct violation of the Authority's compact, which prohibits expenditure of funds on economic development projects if sufficient money is not available for bridge projects. In fact, the Authority actually had to take on additional debt to pay for the economic development projects, even as it was cutting back on funding for bridge projects.

Mr. Chairman, we greatly appreciate your introduction of the Commuter Protection Act, which was cosponsored by Senator Menendez. ATA believes it is a significant step towards ensuring better oversight of tolling authorities that serve interstate traffic. Congress has an obligation under the Constitution's commerce clause to ensure that interstate travelers, who may not be represented when rate setting and spending decisions are made, to have a voice in these processes.

And as such, since the early part of the 20th century, Federal law has required that toll rates for certain bridges should be just and reasonable. Unfortunately, and unintentionally, the authority to enforce this requirement has eroded. The Commuter Protection Act will correct its oversight.

We look forward to working with the Subcommittee to pass Federal legislation that curtails tolling authority abuses and ensures that the public is treated fairly, with a transparent process that takes the interest of interstate travelers into account.

Thank you.

[The prepared statement of Mr. Grabell follows:]

PREPARED STATEMENT OF STEVE GRABELL, CHIEF FINANCIAL OFFICER, NFI, ON BEHALF OF THE AMERICAN TRUCKING ASSOCIATIONS (ATA)

Introduction

Chairman Lautenberg, Ranking Member Wicker, and members of the Subcommittee, thank you for giving me the opportunity to testify on behalf of the American Trucking Associations (ATA). The American Trucking Associations is the largest national trade association for the trucking industry. Through a federation of other trucking groups, the industry-related conferences and its 50 affiliated state trucking associations, ATA represents more than 35,000 members covering every type of motor carrier in the United States.

My name is Steve Grabell and I am the Chief Financial Officer for National Freight, Incorporated, more commonly known as NFI. NFI offers a complete range of transportation and distribution services throughout the United States and Canada, including dedicated trucking, non-asset based transportation services, public and dedicated warehousing, and other supply chain and logistics services. NFI is based in New Jersey and has total annual revenues of approximately $1 billion. More than 50 percent of NFI's trucking revenue is generated in the Mid-Atlantic and Northeast regions of the U.S., where tolls are most prominent. NFI operates approximately 2,000 tractors and 7,000 trailers and about 20 million square feet of warehouse space.

Mr. Chairman, we are very concerned about the irresponsible behavior of some tolling authorities which, along with complicit state officials, seemingly view toll revenue as a slush fund for investment in all manner of projects, programs and activities which have nothing to do with maintaining their highways, bridges and tunnels. We believe that these toll facilities must be subject to Federal oversight, and the statutory "just and reasonable" toll rate standard that has been in effect for nearly a century must be applied to toll facilities that serve interstate traffic. Furthermore, Federal enforcement authority, whether through judicial review, Executive Branch oversight, or a combination of the two, must be restored. Absent such action, consumers and businesses will be compromised by unfair costs and a highway system that is less efficient and less safe.

The Impacts of Tolls on NFI

Due to our considerable operations in the Northeast and Mid-Atlantic, NFI bears a significant toll burden. In 2011 alone, we paid approximately $14 million in tolls. Tolls represent the fourth largest expense category for our trucking fleet, behind the cost of our drivers, trucks and fuel. In the event of increases in tolls, we are able to pass on to our customers in any given year, 50 percent to 80 percent of these increases, depending on contractual commitments, market conditions and the particular freight lanes. Regardless, there will always be a portion of our toll cost increases that we cannot collect from our customers. For example, when the marketplace may not accept, or may delay the acceptance of, the additional pricing for necessary empty miles run by our trucks without customer freight. The additional costs, administrative burdens, as well as customer frictions created by the toll increases, compromise margin and customer satisfaction in an already low margin, highly competitive business.

Our customers, ultimately, bear much of the costs of tolls, and of course, they attempt to pass the costs on to their customers, which eventually filter through to the consumer of the product. This impacts the customers' cost of doing business and creates additional uncertainty regarding these companies' ability to continue to operate in the Northeastern part of the U.S. and other areas of the country that impose tolls on major freight routes. It should be no surprise that companies have relocated to more business-friendly locations. Toll costs certainly contribute to these decisions. It is also important to recognize that individual toll facilities do not exist in a vacuum. Because of other recent increases in the Northeast, by 2015 a trip from Baltimore to New York City will cost a 5-axle truck more than $209 in tolls. To put this into perspective, the tolls could represent more than 20 percent of the charge to a customer for this move and would make tolls as a cost component more expensive than the cost of a driver, truck or fuel for this trip. This will be a serious consideration for businesses who are considering their future plans, including in states served by the I–95 corridor which do not impose tolls.

Due to these recent major toll rate increases in our service area, we are in the process of reviewing all of our major lanes in the Northeast to evaluate rerouting to avoid tolls. We have some success avoiding, for example, the New Jersey Turnpike. We have to measure the cost savings of the tolls relative to costs associated with the out-of-route miles. Unfortunately, to avoid tolls, we are creating additional mileage and congestion on non-toll roads which in some cases may be less safe. Obviously we prefer to use Interstates as much as possible, but we operate in a competitive industry with low average profit margins, and when toll authorities raise their rates to a certain threshold, we have no choice other than to find a less expensive alternative. Tolls distort the marketplace by penalizing those vehicles that stay on the toll roads and rewarding those that divert to local roads. As a result, efforts to raise money for toll facility maintenance and improvement have the unintended, yet predictable, effect of adding to the maintenance costs of diversionary routes. In some cases these routes are outside of the state where the toll facility is located.

Some Toll Authorities Have Abused the Public Trust

Mr. Chairman, while there is significant evidence of toll authority abuse in many locations, we would like to highlight two recent examples: the Port Authority of New York and New Jersey (PANYNJ) and the Delaware River Port Authority (DRPA).

Port Authority of New York and New Jersey

A January 31, 2012 audit report[1] of the PANYNJ found "a challenged and dysfunctional organization suffering from a lack of consistent leadership, a siloed underlying bureaucracy, poorly coordinated capital planning processes, insufficient cost controls, and a lack of transparent and effective oversight of the World Trade Center (the "WTC") program that has obscured full awareness of billions of dollars in exposure to the Port Authority." The report found that the PANYNJ had accumulated debt of $19.5 billion by the end of 2011, which is projected to rise to $20.8 billion by the end of 2012.

In order to fund a 10-year, $25.1 billion capital plan, in 2011 the PANYNJ announced a massive toll rate increase on the six interstate bridges and tunnels between New York and New Jersey under its jurisdiction. By 2015 the cash toll rate will increase by 88 percent for cars and a whopping 163 percent for 5-axle trucks. This is on top of a 75 percent increase in truck tolls passed just three years earlier. At $105 per crossing on PANYNJ facilities, the truck toll rate will be nearly three times higher than the rate for any other bridge or tunnel in the country. In a laughable attempt to mitigate the exorbitant increases, the authority recently developed a "Truck Repeat Volume Program," which offers a mere 10 percent discount on trucks' monthly tolls, provided they take 100 trips or more through Port Authority crossings during off-peak hours within 30 days. However, the vast majority of truckers entering New York City will not be eligible for the program. The fact that a truck has to cross during off-peak hours presents a huge problem. The trucking industry does not choose when to cross a bridge—that is dictated by our customers. Until shippers and receivers allow truck deliveries during overnight hours, trucks MUST travel into New York City during high congestion times. Furthermore, most trucking companies are small operators and simply do not have the necessary volumes to qualify. In addition, in order to qualify for the discount, the truck must have either a New York or New Jersey E-ZPass transponder. Transponders from other states do not qualify.

Since the PANYNJ has refused to specify how the additional toll revenue will be spent, it is unclear how the money generated by the toll increases will be invested. Public information made available by the Authority lists the projects to be funded, but does not detail the amount to be spent on each.[2] A PANYNJ press release put out prior to final approval of the capital budget suggested that only about $3 billion of the revenue from toll increases will be used for projects that directly benefit toll payers.[3] The remainder will be used to raise the Bayonne Bridge to accommodate larger ships, improve security at PANYNJ facilities, and fund airport and seaport improvements. However, the most egregious use of toll revenue is the approximately $11 billion dedicated to the completion of the World Trade Center office buildings. It is apparent from the audit report that these costs are likely to escalate. It is unclear why trucking companies and commuters are being forced to foot the bill for a real estate project. Certainly when Congress granted an interstate compact to the PANYNJ, it did not envision that the Authority's responsibilities would extend to such activities.

The manner in which the Authority conducted the public hearings associated with the toll increase did not allow commuters and carriers with legitimate concerns, and who would likely suffer significant hardship as a result of the increases, with sufficient opportunity to provide input. The proposal was announced on August 5, 2011, and only one day of hearings was scheduled, for August 16, 2011. This allowed less than two weeks for the public to analyze the proposal and prepare remarks. The hearings were held at locations that were difficult for the public to reach, and at inconvenient times of the day. Following the hearings, the Port Authority Board met on August 19, 2011 and approved a revised toll increase schedule which was apparently negotiated with both Governor Cuomo (NY) and Governor Christie (NJ). As a result, the public was not even provided an opportunity to comment on the final proposal. The approved toll increase was set to go into effect on September 18, 2011, providing less than a month for motorists to prepare for the exorbitant increases associated with the first phase of the 5-year planned increases. This is especially

[1] Navigant, "Phase 1 Interim Report to the Special Committee of the Port Authority of New York and New Jersey," Jan. 31, 2012.

[2] *http://www.panynj.gov/press-room/press-item.cfm?headLine_id=1445.*

[3] *http://www.panynj.gov/press-room/press-item.cfm?headLine_id=1401.*

problematic for trucking companies, which cannot easily renegotiate contracts with customers or, in many cases, cannot effectuate the rate increases with customers within such a short period. The result for NFI and other truckers is that we will absorb a disproportionate amount of the toll increase for a period of time.

The hearings associated with the proposed increases were frankly just window dressing. The way in which the whole process was conducted sent a very clear message that the decision to increase tolls had already been made, without regard to public input. The increases were forced on motorists during a slow recovery from one of the worst economic recessions in history, with little to no time for commuters or businesses to determine how they would budget for the increased costs. The process and the outcome points to an Authority with unchecked power that shows little regard for the impacts of its decisions on the community which it purports to serve.

Delaware River Port Authority

Among other responsibilities, DRPA owns and operates four interstate bridges serving traffic between Pennsylvania and New Jersey. Until the PANYNJ's recent rate increases, DRPA's truck toll rates were the highest in the country for a bridge crossing. A March 29, 2012, investigative report by the New Jersey Office of the State Comptroller found "wasteful spending and mismanagement of tollpayer funds due to misguided priorities as well as weak or ignored DRPA policies, procedures and internal controls."[4] The report reveals an organization whose flagrant disregard for its customers, misuse of public funds and disregard for following even basic tenets of public accountability, is a textbook demonstration of the need for greater Federal oversight.

Here are just a few of the report's findings regarding DRPA's operations over the past 10 years:

- $1.5 million in payments were made to two insurance firms that provided no service or coverage to DRPA.
- $440 million in "economic development" project grants were made, even though the DRPA Compact prohibits such grants if sufficient money is unavailable for bridge projects. Over the same period, DRPA had to cut back on bridge project funding and take on additional debt to fund economic development projects.
- The economic development project selection essentially relied on the recommendations of elected officials from New Jersey or Pennsylvania, and from DRPA commissioners. Projects were accepted without any evaluation of the benefits to DRPA. No project oversight was instituted.
- Contributions from the DRPA's charitable contributions fund were almost all made to organizations in some way affiliated with the commissioners.
- DRPA commissioners, employees and their friends and family members got free passage E-ZPasses, which cost $1.2 million over 10 years.
- DRPA totally ignored all procedures with regard to expense reimbursement, caps on expenses using DRPA credit cards, etc. The report found evident abuse, citing "meetings" at expensive restaurants and questionable trips and outings, some for elected officials responsible for Authority oversight.

It is clear from the report's findings that the obvious abuses at DRPA over a long period of time were allowed to continue with the knowledge of the state officials who were supposed to provide oversight, most likely because these officials were benefitting from DRPA's largesse.

These are just two recent examples of toll agencies' irresponsible practices. There are many more. Here is just a sampling:

- The Ohio Turnpike Commission raised toll rates by 82 percent in the mid-1990s, and was subsequently forced to partially roll back the increases when it became apparent that massive diversion of traffic to secondary roads was occurring, a scenario that the Commission was told would likely unfold even before they made the decision to raise rates. The Commission ignored entreaties from the state legislature, local school boards, the trucking industry, local city governments and others, who warned that the rate increase would cause massive evasion with dire consequences. The Commission went ahead with their plans anyway. It is instructive that while the Commission's own rules require public hearings prior to a rate increase, and did indeed schedule hearings, none of the Commissioners actually showed up, having obviously predetermined the outcome.

[4] *http://www.state.nj.us/comptroller/news/docs/report_drpa_032912.pdf.*

- In 2003, the Delaware River Joint Toll Bridge Commission voted to increase tolls by 300 percent, partially for economic development, even though Federal law did not allow them to use toll revenue for this purpose. When Commissioners realized they could not spend the money as intended, rather than roll back the increases, they put the money into a slush fund. When ATA challenged the rate increases under the Federal "Just and Reasonable" standard, the Court found that although the Commission likely violated the standard, Federal law does not provide a private right of action to enforce the law, and therefore the suit was thrown out.
- The New York Thruway recently approved toll rate hikes of up to 100 percent, in part to finance a continuing subsidy of the state's canal system.
- In 2004, the City of Chicago signed a 99-year lease agreement handing control of the Chicago Skyway—and the toll revenue it generates—to a private consortium in return for a one-time payment to the City of $1.8 billion. Nearly all of this money was used to retire city debt. Skyway users—about 80 percent of whom live in Indiana—were forced to endure a doubling of toll rates. Indiana residents will have the satisfaction of knowing that for the next century they will be paying off the debt for a city which they do not even reside in.

ATA Opposes Tolls on Existing Lanes

Mr. Chairman, a safe, efficient system of highways connecting America's cities, towns and rural areas, financed in a fair and equitable way, is essential to our country's economic well-being, national security, and overall quality of life. Trucks move 67 percent of our Nation's freight tonnage and draw 81 percent of freight revenue.[5] Unfortunately, the highway system no longer meets our transportation needs. According to the U.S. Department of Transportation, highway investment would have to approximately double in order to fix the system's deficient pavements and bridges, and address serious and growing congestion on highways throughout the Nation.[6]

Disruptions to the movement of freight on our Nation's highway system due to congestion jeopardize the tremendous gains the trucking industry has made to improve supply chain efficiencies. Congestion slows delivery times, creates unpredictability in supply chains, and ultimately makes U.S. businesses less competitive and consumer products more expensive. If we fail to address congestion, these costs will continue to rise, and will translate into higher consumer prices and slower job growth, and weaken the United States' ability to compete in the global economy. However, the real costs of congestion are largely hidden. The supply chain is wound so tightly that any disruption or slow-down can cause significant ripple effects.

Recognizing these serious threats to our Nation's economic security, ATA's members have indicated their willingness to support an increase in highway user fees, provided the revenue is dedicated to projects and programs that will benefit goods movement on the Nation's highways. We use the following criteria to determine how this revenue should be raised.

- Will produce the level of revenues needed to meet current and future highway infrastructure needs;
- is easy and inexpensive to pay and collect;
- has a low evasion rate;
- is tied to highway use; and
- does not create impediments to interstate commerce.

Traditional user fees, such as fuel taxes and registration fees, meet the above tests, and ATA has been a vocal proponent for an increase in the Federal fuel tax. Tolls, on the other hand, fall well short of meeting these criteria, and therefore ATA is strongly opposed to tolls on existing Interstate highways. While Federal law generally prohibits this practice, Congress has, over the years, created a number of exceptions. Imposing tolls on existing lanes of the Interstate System would have a devastating effect on the trucking industry. The industry is highly competitive and tolls cannot easily be passed along to shippers. Furthermore, tolls cause diversion of traffic to alternative routes, which are usually less safe and were not built to handle the additional traffic.

ATA also opposes the imposition of mileage-based user fees, which are a form of tolling. While we recognize that in the future a replacement for the fuel tax as the

[5] Global Insight, *U.S. Freight Transportation Forecast to . . . 2023,* 2012.

[6] U.S. Department of Transportation, *2008 Status of the Nation's Highways, Bridges and Transit: Conditions and Performance,* 2009.

primary source of revenue for highway funding will be necessary due to changes in vehicle technology, that scenario is likely at least two decades away. It is also important to understand that passenger vehicle fleet conversion will precede commercial vehicles' transition from internal combustion engines by many years. Therefore, it would be illogical to require trucks to transition to a mileage-based fee before passenger vehicles. In addition, currently available options for implementing vehicle miles traveled fees are limited, and these options have extremely high collection costs and will experience a very high level of evasion.

Federal Oversight is Needed

Mr. Chairman, we would like to thank you and Senator Menendez for introducing the S. 2006 "Commuter Protection Act." This legislation will provide greatly needed oversight for irresponsible tolling authorities and protect the public from being gouged in order to fund projects and programs that do not benefit them by ensuring that rates comply with the long-established "just and reasonable standard." Those tolling agencies which set "just and reasonable" toll rates will not be affected by the legislation and have no reason to be concerned with or oppose the bill.

Title 33, Section 508 of the United States Code requires that "Tolls for passage or transit over any bridge . . ." constructed over navigable waterways ". . . shall be just and reasonable." This requirement, which was first established in 1906, was amended several times over the years. In 1966, Congress gave the U.S. Department of Transportation (USDOT) the explicit authority to determine whether tolls met the just and reasonable standard, although it was equally clear that the law gave the public the right to challenge the agency's decisions through the judicial process.

In a wide-ranging effort to streamline the Federal administrative process, in 1985 Congress removed the USDOT's authority to rule on the just and reasonable standard. While it is clear from the legislative history that Congress' intent was to retain a just and reasonable standard that was challengeable through the court system, the new language did not explicitly create a private right of action which would allow the public to challenge the toll rates in Court. In a 2006 decision by the United States Court of Appeals for the Third Circuit, the Court established that this lack of a specific provision for a private right of action prevents the public from challenging toll rates through the judicial process. As a result, since Congress removed the Federal government from the review process altogether, the Court decision essentially rendered Section 508 moot, despite the fact that Congress clearly intended to retain the just and reasonable standard.

The result of this decision is that toll authorities subject to Section 508 can, and have, set toll rates which generate revenues that are far in excess of what is necessary to maintain and improve the tolled bridges. In some cases, the tolls have become a slush fund for all manner of activities completely unrelated to the bridges themselves, and with little or no benefit to the motorists paying the tolls. These toll rates clearly violate the just and reasonable standard established by Congress. Yet neither the public nor the Federal government has the ability to challenge these rates and enforce Federal law. The Commuter Protection Act, a bicameral, bipartisan bill, would restore enforcement of the just and reasonable standard and we urge its passage.

Congress has a Constitutional obligation to protect interstate commerce. Most of the states that have considered, or are currently considering, Interstate tolls, have suggested that they will charge tolls at their borders or at other locations designed to place much of the financial burden on out-of-state traffic, an act that likely violates the Commerce Clause. Multi-state agencies, such as the PANYNJ and the DRPA, operate with the consent of the Federal government and are subject to Federal requirements.

Mr. Chairman, as described above, we have witnessed a disturbing trend among some tolling authorities. Operating independently, or with the support of, or benign neglect from, state officials, these authorities seem to view their control over the distribution of toll revenue as an opportunity for personal enrichment or accumulation of power. Without Federal oversight, such abuses may never be uncovered and will not be curtailed.

Toll facilities that serve significant volumes of interstate traffic are particularly in need of Federal oversight. This is especially true of bridges and tunnels, which normally do not have toll-free alternatives. In these cases, facility users are captured, and the normal free market rules which might otherwise hold toll rates down do not apply. Under these circumstances, one can characterize tolls more as taxes than as user fees, since customers have no choice but to pay the toll. Yet out-of-state travelers have no voice with regard to whether their toll taxes should be raised since they enjoy no political representation. A Federal presence is required to fill

that void and to be the voice of representation for interstate travelers. This is certainly consistent with the Commerce Clause.

Mr. Chairman, once again, I would like to thank you for holding this hearing. We look forward to working with the Subcommittee to ensure that the rate-setting practices of tolling authorities are fair, transparent, and consistent with the public's interest. We also encourage Congress to refrain from granting additional state authority to toll existing Interstates, and to consider eliminating existing authority.

Senator LAUTENBERG. Thank you very much.

Mr. Plaushin, we'd like to hear from you. I understand you're the Vice President for Public Affairs, AAA, and we'd like your view on what's happening with tolls.

STATEMENT OF CHRIS PLAUSHIN, DIRECTOR, FEDERAL RELATIONS, AMERICAN AUTOMOBILE ASSOCIATION (AAA)

Mr. PLAUSHIN. Thank you very much, Chairman Lautenberg and Senator Wicker for the opportunity to testify here today.

To put our tolling policies and positions in context, AAA believes the success of any tolling plan is first that motorists must be assured that the tolls they pay are fair and equitable, the process for setting these toll rates is transparent and open, and that the revenues derived are utilized to improve the corridor or facility from which they are collected.

