USING INNOVATIVE FINANCING TO DELIVER HIGHWAY AND TRANSIT PROJECTS

(111–101)

HEARING

BEFORE THE

SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

April 14, 2010

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April 13, 2010

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit

FROM: Subcommittee on Highways and Transit Staff

SUBJECT: Hearing on "Using Innovative Financing to Deliver Highway and Transit Projects"

PURPOSE OF THE HEARING

The Subcommittee on Highways and Transit is scheduled to meet on Wednesday, April 14, 2010, at 10:00 a.m., in room 2167 of the Rayburn House Office Building to receive testimony on innovative financing practices in surface transportation project delivery. This hearing is part of the Subcommittee's effort to reauthorize Federal surface transportation programs under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (P.L. 109-59), which would have expired on September 30, 2009, but has been extended through December 31, 2010. This hearing also is being conducted as one of several hearings under the requirements of clauses 2(n), (o), and (p) of Rule XI of the Rules of the House of Representatives. The Subcommittee will hear from the Assistant Secretary for Budget and Programs and Chief Financial Officer of the U.S. Department of Transportation (DOT), the Secretary of the North Carolina Department of Transportation (NCDOT), the General Manager and Chief Executive Officer of Denver's Regional Transportation District (RTD), the Chief Executive Officer of the Los Angeles County Metropolitan Transit Authority (LACMTA), and the President of a consulting firm specializing in the financing of transportation infrastructure projects.

BACKGROUND

Adequate investment in surface transportation infrastructure is critical to the nation's economic growth, competitiveness in the world marketplace, and the quality of life in our communities. Delivering successful transportation projects requires both sustained and reliable levels of funding, as well as access to sufficient financing mechanisms. Traditionally, highway and transit investments have been funded through a combination of Federal, State, and local public funds. Additionally, private funds have been used to augment and leverage public funds for certain types of transportation projects. Transportation "funding" thus generally refers to the different revenue sources generated at the Federal, State and local levels, including: taxes, fees, user charges, and capturing enhanced property values through special assessments.

Current public investments in funding surface transportation are not adequate to meet the needs of the system. According to DOT's *2008 Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance* report (C&P Report), over the next 20 years, an **additional**:

- $27 billion per year from all levels of government is needed simply to sustain highway conditions and performance;
- $96 billion per year from all levels of government is needed to make all cost-beneficial highway improvements and to eliminate the backlog of bridge deficiencies;
- $2.3 billion per year in capital investment from all levels of government is necessary to maintain the current average transit asset conditions and current transit vehicle occupancy levels; and
- $8.3 billion per year in capital investment from all levels of government is necessary to improve transit conditions and performance.

The significant underinvestment in surface transportation infrastructure identified in the C&P Report confirms the findings of two commissions established by Congress to study future surface transportation policy and financing needs.

- The National Surface Transportation Policy and Revenue Study Commission called for an annual investment level of between $225 and $340 billion – by all levels of government and the private sector – over the next 50 years to upgrade all modes of surface transportation (i.e., highways, bridges, public transit, freight rail, and intercity passenger rail) to a state of good repair.

- Similarly, the National Surface Transportation and Infrastructure Financing Commission (Finance Commission) found that an annual investment of $200 billion by all levels of government was necessary to maintain and improve the nation's highway and transit infrastructure systems. The Finance Commission projects a Federal highway and transit investment gap that totals nearly $400 billion in 2010-2015, growing to about $2.3 trillion through 2035.

Distinct from the sources of transportation funding, transportation "financing" refers to the different financial tools that are used to leverage transportation funding and revenue sources, allowing transportation agencies to raise the up-front costs needed to build projects and expedite the implementation of surface transportation improvements. Thus, financing mechanisms are the tools used to leverage existing funding sources, including a wide variety of bonds, credit enhancements, debt instruments, and loan programs designed to assist transportation agencies in expediting the implementation of transportation improvement.

Due to the nation's recent economic recession, however, many of the previously available funding sources and financing mechanisms used to deliver surface transportation projects have been undermined in a variety of ways. For example, State and local budgets have encountered sharply falling revenues that have negatively impacted the availability of traditional funding sources, such as sales and property tax revenues. Increases in fuel economy for cars and trucks and a decrease in vehicle miles traveled have reduced the amount of revenue collected through Federal and State taxes on motor fuels. Additionally, the volatility of the U.S. financial markets has limited the ability of the private sector to play an increasing role in either funding or financing surface transportation investments.

Compounding the State, local, and private sector funding and financing shortfalls is the lack of a long-term reauthorization of the Federal surface transportation programs. This severely limits the ability of the Federal Government to provide increased funding and innovative financing tools to achieve the needed investments in the nation's surface transportation systems. Addressing the Federal surface transportation funding and financing challenges are critical, and this hearing will focus specifically on innovative financing tools and programs that can assist in successfully delivering highway and transit projects.

Innovative Financing of Surface Transportation Projects

Innovative financing is a broadly defined term that encompasses a combination of specially designed techniques that supplement traditional surface transportation funding and financing methods. Under traditional financing methods, transportation projects are usually completed on a pay-as-you-go basis, meaning that projects have often been built in phases or increments as funds become available over a period of years. By using innovative financing methods, project sponsors can gain immediate access to all of the funds necessary to complete the project and use their traditional funding sources to pay back the debt on the financing instrument over time. It is important to note that most innovative financing tools do not generate new funds in and of themselves. However, they can reduce upfront capital costs, achieve life-cycle cost efficiencies, facilitate the transfer of risk away from the public sector, and expedite the implementation of needed transportation improvements.

The primary objectives of innovative financing mechanisms are to:

- maximize the ability of project sponsors to leverage immediate capital for a project;
- more effectively utilize existing funds;
- move projects into construction more quickly than under traditional financing mechanisms;
- make possible major transportation investments that might not otherwise receive financing; and
- limit the risk to the project sponsor of cost over-runs associated with the project.

Unfortunately, the various types of innovative financing tools are not always easy to access, and often may be difficult to initiate. State and local officials wishing to implement an innovative finance program may face unique challenges that will potentially be different from those faced by other States, due to the varying programs, policies, and political traditions among the States.

The primary barriers to using innovative financing mechanisms are:

- private financial market conditions that may be unpredictable or unstable;
- the lack of statutory authority to use particular mechanisms (e.g., State infrastructure banks);
- limited public agency familiarity with (or capacity to institute) innovative financing tools; and
- projects' inability to generate revenue streams for repayment.

Oftentimes, for certain transportation projects that seek to combine Federal grants with innovative financing methods, the barriers become even greater. According to an October 2009 report by the U.S. Government Accountability Office (GAO), the Federal Transit Administration's (FTA) New Starts project approval process remains a barrier to a greater private sector role in project delivery. The report found that FTA could enhance its efforts to assist project sponsors seeking innovative financing approaches, and specifically recommended that FTA develop guidance, provide technical assistance, and sponsor greater use of financial assessments for New Starts projects whose sponsors seek to utilize alternative financing approaches.

Questions have also been raised about the Federal role in relation to an area of innovative finance that has spurred substantial State and local interest in recent years: public-private partnerships (PPPs) to design, build, finance, and/or operate highways. In a February 2008 report, GAO recommended that DOT develop objective criteria for identifying national public interests in highway PPPs. The same report recommended that DOT play a targeted role in ensuring that these interests are appropriately considered in PPP arrangements.

Despite these barriers, innovative financing mechanisms will continue to play a role in supporting State and local investment in surface transportation. As the Finance Commission stated in its February 2009 final report, innovative financing approaches should not be oversold as a "silver bullet" solution to the nation's increasing transportation investment needs, but they can play an important role in helping public-sector agencies more rapidly advance projects by leveraging future revenue streams.

<u>**Federal Policies and Programs to Support Innovative Financing of Surface Transportation**</u>

The Federal surface transportation programs have not always been at the forefront of supporting innovative financing tools for the delivery of highway and transit projects. In recent years, however, several new programs and policies have been developed at the Federal level in order to support and encourage innovative financing methods. Following is a detailed discussion of four types of innovative financing methods that are supported at the Federal level: Federal credit assistance programs, innovative bonds, grant anticipation borrowing, and State infrastructure banks.

Federal Credit Assistance Programs

<u>Transportation Infrastructure Finance and Innovation Act (TIFIA)</u>

Enacted as part of the Transportation Equity Act for the 21st Century (TEA 21), the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) established a Federal credit program for eligible transportation projects of national or regional significance. The program's goal is to leverage Federal funds by attracting substantial private and other non-Federal co-investment in critical improvements to the nation's surface transportation system. TIFIA credit assistance provides improved access to capital markets, flexible repayment terms, and potentially more favorable interest rates than can be found in private capital markets for similar instruments.

Through TIFIA, DOT provides Federal credit assistance to highway, transit, rail, and intermodal freight projects, including seaports. The amount of TIFIA assistance may not exceed 33 percent of total project costs. The program targets only large projects – generally those costing more than $50 million. Both public and private project sponsors may apply for TIFIA assistance, but all prospective borrowers must demonstrate that the proposed project is consistent with State and local transportation plans.

The TIFIA program offers three types of financial assistance: secured loans, loan guarantees, and standby lines of credit. Secured loans are direct Federal loans to project sponsors. Loan guarantees provide full-faith-and-credit guarantees by the Federal Government to institutional investors that make loans for projects. Standby lines of credit represent secondary sources of funding in the form of contingent Federal loans that, if needed, supplement project revenues during the first ten years of project operations.

To fund TIFIA, SAFETEA-LU and the recent extension of SAFETEA-LU have provided $122 million in contract authority from the Highway Trust Fund for each of fiscal years 2005 through 2010 to pay the subsidy cost and administrative expenses of credit assistance. As of February 2010, the TIFIA program had approved $7.8 billion in credit assistance to 23 projects representing more than $29 billion in total infrastructure investment. Of these, 14 are highway projects, three are transit projects, and six are intermodal in nature.

Railroad Rehabilitation and Improvement Financing (RRIF)

The Railroad Rehabilitation and Improvement Financing (RRIF) Program provides direct Federal loans and loan guarantees to finance development of railroad infrastructure, which in the transit industry can benefit commuter rail. The RRIF program was reauthorized in TEA 21 and amended by SAFETEA-LU. Under this program, the Federal Railroad Administrator is authorized to provide up to $35 billion in direct loans and loan guarantees for projects. Direct loans can fund up to 100 percent of a railroad project with repayment periods of up to 35 years and interest rates equal to the cost of borrowing to the government. Since its enactment, the RRIF program has executed 25 loan agreements worth nearly $1 billion, of which $224.6 million – or about 22 percent of the total – have benefited public transit projects.

Innovative Bonds

Private Activity Bonds

Private Activity Bonds (PABs) allow private entities to use tax-exempt debt based on the investment purpose of the bond proceeds and subject to a series of limitations. The interest earned on most bonds issued by State and local governments is exempt from Federal taxation. However, Federal law limits tax-exempt financing of facilities used in conjunction with private activities. PABs are designed to provide the same Federal tax exemption for some private investments in infrastructure.

Congress has specified certain private activities that can be financed with tax-exempt bonds (also referred to as "qualified" private activity bonds). These activities include airport, water and sewer projects, and as of 2005, highway and surface freight transfer facilities. In general, qualified private activity bonds are subject to a number of restrictions, including annual State-by-State limitations on the volume of such bonds that can be issued.

