

**LEVERAGING FEDERAL FUNDING;
INNOVATIVE SOLUTIONS FOR INFRASTRUCTURE**

HEARING
BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
OF THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED FIFTEENTH CONGRESS
FIRST SESSION

MAY 16, 2017

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ONE HUNDRED FIFTEENTH CONGRESS
FIRST SESSION

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LEVERAGING FEDERAL FUNDING; INNOVATIVE SOLUTIONS FOR INFRASTRUCTURE

TUESDAY, MAY 16, 2017

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3:17 p.m. in room 406, Dirksen Senate Building, Hon. James M. Inhofe (Chairman of the Subcommittee) presiding.

Present: Senators Inhofe, Fischer, Ernst, Sullivan, Cardin, Whitehouse, Gillibrand, Duckworth, Harris, and Carper.

OPENING STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator INHOFE. The hearing will come to order.

I want to thank all of you for being here today. I thank my friend, Ranking Member Cardin, and his staff for the flexibility with the scheduling of today's hearing.

It is kind of interesting because Ben Cardin and I are maybe three of the last remaining of the class of—what was that?

Senator CARDIN. The 100th Congress in 1987.

Senator INHOFE. Yes, 1987. No, we have Lamar Smith and a couple more.

It is funny. We are on opposite sides on a lot of issues, but we are always together in friendship as well as in infrastructure.

As this week is Infrastructure Week, it is a great opportunity for us to highlight the critical needs we have in this country. Tomorrow the full Committee will have the chance to question Secretary Chao on the Administration's priorities. It is my hope today's hearing will be a productive lead in to her visit.

Last Congress the EPW Committee led the charge to pass the FAST Act and the sixth highway reauthorization bill that I personally worked on. This was the largest one since 1998. Nobody believed we would get it done, and others thought we would only get an 18-month bill.

However, Senator Boxer and I, as the Chairman and the Ranking Member, insisted on 5 years. It shows that people of opposite and different philosophies can get along and make wonderful things happen.

However, the current investment is not enough to fully address our maintenance and the new capacity needs. The FAST Act authorization is about \$305 billion over 5 years. Yet according to the

United States DOT report from this year, the backlog of highway and bridge work in the United States stands close to \$836 billion.

As the Administration and Congress consider a potential trillion dollar infrastructure package, we must keep in mind that the package will include more than just roads and bridges, but also our port system waterways, airports, and energy needs as well. While the Federal Government will and should continue to be a leading partner in maintaining and building out our infrastructure, the current and proposed Federal investment will not meet all of our needs.

Whatever action we take on infrastructure, our State and local partners have to be a part of the solution and prioritize transportation. Some States and local areas are doing this. Unfortunately, this weekend, in my State of Oklahoma, I learned about the effect of proposed budget cuts to the Department of Transportation.

My State of Oklahoma did not properly prioritize the need for transportation. Oklahoma and other States have to meet their modest match. We are talking about matches of either 10 and 90 or 20 and 80. It occurred to me, and I was not aware, that they were not prioritizing that.

Ben, I took my plane and loaded it up with media and went around to all the construction sites saying that if we do not do our portion of the match, we are going to be stopping some of the construction. I think you know what happens when that does happen.

In addition to States and locals prioritizing infrastructure, we also need to find responsible and meaningful ways to attract and leverage additional private investment to help close the gap.

Today's hearing will examine all these possibilities and what the Federal Government can do to help make it easier for our partners to leverage the Federal investment with other opportunities. Though not all ideas will work everywhere, all options should be on the table. We should incentive our non-Federal partners to pursue them.

I look forward to hearing from our witnesses.

Senator Cardin.

**OPENING STATEMENT OF HON. BENJAMIN L. CARDIN,
U.S. SENATOR FROM THE STATE OF MARYLAND**

Senator CARDIN. Mr. Chairman, once again, thank you very much for your leadership in regard to infrastructure in our country. It is a real pleasure to be the Ranking Democrat on the Subcommittee to work with you on a bipartisan infrastructure bill.

We have never had a problem in bipartisan infrastructure. I expect that will be the same, and I really do look forward to working with you to figuring out a way we can get this done.

Up front, let me put on the record my conflict with today's hearing. I commute back and forth from Baltimore to Washington every day. I know firsthand the problems of traffic and congestion. When I started in 1987, Mr. Chairman, when we were both elected, the roundtrip commute between Baltimore and Washington took me about 2 hours. Today, that exact same commute at the exact same time today takes 3 hours and 15 minutes.

My transportation people are telling me to expect 1 million more people in Maryland over the next 25 years. Twenty-five years from now when we are celebrating whatever anniversary that is together

in Congress, that commute is going to take 4 hours and 15 minutes. We have to do something about it.

Mayor Garcetti, I am glad you are here because the congestion in Los Angeles is worse than our congestion. I have someone I can point to who has an even more difficult commute than we do.

We really need to address this. The congestion is very costly to our economy; it is costly to our public health. It is a circumstance that the public demands that we modernize our infrastructure.

We have neglected it. Yes, I agree with the Chairman, we can always do things more efficiently and always find more creative ways for partnership, but the bottom line is the public investment must keep up with the need. We have not kept up with the need. We are here today to figure out how we can do this.

The Washington district has ranked anywhere from one to four to fifth as the most congested region in the country. That is why we work on ways to get people out of cars. The transit programs are important.

WMATA, which has 700,000 riders a day, one-third of whom are Federal employees trying to get to work, is an old system. It also needs help. It takes resources to rebuild our stations, to improve our lines, and to deal with the needs of additional lines. Some of this is extremely expensive. We have to figure out a proper way in order to finance our infrastructure.

We also need to deal with the flexibility issues. I appreciate that.

Senator Carper is now here. Senator Carper is the Ranking Member of the full Committee and a real champion on infrastructure.

He is very bold, by the way, in saying he is ready to pay for it. Senator Carper is very much in the leadership of saying, we have to pay for what we need, and let us find a way to do it. I appreciate his leadership on this.

One of the things we try to do is give flexibility to local governments, which I think is very important. Baltimore was designed by Olmsted. Olmsted connected all neighborhoods together through green space. Over the years, that green space got developed, and communities got isolated. Literally, people were trapped in their neighborhoods. The only way they could get around was if they had a car. Some had cars, and some did not have cars, but it put more traffic on the road.

We have given Baltimore the flexibility of using transportation money to reconnect neighborhoods so that people can literally walk and bike between neighborhoods without using their cars, which takes cars off the roads; that preserves our roads for longer periods of time and improves the quality of life. That is what we did together, giving the flexibility in our transportation programs so local governments can make their own decisions rather than us trying to dictate from Washington how things should be done.

I would hope we would continue those types of efforts as we look at additional tools we can give our mayors and local officials so that they can do what is best for their community in order to restore their communities.

This is an area we should be able to get done, Mr. Chairman. We have a President of the United States making transportation one of his top priorities. We have had bipartisan proposals come out of

Congress on revenues to deal with transportation. This Committee is dedicated to working together, listening to every member of this Committee. We come from different areas. Oklahoma and Maryland have different transportation needs, but we agree that we need additional help.

Working together, I think we can get this done. I very much look forward to our hearing and to working with the Chairman.

Senator INHOFE. Thank you very much, Senator Cardin.

Let me suggest we will go ahead and make some introductions. I want to get into the record all five important people we have here to testify.

Senator Harris, why don't you start off by introducing the Mayor?

Senator HARRIS. I appreciate that, Chairman. As you know, I am also on the Senate Intelligence Committee which is meeting at the exact same time. Thank you for that.

I would like to introduce and welcome Los Angeles Mayor Eric Garcetti, a longstanding friend and a great leader in California. He is here to talk about our nation's transportation needs.

Los Angeles freeways are infamous. The intersection between the 10 and the 405 is known affectionately as the biggest parking lot in America.

It is not just our roads that are overstretched. In 2015, 45.5 million visitors traveled to Los Angeles, and 6.7 million arrived from other countries. Los Angeles International Airport is the second busiest airport in the country. L.A. County has the top two biggest container ports in the country.

Having quality infrastructure in Los Angeles is not just important for those who call it home, as do I, but it is important for the entire country. When Los Angeles is moving efficiently, that means it is easier for the products, goods, and people that we all need to move around the country and the world, that they are able to move in an easier way.

Mayor Garcetti has a front row seat to the transportation challenges and needs of southern California while also running a city that is looking at new ways to address urban mobility and challenges and hopefully, a city that will also host the Olympics.

Los Angeles is investing in new highway and surface street infrastructure while it is expanding rail transit and looking at how to impact dedicated bus and bike lanes. Los Angeles residents just approved a measure to invest their own money in the infrastructure that helps keep Los Angeles and its region growing and moving. It is time for the Federal Government to do its part.

Residents are steadily seeing new options to get around their city, but they need Federal resources in order to provide businesses and tourists the experience they deserve. The City and County of Los Angeles have always had a history of working with the Federal Government to build bipartisan support in an effort to accelerate infrastructure improvement projects.

The work underway to address Los Angeles' urban mobility challenges requires innovation, combined with support from local, State, and Federal Government. I look forward to hearing my Mayor's testimony today.

Welcome, Eric Garcetti.

Senator INHOFE. Thank you, Senator Harris.

Before we continue with the introductions, I would like to ask Senator Carper if he has any statement to make as he is the Ranking Member of the entire Committee.

**OPENING STATEMENT OF HON. THOMAS R. CARPER,
U.S. SENATOR FROM THE STATE OF DELAWARE**

Senator CARPER. Welcome, one and all.

I am proud to be a member of this Committee. I have been on it for about 16 years now. I am also a recovering Governor and served for 8 years as Governor of Delaware from 1993 to 2001. I care about these issues and have thought about them as well.

I want to thank the leadership of this Subcommittee for holding the hearing today. I want to thank all of you for coming and sharing with us your perspectives on an issue on which we hope we can find some bipartisan agreement and make progress. We pretty much need to.

I like to say one of the major roles of government is to provide a nurturing environment for job creation and job preservation. I say that several times a day. That is one of my guiding principles.

It is hard to have a nurturing environment if you do not have good transportation systems. You folks know that from the work that you do. I support measures to enable public agencies to partner with private investors. I want to ensure that these agencies have the capacity and the support they need to be successful.

In Delaware, we have an interest in using public-private partnerships. Right now, our State is working on one agreement with a private developer to build a mixed use parking garage and transit center in Wilmington, Delaware, where my family and I live. We would do that in order to try to facilitate access an increasingly vibrant retail district downtown.

If we are successful in this one endeavor, it will be the first transportation related P3 for Delaware—the first. Although our State has bid projects on public-private partnerships in the past, they have never proceeded ultimately because of a lack of investor interest, I suspect because the investor figured out they could not make the kind of return on the investment they wanted to make.

In Congress, we have done important work to support agencies interested in partnering with private firms to transfer project risks and potentially to build projects more quickly. In the FAST Act, we restructured the Department of Transportation's credit and innovation finance programs into a single, one stop show to streamline and improve the process for agencies and for investors.

We also reduced the minimum project cost for the Transportation Infrastructure Financing Innovation Act, TIFIA, in order to expand access to TIFIA loans. I believe the private sector can play an important role in stimulating investment in our critical infrastructure.

However, I also know public-private partnerships and other financing tools are not the complete solution to our funding shortage even though sometimes we imply they would be. We need to be clear that leveraging public funding with private finances is not a replacement for public funding and will not solve either our High-

way Transportation Fund insolvency crisis or the maintenance backlog for our roads, our bridges, and for transit.

In just over 3 years we will face an insolvency crisis for the Highway Trust Fund yet again. We will be facing a \$115 billion shortfall for our next 5-year transportation bill. That funding crisis will also be a crisis for private investors who similarly rely on certainty of public funding from the Highway Trust Fund.

Partnering with private investors can help public agencies complete large, complex problems more quickly. That is an important value, particularly with the number of major bottlenecks in transportation regional projects that need to be completed today where I live, and frankly, where we all live.

On the other hand, there are only a small number of large, complex, and transformative transportation projects where financiers are interested in investing. For example, in 2014 just four transportation projects were closed with a public-private partnership contract. They were all several hundred million dollar projects.

The hard truth is that public-private partnerships have not been as useful for routine maintenance and critical safety projects. This was a shock to me. Moreover, a total of a third of all States do not allow the use of public-private partnerships.

In Texas, a State that has allowed them in the past, the legislature recently voted not to use P3s because their constituents did not want to pay higher tolls. There are a number of questions that should be asked about when public-private partnerships are a useful tool, how we can ensure they are making good use of scarce Federal dollars.

I use this analogy, and my colleagues have heard we say it before. Usually when we come to funding transportation across the country, there is no silver bullet. There are a lot of silver BBs, some are bigger than others. I have said the biggest silver BB is one that calls for those who use roads, highways, bridges, businesses and people should pay for them.

There are other ways we can use that money to help leverage other money, including public-private partnerships and we should do that.

Thank you so much.

Senator INHOFE. Thank you, Senator Carper.

Let me introduce the next witness, Tim Gatz, the Executive Director of the Oklahoma Turnpike Authority. Before his current role, he worked for the Oklahoma Department of Transportation for over 25 years, starting as a drafting technician and working his way up to serving as the director of the department.

At the Oklahoma Department of Transportation, he was actively involved in developing their project management methodologies, as well as construction work plan which guides the department's project development and delivery strategies.

With his new role as the Executive Director of the Turnpike Authority, Tim will oversee the continued development and implementation of the nearly \$900 million driving forward plan which he will be sharing with us.

Tim, it is great to have you here.

Let me say we have so many people right now really into this issue. I often sometimes say, these guys have heard me say it,

there is an old, worn out document nobody ever reads anymore called the Constitution which talks about what we are really supposed to be doing here, defending America, and they called it post roads then, but highways and construction.

We have a new President who has made this commitment a long time ago. People say, wait a minute, a trillion dollars; that is not going to work. It is time to think about what happened 8 years ago. Eight years ago we had another person elected as the President of the United States. He came out with an \$800 billion+ program that was supposed to stimulate, and it did not stimulate anything.

I can remember Barbara Boxer and I trying to put amendments on there to use that for that very reason.

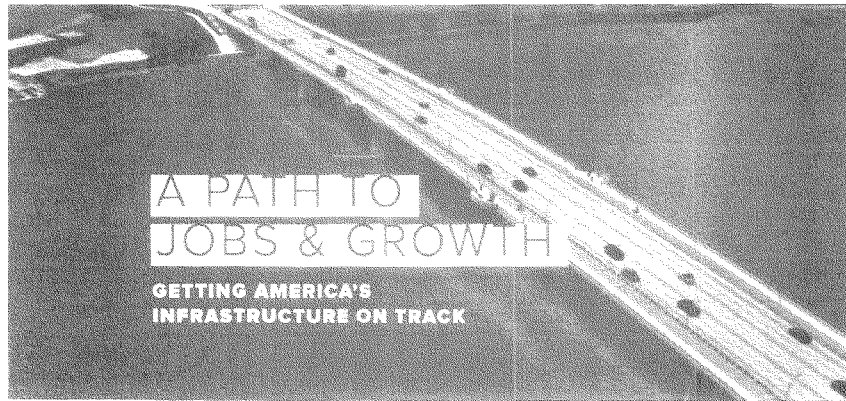
Also, I was visited this morning by the Business Roundtable. I ask unanimous consent that their statement of support for what we are doing today be made a part of the record. Without objection, so ordered.

[The referenced information follows:]



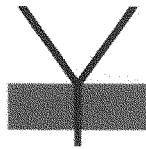
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May 16 · 3 min read



By Jacqueline Hinman, Chair, Business Roundtable Infrastructure Committee and Chairman and Chief Executive Officer, CH2M

11/11/17



Yesterday, I joined a tremendous cross section of civic and private sector leaders, including U.S. Secretary of Transportation Elaine Chao, Los Angeles Mayor Eric Garcetti and Denver Mayor Michael Hancock, all united in a common mission: reinforcing and revitalizing a cherished American asset, infrastructure.

As Chair of the Business Roundtable Infrastructure Committee, I was proud to kick off Infrastructure Week 2017. Members of the Business Roundtable are encouraged and energized by the growing momentum for investing in infrastructure, which in turn enables job creation and economic growth.

Infrastructure Week

It's time to start building. It's officially Infrastructure Week 2017! Join us this week in Washington, D.C. and around...

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This is a critical turning point for our nation's future. Modern infrastructure is a strategic asset that must be maintained and upgraded to ensure the continued health, safety and prosperity of our people and our nation. Unfortunately, America's transportation, water, and energy systems have not kept up with the demands of today's economy and the nation's growing population.

America's business leaders understand the urgency of this challenge and are committed to smart, innovative strategies to maintain and upgrade our nation's roads, sea and air ports, water systems and other infrastructure assets. To provide business input to policymakers through this effort, Business Roundtable is marking Infrastructure Week by releasing our plan for action, *Back in Business: A Blueprint for Renewing America's Infrastructure*.

This blueprint contains guiding principles to advance the development of 21st century American infrastructure. We propose harnessing the power of private investment and innovation; advancing smarter regulations; embracing self-sustaining "user pay" models; and improving our management of existing infrastructure assets. The blueprint also offers specific recommendations for surface transportation, waterways, aviation, drinking and wastewater, energy and financing –all designed for policymakers to put into action.

The World Economic Forum ranks the overall quality of U.S. infrastructure as 12th in the world, falling below major competitors like Japan and France. Improving our competitive position will require making consistent, long-term investments starting now. Delay means further deterioration and the likelihood of even more costs in the future.

At CH2M, we partner with governments, communities, businesses and organizations to tackle the world's toughest infrastructure, facility, energy, and natural resource challenges. For example, In

Washington, D.C., where we kicked off Infrastructure Week, we are managing the Anacostia Waterfront Initiative, a project to restore the long-neglected Washington, D.C., riverfront neighborhood. We are working to leverage private investment to revitalize the area by converting highways to urban boulevards, improving connectivity between neighborhoods and creating a cleaner river environment featuring waterfront parks and recreation areas.

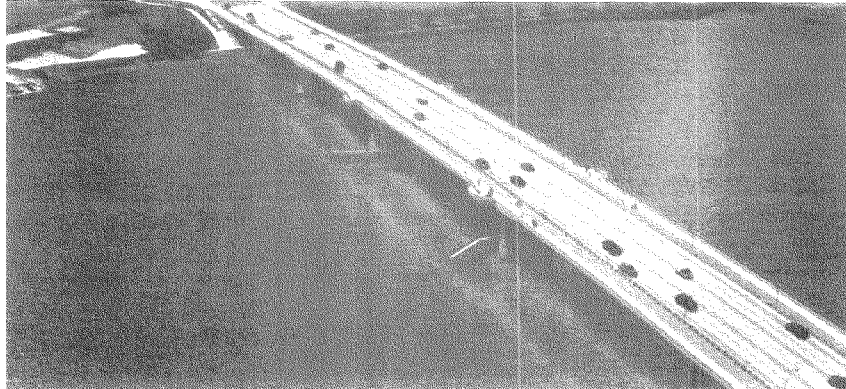
In this effort and so many more, we see firsthand that investing in infrastructure makes communities stronger and helps deliver the job creation, growth and quality of life that allows all Americans to share in the nation's prosperity.

11/11/2014

Jacqueline Hinman | Business Roundtable

Jacqueline Hinman (formerly Rast) serves as the Chairman and Chief Executive Officer of CH2M. She has 30 years of...

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Senator INHOFE. Mayor Garcetti, do you have to leave early? Does this alter your testimony?

Mr. GARCETTI. I do have to leave early, but I am ready to go whenever you say.

Senator INHOFE. Let me introduce the rest of the witnesses. We will start with you, and when you have to leave, let us know. I appreciate your presence here very much.

Geoffrey S. Yarema is a partner at Nossaman LLP in Los Angeles, California. Kevin DeGood is Director of Infrastructure Policy, Center for American Progress, Washington, DC. Welcome. Aubrey L. Layne is Secretary of Transportation for the Commonwealth of Virginia.

Senator CARDIN. I should explain I asked my Maryland folks who would be the best person to testify in regards to our problems in this region, and they recommended Secretary Layne.

It is a pleasure to have you here, Mr. Secretary. Virginia, Maryland, and Delaware get along very well together.

Senator INHOFE. Your Honor, you are on.

I am going to try to encourage you folks to limit your statement to 5 minutes or a bit more maybe, but your entire statement will be made a part of the record, as is always the case.

STATEMENT OF HON. ERIC GARCETTI, MAYOR, CITY OF LOS ANGELES, CALIFORNIA, AND CHAIR, U.S. CONFERENCE OF MAYORS INFRASTRUCTURE TASK FORCE

Mr. GARCETTI. Thank you so much, Chairman Inhofe. Thank you for your friendship.