As a general principle, AAA opposes tolling the existing interstate, but we also recognize that tolling to provide new capacity is among the future solutions that will help us increase capacity and manage congestion.

AAA has done periodic polling on the topic of transportation funding and, specifically, on tolling, in particular. And naturally, it would come to no one's surprise that no one really wants to pay more, but what we found is that the public is generally more supportive of the concept of a user-paid system, and then that support can translate to tolling on the principle that toll revenues collected will be solely dedicated toward the transportation improvements for that particular facility. But once that direct link is severed, the public acceptance will plummet.

The Office of the New Jersey State Comptroller said as much, recently detailing the actions of the Delaware Port Authority, stating that toll payers have borne a financial burden attributable to years of mismanagement and neglect. Over 15,000 AAA members registered their complaints to the DRPA board for raising tolls and spending revenues on items unrelated to transportation improvements.

If tolling is to fulfill its role as part of the solution to financing our infrastructure needs, tolling proposals must provide the public with recognizable improvements for their traveling experience. Instead, the public is being asked to pay more and more, and in return, given less and less. The daily commuter, the AAA member, the small businessman, the traveler is being squeezed and developing a sense of futility, because they feel that they have no voice in the process, and in many cases, they don't.

Going forward, what can we do better, and what kinds of safeguards should be in place to ensure the public good is being served. Toll rates need to have a sound economic basis to reflect the actual costs of improvements to the system, and capital plans should be included as part of the overall scope. A sufficient amount of time

needs to be established between the development of the tolling proposal, the public hearings, and final approval so that all portions of the plan can be fully vetted.

Public hearings on tolling need to be held at a variety of locations and times, especially to ensure that there's broader public acceptance. And tolling authorities should make annual disclosures of their financial status and the progress of the debt retirement for the tolled facilities within their jurisdictions.

Before concluding, Mr. Chairman, I want to take the opportunity to state AAA's support for your legislation, the Commuter Protection Act, and to thank you for your leadership on the issue of toll fairness and revenue protection. Your bill will reinforce the definition of "just and reasonable" as the standard for tolls, and reassert the need for accountability and oversight of the process.

Further, today I'd like to submit a letter sent yesterday from AAA's CEO, Bob Darbelnet, to the Executive Director of the E-ZPass Interagency Work Group. Various AAA clubs have heard from their members with complaints about unfair and unequal treatment for those with E-ZPass transponders, and it appears that E-ZPass holders are being charged different amounts, based on which authority issued their transponder, or which state they were issued at.

[The letter follows:]

AMERICAN AUTOMOBILE ASSOCIATION
Heathrow, FL, April 17, 2012

Mr. PJ WILKINS,
Executive Director,
E-ZPass Interagency Group,
Wilmington, DE.

Dear Mr. Wilkins:

I am writing to express AAA's concerns about disparate E–ZPass tolling policies being exercised by member agencies of the E-ZPass Interagency Group (IAG). AAA represents over 53 million members in North America, with 19 million of them residing in the states that make up the E-ZPass network.

AAA clubs have heard from members who utilize E-ZPass technology about what they characterize as unequal and unfair treatment of those with transponders. Their complaints are based on various toll authorities charging different amounts to E-ZPass holders depending on which authority issued the transponder.

We believe this practice is not only unfair and could serve as an impediment to interstate travel and commerce, but also flies in the face of the underlying promise of E-ZPass, which you state is "to provide the public with a seamless, accurate, interoperable electronic method of paying tolls and fees."

There is no reason for one authority to charge some E-ZPass holders a higher toll, except, unfortunately in our estimation, to take advantage of drivers who may be "from out-of-state." The fact is, the cost of providing the transportation service and collecting the toll are identical for a vehicle with an E-ZPass tag issued by the home authority and a vehicle with a tag from an away authority.

I urge you to work within the IAG to put an end to this practice.

Sincerely,

ROBERT L. DARBELNET,
President and CEO.

Mr. PLAUSHIN. AAA believes charging out-of-state drivers a higher toll rate violates the underlying promise of E-ZPass, which is to provide the public with a seamless, accurate, and interoperable electronic method of paying tolls and fees.

And with that, I will conclude my remarks in four minutes. And thank you again for the time today.

[The prepared statement of Mr. Plaushin follows:]

PREPARED STATEMENT OF CHRIS PLAUSHIN, DIRECTOR, FEDERAL RELATIONS, AMERICAN AUTOMOBILE ASSOCIATION (AAA)

AAA History

Thank you for the opportunity to testify at today's hearing. My name is Chris Plaushin. As the Director of Federal Relations for AAA, I oversee AAA's Federal public policy and advocacy agenda on the topic of transportation funding.

By way of background, AAA was founded in 1902 to advocate for better roads and motorist safety. AAA is a not-for-profit, fully taxpaying federation of motor clubs in the U.S. and Canada serving over 53 million members. Nearly 24 percent of all North American passenger vehicles belong to AAA members. Our members are prime users and beneficiaries of the Nation's surface transportation system. They are commuters, leisure travelers, business owners, and users of public transportation.

Current Needs, Immediate Crisis

As members of this committee know all too well, our Nation's transportation system is woefully underfunded. Opinions differ on how to make up this funding shortfall and precisely whose responsibility it is to bridge the funding divide. But we should not lose sight of the fact that everyone involved in this complex discussion cares about the future of our system and wants to create a more functional, efficient, sustainable transportation network.

The U.S. Department of Transportation (USDOT) recently released its latest Conditions and Performance report which estimates that $101 billion, plus increases for inflation, would be needed annually over the next 20 years from all levels of government—local, state and federal—to maintain the highway system in its current state. Investments needed to *improve* the current state of highways and bridges could total up to $170 billion a year, according to the report.

The most recent American Society of Civil Engineers report card gave our Nation's roads a "D-" grade and our bridges a "C". Further, the Congressional Budget Office last month issued its March 2012 baseline for the Highway Trust Fund that shows it is expected to stay solvent through the end of Fiscal Year 2012 but run into a negative balance sometime in Fiscal Year 2013.

All of this data demonstrates that we are on the wrong trajectory when it comes to the maintenance of our current system and providing adequate funding to expand our system to meet the demands of the 21st century.

AAA has been sounding the alarm on this topic for years. While our engagement has brought some successes along the way, unfortunately there is still much work to be done and not much time to do it. Which brings us to our topic for today's hearing—the role that tolling can play as a future funding solution to our Nation's transportation funding crisis.

AAA Tolling Policy/Position

To put our tolling policy and positions in context, AAA believes the success of any transportation funding plan or program is that fees or taxes collected are fair and equitable, transparent, and used for the purposes for which they are collected.

AAA supports the user-fee concept as the most appropriate and fair way to continue to fund our transportation system for the future. Tolling, properly implemented, is a part of the solution.

At the same time, tolling is estimated—even in the most ideal of circumstances—to only bring in a small portion of the revenue needed to build and maintain our Nation's infrastructure. Despite this, there are some who envision a system where tolling is the silver bullet solution to all that ails our transportation network.

As a general principle, AAA opposes tolling existing capacity, but tolling new capacity is among the future solutions necessary to increase capacity and manage congestion. However, tolls are not the panacea proponents often try to paint them to be. As I mentioned before, we won't fix the Nation's transportation funding shortfall by assuming that tolled projects alone will fill the gap.

Tolling for some in the transportation community is simply a way to engage in the real policy pursuit of congestion pricing. AAA generally opposes pricing when it is implemented as a punitive measure to get people out of their cars while providing no alternatives. A fairer approach is to provide a priced road as an alternative to existing congested roads. Many people don't have flexibility with their employers to alter their work schedules to non-peak travel times. By providing priced lanes as a superior service alternative, motorists can choose to use them when time and predictability are most important.

Key to our support for tolls is that the revenue not be diverted to other uses. In a perfect world, toll revenue would only be reinvested in the facilities where users are charged, though we are now seeing an increasing trend of toll money being used for other transportation projects off the tolled-traffic corridor, as well as projects that have nothing to do with transportation. These are troubling trends which only serve to move us further away from the user-pays/user-benefits model.

AAA Public Polling Data

In terms of public perceptions on tolling, AAA national as well as some individual AAA clubs, periodically poll the public on the topic of transportation funding, and tolling more specifically. What we have found is that the public generally supports the idea of a user-pays system and supports tolling on the principle that toll revenue collected would be solely dedicated towards transportation improvements for that particular facility.

In 2009, we found that 41 percent favor building new toll roads and bridges which polled fairly high against other funding alternatives. Similarly, in a telephone survey conducted among 800 New Jersey motorists in May, 2011, the AAA New Jersey Automobile Club found that 67 percent of survey respondents support maintaining existing toll rates and planned toll rate increases.

The public has clear expectations that the tolls they pay will be utilized for the purpose of upkeep and proper maintenance for the facility on which they were collected. Once that direct link is severed, the toll is no longer a direct user fee, it just becomes another tax.

AAA Recommendations for Tolling Authorities

Going forward, what can we do better and what kind of safeguards should be in place to ensure the public good is being served?

- Toll rates need to have a sound economic basis to reflect the actual cost of improvements to the system. A capital plan should be included as part of the overall project scope.
- A sufficient amount of time needs to be established between the development of the tolling proposal, the public hearings, and final approval, to ensure that all portions of the plan are fully vetted.
- Public hearings on tolling proposals need to be held at a variety of locations and times, especially to ensure broader public attendance. Further, tolling commissioners should be required to attend such hearings.
- Tolling authorities should make annual public disclosures of their financial status and the progress of the debt retirement for each tolled facility within its jurisdiction.

Commuter Protection Act

With that in mind, Mr. Chairman, I want to take this opportunity to state AAA's support for your legislation, the Commuter Protection Act, and thank you for your leadership on the issue of toll fairness and revenue protection. AAA endorses the Commuter Protection Act and is pleased that you were able to get included within MAP–21 a GAO study of tolling authority practices. Hopefully this will improve public oversight and accountability of tolling agencies while we continue to work towards enacting this important legislation.

As you know, the Commuter Protection Act would protect commuters and interstate travelers from unfair and egregious toll hikes. Specifically, your bill would restore USDOT authority to determine whether toll increases are 'fair and reasonable.' Groups like AAA and other affected parties would have an opportunity to protest toll revenue diversion, and other unjustified actions, on Federal roads and bridges before USDOT.

E-ZPass Letter

Before closing, I'd like to take a moment to discuss an issue that AAA thinks is critical to the future of tolling in the United States—and that is the interoperability and seamless nature of interstate tolling transponder technology. Tolling agencies that utilize E-ZPass technology and are members of the E-ZPass Interagency Group (IAG) have recently engaged in a harmful, discriminatory practice of charging drivers who purchase their transponders out-of-state a higher rate than those who purchase their technology in-state.

This troubling industry trend is the subject of a letter, sent yesterday by AAA's President and CEO Robert Darbelnet to the E-ZPass IAG which I would like to submit for the record.

The letter calls on the IAG, which represents toll facilities that account for almost 40 percent of all U.S. toll transactions and nearly 70 percent of all U.S. toll revenue, to immediately end this misguided charging practice.

Technology that was once hailed as being innovative, open, fair and transparent, is at risk of becoming perceived as untrustworthy, parochial, inconvenient and heavy-handed because of this discriminatory business practice. AAA has an interest in protecting the integrity of future cashless tolling systems which we believe are important to motorists because of their convenience, and accommodation of free-flowing toll payments. I hope the IAG is able to remedy this troubling issue for the benefit of America's motoring public.

Conclusion

AAA is committed to doing its part to engage our members and raise awareness about the transportation funding challenges our Nation faces. We're doing so through our "Making America Stronger" campaign and website, social and traditional media channels as well as club efforts at the state and local level. Our research shows Americans understand that a free-flowing, safe, efficient transportation system is needed to keep us competitive in the global economy. We need to focus our collective efforts on building broader public support for all solutions that can raise revenue, in a fair and responsible way, for our Nation's transportation infrastructure.

Thank you for the opportunity to testify here today. I look forward to any questions you might have.

Senator LAUTENBERG. We didn't stop you to pay any tolls.

[Laughter.]

Mr. PLAUSHIN. It was a fast trip.

Senator LAUTENBERG. You just kept going. Anyway, thanks very much.

Mr. Conti, we look forward to hearing from you now.

STATEMENT OF HON. EUGENE A. CONTI, JR., SECRETARY, NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, ON BEHALF OF THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS (AASHTO)

Mr. CONTI. Thank you, Mr. Chairman and Senator Wicker for giving me the opportunity to share the state policy perspectives on the use of tolling as part of a menu of revenue options for surface transportation. And I have submitted a longer statement for the record. I'm testifying on behalf of the American Association of Highway and Transportation (AASHTO) officials, which represents all the states transportation departments.

Two Federal commissions and a number of recent studies have demonstrated and documented that we have a significant investment deficit. I think both of you referenced that in your opening comments. There is a significant investment deficit in surface transportation infrastructure at all levels of government.

We have a sizable portfolio of financing mechanisms that could be utilized to supplement more traditional grant funding, which supports investments in transportation infrastructure, and one of the most useful has proven to be tolling options.

AASHTO developed the board of directors, which is all the states' CEOs. It recommends adopting a diversified portfolio of revenue options, including tolling, to meet program funding needs, and to this end, we believe the Congress should support flexible national policies that use both conventional and innovative financing tools. For example, Federal limitations should be removed on the ability of state and local governments to raise toll revenues, and to apply those revenues to transportation projects and activities within the

same corridor or region as the toll facility. At the same time, we recognize that states must continue to deliver on the need for accountability and transparency.

Under the interstate reconstruction and rehabilitation pilot program, which was authorized under T–21, the last three existing interstate facilities to be tolled, this tool holds tremendous promise, given the backlog of reconstruction and rehabilitation needs in the interstate system, and three states, including my home state of North Carolina, along with Missouri and Virginia, have been approved by the Federal Highway Administration to proceed with those pilots.

We have addressed very directly the issues of transparency, accountability, and equity in our pilot program, and I know Virginia is in particular doing the same thing to make sure that we are studying all the issues around tolling Interstate 95 through North Carolina. We have spent 30 months, two and a half years, to reach out to affected communities and users of the I–95 corridor through social media, through a dedicated website, through editorial board meetings, through structured workshops, with stakeholder groups, and the public. Seven public hearings. Seven informational workshops. We've gone beyond the traditional project development process by adding an additional step to assess the economic impact along the corridor of the potential tolling of I–95. And let me say very directly that our Governor has not decided whether to move forward with this imitative, but we are doing the detailed work that needs to be done in a transparent way to make that decision openly and with all the facts on the table.

Let me conclude by just commenting on the Commuter Protection Act. Our concerns, from a state perspective, are an insertion of new Federal oversight and uncertainty into what has traditionally been a state and local process for setting toll rates. We would resist the idea of direct Federal decisionmaking for tolling. We have no problem with the Federal involvement as it is, where we work with the Federal Highway Administration on new tolling proposals, and to make sure that we follow those rules of transparency and accountability that I talked about. But to lose the ability of states and localities to make these decisions and to have another step in the process of Federal approval and decisionmaking we think would discourage the role of tolls and innovative finance, and particularly create an impediment for private investment in infrastructure projects.

So, we think the most appropriate role for the Secretary is to stay within that broader Federal policy framework, and to continue to provide the guidance and counsel that we've had in the past.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Conti follows:]

PREPARED STATEMENT OF HON. EUGENE A. CONTI, JR., SECRETARY, NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, ON BEHALF OF THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS (AASHTO)

Introduction

Chairman Lautenberg and Members of the Subcommittee, thank you for the opportunity to share AASHTO's policy perspectives on the use of tolling as part of a menu of revenue options for surface transportation. My name is Dr. Eugene Conti, and I serve as Secretary of the North Carolina Department of Transportation. Today

I am testifying on behalf of the American Association of Highway and Transportation Officials (AASHTO), which represents the state departments of transportation (DOTs) of all 50 states, Washington, D.C. and Puerto Rico.

The federal surface transportation program is at a crossroads. While the Highway Trust Fund (HTF) had generally provided stable, reliable, and substantial highway and transit funding since its inception in 1956, this is no longer the case. According to the Congressional Budget Office, HTF spending is estimated to exceed receipts by about $13 billion per year on average for the next ten years (FY 2013–2022). At the same time, the National Surface Transportation Policy and Revenue Study Commission has projected future Federal investment needs at $225 billion per year for the foreseeable future. When compared to about $90 billion currently spent, there is a significant investment deficit in surface transportation infrastructure.

This trend toward flattening or declining revenues at a time of increasing investment needs is not something that is limited to just the current Federal funding sources. In fact, this funding issue is creating deep concern at all levels of government about the outlook for adequate resources for maintenance and capacity improvements in highway and transit assets in the United States. While addressing the transportation investment crisis will require sustained commitment from a broad range of stakeholders, a key component in this effort is the funding and financing mechanisms that could be utilized to support investment in transportation infrastructure. One of the useful proven tools is tolling.

Definition and Historical Context

Generally, roadway tolling can be applied at the state and local level in a wide range of fashions, including turnpikes, which are individual (generally long-distance) facilities that charge a fee for use; "single links," which are facilities such as bridges, tunnels, or connector roads; and "managed lanes," or highway lanes that are devoted to carpoolers, public transit vehicles, and toll-paying users, including but not limited to High Occupancy Toll (HOT) lanes and HOT networks, or systems of high-occupancy vehicle lanes.

The United States has made extensive use of, and has broad expertise with facility-based tolling, but the history of toll use has also been evolving. Prior to the Interstate era and the Federal Aid Highway Act of 1956, many of the major highways and bridges/tunnels in the country were funded through toll financing. Examples include the turnpikes in Pennsylvania, New Jersey, and Delaware and many of the bridges and tunnels in the New York metropolitan area. After 1956, however, the number of new facilities built as toll roads declined dramatically due to the focus on completing the Interstate system, the availability of Federal funding to support investment, and the Federal tolling prohibitions that went along with the use of this money.

In recent years, with the growing gap between highway investment needs and available revenues as well as the development of easy-to-use automated toll collection technology, toll roads and toll lanes have once again become an important means for financing investment in new highway capacity—in the last decade about one-third of all new limited-access lane miles built in the United States were tolled; in states such as Texas and Florida, the share is even higher.

Modern tolling in the United States has occurred primarily in two forms: for new construction and for rehabilitation or conversion of existing facilities. Tolling for new construction covers most tolling projects currently in development in the country and relates to the use of tolling to fund new capacity in the form of either new highways or additional lanes for existing facilities. Examples of recent new toll alignments (so-called greenfield projects) include the Pocahontas Parkway in Virginia and the Inter County Connector in Maryland. The State Route 91 Managed Lanes Project in Orange County in California, which included the addition of two toll lanes in each direction parallel to existing non-tolled lanes, exemplifies the use of tolls to add new capacity to existing routes. In North Carolina, we are opening this year the state's first modern toll road, around Raleigh, and two more toll expressways near Charlotte are close to construction.

Tolling for rehabilitation or traffic management involves either imposing a toll on an existing bridge or roadway to help pay for its rehabilitation or replacement or converting High Occupancy Vehicle (HOV) lanes to High Occupancy Toll Lanes (HOT) lanes to make better use of existing capacity. Examples of these so-called brownfield projects include addition of tolls on the Tacoma Narrows Bridge in Washington and the Coleman Bridge in Virginia to pay for reconstruction or expansion and various HOT lane conversions in California, Colorado, Minnesota, and Utah. Again in North Carolina, we are planning conversion of HOV lanes to HOT lanes to pay for widening of congested Interstate 77 near Charlotte.

Currently, there are more than 270 state and local toll roads, bridges, and tunnels in 32 states, totaling 5,541 miles of roadway. Several more toll facilities are either in development or under consideration. In 2008, toll revenues of $11 billion represented 9 percent of total federal, state, and local highway user fee revenues (*i.e.,* from motor fuel taxes, vehicles fees, and tolls).

Toll roads have been widely used to finance important system links between large cities by crossing through rural areas in states such as Kansas, Oklahoma, Pennsylvania, and New York. While the majority of U.S. toll roads (by number of facilities) is in urban areas, 52 percent of the country's toll road miles are in rural areas, mostly on the parts of the Interstate system as part of statewide tolling programs (grandfathered from tolling prohibition in case of Interstates), not as part of targeted tolling efforts. In addition, several toll road projects have been initiated or developed in recent years in ex-urban areas.

AASHTO Recommendation On Federal Tolling Policy

The *AASHTO's Board of Directors recommends adopting a diversified portfolio of revenue options, including tolling, to meet program funding needs.* Furthermore, given the magnitude and diversity of needs throughout the country, Congress should develop national policies that support flexible use of both conventional and innovative funding and financing tools. Under this framework, state DOTs agreed that *Federal limitations should be removed on the ability of state and local governments to raise toll revenues and to apply such revenue to multimodal transportation projects and activities within the same corridor or region as the tolled facility*.