SAFETEA-LU amended section 142 of the Internal Revenue Code to add highways and freight transfer facilities to the types of privately developed and operated projects for which qualified private activity bonds may be issued. This change allowed private activity on these types of projects, while maintaining the tax-exempt status of the bonds. This allows projects with private-sector financial participation to obtain lower financing rates, which helps eliminate one barrier to private-sector transportation investment. SAFETEA-LU limits the total amount of such private activity bonds to $15 billion and directs the Secretary of Transportation to allocate this amount among qualified highway or surface freight transfer facilities. As of January 2010, PAB allocations approved by DOT total about $6.3 billion for seven projects.

Build America Bonds

Traditionally, tax-exempt bonds provide a critical source of capital for State and local governments, but the recent financial crisis sharply reduced their ability to finance new projects. In response, Congress created within the American Recovery and Reinvestment Act (P.L. 111-5) (Recovery Act) (and extended in the Hiring Incentives to Restore Employment Act) a new innovative financing tool: Build America Bonds (BABs). These bonds, which allow a new direct Federal payment subsidy, are taxable bonds issued by State and local governments that give them access to the conventional corporate debt markets. At the election of the State and local governments, the Treasury Department makes a direct payment to the State or local governmental issuer in an amount equal to 35 percent of the interest payment on the BAB. As a result of this Federal subsidy payment, State and local governments will have lower net borrowing costs and be able to reach more sources of borrowing than with more traditional tax-exempt or tax credit bonds. Since April 2009, State and local governments issued a total of $28.5 billion in BABs to be used for highway and transit projects across the nation.

Grant Anticipation Borrowing

Bonds repaid with future Federal funds are commonly referred to as Grant Anticipation Revenue Vehicles (GARVEEs) for highway projects or Grant Anticipation Notes (GANs) for transit. GARVEEs and GANs allow public agencies to pay debt service and other bond-related expenses with future Federal and/or State funding. The broad use of GARVEEs and GANs were made possible by the National Highway System Designation Act of 1995 (P.L. 104-59) (NHS Act), which modified the Federal reimbursement and eligibility process as necessary to permit borrowing against future funds.

As of December 2008, 20 States, Puerto Rico, and the Virgin Islands had issued GARVEE bonds for approved Federal-aid highway projects totaling nearly $9.3 billion. According to FTA, over $3.2 billion worth of GANs have been issued by transit agencies since 1997. Because of the smaller size and relatively non-predictable nature of the Federal transit grant programs, transit agencies have found it difficult to issue long-term GANs without pledging additional resources to secure debt service. And unlike GARVEE bonds, GANs do not include debt-related financing costs such as interest and issuance costs.

State Infrastructure Banks

A State Infrastructure Bank (SIB) is a revolving fund mechanism for financing a wide variety of highway and transit projects through loans and credit enhancement. SIBs are intended to complement the traditional Federal-aid highway and transit programs by supporting certain projects with dedicated repayment streams that can be financed in whole or in part with loans, or that can benefit from the provision of credit enhancements. As loans are repaid or the financial exposure implied by a credit enhancement expires, the SIB initial capital is replenished and can be used to support a new cycle of projects.

Section 350 of the NHS Act authorized DOT to establish the SIB Pilot Program. Specifically, DOT was authorized to select up to 10 States to participate in the initial pilot program and to enter into cooperative agreements with the Federal Highway Administration (FHWA) and/or the FTA for the capitalization of SIBs with a portion of their Federal-aid highway funds. The DOT and Related Agencies Appropriations Act, 1997 (P.L. 104-205) opened SIB participation to 38 States and the Commonwealth of Puerto Rico and appropriated $150 million in Federal General Funds for SIB capitalization. Under this authority, 32 States and Puerto Rico established SIBs. SAFETEA-LU made the pilot program permanent and expanded it to allow all States and territories to capitalize SIBs with a portion of their apportioned highway formula funding. By the end of December 2008, these SIBs had collectively issued more than $6.2 billion in loan agreements.

Innovative Financing in the Surface Transportation Authorization Act

The Surface Transportation Authorization Act (STAA) (H.R. ___), which the Subcommittee on Highways and Transit reported to the full Committee in June 2009, includes a variety of provisions related to innovative financing of highway and transit projects. STAA would reauthorize the TIFIA and SIB programs, and would increase the proportion of a TIFIA project that could receive Federal assistance (up from 33 to 49 percent of total project cost). STAA would also authorize metropolitan planning organizations (MPOs) to use funding under the newly-created Metropolitan Mobility and Access (MMA) program to capitalize Metropolitan Infrastructure Banks (MIBs), which would operate very similarly to SIBs. Only MPOs receiving MMA funding would be authorized to establish MIBs. The Committee intends to include in the STAA provisions authorizing the establishment of a National Infrastructure Bank within DOT. The Bank will be administered by the Office of Intermodalism, and will operate like a larger version of the existing TIFIA program, with additional authorities. The Bank will focus on providing assistance to projects under three programs: (1) the newly-created Metropolitan Mobility and Access program; (2) Projects of National Significance; and (3) high-speed rail corridors.

PREVIOUS COMMITTEE ACTION

On both May 8, 2008 and June 10, 2008, the Committee on Transportation and Infrastructure held a hearing to examine methods for financing investment in our nation's infrastructure, including roads, bridges, public transportation, aviation, ports, waterways, and wastewater treatment infrastructure.

On February 13, 2007, the Subcommittee on Highways and Transit held a hearing on innovative financing under PPP arrangements. The hearing examined how the public interest should be protected when PPPs are used to provide innovative financing for infrastructure investment, and whether the model legislation developed by the FHWA provides adequate safeguards for the public interest.

WITNESSES

The Honorable Chris Bertram
Assistant Secretary for Budget and Programs and Chief Financial Officer
U.S. Department of Transportation

The Honorable Eugene A. Conti
Secretary
North Carolina Department of Transportation

Mr. Phillip A. Washington
General Manager and Chief Executive Officer
Regional Transportation District, Denver, CO

Mr. Arthur T. Leahy
Chief Executive Officer
Los Angeles County Metropolitan Transportation Authority

Mr. Jeffrey A. Parker
President
Jeffrey A. Parker & Associates, Inc.

USING INNOVATIVE FINANCING TO DELIVER HIGHWAY AND TRANSIT PROJECTS

Wednesday, April 14, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2167, Rayburn House Office Building, the Honorable Peter A. DeFazio [Chairman of the Subcommittee] presiding.

Mr. DEFAZIO. The Highways and Transit Subcommittee will come to order.

Today's subject is to discuss, or the formal title is Using Innovative Financing to Deliver Highway and Transit Projects.

I am not going to revisit all of the statistics regarding the miserable condition of the Nation's infrastructure. Suffice it to say that the United States used to lead the world in transportation infrastructure. For some time I have been saying we are losing so much ground we are falling toward third-world status, until one of my colleagues pointed out that most third-world nations invest a larger percentage of their GDP in transportation infrastructure than we do. So I have taken to calling it fourth-world; that is, formerly first world, now vaulting over the third-world backwards.

Transportation investment is critical to the efficient movement of our people, our goods, our competitiveness internationally, and to our fuel efficiency. So many things go to it. We are trying to write a long-term bill to rectify these problems. The Administration is scared to death that we might actually make additional investments, so they don't want to talk about it. And we, therefore, turn to this panel to talk about some other ways we might be able to increase investments without using the dreaded T word, and begin to address the Nation's infrastructure investment deficit.

I have read all the testimony. I assume other Members of the Committee have. So we would appreciate it if you, when you speak, you either summarize your most cogent points or respond to someone else on the panel if you have disagreements, and then we will go and move quickly into questions. I found some of the testimony very helpful and we will want to build on that as we go through the hearing.

With that, I would turn to the gentleman from Tennessee, Mr. Duncan.

Mr. DUNCAN. Well, thank you very much, Mr. Chairman, for calling this hearing on using innovative financing practices to deliver our surface transportation projects. I also want to thank all of our witnesses for attending this hearing. Some of them have come from very long distances to be here and I look forward to hearing their testimony, because this is a very important hearing. The reauthorization of the highway and transit and safety programs has been stalled for almost a year now, and that is largely due to the fact that we are unable to agree on how we will fund all of these programs and projects in the future; and, of course, that is the megabillion question that we are all facing, particularly on this Subcommittee.

Tax revenues are declining for all levels of Government and everyone is being asked to do more with less. As a result, innovative financing methods will play a bigger role in the next surface transportation reauthorization bill, a bigger role than they ever have before.

In the past, innovative financing has been associated primarily with toll road projects but, in recent years, transit projects and highway projects that do not include tolls have benefitted from innovative financing.

Today we will hear about Denver's Union Station project, which will utilize two USDOT loan programs, and we will hear about a tunnel project in Miami that uses innovative financing but does not include tolls.

As the number of transportation projects that are financed with loans, bonding, or with private sector funding grow, there are important policy issues that must be addressed. One is my concern that we need to make sure that today's governors and, in some cases, mayors do not leverage so much of their future Federal funding that future governors do not have any Federal money available to address the problems they will face and will be left holding the bag, so to speak.

At the same time, we do not want to give the Federal Government absolute veto power over every financing decision made by a State DOT or a local transit agency, because we need to have flexibility.

It will be difficult to strike the right balance between these two perspectives, but I believe that the witnesses today can provide us with valuable information that will help us move in the right direction.

Thank you, Mr. Chairman, for calling this hearing, and I look forward to hearing the testimony of the witnesses.

Mr. DEFAZIO. I thank the gentleman.

We will move now to the witnesses, and the first will be The Honorable Chris Bertram, Assistant Secretary for Budget and Programs, Chief Financial Officer, United States Department of Transportation.

Mr. Secretary.

TESTIMONY OF THE HONORABLE CHRIS BERTRAM, ASSISTANT SECRETARY FOR BUDGET AND PROGRAMS AND CHIEF FINANCIAL OFFICER, UNITED STATES DEPARTMENT OF TRANSPORTATION; THE HONORABLE EUGENE A. CONTI, SECRETARY, NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; PHILLIP A. WASHINGTON, GENERAL MANAGER AND CHIEF EXECUTIVE OFFICER, REGIONAL TRANSPORTATION DISTRICT, DENVER, CO; ARTHUR T. LEAHY, CHIEF EXECUTIVE OFFICER, LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY; AND JEFFREY A. PARKER, PRESIDENT, JEFFREY A. PARKER & ASSOCIATES, INC.

Mr. BERTRAM. Chairman DeFazio, Ranking Member Duncan, Members of the Subcommittee, I am pleased to appear today to discuss the Department of Transportation's efforts to use innovative financing techniques for surface transportation. My written testimony outlines the Department's programs in this area. Let me just make a couple of observations.

First, innovative financing is a response to the difficulty State and local governments face in funding major projects of regional or national significance through traditional grant programs on a pay-as-you-go basis. Today, such projects are rarely fully financed from just one source of funds; it is much more likely that a project sponsor will draw in multiple sources of revenue to move a project forward.

The Denver RTD, which you will hear from today, is a good example of this approach. The Department is participating with the RTD through the Transit New Starts program, the TIFIA program, and the RRIF program; and we are also in discussions with Denver RTD about the use of private activity bonds.

The Department has also begun discussions with Los Angeles about their 30-in-10 program, which envisions accelerating multiple projects by leveraging the sales tax revenue dedicated to transit.