For the times we have met in the past, Ranking Member Cardin, thank you.

Senator INHOFE. What is it I always tell you when we meet? I say, I had a hard job once.

Mr. GARCETTI. Yes, you did. I think we bonded over that, and I appreciate the perspectives you have brought.

Ranking Member Cardin and Senator Carper, as well, thank you for your leadership, and also Senators Ernst and Fischer.

I am Eric Garcetti, Mayor of Los Angeles. I want to give a special thanks to my Senator, Senator Harris, for the introduction.

I am honored to appear before you, not only as Mayor of a great American city, but also as the Chair of the Task Force on Infrastructure for the U.S. Conference of Mayors.

When I heard folks talking about infrastructure a few months ago in the presidential election, as Mayor of the city that has the biggest port in America, the largest municipal utility in America, the No. 1 airport of origin and destination, the most miles of road, and as stated, the worst traffic, I got very excited. Contrary to what you might have seen in LaLa Land, no, we do not dance in traffic. We just sit there and stew.

I am here today to get you excited. Do not let this get out because 99 percent of the coverage tonight is not going to be about how we are all getting along; it is going to be about how we disagree. Right here, we truly do have bipartisanship and agreement on what this country needs. That is the space Mayors occupy every single day.

For all of us in the municipalities who have heard the words “a trillion dollars,” in the election in November when everyone was focused on the national elections, throughout cities in America, \$230 billion of infrastructure initiatives were approved by voters, a quarter of that down payment people are talking about happening over a decade.

My message from America’s cities is loud and clear. We can do this. We should be excited to do this. I want to share our lessons in Los Angeles about how we did this. Republicans and Democrats agree, as well as Independents, on the need for this. We looked at this in Los Angeles, not just as an infrastructure need, but really as a jobs and quality of life initiative.

We get excited about the word “infrastructure,” but normal Americans want more time with their kids to tuck them in. They know the billions of dollars in our local economy that were taken from us, millions of hours taken away from us through the traffic that chokes our cities.

We started crisscrossing a 4,700 square mile county with 10 million people, bringing in Republicans and Democrats. My wingman on this was somebody you may know, Supervisor Mike Antonovich, the most conservative member of the Board of Supervisors in L.A. County, and we crossed over to say, this is something we have to figure out a way.

In California, you need a two-thirds vote to raise a tax. It is an incredibly high threshold. A long story short, we had a 71 percent vote for a \$120 billion package, the largest in American history times two at the local level, to fix our roads, 15 rapid transit lines, repair our freeways, and give local money back to our cities and the county for the road repairs they need.

What led to that success? I think we each gave up a little something of who we were. As a Democrat, I came in skeptical as a Mayor about public-private partnerships and the role of leverage and banks. Today, I am a convert. Somewhere the fiscal conservative in me did not feel great about grants that come in with little accountability, but I see how critical and how crucial they are.

The days of cities coming or States coming to this esteemed Senate or the House of Representatives saying, look, I have an empty hat in hand and a great project, please fill it up are long gone. We know that.

We have been immensely successful in Los Angeles in coming to you with a hat that is half filled saying, can we have our Federal tax dollars along with our local tax dollars to make this happen?

I spent 3 days last week with the International Olympic Committee members who came to Los Angeles. I do want to bring the Olympics back home to America. They were blown away by what we are doing with infrastructure: \$14 billion in our airport; \$120 billion, as I said, in public transportation and roads; and another \$2.6 billion at our port.

However, the jobs piece of making sure these are American jobs, because there is no port equipment manufacturer in the United States, there is no railcar manufacturer in the United States, we have real opportunities in passing this not just to talk about the needs of infrastructure, but the need for middle class jobs in America.

What leads to success policy-wise? I hope to lay that out in my last minute here. There are three things. We are calling this the I3. You have heard of P3; this is the Infrastructure Incentives Initiative.

One is leverage. Two is to think about the life of projects. Three is innovation and technology. Leverage, I think, is clear. I just came from a discussion with Members of the House and Senate, leaders in industry and a few of us mayors. They were talking the same language.

You need to leverage localities; reward those that step up, but also put out there that if you do have local money, you have a better chance of getting Federal money. Similarly do that between public and private partnerships, knowing the advantages and the shortcomings that P3s have.

We have seen this in Denver where in 75 percent of the time and 7 years less, they got a transit line from downtown to the airport. Leverage has to be the central principle of what we write.

Two is to think about life of projects. I am glad you brought up WMATA. We have seen this not just in Washington where people were killed, where yesterday you saw the line shut down, but in Boston where people kicked out windows of the railcar because it was smoking and places like the Bay Area in my State where folks are trying to get on the ballot something for maintenance. Make sure you reward those places that are not just thinking about the construction, because we all love ribbon cuttings, but think about the maintenance and the long term.

The third is innovation and technology both in the process as well as the technology itself. We are looking at changing American tunneling technology. Elon Musk, who you all know, in my city is looking at changing boring machines. I know this sounds like a boring topic, but it is actually quite exciting. Boring machines have not changed in 50 years, and he thinks he can get SpaceX engineers to increase the speed that they drill by as much as 10 times.

We do not know what we do not know, but you need to put aside some funds, as we did in our initiative, for new, innovative technologies because we could be getting around in a very different way in 5, 10, we for sure will be in 20 years from now.

Those three concepts of leverage, the full life of projects, and innovation technology is what the U.S. Conference of Mayors is putting forward as our plan to help assist you.

I will close with this. I will work off my tail to help you get Republican and Democratic mayors from every single town and city in this nation to help get this passed. There is no better thing we could be doing for jobs, for the quality of life of all Americans, and it is the one thing that unites all of us.

I will say, on behalf of America's cities, we have stepped up; we cannot wait for you to join us, too.

Thank you for all your support.

[The prepared statement of Mr. Garcetti follows:]

**Statement of
Los Angeles Mayor Eric Garcetti
Before the
Senate Environmental and Public Works
Subcommittee on Transportation and Infrastructure
Hearing on "Leveraging Federal Funds: Innovations Solutions for Infrastructure"
May 16, 2017**

Chairman Inhofe, Ranking Member Cardin and Members of the Subcommittee — my name is Eric Garcetti, and I serve as Mayor of Los Angeles.

I am honored to appear before you and this Subcommittee on behalf my City, and as Chair of the United States Conference of Mayors Infrastructure Task Force.

As you know, the U.S. Conference of Mayors is a national bi-partisan organization representing the chief executives of close to 1,400 American cities with populations of 30,000 or more.

Los Angeles is the infrastructure capital of America: we are home to the nation's busiest origin and destination airport. We have the nation's leading port complex. And since November, following county-wide and bi-partisan approval by the voters, we are home to a \$120 billion infrastructure program, the largest in our nation's history — times two.

The new economy is advancing faster than ever before, and it is leaving too many Americans behind. For our nation to succeed, we must strengthen our middle class through job creation. We must win against global competition by moving goods faster and better. We must improve the everyday quality of life for the American people — cleaner air to breathe, reliable water from the tap, less time in traffic, less money spent on wasted fuel and lost productivity.

The creation of a bi-partisan National Infrastructure Program would help us achieve all of this and much, much more. It would help usher in a new era of prosperity, innovation, and economic health for our nation. And it would position the United States of America to continue its economic leadership of the world for in the 21st Century.

This is why America's cities are already taking action.

Los Angeles is investing \$2.6 billion to upgrade our port's infrastructure to accommodate the new and larger classes of container ships and increasing cargo volumes. We are investing \$14 billion at our airport to upgrade 1960s-era terminals, and to welcome 21st century aircraft like the A380. Just last week, I was hundreds of miles from Los Angeles, being briefed on upgrades to the dams and aqueducts that supply much of our city's drinking water. And we are already at work executing that \$120 billion infrastructure plan I mentioned — to create a truly comprehensive rail network, ease congestion on our freeways, and fix our local roads.

And this kind of nation-leading investment isn't just happening in L.A.

The voters in Austin, Texas passed "Proposition 1" to upgrade their transportation system. Charleston County in South Carolina gave their "transportation initiative" a green light, and voters in the great Northwest approved the "Sound Transit 3" ballot measure in Seattle, Washington.

But cities across America are still reliant on decades-old infrastructure that was wholly funded by the federal government through initiatives like the Works Progress Administration and the Interstate Highway System. We know this infrastructure, which fueled decades of growth, is today crumbling and requires drastic improvement.

As we seek to upgrade this infrastructure, I believe we should also seek to move past this 100 percent federal model when it comes to infrastructure investment. Instead, I hope to partner with you by leveraging and combining local, state and federal dollars.

This is one viable path to achieving a truly robust national infrastructure program — for example, one that is \$1 trillion in size. This is something that every American can rally around, and will benefit from — which includes urban, suburban, and rural areas.

America's cities, look forward to partnering with this committee to develop a robust and bi-partisan National Infrastructure Program.

While developing such a program will certainly be complex, I am confident that the following four components are absolutely necessary for success:

First, we must — quote — "do no harm."

Existing federal programs such as New Starts and Tiger are already combining with local funding streams to build, accelerate and expand projects. These programs prove that the local-federal partnership model can be successful, and must be maintained. They are the foundation upon which a national infrastructure policy must be built.

Second, we must, of course, expand direct federal infrastructure funding.

Local entities cannot do this critical work of expanding access to mass transit, and upgrading our nation's roads, freeways and bridges alone. At the same time, neither can the federal budget. Which leads me to the third component:

A national infrastructure package must include legislation that incentivizes local entities to generate their own revenue — and not just for the sake of spending the way that we've funded infrastructure for the last 50 years. We need to leverage new project delivery innovations, and make sure that our project reviews are as efficient as possible, and delivering real value.

Finally, we need to build our projects so they perform in the long-term.

Too often we only care about ribbon-cuttings and groundbreakings. The federal government should reward states and cities for ensuring their assets perform to the level that the public expects — focusing on longer-term life-cycle needs, and using innovation and new technology to deliver results whenever possible. Public-private partnerships, in many cases, are a particularly good way to deliver ongoing performance, and they also allow the public sector to leverage private funding to help deliver projects sooner, more efficiently with performance guarantees.

Altogether, this is how we can indeed get to \$1 trillion. And this is how we can lay a new path forward — one that creates hundreds of thousands of jobs for our economy, builds connections between our communities, and improves the quality of life of all Americans.

I look forward to working with this committee to help deliver that future for the American people, and cities across this country.

Measure M – An Unprecedented Transportation Infrastructure Program

Measure M is the largest transportation initiative in the history of the United States — times two. Measure M is expected to generate an \$860 million a year in 2017 dollars. This measure will help expand our rail and rapid bus transit system, accelerate rail construction and improve our system connectivity throughout the County of Los Angeles. It will stitch the rail network needed to connect every resident in Los Angeles County. A total of 15 rail and bus rapid transit projects will be built under Measure M. These projects include the acceleration and completion of our Purple Line subway extension, light rail connections in the San Fernando and San Gabriel Valleys, and the vital connection to LAX. The Purple Line extension would connect the two largest job centers in the State of California, downtown Los Angeles to the UCLA/Westwood area. And the project will be ready by 2024, the target year for our Olympic bid.

Measure M also funds projects to build and fix 14 major highway projects. It aims to tackle some of the most congested corridors and roadway bottlenecks in the nation. For example, the measure will help modernize Interstate 710 Long Beach Freeway, a vital transportation artery that links the Ports of San Pedro Bay to major distribution centers. Thousands of trucks use this corridor every single day. The construction of this project will improve air quality, enhance traffic safety and assist to accommodate future economic growth to address our nation's freight movement needs.

Another important feature of the Measure M program is the so-called local return program. Local return pays back all the 88 cities in the County so streets can be repaved, potholed are repaired and traffic signals are modernized through synchronization. When designing the program, it was important to us that neighborhood streets and intersections would also benefit.

But Measure M is not just about infrastructure transportation improvements. Measure M will add 466,000 new jobs across the entire Los Angeles County region. These are high-

level and well-paying construction and technical jobs. I want to point out that these are career jobs, jobs that can support a family.

But a local ballot measures cannot do it alone. A national infrastructure plan only works when the Federal government is at the table.

Keeping Existing Federal Programs and Maximizing Direct Federal Funding

Both the FAST ACT and MAP-21 have been incredible resources for both highway and transit projects for many cities and jurisdictions around the country. And we should keep all the current funding programs in place.

The Los Angeles County Transportation Authority, also known as Metro, has benefited from the Federal Transit Administration's Capital Investment Grant Program, also known as New Starts. Over the last five years we have matched over \$3 billion in federal New Starts grants with an equal amount of local Los Angeles County taxpayer dollars to build effective and efficient rail projects. The Federal government should continue to support and fully fund the New Starts program — which has proven to be an outstanding steward of the American tax dollars. In my considered opinion, any effort to block future New Starts grants would be misguided and compromise a program that has proven its effectiveness over the last decade.

Los Angeles Metro has used nearly \$2 billion in TIFIA loans to leverage Los Angeles County taxpayer dollars to finance four major transit projects over the past five years. The TIFIA program — which costs the federal government very little to maintain — has been essential in helping Metro and other transportation agencies across the nation to take highway and transit projects from the drawing board to their construction phases.

Metro has been a national leader in matching TIGER grant funds with local dollars in order to maximize the impact of these valuable federal funds. Whether it was Metro's Rosa Parks Blue Line Transit Station — which secured a \$10.2 million TIGER grant or the \$15 million TIGER grant Metro recently secured to fix one of the most dangerous grade crossing projects in California (Rosecrans/Marquardt Grade Separation Project) — the TIGER grant program is a great example of how federal funds can be used to leverage local and state dollars. Congress would be wise to continue funding the TIGER grant program — which has benefitted both rural and urban cities across the nation since it was first authorized in 2009.

These programs have worked well in Los Angeles and many cities across the U.S. Do no harm is what I call it, meaning, it is essential that existing sources and uses of funds are not changed or eliminated. This means, building on what we have, and using the tools we have available.

Next Steps to Craft a Bi-partisan National Infrastructure Program

Since last November, I listened carefully to the infrastructure proposals from Administration officials and Congressional leadership. Undoubtedly, both sides of the aisle share the same objectives, it is to rebuild America's infrastructure. We agree

cutting red tape and streamlining projects is a good to bring projects benefits to the public sooner. But for the U.S. to have a robust infrastructure we all envision, at to be competitiveness at the global stage, a significant amount of new federal funding is necessary. This is a must. And then enacting legislation that would reward cities and rural areas for generating their own revenue. That is why I believe both the Administration and Congress should identify and new Federal funds while using these revenues to yield greater returns and outcomes.

So Los Angeles, for example, is not just coming with an empty hat, Los Angeles is coming in with money in hand, approximately \$120 billion, and an offer for a Federal partnership with the other hand is what we are looking for. A program that incentivizes localities across the Country to pass their own bonds and/or funding efforts in the way Los Angeles has recently done, will create an incredible catalyst for a major infrastructure program. This means creating significant leverage by incentivizing infrastructure owners to secure and commit to their own revenue measures, bond programs and other sources of revenues will go well beyond traditional federal-state funding splits.

As mentioned before, we do have tools for financing to stretch every federal programs such as Build America bonds and TIFIA, as well as a National Infrastructure Bank, are all very good complimentary frameworks. However, cities and states should also think about innovative public-private partnerships and opportunities for us to partner with the Federal government to leverage what localities are doing.

So as Congress gets closer to finalizing our funding strategy, we look forward to working with you to forge a new Federal-local partnership that will create jobs, improve commute times, and build livable communities. As chair the U.S. Conference of Mayors Infrastructure Task Force, we will be exploring further on incentivizing specific long term programmatic outcomes to better stretch every single federal dollar. This includes leveraging new local revenue sources, as I mentioned before, addressing project life-cycle costs, using public-private partnerships, and exploring innovation and technology.

Conclusion

I want to thank you once again, Chairman Inhofe and Ranking Member Cardin for allowing me to be here today. I really enjoyed participating in today's hearing and look forward to working with you, at a bipartisan level, to identify innovative ways to address our nation's infrastructure needs. Please do not hesitate to contact me directly or my Transportation Director Borja Leon at (213) 473-9771 or borja.leon@lacity.org before or after the hearing if you have any questions.

Thank you very much.

**Senate Environment and Public Works Committee
Subcommittee on Transportation & Infrastructure
Hearing entitled “Leveraging Federal Funding: Innovative Solutions for Infrastructure”
May 16, 2017
Questions for Mayor Eric Garcetti**

Ranking Member Carper:

1. When leveraging investment in transportation, should we look to include policies that require stakeholders to invest in congestion mitigation before, during, and after construction so that we can reduce the impact of such construction?

As a Mayor committed to the cost-effective delivery of nationally significant transportation infrastructure, I can confirm that federal support for congestion mitigation programs is beneficial to successful project delivery and key to avoiding costly delays. Community support is vital to the long-term success of a project and federal congestion mitigation programs are a necessary tool to developing overall consensus from impacted communities.

Congestion mitigation programs are good for the health of residents who work and live near construction projects and good for the health of a project.

Toxic air contaminants, particulate matter, and excessive ozone, carbon monoxide, and nitrogen dioxide emissions have been linked to increased hospitalizations, emergency room visits, and premature death. Additionally, it has been proven that excessive emissions are altering the chemical makeup of the Earth’s atmosphere, which will have long term consequences for us all.

With an open and transparent approach to environmental impacts, project managers are better able to inform the public and address concerns before a project begins. It is the type of due diligence that helps construction managers navigate a project to completion without costly delays. Policies developed at the federal level that support the work of mayors on congestion mitigation would be welcomed and appreciated.

2. Programs such as USDOT’s Smart Cities program show that there are many ways to leverage technology and private investment into our transportation system. Do you believe that Congress should expand funding for such activities?

Expanded funding for Smart City programs and technologies would be welcomed and appreciated.

Los Angeles has been at the forefront of testing and using Smart City technologies. With guidance and funding from our federal partners, Los Angeles is implementing a large scale deployment of technology on our transit network – including communication between traffic signals and vehicles, collision avoidance by transit buses using Mobileye, and passenger safety measures at Metro rail station stops.

There are more than 2 million registered car owners in the City of Los Angeles, more cars than any other city in America. Easing congestion in a city with this type of vehicle density requires us to provide transportation options that are fast, reliable, and cost effective – we must develop and employ Smart Technologies to ease congestion and help people arrive at the destinations quickly and safely.

Senator INHOFE. Thank you, Mayor.
Tim Gatz.

**STATEMENT OF TIM J. GATZ, EXECUTIVE DIRECTOR,
OKLAHOMA TURNPIKE AUTHORITY**

Mr. GATZ. Mr. Chairman, Ranking Member Cardin and members of the Committee, for the opportunity to come and testify this afternoon.

My name is Tim Gatz, and I serve as the Executive Director for the Oklahoma Turnpike Authority. Today, I want to emphasize several points.

The conditional deficiencies of a long underfunded national transportation system cannot be resolved by the States alone and will require an increasing and congressionally influenced Federal investment, combined with a long term national transportation strategy.

The focused investment of Federal resources is necessary, but should in no way be restricted from use as leverage for financing opportunities and private sector partnerships. The advancements in tolling technologies and equipment, along with toll tag interoperability efforts by tolling authorities across the country, indicates that tolling should be clearly recognized as a viable, long term, and sustainable transportation revenue mechanism.

The Oklahoma Turnpike Authority was legislatively created in 1947 to construct a modern transportation link between Oklahoma City and Tulsa. Today the more than 270 miles of the Turner, the Will Rogers, and the H.E. Bailey Turnpikes carry the Interstate 44 shield and are part of a combined toll network of 605 miles.

Oklahoma has utilized a balanced and responsible investment strategy, including tax supported and toll supported highways to meet the transportation needs of our citizens. To be clear, long term, consistent Federal funding remains vitally important to the development and delivery of transportation improvement projects.

States must be able to anticipate the availability of resources in order to properly plan, design, and construct projects. Recognized and documented critical needs and our clear understanding of long term resource availability factors heavily into our investment decisionmaking.

In 1956 the Federal Highway Act included a general prohibition on tolling that remains largely in effect with tolling allowed only under very specific circumstances. However, public-private partnerships and other debt financing options requiring long term revenues are encouraged.

Simple tolling can be a very flexible and effective revenue component in a bold, new national transportation strategy and is the purest representation of an equitable user fee. That being said, 3Ps, innovative financing, and tolling options will not work in every case and should not be held as the Federal Government's best or only solution to stemming the further deterioration and operational deficiency of our national transportation system.

Recognizing that a 3P project must have sufficient liquidity to provide an adequate return to investors, we believe carefully vetting potential projects, selecting the appropriate risk sharing

model, and preparing a structured financial plan is paramount to project success.