We recognize that seeking greater Federal flexibility for tolling activities entail states and local partners ensuring that such programs are implemented with appropriate accountability, transparency, and equity. There is no question that states have and will continue to deliver on the need for accountability and transparency. States have been able to demonstrate many positive benefits of tolling over the past decades. Some examples include:

- Raising substantial revenues as non-federal shares and paying for state-only investments, in areas where traffic volumes make it cost-effective to implement;
- Establishing a revenue stream that tends to be stable and well suited to be dedicated to transportation;
- Adjusting toll rates as necessary to account for inflation, including through automatic toll rate adjustment mechanisms;
- Utilizing excess revenues (beyond debt service and operations costs) for transportation purposes at their discretion;
- Encouraging innovation through implementation of electronic toll collection and other tolling technologies to improve compliance enforcement and offering user benefits such as improved travel speeds and toll discounts that, over time, can help offset the associated costs of the technology to the consumer;
- Setting toll rates to manage congestion, which can help maximize the efficiency of the existing network;
- Providing income equity in many instances through provision of non-toll alternatives such as transit;
- Generally establishing a high level of user-beneficiary equity by ensuring that toll rates reflect the benefits derived by the user, and;
- Constructing tolled turnpikes in regional or national goods movement corridors to provide robust highway capacity through rural regions that otherwise could not afford it.

Furthermore, expanding Federal flexibility and support for tolling would continue to build upon a progression of policy changes in the last two decades achieved through ISTEA, the NHS Act, TEA–21, and SAFETEA–LU that established the following programs:

- Express Lanes Demonstration Program
- High Occupancy Vehicle (HOV) Facilities
- Interstate System Reconstruction & Rehabilitation Pilot Program
- Interstate System Construction Toll Pilot Program
- Title 23 U.S.C. Section 129 Toll Agreements
- Value Pricing Pilot Program
- High Occupancy Toll (HOT) Facilities

Reflecting the need for program financing beyond the traditional pay-as-you-go framework, some of these pilot programs have seen heavy demand from states. In

particular, the Interstate System Reconstruction & Rehabilitation Pilot Program allows up to three existing Interstate facilities (highway, bridge, or tunnel) to be tolled to fund needed reconstruction or rehabilitation on Interstate highway corridors that could not otherwise be adequately maintained or functionally improved without the collection of tolls, This tool holds tremendous promise given the backlog of reconstruction and rehabilitation needs in the Interstate system after 56 years in service.

Three states, including my state of North Carolina, along with Missouri and Virginia, have been approved for pilot demonstrations. This is how we have addressed the issues of transparency, accountability and equity in our pilot program studying the feasibility of tolling Interstate 95 through North Carolina. Over a period of 30 months, we have reached out to affected communities along the 182-mile I–95 corridor through social media, a dedicated website, editorial board meetings, seven citizen informational workshops, seven public hearings and numerous public presentations and meetings with stakeholder groups. We are also going beyond the traditional project development process by conducting an extensive economic analysis on the economic impact of the project on local communities.

Commuter Protection Act

I would also like to take this opportunity to share AASHTO's perspective on S. 2006, the Commuter Protection Act, introduced by Senator Lautenberg in December 2011. We understand that this legislation would provide the U.S. Secretary of Transportation the authority to review and regulate tolls for passage over or through any bridge or tunnel on any Federal-aid highway.

Contrary to additional flexibility that tolling affords the states in meeting funding needs, this bill would introduce new Federal oversight and uncertainty into what has traditionally been a state-and locally-managed process of setting toll rates. At a time when new infrastructure investment opportunities should be encouraged, this bill would introduce direct Federal decision making for tolling, which could discourage states and regions from utilizing tolling to expand capacity and improve operations of their facilities and the overall transportation network.

Furthermore, the loss of tolling agencies' ability to set their own rates would have a deeply unfavorable effect on their credit ratings, increasing the cost of capital and making it harder for such agencies to borrow money through issuances of bonds for much needed capital improvements, maintenance and other essential services. In addition, the bill would discourage use of toll-financed public-private partnership (PPP) opportunities. Instead of granting maximum access and flexibility to a mix of funding and financing tools most appropriate for each state including toll-based PPPs, Congress would create new impediments to private investment through this legislation.

We believe that the U.S. Secretary of Transportation's most appropriate role with respect to tolling lies in addressing the broader Federal policy framework, including how the historically strong Federal investments in surface transportation can best be sustained over the long term.

Conclusion

On behalf of AASHTO, I very much appreciate the opportunity given to us to offer our views on appropriate tolling policies to support transportation funding and financing. Given the tremendous challenges we face at all levels of government, the state DOTs are in full support of assisting you in your efforts to address our national infrastructure investment needs. Thank you and I look forward to answering any questions you may have.

Senator LAUTENBERG. Thanks very much, Mr. Conti.

I want to take a look at what's happened, Mr. Baroni, with recent toll increases, drivers paying $12 in cash and nearly $10 with E-ZPass to cross the Port Authority bridges and tunnels. Trucks have to pay as much as $65 to cross. The question is: did the size of the increase strike those of you who make the decision at the Port Authority as being fair? I mean that's a substantial 50 percent increase to cross the bridge. That's a lot of money.

Mr. BARONI. Senator, thank you for the question, and I know that the conversation we heard some of my colleagues talking about how much it is, but as I described before, Senator, that if you are a cash-paying, non-E-ZPass using, rush-hour driving truck, you are causing the most challenges physically to our crossings. For

every fully loaded tractor-trailer that goes across our bridges, it's 10,000 times the damage to our bridges as one car.

But one of the reasons we built all of the discounts in, Senator, is to be able to—those folks who are commuting, who have an E-ZPass, or are driving off-peak. And Senator, respectfully, I understand the concerns that people have about paying tolls across the Hudson. It is something that commuters, as you mentioned, Senator, pay each and every day. But respectfully, Senator, you only started paying tolls recently. For years, Senator, as a former commissioner of my agency, you received free E-ZPass. In fact, I have a copy of your free E-ZPass. I've got letters from 2001.

Senator LAUTENBERG. How often was it used, do you know?

Mr. BARONI. Yes, actually. 2001, 2002, 2003——

Senator LAUTENBERG. But how many times?

Mr. BARONI. Well, I can tell you. Without——

Senator LAUTENBERG. I'm not going to permit you to continue with this silliness.

Mr. BARONI. Well, Senator, you took 284 trips for free in the last 2 years you had a pass.

Senator LAUTENBERG. I want you to answer this question.

Mr. BARONI. Sure.

Senator LAUTENBERG. Is this fair? Is this toll increase fair to the public at large?

Mr. BARONI. I think, Senator, for the——

Senator LAUTENBERG. Talk about the individual cars, and then we can talk about truckers.

Mr. BARONI.—cars. Certainly.

Senator LAUTENBERG. I want to keep you on track, so let's go.

Mr. BARONI. Certainly, Senator. It is impossible to argue fairness in tolls if you don't pay them. So, the people who are driving vehicles across the Hudson River each and every day, we give discounts for E-ZPass peak, discounts for E-ZPass off-peak. We give discounts for carpools. We give discounts for green pass.

Senator LAUTENBERG. Have the discounts worked?

Mr. BARONI. It worked.

Senator LAUTENBERG. Has it leveled off the usage on the facilities?

Mr. BARONI. It has. We're now up to 81 percent of our facilities use E-ZPass. Vehicles that cross the bridges and tunnels are 81 percent. We're up 4 percent E-ZPass use since August of last year.

Senator LAUTENBERG. You've talked about trucks. You've talked about——

Mr. BARONI. Well, you asked me to talk about vehicles.

Senator LAUTENBERG. Yes. Vehicles, trucks, I'm talking about the whole assemblage of people who use those bridges and tunnels and pay tolls.

Mr. BARONI. Eighty-one percent of the people who will go through the tolls at the Port Authority crossings will use an E-ZPass that they pay for.

Senator LAUTENBERG. How do you get an E-ZPass?

Mr. BARONI. There are a variety of ways to get an E-ZPass. You can go online and get an E-ZPass.

Senator LAUTENBERG. What do you pay for an E-ZPass?

Mr. BARONI. I think the number is, it's $20-some. I can get back to you on the exact number, Senator.

Senator LAUTENBERG. Yes. The fact of the matter is that if you've got the extra money, you get a little bit of privilege.

Mr. BARONI. I'm not sure what you mean by——

Senator LAUTENBERG. I guess it's all right.

Mr. BARONI. E-ZPass is not a privilege.

Senator LAUTENBERG. I'm going to conduct this hearing. And I'll give you adequate time to respond.

Mr. BARONI. Great.

Senator LAUTENBERG. I'll promise you that.

You flooded us with all the things that were wrong in the past, and to pull out that little thing that I got after serving in the Port Authority for 4 years, I don't even think about using it, Mr. Baroni.

Mr. BARONI. Of course not, because we took it away, Senator.

Senator LAUTENBERG. Well, what happened, it was there. That's what they did, and that's what I took. And I'm not going to defend it. That's a silly thing to bring into this. I want to discuss your direction of this grand agency, and where the money has gone.

Mr. BARONI. Sure.

Senator LAUTENBERG. And why the increases were so large. Is that fair play, in your view? Why did the administration that we have in office now cancel $6 billion worth of money that we raised through this place to build a tunnel and get 22,000 cars a day off the road? You want to talk about those things? We have to stay on the subject, and I, now Chairman of this Subcommittee, will lay the ground rules.

Mr. BARONI. Senator, I'm prepared to talk about anything you'd like.

Senator LAUTENBERG. Yes. And you were prepared to talk about a lot of things that aren't relevant to this subject. You can't hear me? I'll make it louder, I promise you.

So, is $12 for crossing fair?

Mr. BARONI. Is $12 for a crossing, if you don't have an E-ZPass, therefore, you're backing our traffic up? Yes.

Senator LAUTENBERG. Yes. If you don't have the money to buy an E-ZPass, right.

Mr. BARONI. If you're traveling on E-ZPass and you're going through on peak rush hour, and you don't have an E-ZPass, given the fact that 81 percent of the people who do our crossings have an E-ZPass, and given the fact—you know, for every 10 percent that we can move people——

Senator LAUTENBERG. How do you go to work?

Mr. BARONI. Say it again.

Senator LAUTENBERG. How do you go to work? You live in New Jersey.

Mr. BARONI. I do live in Hamilton, New Jersey. I take the train. Sometimes I drive.

Senator LAUTENBERG. Oh. You take the train.

Mr. BARONI. Sometimes I drive.

Senator LAUTENBERG. Because, otherwise, you could wait a half an hour or an hour to cross the bridge, or the tunnels, or things of that nature.

Mr. BARONI. That's true, because not enough people are using E-ZPass.

Senator LAUTENBERG. Instead of taking advantage of the opportunity to build more rail transportation there, what you did you laid it all over the commuters, the truckers who need to have that kind of access.

So, I want you to answer the question. Do you think it's fair?

Mr. BARONI. Is it fair for someone who doesn't have an E-ZPass? Is it fair for a truck that's causing 10,000 crossing——

Senator LAUTENBERG. No. I didn't ask you that. I asked you if it's fair for a passenger going to work in a car, is it fair——

Mr. BARONI. A passenger going to work in a car, commuting by car, the statistics of E-ZPass users are even higher. They're not paying that. They're doing E-ZPass discounts. So, Senator, look, for someone who doesn't get an E-ZPass and is backing our traffic up at the Lincoln Tunnel this morning, yes, it's fair.

Senator LAUTENBERG. The person who doesn't have the money to buy an E-ZPass——

Mr. BARONI. Some people don't get them given to them, Senator.

Senator LAUTENBERG.—is screwing up the works as you cross the bridge.

Mr. BARONI. I didn't understand, sir.

Senator LAUTENBERG. Your response to the question is——

Mr. BARONI. In fact, Senator, I've just been handed some information, so I want to correct something I said. You don't have to pay for an E-ZPass. All you need is a pre-paid balance on E-ZPass for the Port Authority of New York and New Jersey.

Senator LAUTENBERG. Are you kidding? What do you mean a balance? Where does the balance come from? Does it come out of your pocket? Does it come out of your——

Mr. BARONI. Yes. And when you're done using the E-ZPass, you get it back.

Senator LAUTENBERG. You get what back? You get the cost of the card back?

Mr. BARONI. The E-ZPass?

Senator LAUTENBERG. Yes.

Mr. BARONI. You put a balance——

Senator LAUTENBERG. E-ZPass gives you a $9.50 ride, right?

Mr. BARONI. Depending on the time of day, but OK.

Senator LAUTENBERG. A $12—a $9.50 ride with E-ZPass.

Mr. BARONI. OK. You're talking a peak-hour E-ZPass.

Yes?

Senator LAUTENBERG. Yes. Yes. $9.50. Is it fair to the person who doesn't have an E-ZPass to pay 12 bucks? Is it fair to someone who puts up their money in advance to pay $9.50? Is it a fair rate, in your judgment?

Mr. BARONI. Yes.

Senator LAUTENBERG. It is?

Mr. BARONI. Yes.

Senator LAUTENBERG. OK.

Mr. BARONI. Given the world that we inherited. Yes.

Senator LAUTENBERG. So you're saying to those who need the bridges and tunnels to commute, pay up. Did the Governor approve the minutes that raised the toll?

Mr. BARONI. Yes. Of course.

Senator LAUTENBERG. He approved it?

Mr. BARONI. You know that, Senator.

Senator LAUTENBERG. So, he knew about—you didn't surprise him with something and say——

Mr. BARONI. When he got the minutes? No.

Senator LAUTENBERG.—"Here's what we got. Tomorrow we'd like to raise"——

Mr. BARONI. When the Governor got the minutes of the meeting, no. Both Governor Cuomo——

Senator LAUTENBERG. He got advance——

Mr. BARONI. Governor Cuomo and Governor Christie got the minutes of the meeting and they did not veto them. That's exactly right. Well, you know that, Senator, because when you were on the commission.

Senator LAUTENBERG. Don't tell me what I did. I want to know what you did.

Mr. BARONI. Senator, you can't ignore the past.

Senator LAUTENBERG. I'm going to keep you on path, whether you like it or not. You don't have an E-ZPass. You are there in the chair——

Mr. BARONI. I do have an E-ZPass.

Senator LAUTENBERG.—at our request, and we expect you not to give us a song and dance, but to answer the questions specifically. OK?

So, I'm asking you: when did the Governor get word of the fact that you were going to boost the——

Mr. BARONI. Well, Senator, I'm not going to get into conversations that I have with the administration.

Senator LAUTENBERG. No. You have——

Mr. BARONI. Senator, I'm not going to start having a conversation about who I talked to.

Senator LAUTENBERG. So, you're refusing to answer the question.

Mr. BARONI. Senator, I'm not going to have a conversation——

Senator LAUTENBERG. You're refusing to answer the question.

Mr. BARONI. Senator, I'm not going to talk about conversations that I have with different administration officials.

Senator LAUTENBERG. This isn't a conversation. Are you running a protection agency there?

Mr. BARONI. Excuse me?

Senator LAUTENBERG. Talk straight about what went on. And I asked you a simple question, and you say you're not going to discuss it. You have to discuss it. You're an important executive at that agency. You work for the people, whether you think so or not. And the fact of the matter is, I want to know when the Governor knew when the rates were going to go up.

Mr. BARONI. Well, as you said before, Senator, and I'll clarify it.

Senator LAUTENBERG. If that was your private conversation, you can't use the private, it's a public effort.

Mr. BARONI. You asked me the direct question before. The Governor and Governor Cuomo received the minutes of the meeting and they approved the toll increases by not vetoing them. Yes, sir.

Senator LAUTENBERG. Yes. OK. So, they knew what was coming. That was not what I would call an E-ZPass. The decision to raise the toll, of course, was the Governor's decision to raise that toll.

An external audit released after the toll hike went into effect called the Authority a dysfunctional organization. Tolls are scheduled to rise even higher in the coming years, reaching $15 a car to enter Manhattan in 2015. Will you agree to delay the additional toll increases until a subsequent external audit finds the Port Authority has fully resolved the issues raised in the initial audit?

Mr. BARONI. I can't sit here, Senator, and commit to something that the board does or does not do. I can tell you that what you're referring to is the Navigant report that was called for by Governor Christie and Governor Cuomo at the time of the tolls. And in that report, they said the Port Authority had become dysfunctional. And it is impossible to argue with that conclusion.

For decades, the Port Authority had moved away in many ways from its core mission, investing in projects that don't have to do, and this is something the Navigant report points out, investing in projects that don't have to do with its core mission, had done, over the decades, wasteful reckless spending, and had developed a system of compensation and benefits that was completely out of whack with the rest of the public sector and certainly the private sector.

And as a result of that, at our last board meeting, Chairman Sampson and Vice Chairman Rechler led the board in getting rid of all of those compensation and benefit—all of them, and over the next 18 months saving $41 million for the agency.

In addition, to a series of reforms that this agency has put into place, including the first new outside auditor, including the leadership that we've had on making people contribute to healthcare. These are the kind of reforms—and getting out of these bad real estate deals, and starting to get out of deals that we should never have been in the first place, and selling and getting rid of these wasteful spending.

Senator, you know, I came into office in March 2010. We're about to celebrate our 90th anniversary of the agency. Over those decades, decisions were made at the Port Authority, for example, to, as I said before, invest in the teleport, and create industrial parks.

Senator LAUTENBERG. Let's not talk about all those things that were—tell me what you're doing?

Mr. BARONI. You can't say we're dysfunctional and not let me explain why we became dysfunctional.

Senator LAUTENBERG. Well, you've blamed it on everybody else. *The Bergen Record* linked Governor Christie in January to offering more than 50 positions to people at the Port Authority. Now, according to the article, many of these employees have six-figure salaries and close ties to the Governor, including a former political blogger, a campaign worker, and local mayors, prompting questions about the extent of political patronage at the Port Authority.

Mr. BARONI. Yes.

Senator LAUTENBERG. I want you to supply this committee the names and the positions of these recommendations and their qualifications. We'll give you two weeks to do that.

Mr. BARONI. Well, Senator, I'm not sure how the last time a Senator asked for a list of names, but I'm happy to provide a——

Senator LAUTENBERG. What do I care about—your opinions are really——

Mr. BARONI. You asked me to come here. You asked for my opinion.

Senator LAUTENBERG. Yes. But you're not going to do—I'm asking you to do something.

Mr. BARONI. Well, Senator——

Senator LAUTENBERG. You have——

Mr. BARONI. Absolutely. I'm happy——

Senator LAUTENBERG. You have a direct responsibility to be looking at these things in terms of their need.

Mr. BARONI. Sure.

Senator LAUTENBERG. There's a lot of money that the Port Authority was originally going to put into the tunnel, which was pulled back. $3 billion was the offer that was made to match the Federal contribution to the rail tunnel. Nothing happened.

Mr. BARONI. Well, Senator, can I at least address your question about patronage, because I think it's a fair one, and I appreciate you asking it.

So, *The Bergen Record* ran a story back in January, I believe, that talked about 50 political hires that were directed—the story goes, were directed by the Governor's office. If I could make a couple of points.

First of all, the list that *The Bergen Record* mentioned—the number that the *Record* mentioned, included a list of interns. Eleven of them. One of whom is a young man by the name of Robert Menendez, Jr., who I understand his dad works around here. And he was a graduate of the University of North Carolina, for my friend, the secretary, and he worked very hard, and clearly, I don't think anyone could say that he's a political appointee. But he was on the list.

But I think philosophically that, as Governor Christie has said, governors have the ability—you know, when I showed up at the Port Authority, I was the first Christie person there. And, you know, governors should be able to put people at these agencies who share their values and interest. You may disagree with it, but Senator, respectfully, over the 8 years before I got there, there were 68 political appointees by Governors Codey, McGreevey, and Corzine. Sixty-eight. There was never a hearing about that. And one of the reasons I find interesting, and one of the criticisms——

Senator LAUTENBERG. They weren't called dysfunctional at that time.

Mr. BARONI. Senator, you just criticized me for hiring, your words, a campaign staffer. Well, Senator, one of your campaign staffers from the 2002 campaign was then hired at the Port Authority. On her resumé, when she applied to the Port Authority, said she ran your U.S. Senate candidate visibility throughout the county, and was hired at the Port Authority as an energy specialist. What I find interesting is when Chris Christie and this Port Authority brings somebody on, it's political. When it happens before, it's good government.

Senator LAUTENBERG. You're going to pick out these things. Robert Menendez, Jr., very smart guy, and you're lucky to have——

Mr. BARONI. Absolutely.

Senator LAUTENBERG.—him on the job.

Mr. BARONI. That's why I brought him on board.

Senator LAUTENBERG. Why is 1 out of 50, why does it matter? These little tidbits of things that you're trying to score points with don't register with me.

Mr. BARONI. I know they don't register with you.

Senator LAUTENBERG. Yes. But you have a responsibility. And so, we want straight talk from you. If you want to play little games, Robert Menendez, Jr., he's a very qualified young man.

Mr. BARONI. And that's why I hired him.

Senator LAUTENBERG. Oh. So, that justifies the other 49 is what you're saying.

Mr. BARONI. Senator, I'm happy to go through the list. You want a list.

Senator LAUTENBERG. Well, I've asked you for a list——

Mr. BARONI. You just did.

Senator LAUTENBERG.—of all 50 of those people.

Mr. BARONI. Sure.

Senator LAUTENBERG. And their responsibility.

Mr. BARONI. Would you like to go through it now?

Senator LAUTENBERG. And their backgrounds.

Mr. BARONI. Sure. Should we go through them now? I'm happy to.