My second point: innovative financing is broader than just highway projects. There is heightened interest among transit and rail project sponsors in innovative financing. Although transit is traditionally less reliant on user fees, transit projects can leverage sales taxes and other revenue streams to repay project financing costs. For example, the Department recently provided a $171 million TIFIA loan for the Transbay Transit Center in San Francisco, a major transportation hub costing over $1.2 billion. The loan will be repaid by dedicated real estate tax increment revenues resulting from the economic benefits of the overall project.

Thirdly, interest by State and local governments in such programs appears to be higher than ever. Last winter, the Department published a Notice of Funding Availability for the TIFIA program, with a deadline of March 1st, for letters of interest from project sponsors. Project sponsors submitted 39 letters of interest for almost $13 billion in credit assistance to support over $41 billion in total project costs. These letters of interest represent a range of different project types, including transit, highway, bridge, and freight intermodal projects. However, due to the limited funds available to the Department, we will only be able to provide loans to a fraction of these requests.

Finally, allow me to briefly discuss the proposal in the President's budget to provide $25 billion over five years for a new Infrastructure Fund. This Fund would allow the Department to select major projects from around the Country and provide a variety of financial products—grants, loans, or a combination—to best fit a project's needs. This proposal reflects an acknowledgment that the Federal Government needs to take a more active role in supporting major transportation infrastructure projects with targeted grants and credit assistance.

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

Mr. DEFAZIO. I thank the gentleman.

We turn, then, to the next witness, who would be The Honorable Eugene A. Conti, Secretary, North Carolina Department of Transportation.

Mr. Duncan, would you care——

Mr. DUNCAN. Well, Mr. Chairman, I was going to mention I think our Committee Member, Mr. Coble, might like to introduce this witness from his home State.

Mr. DEFAZIO. That would be great.

Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman, Mr. Duncan. I am indeed pleased to recognize Secretary Conti. Mr. Chairman, I am scheduled to manage a bill on the Floor, so I may have to depart before I hear all the testimony, but Secretary Conti is no stranger to Capitol Hill; he served a good period of time here as the chief of staff for Congressman David Price.

Gene, were you with any other Member besides David?

Mr. CONTI. [Remarks off microphone.]

Mr. COBLE. I thought there was another stint.

But, Mr. Chairman and Mr. Duncan, Secretary Conti has served with distinction as the Secretary of the North Carolina Department of Transportation and I am indeed pleased to welcome him here, and thank you for letting me introduce Mr. Conti. Thank you. Yield back.

Mr. DEFAZIO. Proceed.

Mr. CONTI. Thank you, Mr. Chairman and Mr. Duncan. I certainly appreciate Mr. Coble's kind comments.

We fully support the use of these innovative financing programs, and I am going to talk a little bit in detail about some of our uses in North Carolina, a range of programs made available over the last 10 to 15 years and, as Secretary Bertram said, becoming increasingly important to the States as we seek to build on the basic user fee-based financing that comes through our Federal grant programs for both highway and transit. But we have found the need to supplement that grant program grant approach with these innovative financing tools.

In North Carolina, as in many States, our traditional sources of financing are heavily constrained by gas tax revenue shortfalls and DMV fees and those kinds of things, so we have had to look at a number of these programs to move forward, and let me just tick a few of those off.

One, we have used the Value Engineering Project Clustering approach and we are very successful in replacing seven bridges on our Outer Banks in a 75-day period, something that, if we had taken the traditional approach, may have taken several years to do and probably would have cost us significant amounts of money, more than we actually ended up spending. So taking that approach was very important to getting it done.

We have also gotten into the Design-Build and Design-Build Finance area. We have used those approaches on more than 25 projects around the State and we have saved significant time in getting those projects done and also significant dollar savings getting them done earlier. For example, we are completing the Charlotte Loop project, which has been 20 years in the making. We are going to complete it five years earlier by using Design-Build Finance.

We have gotten into the GARVEE Bond program very significantly, $530 million covering over 42 projects, and we have set that up to be kind of a revolving fund for us to keep those dollars flowing back into projects as we repay those GARVEE Bonds.

We have also gotten into the tolling business. We have closed our financing on Triangle Expressway in the Raleigh area using a combination of Build America Bonds, Toll Revenue bonds, and a TIFIA loan. We will have that project as the first cashless electronic toll road in the Country. Starting cashless; I know a lot of places are converting to cashless.

We are also working with a private sector partner on the Mid-Currituck Bridge that is on the Outer Banks of North Carolina, a project that we wouldn't do with public dollars alone, but we do have private sector interest in sharing the development costs and also sharing in the revenue stream after we get that built.

We had a great example in Charlotte of a public-public partnership, if you will, the State, the Federal Government, and the local governments coming together to build a very successful light rail project in Charlotte.

We are also moving forward with a public-private partnership in Charlotte built around a new inner city passenger rail station which will also service local buses and have mixed use development around it as well.

Finally, we are working under the Value Pricing program to look at tolling all or parts of I-95, which is the main street of the East Coast; runs right through our eastern part of our State.

A couple of areas where we have some questions and we would love to have some conversation today is about the TIFIA credit program. Again, we have used it; we intend to use it in the future, but there are a couple of concerns.

One is the approach of requiring up-front payments for TIFIA, and North Carolina, I think was either the first or second to have to go through that experience. Coming up with that $10 million up-front payment did complicate the financing of our project and certainly would complicate the financing of our additional projects that we have put in for. Finally, we need much more clarification about some of the new features that the Administration has introduced around livability and sustainability, and how that applies to TIFIA projects. So we would like more definition around that.

Finally, on the I-95 issue, we are working very hard to develop the alternatives, kind of similar to what Maryland did on I-95 north of Baltimore, where they developed about five or six different approaches in terms of pricing and financing, and then moved forward with the Express Lanes approach. So within a year or so we will have that study done; we will have those alternatives outlined. There is a lot of public involvement we are doing to make sure that our citizens understand what the options are and what the impacts might be.

Thank you again, Mr. Chairman and Members of the Committee, for giving me the opportunity to be here today. I would be happy to answer questions.

Mr. DEFAZIO. Okay. Thank you.

Next we will have Mr. Phillip A. Washington, General Manager and Chief Executive Officer of the Regional Transportation District, Denver, Colorado.

Mr. Washington, thank you for being here.

Mr. WASHINGTON. Chairman DeFazio, Ranking Member Duncan, Members of the Committee, thank you for having me here. I also want to acknowledge my Colorado delegation representative—she is not here—Betsy Markey, who has been wonderful in helping our transit agency doing the projects that we are doing.

The innovative financing tools that we have employed at RTD are very, very important. We encourage Congress to implement TIFIA, PABs, the things that we will talk about today. They have been very, very critical for us. We would not have been able to implement the projects or go down the road of implementation of the single, really, largest voter-approved transit expansion program in the Country without these innovative financing tools that we are talking about today.

We are implementing the full load, as Secretary Bertram mentioned. The public-private partnership, which today, incidentally, the concessionaire teams that will be bidding on this Eagle P3 Project, which consists of two and a half rail lines—commuter rail, maintenance facilities—those bids are due in today. So this is very, very timely that we talk about this.

Private activity bonds, we are implementing TIFIA, railroad rehabilitation and improvement financing, and a lot of interagency cooperation and coordination with our State DOT and the Transit Agency.

Also, there was some discussion about the livability cooperation between DOT, EPA, and HUD. We, of course, have a regional partnership and we are exercising that. We also, understanding this is a financing or innovative financing discussion, but there is some great innovative workforce initiatives that we are doing out in Denver, too, with this transportation investment program as an impetus.

So, again, thank you for having me here. I look forward to the questions.

Mr. DEFAZIO. Thank you.

Mr. Arthur T. Leahy, Chief Executive Officer—oh, wait. Excuse me. Mrs. Napolitano would like to introduce the next witness.

Mrs. NAPOLITANO. Thank you, Mr. Chair, and it is very brief. Just to welcome Mr. Leahy again to the Subcommittee. He has been before us several times, formerly with the Orange County Transit, now with the Low Angeles, and we welcome him with open arms because he brings a new face, new ideas, and certainly a lot of brain thrust that we have sorely needed in the LA region. The only thing I have to say is that we put in that there is 10 million people in LA. There are more like 13 million just in the county alone. And that is a big job. So we welcome you and look forward to your testimony, sir.

Mr. LEAHY. Thank you, Congresswoman.

Mrs. NAPOLITANO. Thank you, Mr. Chair.

Mr. LEAHY. Mr. Chair, Mr. Duncan, Members, I am pleased to be here with you. Los Angeles is what we call in California a self-help county. What that means is that there are three one-half penny sales tax measures—voter approved—the last one measure approved by a 68 percent level. Those funds generate about $1.5 billion annually, which are used to pay for transit highway operations and capital. We very much look forward to working with you as partners using those funds as a basis for transportation development and economic development in Los Angeles and Southern California.

My testimony cited a number of projects: the Alameda Corridor, using Federal loan guarantees guaranteed by container fees, a very successful project; the SR-91, an Orange County project, one of the best examples in the world of congestion pricing. Under that program, Orange County has now achieved, using transponders to collect the fares, the highest levels of speeds, revenues, passenger volumes, and average vehicle occupancy in the history of that road, a very successful model with no public money in the road; it is paid for exclusively by tolls.

I will note also that our joint development projects in Los Angeles generate around $17 million per year in revenue.

Measure R was passed in 2008. It generates about $30 billion over a 30-year period. It is going to be used to pay for highway and transit projects. The mayor of Los Angeles has recently advanced a notion of a so-called 30/10 program in which we would seek Federal loan guarantees and assistance to advance the 30-year program to be done in a 10-year period of time, the objective being to achieve the benefits from those projects, but also to stimulate the economy. The LA Economic Development Corporation estimates this would create about 500,000 jobs during the course of the project.

We look forward to working with you on such things as a National Transportation Investment Finance Fund, Build America Fund, the Metropolitan Mobility Access Fund. Using the monies, the revenue stream that we have coming in Los Angeles to do transit and highways, we think that we can accomplish some wonderful things for Southern California, indeed.

So we appreciate being here with you and look forward to working together in the future.

Mr. DEFAZIO. Thank you.

Then, finally, Mr. Jeffrey A. Parker, President of Jeffrey Parker & Associates, Inc. Mr. Parker. Make sure your mic is on there, Mr. Parker.

Mr. PARKER. Thank you very much, Mr. Chairman. It is an honor for me to be here today with such a distinguished panel. You have my testimony and we refer to a number of projects that we have worked on which I think demonstrate some innovation. Our company advises public agencies on innovative finance, and I must say that I share your interest in finding other ways beyond the T word to generate the revenues that we need to get the job done in this Country. We have been looking for it for 30 years; we haven't found it yet.

What we have found are ways to stretch the dollars that we do have available to get some better outcomes, to get more product for those dollars. The loan programs, the grant programs at the Federal level have been essential to advancing the edge of innovation in this area. Sometimes we fall off the edge a little bit, but hopefully we correct and we come back to where we need to be.

I think the opportunities in front of us are significant, but so are the challenges during these difficult economic times, and I look forward to any questions that you may have. Thank you.

Mr. DEFAZIO. I thank all the panel members, and hopefully now we can get into a little more interesting and thoughtful discussion among the members of the panel and the members who are here today. We have some pretty good participation.