In Oklahoma, the Gilcrease Expressway was part of the original Tulsa region expressway master plan created more than 50 years ago, including a segment to serve west and north Tulsa. Some development work has progressed over the years funded with very limited traditional Federal, State, and local revenue streams.

Completing this \$300 million, 5 mile leg of the Expressway between Interstate 44 and US Highway 412 with a bridge over the Arkansas River is vital to providing access for businesses and economic activity in the region and to provide a reliever route for growing congestion concerns for travel into downtown Tulsa.

After many years of discussion, the Oklahoma Turnpike Authority, the city of Tulsa, Tulsa County, the Indian Nations Council of Governments, the Oklahoma Department of Transportation, and the Federal Highway Administration have crafted an innovative partnership.

The Oklahoma Turnpike Authority will leverage the investment and work that has been accomplished to construct the Gilcrease Expressway segment as a federalized toll facility. It is anticipated that OTA will develop a process to solicit interest from potential third party contractors and investors in a delimited public-private partnership.

The proposed partnership will share only in the cost of construction which will be partially offset with a defined cash contribution from the OTA and from the sale of GARVEE bonds.

While many variables with the Gilcrease project are yet to be solved, it is evident that a variety of funding and financing methodologies can be combined and leveraged to successfully and quickly deliver transportation improvement projects that might not be financially viable otherwise.

Innovation to address well defined transportation system needs, and in turn generate a user specific revenue stream in order to finance or partially finance construction, operation, and maintenance should be enhanced in the Federal program and should not be unnecessarily restricted.

In conclusion, any proposed Federal infrastructure initiative seeking to attract private sector investment must be flexible enough to equitably accommodate potential projects in all stages of completion and in all types and sizes, not just mega-projects. Likewise, State and national tolling strategies should be supported and enhanced for the future.

Mr. Chairman and members, thank you again for the opportunity to visit with you today, and I will be happy to try and answer any questions you may have.

[The prepared statement of Mr. Gatz follows:]

WRITTEN TESTIMONY OF

THE HONORABLE TIM GATZ

STATE OF OKLAHOMA
EXECUTIVE DIRECTOR OF THE OKLAHOMA TURNPIKE AUTHORITY

Before the

UNITED STATES SENATE
ENVIRONMENT AND PUBLIC WORKS
TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEE

Hearing on

“Leveraging Federal Funding; Innovative Solutions for Infrastructure”

MAY 16, 2017

Thank you, Chairman Inhofe, Ranking Member Cardin and members of the Subcommittee, for the opportunity to testify related to identifying innovative ways to leverage available resources to fund and finance transportation infrastructure. We appreciate the critical charge and important work of the Subcommittee and encourage all possible consideration for options to improve our national transportation infrastructure.

My name is Tim Gatz and I serve as the Executive Director for the Oklahoma Turnpike Authority. I have been involved in planning, constructing and maintaining Oklahoma's transportation system and infrastructure at many different responsibility levels since 1990.

Today, I want to emphasize several points –

The conditional deficiencies of a long underfunded national transportation system cannot be resolved by the States alone and requires an increasing and congressionally influenced federal investment level combined with a long term national transportation network improvement strategy.

The focused investment of federal resources is necessary, but should in no way be restricted from use as leverage for financing opportunities and private sector partnerships.

With the advancements in tolling technologies and equipment along with toll tag interoperability efforts by tolling authorities across the country, tolling should be clearly recognized as a viable, long term and sustainable transportation revenue mechanism to address critical national transportation system needs and the deployment of toll-supported infrastructure investments should be included in any national transportation system investment strategy.

The Oklahoma Perspective

The Oklahoma Turnpike Authority was legislatively created as an instrumentality of the State of Oklahoma in 1947 to construct a modern transportation link between Oklahoma City and Tulsa. At the time, Oklahoma was blessed to be on the route of the Mother Road, U.S. Route 66, which entered the northeast corner of the state at Miami and crossed the state serving Tulsa and Oklahoma City before exiting at Erick on our west border with Texas.

After World War II Route 66, as the only national transportation link between Illinois and California, became increasingly congested, dangerous and concerning for Oklahomans and no tax supported resources were available to address the developing deficiencies. The 87 mile long Turner Turnpike was completed in 1953 as a safe, modern, high speed toll road three years prior to President Eisenhower signing the Federal-Aid Highway Act ushering in the Interstate era. Today, the more than 270 miles of the Turner, the Will Rogers and the H.E. Bailey Turnpikes carry the Interstate 44 shield and are part of a combined toll network of 605 miles. Oklahoma has utilized a balanced and

responsible investment strategy including tax supported and toll supported highways to meet the transportation needs of our citizens.

The Need for Continued Federal Investment in Transportation Infrastructure

New innovation is necessary to address the increasing transportation challenges ahead and states should not be left to bear the financial burden of a national transportation system by ourselves. The resolution of our on-going national transportation funding crisis and the crafting of new, more effective project and program delivery protocols must be jointly developed in a renewed State and Federal partnership. Such a partnership must be based on the trust and alliance between state and local leaders and their congressional members along with the clear, mutual understanding of the critical and growing needs of infrastructure.

Long term, consistent federal funding remains vitally important to the development and delivery of transportation improvement projects. States must be able to anticipate the availability of resources in order to properly plan, design and construct projects. States constantly inspect our transportation infrastructure and collect and analyze a wide variety of data in order to assess the operational and conditional status of our highways. The care, preventative maintenance, reconstruction and expansion of the transportation system are predicated on recognized and documented critical needs and our clear understanding of long term resource availability factors heavily into our investment decision making.

This understanding of Oklahoma's transportation needs affords us with a multi-faceted transportation improvement program that is fiscally constrained, tangible, explainable and extremely easy to discuss with transportation professionals, elected officials and the public.

Increasing Private Sector Investments and Enhancing Financing Options

For the most part, the federal interstate and national highway system has been predominantly constructed and operated on a publicly financed basis with the majority of projects designed, operated and maintained by public sector transportation agencies. However, nothing in federal transportation law should inhibit or restrict the way a state is allowed to fund and finance the transportation improvement projects and transportation facilities of today. Every available option should be given full, careful and complete consideration. In a time of such funding uncertainty, states should be empowered to look outside the federal government for desperately needed transportation investment dollars.

In 1956, the Federal-Aid Highway Act included a general prohibition on tolling on the interstates and other federally assisted highways. Even today, this prohibition remains largely in effect with tolling allowed only under very specific circumstances. However and conversely, public / private partnerships (3Ps) and other debt financing options are being encouraged as effective and widely accepted financing options. In this discussion, it is important to recognize that technological advancements are rapidly

enhancing multi-state toll tag interoperability and a national toll tag is no longer out of reach. Simple tolling can be a very flexible and effective revenue component in a bold, new national transportation strategy and is the purest representation of an equitable user fee.

That being said, the difference between identifying new near and long term sources of transportation revenue and simply creating new ways to incur debt must also be acknowledged. Public / Private partnerships and innovative financing options will not work in every case and should not be held as the federal government's best or only solution to stemming the further deterioration and operational deficiency of the entirety of our national transportation system.

Balancing Revenue Risk in Public Private Partnerships

While Oklahoma has not engaged in a transportation related public private partnership in the current definition, we have long employed a business model where bond holders finance turnpike improvements and the public's use of the facilities provides for a reasonable return on investment over time. Nonetheless, we have been both watchful and mindful of the continuing development of modern 3P project delivery methodologies and of the mechanisms used to assess and assign risk.

Recognizing that a 3P project must have sufficient liquidity to provide an adequate return to investors and to pay for any debt incurred, we believe carefully vetting potential projects, selecting the appropriate risk sharing model and preparing a structured tolling strategy is paramount to project success. Until recently, we simply had not identified a potential project that met our expectations for private sector risk sharing while retaining the ability to meet our performance criteria and deliver a good value to future users of the transportation improvements.

The Gilcrease Expressway – Oklahoma's Proposed and Uniquely Leveraged Partnership

The Gilcrease Expressway was envisioned as part of the original Tulsa region expressway master plan more than 50 years ago, including the long recognized need for a segment to serve west and north Tulsa. Some engineering, environmental and right of way acquisition work has progressed over the years funded with very limited, but nonetheless traditional federal, state and local revenue streams. Completing this \$300 million, five mile leg of the Expressway between Interstate 44 and US Highway 412 with a bridge over the Arkansas River is vital to providing access and connections for businesses and economic activity in the region and to provide a reliever route for growing congestion concerns for travel into downtown Tulsa. However, no single governmental entity is able to complete the project in the near term without partnership and innovation.

After many years of discussion between the Oklahoma Turnpike Authority (OTA), the City of Tulsa, Tulsa County, the Indian Nations Council of Governments (INCOG), the Oklahoma Department of Transportation (ODOT) and the Federal Highway

Administration (FHWA), an innovative partnership has been conceived. The Oklahoma Turnpike Authority will leverage the work that has been accomplished to date to construct the Gilcrease Expressway segment as a federalized toll facility. The project will consist of a fully functional four lane divided tolled highway including a bridge over the Arkansas River and interchanges at Interstate 44, W 51st Street S, W 41st Street S, W 21st Street S, US-412 and with a north terminus at West Edison Street.

The project is federalized through the previous investment of federal funds in design services and right of way acquisition facilitated by INCOG on behalf of the City of Tulsa. Therefore, it is not feasible to include the facility as a component of the currently defined turnpike network and the project as described will be constructed as a federal-aid compliant, wholly OTA owned, operated and maintained, but stand-alone toll facility.

Previously acquired right of way from ODOT, Tulsa County and the City of Tulsa will be conveyed to OTA ownership and we will fund and complete the additional right of way acquisitions necessary to facilitate the construction of the project. Also, the City of Tulsa has previously contracted to progress engineering work and OTA will assume the remaining fee for the design contract beginning at a defined milestone and establish a scope to complete the engineering work.

It is anticipated that OTA will develop a process to solicit interest from potential third party contractors and investors who may wish to be a party to a delimited public-private partnership. In general, the OTA will provide for the necessary right of way, engineering plans, construction management, and toll operations to insure construction and operations meet our high standards. The proposed partnership will share only the construction risk and a portion of the long term toll revenue risk associated with and defined by a tolling directive. The cost of construction will be partially offset with a defined cash contribution from the OTA and from the sale of GARVEE Bonds backed by INCOG on behalf of the City of Tulsa.

Interested third party partners will be expected to provide the remaining capital necessary to complete the construction of the Gilcrease Expressway segment in exchange for anticipated payments from the generated toll revenues in an amount to be determined and over a period of time to be proposed in a subsequent competitively bid process. OTA will provide support for the collection and remittal of the toll revenue to the successful bidder after satisfying a defined maintenance reserve requirement. At the end of the agreed upon toll collection payout, the continued tolling directive and maintenance responsibility will remain with the OTA as the owner.

While many variables with the Gilcrease project are yet to be completely solved, it is evident that a variety of funding and financing methodologies can be combined, leveraged and utilized to successfully and quickly deliver transportation improvements that might not be financially viable otherwise. The utilization of such methodologies in order to fund certain, well defined transportation system needs and, in turn, generate a user specific revenue stream in order to finance or partially finance the construction, operation and maintenance of the facility should continue to be supported and further

enhanced in the federal program and not be unnecessarily restricted or inhibited by federal regulation.

In conclusion, any proposed federal infrastructure initiative seeking to attract private sector involvement and investment must be flexible enough to equitably accommodate potential projects in all stages of completion and in all types and sizes, not just "mega-projects". Likewise, state and national tolling strategies should be considered and included in these discussions and supported and enhanced for the future.

Mr. Chairman and members, thank you again for the opportunity to visit with you today and I will be happy to try and answer any questions you may have.

Senate Environment and Public Works Committee
 Subcommittee on Transportation & Infrastructure
 Hearing entitled “*Leveraging Federal Funding: Innovative Solutions for Infrastructure*”
 May 19, 2017
 Questions for Mr. Tim Gatz

Ranking Member Carper:

1. In the state of Oklahoma, are there currently barriers to the use of innovative finance tools, including public private partnerships, and TIFIA loans?

Answer – While we have chosen not to utilize public private partnerships in the modern interpretation or TIFIA loans in the past, there are no barriers that preclude the utilization of these tools. From a public private partnership standpoint, Oklahoma has historically and effectively engaged private bondholders to invest in and construct a leveraged system of turnpikes to address recognized critical transportation needs where no traditional tax or fee based transportation capital was available. These leveraged turnpike network enhancement and expansion investments provide for near term realization and utilization of the improvements and are then repaid over time with dedicated toll revenue.

In addition, the decision making process to utilize innovative financing / public private partnerships is not arbitrary. State and Federal transportation revenue projections must be carefully evaluated for the ability to support long term financing commitments. The impact of project financing repayment and the associated reduction of available funding must be considered in the context of the management of the transportation infrastructure as a whole. Suitable projects that can clearly benefit from non-traditional project delivery models must be identified and carefully vetted. Not every project is suitable for financing and public private partnerships are not feasible without detailed repayment provisions and profit incentives to attract interested investors.

2. To what extent are finance tools able to supplant the need for additional direct Federal funding?

Answer – The premise that transportation financing can be utilized to supplant the need for direct funding, either at the State or Federal level, is fundamentally flawed. Transportation financing must be repaid over time and the revenues necessary to retire any debt incurred must originate from the long term dedication of traditional direct funding or, when conditions allow, through measures that generate user based revenue such as tolling.

As previously stated, financing critically needed and specific transportation improvements certainly can be an effective tool, however, the long term impact of debt service on available resources must be carefully assessed. State transportation professionals should have a clear understanding of transportation needs and resource constraints and reviews of system-wide transportation asset management plans should support financing commitments before allocating historically limited, traditional direct funding for such purposes. A balance of routine maintenance, longer term asset preservation and major reconstruction and expansion is paramount to the efficient operation of transportation infrastructure and one size does not fit all.

Senator INHOFE. Thank you, Mr. Gatz.

Mr. Yarema, I appreciate your being here today. You are recognized.

**STATEMENT OF GEOFFREY S. YAREMA,
PARTNER, NOSSAMAN LLP**

Mr. YAREMA. Chairman Inhofe, Ranking Member Cardin, Ranking Member Carper, and members of the Committee, thank you for inviting me to testify today.

My name is Geoff Yarema. I am a lawyer and partner at the Nossaman law firm.

My testimony today reflects a long career advising State and regional governments across the country in more than \$40 billion of infrastructure projects and in my service on the bipartisan congressionally mandated National Surface Transportation Infrastructure Financing Commission.

As our commission reported, the nation faces a crisis. Our surface transportation system has deteriorated to such a degree that our safety, economic competitiveness, and quality of life are at risk. That view remains true today.

Thanks largely to this Committee's action, and Mr. Chairman, to your leadership in particular, the last two authorization bills represent real progress. There is still much work to do, however, which is why we are all here today collectively determined to seize the opportunity.

If we are to remain the leader of the global economy, we must have, as Chairman Barrasso has repeatedly called for, a significant supplement to existing Federal infrastructure spending.

Today, I would like to focus on the important question of how to spend any newly secured discretionary funds in the most impactful way possible. By working together, Congress and the Administration can achieve this paradigm shift through what Mayor Garcetti has called the Infrastructure Incentives Initiative or I3.

I3 would expend new discretionary resources expressly to serve four outcomes. First would be creating significant leverage by incentivizing government infrastructure owners to secure and commit their own revenue measures and project revenues beyond historical Federal-State funding splits.

Second is assuring long term performance of new capital improvements by incentivizing owners to achieve life cycle cost efficiencies and avoiding any further deferred maintenance.

Third is modernizing business practices by incentivizing owners to update procurement policies to better capture the best of private sector capabilities.

Finally would be incorporating rapidly evolving technology by incentivizing infrastructure owners to design their spending programs to maximize innovation.

Applying these principles to the allocation of new Federal funds would move the Federal Government away from selecting what it deems to be the most worthy projects and move it toward spurring its non-Federal partners to achieve better, long term infrastructure outcomes and permanent program-wide enhancements.

I3 can be scaled to match whatever size funding program is created, can be adapted to all government owner infrastructure classes, and can be designed to benefit rural as well as urban areas.

The recent State gas tax increases in Wyoming, Iowa, Idaho, Nebraska, Georgia, Vermont, Tennessee, and Indiana stand alongside Measure M in Los Angeles, Proposition 1 in Austin, Texas and Sound Transit 3 in Seattle to demonstrate how rural and urban regions alike can generate billions of self-help dollars as supplemental transportation investment. These results are entirely replicable around the country with the right Federal incentives. Funding is only part of the solution, however. We need better outcomes from long term maintenance technology and procurement practices.

In conclusion, I3 would have our nation be more ambitious for the outcome of its hard fought infrastructure investment than just to fund a federally selected basket of shiny new projects or add more to highway apportionment.

It would expressly urge every State and city with major infrastructure challenges to partner more aggressively in exchange for new funding. That partnership would result in outsized program responses with each area around the country selecting for itself what kind of self-help leverage to commit, what projects are most worthy of completion, and the types of procurement models to use.

The result would be a lasting paradigm shift in the Federal, State, local, and private infrastructure partnership.

Thank you for your attention. I stand ready to assist the Committee as it pursues its legislative efforts.

[The prepared statement of Mr. Yarema follows:]

Testimony of Geoffrey S. Yarema
Partner, Infrastructure Practice Group, Nossaman LLP
Member, National Surface Transportation Infrastructure Financing Commission

Before the

United States Senate
Committee on Environment and Public Works
Subcommittee on Transportation and Infrastructure

Hearing on "Leveraging Federal Funding: Innovative Solutions for Infrastructure"

May 16, 2017

A. Introduction

Chairman Inhofe, Ranking Member Cardin, and members of the Committee, thank you for inviting me to testify today. My name is Geoff Yarema. I am a partner in the Infrastructure Practice Group at the law firm, Nossaman LLP.

While the views I express here today are my own and not necessarily those of any colleague or client of the firm, my testimony reflects a long career representing units of state and regional governments across the country, all struggling to solve their mobility challenges in a period of ever-shrinking federal gas tax revenues. In that capacity, I have had the honor of advising on the wide array of innovative approaches to deliver and finance large transportation projects that minimize reliance on federal funding.

I have also had the privilege to serve on the National Surface Transportation Infrastructure Financing Commission, which carried out a bipartisan, Congressional mandate under SAFETEA-LU. The Commission's final report recommended numerous approaches to addressing the major deficits affecting passenger and freight mobility in the United States.

As our Commission reported at the time, "The nation faces a crisis. Our surface transportation system has deteriorated to such a degree that our safety, economic competitiveness and quality of life are at risk." That view remains true today.

Thanks largely to this Committee's action and, Mr. Chairman, to your leadership in particular, the last two authorization bills – MAP 21 and the FAST Act – represent real progress. There is still much work to do, however, which is why we are all here, collectively determined to seize the opportunity.

If we are to remain the leader of the global economy, we must have, as Chairman Barrasso has repeatedly noted, a significant supplement to existing federal infrastructure funding. How much that supplement should be and how it is to be paid for

are critically important questions I will leave to other witnesses or another time to address. Whatever the size of the new program, however, it will almost certainly fall far short of what we need to clear our infrastructure backlog, defined by the major deficits in our state of good repair and the sheer expense of needed capacity expansions.

Instead, I would like to focus today on the equally important question of how to spend new discretionary funds in the most impactful way possible. Can we do it in a way that recognizes this historic opportunity and achieves a more lasting impact than can be reached either through arbitrary federal selection of "shovel ready" projects or by providing a marginal increase to existing transportation programs? I respectfully suggest the answer is yes.

By working together, Congress and the Administration can achieve this paradigm shift through what I call the **Infrastructure Incentives Initiatives**, or "**I-3**."

B. Infrastructure Incentives Initiative

I-3 would expend new discretionary resources expressly to spur the following outcomes:

- **Creating significant leverage** by incentivizing infrastructure owners to secure and commit their own revenue measures, bond programs and project revenues well beyond traditional federal-state funding splits.
- **Assuring long term performance of all new capital improvements** by incentivizing infrastructure owners to avoid future deferred maintenance and to instead capture lifecycle cost efficiencies through outcome-based specifications and strong funding commitments.
- **Modernizing business practices** by incentivizing infrastructure owners to update outmoded procurement policies and project delivery approaches to better reflect 21st Century models, including public-private partnerships ("P3s"), and to capture the best of private sector capabilities.
- **Incorporating new and rapidly evolving technology** by incentivizing infrastructure owners to design their capital spending programs in ways that maximize the benefits of innovation, including autonomous and connected mobility.

Applying these principles to the allocation of new federal funds would move the federal government away from selecting specific projects. Instead, the federal role would be to use its resources expressly to spur its non-federal partners to achieve better long term infrastructure outcomes and program-wide enhancements.