Senator LAUTENBERG. The impertinence is barely tolerable, but no. I'll give you 3 days to provide it here.

Mr. BARONI. No problem. Look forward to it.

Senator LAUTENBERG. I'm sorry?

Mr. BARONI. I have no problem——

Senator LAUTENBERG. OK. Fine. Fine.

Mr. BARONI.—answering for the people that we hired.

Senator LAUTENBERG. Yes. OK. Well, that only took us 15 minutes to get to.

In January 2011, both Governors Christie and Cuomo were informed of the need to raise cash tolls to $12. January 2011. Suddenly, in July, the internal proposal drastically jumped to $15. Whose decision was it to raise the toll to $15, when that matures?

Mr. BARONI. I'm not sure what proposal you're talking about, Senator.

Senator LAUTENBERG. The one that it's going to take the tolls up to $15 in the year——

Mr. BARONI. The toll proposal you're talking about?

Senator LAUTENBERG. Yes.

Mr. BARONI. Well, Senator, the Port Authority did. We put it out as a public notice in full page ads in the newspaper. Then people came and had public hearings about it, that you talked about. And so, I'm not—the Port Authority did.

Senator LAUTENBERG. The Port Authority did. With the approval of the Governors.

Mr. BARONI. No. As you asked me before, Senator, the Governors approved the minutes after the toll increase.

Senator LAUTENBERG. Yes. Oh. So, this was something that the Port Authority decided without waiting for any approval.

Mr. BARONI. As I said before, Senator, I'm not going to go back and forth in the conversations that agencies have with each other,

but it's certainly fair to say, by me sitting here today, it's the person you want to ask questions about the tolls, so I'm prepared to spend all day talking about them.

Senator LAUTENBERG. So what's the significance of what you just said? What's the significance of that?

Mr. BARONI. The significance—it's a great question.

Senator LAUTENBERG. You're trying to play——

Mr. BARONI. It's a great question.

Senator LAUTENBERG.—a funny game of table tennis here. I don't like it, obviously. I asked you a question. Who raised it? You said the Port Authority.

Mr. BARONI. Port Authority. Sure.

Senator LAUTENBERG. I thought you said that the Governors hadn't yet seen it. Is that what you're suggesting?

Mr. BARONI. Well, again, I'm not going to comment about who saw what and when, but——

Senator LAUTENBERG. Well, you are going to comment.

Mr. BARONI. Well, Senator.

Senator LAUTENBERG. You have a responsibility to comment, my friend, whether you like it or not. You're at a table here, and you are compelled to tell the truth to the Congress.

Mr. BARONI. Of course, I'm telling the truth, Senator. I've told the truth the whole time.

Senator LAUTENBERG. Yes.

Mr. BARONI. And an implication, Senator, that somehow I had not told the truth is offensive to me. I take this body and this Senate sacrosanct——

Senator LAUTENBERG. No. The game you're playing, with picking out these things, a past——

Mr. BARONI. Senator, you can't——

Senator LAUTENBERG.—former Port Authority Commissioner.

Mr. BARONI.—say that we're dysfunctional, like somehow the Port Authority became dysfunctional in the 2 months Chris Christie was Governor. Senator, we're cleaning up.

Senator LAUTENBERG. Oh. Are you sensitive to that? That suddenly it was declared dysfunctional in the last 2 months.

Mr. BARONI. It was because of Chris Christie and Andrew Cuomo called for a Navigant review of the agency that finally somebody did call it dysfunctional. And it's dysfunctional——

Senator LAUTENBERG. By throwing 50 political appointments in there, did that help straighten out the dysfunctionality at the agency?

Mr. BARONI. We brought people to this agency, passionately believed in reforming it. And we brought people in who took the places, in some cases, of the very political appointees under Governor McGreevey, Governor Codey, and Governor Corzine, that apparently were, in the world here, good government. But it's political when Chris Christie does it, but apparently it's good government when John Corzine does it.

And the dysfunction that we are cleaning up, that we are passionate about cleaning up, that we're making people pay for their healthcare, that we are getting rid of all these benefits.

Senator LAUTENBERG. Just get me the list.

Mr. BARONI. No problem, Senator.

Senator LAUTENBERG. Get me the list.

Mr. Grabell or Mr. Plaushin, to ensure public involvement, the Port Authority is required to hold public hearings on toll increases. Did drivers in New Jersey and New York have sufficient opportunities to air their concerns to the Port Authority, Mr. Plaushin and Mr. Grabell?

Mr. PLAUSHIN. My understanding of the public hearings, from talking to our AAA club in New York, was that they were all held at the same time during rush hour, and that none of the Commissioners actually attended any of the public hearings.

Senator LAUTENBERG. And Mr. Grabell?

Mr. GRABELL. With regard to truckers, the best we were able to do is to attend via webinar a particular hearing, and our attendees found that to be a pretty unproductive exercise, in light of not being able to hear information proffered by other people on the webinar. So we've generally just looked to rely upon the agencies that support us to try to give us the best support they can, because, again, we're not just looking at this location, but we're looking at dealing with tolling authorities elsewhere as well.

Senator LAUTENBERG. The New Jersey comptroller issued a scathing report on the practices at the Delaware River Port Authority. Again, for Mr. Grabell and Mr. Plaushin. According to the report, the Authority was treated like an ATM for those who had connections to the board. Do you have any concerns about the diversion of nearly half a million dollars in toll revenue that was given to an insurance service company, even though the company did no direct work for the Authority?

Mr. PLAUSHIN. In reading some of that report, I know there were many things listed in terms of diversion of funds to non-transportation-related items. I think the most important item that comes out of that report is that the Port Authority basically ignored its primary responsibility, which was to address the backlog in transportation and infrastructure improvements.

Any sort of diversion of funds from toll payers is unacceptable and needs to be addressed, and I think that's why—you know, AAA is not anti-tolling, but we do believe that some accountability in the process is needed.

Senator LAUTENBERG. Mr. Grabell?

Mr. GRABELL. We would share those thoughts. I mean, obviously, the challenge today is the escalating costs of tolls. And, obviously, if money is being used for inappropriate purposes, it gives us great concern, because this cost escalation dramatically impacts both us and our shipping customers, and ultimately, the consumers. So, we are very concerned. We recognize that there needs to be revenue to support the highways, and the bridges, and the tunnels, but certainly diverting money to other inappropriate places does not help the cause at all.

Senator LAUTENBERG. The Delaware River Port Authority borrowed money and delayed needed infrastructure repairs to fund non-transportation economic development projects. Do you think that that is appropriate to use those toll revenues for non-transportation projects?

Mr. GRABELL. Chairman, from our perspective, we find that to be very inappropriate. I mean the challenge that we have is that we

see that there is obviously a need for funds to be raised to support the infrastructure, but for people that are paying those tolls, to then have money used for purposes that have nothing to do with helping to make their highways, bridges, tunnels, and other facilities both safer and more efficient really is, you know, essentially burdening them with expenses that probably should be borne by a different universe of people.

Senator LAUTENBERG. Mr. Plaushin?

Mr. PLAUSHIN. Yes. I mean I would agree. I mean AAA would argue that tolls, you know—we know that localities are strapped. We know that, as Secretary Conti pointed out, that, you know, the need for revenue is great, and tolls can be a part of that solution. They're not a panacea. They're not a silver bullet. But they need to be implemented in a way that's fair and reasonable, and the tolling authorities need to be accountable and transparent to those that are paying the rates.

Senator LAUTENBERG. Mr. Baroni, the Port Authority cited declining revenues as one of the major reasons for the drastic toll hike.

Mr. BARONI. Yes, sir.

Senator LAUTENBERG. Shortly before the toll hike, the Port Authority redirected $1.8 billion that was slated for the ARC Tunnel, as you know, to fund the non-Port Authority road projects. How much revenue will be generated by these road projects?

Mr. BARONI. Essentially the same amount that ARC would have generated for the Port Authority.

Senator LAUTENBERG. The same way?

Mr. BARONI. For the Port Authority's revenue? You know, when you look at the projects that, we call it the Lincoln Tunnel Access project, because, you know, there are four of them that are part of the program, but the one that most folks talk about, of course, is the Pulaski Skyway. And Senator, you and I have both many times driven across the Pulaski Skyway, and it was built to be the missing link between the Holland Tunnel and the Port. In fact, it wasn't even built by the Port Authority. It was given to the Port Authority after we were founded. It was the first vehicular crossing across the Hudson.

The problem is that Pulaski, nearly as soon as it was built—in fact, there's a great book, and Senator, I'll get you the name of the book. Well, actually, one of my former law students read it.

Senator LAUTENBERG. Well, you'll probably finish it here, but please go ahead.

Mr. BARONI. Well, you're talking about Pulaski. I was just saying I would recommend the book to you about Pulaski Skyway, that as nearly as soon as it was built, it became obvious that it couldn't take trucks. So we have Truck 1/9, that winds its way through. But you look at Pulaski built in the same manner that the I–35 bridge in Minneapolis, and Governor after Governor, Senator Lautenberg, you've certainly spoken about this repeatedly, the need to replace Pulaski.

The reason why Pulaski will assist the Port Authority is it will do a couple things. It will make a smoother trip to Lincoln, it will help at Holland, and certainly will help at the Helix. So, it is a direct link to our facilities, which has been the law in New Jersey

forever and New York forever and a day. So, it's an important project for our interstate network.

Senator LAUTENBERG. But, I detect that through all of this discussion that we've just heard is that the non-Port Authority road projects, how will they generate the revenue that you said would be the same as that, which would be——

Mr. BARONI. Well, the ARC was a $3 billion contribution from the Port Authority to the project. The Port Authority's contribution was $3 billion, but the Port Authority was not really going to get revenue out of that project, as you know, but the Pulaski project, Whit Penn, Pulaski 1/9, we believe will have a benefit to the current crossings, certainly, at Lincoln, and at Holland. So, we believe, you know, it will be a marginal improvement there. But, no one has made an argument that—Senator, you're not arguing we should toll the Pulaski.

Senator LAUTENBERG. That wasn't the only non-Port Authority project.

Mr. BARONI. It's four projects in the same—they're all linked. It's Whit Penn. It's Pulaski. It's 1/9. And I'll get the fourth one. I think it's 139. They're all connected to the Lincoln Tunnel. They're all linked to the Lincoln Tunnel.

Senator LAUTENBERG. What's does the transportation trust fund look like in New Jersey right now?

Mr. BARONI. Senator, it's been 2 years since I've been in the State Senate, so I'm not necessarily the person you should ask that question to.

Senator LAUTENBERG. Well, if the Port Authority was prepared to give $3 billion to the ARC Tunnel, and the state committed to do the program, I discussed this directly with the Governor, Governor Christie, and he was much behind it as a candidate and then as Governor. And then suddenly, the climate changed, and he killed the tunnel project. And some of that, I think, might have been given to the transportation trust fund. Are you aware of that at all?

Mr. BARONI. Senator, all I can speak to is the Port Authority dollars that are going to these four projects. Beyond that it's——

Senator LAUTENBERG. But is that the only place that the—you're talking about the $3 billion?

Mr. BARONI. Right. The four projects that the Port Authority is participating in are designated for specific projects.

Senator LAUTENBERG. How much money?

Mr. BARONI. $1.8 billion.

Senator LAUTENBERG. $1.8 billion.

Mr. BARONI. Right.

Senator LAUTENBERG. So, how did the four projects get designated?

Mr. BARONI. We spent a lot of time with engineers. We spent a lot of time looking——

Senator LAUTENBERG. But, these were approved in the minutes of the Port Authority by Governor Christie and Governor Cuomo.

Mr. BARONI. My recollection at the time that this was probably done under Governor Patterson, but I'd have to go back and check.

Senator LAUTENBERG. The ARC Tunnel would have taken an estimated 22,000 cars off the road, double the number of households

in New Jersey that are within 50 minutes of Manhattan. Will the $1.8 billion that was redirected from the ARC Tunnel to fund the road projects provide the same levels of benefits for commuters?

Mr. BARONI. Well, again, Chairman, I'm not an expert about it. I can tell you this, that clearly, fixing Pulaski, Whit Penn, 139 will make the flow, and traffic, and delay in and out of Lincoln, and less so, in and out of Holland, better. But, in addition to that, and I think you raise you a very, very good point about cross-Hudson Rail, and there was a lot of discussion about when it comes to ARC and Gateway, but the first four tunnels that take trains under the Hudson were built by us, well, built by the Hudson and Manhattan, that we bought in the late 1960s and made it the PATH. And because of the commitment that previous Governors, and Governor Christie, and Governor Cuomo, we've had an extraordinary investment in PATH, that I think often gets—and I know we're talking about tolls, but I think since we brought up crossings, we've seen the last couple of weeks on a project that—and the folks who know me at the Port Authority has been one of the projects I spend a lot of time pushing, and pushing, and pushing, and that's a new train station in Harrison.

Mayor McDonough, working across party lines, Mayor McDonough, in Harrison, points out that the Harrison train station needed work, but not only did it need a new station——

Senator LAUTENBERG. Thank you very much.

Mr. BARONI. OK, Senator.

Senator LAUTENBERG. Thank you.

Mr. BARONI. I thought this was important.

Senator LAUTENBERG. Yes. The terminal at Harrison was important. Thank you.

Mr. BARONI. But if I could just finish up, because it's very exciting.

Senator LAUTENBERG. Well, I thought you were finished.

Mr. BARONI. I just wanted to talk about the 10-car platforms, because we talk about increasing capacity across the Hudson. One of the challenges at Harrison is not just the station, it's the physical head houses, but the platforms themselves can only today accommodate eight cars. Under the plan, we're going to be able to go to 10 cars, and that's going to help us bring more rail——

Senator LAUTENBERG. Thank you very much. This hearing is over. I expect from you, Mr. Baroni, the list of the 50 that were appointed to the jobs, including their salaries, and including their backgrounds and experience.

Mr. BARONI. Certainly, sir.

Senator LAUTENBERG. Thank you all for your being here. We know one thing, that we have to be careful about how we use these toll revenues. And again, I think it's agreed that, look, at some places they're desperately needed, but we want them to be just and reasonable, and I express a point of view that perhaps hasn't come across yet.

I thought that a 50 percent increase at one moment was an outrage, and we're going to continue to talk to and with the Port Authority, and we'll ask for particular documents, and I'm sure that you'll be quick to furnish them. The mail's good, rather than verbal. I think we'll just condense it that way.

Thank you all very much for being here.
[Whereupon, at 11:15 a.m., the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO BILL BARONI

Question 1. It has come to the Committee's attention that from January to early July 2011 the Port Authority worked to finalize a toll increase that was approximately $12 for cash payers and $10 for E-ZPass users. The Committee understands that, in July 2011, you and David Wildstein, Director of Interstate Capital Projects, directed that the proposal be changed to $15 for cash payers and $12 for E-ZPass users. The Port Authority announced the redesigned proposal publicly on August 5, 2011. Who specifically made the decision to change course shortly before the announcement and propose this higher toll increase?

Answer. In the summer of 2011, the Port Authority of New York and New Jersey was faced with the difficult decision to raise tolls and fares. The decision was made as a result of numerous factors, which included the effects of the 2008 economic crisis, which dramatically affected Port Authority revenue; the resulting effect of that crisis on our ability to access capital markets and the need to keep our aging facilities—many built in the 1920s—in a state of good repair through major capital projects. In addition, the Port Authority's mission of transportation and economic growth required the investment of billions in new and rebuilt infrastructure.

These projects include the raising of the Bayonne Bridge to accommodate the world's largest cargo ships; a new Goethals Bridge; a rehabilitated Helix leading into the Lincoln Tunnel; the replacement of the suspender ropes on the George Washington Bridge; a new PATH train station at Harrison; a refurbished George Washington Bridge Bus Station; and hundreds of other infrastructure projects that would have been further delayed in the absence of a revenue enhancement.

The Port Authority did much to forestall this increase. The Port Authority is in its third straight year of flat operating budgets; the Port Authority is at its lowest employee headcount in decades; the Port Authority has implemented reforms to compensation and benefits saving millions and the Port Authority has actually reduced the number of employees by hundreds since 2010. Raising tolls and fares was a last resort.

The process of the consideration and proposal of a toll and fare increase is an internally collaborative one. All internal work product and communications within the Port Authority on this—or any—matter is therefore inappropriate for release as part of this Question For the Record. Similarly, any communications between the Port Authority and the offices of the Governors of New York or New Jersey on this—or any—matter would similarly be inappropriate for release.

Question 2. After months of planning for a smaller toll increase, what was the reason for drastically increasing the proposed tolls just weeks before the announcement?

Answer. Please see one (1), above.

Question 3. When was Governor Christie's office first aware that the proposal was being changed as described in Question 1? Who in the Governor's office was made aware that the proposal would be changed?

Answer. Please see one (1), above.

Question 4. Please provide the Committee with all communications—including, but not limited to, memoranda, briefing materials, electronic mail, and letters—between the Port Authority and the Governor Christie's office regarding the toll increase from January 1, 2011 to August 19, 2011.

Answer. Please see one (1), above.

Question 5. Please provide the Committee with a description of each toll proposal that was considered, proposed, or adopted by the Port Authority, including the dates these plans were created, internally approved, discussed with Board Members, and discussed with Governors Christie's and Cuomo's offices from January 1, 2011 to August 19, 2011.

Answer. Please see one (1), above.

Question 6. Please provide any analysis the Port Authority conducted to determine the economic impacts of the initial internal toll proposal, the August 5 proposal, and the approved August 19 toll increase on the region, including impacts to businesses and commuters.

Answer. Please see one (1), above.

Question 7. In January, the *The Record* newspaper linked Governor Christie to dozens of high-paying positions at the Port Authority. For each individual with a salary in excess of $90,000 on the list you provided to my office, please provide the Committee their job description and job duties, their resume and/or application, and their letter of recommendation from the Governor and/or his office. If there have been additional hires at the Governor's recommendation since this article, please include their information as well. Also, please provide details on whether their positions were publicly posted and how many additional individuals were considered for the positions.

Answer. Please find attached the resumes of employees hired by the Port Authority since January 2010 whose salaries are $90,000 or greater [resumes retained in Subcommittee files]. The following employees were directly hired without resumes: Patrick J. Foye, Executive Director; William Baroni, Deputy Executive Director; William DeGraaff, Program Manager, Regional Airport Programs, Aviation; Paula Dow, First Deputy General Counsel, Law; Anthony Greco, Senior Writer/Editor, Media Relations; Erik Horvat, Assistant Director, Development, World Trade Center Redevelopment; Diana Lopez, Senior Advisor, Port Commerce; John Ma, Chief of Staff; David Wildstein, Director, Interstate Capital Projects; Eddie Malave, Senior Safety Engineer, Operations Services; and Mark Pucci, General Manager, Retail, World Trade Center Redevelopment.

Question 8. Damon DiMarco is the coauthor of your book *Fat Kid Got Fit: And So Can You.* When did the Port Authority hire Mr. DiMarco?

a. Is Mr. DiMarco a full-time or part-time employee? How many hours per week does he work and what is his work schedule?
b. What was your role in Mr. DiMarco's hiring?
c. Did you and Mr. DiMarco have a written or oral agreement relative to Mr. DiMarco's compensation for this book project? When was that agreement signed or otherwise agreed to? Please describe the agreement in detail or provide a copy to the Committee.
d. On what date did you sign the contract with the publisher of this project?
e. Did the Port Authority legal department review the ethics of hiring your business partner? If so, did that include a review of all agreements between you and Mr. DiMarco?

Answer. Damon DiMarco was hired in the office of Public and Government Affairs in June of 2010. He was hired to work part-time. The book project was undertaken in 2008. Prior to the entrance into a publishing contract, Mr. DiMarco and Mr. Baroni received an opinion from an attorney in Governance and Ethics Unit of the Port Authority Law Department that the entrance into the book contract would be consistent with the Port Authority's Code of Ethics and Financial Disclosure.

Question 9. When did the Port Authority hire Gretchen DiMarco? What was your role in Ms. DiMarco's hiring?

Answer. Gretchen DiMarco was hired as a special assistant in the Office of the Deputy Executive Director in April 2010.

Question 10. What are David Wildstein's specific job duties? Please provide a copy of his official job description and duties.

a. When was Mr. Wildstein first approached about employment at the Port Authority?
b. It has come to the Committee's attention that Mr. Wildstein played a lead role in coordinating and setting the rates of the proposed toll increases. Please describe why Mr. Wildstein, as Director of Interstate Capital Projects, played this role.
c. Who tasked Mr. Wildstein with his role in the toll increases?

Answer. David Wildstein is the Director of Interstate Capital Projects. He joined the Port Authority in May 2010. A description of his professional background is attached [see below].

> David Wildstein served as Vice President and Shareholder of Apache Mills, Inc., a family-owned textile manufacturing company, from 1988 to 2007. With more than 600 employees, the company has offices in six states, a 750,000 square foot

manufacturing facility, and had an international customer base. From 2007 to 2010, he was the Executive Director of the Observer Media Group.

He served on the Livingston Township Council from 1985 to 1989 and was the Mayor of Livingston from 1987 to 1988. He served as Chairman of the Livingston Redevelopment Authority, as Chairman of the Board of Health, and as Member of the Livingston Free Public Library Board of Trustees. He was the Chairman of the Essex County Conference of Mayors' Solid Waste Subcommittee.