I would start with Secretary Bertram. You know, TIFIA suffers perhaps from being too successful; that is, you mentioned an extraordinary amount of potential demand and you are only going to be able to meet a fraction of that. Yet, at the same time the Administration is proposing this new I Fund. I mean, we have a plethora of programs.

One question would be you have TIFIA, you have RRIF, you get PABs, you get BABs, you got GARVEEs, on and on and on, and now you want to have an I Fund. I mean, the question is at some point do we want to look at some sort of centralized clearinghouse that perhaps deals in different instruments which have different benefits? Because if you have a tax-exempt or not tax-exempt issuance, there are different markets for that. Some agencies have more capability of repayment than others, so that goes to what sort of financing they can access.

I mean, do we really need to create a new I Fund, when we have something very successful like TIFIA, which is over-subscribed? Would it be better to put that money into TIFIA so that we can meet some of that already known demand? I am a little puzzled by—are we going to bring in some sort of rationalization to this process?

Mr. BERTRAM. I think you are exactly correct. One of the points of having the Infrastructure Fund, is that you would have one entity within the Department of Transportation that a project sponsor could go to for loans, loan guarantees, grants, or a combination thereof. The vision of the Department is that TIFIA, RRIF, and other programs would eventually get folded into the Infrastructure Fund, so you wouldn't be going to the Federal Transit Administration just to deal with New Starts and Federal Highways for TIFIA, but you would have sort of a central entity that people could go to that would provide planning and develop projects. Your point is exactly what we are trying to do.

Mr. DEFAZIO. Now, we tend to have stovepipes, many stovepipes, and, again, we just talked about that briefly, but RRIF is way under-subscribed and TIFIA is over-subscribed.

Mr. BERTRAM. Right. You know, it is interesting because the RRIF program started out really as a method of credit assistance for small, short-line railroads after the deregulation of the railroad industry. The last highway bill, SAFETEA-LU, made a number of changes to the RRIF program, expanded the eligibility, expanded the amount of credit it could give, and the RRIF program is actually changing. We see a lot more demand for that. We actually are currently negotiating with the Port Authority of New York on——

Mr. DEFAZIO. With what? I'm sorry.

Mr. BERTRAM. Port Authority of New York and New Jersey for a potential loan to buy new commuter railcars, which would be a loan of almost half a billion dollars. So you are right, currently TIFIA seems over-subscribed, RRIF seems under-subscribed, but the amount of interest we are, all of a sudden, getting in the RRIF program over the last year is really quite amazing. I think we will see the Department making many more RRIF loans not just for freight railroads, but also for commuter rail and possibly passenger rail.

Mr. DEFAZIO. Okay. There was in the press—and Mr. Conti mentioned this, it was in his testimony, the first time I had seen it. They essentially had to pay points for their TIFIA loan. What was it called? It had a special name. It was some kind of fee. What did you call that?

Mr. CONTI. While some of our folks called it an extortion fee, but——

[Laughter.]

Mr. CONTI.—that is not the official name of it. In fact, I don't know exactly what——

Mr. DEFAZIO. Okay. I don't remember either, but, Mr. Bertram, would you care to comment on the extortion fee and why they were subjected to it, how it is going to be applied, what is the consistency of it? Because one concern I have about TIFIA is it seems like we have treated everybody the same. Are we now going to treat people differently; that is, say, well, you have more capabilities, therefore, we are going to charge you an up-front fee? And is the up-front fee limited? This one seems to have been about three percent of the value. Can you comment on that?

Mr. BERTRAM. Sure. Let me comment on that. It is something that happened before I got to the Department, but basically because TIFIA is so over-subscribed, the Department, sometime last year or the year before, made a decision that they had a number of applicants for TIFIA loans and they had a limited amount of credit subsidy that they got from the highway bill, and they made a number of allocations that were essentially capped. So North Carolina got an allocation of $20 million for the credit fee.

As the project developed and as the Department worked on calculating what the credit costs would be, that ended up being more than the $20 million. However, there was no additional credit subsidy because it had been allocated to other programs who also received a capped amount. So, as the loan went to closing, my understanding was that North Carolina paid more and then the Department also increased its cap by some amount, I forget how much that was.

But it is really due to the fact that the program is over-subscribed.

Mr. DEFAZIO. Right. But, is this going to be consistently applied in the future? Is it going to be applied only to certain people? I see it as a way of extending the program; I understand that part. But the question is, is it a set percentage fee? In what circumstances might it be assessed? If one area is economically depressed and another is doing very well, will one fee be applied consistently? I mean, we weren't trying to facilitate the 30/10 plan in LA, that is going to be a big use potentially of funds. How are you going to apply it?

Mr. BERTRAM. I don't know how we are going to apply that prospectively; we just got, as I mentioned, the 39 letters of interest. We are going to start working through those; look at the eligibility, look at the credit worthiness. I don't know if this Secretary will want to apply a similar policy or not in order to stretch those TIFIA dollars. We only have about $108 million for 2010.

Mr. DEFAZIO. How much for 2010?

Mr. BERTRAM. About $108 million in contract——

Mr. DEFAZIO. But the total—okay, let's just parse through this real quickly, then I want to get to other members of the panel. But your total requested amount is? You threw out that number.

Mr. BERTRAM. Was $13 billion in loans.

Mr. DEFAZIO. Okay. And what percent of that—I mean, what would be the credit part of that?

Mr. BERTRAM. The rule of thumb is maybe 10 percent credit subsidy.

Mr. DEFAZIO. Okay.

Mr. BERTRAM. So that would be $1.3 billion.

Mr. DEFAZIO. Okay. And you have how much?

Mr. BERTRAM. One hundred eight.

Mr. DEFAZIO. Okay, 108 or 80?

Mr. BERTRAM. Eight.

Mr. DEFAZIO. Eight. Okay. So you have somewhere about 12 percent of the demand.

Mr. BERTRAM. Yes.

Mr. DEFAZIO. That is kind of pathetic. Don't you think we should be looking at somehow trying to increase the scope of that? Because, there is very little cost here to the Federal Government compared to the traditional program, and yet the economic returns, the investment returns are phenomenal.

Mr. BERTRAM. Right.

Mr. DEFAZIO. So you are asking for $4 billion in the President's budget for the I Fund.

Mr. BERTRAM. Right.

Mr. DEFAZIO. If we had that $4 billion to apply to credit, we could more than cover those loans and cover the 30/10 plan, probably.

Mr. BERTRAM. Absolutely, and of the $4 billion we would envision that some part of it would go to TIFIA types of loans.

Mr. DEFAZIO. Well, maybe all of it should just go into TIFIA right now, and then we work toward consolidation.

With that, I turn to Mr. Duncan. Mr. Duncan.

Mr. DUNCAN. Well, thank you, Mr. Chairman.

Secretary Bertram, you mention in your testimony this National Infrastructure Innovation and Finance. How is this different from TIFIA or other things that we already have in existence?

Mr. BERTRAM. As I mentioned earlier, it is different in that it would be broader than just TIFIA loans. We know TIFIA is capped at a third of the overall project cost. The I Fund could do more than that. It also would have grants that could be combined with loans or loan guarantees.

It would also allow a project sponsor to come to one entity within the Department of Transportation and try to get a financing project as opposed to currently having to go to Federal Highways for a TIFIA loan and perhaps having to go to the Federal Railroad Administration for a RRIF loan and the Office of the Secretary to get a private activity bond. So it would be a consolidated place where people could apply.

Mr. DUNCAN. Let me ask you another thing. In SAFETEA-LU we expanded the Railroad Rehabilitation and Improvement Financing program. There have been 24 loans made under that program for $851 million, but that is only a tiny fraction of the authorization.

Mr. BERTRAM. That is correct.

Mr. DUNCAN. Why is that? Is there just not that much demand or is there a problem of some type?

Mr. BERTRAM. No, the demand is changing, as I mentioned earlier to Congressman DeFazio. We have a lot more interest in the RRIF program. The eligibility was changed in SAFETEA-LU, as well, and people are starting to understand that they can use RRIF loans. With Denver RTD, we are currently in discussions to do a RRIF loan for Denver Union Station, which is sort of their downtown transit hub, which would be combined with a TIFIA loan. So we actually are moving forward with the RRIF program, trying to find new innovative ways to use it not just for freight railroads or short lines, but actually using it to do transit and commuter rail projects.

Mr. DUNCAN. Let me ask you this. The Administration earlier asked for an 18-month extension and we didn't go quite that far. Does the Administration want to see a highway bill passed this year? Is that a goal of the Administration?

Mr. BERTRAM. Secretary LaHood has said he wants to work on a highway bill. I don't know exactly what the timing will be. We have until this December with the latest extension, as you know, and he is working internally on some proposals and some principles for the highway and surface reauthorization.

Mr. DUNCAN. And without—I know you wouldn't want to—you couldn't come out in favor of it, I suppose, but do you think that, from what you have read and heard and so forth, do you think that most experts feel that there needs to be a—who have looked at this, feel that there needs to be an increase in the gas tax?

Mr. BERTRAM. I think the Administration has been pretty clear that in this economic climate we don't think a gas tax increase is appropriate. We do support extra investment in infrastructure; that is why we included the Infrastructure Fund in the President's budget request.

Mr. DUNCAN. Well, I wasn't asking you if the Administration favored it; I am just asking if you think, from what you have read and heard, that most people feel that, most of the people who have studied this, feel that there needs to be an increase in the gas tax. It is a little bit of a different question.

Mr. BERTRAM. Yes, it is a different question. I don't know if the majority of people who have studied this feel there should be an increase. I know there are people who have studied transportation that believe that there should be an increase in the gas tax, that is correct.

Mr. DEFAZIO. If the gentleman would yield for just a second on that.

But every study and every analyst who is credible out there has said we need additional investment and funding.

Mr. BERTRAM. Right.

Mr. DEFAZIO. There is not agreement on the form of it.

Mr. BERTRAM. That is correct.

Mr. DEFAZIO. But there is—we can quantify the deficit as being huge in terms of annual investment.

Mr. BERTRAM. Right.

Mr. DEFAZIO. Okay. I just wanted to clarify that. Thank you.

Mr. DUNCAN. Well, I know you have done a lot of different things and you worked for this Committee for a while, and you also worked for the Senate Commerce Committee, I understand. I am tempted to ask you which you liked better, working for the House or Senate?

[Laughter.]

Mr. BERTRAM. They were both great experiences.

Mr. DUNCAN. Secretary Conti, have you studied the proposed bill that we have in this Committee, the reauthorization bill? And what I am getting at, have you looked or consider what effect this proposed Office of Public Benefit would have on the projects that you have worked on in North Carolina?

Mr. CONTI. Well, I think what we are concerned about in terms of the authorities in the outline that was put out is it seems to reduce a lot of the authorities that exist now, some of the things that I talked about that we are using or attempting to use. I think it would be useful to have some centralized evaluation process for how these tools work and which projects are creditworthy and all that, so I am not opposed to an Office of Public Benefit, but I think without having the Federal tools available to us, it would be very difficult to work in that structure.

Mr. DUNCAN. All right, thank you.

Mr. Washington, this Denver Gold Line and these corridor projects, $2.5 billion, how long did it take you to work that out from conception to actually starting on the project?

Mr. WASHINGTON. I would think it took us about two years or so in various phases. The procurement phase, which we are in right now, as I mentioned, the technical bids are due back today. So I would say about two and a half years to put this together; dealing with the industry, dealing with the Federal Transit Administration, who has been great partners with us. Putting this design-build-finance-operate-maintain public-private partnership together has been very, very huge.