I-3 will work effectively to provide the necessary support and incentives to deliver needed highway reconstruction, transit capacity and freight and supply chain improvements not just in urban areas, but in rural areas as well. It can be scaled to

match whatever size funding program is created and can be adapted to other government-owned infrastructure classes, not just transportation.

C. Digging Deeper

So how would I-3 work in practice?

The federal government would use new funds to create a discretionary program that rewards and assists non-federal project sponsors in achieving the four outcomes identified above.

These new funds would be allocated towards programs of projects, not individual projects. Each project sponsor would demonstrate in their applications how they planned to achieve these four outcomes and the specific steps they planned to take to make these outcomes a reality. For programs of projects that received funding, the funding would be contingent upon the project sponsor achieving the progress benchmarks outlined in their application.

To maximize the impact of this approach, federal discretionary funds should be paid out over a period of years, smoothing federal budgetary impacts, laying the foundation to attract non-federal investment and allowing for project sponsors to allocate resources optimally instead of artificially advancing the most “shovel-ready” projects.

Using this approach, project sponsors could use the funding commitments as instruments to borrow against, further leveraging limited non-federal funds to achieve outsized results.

D. Rural and Urban Areas

I-3 can and should be implemented to incentivize outcomes for the benefit, not just of urban areas, but for the rural areas as well. The degree of funding leverage might be different than what’s achievable in urban areas, but I-3 can be designed specifically to incentivize the tough political decisions inherent in “self-help” revenue decisions in less populated but interstate highway-intensive regions.

The state gas tax increases Wyoming, Idaho, Nebraska, Georgia, Vermont, Tennessee, and Indiana have all recently implemented to supplement existing federal funding provide models that other states should emulate. Along with such efforts as Measure M in Los Angeles, California, Proposition 1 in Austin, Texas, the transportation ballot initiative in Charleston, South Carolina and Sound Transit 3 in Seattle, Washington, these “self-help” actions demonstrate how state and regional governments can generate billions of dollars of supplemental transportation investment – results that are entirely replicable around the country with the right incentives.

Funding is only part of the solution, however. I-3 would build on the progress rural states have already made to leverage additional infrastructure funds by incentivizing the other three outcomes as well.

While I-3 would incentivize the use of the right business tool in the project delivery toolbox for each project, one of those tools could be P3s. I believe that there is a general misunderstanding about the potential value of P3s in rural areas, however.

There are two primary types of P3s – those that require a revenue stream, such as a toll road, and those that do not. The latter type of P3, known as an availability or performance payment P3, is the most common type in the market today. It requires no project revenues and presents a different value proposition than the conventional contracting approach of telling a contractor not just what to do but how to do it, and then compensating the contractor for construction progress, without warranty for the resulting product, in most cases.

A performance payment P3, by contrast, compensates the contractor only for infrastructure performance. Akin to a supercharged warranty, government parties to these transactions generally make no payments until the contractor completes the project and the government owner accepts the work. Upon acceptance, the government owner commences making maximum "performance payments" on a level basis through the P3 contract life. Payments are subject to adjustment downward to the extent the infrastructure underperforms on any number of issues, including quality, safety, or availability. At the end of the life of the contract, the contractor is required to hand back the infrastructure asset in accordance with a predetermined condition.

This tool ensures that the companies that design and build a project are on the hook for the long term performance of the infrastructure, are required to take lifecycle cost into account in bidding on the project and are rewarded for innovative delivery solutions.

I respectfully suggest these outcomes are just as valuable in the rural setting as they are in the urban contracting environment.

F. Complementary Reforms

For maximum effect, I-3 should be coupled with the following complementary policies:

- Make impactful changes to federal environmental review and permitting processes that have unduly limited and delayed the delivery of needed infrastructure. This effort should include reshaping the role of the Council on Environmental Quality and should achieve greater consistency and predictability in environmental review and permitting processes.
- Increase the size of the TIFIA program to meet all projected eligible demand and significantly reform the program to improve efficient administration and borrowing flexibility.
- Remove the cap on private activity bonds for transportation and authorize private activity bonds for other classes to better enable private investment in publicly-owned and privately-managed infrastructure.

- Update long out-dated federal tax incentives to encourage at-risk equity and debt capital investment in publicly-available infrastructure projects.
- Empower state and regional governments to make their own highway tolling decisions, which are currently under undue and unneeded federal restrictions.
- Reduce federal procurement and contract oversight burdens on state and regional governments, relying instead on well-established owner practices and capabilities to self-certify performance and avoiding regulatory inefficiencies and redundancies.

G. Conclusion

I-3 would have our Nation be more ambitious for the outcome of its hard fought infrastructure investment than just to fund a federally-selected basket of shiny new projects. It would expressly urge every state and city with major infrastructure challenges to partner more aggressively with the federal government in exchange for new funding. That partnership would result in outsized program responses, with each area around the country selecting for itself, in accordance with its own unique programmatic and project-driven needs, what kind of "self-help" leverage to commit and what projects are most worthy of completion.

At the same time, *I-3* would spur state and regional owners to make commitments to new and future technology, private sector innovation, modern business models and lifecycle cost performance.

Thank you for your kind attention. I stand ready to assist the Committee as it pursues its legislative efforts.

Senate Environment and Public Works Committee
Subcommittee on Transportation & Infrastructure
Hearing entitled “Leveraging Federal Funding: Innovative Solutions for Infrastructure”
May 16, 2017
Questions for Mr. Geoffrey Yarema

Ranking Member Carper:

1. How should Congress ensure that public agencies have the technical capacity to negotiate and administer the use of innovative finance tools and uphold their fiduciary duty to the taxpayer?

The technical ability of public agencies to use the project delivery tool that provides the most efficient use of public funds is a critical element to the modernization of U.S. infrastructure. Many public agencies have not used innovative project delivery methods, incorporating best practices. As a result, ensuring that federal infrastructure legislation provides resources to raise the technical capacity of these agencies so that all of the project delivery tools in the toolbox can be used is an absolute necessity.

The FAST Act recognized this challenge and took a first step to improve the technical capacity of public agencies by authorizing the Regional Infrastructure Accelerator Demonstration Program in Section 1441. Unfortunately, this program has not received appropriations to date.

Much more needs to and can be done. Any new federal funds Congress authorizes should incentivize public agencies to modernize their business practices, to reward agencies that update outmoded procurement policies and project delivery approaches, to evaluate projects based on the method of delivery that provides the greatest value to the public. It would be wise to ensure they have sufficient resources to support the technical capacity these tasks will require.

2. Do you believe that the changes made in the FAST Act to create an innovative finance bureau at USDOT will help improve the ability of public agencies to use public private partnerships effectively?

To date, the Federal Highway Administration and the Federal Transit Administration have both provided background resources to project sponsors on key issues arising with the effective usage of public-private partnerships. The innovative finance bureau continues and expands upon that function. It does not, and indeed cannot, provide the degree of resources that an agency charged with procuring public private partnerships will need at the transactional level. It is critical that state and regional agencies secure and deploy the financial, technical and legal skills needed to ensure they optimize the value public private partnerships can offer to the taxpayer. The federal government can and should provide funding for such functions, but cannot provide the services themselves.

Congress should be vigilant in overseeing the efforts of this new office, however. While the congressional intent in creating the bureau is exactly in line with what project sponsors need, there is always the risk that a new administrative office will merely result in increased bureaucracy. Congress should ensure that the bureau functions as a nimble, responsive resource for project sponsors, not a new source of regulation.

Senator Boozman:

3. Mr. Yarema – It has become apparent that modernization and expansion of America’s infrastructure system is not an option, but a necessity. If we do not act, the United States will no longer remain a global economic leader, and will be unable to retain our current standard of living.

How can the federal government give states and the private sector, the tools necessary to get these important infrastructure projects funded?

In addition to the four outcomes achievable through the Infrastructure Incentives Initiative (I-3) outlined in my testimony, there are a number of complementary measures that Congress should adopt, each of which will demonstrably assist project sponsors to deliver needed infrastructure efficiently:

- *Make impactful changes to federal environmental review and permitting processes that have unduly limited and delayed the delivery of needed infrastructure. This effort should include reshaping the role of the Council on Environmental Quality and should achieve greater consistency and predictability in environmental review and permitting processes.*
- *Increase the size of the TIFIA program to meet annually all projected eligible demand and significantly reform the program to improve efficient administration and borrowing flexibility.*
- *Remove the cap on private activity bonds to enable private investment in publicly-owned and privately managed infrastructure to maintain the efficiency of tax exempt borrowing.*
- *Create additional federal tax incentives to encourage at-risk equity and debt capital investment in publicly-available infrastructure projects (e.g., tax credits for P3 contractors; simplified and accelerated depreciation for P3 contractors’ at-risk investment; and tax-free treatment of public agencies’ compensatory payments to private parties for land and other assets acquired in infrastructure projects).*
- *Empower state and regional governments to make tolling decisions for highways, currently under undue and unneeded federal restrictions.*
- *Relax federal restrictions on the ability of infrastructure owners to make hiring decisions.*

Reduce federal procurement and contract oversight burdens on state and regional governments, relying instead on well-established owner practices and capabilities to self-certify performance and avoiding regulatory inefficiencies and redundancies.

Senator INHOFE. Thank you, Mr. Yarema.
Mr. DeGood.

STATEMENT OF KEVIN DEGOOD, DIRECTOR, INFRASTRUCTURE POLICY, CENTER FOR AMERICAN PROGRESS

Mr. DEGOOD. Thank you, Chairman Inhofe, Ranking Member Cardin, and members of the Committee, for inviting me to testify. It is an honor to contribute to this Committee's work.

Transportation infrastructure is essential to our economy and local communities. Unfortunately, public investment has not kept pace with overall needs. As a result, the United States faces a well documented infrastructure backlog.

Throughout the presidential campaign, Donald Trump repeatedly vowed to spend \$1 trillion to rebuild America's infrastructure. Unfortunately, this promise has given way to a call for State and local governments to "maximize leverage" through public-private partnerships, or P3s.

At their core, public-private partnerships are an alternative method of procurement. Importantly, P3s are not a means of closing the infrastructure gap. The binding constraint facing State and local governments is insufficient tax revenue, not a lack of access to financing. Let me say that again. The binding constraint facing State and local governments is insufficient tax revenue. Public-private partnerships and tax credits do not solve this problem.

Instead, the true value of P3s is risk transference. Unlike traditional procurement models, P3 allow the State to draft a contract that shifts the responsibility for delivering a large, complex project on time and on budget to a private entity.

This transference does not come cheaply as the private companies rightly demand a premium price for assuming the project risks. Proponents of P3s talk about the need to get private capital "off the sidelines." This assumes project sponsors face capital scarcity. This is simply wrong.

The municipal bond market is robust with more than \$3.8 trillion in outstanding issuances and a strong appetite for new offerings. Additionally, the TIFIA Loan Program, run by USDOT, offers flexible, low cost financing to project sponsors.

The current interest rate on municipal bonds with an AAA rating over 30 years is only 3 percent. By comparison, equity investors look for annual returns of between 10 and 15 percent. This raises costs significantly.

For instance, the financing charge on \$100 million of municipal debt at 3 percent over 30 years is just \$90 million. Over the same period, \$100 million in private equity capital at 15 percent has a finance charge of \$450 million.

Even factoring in the Trump administration's plan to offer investors tax credits, equity capital is still vastly more expensive than municipal debt.

Additionally, P3s have very limited applicability. The average cost of highway P3s with a TIFIA loan and equity capital is \$1.28 billion. However, maintenance and incremental expansion projects represent the majority of the infrastructure needed across the country.

For example, for the 1,657 highway projects included in the State of Ohio's transportation program, only two have a cost of over \$1 billion and another six a cost of more than \$200 million. The average project cost in Ohio is just \$9 million.

The lesson is that outside of urban mega-projects, public-private partnerships have little value. For rural communities, small towns, and economically struggling urban areas, an infrastructure plan based on tax credits is the same as no plan at all.

Wall Street is eager to see more P3s. A 2015 report by UBS sums up the attraction. "The high barriers to entry and the monopoly like characteristics of typical infrastructure assets mean their financial performance should not be as sensitive to the economic cycle as many other asset classes."

In other words, highways behave like a utility but without price regulations. Even this is often not sufficient to defend against future competition; many private firms push for non-compete clauses. These contractual provisions are intended to keep the private firm financially whole.

A non-compete clause often includes a specific list of parallel facilities that the State may not expand or otherwise improve. If the State chooses to make improvements to a listed facility, it must provide a payment to compensate the private firm for their estimated loss revenue.

These provisions are deeply problematic as they offer private firms a degree of guaranteed profitability that does not exist anywhere else in the marketplace.

Finally, in recent weeks, the Trump administration has pushed for "asset recycling." This is a new term of art for brownfield lease transactions. In a typical lease deal, a State or local government receives an up front payment from a private firm. In return, that firm has the right to collect a stream of user fee revenues over the life of the agreement.

These deals are presented as a source of new revenue. In reality, they are an expensive loan that comes with contract terms often harmful to the public. For example, in 2008 the city of Chicago leased its parking meters for 75 years in exchange for an up front payment of \$1.15 billion or 20 percent of its 2008 budget.

As result, the city is substantially constrained in how it may manage its roadways, including making it more difficult to make improvements to public transportation service. If the city had simply issued municipal debt to generate these funds, residents would face lower parking fees, and the city would have the freedom to grow and change without the contractual limitations.

This deal, like other asset leases, was a cash grab under the guise of innovation that the public must live with for many decades to come.

In conclusion, there are no shortcuts to rebuilding America's infrastructure. The Federal Government needs to provide direct funding to State and local project sponsors. Furthermore, these funds should be targeted to those communities facing the greatest need and the highest level of economic hardship.

Thank you again for the opportunity to address this Committee.
[The prepared statement of Mr. DeGood follows:]

Center for American Progress



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Leveraging Federal Funding; Innovative Solutions for Infrastructure
Subcommittee on Transportation and Infrastructure
Committee on Environment and Public Works
U.S. Senate

Testimony by Kevin DeGood
Director of Infrastructure Policy
Center for American Progress
May 16, 2017

Thank you, Chairman Inhofe, Ranking Member Cardin, and members of the committee, for inviting me to testify on how the federal government can help build 21st-century infrastructure. It's an honor and a privilege to contribute to this committee's work.

Transportation infrastructure facilitates the efficient production of goods and services and allows families to safely and affordably access jobs, education, and health care, among other services. Unfortunately, public investment has not kept pace with overall needs. As a result, the United States faces a well-documented infrastructure backlog.

Throughout the presidential campaign, Donald Trump repeatedly vowed to spend \$1 trillion to rebuild America's crumbling infrastructure. Unfortunately, this promise has given way to a call for state and local governments to "maximize leverage" through public-private partnerships, or P3s.¹ To facilitate more of these transactions, the campaign released a plan that calls for Congress to authorize a pool of tax credits for equity investors that participate in U.S. infrastructure deals. If enacted, the tax credit plan would leave the vast majority of communities and projects behind while increasing the deficit.

At their core, public-private partnerships are an alternative method of procurement. Importantly, P3s are not a means of closing the infrastructure gap. The binding constraint facing state and local governments is insufficient tax revenue, not a lack of access to financing. Let me say that again. The binding constraint facing state and local governments is insufficient tax revenue. Public-private partnerships and tax credits do not solve this problem. A 2015 report by the U.S. Department of the Treasury clearly states the issue:

All infrastructure investments ultimately depend on either user fees, government tax revenues, or a combination of both. ... Therefore, community and political support for greater investment of government tax revenues or the imposition of user fees is critical to expanding investment in our nation's public infrastructure.²

Instead, the true value of public-private partnerships is risk transference. Unlike traditional design-bid-build procurement models, P3s allow the state to draft a contract that shifts the responsibility for delivering a facility on time and on budget to a private entity. This risk transference does not come cheaply. Private companies rightly demand a premium price for assuming the risks associated with delivering major infrastructure projects. Returns on equity capital often serve as the mechanism by which the private firm secures this premium. The challenge for the public sector is negotiating the appropriate risk-adjusted price. Again, none of these considerations apply if a project sponsor does not have the funding to repay project financing or the political will to face angry constituents unhappy about the prospect of paying tolls or other user fees.



Proponents of P3s often talk about the need to get private capital “off the sidelines.”³ Implicit in these statements is the idea that project sponsors face capital scarcity. This is fundamentally wrong. The municipal bond market is robust with more than \$3.8 trillion in outstanding issuances and a strong appetite for new offerings.⁴ Additionally, the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program run by the U.S. Department of Transportation offers flexible, low-cost financing that may be tailored to match expected project revenues. The TIFIA program offers credit at a pass-through rate to a treasury security of equivalent maturity. As Treasury notes are considered the global risk-free rate for borrowing, project sponsors are often able to secure financing on terms even more favorable than the municipal bond market.

The current interest rate on a municipal bond with a 30-year maturity and a AAA rating is only 3 percent.⁵ By comparison, equity investors look for annual returns of between 10 percent and 15 percent, depending on the characteristics of the deal. The spread in rates adds up quickly. For instance, the finance charge on \$100 million of municipal debt at 3 percent over 30 years is \$90 million. Over the same period, \$100 million in private equity capital at 15 percent has a finance charge of \$450 million.

The effect of the tax credit plan put forward by the Trump administration would be to lower the cost of equity capital by perhaps 25 percent. Even factoring in this reduction, equity capital is still vastly more expensive than municipal debt. More importantly, there is little indication that investors want tax credits. Equity investors want their capital in deals earning large returns. Receiving 82 cents on the dollar back in the form of a tax credit, as proposed by the Trump administration, undermines the very purpose of investing.

Putting aside the impact of tax credits, public-private partnerships have a very limited applicability. The average total cost of highway P3s with a TIFIA loan and equity capital is \$1.28 billion.⁶ In surface transportation, the potential procurement efficiencies from public-private partnerships are limited to megaprojects. However, the vast bulk of infrastructure needs around the country are smaller maintenance and incremental expansion projects. For example, of the 1,657 highway projects included in Ohio’s Statewide Transportation Improvement Program, only two have a total cost of more than \$1 billion and six a total cost of more than \$200 million.⁷ These projects represent less than half of 1 percent of Ohio’s total. The average project cost is \$9.2 million.⁸

The lesson is that outside of urban mega projects, public-private partnerships have little value. For rural communities, small towns, and economically struggling urban areas, an infrastructure plan based on tax credits is the same as no plan at all.

Investor demand and noncompete clauses

Wall Street is eager to see an expansion of public-private partnerships in the United States. In a 2015 report, UBS summed up the value proposition succinctly: “The high barriers to entry and the monopoly-like characteristics of typical infrastructure assets mean their financial performance should not be as sensitive to the economic cycle as many other asset classes.”⁹

In other words, highways behave like a utility but without price regulations. This characteristic means that a concessionaire—the private firm or consortium that won the P3 bid—can extract monopoly rents from users that are less susceptible to normal business cycles or competition over time. Yet even this is often not sufficient. To defend against future competition, many private firms push for noncompete clauses within their P3 contracts.



These contract provisions are intended to keep a concessionaire financially whole. A noncompete clause often includes a specific list of parallel facilities that the state may not expand or otherwise improve. If the state chooses to make improvements to a listed facility, it must provide a payment to compensate the concessionaire for their estimated lost revenue.

These provisions are troubling on two levels. First, they allow one mayoral or gubernatorial administration to sign a contract that binds the decision-making and investment choices of future administrations for many decades. Second, they offer private firms a degree of guaranteed profitability that exists nowhere else in the marketplace.

Asset recycling

In recent weeks, members of the Trump administration have started pushing the concept of asset recycling.¹⁰ Make no mistake—this is a new term of art for brownfield lease transactions. In a typical lease deal, a state or local government receives an upfront payment from a private concessionaire. In return, the concessionaire obtains the right to collect a stream of user fee revenues over the life of the agreement. These agreements are presented to the public as a source of revenue. In reality, the money the state receives is simply an expensive loan that often comes with contract terms harmful to the public.

For example, in 2008, the city of Chicago leased its parking meters for 75 years in exchange for an upfront payment of \$1.15 billion.¹¹ While this may sound like a significant amount, the payment represented just 20 percent of the city's 2008 budget.¹² And while these funds have all been spent, city residents and planners must live with the terms of this deal for another six and a half decades. Under the terms of the deal, the city is substantially constrained in how it may manage its roadways, including making it more difficult to make improvements to transit service. Although the winning concessionaire has not released its return on investment target, it seems fair to assume that it's substantially higher than interest rates on municipal bonds, which currently stand at 3 percent.¹³ If the city had simply issued debt to generate these funds, residents would face lower parking fees, and the city would have the freedom to grow and change over time without the limitations imposed by this deal.