He was a member of the Essex County Vocational and Technical Board of Education from 1987 to 1990. He was Vice President from 1988 to 1990, and served as Chairman of the Personnel and Labor Relations Committee and as Vice Chairman of the Finance Committee. He was a member of the Essex County Board of School Estimate.

He was the Deputy Clerk of the New Jersey General Assembly from 1987 to 1990. He served as Chief of Staff to Assembly Minority Leader Chuck Hardwick, as a legislative aide to State Senator Louis Bassano, and as a staff assistant to Congressman Christopher Smith.

He served on the Board of Directors of the Livingston Community Hospital, the Essex County Association for Retarded Citizens, the Livingston Babe Ruth League, and the Livingston Youth Service Bureau.

Question 11. The Port Authority was criticized for giving misleading reasons for needing the toll hike—including funding non-transportation, economic development projects. Please provide the Committee with all of the specific projects and activities that will be funded by the toll increase, the projected cost of each project, and the scheduled completion date of each project.

Answer. As stated in one (1), above, the Port Authority was forced to raise revenue as a result of difficult economic situations caused by the 2008 recession. The Port Authority operates facilities supported by toll revenues and the Port Authority Trans-Hudson (PATH) fares as an integrated, interdependent transportation network system (Interstate Transportation Network). All of the revenues from the toll increase are needed to fund the needs of the Interstate Transportation Network. Please find attached the filings of the Port Authority on the litigation filed by the AAA on this matter [go to *http://www.panynj.gov/press-room/pdf/AAA-v-PA-USDC-Memorandum-Opinion-and-Order-020612.pdf*]. The response by the Port Authority provides a detailed explanation of that issue.

Question 12. The Port Authority cited declining revenues as one of the major reasons for the toll hike. Yet, shortly before the increase, the Port Authority redirected $1.8 billion that was slated for the ARC Tunnel project to roads that were previously maintained by the state of New Jersey. Under what legal authority did the Port Authority direct funds to these projects?

a. The Committee has been made aware that the General Counsel's Office does an extensive review of projects that expand the Port Authority's role. Did the General Counsel's office review these projects? If so, please provide the Committee with the General Counsel's analysis and determination.

b. Were these projects part of the capital plan or annual budget? If so, when were these projects added?

Answer. On December 7, 2010, the Board of Commissioners adopted a budget for 2011. Attached is a copy of that budget, which includes a 2011 Capital Plan Project List [go to *http://www.panynj.gov/corporate-information/pdf/budget-2011.pdf.* For minutes attached to the budget, go to *http://panynj.info/corporate-information/pdf/board_minutes_dec_7_2010.pdf*]. On March 29, 2011, the Board of Commissioners approved Access Infrastructure Improvement Projects. Attached is a copy of the Board item [go to *http://www.panynj.gov/corporate-information/pdf/special_ops_minutes_mar_29_2012.pdf*].

Question 13. The Port Authority is charged with providing transportation services for the traveling public, yet has faced severe criticism for being unaccountable to the public. Does the Port Authority Inspector General review the agency's transparency efforts; if not, will you commit to having the Inspector General issue an annual report analyzing the Port Authority's transparency efforts?

Answer. The Port Authority has recently updated its Transparency Policy, allowing for greater transparency of the Agency's activities. The Board of Commissioners on March 29, 2012 passed the attached item [go to *http://www.panynj.gov/corporate-information/pdf/special_ops_minutes_mar_29_2012.pdf*]. That policy is regularly reviewed by the Board of Commissioners. The Inspector General provides reports directly to the Audit Committee of the Board of Commissioners, chaired by Commissioner David Steiner.

Question 14. Please provide the Committee with the number of vehicles that travel on average in each of the toll categories as well as the revenue generated by each of these categories. What are the expected revenue and driver diversion rates versus actual based on the September 2011 toll increase for each of these categories? What are the expected revenues and driver diversion rates for each category for the scheduled December 2012 toll increase?

Answer. Please see attached memorandum from Cedrick Fulton, Director of Tunnels, Bridges and Terminals [see "Memorandum" following this set of responses].

Question 15. The Port Authority Bus Terminal capacity expansion project would have been one of the only current projects to provide real congestion relief for New Jersey commuters, yet it has been removed from the capital plan. With New Jersey paying a disproportionate portion of the tolls, why has this commuter project not been prioritized? Please provide the Committee with the Port Authority's plan for this project.

Answer. The Port Authority is committed to providing greater cross-Hudson capacity for commuters. Investments in PATH, including a new station in Harrison, an entirely new fleet of PATH cars, and enhanced signaling will assist in handling the growing use of PATH. The rehabilitation of the Lincoln Tunnel helix will reduce unnecessary and unplanned repairs, a new Goethals Bridge will alleviate congestion over the 1–278 corridor, and the investments in a refurbished George Washington Bridge Bus Station and the 42nd Street bus terminal are ongoing. In addition, the Port Authority is undergoing a detailed and thorough review of bus transportation at the 42nd Street terminal to increase capacity and parking for buses on the West Side of Manhattan.

MEMORANDUM

THE PORT AUTHORITY OF NY & NJ
TUNNELS, BRIDGES & TERMINALS DEPARTMENT—DIRECTOR'S OFFICE

To: PATRICK J. FOYE, Executive Director
BILL BARONI, Deputy Executive Director
From: Cedrick T. Fulton
Date: June 7, 2012

Subject: 2011 and 2012 Toll Increase

In the seven months since the September 2011 toll increase, the average monthly traffic has been 9,586,425 vehicles, which represented an average monthly toll revenue of $100,732,886. The breakdown by vehicle type for these averages is as follows:

	Avg. Monthly Traffic	Avg. Monthly Revenue
Auto	8,727,188	$76,680,791
Bus	244,221	$2,564,608
Small Trk	288,725	$6,385,111
Large Trk	326,291	$15,102,376
Total	9,586,425	$100,732,886

In comparison, the average monthly traffic and revenue in 2010 (i.e., the full year prior to the toll increase) was:

	Avg. Monthly Traffic	Avg. Monthly Revenue
Auto	9,206,809	$ 62,462,671
Bus	260,158	$ 1,112,880
Sm Trk	292,388	$ 4,766,364
Lg Trk	341,123	$ 11,784,755
Total	10,100,479	$ 80,126,669

We expected the September 2011 toll increase to reduce total vehicular traffic by 1,417,159 vehicles (–-1.2%) from original 2011 Plan of 122,408,652 vehicles prior to the toll increase. What we actually experienced in 2011 since 9/18/2011 was a decline of 1,841,708 vehicles (–1.5%) below the original 2011 plan. The breakdown for these variances by vehicle type is as follows:

	Sept 2011 Toll Increase Expected Change vs. Original 2011 Plan	Pctg. Change	September 2011 Increase Actual Change vs. Original 2011 Plan	Pctg. Change
Auto	(1,300,537)	–1.2%	(1,584,720)	–1.4%
Bus	34,553	1.1%	(149,542)	–4.6%
Sm Trk	27,476	–0.8%	(85,768)	–2.4%
Lg Trk	(123,699)	–3.0%	(21,677)	–0.5%
Total	(1,417,159)	–1.2%	(1,841,708)	–1.5%

We expected the September 2011 toll change to increase total toll revenue by $99,001,015 (9.2%) from the original 2011 Plan of $982,789,667 prior to the to increase. What we actually experienced in 2011 since 9/18/2011 was an increase of $48,741,732 (4.5%) above original 2011 plan. The breakdown for these variances by vehicle type is as follows:

	Expected Change vs. Orig. 2011 Plan	Pctg. Chg.	Actual Change Orig. 2011 Plan	Pctg. Chg.
Auto	$72,822,073	8.7%	$41,708,839	5.0%
Bus	$6,647,748	32.1%	$2,024,420	9.8%
Sm Trk	$ 5,186,638	8.1%	$471,834	0.7%
Lg Trk	$14,344,557	9.0%	$4,536,639	2.9%
Total	$99,001,015	9.2%	$48,741,732	4.5%

When we developed the impact of the toll increases in August of 2011, we expected a traffic decrease of 563,891 vehicles (–0.5%) to result from the full-year effect of the planned December 2012 toll increase compared to 123,743,906 vehicles in the original traffic plan for 2012. We expected an increase in toll revenue of $143,374,747 (10.6%) to result from the full-year effect of the planned December 2012 toll increase compared to $1,352,432,579 in the original revenue plan for 2012. The breakdown for these variances by vehicle type is as follows:

	Full-Year Dec 2012 Toll Increase Expected Traffic Change vs. Orig. 2012 Plan	Pctg. Chg	Full-Year Dec 2012 Toll Increase Expected Revenue Change vs. Orig. 2012 Plan	Pctg. Chg.
Auto	–507,844	–0.5%	$85,207,503	8.3%
Bus	–	0.0%	$2,607,625	6.7%
Sm Trk	–26,879	–0.7%	$15,840,176	19.0%
Lg Trk	–29,169	–0.7%	$39,719,443	19.6%
Total	–563,891	–0.5%	$143,374,747	10.6%

We are currently in the process of updated the Port Authority traffic and toll revenue forecasts . This will include an update of the impacts on the estimated traffic and revenue for 2012 The revised forecasts will include new elasticities for cash payment and E-ZPass adoptions, updated economic drivers, the revised PA Staten Island Bridge discount plan, the new truck volume discounts, and anticipated losses from the NY Container Terminal in Staten Island. The update will be completed by the end of June 2012.

CEDRICK T. FULTON,
Director.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

The Port Authority of New York and New Jersey fundamentally agrees that the public should have the greatest possible level of transparency to see how their toll and fare dollars are being spent. The Port Authority has made great strides to ensure that transparency and oversight. At the direction of the Board of Commissioners, under the leadership of Chairman David Samson, we have embarked on a wholesale reform of the agency's transparency policies.

As a result of our initial review, the Board of Commissioners adopted a new Freedom of Information (FOI) Code in March of this year to provide greater accountability and transparency, and an ongoing, proactive Transparency Project that will identify agency records for public release.

The Port Authority Transparency Project is an ongoing, proactive review of agency policy, documents, and financial information to determine what steps can be taken to ensure that the Port Authority remains at the forefront of open government ini-

tiatives. At the time of its launch in March, the Transparency Project posted roughly 22,000 pages of documents including a one-year archive of FOI requests, a one year archive of board and committee meeting presentations, and more than 300 pages of toll and fare hearing transcripts.

Since March, a significant number of strides have been made to further increase Port Authority transparency and accountability. A dedicated search feature has been added to our FOI request web page, making it easier for the public to find documents for which they are looking. The agency has voluntarily posted nearly 2,400 pages of Port Terminal leases and over 4,300 pages of new FOI requests—all free of charge. The agency recently updated Port Authority and Port Authority Trans-Hudson Rail Corporation (PATH) total payroll information setting forth total compensation, including base salary and all additional compensation for all employees to reflect the first quarter of 2012, adding to the four year archive, and for the first time, a breakdown of agency overtime hours by department and category. This information is updated quarterly. The Transparency Project is and will remain a key Port Authority initiative going forward.

In addition, the Board of Commissioners passed a new FOI Code that includes clarification of what documents are and are not exempt from release, allowing for a faster, more streamlined process. All documents released through the FOI process are posted online in real time so that all members of the public can review documents that have been deemed public. On a one-year trial basis, fees related to the FOI process will be waived.

Following the most recent toll and fare increases that were adopted in 2011, Governors Chris Christie and Andrew Cuomo charged the Special Committee of the Board to undertake a comprehensive review and audit of the agency. The Phase I interim report was released in January of 2012, and Phase II, focusing on the hundreds of projects in the agency's capital plan, will be released later this year.

This is all in addition to a longstanding Port Authority commitment to ensuring that public documents at a public agency are available to the public. Examples include: Port Authority budgets going back to 2008, Board Minutes going back to 2006, financial statements going back to 2003, and the annual reports that are provided each year to the Governors and Legislatures of both states going back to 2001.

Under the leadership of Governors Christie and Cuomo and the Board of Commissioners, the Port Authority is quickly becoming a model for transparency and good governance for Authorities around the Nation. The Port Authority is committed to making the agency more open, accountable, and transparent so that it may better serve the public interest. Please find attached a copy of the resolution of the Board of Commissioners from March of this year.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO STEVE GRABELL

Question 1. I'm troubled by reports of mismanagement, misuse of funds, and a general lack of accountability at multiple tolling entities around the country recently, several of which operate as interstate compacts. Given the Federal government's role in establishing interstate compacts, what should the Federal role be in overseeing these organizations to ensure that they act with the traveling public's best interests in mind?

Answer. It is apparent in certain cases that toll authorities, particularly those which serve a significant percentage of interstate traffic, may not be fully accountable to toll payers, and therefore require additional oversight. While in some cases oversight can be provided by the state, this is often insufficient, since the authority may be working in concert with state officials to establish unfair or discriminatory toll rates. This is particularly true when the state relies on toll revenue to meet its own fiscal needs. In those cases where the public has nowhere else to turn for relief, Federal intervention may be necessary. ATA believes that the longstanding Title 33 Federal toll rate standard requiring tolls on certain bridges to be "just and reasonable" should be preserved and its enforcement mechanism should be restored, through either a Federal administrative process, or by giving the public a "private right of action," which would allow the public to challenge toll rates through the judicial system. The standard should, at a minimum, be applied to those bridges currently subject to the Title 33 standard, to federal-aid bridges and tunnels on the Interstate Highway System, and to other bridges and tunnels established under an interstate compact. These are clearly facilities on which the Federal government has an interest under the Constitution's Commerce Clause.

Question 2. Your organization has spoken against tolls on existing roads, bridges, and tunnels. Beyond increasing the gas tax, what other methods do you support to

increase funding for transportation projects? Does your organization support tolling as a means to finance new transportation projects?

Answer. ATA has explored many different mechanisms for funding transportation projects. We have found that the most successful are the fuel tax and state registration fees. There are various other state-level revenue sources that are viable, but inferior to fuel taxes and registration fees. These include sales taxes, property taxes, development fees, and local option taxes.

At the Federal level, increasing the three non-fuel taxes—Heavy Vehicle Use Tax, excise tax on new equipment and tire tax—are viable options, but they tend to create cash flow challenges for carriers and, in the case of the excise tax, a disincentive for carriers who wish to purchase new equipment, which is likely to be safer and cleaner. We have looked at a variety of other proposals, such as container fees, freight waybill taxes, and other methods to more directly charge the ultimate beneficiaries of freight transportation for these services. All of these options faced extremely difficult or insurmountable legal or administrative challenges and were therefore dismissed.

ATA has looked extensively at the viability of vehicle miles traveled fees. While we are not opposed to VMT fees on their face, we believe that challenges associated with collection costs, the potential for evasion, and a lack of institutional certainty with regard to how rates will be set and collected, are unlikely to be overcome in the foreseeable future. We also believe that public concerns with regard to privacy will likely doom these proposals even if all other issues are resolved.

In short, the fuel tax is, by far, the best source of revenue for transportation projects, and is likely to remain so well into the future.

We believe that toll financing of new capacity projects is inferior to traditional financing through a combination of fuel taxes, registration fees, etc. and municipal bonding, primarily because of the additional costs associated with toll collection. However, we have not opposed tolls provided they offer an additional option, *i.e.,* a toll-free alternative is available, and existing lanes (other than HOV) are not tolled.

Question 3. The public has the right to see exactly how tolling entities use their revenues in order to ensure that these organizations are spending funds with the public interest in mind. In your opinion, how can tolling authorities best achieve this?

Answer. Tolling authorities should issue annual reports showing a detailed accounting of how much revenue was collected from tolls and other sources, and exactly how the revenue was spent. The authority should also provide an estimate of future needs.

The report should include salary information and board/commission members' compensation, including any in-kind contributions. If any contracts are awarded, or contributions made, to a company with a relationship to a senior employee or board/commission member, or to a member of their family, that information should be disclosed. Furthermore, if a relative of a board/commission member is hired, that information should be disclosed as well.

Any proposed increase in toll rates should include a public outreach process, with hearings to be held at convenient times and locations. Board/commission members should be required to attend at least some of these hearings. In addition, any votes taken to increase toll rates should be public. The public should be given the opportunity to review rate increase proposals, including projected revenue and how the money is intended to be spent, well in advance of the public hearings. In addition, at least 1/3 of voting members should be from organizations which represent the interests of facility users.

Finally, ATA believes that privatization of toll facilities would largely eliminate public accountability and transparency, and we therefore oppose these types of schemes. A long-term lease to a private company is often seen as a way for elected officials to avoid public scrutiny when toll rate increases are considered. Under a long-term contract, any actions by the leaseholder cannot be undone, even in the face of public opposition, without severe penalties that will ultimately be borne by taxpayers.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO STEVE GRABELL

Question 1. At the hearing, Mr. Baroni referenced many discounts that the Port Authority of New York and New Jersey has provided for truck traffic. Have the "discounts" provided by the Port Authority mitigated the effects of the toll rates? To what extent are you able to take advantage of reduced rates?

Answer. The PA offers discounts for E-ZPass, off-peak and overnight hours. Most carriers routinely operating in the area are likely using E-ZPass. However, many carriers do not have flexibility in their pick-up and delivery schedules, and are unable to take advantage of the off-peak or overnight discounts. The PA's "Truck Repeat Volume Program" offers a 10 percent discount on trucks' monthly tolls, provided they take 100 trips or more through Port Authority crossings during off-peak hours within 30 days. Many truckers entering New York City will not be eligible for the program because if their customers do not give them the flexibility to enable deliveries during overnight hours. In these cases, trucks MUST travel into New York City during high congestion times. Furthermore, most trucking companies are small operators and simply do not have the necessary volumes to qualify. In addition, in order to qualify for the discount, the truck must have either a New York or New Jersey E-ZPass transponder. Transponders from other states do not qualify. This is complicated by the fact that many other states follow the same practice of only allowing discounts for home-state transponders, and using multiple transponders is impractical. This situation prevents carriers operating multi-state fleets from fully utilizing available discounts.

It is important to note that even if carriers are able to take advantage of these discounts, the rate increase is still unacceptably high. The lowest rate for a 5-axle truck that takes advantage of all available discounts will be approximately $70 in 2015. This is nearly twice as high as the highest rate for any other bridge or tunnel crossing in the country.

Question 2. With tolls increasing annually, what alternative routes will your company consider? What additional impacts could these diversions have on New Jersey?

Answer. NFI is currently utilizing the following alternative routes:

I–295 instead of the NJ Turnpike

Route 422 instead of I–476 through PA

I–68 and I–70 through Maryland instead of the PA Turnpike between Pittsburgh and Philadelphia area

Unfortunately, because of the PANYNJ's monopolization of routes between New York City and New Jersey, there are no feasible alternative routes.

Diversion of vehicles, particularly trucks, from Interstate and other primary highways to lower-order roads could pose severe consequences for New Jersey and other affected states. Roads are built to engineering standards commensurate with anticipated traffic levels, including the projected number of ESALs. It is likely, therefore, that a significant, unanticipated increase in heavy traffic will increase pavement wear on these alternative routes, resulting in additional maintenance costs or even the need to reconstruct the roadway to a higher standard. Similarly, the life of bridges on diversion routes could be shortened, resulting in unanticipated maintenance, strengthening or replacement costs.

Furthermore, alternative routes would likely see an increase in traffic, with higher levels of congestion. This will result in additional air quality impacts. This will be further exacerbated by the fact that many of these routes are likely to include intersections that force vehicles into acceleration-deceleration modes that are not present on most toll roads.

We are also very concerned about the safety impacts of toll evasion. Toll roads such as the New Jersey Turnpike and Garden State Parkway are generally far safer than their alternative routes. While on average Interstates have a fatal crash rate that is four times lower than the rate for surface streets, in some cases the disparity is much greater. For example, the fatal crash rate of one alternative route used by vehicles avoiding high tolls on the Ohio Turnpike was 17 times higher than the Turnpike's rate, according to an Ohio DOT report.

Question 3. Mr. Baroni claimed that the hearings leading up to the recent toll increase were the most open and transparent in its history. Was that your experience and the experience of the trucking industry in general?

Answer. The manner in which the Authority conducted the public hearings associated with the toll increase did not allow commuters and carriers with legitimate concerns, and who would likely suffer significant hardship as a result of the increases, with sufficient opportunity to provide input. The proposal was announced on August 5, 2011, and only one day of hearings was scheduled, for August 16, 2011. This allowed less than two weeks for the public to analyze the proposal and prepare remarks. The hearings were held at locations that were difficult for the public to reach, and at inconvenient times of the day. Following the hearings, the Port Authority Board met on August 19, 2011 and approved a revised toll increase schedule which was apparently negotiated with both Governor Cuomo (NY) and Governor Christie (NJ). As a result, the public was not even provided an opportunity to com-

ment on the final proposal. The approved toll increase was set to go into effect on September 18, 2011, providing less than a month for motorists to prepare for the exorbitant increases associated with the first phase of the 5-year planned increases. This is especially problematic for trucking companies, which cannot easily renegotiate contracts with customers or, in many cases, cannot effectuate the rate increases with customers within such a short period. The result for NFI and other truckers is that we will absorb a disproportionate amount of the toll increase for a period of time.