As we move forward through this—and one of the lines that you mentioned includes the airport line. I was talking to some aviation friends of mine and we were talking about that Denver International Airport is the fifth busiest airport in the Nation, but the only one with no train from it to the downtown area. So this construction build-out, which will take about four years, and then the operation and maintenance piece of this that will be operated by the private sector for a 40-plus year period is huge.

We have significant control, as the public sponsor, to include setting the fares, setting performance measures, the opportunity for liquidated damages if performances are not met. We believe that this PPP in transit, where the private equity partner is bringing up to $1 billion to the table up front and where we will pay back through availability payments, is really a model for the Country in transit in terms of public-private partnerships. So it took us a while to get to this point in working with FTA and our elected officials.

And I see Congresswoman Markey has come in. Thank you for all your work helping with us.

But it took us a while, but we are——

Mr. DUNCAN. What was the most difficult part to work out?

Mr. WASHINGTON. I think the risk allocation piece, looking at the risk allocation and how much risk the public sector or the public agency takes on versus the concessionaire team was probably the most significant piece.

Mr. DUNCAN. All right. Thank you.

Mr. Leahy, I am very impressed that you got a 68 percent vote in favor of a tax increase. Somebody did a pretty good sales job, I would say. But you describe this SR-91 express lane toll road as the most successful toll road project, did you say, in the world?

Mr. LEAHY. Sir, I think I referenced congestion pricing, one of the most successful congestion pricing models in the world.

Mr. DUNCAN. I see. And the tolls run as high as $9.50 at times?

Mr. LEAHY. Yes, sir.

Mr. DUNCAN. And that is to go 10 miles?

Mr. LEAHY. Yes, sir.

Mr. DUNCAN. But did you also say that the tolls are higher not only at peak times, but they pay more the faster, the more speed there is?

Mr. LEAHY. Yes, sir. If I might describe how the OCTA approached this.

Mr. DUNCAN. Go ahead.

Mr. LEAHY. We purchased the road from a private firm who had developed the project under a State franchise for a variety of reasons, fundamentally, a non-compete protection they enjoyed. It was very controversial. The OCTA sought to purchase the road, which we did, and negotiated price, and at the time we sought State authority for charging a toll because the purchase was going to be paid for out of tolls.

Once we purchased, took possession of the road about six years ago, we then developed a tolling policy in which we looked at what the customers wanted, which was speed, that is, therefore, time. We then looked at traffic volumes and we discerned that when volumes—since two lanes in each direction came to 3200 cars per hour, speeds became unstable, radically unstable; they would go from 60 or 70 down to 15. As a consequence, we developed a tolling policy which sets tolls by hour of day, by direction, and day of week. As a consequence, the tolls are very high.

Let's say, Thursday afternoon at 5:00 there might be $9.50. Friday morning, in the opposite or in that same direction it might be $1.5 to go the same trip. So what happens is the users, the customers, who use it voluntarily—remembering there is no taxpayer money in those lanes—manage their trip times around when the tolls are highest. So, as a consequence, the p.m. peaks became wider. So under this process we achieved the highest speeds, the highest volumes, the highest revenue, and because of the discount to car pools, the highest average vehicle occupancies in the history of that road.

And, I guess to cap this off, I would note it took the profits, which are substantial, and used those profits to pay for improvements in the parallel free lanes, and Orange County paid for improvements in Riverside using the profits from the toll lanes.

Mr. DUNCAN. Approximately how much profit are you making off that? You said the profits are substantial.

Mr. LEAHY. Yes. The last year I was there, the last full year I was there for this, there were revenues of around $50 million and total expenses of around $30 million.

Mr. DUNCAN. All right. I have some other questions, but the Chairman has asked me to go to other members, so we will save those for later. Thank you.

Mr. DEFAZIO. Yes, we will have an opportunity for a second round. I would just like to, since there are a number of Members here, move along.

Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair.

I certainly find great interest in the information you have in your testimony, Mr. Bertram, and I certainly would hope, as you mentioned the 30/10 for Southern California, that you don't forget that that is the mayor's plan, not the county's plan, nor MTA's plan, nor the city's plan. And they have to be taken into consideration when taking a look at the progress that it is making or not making.

One of the major focuses of the mayor is to finish his lane to the sea, which is for tourism. We need mass transit, and the completion of the Santa Ana Freeway, the I-5. So, you know, there are things that need to be considered. And one of the reasons I believe that Mr. Leahy's description of the passage of Measure R was because it was dedicated funding to transportation. The only problem was there wasn't any defined—how would I say?—of who was going to benefit, what areas, whether it was bus transit or rail transit or highway building.

I would love to have a letter into the record, Mr. Chair, from Gateway Cities, representing 20 cities. These are elected officials, Gateway COG, kind of outlining some of the concerns they have with the 30/10 plan. It is ambitious and it is a very good plan except if they take and build it out to the sea, it is already probably—how would I say?—over budget in planning, which will mean there won't be very much funding left for any of the other projects, and that is some of the concerns that the cities have.

We look forward to being able to have more assistance to the communities themselves, who can determine what their needs are, rather than the State or the county, and direct ability for them to either bond local funding to be able to implement those local changes, and I look forward to talking to you and having possibly more of a knowledge for the communities. There's the three councils of government that represent about 77 of the 85 county cities, and certainly they should have some input as to whether or not the plan, that is the 30/10 plan, is going to be something that is going to be helpful or detrimental in their eyes.

I don't have many questions other than to thank you for being here. As far as the gas tax is concerned, while I agree that it is probably not the time to do it, but if people see that it is dedicated to things that they feel are important, especially with the fact that so many new hybrids are on the road, there is less gas tax coming into the communities for them to be able to assist in addressing some of their local concerns.

So while it may not be right now, timely now, I don't want to—how would I say?—belabor it, but there hasn't been a gas tax increase since 1993. That is a long time and I think it is time that we begin to at least consider it and have the general public understand the reason why and be able to move forward in the next few years.

So, with that, thank you, Mr. Chair. I yield back.

[The information follows:]

GATEWAY CITIES
COUNCIL OF GOVERNMENTS

March 10, 2010

The Honorable Grace Napolitano, Congressmember
United States House of Representatives
1609 Longworth House Office Building
Washington, DC 20515-0546

Dear Congresswoman Napolitano:

You may have recently heard of the City of Los Angeles' 30/10 Transportation Plan to accelerate transit projects through potential federal borrowing against Measure R receipts. I have been briefed by the Mayor's office and from the perspective of the Gateway Cities COG sub-region have some concerns about how little actual benefit there is for our sub-region within this plan. We have attached a brief perspective indicating the concerns for the Gateway Cities sub-region and recommendations for a working plan. I am going to continue to dialog with the City of Los Angeles representatives to try and bring the plan into a state where it can provide a tangible benefit to Southeast LA.

If you have any questions please do not hesitate to contact me through Richard Powers, Gateway Cities COG Executive Director at 562 663-6850.

Sincerely,

Diane DuBois

Diane DuBois
Director MTA Board and
Councilmember City of Lakewood

Attachment

ATTACHMENT

Gateway Cities 30/10 Perspective

Concerns with 30/10

- The 30/10 Plan is being shopped in Washington without MTA Board approval. There are legitimate concerns about this plan and they should be vetted at the Board.
- The 30/10 Plan is single-mode, transit only.
- Should the Plan be implemented, how will operational expenses be covered?
- Should the Plan be implemented and transit projects accelerated, how will the accelerated risk be managed (legal issues, unknown soils issues, other risk)
- If the Feds. do create an Infrastructure Bank, are transit projects the only projects that the MTA will ask for? Board action has already committed Crenshaw and Foothill as a top priority for non-New Starts funding, does 30/10 push highway priorities back 20 years? Under 30/10, funding for highway projects takes a back seat to transit. Goods movement is an economic recovery priority and highway congestion stymies deliveries and the growth of both large and small businesses. There is nothing in this plan that recognizes goods movement in a direct manner.
- Traffic control – What are the congestion and economic impacts of building the S2S, Crenshaw, Expo II within the same subregion. What will the construction mitigation costs be from this combined activity. Has this been factored into the costs?

Recommendation

- Stop promoting this plan until it is vetted at the Board, there should be input, discussion and a vote to support. As it has been presented there is no reason for the Gateway Cities Council of Governments to support this plan.

- Expand 3010 to include Measure R highway improvements in an accelerated timeframe even of that means leaving some transit projects in their original time frame (or behind for that matter). The Plan needs to expand to promote highway priorities for the Infrastructure Bank and other financing mechanisms. The highway piece should look at those highway improvements that have national import; projects such as the I-5 truck lanes.

- Revise plan to include the entire West Santa Ana Branch project to LA Union Station. Include the full cost (estimate of that segment).

- Provide a funding plan for the I-5 (I-605 – I-710) as a Countywide priority and along with the other Measure R highway priorities as a critical piece of national economic infrastructure, servicing the San Pedro Bay Ports and trade access to Mexico. There is a request for doing this in the Antonovich, Fasana, M R-T Motion.

- The 2009 version of the 30/10 Plan referenced mobility's role in goods movement and national economic recovery but did not make a logical nexus with the all-transit project emphasis. The national economic language should return with a suggested acceleration of highway projects.

Mr. DEFAZIO. I thank the gentlelady.

Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. Thank you for calling this hearing.

Thank you all for being with us.

Secretary Conti, good to see you again especially. I know that the North Carolina Turnpike Authority has tentative projects on its books that would require coordination with our neighboring States for collection purposes. Mr. Secretary, how would the motorists traveling through or in the State be affected should these projects move forward?

Mr. CONTI. We are very active in a group called the Alliance for Interoperability. This is a critical issue as more and more States go to tolling as an option on some of the major highways, so we are trying to get a system where we can share information about license plate data so we can assess the tolls, if necessary, through video enforcement. We are going to need some help from the Federal Government on that effort, but it is something that we are actively leading in terms of a national coordination effort.

Mr. COBLE. Thank you, sir. You and I are both thoroughly familiar with the infamous Yadkin River Bridge which spans the Yadkin River, and I think, Mr. Conti, the most heavily traveled corridor between Washington and Atlanta. I think I am right about that.

Mr. CONTI. I think that is right, Congressman.

Mr. COBLE. But recently it was announced that the NCDOT will use GARVEE funds to finance the first phase of the project, and I commend you for taking that step forward. But if you would, Mr. Secretary, walk us through what led NCDOT to determine GARVEE Bonds were the best option to get to work.

Mr. CONTI. Well, we have had a very active GARVEE program for the last several years, using it for significant projects like the Yadkin River Bridge. We had applied for a TIGER grant for the $300 million that it will take to do the whole project. We were not successful in getting that amount of money out of the TIGER program, so we decided to do the first phase of the project, which is replacing the bridges, using our GARVEE Bond authority. Moving forward, we are also looking at ways to finance the second piece so we can get that under construction hopefully in the near term and get all the project done within the next three to four years.

Mr. COBLE. Thank you, sir. Now, the Chairman asked you about the TIFIA loan. Did you want to say any more about that? You responded to the Chairman.

Mr. CONTI. Well, I thought the Chairman's questions were very appropriate. I think the key is we need to know what the rules are for this program so we can decide if that is the vehicle we want to pursue to finance some of these important projects. And if the rules keep changing or we are not sure what the up-front fee is and how that is going to be calculated, we just need a lot more transparency, a lot more definition about what the rules are for that program and, frankly, all these programs—Build America Bonds, GARVEEs.