Similarly, in 2006, the state of Indiana agreed to lease its toll road for 75 years for an upfront payment of \$3.8 billion.¹⁴ After years of travel demand that failed to meet expectations, the concessionaire declared bankruptcy. On the surface, this suggests that the state of Indiana struck an exceptionally good deal since the winning firm clearly overpaid for the toll road. This interpretation misses a more fundamental point. Namely, that neither the state nor the concessionaire had any real idea what future travel demand would be. Both sides essentially guessed and settled on a price that reflected this guess. However, it's not hard to imagine the counterfactual. If the Great Recession had not occurred and travel demand exceeded expectations, then the concessionaire would have walked away with a huge windfall at taxpayers' expense. This begs the question: Do we want our elected officials gambling with public assets? The clear answer is no.

In neither the Chicago parking meter nor the Indiana Toll Road example did the private concessionaire provide any service that could not have been performed through traditional procurement or municipal financing. These deals were cash grabs under the guise of innovation that the public must live with for many decades to come.

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Conclusion

There are no shortcuts to rebuilding America's aging infrastructure. The time has come for the federal government to serve as a strong partner by providing direct funding to state and local project sponsors.

These funds should be targeted to those communities facing the greatest need and the highest level of economic hardship. Furthermore, federal funds must address the threats presented by global climate change. Grant recipients should be required to build resilient facilities that account for higher temperatures and the increased threat of flooding and other weather extremes. Finally, Congress should require grant recipients to base their project selection decisions on long-range plans that account for the most up-to-date climate modeling.

Thank you again for the opportunity to address the committee.



Endnotes

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¹² Result based on author's calculation from Ibid.; The Civic Federation, "City of Chicago FY2008 Proposed Budget: Analysis and Recommendations" (2007), available at <https://www.civiced.org/file/4866/download?token=2l-MSmk5>.

¹³ FMSBonds Inc., "Municipal Market Yields."

¹⁴ Ferrovial, "Cintra begins operating Indiana Toll Road (USA) under a 75-year concession," Press release, June 29, 2006, available at http://www.ferrovial.com/en/press-room/press_releases/cintra-begins-operating-indiana-toll-road-usa-under-a-75-year-concession/.

Senator INHOFE. Thank you, Mr. DeGood.
Secretary Layne, you are recognized.

**STATEMENT OF AUBREY L. LAYNE, JR., SECRETARY OF
TRANSPORTATION, COMMONWEALTH OF VIRGINIA**

Mr. LAYNE. Thank you very much, Chairman Inhofe, Ranking Member Cardin, and other members of the Subcommittee. Thank you for the opportunity to testify today.

My name is Aubrey Layne. I am the Secretary of Transportation for the Commonwealth of Virginia. My testimony today will focus on my personal experience with public-private partnerships, or P3s, throughout my professional career.

These deals have been praised in some circles as the solution to all our transportation problems and condemned in others as a corporate giveaway. The truth is much more complex and ultimately dependent on the nature of the project and the degree to which the government officials understand how these deals work and how to protect taxpayers.

I have had a 30 year business career of running large operational companies. I have a degree in accounting and a Master's in Business Administration. I began my career as an auditor in the CPA for KPMG and finished as the president of a large real estate company.

As Secretary of Transportation, I oversee seven transportation agencies that employ more than 10,000 staff and have a combined annual budget of over \$6 billion.

The toughest issues I face today involve funding projects, not engineering or environmental problems. That means I spend most of my time on resource allocation, financing, risk assessment, and operations.

Fortunately, my past experience provides me with a foundation and knowledge for financing large scale construction deals.

Public-private partnerships are complex transactions that can have significant implications for the public. It is important that we all understand them. Before I get into that, I, first, want to be clear that financing, whether public or private, helps leverage resources, but it is not a replacement for sustainable and stable public funding.

The priority for Congress should be addressing the long term solvency of the Federal Highway Trust Program, fund growth in the program, and helping States fund our transportation needs regardless of mode.

In Virginia, we have relied on several guiding principles regarding public-private partnerships. Our fiduciary responsibility is to the taxpayers. We need to deliver the best results for them.

P3s are a helpful procurement tool where appropriate and when negotiated well. Government officials should consider all options, including public finance, before making decisions. We must ensure competition throughout the process. We must be transparent and accountable to the public and elected officials.

I am an unabashed capitalist and a big believer in private industry. This belief is premised on true free market competition. Both parties entering a P3 must have a full understanding of the issues being negotiated. Unfortunately, that is not always the case.

Our Commonwealth has long been recognized as a leader in P3s. Since 2007 we have closed five concession deals that transfer risk to the private sector. Collectively, these deals are worth more than \$9 billion, more than \$2.5 billion coming from private equity and approximately, \$1 billion in public funds and the remaining from privately backed debt.

In addition, we are currently negotiating a P3 contract for \$1 billion in improvements right here in the I-95/I-395 corridor.

As I stated before, P3s are complex business transactions that are unlike any transaction in which a State DOT is typically involved. First, P3s are typically long in nature, long contracts. Normal transportation contracts expire when construction is done after a limited number of years.

This provides the opportunity to evaluate outcomes, and if necessary, officials can make changes. This is not true with a 50 year P3 concession contract with a private partner. Changes can often result in compensation to the private party. Getting these deals wrong can be very costly.

These deals also can be some of the largest projects, as we have heard in previous testimony. The average P3 deal in Virginia is \$1.8 billion compared with an average contract value of less than \$3 million.

For these reasons, it is imperative that decisionmakers understand the fiduciary responsibility of each party involved. The private sector is responsible to its shareholders and its investors. The public sector needs to make sure the public's interest is protected and advanced. The hard part is to see where these interests lie.

In 2015 Governor McAuliffe asked me to evaluate our P3 program. We were not getting the results we wanted. In fact, we had some pretty tough deals that were negotiated. I found out that these deals were not made with transparency and accountability, so we decided to start from scratch.

What we found is the best way to protect the taxpayer is to make sure the private sector has to compete. We do not want to give anything away which means they need to beat our bottom line.

We lay out our major business terms, what we want to accomplish, and we develop the public option. We do not go it alone; we have a steering committee to help us evaluate this. Then and only then if it makes sense do we invite the public and the private sector to compete along with us. If the private sector can beat our public option, then we enter into a P3 process.

It is important to note that we never take the public option off the table. This has worked very well for us in Virginia with our I-66 deal that we just did, a \$3.1 billion deal. We ended up doing it with no public subsidy and an additional \$500 million paid as a concession payment to the State up front.

This is not free money. This is how the public toll funds will be used. This new process considers that users' fees benefit taxpayers.

As you guys consider—as Congress considers potential infrastructure packages, I would strongly urge members to be careful not to create unintended consequences through new incentives for P3s.

Many of the concepts being considered would provide incentives only available if a project is privately financed. This can undercut the published negotiating position.

In closing, P3s have real promise to address certain transportation projects, but according to FHWA, there are only 42 surface transportation projects across the country that involve private financing and 60 percent in five States: Virginia, Texas, Florida, California, and Colorado. Thirty-five States have never entered a single transaction involving private financing.

I would encourage Congress to ask two questions if we consider incentives. How will it help deliver the best deal for taxpayers and whether it will create distortions that will hurt the public negotiating position.

I have one last closing comment. I know you will hear a lot of people say there are a lot of barriers to P3s, but I strongly disagree. These are the same people who said, when we reformed our program, that it would kill it. It turned out that just was not true.

Thank you very much for the opportunity to testify.

[The prepared statement of Mr. Layne follows:]



COMMONWEALTH of VIRGINIA

Testimony of
The Honorable Aubrey L. Layne
Secretary of Transportation
Commonwealth of Virginia

Regarding
"Leveraging Federal Funding: Innovative Solutions for
Infrastructure"

Before:
Senate Environment and Public Work's Subcommittee on
Transportation and Infrastructure

On
May 16, 2017

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Chairman Inhofe, Ranking Member Cardin and members of the Senate Environment and Public Work's Subcommittee on Transportation and Infrastructure, thank you for the opportunity to provide input on the topic of innovative solutions for transportation. My name is Aubrey L. Layne, Jr., and I have the pleasure to serve as Secretary of Transportation for the Commonwealth of Virginia.

My testimony today will focus mostly on the topic of public private partnerships as this is a major topic in the current infrastructure discussion at the federal government level. These partnerships have been praised in some circles as the solution to all of our transportation problems and condemned in others as a corporate give-away. The truth is much more complex and ultimately dependent on the nature of the project and degree to which the government officials involved understand how these deals work and their fiduciary responsibility to taxpayers.

Prior to being appointed by Governor McAuliffe as Virginia's Secretary of Transportation, I served former Governors Kaine and McDonnell as a member of the Commonwealth Transportation Board for five years. I also served on the Chesapeake Bay Bridge-Tunnel Commission for five years, most recently as Chairman of the Board. I have had a 30-year business career serving as President of a large retail company, and President and Principal Broker for one of the largest privately owned multi-family real estate companies in the Mid-Atlantic region. I began my career as an auditor and certified public accountant for KPMG after graduating from the University of Richmond with a degree in accounting. I also hold a master's degree in business administration from Old Dominion University.

As Secretary of Transportation, I oversee the Commonwealth's seven transportation agencies – the Virginia Department of Transportation, the Department of Rail and Public Transportation, the Virginia Port Authority, the Department of Motor Vehicles, the Department of Aviation, the Virginia Commercial Spaceflight Authority, and the Virginia Motor Vehicle Dealer Board. Collectively, these agencies employ more than 10,000 staff and have a combined annual budget in excess of \$6 billion.

I am also chairman of the Commonwealth Transportation Board. This Board is responsible for the administration, programming and allocation of funds for surface transportation within the Commonwealth.

Many of the most pressing issues facing directors of state departments of transportation (DOTs) today are different from those of the past. The toughest issues I face as a Secretary of Transportation involve resource allocation, financing and risk assessment, and operations – not engineering problems. My past experience has provided me with a foundation and knowledge of financing large-scale, multi-decade deals.

The goal of my testimony today is to describe, in terms that can be understood by the public and policymakers, the real world implications of public-private partnerships that leverage private investment.

Guiding Principles

First I want to be clear that financing, whether public or private, helps leverage funding but is not a replacement for sustainable and stable public funding. The Virginia General Assembly took courageous action in 2013 to enact new taxes and fees to support our transportation program. However, this was done with the expectation that the federal government would remain a strong and reliable partner in our efforts to improve the nation's transportation system. The first order of priority for Congress should be addressing the long-term solvency and growth in the federal Highway Trust Fund.

In 2014, I testified before the U.S. Senate Finance Committee on the importance of the federal transportation program. My three main points from that testimony remain true today – (i) the federal government has and should continue to have a strong role in surface transportation; (ii) while states are stepping up and raising revenues, they need a strong and reliable partner in the federal government; and, (iii) we need increased multimodal resources to address our transportation needs. I have submitted a copy of that testimony for the record on this hearing.

The McAuliffe Administration has several guiding principles on the topic of innovative finance and public-private partnerships that have influenced our actions over the past three and a half years—

- Our fiduciary responsibility is to the taxpayers of the Commonwealth and as such our actions must deliver the best results for the taxpayers;
- Public-private partnerships are a helpful procurement tool that can benefit taxpayers, where appropriate and when negotiated well;
- Government officials should consider all options, including public finance, before making decisions, particularly those that may last decades into the future;
- We must ensure competition throughout the process to deliver the best deal for the taxpayer; and,
- We must be transparent and accountable to the public and elected officials throughout the process.

I am a capitalist and a big believer in private industry. However, this belief is premised on true, free-market competition. For competition to work, both parties entering into partnerships must have a full understanding of the issues being negotiated and there cannot be ulterior motives. Unfortunately that is not always the case. Politics and ideology often times intercede in the negotiations.

If the above noted principles are followed, the public sector can realize significant benefits through the use of public-private partnerships.

Virginia is a leader

The Commonwealth has long been recognized as a leader in the field of transportation public-private partnerships. Our enabling legislation, the Public-Private Transportation Act, was enacted in 1995 and has served as a model for many other states.

Since 2007, we have closed 5 public-private partnership deals that transfer design, construction, finance, operations and maintenance responsibilities to the private sector. Collectively these deals are worth more than \$9 billion, with more than \$2.5 billion coming from private equity, less than \$1 billion in public funds, and the remaining from privately backed debt. In addition we are currently negotiating contracts for an additional \$1 billion in public-private partnership improvements along the I-95/I-395 corridor. Projects that have reached commercial close in the Commonwealth include—

2007 – Pocahontas Parkway, Richmond area - \$672 million total value

- \$0 upfront public funding
- \$172 million in private equity
- \$195 million TIFIA loan
- \$305 million in private debt

2008 – I-495 Express Lanes, Northern Virginia - \$2.1 billion total value

- \$533 million upfront public funding
- \$349 million in private equity
- \$589 million TIFIA loan
- \$589 million in private activity bonds
- \$46 million in interest income

2011 – Downtown/Midtown Tunnels, Hampton Roads - \$2.1 billion total value

- \$308 million upfront public funding, at financial close
- \$272 million in private equity
- \$422 million TIFIA loan
- \$675 million in private activity bonds
- \$368 million in toll revenue during construction
- \$46 million in interest income

2012 – I-95/I-395 Express Lanes, Northern Virginia - \$923 million in total value

- \$83 million upfront public funding
- \$280 million in private equity
- \$300 million TIFIA loan
- \$253 million in private activity bonds
- \$7 million in interest income

2016 – I-66 Express Lanes, Northern Virginia - \$3.3 billion in total value

- \$0 upfront public funding
- \$1,522 million in private equity
- ~\$1,800 million in debt; TIFIA and private activity bond amounts to be determined at financial close

Public-Private Partnerships – not the typical DOT transaction

Public-private partnerships are complex business transactions and unlike any other transaction a state DOT is typically involved. These deals last for decades instead of years. The longer term is necessary to provide time for the private sector to recoup the hundreds of millions of its own funds invested to build the project and repay an even larger amount of debt, plus a profit for their efforts.

Due to the significant amount of risk the private partners are taking, the contracts contain provisions to ensure that the private sector is held harmless if the government changes its mind on major business terms during the life of the deal. A DOT may choose to ‘change its mind’ after learning from an experience or because a new Governor disagrees with a decision of his or her predecessor. These changes usually involve compensation from the public to the private partner.

The normal citizen-government relationship may change due to the long duration of these contracts. Most contracts expire upon completion of the construction of a project or after a limited number of years. This provides the public with the opportunity to evaluate outcomes and, if necessary, ask government officials for changes. This is not the same with a 50-year concession contract with a private partner.

These deals also tend to involve some of the largest construction projects a state will ever deliver. The average value of the public-private partnership deal in Virginia is \$1.8 billion compared with an average contract value of less than \$5 million.

For these two reasons, it is imperative that the public sector understand the fiduciary responsibility of each party involved in a deal. The private sector is responsible to its shareholders and investors. Their goal is to make the deal as profitable as possible for the benefit of shareholders. This is understandable from the private sectors perspective. However, these deals involve public assets and repayment streams paid by the public. The public sector needs to make sure the public’s interest is protected and advanced. The hard part is to find the opportunities where both interests are aligned.

Is a P3 the right procurement?

As I noted earlier, public-private partnership can be a useful tool to advance large-scale projects or a package of projects. However, they are not the silver bullet to solve the bulk of transportation needs a state faces.

The majority of work of a state DOT is akin to 'blocking and tackling' in football. This is not the type of work that press conferences are held for or that the newspaper writes stories about. But without on-going maintenance and operations the system will not work. More than half of the Commonwealth's surface transportation budget is dedicated to maintaining our existing assets.

A public-private partnership requires a repayment stream, such as tolls or taxes on adjacent property, that allows the private sector the opportunity to recoup the funds it provided to build the transportation project. This limits the pool of potential projects for P3s to a discrete number of projects unless a state is willing to pledge existing tax revenues to re-pay the private sector.

Not all projects that have an associated revenue source are good candidates for a P3 procurement. Another major consideration is whether there are risks that can be transferred to the private sector. Key risks in transportation include construction, long-term maintenance and operations, and financing (including revenue risk).

Being a good candidate for a P3 procurement does not necessarily mean that entering into a public-private partnership contract is in the best interest of the public. There are many nuances in a P3 deal that ultimately determine whether it is a good deal for taxpayers. Unfortunately we have experienced both the good and the bad in Virginia.

Virginia Experience – The Bad

In this section I will outline Virginia's experience with the Downtown/Midtown Tunnels project. I want to stress that the bulk of the negative outcomes resulting from this project and its contract are the fault of the public sector, not our private partner. In most cases our private partner lived up to their end of the bargain and delivered an important transportation project ahead of schedule, though there have been times we have had to hold them accountable for shortcomings. The public sector on the other hand did not do its job well and failed to protect taxpayers.

The Hampton Roads region is located in southeast Virginia. It is a region separated by major bodies of water – namely the Chesapeake Bay and the many branches of the Elizabeth River. The region's economy is driven by water based industries such as the United States Navy, the Port of Virginia, ship building, and tourism.

There is significant congestion at the major water crossings in the region. The Downtown/Midtown Tunnels project delivered much needed expansion of capacity in the region – it doubled the size of the Midtown Tunnel, rehabilitated the Downtown Tunnel,

and extended the MLK freeway for two miles completing a missing connection in the regional highway network.

The project was delivered through a public-private partnership. Under the terms of the deal, the private partner was responsible for designing, building, financing, operating and maintaining the facilities for 58 years. In return they have the right to collect a fixed toll on these facilities with rates specified in the contract.

The previous administration did not explore all of its available options to advance this project. They believed the Commonwealth did not have enough resources to construct large scale projects and that private financing was preferable to public financing. This notion is flawed as the toll revenues used to repay the private partner just as easily could have been used to repay public bonds used to build the project. This ideology put the private sector in the driver's seat and resulted in bad public policy outcomes for taxpayers. There are four areas where this procurement and the resulting deal caused poor public outcomes:

1. The toll rates are contractually fixed but were not publicly disclosed in advance of the deal being signed. The decision to not work with the public to determine a consensus toll rate resulted in a public outcry and significant impacts on the many low-income individuals that live in the two cities connected by the tunnels. This lack of transparency took away the opportunity of the elected officials and the public to discuss whether they would have preferred to pay more money up-front to reduce tolls or pay the proposed toll rates. Ultimately due to public outcry, almost \$275 million in additional public funds were invested to 'buy-down' toll rates. Had \$275 million been made available during the procurement much more significant toll reduction would have been possible or the state would have determined that publicly financing the project was more advantageous.
2. The tolls were imposed on the facilities in advance of any new capacity. In fact due to rehabilitation work, existing travel lanes were closed on the Downtown Tunnel. Many in the community felt that they were paying tolls for a worse commute. Drivers should not have to pay a toll in advance of capacity improvements.
3. The Commonwealth failed to ensure that there were meaningful performance standards related to toll violations in the contract. The idea was that the private sector would ensure efficient operations because that was in their best interest. However, when tolling started it was clear that the operator was not prepared to do the work. They charged cars the truck toll rate. They sent toll violation notices to the wrong customers. The Commonwealth had little recourse as the contract only required the use of 'good business practices'. Ultimately, Governor McAuliffe had to use the bully pulpit for the Commonwealth to see better practices from our private partner.

4. The most damning aspect of this deal is a provision that requires the Commonwealth to “compensate” our private partner if any of the other water crossings in the region are expanded and this results in reducing their toll collections. This was never publicly discussed and in fact many did not know it was included in the deal until months after it was signed. In a region where congestion is concentrated at water crossings, why would a state agree to pay a third party for the privilege to spend its own money to widen other water crossings? To complete this abdication of fiduciary responsibility, Virginia failed to evaluate the potential cost implications of this provision. After the deal was signed the private sector disclosed it valued the provision at \$774 million. This provision significantly reduced the risk taken by the private sector.

The problems with this deal are a result of the public sector not looking out for the taxpayer. I do not blame the private sector for asking for the compensation event that requires Virginia to pay for any diverted traffic. They were looking out for their shareholders – that is their job.

However, I do blame the public sector for agreeing to these requests. The failure to consider all options, ensure competition, and be transparent and accountable resulted in a bad deal for taxpayers.

Virginia Experience – The Need for Reform

In 2014, Governor McAuliffe entered office and wanted to ensure that the Commonwealth did not enter into any other deals like the Downtown/Midtown Tunnels P3 contract. I-66 outside the Beltway in Northern Virginia was the next major project to be considered in Virginia after the public outcry from the Downtown/Midtown Tunnels deal. This project would expand I-66 to 3 general purpose lanes and 2 express lanes in each direction over a 20+ mile corridor.

That year I received an analysis outlining whether or not this project should be procured as public-private partnership. The major underpinning of this decision was known as the ‘Value for Money’ analysis. It compared the cost of building and financing the project both publicly and privately, and attempted to monetize the value of transferring different risks to the private sector.