The hearings associated with the proposed increases were frankly just window dressing. The way in which the whole process was conducted sent a very clear message that the decision to increase tolls had already been made, without regard to public input. The increases were forced on motorists during a slow recovery from one of the worst economic recessions in history, with little to no time for commuters or businesses to determine how they would budget for the increased costs. The process and the outcome points to an Authority with unchecked power that shows little regard for the impacts of its decisions on the community which it purports to serve. Mr. Baroni's characterization of this process as "the most open and transparent" in the PA's history certainly does not speak well of past Authority practices. The PA has a long way to go to fulfill its responsibilities as a public institution, and as long as it continues to operate with impunity, it is likely to continue to place its own goals ahead of the public's interest.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO CHRIS PLAUSHIN

Question 1. I'm troubled by reports of mismanagement, misuse of funds, and a general lack of accountability at multiple tolling entities around the country recently, several of which operate as interstate compacts. Given the Federal government's role in establishing interstate compacts, what should the Federal role be in overseeing these organizations to ensure that they act with the traveling public's best interests in mind?

Answer. Mr. Chairman, AAA supports S. 2006, "The Commuter Protection Act," introduced by Senator Lautenberg that would protect commuters, truckers and other highway users from paying tolls that go to non-transportation related purposes. This bill restores the U.S. Department of Transportation's (USDOT) ability to determine whether toll rates on bridges and tunnels imposed by local authorities are "just and reasonable." Up until 1987, USDOT had the authority to determine whether any tolls charged to drivers were "just and reasonable" upon a complaint. Under the "Commuter Protection Act," if the tolls were deemed unfair, USDOT could prescribe a more reasonable maximum toll that could be charged. This authority served to protect Interstate commerce and facilitate Interstate travel.

As background, in the summer of 2011, dramatic toll hikes took effect in the New York and New Jersey region, where revenues were planned to be diverted to non-transportation related real estate development projects. While and Senator Lautenberg introduced the "Commuter Protection Act" in response this particular egregious action, there now exists a troubling new precedent whereby drivers using Interstate facilities are being forced to pay for non-transportation related costs, such as real estate development and athletic stadiums. The bill is also endorsed by the American Trucking Associations, American Highway Users Alliance, American Motorcyclist Association, Owner-Operator Independent Drivers Association and NATSO.

Question 2. When done responsibly, tolling can be a useful and necessary method of raising revenue for needed transportation improvements. However, tolls can also disproportionately impact some citizens, such as those required to commute on tolled facilities during peak hours to and from work on a daily basis. With this in mind, beyond congestion pricing schemes, what options are there for tolling entities to lessen the burden on those who must commute during peak hours?

Answer. Mr. Chairman, AAA's position remains that tolling can be a part of the solution for our funding problems if the fees charged are just and reasonable and the revenue is directed to improving the facility where the tolls are applied. We would evaluate other similar proposals or pricing schemes on a case-by-case basis.

Question 3. Your organization has spoken against tolls on existing roads, bridges, and tunnels. Beyond increasing the gas tax, what other methods do you support to increase funding for transportation projects? Do your organizations support tolling as a means to finance new transportation projects?

Answer. Mr. Chairman, AAA will support a gas tax increase, provided it's tied to a significantly restructured program that is performance based, and ensures accountability and transparency. We agree with the experts who have concluded that,

at least for the next decade, the Federal gas tax remains the best way available to generate significant amounts of revenue. It is fraud-resistant, easy to administer, and it maintains the user-fee principle that has served as the backbone of the transportation program for over 50 years.

AAA acknowledges that additional revenue sources will be needed now and into the future, and that we will need to begin transitioning to a successor funding system. We're willing to consider all funding options, including vehicle miles traveled tax systems, tolling and public-private partnerships. But for AAA, protecting the public interest will continue to be paramount, and all funding options will be evaluated in this context.

Tolling and pricing are among future solutions to increase capacity and manage congestion. However, they are not a panacea. We won't fix the Nation's transportation funding shortfall by assuming that tolled or priced projects will fill the gap. Expansion of tolling and pricing projects must be thoughtfully and carefully implemented. Every project must be judged on its merits. Motorists must be assured that tolls are fair and equitable, transparent, and are used for the purposes for which they are collected.

Private investment has been touted as a simple, "tax free" way to raise large amounts of money for transportation. But the reality is private investment will likely only constitute a small portion of revenue for transportation in the near term, and it is not "free" money. Transportation users will be paying private investors back in the form of tolls or some other method of taxation for years.

AAA has significant concerns about how private investment has been portrayed in recent years, particularly with regards to the long-term lease of existing assets. These are complex financial and operational arrangements and they warrant close scrutiny. The problems we now face have been years, if not decades, in the making. We are kidding ourselves if we think there is a quick or easy fix.

Our roads and bridges are not financial assets to be sold to the highest bidder. AAA recommends creating a Federal framework for public-private partnerships that ensures the public interest is not ignored in the quest to receive the highest bid price. In any of these arrangements, motorist fees must be fair and equitable, upfront lease payments should not be diverted for non-transportation purposes, and high levels of public oversight must be maintained, among other protections.

Question 4. The public has the right to see exactly how tolling entities use their revenues in order to ensure that these organizations are spending funds with the public interest in mind. In your opinion, how can tolling authorities best achieve this?

Answer. Mr. Chairman, there are a few practices and procedures that can help protect motorists in the context of tolling arrangements. A capital plan should accompany all tolling proposals so that the public is clear as to why additional funds are required and what exactly they will be spent on. Authorities should conduct an evaluation of the impact tolls will have on those who live and work along the affected corridor. Hearings on tolling proposals should be held at a variety of locations, times and days in order to generate the highest public attendance possible. There should be a reasonable period of time, months not weeks, between the unveiling of a tolling proposal and subsequent hearings and legislative votes on the proposal. Tolling commissioners (some or all) should be required to be present at public hearings. Authorities should explore creating "citizens advisory committees" which represent the community and have an opportunity to communicate their ideas and suggestions, seek information, and question decisions being made through regularly scheduled meetings with officials who set toll rates.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO CHRIS PLAUSHIN

Question 1. At the hearing, Mr. Baroni referenced many discounts that the Port Authority of New York and New Jersey has provided for commuters. Have the "discounts" provided by the Port Authority mitigated the effects of the toll rates? To what extent are your members able to take advantage of reduced rates?

Answer. Mr. Chairman, it is important to note that the discount plan was announced after the huge public uproar over the Port Authority's proposal. The discount represents a small decrease if you have an E-ZPass, and a slightly larger discount if you have a Port Authority-issued E-ZPass. Though while the discount does help mitigate the costs for some commuters, it is important to remember that all tolls went up by such a large rate that the savings from those discounts likely served as cold comfort to commuters. Even with the discounts, the toll rate increases are putting a significant burden on commuters.

Question 2. Mr. Baroni claimed that the hearings leading up to the recent toll increase were the most open and transparent in its history. Did your members believe this was the case?

Answer. Mr. Chairman, AAA does not believe this to be the case. The hearings seemed to serve as a "check-box" for the Port Authority as the hearings were all held on one day, the bare minimum required, and no commissioners personally attended the hearings. Also, the hearings were in the dead of summer with little notice, at inconvenient times and locations for the working public. This is hardly the type of transparency commuters are looking for.

The most recent hikes were announced August 5, and implemented on Sept 18, providing motorists a little more than six weeks to formulate questions regarding the proposal. By way of comparison, the prior toll fare hike was announced on November 19, 2007 and implemented March 8, 2008—a window of more than 3 months. Also, in 2008 the public hearings were spread over a nearly two week period—much more accommodating for the general public.

Finally, it is important to remember that the previous toll fare hikes were accompanied by a Capital Plan detailing the projects to be financed. As of today the Port Authority still has not released a Capital Plan for their latest toll increases but rather only released a "preliminary budget".

Question 3. What issues have your members had with transparency at the Port Authority?

Answer. There exists a widespread concern that the Port Authority is operating under little oversight and the public cannot be guaranteed that their toll money is being utilized in a wise, responsible manner. Therefore, we are pleased to see the inclusion of a General Accountability office (GAO) report in MAP–21 that will provide further information on the transparency and accountability practices of tolling authorities.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO HON. EUGENE A. CONTI, JR.

Question 1. I'm troubled by reports of mismanagement, misuse of funds, and a general lack of accountability at multiple tolling entities around the country recently, several of which operate as interstate compacts. Given the Federal government's role in establishing interstate compacts, what should the Federal role be in overseeing these organizations to ensure that they act with the traveling public's best interests in mind?

Answer. The State transportation agencies recognize the importance of transparency and the need to ensure the public that facilities operated under Interstate compacts are well-managed and accountable. The establishment of tolling authorities under interstate compacts, which are provided for in the Constitution, generally include provisions to ensure that the public's interest for which such facilities are provided are fully protected. Because these compacts are created at the behest of the affected States, we believe that it is more appropriate for those States to maintain—and improve as necessary—procedures to ensure protection of the public, oversight and accountability, and resolution of disputes that best fit each state's context. With such procedures in place, heavy Federal oversight would be duplicative and is therefore not necessary.

Question 2. When done responsibly, tolling can be a useful and necessary method of raising revenue for needed transportation improvements. However, tolls can also disproportionately impact some citizens, such as those required to commute on tolled facilities during peak hours to and from work on a daily basis. With this in mind, beyond congestion pricing schemes, what options are there for tolling entities to lessen the burden on those who must commute during peak hours?

Answer. Many tolling entities make special provisions for frequent users by providing special discounts based on their residency and/or income. While toll rates are generally set to meet bond coverage ratios as required by bond covenants to cover the operating and maintenance costs of the facilities, states are fully cognizant of equity issues associated with tolling, and continue to strive to ensure access for all users in a financially responsible manner

Question 3. The public has the right to see exactly how tolling entities use their revenues in order to ensure that these organizations are spending funds with the public interest in mind. In your opinion, how can tolling authority's best achieve this?

Answer. There are many approaches to ensure tolling entities are open and transparent about how the money that is collected is spent. For example, most tolling

entities require periodic audits or budget reviews, the results of which are available to the public. In addition, toll increases generally require a public process at which details of toll increases are provided and public comment is obtained. Such public involvement opportunities hold toll agencies accountable by providing regular avenues of public input and engagement.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KAY BAILEY HUTCHISON TO HON. EUGENE A. CONTI, JR.

Question 1. What is the anticipated timeline, including major milestones, for final approval of North Carolina's I–95 Federal tolling application?

Answer. Following is the anticipated time and major milestones for final approval:

- Completion of the Economic Assessment—early 2013
- In-depth funding assessment can be done concurrently with Economic Assessment
- Phasing & Finance Plan—3 to 4 months after economic assessment
- Final environmental document (for concept of tolling)—3–6 months after Economic Assessment
- FHWA could potentially grant final approval by summer 2013.

Question 2. What, if any, is the anticipated net increase in crashes, and in road maintenance and improvement costs, associated with traffic diversion as a result of tolls on I–95?

Answer. When we have a final Phasing & Finance plan that determines the number and location of gantries, it then will be possible to estimate traffic diversion. When we are able to accurately estimate diversion, we will estimate maintenance costs based on the anticipated traffic volumes and current roadway conditions.

Question 3. Since both North Carolina and Virginia are applying for I–95 tolling authority, will your traffic and revenue and economic impact analyses factor in the effects of the combined tolls?

Answer. Once we have the final details of their plan, including toll locations and rates, traffic volumes, etc., we intend to consider the effects of the combined tolls.

Question 4. What process will NCDOT use to receive input from the public as it works towards approval of the application?

Answer. NC DOT intends to use traditional and cutting-edge public outreach methods, including public hearings/workshops, e-mail notification, project website, social media, radio, newspaper, TV news, bilingual hotline, virtual meetings, charrettes, town hall meetings, community involvement.

July 24, 2012

PATRICK FOYE,
Executive Director,
Port Authority of New York and New Jersey,
New York, NY.

DAVID SAMSON,
Chairman,
Port Authority of New York and New Jersey,
New York, NY.

Dear Mr. Foye and Chairman Samson:

Since the United States Congress ratified the interstate compact that created the Port Authority of New York and New Jersey in 1921, the United States Senate Commerce Committee has exercised oversight of the Port Authority and its impact on interstate commerce. Pursuant to this power, on April 18, 2012, the Surface Transportation Subcommittee of the Senate Commerce Committee held a hearing entitled "Protecting Commuters: Ensuring Accountability and Oversight in Tolling." The purpose of this hearing was to gather information on the Authority's use of tolls, in particular the toll increases that the Authority announced on August 19, 2011.

As you know, the executive who appeared on behalf of the Authority at the April 18 hearing, Mr. Bill Baroni, was argumentative and unresponsive to the Subcommittee's questions about how the Port Authority's toll rate decisions impact consumers in New York and New Jersey. Mr. Baroni also failed to meet the basic standards of civility and decorum that the Committee expects from its witnesses.

Following the hearing, the Committee gave the Port Authority another opportunity to answer the questions posed in the hearing by responding to written questions to be included in the record. Unfortunately, the Port Authority again failed

to provide serious, complete responses to the Committee. The answers we received were largely incomplete or did not respond to the questions posed and, at least in one case, the Port Authority asserted—without any legal authority—that providing requested information would be "inappropriate."

This repeated failure to respond to the Committee's questions not only shows a lack of respect for legitimate congressional oversight; it also directly contradicts repeated assertions by Port Authority officials that the agency is increasing its transparency. Port Authority Chairman Samson recently stated that the Authority was attempting to be "the national leader in transparency and open government," but our Committee has experienced the opposite, which we find highly disappointing given the issue of the hearing. Transparency about tolling decisions is particularly important because tolls have a serious impact on hundreds of thousands of commuters in the region.

Leadership at the Port Authority has stated that, despite the fact that he was asked to respond on behalf of the agency, Mr. Baroni's responses to the written questions for the record do not reflect the official position of the Port Authority. If this is the case, it is hard to understand how an accountable and transparent organization would allow a rogue actor to behave in such an unbecoming way without correcting the record.

Due to the important subject matter of this hearing and the Committee's ongoing oversight responsibilities, it is important that the congressional record be complete. If the answers that Mr. Baroni provided or failed to provide do not reflect the official position of the Port Authority, then we ask the Port Authority to correct the record or provide a legitimate legal basis for any specific instances that it cannot provide the requested information. With that in mind, please provide this information to the Committee no later than August 14, 2012.

Sincerely,

JOHN D. ROCKEFELLER IV,
Chairman, U.S. Senate Committee on Commerce, Science, and Transportation

FRANK R. LAUTENBERG,
Chairman, U.S. Senate Commerce Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security

cc:
SCOTT RECHLER, Vice-Chairman
RICHARD BAGGER, Board Member
H. SIDNEY HOLMES III, Board Member
JEFFREY LYNFORD, Board Member
JEFFREY MOERDLER, Board Member
RAYMOND POCINO, Board Member
ROSSANA ROSADO, Board Member
JAMES RUBIN, Board Member
ANTHONY SARTOR, Board Member
WILLIAM SCHUBER, Board Member
DAVID STEINER, Board Member
WILLIAM BARONI, JR., Deputy Executive Director

August 14, 2012

Hon. JOHN D. ROCKEFELLER IV,
Chairman,
U.S. Senate Committee on Commerce, Science, and Transportation.

Hon. FRANK R. LAUTENBERG,
Chairman,
U.S. Senate Commerce Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security,
Washington, DC.

Dear Chairman Rockefeller and Chairman Lautenberg:

Thank you for your letter to Chairman David Samson and me, regarding the matters raised at the April 18, 2012 hearing held by the United States Senate Commerce Committee entitled: "Protecting Commuters: Ensuring Accountability and Oversight in Tolling." The Port Authority greatly appreciates the opportunity to supplement the responses previously provided to the questions for the record (QFRs) issued following the April 2012 hearing. We take this opportunity to set forth in detail answers, which we sincerely hope, will clarify our positions on the issues you have raised. We offer these responses in the spirit of continued collaboration and

partnership, which we recognize is vital to ensuring that the Port Authority fulfills its mission of providing the highest level of service to the public.

Please be assured that the Port Authority appreciates and respects the significant role that Congress and the Federal government have played in the history of this agency, from the Congressional approval of the Compact that gave birth to this agency, to the Federal role in the development of the Port Authority. For over 90 years, the Port Authority has benefited from an alliance with the Federal government and it is because of this strong alliance that the Port Authority has become one of the largest providers of transportation services in the world, as well as a critical provider of transportation at the heart of this region's transportation and commercial interests. We hold the Senate Commerce Committee and its members, particularly Chairmen Rockefeller and Lautenberg, and Senators Hutchison and Wicker, in the highest regard, and we welcome the support and guidance that the Committee can provide as the Port Authority works to further its mission to provide efficient and safe transportation for people and goods in the bi-state region.

The 2011 Toll and Fare Increase—Questions 1 through 6

The following information responds to the first six questions, which all relate to the most recent toll and fare increase adopted by the Port Authority.

The Interstate Transportation Network

The Port Authority owns, operates and maintains the Interstate Transportation Network ("ITN"), a critical component of the transportation infrastructure of the New York and New Jersey Metropolitan Region. The ITN consists of four vehicular bridges (the George Washington, Bayonne and Goethals bridges as well as the Outerbridge Crossing), two vehicular tunnels (the Holland and Lincoln), the Port Authority Trans-Hudson rail system ("PATH"), two bus terminals and a bus station (the Port Authority Bus Terminal, the Journal Square Transportation Center and the George Washington Bridge Bus Station) and the Trans-Hudson Ferry Service.

The Port Authority does not receive tax revenue and, while it has received select funds from the United States Department of Homeland Security for security and seismic improvements and funds under discretionary programs for promotion of commuter bus alternatives, the toll and fare structure is the Port Authority's primary means of funding the region's ITN.

While the Port Authority raised tolls in 2008, the severe recession in that same year significantly impacted all of the Port Authority's transportation facilities, including the ITN, in the form of substantial declines in usage and traffic across all vehicle classes. Those declines resulted in operating revenues and financial capacity far lower than the original projections. Specifically, the aggregate toll revenue variance resulting from recessionary traffic declines for the 2008–2016 forecast marked a shortfall of $789 million from the revenues expected prior to the recession. In addition, the effects of age and extensive usage on these ITN facilities have generated further and significant capital needs for the ITN. In short, the ITN was producing revenues that were insufficient to fund its needs, and the Port Authority therefore had to increase tolls. The extent of the ITN deficit is borne out by financial analyses, which, as described further below, demonstrate that the recent toll increase will reduce the deficit but not eliminate it. In fact, even with the revenues from the recent toll increase, which will be used only to fund ITN-related projects, the ITN will continue to run a deficit until 2020 and its capital needs will not be fully met.

That the revenue from the 2011 toll and fare increases is needed to reduce the ITN deficit, will be used to pay for only ITN-related expenses and projects and to contribute to statutorily required reserve funds demonstrates that the increases are just and reasonable and satisfy Constitutional requirements. Furthermore, in assessing the reasonableness of the Port Authority's toll structure, it is significant that Port Authority tolls remain in line with those for similar bridges and tunnels in the region.

The Capital Investment Needs of the ITN

The inability of the then-existing ITN toll and fare structure to support the current and future capital needs of the ITN facilities caused the Port Authority to adopt the 2011 toll and fare increases. The projected capital spending for the ITN over the next 10 years amounts to $10.786 billion. Even with this level of spending and with the revenue generated by the 2011 toll and fare increases, the ITN will have unmet capital needs totaling $4.3 billion.

Over the next decades, the Port Authority must begin work on critical infrastructure projects in order to continue to provide the region with safe and reliable transportation at the highest level of service. During 2010, the Port Authority bridges and tunnels handled 121.2 million vehicles, while the PATH system served 73.9 million passengers at an average of 247,000 passengers per weekday. In 2011, the

bridges and tunnels handled 119.2 million vehicles, while PATH ridership rose to 76.6 million trips or an average of 256,000 per weekday—the highest ridership since the Port Authority took over PATH operations in 1962. In 2010, the bus terminals had 3.3 million bus movements serving 75.4 million passengers, which rose to 3.4 million bus movements serving 76.5 million passengers in 2011. As ridership and traffic increases, so does the age of our ITN facilities, most of which are more than eighty years old and, thus, the ITN infrastructure now requires significant ongoing maintenance and regular capital investment to sustain operational safety and a state of good repair. Given the age and wear of the ITN facilities, many of the bridges and tunnels are outdated, compromising their ability to serve the volume and vehicle designs of this century. Deferral of large state-of-good-repair projects only creates more frequent and costly emergency and corrective repairs that adversely affect service levels and travel reliability for customers.

During the next ten years, the Port Authority is planning to expend $10.786 billion on capital improvements to maintain the ITN. The Port Authority is strategically programming asset replacement projects designed to deal with critical state-of-good-repair needs and infrastructure obsolescence. The ongoing PATH safety program includes installation of improved tunnel and station ventilation systems. Port Authority investment in the George Washington Bridge Bus Station will be used to construct new bus platforms and a new passenger waiting area. The Port Authority Bus Terminal and Journal Square Transportation Center will receive investments for state-of-good-repair projects, security enhancements and rehabilitation.