We have had great success with the GARVEE program because the DOT defined the program early on and worked with the States to refine it, improve it, make it workable. I think all of us are very pleased with that. I think we need the same approach on TIFIA or any other of these financing programs. We just need to know what the rules are and how they are going to be applied, have a much more transparent process so we can understand how these decisions are made and what our financial liability might be.

Mr. COBLE. Thank you, Mr. Secretary.

Thanks to all of you for being with us today.

Mr. Chairman, I yield back.

Mr. DEFAZIO. Thank you, Mr. Coble.

Still on your time, Mr. Bertram, could you respond to that? Because I think that is a key point and we seem to have created some uncertainty here. They were assessed a fee. That was the previous Administration. Could you——

Mr. BERTRAM. I totally agree with Gene. Putting these projects together is not cheap for an applicant; they require financial analysis, they have to go through preliminary engineering, the NEPA process. So I think people should have a better idea, before they put in a full application, what the rules are, and I think we will definitely keep that in mind for the next round of loans.

Mr. DEFAZIO. Well, keep it in mind is one thing. The other is to have an expressed intent. It is like I will be advised by his concerns, it is like that doesn't mean anything. So don't you think there should be some guidance, perhaps a letter or something promulgated by the Secretary or your office that says, for this next round, these are the conditions we will apply?

Mr. BERTRAM. Yes. I think in the next round, when we look at the letters of intent and we—or letters of interest and we go back to the applicants before they put in a full application, I think we will be very clear about what sort of the general outlines of those loans will be. I agree with you.

Mr. CONTI. Mr. Chairman, if I could just add an additional comment. To the Administration's credit, they had planned to have a public seminar, if you will, back in, I think, February. One of the snowstorms hit Washington that week, so it got cancelled.

But I would be very supportive, and I think most of the States would be, if they would have some kind of a public discussion like that where we could come and present directly to the Administration and the leaders at DOT our views on how this program could be structured and have a good dialog, and then, of course, ultimately they need to make the decisions about how to structure it, but I think that kind of public exchange would be very helpful.

Mr. DEFAZIO. That is a great idea. Have we rescheduled?

Mr. BERTRAM. We haven't rescheduled that; we plan to do that this summer.

Mr. DEFAZIO. Okay. Should be able to, you know——

Mr. BERTRAM. With no snow this time.

Mr. DEFAZIO. Then you have thunderstorms.

Okay, with that, Mr. Carney.

Mr. CARNEY. Thank you, Mr. Chair.

Over here, guys.

Secretary Bertram, I had a quick question. I am from Pennsylvania, but we pay attention to what transportation issues are around the Country, and looking at the toll road near San Diego that got the TIFIA loan and then the private owner operator, and it went bankrupt, what have we learned from that? Are there lessons that we need to be aware of as we apply this around the Country, this bankruptcy? Are we going to get the money back? How is this going to work?

Mr. BERTRAM. You are referring to the South Bay project?

Mr. CARNEY. Yes.

Mr. BERTRAM. There was a—there is a dispute between the company that constructed the project and the project sponsor as to outstanding costs associated with building the road that were in the hundreds of millions of dollars, and the project sponsor decided to go into bankruptcy, which means that the court will now decide which of those construction claims are valid and will have to be paid. The Department of Justice is representing the Department in that case.

There is a feature in TIFIA that people commonly refer to as the springing lien, which means that when a project sponsor goes into bankruptcy, the Federal Government is first in line to be repaid. This will be the first time that it is actually tested in a practical case, so I think whatever experience we get out of that, I think that will probably be the biggest lessons we get out of that. But there are risks to these projects, and that is why they want a TIFIA loan, because they could not get the whole project going without one. So we are working very closely with Justice and monitoring that.

Mr. CARNEY. From your knowledge, do you anticipate this happening elsewhere where TIFIA money is involved?

Mr. BERTRAM. On all of our loan programs we have sort of a portfolio monitoring process. I am not aware of any other TIFIA loan that is potentially in this situation.

Mr. CARNEY. Okay. Thank you.

Mr. Conti, I agree with you in your comments that innovative financing mechanisms are not the primary fund; we need to have a transportation bill, we need to have a full authorization bill. There is no question about that. That is the way to do this. But, from your perspective, what are some of the most efficacious of the innovative financing that would serve all of our needs, from your perspective?

Mr. CONTI. Well, I think the GARVEE program has been a very, very successful program. We certainly would continue to support that. Build America Bonds, we have had some experience with that in the transportation area and I think again offers some significant opportunities for us, so we would be very supportive of that. Again, the TIFIA program, or something like it, very helpful.

I think the important thing is to have a range of tools available and then to have a one-stop shop, if you will, at the Federal level so you could deal with one agency or one office that could help you walk through the alternatives and what might be most useful, because every State is different, every city is different in terms of their own capabilities and what kinds of packages could be put together.

None of these projects anymore are very easy to do from a financial perspective, so you really have to be creative; you have to look at all the tools and then package them together. For instance, our first toll road in North Carolina, about a billion dollar project, we used Build America Bonds, we used the TIFIA loan, and then we had something called State Appropriation Bonds, where the legislature committed resources over a 30-year period to repay those bonds. So that is a package of financing that made sense and it all worked, and we have that project under construction.

Mr. CARNEY. Mr. Bertram, is the Department putting together a one-stop shop?

Mr. BERTRAM. Yes, sir, that is one of the main concepts between our proposed Infrastructure Fund, is that there is one entity within the Department that major projects could go to to get information, get technical assistance, get planning help to do a combination of credit and grant programs, yes, sir.

Mr. CARNEY. And the ribbon cutting on that will be when?

Mr. BERTRAM. Well, we will work with you on developing that.

Mr. CARNEY. Okay, thank you.

No further questions, Mr. Chair.

Mr. DEFAZIO. I thank the gentleman.

With that, I would turn to the gentleman, Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

Thank you, gentlemen, for being here today. You know, I am from South Carolina, along the coast there, and roads is a major problem. In fact, Mr. Conti, we are your next door neighbor and we have several major projects that we are independently, I guess, depending on each other to connect those roads, particularly I-73 and I-74.

Mr. CONTI. Yes, sir.

Mr. BROWN. I notice, as I travel up 95, that you all are making some pretty good progress, probably much more than we are. How are you actually funding those projects?

Mr. CONTI. Well, right now we are funding them through the traditional grant programs and State funding, but we are looking, on 95, at tolling options on 95 for significant capacity expansion and modernization. We would not just toll the existing facility; we would have a significant effort to improve, modernize, expand capacity, and then toll it.

And Secretary Limehouse and I have had several discussions about working together. Actually, we had a five State coalition several years ago, Virginia all the way to Florida, to look at that 95 corridor and work together, and we continue to have good relationships up and down that corridor and we will be continuing to work in partnership on some of those efforts.

Mr. BROWN. I know that it is just a matter of time when it has to go from two lanes to three lanes. I went to see the shuttle launch a couple weeks ago and that part in Florida is just the same way, it is just stop and go from time to time.

Mr. CONTI. Exactly. Georgia has done a pretty good job of widening more than some of the rest of us.

Mr. BROWN. Yes, South Carolina has been in that same ballpark too.

Mr. Leahy, I was interested in listening to you that you could charge a total of $9.50 for a 10 mile ride. That is pretty amazing.

Mr. LEAHY. Yes, sir, it is. Maybe I should describe the physical layout. The SR-91 connects Orange County, which is jobs ridge, with Riverside County, which has many people who come to Orange County and, indeed, LA County to work. There is a mountain range which separates those two counties and this toll lane, the 91, goes over a pass through that mountain range. So it really operates just like a bridge like in San Francisco; thus, there are no really easy options. So I don't know that I would argue that is applicable in all cases, but in this instance it works.

Mr. BROWN. Does it have truck traffic also?

Mr. LEAHY. Yes, sir, a great deal of truck traffic.

Mr. BROWN. Well, we are trying to help you out a little bit on that with the Panama Canal being expanded. We think a lot of those tankers or big container boats, instead of stopping in Los Angeles, will actually go through the Canal and come up the East Coast to Charleston and some of the other places. So I am leading all this up to lobby the Secretary to recognize that pattern and shift in the transportation arena. But, anyway, that is interesting. And I heard the statement it is making $20 million a year or thereabouts?

Mr. LEAHY. Yes, sir, and, again, no taxpayer money. I would just note there is major truck and rail traffic and logistic centers in Riverside and San Bernardino counties, major impacts of goods movement in Los Angeles on the 60 and the 10. So we do think that Federal support for goods movement and the like is very important to all States.

Mr. BROWN. So you are looking for a little relief if we could help you out a little bit over that?

Mr. LEAHY. Yes, sir.

Mr. BROWN. Mr. Secretary, I noted in South Carolina we had to do a lot of creative things to be able to meet our transportation needs. I am kind of amazed as I sit on this Committee—and this is my tenth year—that we haven't taken more of a proactive role in trying to address the transportation shifts in this Country.

I don't know that we really did much to update the interstate system basically since the 1950s or so, and it seems like to me it would be an ideal time with the unemployment around 10 percent, and we know that transportation, every billion dollars we spend creates 30,000 jobs or thereabouts. It seems like to me it would be a good match, with the economy down, that this would be a spark to create jobs in this down-turned economy.

Mr. BERTRAM. Okay. And the Recovery Act included almost $27 billion with the highway funding, which I think has now been obligated by all the States and most of those projects are underway.

Mr. BROWN. But most of those went to resurfacing and doing some other stuff. I don't know what we—we haven't done anything. I know the gentleman from North Carolina, we are trying to do some things within our own structure to extend the interstate system. In fact, we have about 30 miles built in Myrtle Beach which is all local money.

So we just need some relief, and we were hoping that the reauthorization bill would be more available than postpone another 18 months. We felt like that ought to have been a jump start to create the jobs and the economy. We are just looking for some help. I know in South Carolina, when I chaired the Ways and Means Committee, we created an infrastructure bank, and that was our hope, and we actually have under construction about $3 billion worth of construction jobs because of it.

So I was hoping that on the national level that somebody would be creative enough to create a similar kind of device and fund it with some additional funding so we could address just our major projects. Do you have any thoughts about that?

I know my time has expired, Mr. Chairman. I apologize.

Mr. BERTRAM. As said before, I think the Infrastructure Fund that we have proposed, which could do credit projects, would be sort of the leveraging you are sort of talking about, where you would have a certain amount of Federal money, would turn by a multiplier of whatever the credit subsidy is into a loan, and then also get local and State matching funds. So we would be interested in working with you.

Mr. BROWN. Okay, thank you very much.

I have one other issue, Mr. Chairman, I was going to talk to the Secretary after the meeting.

Mr. DEFAZIO. There will be an opportunity for a second round also.

Ms. Markey, you have already been mentioned twice by Mr. Washington.

Ms. MARKEY. Thank you.

Mr. DEFAZIO. So go right ahead.

Ms. MARKEY. Thank you, Mr. Chairman. This is my first hearing on this Subcommittee, and I look forward to working with all of you.

And thank you for being here, Mr. Washington. You have done an incredible job. I have a couple of questions. The FasTracks expansion was originally funded back in 2005 with a sales tax increase. Can you talk a little bit about how you cultivated public support for that tax increase? We are talking about other funding mechanisms like a gas tax increase. How did you get really overwhelming public support for it?