The value for money analysis found that a P3 was in the public interest as it would cost \$186 million less than publicly financing the project after taking into account the value of transferred risks. Sounds like a P3 is the best solution, right?

As a certified public accountant I wanted to understand the basis for this determination. After reviewing the documents and several meetings it became clear that the basis for this determination was flawed. The analysis assumed that traffic projections and toll collections on I-66 would be negatively off by 25% - the average variance on toll road

revenue projections over the previous ten years. If the project was publicly financed then taxpayers would be responsible for covering any debt service that tolls may be unable to cover while if the project was privately financed then taxpayers would be protected as private sector would be on the hook to cover debt service.

Our review found that if the traffic projections were off by less than 21%, then the analysis determined publicly financing the project was in the public interest. So for the estimated likelihood that traffic would be more than 21% off from projections, the Commonwealth was prepared to allow the private sector to finance the project with an assumed 13.5% return on investment.

It is not good business practice nor logical to apply the same risk profile to all projects. Each project is different and so is its risk profile. I-66 is the last link in a regional express lanes network. It is also in a region that has some of the worst congestion in the United States. It is not the same as express lanes in other parts of the country.

I was also told that the project would require a \$900 million upfront public contribution and could not 'afford' to support any transit improvements. However, this was not the project the Commonwealth needed. I-66 after this expansion is unlikely to be widened again for a very long time but Northern Virginia is projected to continue growing at a rapid pace over the next 20 years. With a limited roadway footprint and continued growth, it is my responsibility to find ways to move more people in the space available. There are two ways to move more people – (i) encourage carpooling with express lanes to accomplish free passage for high-occupancy vehicles and (ii) increase transit service. Building a road without increased transit service meant not meeting our goals for moving forward with the project.

Based on this flawed analysis it was recommended that Virginia move forward with a P3 and not consider publicly financing the project. It was clear to me that the program needed to be reformed.

Virginia Experience – Implementing Reform

In early 2015, Governor McAuliffe directed me to re-evaluate our P3 procedures and develop a new path forward. I delayed the start of the I-66 P3 procurement for several months while this work took place.

These existing processes were leading to decisions that did not make sense or deliver the project the Commonwealth needed – so we decided to start over from scratch. We asked ourselves four key questions:

- What are the transportation objectives we want to accomplish with this project?
- How much does this cost?
- What are the revenues available to help us pay for this?
- What are the risks associated with this project?

We also worked in a bi-partisan fashion with our legislature to put in place new provisions in our P3 law to improve transparency and accountability. These changes were designed to help the public sector deliver the best deal for taxpayers. In some instances this meant reducing flexibility in negotiating business terms. In general, flexibility is a good thing for public-private partnership procurements, but too much can result in poor outcomes. It is flexibility in negotiating that allowed the compensation event for improving other water crossings to end up in the Downtown/Midtown Tunnels deal.

Virginia developed a new public-private partnership process to help deliver better outcomes for taxpayers. There are several key steps—

1. Establish major business terms of the deal based on what the Commonwealth wants to accomplish.
2. Develop a public option to finance the project based on these terms, including the amount of the upfront public contribution, if any.
3. Review the major business terms before the Virginia Transportation Public-Private Partnership Steering Committee to receive their concurrence with the public option and the major business terms. The Committee consists of representatives from the Office of the Secretary of Transportation, Office of the Secretary of Finance, the Commonwealth Transportation Board and legislative staff from the House of Delegates and Senate of Virginia.
4. If the Committee concurs, the private sector is then given the opportunity to beat the public option.
5. If the private sector submits a bid that meets the business terms and requires less upfront public funding than the public option the Commonwealth will enter into a P3 contract.

How did these reforms help the public?

The private sector is better at negotiating these deals than the public sector. This is not an excuse for poor past performance by the public. Rather it is a statement of fact that needs to be recognized. The private partners negotiate these types of deals on a regular basis while those on the public side often have never negotiated such a deal. We recognized this and put in place steps to increase our leverage during negotiations.

Many actions taken by politicians can undercut the public sector's negotiating position. For example, under the previous administration in Virginia the Governor stated that he wanted the Route 460 project under construction before he left office and that it would be procured as a public-private partnership. These types of statements may make good politics but they are terrible for negotiating positions. Imagine being the public sector negotiators in this situation. Can you really drive a hard bargain if the people on the other side know you need to deliver a result before the Governor's term ends? Can you really say you are going to walk away from a bad P3 deal if the Governor has said the project will be procured as a P3?

It is much easier to walk away from a deal if you have other alternatives to deliver a project. That is why the McAuliffe Administration reforms ensure the public option is always on the table to deliver the project. Governor McAuliffe also stated publicly that he would rather have no project than a bad deal. This gave us the ability to drive a fair bargain knowing we could walk away from the negotiating table.

We made sure the deal delivered the project the Commonwealth needed by setting the major business terms at the outset. In this case that included \$800 million, in net present value, of transit improvements over the term of the deal. We were not going to let the private sector tell us this was not affordable – this is a part of our project. Similarly there are no compensation events to pay for higher than expected carpooling usage. Carpooling will help move more people and should not be restricted.

Finally by having the public option available, we ensure competition throughout the process. Competition is critical. No analysis can quantify the factors that may drive a bidder. The only way to understand and evaluate these factors is through a competitive process.

Initially many in the private sector did not react well to these changes. Lobbyists for these companies told legislators that we were going to kill Virginia's P3 program. As you will see that is not how things turned out.

Virginia Experience – The Good

This reformed process was used for the I-66 outside the Beltway procurement. Under past practices it was originally determined that the project:

- Required a \$900 million to \$1 billion upfront public contribution;
- Could not support transit improvements in the corridor;
- Could not provide any excess revenue for future improvements to the corridor.

The public option developed under our reformed process determined that the project:

- Required an upfront public contribution of not more than \$600 million;
- Could support \$800 million in transit improvements throughout the term, in net present value;
- Could provide \$350 million for future improvements to the corridor over the term, in net present value.

Two private consortiums competed against the public sector option. Both submitted bids that were a better deal for the taxpayers than the public option the Commonwealth could deliver for itself. The winning partner, Express Mobility Partners, submitted the following bid:

- No upfront public contribution;
- \$800 million in transit improvements throughout the term, in net present value;
- \$350 million for future improvements to the corridor over the term, in net present value; and,
- \$500 million for additional improvements to be provided at financial close this summer.

Overall this represents a \$2.5 billion swing from where things started under our old process. Under our reformed process I can stand before our legislature and citizens, and state with confidence that we delivered the best deal for the taxpayer.

You may be thinking this is too good to be true. Without competition we would have never realized this outcome. Why did the winning team offer a deal that was so much better than our public option? The truth is you never know what drives someone in a competitive environment. Did they want a strategic foothold in a new market? Did they want to keep a competitor from having a monopoly? Are there negative interest rates in their home currency? Do they have a higher appetite for risk?

Now in Virginia the private sector must meet or exceed the public sector terms to have the right to enter into a P3 contract. This means a P3 deal is only signed now when we know this is the best deal available for the taxpayers.

What is the Federal role in public-private partnerships?

Public-private partnerships at their most basic level are contractual arrangements between the public owner of an asset and the private sector. In the United States, the owners of assets are almost always states or local governments. This limits the federal role to providing programs to help address barriers to P3s and resources to help public asset owners understand these transactions better.

Over the last ten years, Virginia has attracted \$2.5 billion in private equity. This amount is more than 25% of the federal highway apportionment received by Virginia during the same period. I raise this issue not to say that private equity can replace public funds. It cannot. In fact without some form of public funding or publicly subsidized financing most public-private partnerships in the United States would not have happened. Rather I raise this issue to note that today there are not significant financial barriers to attracting private capital to invest in transportation projects.

The existing federal financing programs are very helpful for public-private partnerships. All of the P3 deals in Virginia have involved TIFIA loans from the U.S. Department of Transportation and most have involved private activity bonds. These tools can help states negotiate better deals for the taxpayer and do not create distortions in negotiations that only benefit a project if it is financed in a particular manner. TIFIA loans are available

whether a project is publicly or privately financed. Private activity bonds can help level the playing field between public and private debt used for public infrastructure.

As Congress considers potential infrastructure packages in the coming months, I would strongly urge members to be careful not to create unintended consequences through new incentives for public-private partnerships. I have concerns with several of the proposals I have heard being floated for consideration. Many of these concepts would provide an incentive that is only available if a project is financed privately. This creates distortions in procurements that will undercut the public's negotiating position.

Many of these incentive concepts are particularly troubling because a significant portion of the federal incentive will end up being 'consumed in the transaction'. That is to say the public will not realize benefits for a significant portion of this federal spending. At the same time, Congress will need to find \$1 for each \$1 in incentive provided. When the federal Highway Trust Fund is taking in less than \$40 billion but spending closer to \$55 billion a year, I would hope that limited federal outlays would not be used for programs where the public does not realize at least a dollar for dollar benefit from money spent.

One of the ideas being floated is to provide a tax credit equal to 82% of the private equity invested in infrastructure to the private investor. The idea is that this will help attract private equity and may help lower the cost of equity in the transaction. However, this concept is flawed. In public-private partnerships the private consortiums create special purpose vehicles for each project. Due to depreciation, financing costs and project 'ramp-up' periods these entities usually do not have any taxable income for a number of years after they are created. This means that the private partners would need to sell tax credits to other parties. Each sale would be at a discount because no one will pay a dollar to have the same dollar then deducted from their tax liability. This would create a situation where the federal government would bear 100% of the cost of the tax credit but only realize a discounted benefit – likely in the 60-70% range.

Another idea that has been discussed is 'asset recycling'. This encourages states and localities, the asset owners, to seek private investment in their transportation projects by awarding a bonus payment of 15-20% of the value of a project to the public asset owner if it is privately financed. As an example, consider a situation where a state has a \$2 billion project that could be publicly financed with only \$200M in upfront public funding. The state offers the private sector the opportunity to beat the public option to determine if the private sector can offer a better deal for their taxpayers. If an asset recycling program is created in the United States, then in this example the private parties know that there is a \$300 million 'bonus' payment that can only be realized by the state if they privately finance the project. The private sector could offer to build the project for \$400 million in upfront public funding, knowing that because of the \$300 million 'bonus' payment from the federal government the state would still be better off by \$100 million compared to publicly financing the project. This would be true only due to this distortion from the federal program in the procurement even when the state pays \$400 million upfront instead of

\$200 million. While the taxpayer from the state perspective and the private sector may be better off in this example, the United States taxpayer paid an extra \$200 million that did not result in public benefits.

Concluding Thoughts

In closing, there are significant transportation needs that this country must work to address. As state, local and federal governments work together to improve transportation we should not assume there is a single solution to these issues nor should we close doors on options available to assist in this effort. Financing alone cannot solve this problem, nor can funding. Similarly states cannot do this alone – we must have a strong and reliable federal partner.

Public-private partnerships offer real promise to help address certain transportation needs across the United States. However, they are not for all places or all projects. We must avoid the simplistic and easy assumption that if a project has a revenue source and risks that can be transferred, that a P3 procurement will always be in the best interest of the public.

Virginia's experience has shown that whether a public-private partnership deal is in the best interest of the public is not a black and white answer. Evaluating a decades long-deal involving hundreds of millions of dollars, if not billions, is a nuanced endeavor. States will need knowledgeable and experienced people at the table when these deals are being negotiated. The reformed P3 process implemented by the McAuliffe administration can serve as a model for other states in the country.

According to FHWA, there are only 42 surface transportation projects across the country that have involved private financing. Of these almost 60% have taken in place in just five states – Virginia, Texas, Florida, California and Colorado. Overall 35 states have never entered into a single transaction involving private financing. Many states would be unable to take advantage of private financing today even if they had a project that was a good candidate for a public-private partnership because they lack the knowledge and experience to do so.

I would encourage members of Congress to ask those who propose a program or incentive for public-private partnerships: (i) how it will help deliver the best deal for taxpayers and (ii) whether it will create distortions that undercut the public's negotiating position.

In Virginia we have found that there are plenty of opportunities for innovative finance and public-private partnerships. Many in the private sector will spend lots of time trying to convince policymakers that there are barriers that need to be addressed. Please remember that these are the same people who told Governor McAuliffe and me that the reforms we implemented in Virginia would kill our public-private partnership program. Eighteen

months later we announced that the \$3.3 billion I-66 outside the Beltway project was being delivered with no upfront public contribution and that we would receive a concession payment of at least \$500 million at financial close.

We must remember our fiduciary responsibility to our citizens as well as those of the private sector when considering policy changes on this topic.

Thank you for the opportunity to provide input on this matter.

**Senate Environment and Public Works Committee
Subcommittee on Transportation & Infrastructure
Hearing entitled “Leveraging Federal Funding: Innovative Solutions for Infrastructure”
May 16, 2017
Questions for Secretary Aubrey Layne**

Ranking Member Carper:

1. What was the most important reform you implemented in Virginia, and what was the hardest part of implementing reforms to your P3 program, that others should be aware of?

While Virginia is known as a leader in public-private partnerships, we have had both positive and negative experiences. The McAuliffe Administration worked in a bi-partisan fashion to reform our P3 rules based on these experiences. The most important reform in Virginia was ensuring competition throughout the process.

For all P3 procurements, Virginia now develops a public option that can be used to publicly finance the project. The private sector is required to compete with the public option and only if they offer a better deal with the Commonwealth enter into a long-term public-private partnership.

Public-private partnerships are still new to many policy makers. This lack of familiarity with these types of transactions can make it difficult for policy makers to understand the potential impact of a proposed policy changes. During the debate on our reforms in Virginia, many private firms involved in P3 deals said that our proposals would stifle our P3 market. Many lawmakers expressed concerns based on feedback from the private sector who were advocating a position that was in their financial interest.

These concerns did not come to fruition. In fact less than two years after we enacted our reforms the Commonwealth reached financial close on a \$3 billion public-private partnership on I-66 that required on upfront public funding and will provide Virginia with a \$500M concession payment.

2. To what extent are finance tools able to supplant the need for additional direct Federal funding?

Financing is not funding and cannot replace funding. Financing tools help a state or city leverage a revenue source to address large scale needs. The revenues used to support a financed project are not available for other uses and needs a state may have.

Virginia uses a number of financing tools and recently increased revenues for transportation. We believe in an all of the above strategy to improve our transportation system. If the federal government cut direct federal funds for highway, transit and rail it would have a devastating effect on the Commonwealth’s transportation program. VDOT already has the ability to finance projects – through state debt, the Virginia Transportation Infrastructure Bank, the USDOT TIFIA program and public-private

partnerships. While there may be opportunities to enhance existing programs, we believe current financing tools meet our needs.

3. What do you view as the most pressing transportation issues that Congress has an opportunity to address?

The most pressing transportation issue facing Congress is addressing the solvency and growing the transportation program. The FAST Act represented a significant achievement, particularly the establishment of the FASTLANE Grant program, but more must be done.

The federal government has and should continue to have a strong role in surface transportation. Transportation infrastructure is critical for the movement of commerce – both people and goods. Investments made today by transportation agencies will improve the ability of people to participate in the economy.

While states like Virginia are stepping up and raising revenues, states can only do but so much. States, MPOs and transit agencies need a strong and reliable federal partner to help address pressing transportation needs like state of good repair and congestion mitigation.

The solutions to resolve the federal surface transportation needs must be long-term and address all modes of surface transportation – highways, transit and rail. There needs to be discussion about growth in the program and expansion of competitive grants – patching the hole in the federal program is only a short-term solution.

4. Are there currently barriers to the use of innovative finance tools, including public private partnerships, and TIFIA loans?

The major barrier to the use of public-private partnerships and other forms of non-traditional financing is experience and knowledge in the public sector with these types of deals. The public sector must ensure it has the expertise to negotiate a good deal for taxpayers. This is important for both the public and private sectors. A bad deal for the public is ultimately a bad deal for the private sector in the long-term as it will turn the public against such transactions.

5. What do you think of the idea of tax credits for private infrastructure or the concept of "asset recycling" that are being floated?

As I mentioned in my testimony, I do not believe that new incentives are needed to attract private investment. As many private firms have indicated there is plenty of private funding available to invest in projects. In Virginia, \$2.5 billion in private equity has been committed to improve our transportation system.

At a time when Congress has difficulty finding funds to support infrastructure any new funds should be used for proven programs that deliver results. I would strongly urge members to be careful not to create unintended consequences through new incentives for

public-private partnerships. I have concerns with several of the proposals I have heard being floated for consideration. Many of these concepts would provide an incentive that is only available if a project is financed privately. This creates distortions in procurements that will undercut the public's negotiating position.

Many of these incentive concepts are particularly troubling because a significant portion of the federal incentive will end up being 'consumed in the transaction'. That is to say the public will not realize benefits for a significant portion of this federal spending. At the same time, Congress will need to find \$1 for each \$1 in incentive provided. When the federal Highway Trust Fund is taking in less than \$40 billion but spending closer to \$55 billion a year, I would hope that limited federal outlays would not be used for programs where the public does not realize at least a dollar for dollar benefit from money spent.

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Senator INHOFE. Thank you very much, Secretary Layne.

Let us start with Director Gatz. You did not say much about the Driving Forward Program, the projects it would cover and why we developed this plan in our State of Oklahoma.

Mr. GATZ. Mr. Chairman, the Driving Forward Program really consists of two parts. There are three projects that represent major reinvestment in our existing toll network to make sure it stays in good operational condition.

One of those is a six lane project that is about 22 miles on the east end of the Turner Turnpike in Tulsa. The other in the Tulsa area that is an expansion project is the Gilcrease that I discussed in my testimony. In the Oklahoma City metropolitan area, in our efforts to try to continue to manage increasing traffic volumes and make sure we can continue to move people, goods, and services, we are expanding the John Kilpatrick Turnpike on the southwest side of Oklahoma City and introducing a new reliever route between Interstate 40 and Interstate 44, the Turner Turnpike in eastern Oklahoma County.

Again, those expansion projects are really being predicated on developing congestion in the metropolitan areas and the increase in accidents we see occurring as a result of that. That is our effort to stay ahead of it, Mr. Chairman.

Senator INHOFE. Thank you.

Mr. Yarema, you heard the attacks on P3s. It has been my experience in conversations I have had with our new President that everything is on the table. It is going to take a lot of imagination, a lot of hard work, experience, and gifted people, and I would hesitate taking anything off the table. Is there anything you would like to say after the attack on P3s, your feelings about them?

Mr. YAREMA. Thank you, Mr. Chairman.

I do not know that I would serious disagreement with what has been said. I agree with others and with you that P3s are not anymore a silver bullet to solve the big infrastructure challenges we have than conventional delivery is. We have problems with every delivery device.

They do not produce new funding. That should not be the purpose of P3s. They are much more than financing devices; they are effective project delivery mechanisms in the right circumstances.

I believe there is too narrow an understanding of what that term applies to and the potential value they offer to both urban and rural areas. There are two main types of P3s: those that require revenue streams and those that do not.

Most commentators focus on the P3s that require revenue streams, like toll roads and manage lanes. These do raise the issues about rate setting and non-compete clauses and the limits on potential future activity by State DOTs.

The other type of P3, known as an availability payment contract or performance contract, raises none of those issues. It does not involve toll revenues. In fact, it is the most common type of P3 in the U.S. and the global market today, but it is not widely appreciated.

If I could, I would take just a second to explain the performance P3. It offers a different value proposition than conventional delivery. With conventional delivery, a State DOT or a regional transit

agency tells a contractor not just what to do but how to do it. It compensates for the resulting work on a progress basis, and there is no warranty generally for the outcome.

With a performance P3, you compensate the contractor only for the infrastructure performance over its useful life. It is akin to a super-warranty. The government generally makes no payments until the project is complete, and then the payments over the life of the project are subject to adjustment downward to the extent the infrastructure underperforms.

The tool ensures that companies that design and build a project are on the hook for the long term infrastructure performance; they are required to bid life cycle costs, and they reward the contractor for innovative solutions.

There is strong competition and rigorous bidding for these kinds of contracts. There are numerous examples in this country: the Ohio River bridges in Indiana, the Purple Line in Maryland, three major projects in Florida, and the Los Angeles World Airport is delivering \$4 billion worth of these kinds of contracts today for its major project, just as examples.

I respectfully suggest that the outcomes that an availability payment or performance payment P3 can produce are just as valuable in a rural setting as they would be in an urban contracting environment.

Senator INHOFE. Thank you, Mr. Yarema. I appreciate that clarification.

Senator Carper.

Senator CARPER. Thank you, Mr. Chairman.

Again, welcome and thank you for your testimony which I think, for the most part, is illuminating. Tomorrow we are going to hold another hearing in this room, and the witness will be the Secretary of Transportation, Elaine Chao.