The following are highlights of the major projects planned for the ITN for 2011–2020:

- *Replacement of the George Washington Bridge Suspender Ropes:* The George Washington Bridge opened more than 80 years ago in 1931. Its suspender ropes have never been replaced and have reached the end of their useful life. The Robert F. Kennedy Bridge, the Bronx-Whitestone Bridge and the Verrazano-Narrows Bridge were all built after the George Washington Bridge and have had some or all of their suspender ropes replaced. The total cost of replacing the suspenders is more than one billion dollars with $544 million of planned expenditures through 2020.
- *The Bayonne Bridge Navigational Clearance Program ("BBNCP"):* The Bayonne Bridge roadway over the Kill Van Kull will be rehabilitated to increase its vertical clearance to meet modern highway and structural design standards. In addition, the raising of the roadway will provide enough vertical clearance to allow access to larger container vessels calling on the port as a result of the Panama Canal expansion in 2015. The acceptance of the Port Authority's application for expedited review of the BBNCP under the Federal Infrastructure Dashboard (the "Dashboard")—believed to be the first submitted application in the nation—was supported by all members of the New York/New Jersey Senatorial delegation. On July 19, 2012, the White House announced the President's inclusion of the BBNCP on the Dashboard, now known as the administration's "We Can't Wait Initiative". The total cost of the BBNCP project is more than $1.28 billion.
- *The Goethals Bridge Replacement Project:* The Goethals Bridge Replacement Project will replace the existing structure, which is functionally obsolete, with a new six-lane bridge. This bridge serves as a critical crossing on the congested I–287 corridor, important to regional mobility, yet has obsolete ten foot wide lanes and no shoulders or medians, making it susceptible to severe traffic congestion in the case of even minor accidents or inclement weather. The Port Authority will expend $294 million for planning and construction. The balance of the cost of this program of approximately $1.37 billion will be financed by the Port Authority through a private financing arrangement rather than the issuance of Consolidated Bonds. To be clear, the contemplated private financing arrangement requires that the Port Authority make annual payments to the private developer, creating a financial obligation requiring Port Authority toll revenue to cover.
- *The Lincoln Tunnel Helix Restoration:* The Lincoln Tunnel Helix is a bridge structure that connects New Jersey highways and local roads to the Lincoln Tunnel in New Jersey. It was constructed in 1937 and is in need of rehabilitation due to age and deterioration. The Lincoln Tunnel Helix Restoration Program will address the interim need for pavement replacement and maintenance, the mid-term need for structural rehabilitation and repaving, and the long-term need for Helix replacement. The Port Authority has begun an $88 million project to perform a rehabilitation of the deck and supporting structure as an interim measure until the Lincoln Tunnel Helix can be replaced. The mid-term

structural rehabilitation and repaving improvements only serve as a temporary solution, but are necessary in order to maintain the helix in an operational condition while a plan is developed for its replacement. The extensive engineering analysis and design work required for the Helix replacement has begun in order to develop a feasible plan for reconstructing the Helix while maintaining traffic flow. The estimated cost of the Helix Replacement is $1.5—$2.0 billion.

- *The Lincoln Tunnel Access Roadway Infrastructure Projects:* Expenditures for three projects to improve roadway approaches to the Lincoln Tunnel will total $1.8 billion.
- *PATH Improvements:* Planned expenditures for capital improvements and safety enhancements in PATH facilities will cost more than $3.1 billion.

In addition, the 2012 Preliminary Capital Budget lists expenditures for the following projects for the ITN:

- *Holland Tunnel Electrical/Mechanical Rehabilitation of Ventilation Systems Upgrade:* Providing for upgraded and modernized tunnel ventilation, fan blowers and motors in all four vent buildings, a new automatic control system, and a new low-and-high-voltage switch gear. The project will rehabilitate an existing ventilation system that is currently beyond its useful life. Replacement of the system's fans and motors will prevent the Port Authority from having to shut down the tunnel to all vehicles in order to address a non-functioning system. The 2011–2020 spending to complete this project is estimated at $60 million, of which $13 million is planned to be spent in 2012. The total cost of this project, including prior spending, is $160 million.
- *George Washington Bridge Upper Level Deck Rehabilitation:* Rehabilitation of the structural steel of the George Washington Bridge's Upper Level roadway deck and support structure to maintain structural integrity, ensure state of good repair, and extend useful life. This project will extend the useful life of the deck another 15–20 years and reduce maintenance costs. The 2011–2020 spending for this project is estimated at $137 million, with $26 million planned for 2012. The total cost of this project, including prior spending, is $143 million.
- *George Washington Bridge Bus Station Redevelopment:* Modernize bus operations on the upper level of the existing George Washington Bridge Bus Station, as well as develop approximately 120,000 square feet of retail space creating a new revenue stream for the agency. Provide a modernized intermodal transportation facility and services that promote reliable travel and seamless connectivity among modes, and more attractive transit alternatives for users of the George Washington Bridge Bus Station. The Port Authority's share of the spending for this project is estimated to be $82 million, of which $34 million was budgeted to be spent in 2012.
- *Toll Collection System Replacement:* Provide a new toll collection system to replace the current system, which is beyond its useful life. Deploy a system that has the capability for All-Electronic Tolling, which will enable the Port Authority to eliminate cash payments in toll lanes, thereby enhancing system capacity and traffic flow at the interstate crossings. Replacement of the aging toll collection system and equipment will serve to protect toll revenue and help to recoup revenue loss as a result of the antiquated system. The 2011–2020 spending for this project is estimated at $162 million, with $15 million planned for 2012. The total cost of this project, including prior spending, is $177 million.

It is also important to note that, in addition to addressing the critical needs of the ITN, the $10.786 billion of ITN capital spending included in the preliminary 2011–2020 capital plan is expected to result in nearly 21,000 direct job-years. Including indirect and induced effects (purchases by both workers and suppliers to the project), the total economic impact amounts to an estimated 47,000 job-years, $2.8 billion in wages and $10.9 billion in economic activity over the ten-year period. The important impact that the full implementation of this plan will have for the people of this region in terms of both services and jobs cannot be underestimated.

Public/Private Partnerships

In order to meet its mandate of providing the highest level of service for the public using the ITN facilities, the Port Authority has increased its capacity to serve those needs through the implementation of ITN projects using a public/private partnership model. In addition to the Goethals Bridge Replacement Project, mentioned above, the Port Authority has also embarked on the following ITN projects, also mentioned above, partnering with private entities:

- *George Washington Bridge Bus Station ("GWBBS") Redevelopment:* As noted above, the Port Authority has executed a long-term 49-year lease agreement with a private developer as part of a public-private partnership that will result in the investment of $180 million for redevelopment of the GWBBS. Through this creative partnership arrangement, the majority of the total investment will come from the developer helping to keep the agency's capital expenditures to a minimum. The redevelopment will provide complete modernization of the bus operating and passenger areas along with extensive retail development, which will revitalize both the GWBBS and the surrounding Washington Heights community. The project is currently in the final phase of design.
- *The Goethals Bridge Replacement Project:* As noted above, the Port Authority will be expending $294 million for the planning and construction of the Goethals Bridge replacement project. The balance of the cost of this program of approximately $1.37 billion will be financed by the Port Authority through a private financing arrangement rather than the issuance of Consolidated Bonds. Nevertheless, as described above, the private financing obligation will create a financial obligation by the Port Authority to repay the developer if they meet certain asset delivery and performance obligations.

Unmet Capital Needs

Even with the revenue generated by the September 2011 toll and fare increases, there remain many unmet capital investment needs for aging ITN facilities. While life-safety, state-of-good repair, and security projects have been given priority treatment, there are projects within these categories that will not be funded under the current preliminary ten-year capital plan and consequently must be deferred due to the lack of sufficient investment capacity generated by projected revenues. Such deferred projects include replacing the bridge decks for the George Washington Bridge and Outerbridge Crossing, rehabilitating the Hudson River ramps for the George Washington Bridge, and replacing the traffic-bearing slabs for the Port Authority Bus Terminal. The projected future unmet needs for such projects total a sizeable $4.3 billion, with an additional $3.6 billion programmed for beyond 2020. Additionally, given the cost constrained environment the Port Authority has been working under, only 76 percent of all priority preventative routines scheduled for 2011 were completed in that year, increasing the risk of more costly repairs as these maintenance routines are deferred.

Past and Projected ITN Revenues and Expenses Will Result in a Deficit

A cash flow analysis of the sources of past and future revenues and operating and capital expenses for the ITN shows it will run a deficit until 2020. For the period 2011–2020, even after the toll and fare increases approved by the Board of Commissioners in August of 2011, the ITN will generate a net loss of $51 million by 2020. The cash flow analysis is appended to the Affidavit of Michael Fabiano, Exhibits B–E, which was provided to the Committee as an attachment to the June 7, 2012 letter.

For the four-year period from 2007–2010, the ITN generated actual net operating revenues of $1.193 billion. The ITN, however, showed a cumulative net loss of $636 million over that period, after deducting direct payments for capital expenditures and debt service allocated to the Port Authority's Consolidated Bonds issued for capital expenditures, and payments into the General Reserve Fund, which are statutorily required because of the issuance of Consolidated Bonds for the ITN. As stated earlier, for the period 2011–2020, the cash flow analysis, which incorporates the toll and fare increases, shows a net loss of $51 million for the ITN by 2020.[1]

The cash flow schedules clearly demonstrate that every dollar of the toll and fare increase is and will be devoted to payment of ITN operating expenses and capital improvements and contributions to statutorily required reserve funds. The revenue from the September 2011 toll and fare increases will not be utilized outside of ITN-related projects.

[1] This cash flow analysis is based on the historical Port Authority practice of using equal amounts of debt and direct payments to finance capital expenditures. The use of a mixture of debt and direct payment of capital expenditures is an efficient way to finance these projects as evidenced by a comparison between the all cash method and the 50 percent cash (direct payment)—50 percent debt method. Assuming the Port Authority paid $10.786 billion in ITN capital expenditures all cash (direct payment) method, the ITN cash flow to the Port Authority at the end of 2020 would result in a loss of $2.854 billion in contrast to the $51 million net projected loss of the ITN at year-end 2020 with the 50 percent cash—50 percent debt method.

Comparison to Similar Regional Tolls

It is also important to note that Port Authority tolls continue to be in line with those for similar bridges and tunnels in the region. The Port Authority's average toll is 4.5 percent lower than the average toll for the major crossings operated by the region's other toll bridge and tunnel operator—the Metropolitan Transportation Authority ("MTA"). The MTA's network includes the Verrazano Narrows, Robert F. Kennedy, Bronx-Whitestone and Throgs-Neck bridges and the Brooklyn Battery and Queens Midtown tunnels. Round trip tolls for comparable MTA bridges and tunnels (*i.e.,* the Verrazano-Narrows, Robert F. Kennedy, Bronx-Whitestone and Throgs Neck bridges as well as the Brooklyn-Battery and Queens-Midtown tunnels) are set forth in Exhibit A. The round-trip toll rates for the Port Authority's tunnels and bridges for the years 1970–2011 are set forth in Exhibit B. This schedule reflects the discounts offered to E-ZPass® account holders, registered carpoolers, truckers traveling during weekday overnight hours and green pass vehicles, which are E-ZPass® customers driving qualifying low-emission, high-efficiency vehicles in off-peak hours.

A comparison of the Port Authority and MTA bridge and tunnel tolls shows that the Port Authority's 2011 tolls are the same as, or lower than, the round-trip tolls for these comparable MTA facilities as set in 2010. The lower tolls charged by the Port Authority are demonstrated by comparing the tolls charged by each agency for cars. The MTA charges $13.00 round trip for cash customers and $9.60 round trip for E-ZPass® customers at all times. By comparison, the Port Authority 2011 round-trip toll for vehicles is $12.00 for cash customers (*i.e.,* 7.7 percent lower than the MTA), $9.50 for E-ZPass® customers during peak hours (*i.e.,* 1.0 percent lower than the MTA), and $7.50 for E-ZPass® customers during off-peak hours (*i.e.,* 21.9 percent lower than the MTA). The Port Authority provides a toll discount for all E-ZPass® transactions, without limitations as to where one's account is established. This policy provides discounts to the largest population of users possible. The MTA offers E-ZPass® discounts only to account holders of their New York Customer Service Centers, limiting the value of E-ZPass® discounts to a smaller population.

Similarly, a comparison of PATH fares to MTA subway and NJ Transit fares shows that, based on full fare rates, PATH fares are the lowest, with PATH riders paying $2.00 per trip, MTA riders paying 2.25 per trip and NJ Transit riders, at the least expensive NJ Transit fare, paying $4.00 per trip.

Toll and Fare Increase Hearings

In conformance with its policy to facilitate public input into the process for consideration of toll and fare adjustments, the Port Authority held an extensive public notice and comment process undertaken in connection with the 2011 toll and fare increases during which almost 600 speakers or comments were received. The Port Authority received more than twice the public participation that it had during the hearings in December of 2007 for the last toll increase proposal. In accordance with the Port Authority's policy, adopted on June 9, 1977, and pursuant to the By-Laws, on August 16, 2011, nine public hearings (four in each state and one via the Internet) and one public meeting were held in the Port District to solicit public comments on proposed changes in the toll structure for the Port Authority's six vehicular crossings and a proposed increase in the fare charged on the PATH system. Notices of the hearings were published in *The Daily News, Newsday* and *The Staten Island Advance* in accordance with Port Authority policy of publishing such notices ten days prior to the hearings. In addition, arrangements were also made for the *New York Times, The Star Ledger* and *The Bergen Record* to publish the notice at a later date. Proof of publication was placed on file with the Port Authority and was made part of the record of the toll and fare proceedings. Michael Francois, Chief of Real Estate & Development, Ernesto L. Butcher, Chief Operating Officer, Michael DePallo, Director/General Manager of PATH, Cedrick Fulton, Director of Tunnels, Bridges & Terminals and Kirby King, Director of Technology Services, presided at the hearings.

The hearings were held at: (1) Newark Liberty International Airport, 1 Conrad Road, Building 157, Bay 3, Newark, New Jersey from 8:00 a.m. to 9:09 a.m.; (2) Port Authority Technical Center, 241 Erie Street, Room 212, Jersey City, New Jersey from 8:00 a.m. to 9:16 a.m.; (3) Port Ivory/Howland Hook, 40 Western Avenue, Staten Island, New York from 8:15 a.m. to 10:30 a.m.; (4) Port Authority Bus Terminal, 625 8th Avenue, Times Square Conference Room—2nd Floor, New York, New York from 8:00 a.m. to 9:25 a.m.; (5) George Washington Bridge Administration Building, 220 Bruce Reynolds Way, Fort Lee, New Jersey from 6:00 p.m. to 7:52 p.m.; (7) Holland Tunnel Administration Building, 13th Street & Provost Street, Jersey City, New Jersey, from 6:00 p.m. to 7:58 p.m.; (8) George Washington Bridge Bus Station, 4211 Broadway, Lower Level Conference Room, New York, New York from 6:00 p.m.

to 7:16 p.m.; (9) John F. Kennedy International Airport, Port Authority Administration Building 14, 2nd Floor Conference Room, Jamaica, New York, from 6:00 p.m. to 7:02 p.m.; and (10) via the Internet from 2:00 p.m. to 3:05 p.m.

At the opening of each session, the hearing officers made a brief statement outlining the purpose of the hearings—to solicit the comments and opinions of the public—as well as the procedural rules governing the conduct of the hearings, which were adopted to provide maximum opportunity for all views to be heard without interruption or dispute. In addition, at the opening of each hearing, the hearing officers provided a statement setting forth the reasons for the proposed changes in the Port Authority toll structure and the PATH fare structure. Copies of the statements were placed in the record.

Additionally, at the request of James Molinaro, the Borough President of Staten Island, Mr. Butcher attended an August 16, 2011 public meeting in Staten Island at the Michael J. Petrides Educational Complex, from 6:00 p.m. to 8:40 p.m., at which members of the public provided additional comments.

Summary of Testimony

During the course of the hearings and at the public meeting, a total of 589 speakers and/or commenters testified and/or submitted written comments. This represents almost twice the public participation received during the hearings held for the last toll increase held in December of 2007 where 255 speakers and/or commenters testified and/or submitted written comments. Of those who testified or commented in the August 2011 hearings, 211 opposed the toll increase and 199 opposed the PATH fare increase, 306 supported the toll increase without commenting on the PATH fare increase and 10 took no position on the toll increase or on the PATH fare increase.

The principal concern expressed by those who either testified and/or submitted comments in opposition was that the proposed increases in the tolls and fares were too high. Those who testified at the hearings, including many public officials, also raised concerns that revenues generated by the toll increase would not be used to benefit those bridge and tunnel users who were being asked to pay the higher tolls. They also raised concern that increased toll revenues would be used for Port Authority airports, the World Trade Center and marine terminals. While many speakers expressed general support for the proposed Ten-Year Capital Plan ("Capital Plan") supported by the toll and fare proposal, they questioned the use of toll revenues as an appropriate source to fund the Capital Plan. Many speakers in Staten Island testified about the lack of investment in mass transit on Staten Island.

Finally, several commenters also suggested that PATH should offer a discount for seniors, the disabled and students. Several groups representing truckers testified that the tolls pricing plan did not recognize the fact that their schedules were dictated by their customers. Hudson County officials and residents were against the PATH fare increase, with some testifying that the proposal would discourage mass transit ridership and fall on those who could ill afford its impact.

However, speakers at all venues offered support for the toll and fare proposals. The Capital Plan to be funded by the pricing plan drew praise from transportation planning organizations who commented on the need to invest in the region's transportation network. Associations and unions also offered support and praise for the new Capital Plan proposals, recognizing that it would lead to the creation of jobs and stimulate the regional economy. Some officials on Staten Island spoke favorably of the new Capital Plan while urging the Port Authority to reexamine the proposal's impact on low-income families and captive Staten Island commuters. A few speakers also argued for a more gradual increase in the toll schedule and for a more modest increase in the PATH fare.

The written comments raised issues identical in most respects to those raised during the testimony at the nine hearings and at the one public meeting. Those identifying themselves as commuters wrote that the increases would impose an economic hardship on people with limited incomes and no other transportation alternatives. The PATH fare increase was criticized as both unfair and ineffective in meeting the goals of alleviating road congestion and encouraging the use of mass transit. A number of commenters expressed concern that the revenue from increased tolls and fares would be used to subsidize unrelated Port Authority projects rather than to improve PATH service and bridge and tunnel maintenance. On the other hand, as during the hearings, many commenters did not oppose a modest increase in PATH fares if it would result in improved PATH service.

A report on the public input received during the notice and comment process was provided to the Port Authority Board of Commissioners in connection with its consideration of the recommended toll increase. The Commissioners were also provided with the actual transcripts of the public hearings.

The Port Authority's Procedure for Toll and Fare Adjustments

While the public hearings and meeting leading up to the 2011 toll and fare increases produced a large volume of public responses, we continue to seek better ways of conducting our affairs. To that end, as part of a continuing review of governance enhancements, the Chairman and Vice Chairman recommended in June of this year that the By-Laws of the Port Authority (and its wholly owned subsidiary corporations) be amended to address several areas. The resulting amendments to the By-Laws include codification of procedural requirements for public hearings in connection with toll and fare adjustments as well as a requirement that Commissioners attend toll and fare hearings. The relevant excerpt from those By-Laws, which was approved unanimously by the Board of Commissioners, is set forth below:

VI. Public Hearings

A. Public hearings shall be held on matters requiring public consideration or public comment and information and may be held upon the request of (i) the Chairman of the Port Authority or (ii) any two Commissioners, one from each State.

B. Pursuant to direction by the Board of Commissioners, the Executive Director shall have authority to arrange for public hearings, in connection with the budgeting, planning, and programming of the Port Authority, including proposals for instituting or changing tolls and fares imposed for use of the Port Authority's vehicular tunnels and bridges and passenger rail facilities. In connection therewith, the Executive Director shall:

(1) determine the dates, times, and locations in each of the two States for the conduct of such hearings, which shall be designed to encourage the broadest possible attendance and participation, and which, in the case of each hearing pertaining to proposals for instituting or changing tolls and fares imposed for use of the Port Authority's vehicular tunnels and bridges and passenger rail facilities, shall include the attendance of at least two Commissioners, one from each State;

(2) provide for appropriate notice to be given not less than ten days in advance of such hearings, with notice to be published within the Port District in one or more newspapers of general circulation in each State, on the Port Authority Internet site or any successor electronic media designated by the Executive Director, and through other available electronic media used by the Port Authority, and which, in the case of each hearing pertaining to proposals for instituting or changing tolls and fares imposed for use of the Port Authority's vehicular tunnels and bridges and passenger rail facilities, shall include the charge or charges proposed to be instituted or changed, shall set forth a comparison of the existing charges with the proposed charges, and shall state the purpose or purposes for which such tolls, fares or other charges are to be instituted or changed and an estimate of the overall increase or decrease in revenues to the Port Authority resulting from such proposed charges;

(3) designate hearing officers (if any) in connection therewith;

(4) arrange for transcripts and reports of the hearings, which shall be made available to all Commissioners prior to the consideration of any proposal; and

(5) take such other action as will effectuate the Port Authority's policy, as established by the Board of Commissioners, for the conduct of public hearings.