Mr. WASHINGTON. Yes. The transit agency, RTD, went out to voters in, actually, 2004 to ask that a four-tenths of a cent be put on the ballot to build out the FasTracks investment program. It was extraordinary support from the Metro mayors, some 34 Metro mayors came together and supported that initiative; it was passed on the ballot. Some of the highlights of that successful campaign had to do with jobs and congestion relief and mobility, so all of those things came together for a 58 percent success on the vote. But I think the biggest piece had to do with the Metro mayors that came together in a nonpartisan way to support that investment program.

Ms. MARKEY. Well, I want to congratulate you on that. Of course, then, unfortunately, with the recession, sales tax revenues have gone down and you have, I think, a $2 billion funding gap, and Denver RTD I think is the only transit agency to successfully utilize the public-private partnership program. So can you talk a little bit about what are some of the benefits and impediments of that program? And do you think that the pilot program should be continued in the next reauthorization?

Mr. WASHINGTON. I do think it should be continued. That public-private partnership program, we were honored to be selected by the Federal Transit Administration to be in the Penta-P Program. The Penta-P Program—and I always get tongue-tied when I try to say what that is—the public-private partnership pilot program, the

Penta-P Program. So we were one of the agencies to be selected to be in that program, which came with very streamlined processes for the New Starts process. So where a lot of the processes take maybe five to seven years, in that program we were able to get from point A to point B, where we are now, about to pick a concessionaire team, in about two years. So that was very, very key.

I do and would encourage Congress to continue with those streamlined approaches, whether it be the Penta-P Program or some of these innovative financing pieces that we are talking about today. But we would not be able to pursue as we have the public-private partnership to this degree without having those streamlined approaches.

Ms. MARKEY. Do you think that your participation in the pilot program helped at all working through the FasTracks? I am sorry, the New Starts program?

Mr. WASHINGTON. Yes. Yes. They helped tremendously. I think some of the substantial savings resulted from being able to lessen some of the risks and impacts of future inflation. When you look at construction costs, being able to get through the NEPA process, being able to get through some of the risk assessment pieces really helped us in terms of being able to go out now in this economy, where we are getting bids in 15, 20 percent below internal estimates, that has helped us a great deal being able to speed that up. So, yes.

Ms. MARKEY. Thank you very much, Mr. Chairman.

Mr. DEFAZIO. If I could follow up. I am a little confused, Mr. Washington, because I had asked about your testimony and the Penta-P Program yesterday, and I was told you don't have your grant yet. You said it took you from five years to two years. I mean, do you have assurances that you are going to get it and could you just give me a little more detail?

I am very frustrated with the bureaucracy and the length of time, as is the Chairman of the Full Committee, to get through this process, and we are looking at legislative streamlining in our bill, but since the Administration doesn't want to do the bill, we are not making a lot of progress there. And I am not going to give them things they want until they do what I want, which is talk about how the heck we are going to pay for our transportation infrastructure. So we are not changing the law.

But how is it that you could have gone from five years to two years? What different processes were adopted and why wouldn't we just apply all these processes to every FTA grant? But there is this other question where staff says you don't have the grant yet, so we don't know if it worked.

Mr. WASHINGTON. Yes. We do not have the grant yet, but we have great assurances that we will get the grant.

Mr. DEFAZIO. In what time period?

Mr. WASHINGTON. In 2011 or whenever the next transit transportation reauthorization bill. So——

Mr. DEFAZIO. Okay. So it didn't actually go from five to two, it has gone to five to maybe three.

Mr. WASHINGTON. Yes, I would agree with that.

Mr. DEFAZIO. But you are saying that somehow—but you are saying you are at a point of just waiting for the final approval and money; you are not grinding through having to go through the cost benefit analysis for the 172nd time for some bureaucrat at FTA, right?

Mr. WASHINGTON. Yes, sir. Yes, sir. And if I could elaborate. Because of the timing of the FFGA and the new transportation reauthorization bill, we phased this project, where the private equity funders brought the money, that private equity up front in the project. So we are using that private equity money up front to build one of those lines, which we hope to break ground on in August. Then with the timing of the FFGA do phase two of the program. So that is how we are structuring that.

Mr. DEFAZIO. Okay. But they did develop for you and apply, and you did go through a process that was streamlined in terms of the normal shuffling of paper back and forth in assessing the benefits and all that.

Mr. WASHINGTON. Yes, sir.

Mr. DEFAZIO. So we do have a model to streamline there.

Mr. WASHINGTON. Yes, sir.

Mr. DEFAZIO. Okay. All right.

Okay, Mr. Schauer.

Mr. SCHAUER. Thank you, Mr. Chairman.

I am from Michigan and, needless to say, it is very difficult to take advantage of these innovative financing programs without State match, without local public dollars, let alone private dollars. In fact, at 2:15 I have a meeting with some Members of the Michigan delegation that are on the full T&I Committee with some DOT officials and representatives from the governor's office, trying to figure out some innovative ways to not leave about a half a billion dollars of Federal road funding on the table for fiscal year 2011 that would be distributed to other States. I am also working with some communities on transit projects.

So I am intrigued by the ideas of the Assistant Secretary and those of you who have also commented on these, and I am just wondering if you have ideas that I can take back, short of the legislature stepping up and doing what it has to do on the revenue side or through financing to draw down these Federal dollars. It is a jobs issue for my State. Certainly, it is a jobs issue from the standpoint of providing mobility for urban areas for intermodalism that is desperately needed. And the reason I am on this Committee is to help our State make these key investments, and there are opportunities for public-private partnerships in a number of these, so I wonder if you can say something that will give me some hope or take back to my State.

Mr. BERTRAM. I know you have met with the Secretary, Secretary Ray LaHood, on this issue. He has asked Victor Mendez, who is the Administrative——

Mr. SCHAUER. Yes. Victor has been a part of those meetings, yes.

Mr. BERTRAM. I don't think we are going to find one silver bullet to help you; I think Victor is looking at a number of different alternatives that we are working on that hopefully we can take back to the State fairly soon, like I said, not one solution, but a couple of maybe different steps to deal with the match issue for Michigan this year. We are very aware of it and want to work with you on it.

Mr. SCHAUER. Great.

I don't know if anyone else has any advice or comments. Yes, sir.

Mr. LEAHY. In California, the law permits a county to seek a sales tax for a limited period of time, up to 30 years, but it might be 10 years, and it requires a two-thirds vote. In order to get a measure passed—and I mentioned we received 68 percent approval in Los Angeles during the recession—but in order to get that level of support, that requires a detailed set of projects in different categories with a schedule for delivering those projects. In California, typically, agencies, county commissions like the MTA have an oversight committee, a taxpayers' oversight committee which are independent of the Authority, which can then make independent annual reviews and reports to the taxpayers. And then the tax expires.

The point of all of that was to create assurances to the taxpayers that the money will stay in the local area, that it will go where it is promised to go, and that there will be independent oversight to assure the voters that in fact has happened. Because the tax will expire, that really motivates the local authority, of course, to deliver on the promises so that the voters might give consideration at some point in the future.

Mr. SCHAUER. Well, thank you for that. That is an interesting model. The Michigan Department of Trans—actually, the State Transportation Commission has pulled 243 State projects from its five-year plan as a result of our current situation, so we have to figure out a way to put those projects back in the plan and do it now. I am very concerned about this construction season. I am pleased that we reached agreement with the Senate on a 15-month bill. We certainly need a longer term bill.

But one of the provisions that I supported, and actually initially introduced, that was in the Jobs for Main Street bill that we passed just before the end of the year, the Senate has not acted on, would waive the State match for 2011. Now, some States may choose not to do that because that, in fact, reduces the overall size of the pie. But in a State like Michigan, where we are about $85 million short for fiscal year 2011, that would give us the fungibility to avoid, again, leaving half a billion dollars on the table.

So, Mr. Secretary, I appreciate your efforts. Please extend my thanks to Secretary LaHood, and we will continue to work.

I yield back. Thank you, Mr. Chairman.

Mr. DEFAZIO. Okay, Mr. Brown has, on behalf of Mr. Diaz-Balart, a request.

Mr. BROWN. Mr. Parker, this is a couple of questions for you, and I note, for the sake of time, I am just going to read you the questions, submit them in writing, and let you respond.

One is the Port of Miami Tunnel project is interested because it highlights the benefits of transfer and risks associated with the project to the private partners in the project. Would Florida DOT have moved forward with this project if they were not able to transfer the potential risks associated with construction costs and overruns to the private sector? Is that a yes or no?

Mr. PARKER. Very definitely No, it would not have gone forward without risk transfer to the private sector.

Mr. BROWN. Okay. Both the I-5 and 95 project and the Port of Miami Tunnel project used public-private partnerships with availability payments. Can you talk a little more—I won't ask you to elaborate, but, but you can give me this in writing—can you talk a little bit more about the availability of payments and how they are applicable to highway projects that are not tolled and how they are applicable to transit projects? And I guess if you can just submit those to him. And I know that time is moving along pretty quickly——

Mr. DEFAZIO. Well, I think there would be general Committee interest if you can answer that question right now, the second one. The first one was a little more specific geographically, but the availability issue that he just raised, could you address that?

Mr. BERTRAM. Was that to me?

Mr. DEFAZIO. Mr. Parker? I thought he was addressing it. Okay, Mr. Parker. Both. Both of you. Because that is a very interesting question.

Mr. PARKER. It is a tool that we found very attractive for both projects to gain the benefit of the risk transfer without imposing certain economic consequences on the Port of Miami and in order to preserve State priority in the I-595 corridor in maximizing throughput, rather than maximizing the revenue that those tolled lanes would yield. And what we found is that the market was extremely interested in that concept. Basically, it is an annual payment which covers the initial construction costs, the ongoing operations and maintenance costs, and it covers the capital renewals that occur over a 35-year concession period. And there are some variations on a theme in there.

In the Port of Miami Tunnel, there is no toll whatsoever charged; these are monies that are forthcoming from the State of Florida and from the local jurisdictions, some of which are paid through the availability payment and others of which have been paid up front. The risk transfer is enormous. These are the largest bored highway tunnels that have ever been built in the United States; they are being built in the worst geotechnical conditions that are imaginable.

And the bids that the State received by doing this through a public-private partnership resulted in construction costs that were half of what the State's independent engineers had anticipated. The reason for that was that there were new entrants to the market who were attracted to the PPP, the public-private partnership structure. They did not need the revenue. They were not looking for the revenue upside; they were looking for the compensation in the form of a long-term revenue stream.

And I think this is a model that addresses many of the policy concerns that have been out there relative to negotiating a fixed rate of return, of isolating the revenues between the public and the private sector. About one-third of the cost of the I-595 project would be covered by tolls. The State of Florida does is it sets the toll to maintain the traffic flow—just as in the SR-91 project—it collects it physically through the Florida Turnpike Enterprise, and it retains those monies. The State uses that revenue to pay the availability payment, and whatever shortfall there is it makes up, and if there is an upside, the public benefits from that upside.

Mr. DEFAZIO. But as I recall from your testimony, there was a lump sum payment upon completion; there was also some benchmark payment in the interim. So it wasn't that it all was put in—there were some fairly substantial payments there. And those came from State funds?

Mr. PARKER. They come from a combination of State and Federal funds in the I-595 case. In the Port of Miami Tunnel case, what emerged was that the State and the City of Miami and Miami-Dade County forged a partnership to pay for the project. Miami-Dade County wanted to pay for their share up front and to finance that through a municipal bond.