I met with her several weeks ago and had a good meeting. One of the questions I asked of her was what do you think the Administration would like to do to fund transportation projects? I am a believer that if things are worth having, they are worth paying for. I also believe that a basic underlying concept for building transportation projects is those who use them, people and businesses help pay for them. That is sort of where I come from, Danville and Roanoke, Virginia, Mr. Secretary.

The Secretary will be sitting tomorrow where you are. Just kind of lift yourself out of your chair and put yourselves up here with us, and it is tomorrow. You are here to give her advice on how to fund transportation projects.

She seemed to think public-private partnerships made a lot of sense. I explained to her that I think in the last I do not know how many years, but for a number of years, if you add them all up, there are maybe 40 or 50. There are big ones; some are really big. There are several you said, but there is just not that many of them.

What advice would you give her? Start, if you could, with our friend from Oklahoma, Tim Gatz.

Tim Gatz, keep it within a minute. What advice would you give her for funding?

Mr. GATZ. I think the most important thing is to understand there is going to have to be a lot of tools in our infrastructure tool-

box. It is going to take a healthy combination of revenue and financing mechanisms.

I think with public-private partnerships, we have to explore innovation that will begin to allow some of the smaller projects—but not the billion dollar projects—to potentially take advantage of those opportunities.

I think, again, as stated many times here in the Committee meeting today, it is going to take a lot of BBs to be able to make that happen.

Senator CARPER. Not a lot of silver bullets but a lot of silver BBs.

Mr. Yarema, what advice would you give the Secretary for funding transportation?

Mr. YAREMA. No. 1, leave existing programs in place. No. 2, find \$200 billion in new funding for infrastructure. Allocate \$100 billion of that to surface transportation, and then create the Infrastructure Incentive Initiative Program, I3, so you take that \$100 billion, and you are able to leverage it into significantly more funding.

You are able to find the efficiencies that life cycle cost approach delivery gives you, the efficiencies that modernizing business practices gives you, and the efficiencies that technology gives you. Then you can get a 5 to 7 times multiple in total infrastructure outcomes.

Senator CARPER. Thanks so much.

Mr. DeGood.

Mr. DEGOOD. Thank you.

I think the No. 1 piece of advice I would give is that we have a longstanding tradition of a user pays model of infrastructure finance for most infrastructure sectors. That has served us incredibly well.

I think unfortunately for a number of political reasons, we have drifted away from that, and it has made the political lift for members to try to find offsets to continue to fill the Trust Fund increasingly difficult. As that number grows with each successive round and surface bill, it gets harder and harder.

I would think that we need to look at those sectors, whether ports, inland waterways, aviation, and surface transportation where we have a user fee structure in place and try to raise those fees to match inflation over the years where we have not.

Senator CARPER. Thank you.

Secretary Layne.

Mr. LAYNE. First of all, I would echo the current funding programs in place like Fast Lane, because P3s are a financing alternative, not a funding alternative.

In terms of P3s, I want to make it clear. I am a big believer in them. I just think you need to understand the two different types of risk and how they need to be negotiated. I believe that is a pretty steep learning curve in some of the States in terms of how to evaluate construction, operational and particularly financial risk.

When you talk about concessions, that is truly the risk you are trying to pass on. If you think about equity, in any deal you do, that is the most significant and most costly part of the capital stream in terms of that.

Quite frankly, it has been attracted because of the low interest public debt programs that are out there. That is what has really enticed many of them to invest.

I would certainly encourage the Secretary, if we are going to continue that, to have some type of programs to help States gear up for the use of these tools. Certainly I believe outcome based results are needed. In the Commonwealth of Virginia, we prioritize now, with our limited resources, through a process we call Smart Scale. It is based on outcomes, not so much inputs but outcomes. Are we reducing congestion using land use?

I have found in my professional career the better way to get more money is to use what you have more effectively and more efficiently. Certainly, I think a prioritization program along with that would be shortening the periods of environmental work and what is needed and helping these projects come to fruition.

That would be my advice to the Secretary.

Senator CARPER. Thanks so much. We will see you tomorrow.

Senator INHOFE. Senator Fischer.

Senator FISCHER. Thank you, Mr. Chairman.

Like many of my colleagues, I believe in the importance of funding our nation's infrastructure. Reliable infrastructure represents a critical investment in advancing safety and also commerce.

The Highway Trust Fund has served to equitably distribute funds to all States, rural and urban, and is the lynchpin of our transportation system. As many of you are aware, we are looking at a shortfall of over \$100 billion that we will face in the 5 years following the FAST Act. I happen to have a bill that will handle that, Mr. Chairman.

However, Mr. Gatz, can you elaborate on how important it is that we have certainty in the formula funding to your State's transportation systems? When it comes to maintaining our roads and bridges, is there really any substitute to that critical apportioned funding that we have?

Mr. GATZ. Senator, I would tell you in many cases, there is no substitute, there is no alternative, especially for a State like Oklahoma. We have to have funding to be able to maintain the system that we have.

Again, it is all predicated on inspection, understanding what our needs are, and then having a very carefully crafted investment strategy to meet those needs. That investment strategy is fiscally constrained based on what resources we believe we are going to have available.

Again, there will have to be continued investment at the Federal level to be able to manage our infrastructure for the future.

Senator FISCHER. I like that you used the term "investment" because that is what this is. It is not going to be a stimulus; it is not really job creation, but it is an investment in the future. When you look at the strategy for that investment, it really, I believe, needs to take place at the State and local levels so you can have those stakeholders come together and decide on the priorities that meet that strategy you are looking at for your State. Do you agree with that?

Mr. GATZ. I would agree. The States are typically held accountable by the folks that reside in those States. Again, we are re-

sponding. We have a responsibility to those constituents to be able to explain our investment strategy and make sure they understand how we are reinvesting in the network to make sure its operationally as good as it can be.

Senator FISCHER. It is important to involve constituents and the people in our States in these decisions.

Mr. GATZ. Absolutely.

Senator FISCHER. Mr. Yarema, you talked about evaluating infrastructure investments based on their performance. Can you elaborate on what performance based standards would look like? Do you believe these could be applied to publicly funded projects?

Mr. YAREMA. I would be happy to. In an availability payment P3 or a performance P3, in a conventional project, the Government basically comes up with standards and specifications that it applies prospectively where they serve as a proxy for outcomes they want to achieve. They mandate how a project is to be built, the manner in which it is to be built, and the means in which it is to be built.

In a performance based P3, the contractor is held to contractual requirements of the infrastructure's long term performance. They are only paid to the extent that performance is actually retrospectively secured.

By performance, we mean that the infrastructure is available, it is safe, it is meeting all of its maintenance criteria, and on many other standards set forth, and it is potentially applicable to apply environmental standards.

Under NEPA and in Federal permits, there is a need to have mitigation requirements, but whether those mitigation requirements actually achieve the desired environmental outcomes is speculative. If it is applied in a performance contract, it is contractually required.

That is the difference in a P3 environment as opposed to a conventional contracting environment.

Senator FISCHER. Thank you.

Secretary Layne, the FAST Act requires States to develop freight plans in order to receive Federal funding. My State, Nebraska, is in the process of developing a very comprehensive freight plan.

Can you talk about the importance of ensuring we have a thorough strategy to address the growing movement of freight across this country?

Mr. LAYNE. Yes. Thank you very much for the opportunity to respond to that.

We, in Virginia, just received one of the largest FAST lane grants for our Atlantic Gateway project, a \$1.4 billion project, between Richmond and the I-95 corridor up to northern Virginia.

It consists of \$1.4 billion, \$165 million in a Federal grant, but supported by \$565 million of private investment and \$710 million coming from the State of Virginia to deliver these projects. A big part of that was freight.

We teamed with our partner, CSX, one of the most congested freightways in the country. It is very important not only for freight but passenger traffic. We certainly support the Port of Virginia having double stacked trains coming up through that corridor.

Having a freight program is actually helping not only freight, but other modes of transportation, taking people off the highway by al-

lowing passenger trains. The freight improvements also helped our passenger movements.

Senator FISCHER. That intermodal connection is very, very important. I am glad to hear you are doing that.

Mr. LAYNE. Yes, it is extremely important.

Senator FISCHER. Thank you.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Fischer.

Senator Duckworth.

Senator DUCKWORTH. I thank the Ranking Member, and I thank the gentleman from Rhode Island for his generosity. I want to thank our witnesses for participating in this very important conversation.

Mr. DeGood, the details of the President's \$1 trillion infrastructure investments are still unavailable to anyone outside of the Administration. However, his budget blueprint reduces transportation funding in very troubling ways.

What little we know about the President's plan suggests that there is actually no trillion dollar investment. Rather, he will rely on financing gimmicks that have limited applicability in most of the country.

I tend to agree with your view that financing mechanisms are mostly limited to urban and mega-project applications. Your testimony suggests that the real constraint facing State and local government is lack of actual dollars, not a lack of access to financing markets. Would this be a correct assessment of your testimony?

Mr. DEGOOD. Absolutely, and I think one of the more disappointing aspects that so much of the conversation from this Administration has been around the possibility of tax credits for equity investors, which I think is both a huge addition to the budget deficit if it were enacted, and also does not really deliver the benefits communities need. We need to get dollars into the hands of project sponsors.

I think one of the things unappreciated about this tax credit program is that, for the most part, it is not something investors are looking for. In my conversations with folks in Wall Street firms, they have repeatedly said to me people bring us money because they want it put into projects and want it earning a return. What we do not need is 82 cents back on the dollar.

I think if Congress were to move forward with this sort of tax credit scheme, we would see it have almost no net effect on overall construction, and it would deliver almost no benefits to the vast majority of communities out there.

We need to bring Federal dollars to the table. I think there is a certain virtuous cycle from that which is when State and local officials know the Federal Government is acting as a partner, they are more likely to take on that political risk to go out and raise their own dollars.

Senator DUCKWORTH. Otherwise there is an interesting history with public-private partnerships. The CREATE Program in Chicago, which is a partnership between the Federal Government, the State of Illinois, the city, and the freight rail industry with their hard dollars, is an extremely effective and balanced effort to address Chicago's freight rail challenges.

In fact, the nation's freight rail challenge is a logjam there in Chicago, but it is not a traditional P3 mechanism. It does not shift risk from one entity to another. However, Chicago's parking meter and Skyway deals highlight how difficult it can be to evaluate public assets to ensure taxpayers get a good deal.

All of these examples are in the context of a challenge of large urban infrastructure. I am interested in learning more about opportunities for rural communities. What financing opportunities are best suited for rural communities where access to private investment is limited, Mr. DeGood?

Mr. DEGOOD. I think one of the potential benefits for rural communities in this conversation about public-private partnerships is that any urban mega-project that is sort of taken care of as a result of a P3 can free up dollars that the State has, general tax dollars that the State has to do smaller projects that just do not fit with that kind of procurement and financing model.

I think it is important for us to be sensitive to the fact that rural communities and small towns just do not have the same tax base. They also do not have the same ability to generate user fees because there is less travel demand on the roadways.

No matter what plan we come up with, we have to make sure to set aside an appropriate amount of money for rural communities and recognize their unique needs.

Senator DUCKWORTH. Thank you.

Secretary Layne, as you noted, most public assets are owned by State and local jurisdictions. I am concerned about the ability of States and local governments to assess and implement complex financing opportunities and also protect local taxpayers at the same time.

As your testimony suggests, VDOT's I-66 expansion project could have gone down a very long path due to an original analysis that was flawed. Relying on that original analysis would likely have led to a very bad deal for Virginia taxpayers.

Secretary Layne, how can States and municipalities avoid similar circumstances? How can we better prepare to assess complex financial deals that ensure taxpayers get the best deal? What can the Federal Government do to help in this effort?

Mr. LAYNE. Senator, I do agree with that assessment. When we came into office, the analysis that was put forth by the department suggested that we were going to need \$1 billion in public subsidy. It was not going to support any multimodal solutions in the area or additional improvements.

What we did, which I think is the key going forward, was to develop the public option. If you are going to negotiate with a third party, you need to understand what it is going to cost you before you begin negotiating.

We did our public option. We said it would only take \$600 million in public subsidy and substantial moneys, over \$800 million for multimodal improvements. As it turned out, true competition, that is the other key besides having a public option on the table, is what resulted in the great deal for taxpayers.

Unless you have true price discovery, which is through competition, you cannot determine what actually has a bidder to make an offer. It could be other factors other than the deal, competition, a

competitor being in control of the whole market, maybe a lower cost to capital that we do in the United States. These are big multinational companies.

The two things we can do to help the States negotiate these deals is have a public option and have true competition. I believe the Federal Government, in helping that, could help us educate the States in how we go forward.

Let me push back on one thing. Every P3 does have a revenue stream. Availability payments do not have a specific one connected to a project, but it still has to be a revenue stream. How else are you going to pay back the third parties?

There is some value for money or the options given up if that money is used for something else already. In the State of Virginia, that would be considered debt because if we do not pay for a project within our construction period, it is considered debt.

I do think availability payments do help in some areas in that, but they are dedicating a revenue stream that could go somewhere else. There are some lost opportunities in those investments.

Those are the things I would say, the public option and having true competition in these deals.

Senator DUCKWORTH. Thank you.

Senator INHOFE. Thank you, Senator Duckworth.

Senator Ernst.

Senator ERNST. Thank you, Mr. Chairman.

Republicans and Democrats are often at odds over a number of things, but when it comes to infrastructure, we generally have bipartisan agreement. That gives me hope. I think coming up this year, really the Federal Government does have a very important role to play in this issue.

Along with ensuring our national defense, which I think is very important, I believe building and maintaining our nation's infrastructure should also be a top priority for our Federal Government.

Director Gatz, you have served at the Oklahoma Turnpike Authority for nearly 30 years. Thank you very much for your service.

In your testimony, you stated, "Until recently, no public-private partnership opportunities really made sense for Oklahoma." Oklahoma has almost 1 million more people than the State of Iowa. Its largest metro area in Oklahoma, Oklahoma City, has more than twice the population of our capital city of Des Moines.

If to this point, a public-private partnership has not worked for Oklahoma, under what circumstance do you see a public-private partnership working for the State of Iowa?

Mr. GATZ. Thank you for the question, Senator.

I think as much as we have engaged in discussions with a lot of different governmental partners, whether that be the city of Tulsa, the Oklahoma Department of Transportation, Tulsa County, and others, on the Gilcrease Project, we are trying to find ways to leverage resources in a project of some size but certainly not a mega-project, to be able to create an opportunity for a private party to come in and help with only the construction of that project.

Again, we think we can create a very competitive environment that would facilitate that investment. It is a bit unique. Again, we have some question marks we are going to have to resolve, but we

simply—I would say that Iowa has, have never had the right project to be able to try to accomplish this.

Quite frankly, we have been talking about the Gilcrease expansion now for about 9 years with these partners. We are only now to a point where we feel we have an opportunity to move forward with it.

Senator ERNST. Every circumstance is very, very different, and making sure it is not one size fits all, I think is really important.

I thought it was interesting that Mayor Garcetti mentioned Los Angeles and their county of 10 million people. My county back home, Montgomery County, is 10,000 people, very different circumstances.

Director Gatz, you also mentioned in your testimony that tolling should be recognized as a long term and sustainable transportation revenue mechanism. My concerns with tolling are a couple different points.

One is how many roads are we going to toll, and at what point do we start inhibiting movement of travelers? This is very true in those rural areas. Oklahoma has the same minimal rural areas where the tax base is really pretty low, and every penny, of course, in those families' budgets count.

Second, wouldn't we be forcing people to go off onto those secondary roads that maybe have not been built for heavy traffic?

Mr. GATZ. Most importantly, I think you have to have a very careful vetting process in place to make a decision about tolling. It cannot be arbitrary. Again, where you have critical transportation needs that are developing that are simply otherwise going to go unmet without a resource commitment, certainly with a lack of traditional transportation investment revenue streams, we think that tolling is a viable option.

In Oklahoma, that is how we have used tolling, where we have had critical needs that we see all the indicators developing, whether that is accidents, congestion, access issues. We have been able to invest and use toll roads to meet those needs and have been pretty successful in doing that.

Again, that cannot be arbitrary. You have to have the right set of circumstances and very careful consideration and vetting.

Senator ERNST. I appreciate that. Again, the one size for all does not fit all kind of approach and thorough vetting. Thank you very much.

Thank you to all our witnesses.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Ernst.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Mr. Chairman.

I am actually optimistic and hopeful that we are going to be able to get something done on infrastructure. You have been a great Chairman on infrastructure projects before. We have worked in terrific bipartisan fashion. We do not always agree on everything, but I think this is a great place to get things done.

First all, thank you for that, Mr. Chairman.

Secretary Layne, although it is not one size fits all, although you have to be able to adapt P3s to different projects, are there certain red flags that we should look out for that should ordinarily be a

warning sign for people trying to protect the taxpayer in P3 deals? If there are those red flags, which ones would you highlight for us?

Mr. LAYNE. First, let me say that you never can institutionalize risk. Every deal is different. For instance, here in the Commonwealth, the risk for extending new lanes on Interstate 66 in an existing right-of-way is a lot different than sticking a tube underneath the Elizabeth River for a new tunnel.

To answer your question, it really gets down to what risks are in each particular project. They primarily fall into three areas: construction risk, operations risk, or financing. That is really where we get into the concessions, and most people think of P3s where we are transferring all those risk to the third parties.

The only way I know to be able to mitigate that is to, first of all, understand what the project is you want built and what it would cost the entity that owns the project, in our case, the State, so that you, one, understand those risks and when you start talking about negotiating those risk away, what they may be a value to in terms of the deal.

Senator WHITEHOUSE. There is no easy red flag. You just have to go in with your heads up and knowing that there are smart people on the other side who are interested in getting money out of taxpayers?

Mr. LAYNE. That is correct. That is not because they are not good citizens. That is their fiduciary responsibility. As a trustee at a real estate corporation, fiduciary responsibility meant a great deal to who I was representing. That is what we need to understand. They are good citizens, but they are fiduciaries.

One red flag that I have found, this is my first time in the public arena, is when you have government, particularly a Governor as we do, a one term Governor, standing up and saying this is the most important project, and I am going to deliver this project before I leave office, that undercuts the public's ability to negotiate the terms of the deal.

That would be a red flag, and my hat is off to Governor McAuliffe for allowing us to walk away from a bad deal. That is why it is important to keep the public option on the table. Not walk away from the project, but walk away from a bad deal.

As I said, I was, in the private sector, an unabashed capitalist and believe in private industry, but you do understand where the fiduciary relationships are. That is what they are going to do.

Senator WHITEHOUSE. Let me turn to another topic that I think also relates to Virginia. Your State is a coastal State, rather like Rhode Island. We are seeing very extraordinary infrastructure needs emerging along our coast as we are seeing very extraordinary sea level rise projections coming from our local scientists, national scientists, NOAA, coastal resources folks, and so forth.

You are seeing this down at Norfolk Naval Station, which is getting all sorts of trouble. You are seeing this down at Hampton Roads. Are you doing anything in particular, or should we do anything in particular looking at infrastructure to address that specific problem of new risks to coastal infrastructure whether it is wastewater, roads, coastal defenses, or military bases? The sea does not like any of that very much. It takes it all over. Are you focusing in any particular way on that threat?

Mr. LAYNE. You are correct. It is a significant threat because it is not just sea level rise; the ground in those coastal areas is also sinking because of taking out groundwater, and they are compressing it.

The answer is yes, but not enough. Particularly on our new projects, that is one part of the big scoring, the resiliency or the environmental impact as we develop new projects. However, we have also had to devote resources to what we call our State of Good Repair because we do have significant assets subject to that, raising the roads or whatever we have to do in those areas. It is far short of the needs.

I have seen that localities have been doing much more, and we assist them. The city of Norfolk got a \$100 million grant from the Federal Government. They have been doing a lot, and we have been assisting them.

We do not have in our budget the ability to take care of all of the resiliency and the sea level rise impacts on the State of Virginia.

Senator WHITEHOUSE. Thank you very much.

Thank you for the extra 30 seconds, Mr. Chairman.

Senator INHOFE. Thank you, Senator Whitehouse.

Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman.

I really thank all the witnesses. I have found this presentation to be very helpful.

I want to drill down a bit more on the recommendation that came in on the I3, that we change the way we configure the Federal partnership in infrastructure to reward, place an incentive for leveraging with either more local government support and/or private sector, which was one leg of it.

The other two legs, I will get to in a moment, deal with technology and dealing with maintenance. I think both of those are very important issues we should talk about at the national level.

Let me talk about leveraging particularly private sector because I thought, Mr. DeGood, you raised a very important point about accountability and so forth and private sector participation.