The Toll Increase is Consistent with Applicable Law

The Port Authority believes that the toll and fare increases that went into effect in September of 2011 are "just and reasonable" under The Federal-Aid Highway Act of 1987 (the "Highway Act"), the Commerce Clause of the United States Constitution and New York and New Jersey law.

The Highway Act

The establishment and maintenance of tolls on the Port Authority bridges is governed by the Highway Act which provides that:

> Tolls for passage or transit over any bridge constructed under the authority of the Act of March 23, 1906 (34 Stat. 84; 33 U.S.C. 491–498), commonly known as the "Bridge Act of 1906", the General Bridge Act of 1946, and the International Bridge Act of 1972 shall be just and reasonable.

33 U.S.C. § 508. In *Automobile Club of New York, Inc.* v. *Port Authority,* 887 F.2d 417 (2d Cir. 1989), the United States Court of Appeals for the Second Circuit articulated the standard for "just and reasonable" tolls on the Port Authority bridges. The

court held that such tolls were "just and reasonable" if the revenues produced by the Port Authority were used to fund the operating and capital needs of the ITN, including those of PATH, the Port Authority bus terminals and stations and Port Authority bus program. *Id.* at 423. The Second Circuit affirmed the finding of the District Court finding "that the Port Authority's bridges, tunnels, bus terminals, bus programs and PATH constitute an 'integrated, interdependent transportation system.'" *Id.* (quoting *Automobile Club* v. *Port Authority,* 706 F. Supp. 264, 280 (S.D.N.Y. 1989)). As described above, the operating and capital needs of the ITN are greater than the revenue produced by the tolls. Specifically, even with the toll increase, the ITN will still lose $51 million by the end of 2020. Accordingly, the Port Authority 2011 toll rates are clearly "just and reasonable" under the Highway Act.

The Commerce Clause

The tolls for the Port Authority interstate bridges and tunnels must also satisfy the test established by the United States Supreme Court for tolls levied for the use of interstate transportation facilities governed by the Commerce Clause of the United States Constitution. The Commerce Clause grants Congress the power "[t]o regulate Commerce . . . among the several States." U.S. Const. Art. I, § 8, cl. 3. The Supreme Court has long held that this power contains negative implications, commonly referred to as the "dormant Commerce Clause" restricting States' power to regulate interstate commerce. *CTS Corp.* v. *Dynamics Corp. of Am.,* 481 U.S. 69, 87 (1987).

The Supreme Court first articulated the rule for determining the constitutionality of user fees charged by states for use of interstate transportation facilities under the dormant Commerce Clause in *Evansville-Vanderburgh Airport Authority District* v. *Delta Airlines, Inc.,* 405 U.S. 707 (1972). In this case, the Supreme Court stated that:

> [A] charge designed only to make the user of state-provided facilities pay a reasonable fee to help defray the costs of their construction and maintenance may constitutionally be imposed . . . so long as the toll is based on some fair approximation of use or privilege for use . . . and is neither discriminatory against interstate commerce nor excessive in comparison with the governmental benefit conferred.

Id. at 714, 716–17.

In *Northwest Airlines, Inc.* v. *County of Kent,* 510 U.S. 355 (1994), the Supreme Court formulated a three-pronged test to determine the reasonableness of fees for the use of state-provided facilities under the *Evansville* rule. Under the Court's test, a fee is reasonable and constitutionally permissible "if it (1) is based on some fair approximation of use of the facilities, (2) is not excessive in relation to the benefits conferred and (3) does not discriminate against interstate commerce." *Id.* at 369 (citing *Evansville-Vandenburgh Airport Auth. Dist.,* 405 U.S. 707).[2]

The current Port Authority bridge and tunnel tolls satisfy all three elements of the *Northwest Airlines* test. The tolls do not discriminate against interstate commerce because each vehicle within the same classification is subject to the same toll. As revenues from the tolls are being used to support the ITN and the ITN will continue to operate at a deficit following the increases, the toll revenues are based on a fair approximation of use of those facilities and are not excessive in relation to the benefits conferred. As the tolls increase adopted will result in the collection of no more revenue than is needed to meet the ITN's capital, operations and maintenance needs and its share of the reserve requirements—the tolls plainly satisfy that test.

State Law

By legislation adopted in both New York and New Jersey, the Port Authority is authorized to establish, levy and collect such tolls and other charges sufficient to meet expenses of construction, operation and maintenance, as well as debt service on obligations, in connection with the ITN vehicular bridges and tunnels as it may deem necessary, proper or desirable. Furthermore, the two States have pledged that they will not impair the power of the Port Authority to establish, levy and collect rentals, tolls, fares, fees, or other charges on facilities whose revenues have been pledged as security for outstanding bonds. In addition, the Port Authority has agreed with the holders of its Consolidated Bonds to establish and collect fees, rents, tolls, fares and other charges to produce sufficient net revenues to provide for debt

[2] In 2009, the Second Circuit endorsed the *Northwest Airlines* test for determining the constitutionality of highway tolls. *See Selevan* v. *N.Y. Thruway Auth.,* 584 F.3d 82, 98 (2d Cir. 2009).

service on such bonds. That all of the ITN's revenues will be expended to pay ITN operating expenses and for capital improvements and contributions to statutorily required reserve funds satisfies the applicable state law regarding the assessment of tolls on the Port Authority bridges and tunnels.

Question 11

The tolls at the Port Authority interstate bridges and tunnels and PATH fares were raised to generate additional revenue needed for ITN expenditures. In summary, as stated above, (1) the Port Authority operates ITN facilities supported by toll revenues and PATH fares as an integrated, interdependent transportation network system; (2) major ITN capital projects will be funded over the next ten years; and (3) all of the ITN revenues, including those produced by the 2011 toll and fare increases, are needed to fund the operating expenses and capital needs of the ITN. Further, ITN revenues will *not* be used for "non-transportation, economic development projects." The ITN will operate at a deficit, so that ITN revenues will not fund non-ITN activities. To the contrary, the ITN will require funding from non-ITN activities in order to meet ITN needs, continuing past practice. Descriptions of the major ITN capital projects to be funded over the decade have been set forth above. To comprehensively respond to the request for "all of the specific projects and activities that will be funded by the toll increase", we respectfully refer you to the entire preliminary capital plan (2011–2020) for the ITN which was appended to the Affidavit of Michael Fabiano, as Exhibit A, and provided as an attachment to the June 7, 2012 letter. Those ITN capital projects will require the expenditure of a total amount of $10.78 billion.

Question 12

In March 2011, in view of the ongoing needs of the Port Authority's facilities for efficient transportation access and egress for goods and people, the Port Authority Board of Commissioners authorized the Executive Director, in consultation with the Chairman of the Committee on Operations, to effectuate the Port Authority's participation in cooperation with the New Jersey Department of Transportation (NJDOT) on the Route 1 & 9 Pulaski Skyway; Route 139 (Hoboken and Conrail Viaducts); Route 7 Hackensack River (Wittpenn) Bridge; and Route 1 & 9 (New Road) projects. Port Authority participation in these projects (or suitable replacement projects mutually agreed upon with NJDOT) is consistent with the Port Authority's Capital Infrastructure Fund provided for in the Port Authority's Annual Budget and its Capital Plan. The Executive Director was authorized to enter into an agreement or agreements with NJDOT relating to such Port Authority participation. Improvements to the main routes in the area of the approaches and connections for these facilities to the Port Authority facilities will improve and strengthen access to and between the Hudson River crossings.

The Preliminary 2012 Budget dated December 11, 2011 includes the following expenditures for these projects:

- Pulaski Skyway: Infrastructure design and construction of improvements to the existing bridge structures and its approaches, including replacing the entire concrete deck of the bridge and all ramp structures, repairing/replacing structural steel members and connections, rehabilitating the substructure and other elements of the bridge such as safety, security, and aesthetics. ($164 million)
- Route 7 Wittpenn Bridge Infrastructure: Replace bridge over the Hackensack River and roadway realignment on the west side of the river. The new bridge will be located north of the existing bridge with an increase in vertical clearance to a minimum of 70 feet in the closed position. ($174 million)
- Route 1 & 9 New Road: Infrastructure design and construction of an extension of Route 1 & 9 from St. Paul's Avenue to Secaucus Road in Jersey City, New Jersey. ($5 million)

Question 13

As recognized in the By-Laws, it is the goal and policy of the Port Authority to conduct its business and activities in the public interest and therefore the public should have access to the records of the Port Authority consistent with the freedom of information laws of New York and New Jersey. In order for the goal of greater transparency in governance to be achieved, a more efficient and clear policy statement, both for the guidance of staff and for the expectations of the public, was adopted in March 2012, to provide a streamlined process, with timely results and subject to judicial recourse in the States of New York and New Jersey. In addition, we will be utilizing the ever-expanding resources of the electronic information age to take advantage of the ability to disseminate information through the Port Authority's Website and other similar tools, and, as such, the fee provisions of the

Freedom of Information Code were suspended, on a trial basis, to determine whether the proposed posting of information on the Port Authority's Website may preclude the necessity for imposing such fees.

The Governance and Ethics Committee of the Port Authority's Board of Commissioners, after consulting with General Counsel, will review on a regular basis the Port Authority's transparency efforts.

Question 14

For 2011, taking into account the partial year toll increase (implemented September 18, 2011), the Port Authority's bridges and tunnels handled 119.1 million vehicles, or 2.1 million vehicles less than were handled in 2010. Total revenues were $1.03 billion and increased by $71.5 million, 7.4 percent higher than 2010 revenues. The average toll paid for all vehicles (autos, buses and trucks) in 2010 was $7.93 and the average in 2011 will be $8.67.

For 2012, the estimated toll revenue for the full year is $1.265 billion reflecting an anticipated increase of $304.1 million or (31.67 percent) above 2010. The estimated traffic change is 600,000 fewer vehicles relative to 2010 (2.2 percent).

Toll revenue overall for 2013, the full year during which the December 2012 toll increase will be in effect is expected to be $1.38 billion—an increase of $113 million in revenues (9.0 percent) over the comparable 2012 estimated toll revenue. A decline in traffic, relative to 2012 of 2.1 million vehicles (1.8 percent) is expected. By vehicle category, on average, autos would pay an extra 69 cents or 7.7 percent, trucks will add $7.17 or 20.4 percent and buses will pay an additional 75 cents or 7.2 percent.

While Question 14 asks for driver diversion rates, presumably due to increased tolls, the projected traffic decreases for 2012, as compared to 2011 and 2013 provided above, are attributable to the regional economic outlook and the toll increases.

Question 15

The Port Authority is committed to providing greater cross-Hudson capacity to benefit all commuters using ITN cross-Hudson facilities. The growing number of PATH riders will benefit from investments in a new rail station in Harrison, an entirely new fleet of PATH cars, and enhanced system signaling. Commuters who use the Lincoln Tunnel will benefit from the rehabilitation of the Lincoln Tunnel Helix, which will reduce the need to interfere with traffic by conducting interim and emergency repairs. Bus riders will benefit from investments in a refurbished George Washington Bridge Bus Station and ongoing improvements to the Port Authority Bus Terminal at 42nd Street. In addition, the Port Authority is undertaking a detailed and thorough review of bus transportation at the 42nd Street terminal to achieve increased bus usage and parking capacity on the west side of Manhattan.

* * *

The Port Authority believes the responses provided to the Committee on June 7, 2012 as supplemented by the responses enclosed herein adequately reflect the position of the Port Authority, and provide a thorough and complete summary as to why the Port Authority raised tolls and fares. Again, on behalf of the agency, I thank you for the opportunity to provide this supplemental response to the QFRs. In closing, I also wish to reiterate the agency's appreciation and recognition of the ongoing support of the Congress and Federal government. If you should have any further questions, please let me know. If it would be of assistance to the Committee, I can arrange to meet with you and/or your staffs to discuss these matters further.

Sincerely,

PATRICK J. FOYE,
Executive Director.

cc: Hon. DAVID SAMSON, Chairman
Hon. RICHARD H. BAGGER
Hon. H. SIDNEY HOLMES III
Hon. JEFFREY H. LYNFORD
Hon. JEFFREY A. MOERDLER
Hon. RAYMOND M. POCINO
Hon. SCOTT H. RECHLER
Hon. ROSSANA ROSADO
Hon. JAMES P. RUBIN
Hon. ANTHONY J. SARTOR
Hon. WILLIAM SCHUBER
Hon. DAVID S. STEINER
WILLIAM BARONI, JR., Deputy Executive Director

EXHIBIT A

TOLLS ARE ALL ROUND TRIP

MTA Bridges & Tunnels

Toll Schedules for VNB, Triboro, Bx-Whitestone, Throgs-Neck, BB Tunnel, QM Tunnel - (ROUND TRIP)

	12/30/2010		3/12/2009		3/16/2008		3/13/2005		5/18/2003		March/1996	
	Cash	E-ZPass	Cash	E-ZPass	Cash	E-ZPass	Cash	E-ZPass	Cash	E-ZPass	Cash	E-ZPass
Autos	$13.00	$9.60	$11.00	$9.14	$10.00	$8.30	$9.00	$8.00	$8.00	$7.00	$7.00	$6.00
Added axle	$5.50	$5.50	$5.00	$5.00	$4.50	$4.50	$4.00	$4.00	$3.50	$3.50	$3.00	$3.00
SI Resid		$5.76	$7.35	$5.48	$6.70	$4.98	$6.40	$4.80	$5.60	$4.00		$3.20
SI Carpl	$2.68		$2.56		$2.33		$2.25		$1.75		$1.25	
Trucks												
2-axle	$26.00	$17.32	$22.00	$16.50	$20.00	$15.00	$18.00	$14.40	$16.00	$12.80	$12.00	$9.60
3-axle	$42.00	$28.38	$36.00	$27.00	$32.00	$24.00	$28.00	$22.40	$26.00	$20.80	$19.00	$15.20
4-axle	$54.00	$36.24	$46.00	$34.50	$42.00	$31.50	$38.00	$30.40	$34.00	$27.20	$26.00	$20.80
5-axle	$70.00	$47.26	$60.00	$45.00	$54.00	$40.50	$48.00	$38.40	$44.00	$35.20	$33.00	$26.40
6-axle	$82.00	$55.14	$70.00	$52.50	$64.00	$48.00	$58.00	$46.40	$52.00	$41.60	$40.00	$32.00
7-axle	$100.00	$66.16	$84.00	$63.00	$76.00	$57.00	$68.00	$54.40	$62.00	$49.60	$47.00	$37.60
Added axle	$16.00	$11.04	$14.00	$10.50	$12.00	$9.00	$10.00	$8.00	$10.00	$8.00	$7.00	$5.60
Franchise Buses*												
2-axle		$8.94		$6.60		$6.00	$7.00	$5.60	$6.00	$4.80	$5.00	$4.00
3-axle		$8.24		$7.84		$7.12	$8.50	$6.80	$7.50	$6.00	$6.50	$5.20
Motorcycle	$5.50	$4.18	$5.00	$3.98	$4.50	$3.62	$4.00	$3.50	$3.50	$3.50	$3.50	

**Franchise Buses:*
At the TBTA, "Franchise Buses" are composed of seven previously independent bus carriers that are now under the MTA umbrella. Since March 16, 2008, Franchise buses must be equipped with E-ZPass to be eligible for a toll discount. Non-Franchise buses are charged the same rate as 2 or 3-axle commercial trucks.

EXHIBIT B

Port Authority Tunnel & Bridge Crossings

Round Trip Toll Rate

		1970*	1975*	1984	1987	1991	2001**				2008**				2011***			
							Cash	Peak E-ZPass	Off-Peak E-ZPass	Overnight E-ZPass	Cash	Peak E-ZPass	Off-Peak E-ZPass	Overnight E-ZPass	Cash	Peak E-ZPass	Off-Peak E-ZPass	Overnight E-ZPass
Class 1	Passenger Car	$1.00	$1.50	$2.00	$3.00	$4.00	$6.00	$5.00	$4.00	—	$8.00	$8.00	$6.00	—	$12.00	$9.50	$7.50	—
Class 2	Truck	$1.50	$2.25	$3.00	$6.00	$8.00	$12.00	$12.00	$10.00	$7.00	$16.00	$16.00	$14.00	$11.00	$26.00	$20.00	$18.00	$15.00
Class 3	Truck	$2.00	$3.00	$4.50	$9.00	$12.00	$18.00	$18.00	$15.00	$10.50	$24.00	$24.00	$21.00	$16.50	$39.00	$30.00	$27.00	$22.50
Class 4	Truck	$3.00	$4.50	$6.00	$12.00	$16.00	$24.00	$24.00	$20.00	$14.00	$32.00	$32.00	$28.00	$22.00	$52.00	$40.00	$36.00	$30.00
Class 5	Truck	$4.00	$6.00	$7.50	$15.00	$20.00	$30.00	$30.00	$25.00	$17.50	$40.00	$40.00	$35.00	$27.50	$65.00	$50.00	$45.00	$37.50
Class 6	Truck	$4.00	$6.00	$9.00	$18.00	$24.00	$36.00	$36.00	$30.00	$21.00	$48.00	$48.00	$42.00	$33.00	$78.00	$60.00	$54.00	$45.00
Additional Axles							$6.00	$6.00	$5.00	$3.50	$8.00	$8.00	$7.00	$5.50	$13.00	$10.00	$9.00	$7.50
Class 7	Car w/Trailer	$1.50	$2.25	$3.00	$4.50	$6.00	$9.00	$8.00	$7.00	—	$13.00	$13.00	$11.00	—	$22.00	$16.00	$14.00	—
Additional Axles				$1.00	$1.50	$2.00	$3.00	$3.00	$3.00	—	$5.00	$5.00	$5.00	—	$10.00	$8.50	$6.50	—
Class 8	Bus	$2.00	$2.00	$2.00	$3.00	$3.00	$3.00	$2.70	$2.70	—	$6.00	$4.00	$4.00	—	$20.00	$10.00	$10.00	—
Class 9	Bus	$2.00	$2.00	$2.00	$3.00	$3.00	$3.00	$2.70	$2.70	—	$6.00	$4.00	$4.00	—	$20.00	$10.00	$10.00	—
Class 11	Motorcycle	$0.50	$0.75	$1.00	$2.00	$3.00	$5.00	$4.00	$3.00	—	$7.00	$7.00	$5.00	—	$11.00	$8.50	$6.50	—
Class 1	Carpool		$0.50	$0.50	$0.50	$0.50	—	$1.00	$1.00	—	—	$2.00	$2.00	—	—	$3.50	$3.50	—
Class 1	Green Pass										—	$8.00	$4.00	—	—	$9.50	$4.00	—

* Original classifications for 1970 and 1975 are different to schedules for later years.
Rates listed in the table reflect classifications equivalent to the years after 1984.

** Peak Hours - Weekdays 6-9am, 4-7pm; Sat&Sun 12 Noon-8pm
Off-peak hours - All other times, including New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day
Overnight hours for trucks - Midnight to 8am weekdays

*** Peak Hours - Weekdays 6-10am, 4-8pm; Sat&Sun 11am -8pm
Off-peak hours - All other times.
Overnight hours for trucks - 10 pm to 8am weekdays

September 24, 2012

DAVID SAMSON,
Chairman,
Port Authority of New York and New Jersey
New York, NY.

BILL BARONI,
Deputy Executive Director,
Port Authority of New York and New Jersey,
New York, NY.

Dear Chairman Samson and Mr. Baroni:

We write to express continued disappointment with the Port Authority's failure to answer several questions raised as part of the Surface Transportation Subcommittee of the Senate Commerce Committee's hearing entitled "Protecting Commuters: Ensuring Accountability and Oversight in Tolling."

As you know, the Port Authority failed to sufficiently respond to the Committee's written questions following the hearing, and the Committee provided the Port Authority additional time to amend the record. On August 14, the Port Authority sent an updated response, which once again failed to respond in whole or respond at all to many of the Committee's questions.

It is unacceptable that the Port Authority is unable to answer straightforward inquiries or supply information about the toll increases in question and this behavior raises serious concerns about the agency's reform efforts. While the Port Authority has publicly committed to being a transparent and accountable agency, there are growing concerns that these efforts are being subverted by obstructionists who appear to put politics above the people and Authority they serve.

We understand that Mr. Foye, Executive Director of the Port Authority, worked in good faith to answer the Committee's questions. It is regrettable that a similar good faith effort apparently was not made by all of Port Authority's leadership.

Decisions about tolls have serious ramifications for interstate commerce in the region, and we are disappointed that prominent Port Authority officials continue to shirk the oversight of the Committee and the commuters that use their facilities every day.

Sincerely,

JOHN D. ROCKEFELLER IV,
Chairman, U.S. Senate Committee on Commerce, Science, and Transportation

FRANK R. LAUTENBERG,
Chairman, U.S. Senate Commerce Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security

cc:
SCOTT RECHLER, Vice-Chairman
RICHARD BAGGER, Board Member
H. SIDNEY HOLMES III, Board Member
JEFFREY LYNFORD, Board Member
JEFFREY MOERDLER, Board Member
RAYMOND POCINO, Board Member
ROSSANA ROSADO, Board Member
JAMES RUBIN, Board Member
ANTHONY SARTOR, Board Member
WILLIAM SCHUBER, Board Member
DAVID STEINER, Board Member
PATRICK FOYE, Executive Director

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