Secretary Layne, I was listening to your testimony pretty carefully. I was trying to figure out where you come down on this. It sounds like you want to be left alone. Where you want to do public-private partnerships, let the States do it, but do not put any incentives or restrictions at the national level. Let the States figure it out. Am I reading you correctly?

Mr. LAYNE. Yes, sir. I do believe the current tools we have in place, TIFIA and the Government programs, there could be things to enhance that. In terms of tax credits or giving some type of bonus for incentivizing the project be done as a public-private partnership, that puts the factors in the deal that the other side, the private sector, is going to know they are there, too, and they will figure out a way to make sure they use them and how they can benefit from that.

I am not saying that is wrong, but I am pointing out you may not get the dollar for dollar increase the Federal Government would be spending, particularly in tax credits and certainly with the incentives in that.

Yes, we have seen no problem attracting private investment in the Commonwealth of Virginia for those projects that lend themselves to P3s.

Senator CARDIN. Mr. DeGood, let me ask you a question. Is there anything in the current Federal authorization and implementation of our transportation programs that causes you heartburn as it relates to private partnerships?

Mr. DEGOOD. I do not think there is anything in the current Federal program that gives me heartburn with respect to P3s. I think the biggest shortcoming is that we do not have aggressive enough performance metrics when it comes to holding States and metropolitan regions accountable for how they expend the vast majority of money which the Federal Government hands out through formulas.

I agree with the Secretary's point that you have to look at this from the perspective of performance, and that should inform your project selection decisions. I would also say I think we need to push substantially more money down to metropolitan regions. I think too much of the decisionmaking authority currently rests with State DOTs.

I think it is a natural outcome of being a State DOT employee that when what you look at every day is a State highway network, you tend to think the solution to the State's mobility challenges is going to rest with expansion of the State highway network, even if there are other lower cost or more environmentally sustainable approaches or things that just provide more transportation options for local families.

I think more money to locals and more performance accountability at the State level is important.

Senator CARDIN. That is helpful.

In my opening statement, I strongly supported the flexibility for local governments. I am proud of the role that Senator Cochran and I played in preserving the transportation alternative programs with the help of this Committee so that we do have that flexibility under the current system. We are going to fight to maintain that.

Let me go to the other two issues, technology and maintenance, which I strongly support. I think we have neglected maintenance. Everyone likes to cut ribbons and they do not like to preserve roads and bridges.

How do we, at the national level, provide the right incentives for advancing technology and dealing with life cycle maintenance?

Mr. YAREMA. I would be happy to take a crack at that.

Again, we start with the proposal that base programs be kept in place and new money be handled differently. Handling it by way of incentives is a new way of establishing a Federal, State, local, and private partnership.

One of those incentives should be preserving assets to the end of their life and doing effective maintenance. Let us draw a line in the sand and say we are not going to build anything new, we are not going to reconstruct anything unless we make that commitment.

One of the ways of making sure that will take place is through an availability payment P3. The contract will obligate the contractor to achieve life cycle costs and useful life length by contract. That is a way of achieving it with certainty.

The truth about the Federal-State relationship in transportation, at least, is that the States and localities own the assets. The Federal role is to fund, to provide TIFIA financing, and to regulate. Hopefully, what we can do is add an incentive, a stronger incentive, as a Federal role as it evolves.

Senator CARDIN. Does anyone else want to comment on that?

Mr. LAYNE. If I may, yes. In Virginia, more than half of our transportation dollars, Federal and State, go to maintaining the roads. In fact, we just added a new law that requires 45 percent of our construction moneys goes into what we call State of Good Repair. Those assets that you cannot pave anymore or just paved, you have to rebuild them, but you are not adding capacity.

Senator CARDIN. Is there something we can do at the national level to encourage States to meet their commitments on life cycles?

Mr. LAYNE. You can probably tell I am not an engineer. I am not enlightened or encumbered by that degree. I look at things from a logistical standpoint or from a pragmatic business perspective.

Certainly rating performance of your current assets, which we do in the Commonwealth, I believe, should be part of the Federal program. Are we maintaining assets to a standard, particularly interstate systems and what have you and that they make sure, like we do, that we are maintaining those.

Senator, I would suggest that there be some performance output based results in the moneys the Federal Government passes on to the States.

Senator CARDIN. That is a good suggestion.

I would make this final comment, Mr. Chairman. In the days when we used to have congressionally designated funding, better known as earmarks, I have never known a legislator to request money for maintenance, but we do request for new roads and new projects because we like to see new projects.

It is a tough political sell when you are dealing with maintenance, but it is our responsibility to make sure that is built into the accountability and into the way we develop our partnership.

I look forward to your input as we develop the next infrastructure authorization bill to see how we can be more effective in preserving our transportation infrastructure in this country, and by the way, also to deal with technology. I think that is an emerging area that is not always given the priority that it needs.

Thank you all for your testimony.

Senator INHOFE. Thank you, Senator Cardin.

I thank all the witnesses.

We started in the opening session talking about the successes we have had over the last couple years. It has been rewarding because people think things get bogged down in political rhetoric, and nothing gets done. That is not the case with this Committee. We actually do things.

I am optimistic. I have heard it from the Administration that we are going to get aggressive and do the things we should have done before.

I do look wistfully back at the old days when our biggest problem was too much surplus in the Trust Fund, but those days will never come back.

I appreciate very much the expertise expressed by the witnesses today.

I am going to adjourn, but this happens to be the 30th year of the partnership program, one in which I was involved 30 years ago this year. We are going to be holding the celebration in this office building in about an hour. I would hope all of you who were kind enough to show up will leave as quickly as you got here.

[Laughter.]

Senator INHOFE. I appreciate that very much.

We are adjourned.

[Whereupon, at 4:50 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]



COMMONWEALTH of VIRGINIA

TESTIMONY

OF

The Honorable Aubrey L. Layne, Jr.

Secretary of Transportation

Commonwealth of Virginia

Regarding

New Routes for Funding and Financing Highways and Transit

Before

The United States Senate Finance Committee

On

May 6, 2014

Office of the Secretary of Transportation

1111 East Broad Street

Richmond, VA 23219

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Introduction

Chairman Wyden, Ranking Member Hatch, Senator Warner and other members of the Senate Finance Committee, thank you for the opportunity to provide input on the importance of sustaining and increasing federal investments in surface transportation infrastructure. My name is Aubrey L. Layne, Jr., and I serve as the Secretary of Transportation for the Commonwealth of Virginia. My testimony today addresses the implication of the pending insolvency of the Highway Trust Fund and the lack of a fully-funded, long-term surface transportation bill on the Commonwealth of Virginia.

Over the last 18 months, there have been numerous witnesses before Congressional committees and reports from the Congressional Budget Office and the United States Department of Transportation that detail the dire state of the federal Highway Trust Fund. For those reasons, I will not discuss in detail the financial status of the Trust Fund, except to say that a significant infusion of revenue is necessary to avert negative balances in the near future.

Prior to being appointed by Governor McAuliffe as Virginia's Secretary of Transportation, I served former Governors Kaine and McDonnell as a member of the Commonwealth Transportation Board for five years. I also served on the Chesapeake Bay Bridge Tunnel Commission for five years, most recently as Chairman of the Board. In these positions I was involved in several major public-private partnership projects. I have had a successful professional 30-year business career serving, as President of a large retail company, and President and Principal Broker for one of the largest privately owned multifamily real estate companies in the Mid-Atlantic region where I was responsible for all operations and financing activities. I began my professional career as an auditor and certified public accountant for KPMG after graduating from the University of Richmond with a degree in accounting. I also hold a master's degree in business administration from Old Dominion University.

As Secretary of Transportation, I oversee the Commonwealth's seven transportation agencies – the Virginia Department of Transportation, the Department of Rail and Public Transportation, the Virginia Port Authority, the Department of Motor Vehicles, the Virginia Department of Aviation, the Virginia Commercial Spaceflight Authority and the Motor Vehicle Dealer Board. Collectively, these agencies employ more than 9,700 staff and have a combined annual budget in excess of \$5.7 billion.

I am also the chairman of the Commonwealth Transportation Board. This Board administers, distributes, and allocates funds in the Commonwealth's Transportation Trust Fund, which provides funding for surface transportation capital improvements and maintenance activities.

Guiding Principles

Before I outline Virginia's transportation program and the importance of the federal-aid program to the Commonwealth, there are a few key points I would like to highlight.

- The federal government has and should continue to have a strong role in surface transportation. Transportation infrastructure is critical for the movement of commerce – both people and goods. Investments made today by transportation agencies will improve the ability of people to participate in the economy.
- While states like Virginia are stepping up and raising revenues, states can only do but so much. States, MPOs and transit agencies need a strong and reliable federal partner to help address pressing transportation needs like state of good repair and congestion mitigation.
- The solutions to resolve the federal surface transportation needs must be long-term and address all modes of surface transportation – highways, transit and rail. There needs to be discussion about growth in the program – patching the hole is only a short-term solution.

Virginia's 2013 Revenue Package

Virginia has struggled with solving its transportation funding situation for a number of years. There have been a number of proposals advanced in fits and starts that were intended to address the problem for the long-term but ultimately fell short. These include the Virginia Transportation Act of 2000, the 2002 regional sales tax referendums, House Bill 3202 in 2007 and other packages that were not enacted.

As you may know, last year a major revenue package that will provide long-term benefits was enacted. It was the first of its kind in 27 years. This package was passed by a Republican-led General Assembly and Republican Governor who worked across the aisle with Democrats. The final bill contains a number of provisions and represents a compromise by all sides. While no one was happy with all of the provisions in the bill in its final form, it passed both chambers of the legislature with close to a two-thirds majority.

The bill modifies a number of statewide taxes. First, the bill eliminated the 17.5 cents per gallon tax on gas and diesel and replaced it with a sales tax, 3.5% on gas and 6% on diesel. This ultimately represented a cut in the gas tax. To ensure that a certain amount of revenues would be generated from the sales tax on fuel, a "legislative floor"

for the wholesale price of gas and diesel was established for the basis of determining the sales tax on gas and diesel. This provision has turned out to be very important, as the current wholesale price of gas is approximately 60 cents less than "legislative floor" price.

The package also raised two existing sales taxes to support transportation. The statewide retail sales tax was raised by 0.3%, with 0.125% being dedicated to transportation improvements and 0.175% to support the maintenance and operations of the highway network. In addition, it raises the motor vehicle sales tax by 1.15% over a period of three years. These two sources represent the bulk of the new statewide revenues generated by this package.

A portion of the existing retail sales tax is transferred from the General Fund to the dedicated transportation fund over a 4-year period. The amount to be transferred was to be up to 0.175% sales tax, however the 0.075% was contingent upon the Congress passing the Marketplace Fairness Act. At this time only 0.1% has been transferred.

The bill also establishes a structure by which if Congress enacts the Marketplace Fairness Act a majority of the sales taxes collected from online retailers would be dedicated to transportation purposes. Of the total 5.3% state sales tax, 3.05% would be used for transportation. This is significantly more than the existing retail sales tax. In the event that Congress does not enact this legislation, then the sales tax on gas will increase to 5.1% on January 1, 2015.

Lastly, the bill recognizes the importance and more complex needs of Virginia's two largest metropolitan areas – Northern Virginia and Hampton Roads. It imposes additional taxes in these regions that will be controlled and allocated by regional authorities. In Northern Virginia the bill increases the retail sales tax by 0.7%, imposes a grantor tax of \$0.15 per \$100 of assessed value on real estate transfers, and imposes a 2% transient occupancy tax on hotel rooms. In Hampton Roads, the bill imposes a 0.7% retail sales tax and a 2.1% sales tax on gas. While not discussed as much, the new taxes in the regions will generate more revenue for transportation improvements than the statewide tax increases.

Virginia's Transportation Program

Virginia has a multimodal Transportation Trust Fund and related accounts that help fund projects to improve all modes of transportation. In fiscal year 2015, these accounts will provide approximately \$1.2 billion for projects in the Commonwealth. The 2015 Transportation Trust Fund revenues are planned to be used as follows:

- 69% is dedicated for highway construction and capital repair;
- 19.6% is dedicated for transit capital and operating support;
- 6.4% is dedicated for passenger rail capital and operating support, as well as freight rail improvements; and
- 4.9% is dedicated for port and aviation improvements.

In addition to state revenues, the Commonwealth of Virginia aggressively pursues other potential funding and financing options to help improve our transportation system. The following sources and tools have been used over the last four years:

- TIFIA loans;
- Private Activity Bonds;
- Private equity;
- Contributions from local governments;
- Contributions from developers;
- State bonds;
- GARVEE bonds;
- Toll revenues; and,
- Loans and lines of credit from the Virginia Transportation Infrastructure Bank.

The surface transportation funds, other revenues and financing tools are combined with the \$1.1 billion in federal funds to develop the Commonwealth's Six-Year Improvement Program. This Program is updated every June and the current draft of the Fiscal Year 2015 to 2020 Program is \$13.1 billion.

The Program outlines the planned investments of a six-year period. It includes all capital projects receiving funds. Examples include the following:

- \$12.7M project to restore and rehabilitate 11 miles of pavement on I-81 in Shenandoah County;
- \$31.6M freight rail improvement along the Crescent Corridor to add a double track between Nokesville and Calverton in cooperation with Norfolk-Southern;
- \$2B public-private partnership to add capacity to the Midtown Tunnel, extend the MLK expressway and rehabilitate the Downtown Tunnel in Hampton Roads;

- \$25M for the first year of WMATA's momentum program to improve the ability of the system to move more people through its core;
- \$1.2M replacement of the Route 601 bridge over Little Walker Creek in Bland County; and,
- \$95.8M project to extend passenger rail service to the City of Roanoke from the City of Lynchburg, connecting it with the Washington, DC and the entire Northeast Corridor.

Importance of the Federal Program

Even with all of the efforts and options undertaken by the Commonwealth, our program would not be what it is without our strongest partner – the federal government. Of the \$2.1 billion in revenues available in fiscal year 2015 for transportation capital improvements, more than half comes from the federal government.

As you know, the federal Highway Trust Fund is facing an impending insolvency. Recent reports indicated that the Highway Account may face negative balances as soon as August and the Transit Account shortly thereafter. I want to be clear; if nothing is done to address this situation, the consequences will be dire.

In Virginia we expect the consequences of not shoring up the Trust Fund for fiscal year 2015 alone to be the following:

- 149 bridge replacements will not happen;
- 44 smaller transit systems, mostly in rural Virginia, will not have the funds to continue running;
- Over 350 other projects will ground to a halt; and
- 175 transit vehicles will not be replaced.

This outcome will impact more than 43,000 jobs across Virginia and the country. And these effects would grow over time.

In addition to these direct impacts, many states including Virginia have taken advantage of the tools provided by Congress to help advance large-scale projects through bonding backed by federal revenues. These bonds known as GARVEE are sold by a state and are to be paid back through future federal apportionments. If those apportionments are not provided then states are faced with the tough choice of canceling other projects to re-direct state revenues to pay debt service or defaulting on the bonds. States entered

into these arrangements based on an understanding that future federal funds would be available.

Congress must act to shore up the federal Trust Fund. The solutions should address all modes of surface transportation, increase revenues and be long-term. The options on how this can be accomplished have been discussed at length so I will not outline them here.

The Commonwealth of Virginia will support pragmatic solutions to address this problem. The specific option of how to best address the problem should be selected by members of this Committee and other members of Congress.

I would like to note that the Trust Fund is not the only pending issue we face with regards to federal support for surface transportation. There are several key programs that are not currently included in the Trust Fund and must go through the annual appropriations process instead.

- The TIGER grant program has helped several key projects in the Commonwealth. It supported a TIFIA loan to advance the \$1 billion I-95 Express Lanes project, provided \$12 million to extend the life by 50 years of two structurally deficient bridges on I-64 in rural Alleghany County, and provided funds to build the first bus-rapid transit system in Virginia.
- Virginia partners with Amtrak to provide intercity passenger rail service to 23 communities across the Commonwealth. The lack of a federal partner for capital improvements hinders the ability of Virginia to expand service and meet the needs of our communities, many of which are losing air service and need connections to other parts of the Country.
- The New Starts grant program helps communities expand transit and leverages federal resources. The Dulles Rail project – arguably the most important project in Virginia and one of the largest construction projects in the country at more than \$5 billion – would not be under construction without this program. Nor would my home region of Hampton Roads have its first rapid transit line – the Tide. The New Starts program provided \$75 million to bring this project to fruition.

Unfortunately these programs are at risk each year and states do not know whether they will be funded in a given year. The certainty that is often discussed for the highway and transit formulas is just as important for these programs, though I find these programs are often left out of the discussion. Dedicated funding for these programs would help provide much needed certainty.

I understand there has been and continues to be a debate regarding the role of the federal government in transportation investments. As you consider these questions, I ask that the members of this Committee remember that transportation is not an end unto itself. We make investments to accomplish outcomes. A focus on whether an investment is on a particular road system or mode is not appropriate. People and goods move on all modes of transportation – not a particular road system or mode.

The focus should be on how an investment using federal funds achieves the desired outcomes. From my perspective the desired outcomes of transportation investments should be to support economic growth by more efficiently moving people and goods, and improving the ability of people to participate in the economy. At the end of the day, transportation is the backbone of our economy and investments should be considered through that aperture.

Demonstrating Public Benefit

Money alone is not the answer. There are many needs and the needs will always exceed resources. To be prudent stewards of the taxpayer funds, transportation agencies have a responsibility to ensure they can demonstrate benefit and results to the public from their investments.

The last federal reauthorization proposal, Moving Ahead for Progress in the 21st Century, started the transition towards a performance-based system. It requires states to establish targets for future performance in several areas and track performance made towards those targets.

We applaud these efforts and will take further steps in Virginia. This past legislative session, at the direction of Governor McAuliffe, I worked with the Speaker of the Virginia House of Delegates, William Howell, and other members of the House and Senate to develop legislation that will implement significant reforms for the programming of transportation funds.

The proposal signed by Governor McAuliffe requires the Commonwealth Transportation Board to develop a statewide prioritization process for capacity expansion projects. The process will establish criteria for congestion mitigation, economic development, accessibility, safety and environmental quality that will be used to rate projects. The Board will use this process to select projects for funding in our Six-Year Improvement Program.

We believe a commitment to transparency and performance is paramount. Our statewide prioritization process when up and running will help citizens of the

Commonwealth understand the benefits they will receive from transportation investments.

Financing Tools and Public Private Partnerships

As a former businessman, I understand the importance and benefits of having financing and other project delivery tools at your disposal. In Virginia we have used a wide range of financing tools and partnered with the private sector to delivery large scale transportation projects.

Federal tools like TIFIA and private activity bonds are helpful to bring large, complex projects to completion. Since 2005, Virginia has received the benefit of more than \$1.4 billion in TIFIA. In 2011 an Office of Transportation Public-Private Partnerships was established to allow the Commonwealth to better partner with the private sector on projects. For this reason, I support proposals like Senator Warner's BRIDGE Act. These additional tools would help us advance projects moving forward.

However, I want to address a misconception that I have heard expressed by some. Financing and public-private partnerships are not silver bullets and cannot address many of the pressing transportation needs faced today. In fact without sustainable funding, states cannot take advantage of financing tools and would be unable to partner with the private sector.

The major benefit of public-private partnerships is the transfer of risk from the public to private partners and the private sector must be rewarded for taking on that risk. While this is possible for large-scale projects like the 495 Express Lanes in Northern Virginia, it will not work to reconstruct aging pavements on Interstate highways.

It is also important to remember that there are two "P"s before partnership in P3s – public and private. Without public sector funding the risk is too high to attract private investment. An often cited example of a successful P3 deal is the already mentioned 495 Express Lanes. However, in the initial deal only \$348M of the \$1.9 billion price tag did not involve some form of public support. The funding for deal is as follows:

- \$495 million in federal highway trust fund and state funds;
- \$589 million in TIFIA loans, publicly subsidized loans with favorable terms;
- \$589 million in private activity bonds, publicly subsidized bonds through tax breaks provided to bond holders; and,
- \$348 million in private equity.

Without public funding this project could not have been advanced. At the same time without the federal financial tools this project would not have been constructed

Conclusion

In closing, the problems that are faced are significant and the consequences too great to ignore. Many states like Virginia are doing their part to address this problem but we need a strong, reliable partner in the federal government.

The solutions to this problem have been identified. At this point it is a matter of Congress' willingness to take the necessary steps to implement them. Failure to do so will hinder the economic growth of this country.

The Commonwealth of Virginia and its partners – metropolitan planning organizations, transit agencies and local governments – stand ready to partner with the federal government and deliver a transportation system that will promote economic competitiveness.

I hope that over the coming months Congress will do its part and solve this problem in a cooperative, bi-partisan fashion.

Thank you again for the opportunity to address this Committee on an issue of vital importance to our nation's economy.