Mr. DEFAZIO. Okay.

Mr. PARKER. So we injected, upon completion, a $350 million final acceptance payment in the Port of Miami Tunnel, and that still maintained the risk transfer, because that check is not written until the project is actually built.

Mr. DEFAZIO. I have a question both to you and to Mr. Bertram in terms of when we are looking at risk transfer. If the availability payments depend upon pledging future revenues from State and local entities—let's say we are dealing with California today; no offense to Mr. Leahy—how would we assess risk in terms of their future capability to produce a non-dedicated revenue stream from apparently general fund resources? How did that work in Florida and how would it work—I ask you that and then I am going to ask Mr. Bertram how that would work generally.

Mr. PARKER. Well, this is a very critical question for us because it also raises an issue that Mr. Conti was addressing regarding the subsidy for TIFIA loans. In the case of Florida those future payments are actually financed through a TIFIA loan by the concessionaire, and in Florida there is a statute that absolutley limits the amount of the State's surface transportation trust fund which can be committed to public-private partnerships at 15 percent of the annual outlays. And those outlays come off the top in terms of making funds available for meeting the obligations of the State.

The State of Florida is roughly a AA credit, and this is an appropriations risk issue; however, by isolating that 15 percent and taking it off the top, there was a great deal of comfort that can be given that those appropriation obligations will be met. There is also a history of appropriations obligations being met.

The difficulty we encountered in the TIFIA process is that despite this very certain source of annual revenues from an AA credit, the initial run at scoring the TIFIA loan subsidy put it very close to a rather speculative toll road kind of project. This posed a lot of issues for the State, as well as the concessionaire, in terms of being able to finance it because, again, our loan was capped at a $20 million subsidy, and some of the initial numbers that we were looking at had ranged up to $35 million, which would have meant the State or the concessionaire would have had to subsidize the loan up to $15 million.

We were, fortunately, able to work with the Federal Highway Administration and indirectly through OMB to rethink the scoring and to say, well, look, this is essentially a AA credit rather than a speculative toll road, and got that subsidy way down, but still encountered some of the transparency and mechanical difficulties that North Carolina did at the time.

Mr. DEFAZIO. Mr. Bertram or Mr. Conti. I realize that I am interjecting here, but I think this is a key point, because the availability stuff seems very attractive, but we need to know how it is going to work consistently over time and how the Feds are going to look at it. So, Mr. Conti, do you want to say something else?

Mr. CONTI. Well, I just wanted to add we haven't gone as far as Florida in terms of use of that tool, but our State treasurer is very concerned about some of the debt affordability issues that Mr. Parker just outlined, so whatever we do will be constrained by the leadership of our State in terms of how comfortable they are in committing future revenues to support those kinds of payments, and we are very much engaged in that process of dialogue. So that is a financing issue within each State that would be important as you consider whether that is a tool you want to make available more broadly.

Mr. DEFAZIO. Right. And just one other question, Mr. Parker. That 15 percent, is that by statute in Florida?

Mr. PARKER. Yes.

Mr. DEFAZIO. So, theoretically they could change that. But we take it as a—okay.

Mr. PARKER. And what we have actually done in explaining that process is gone through a very detailed process both with the banks who financed against those possible payments and TIFIA; and there was language specifically crafted, there was report language, there was a pledge to budget the monies. So I think this——

Mr. DEFAZIO. About as good as you can get.

Mr. PARKER. Yes.

Mr. DEFAZIO. Outside being constitutionally dedicated somehow.

Mr. PARKER. Exactly. And we are working with the California Transportation Commission right now on analyzing some of their P-3 projects, and this is a very real issue out there.

Mr. DEFAZIO. Sure.

Mr. Bertram, anything the Department would like to add?

Mr. BERTRAM. Just one quick comment. The Miami Tunnel project was the first time that TIFIA actually considered availability payments; we had not done that before. We don't have any other projects that we have approved since we approved that last September, so it is a new vehicle, but it seems promising. I think other potential applicants have been interested in maybe using that as well. But it is something new, not——

Mr. DEFAZIO. So at this meeting we are going to reschedule, where you bring in all the DOTs and other entities to explain to them what kind of programs you are interested in and how they are going to be applied, you will have some discussion of the future of availability payments as relates to TIFIA and/or other Federal ways to——

Mr. BERTRAM. Sure.

Mr. DEFAZIO. Okay. I think it would be key to get there.

Okay, Ms. Richardson just came in. Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman.

Mr. Bertram, I am a few minutes late; I came from a Homeland Security Committee meeting, so I apologize if my question might be duplicative. A lot of discussion so far, me being here, has been about TIFIA, which seems to be expiring. I guess the last time of turning in requests was March 1st, 2010. Is there any intention on the Administration's part to expand this program or to continue it, or is there something we need to do legislatively to help you do that?

Mr. BERTRAM. Currently, the program is authorized through the end of December; it was reauthorized as part of the overall highway extension. It is funded through contract authority through the Highway Trust Fund, so there will have to be some sort of—if we are going to continue to do this with contract authority from the Trust Fund, there will have to be some extension at some point.

Ms. RICHARDSON. Okay. And then I come from California, so you heard some of Mr. Leahy's ideas. In California, in particular, we are looking at the 30-in-10 program, which needs Federal financing support. What did you think about what Mr. Leahy shared today?

Mr. BERTRAM. I think we want to work with Los Angeles, with all the sort of interested parties in Los Angeles. And there is a dedicated stream of funding that was dedicated to transportation, and that is the sort of stream of funding and revenue that lends itself to doing some of the innovative financing projects and approaches we have discussed today, and the Department is very interested in working with Los Angeles to see where we can be helpful.

Ms. RICHARDSON. Is there anything on the Federal level congressionally we can do that would help you to do that sooner rather than later?

Mr. BERTRAM. I think it is going to depend sort of which projects are going to be ready from LA sooner rather than later. I think reauthorizing the TIFIA loan, maybe taking a look at the Administration's proposal for the Infrastructure Fund, which also has loans and grants in it would be helpful for projects like LA's.

Ms. RICHARDSON. And, Mr. Bertram, are you familiar with—when I was on the city council a few moons ago, with HUD we had a program with the CDBG loan program, it was called the Section 108; it is a loan guarantee program provision within CDBG programs, and essentially what it would allow you to do, most cities, local governments receive a certain amount of CDBG funds on a formula basis each year. The City of Long Beach receives approximately $10 million per year. What we were able to do was take the $10 million per year and talking about risk base, and I think we didn't borrow on more than 40 percent of it or something. So we were able to do $40 million worth of park development projects in the advance of what we were planning on doing. Have you considered doing a similar program, or do you consider that is what TIFIA is?

Mr. BERTRAM. No, there is a similar program in the transit program called Grant Anticipation Notes, which basically someone who receives Formula Transit funds can pledge future revenues to those bonds. It is similar to GARVEE Bonds in the highway case, but it can be done in transit. A lot of transit authorities also use it for discretionary programs like the New Starts Program, where they have a full funding grant agreement over five or six years, but they want to sort of accelerate the construction over two. So we do have those tools available for transit.

Ms. RICHARDSON. Do you foresee us being able to extend that, for example, to bond programs, since many cities are beginning to do bonds like what Los Angeles did?

Mr. BERTRAM. They are bond—it essentially is a bond program. The State or local entity floats the bond and pledges the future Federal either formula or discretionary grants against those bonds.

Ms. RICHARDSON. But what happens if the State can't float the bond or is in delay of floating the bond?

Mr. BERTRAM. I am sorry, if it is delayed?

Ms. RICHARDSON. Given a State's financial situation——

Mr. BERTRAM. Sure.

Ms. RICHARDSON.—particularly California is what we are talking about, what if we are delayed in doing that? Do you foresee that this might be something the Department could do on its own? Are you familiar with this program?

Mr. BERTRAM. I am not familiar with the HUD program, but there is a program, like I said, in transit and highways that basically lets you pledge future Federal funds to pay those bonds. I am not familiar enough with the bond market right now to know if a State would have trouble issuing those sorts of bonds with future Federal pledges; I just don't know. I would have to get back to you on that.

[The information follows:]

[Information submitted by Mr. Bertram follows:]

A State's financial condition is one of the various factors that affect a State's decision to issue GANs. GANs may be structured so that the sole source of repayment is a pledge of Federal funds that a State expects to receive in the future. In this case, a State's financial condition does not directly impact the ability of the State to issue GANs. However, potential investors of GANs consider the security that a State will pledge to repay the GANs when making investment decisions. The less risk involved in the security pledged to repaying the GANs, the more likely it is that the GANs, and therefore the investors, will be repaid. As a result, potential investors are willing to accept a lower interest rate/rate of return for GANs that are backed by a lower risk pledge of repayment compared to those with a higher risk pledge of repayment. Therefore, GANs have also been structured so that the pledged source of repayment is both general State revenues and the Federal funds that a State expects to receive in the future. This structure results in a lower borrowing cost for the State and allows for a bigger benefit of the future Federal funds. Therefore, a State's financial condition can affect the potential interest rate that a State will pay when issuing GANs but it does not impact its ability to issue GANs.

Ms. RICHARDSON. Okay, I would like to work with you.

Mr. Leahy, did you want to add anything?

Mr. LEAHY. Yes, Congresswoman. I am going to the committee of the MTA Board tomorrow and then the full Board next week to ask them to support the 30/10 approach with a number of provisos as to how that would work. We would then look forward to working with the host communities around Los Angeles County, but also with, of course, USDOT. We are now working on a number of transit projects, a dozen rail projects that we think we will be able to advance and, as you know, we have a very strong revenue stream. I know there is some interest on the board that we will be discussing having to do with seeing whether we might be able to also accelerate the highway program.

Ms. RICHARDSON. Yes.

Mr. LEAHY. That dialog will just now be starting.

Ms. RICHARDSON. Okay. Thank you very much.

Thank you, Mr. Chairman.

Mr. DEFAZIO. Mr. Diaz-Balart, one of your questions was asked by Mr. Brown earlier, but I understand you may have another, so go ahead.

Mr. DIAZ-BALART. Yes. Thank you, Mr. Chairman. I apologize, I had to step out. I apologize to you, Mr. Chairman, and the Members.

Mr. DEFAZIO. No problem.

Mr. DIAZ-BALART. I had to manage some time on the Floor.

Just quick comments. Mr. Chairman, as you know, Florida has been a leader in innovative financing, taking advantage of really, I guess, all available options to leverage much needed funding. A few of the examples, if I may, the I-75 widening in Lee and Calder Counties, which expanded 30 miles of highway using the Design-Build Finance approach. That, Mr. Chairman, advanced the project by five years and allowed the project to actually be completed ahead of schedule.

The I-95 express lanes. We have had some conversation about congestion pricing. I-95 express lanes or HOT lane project, which used that concept to provide increased traffic flow, has actually been very well received.

The Miami Intermodal Center, which was financed through TIFIA. The Port of Miami Tunnel and the 595 corridor improvements. When I walked back in, I know that is what you were talking about.

So I think it is important that we need to obviously encourage further innovation. Our infrastructure, I guess everybody understands, needs repair, and with our national debt skyrocketing and, frankly, no end in sight, I think it is imperative that we look at alternative options to fund our future infrastructure needs.

So, again, thank you for already asking one of my questions, and I am sure a few others that I had have already been asked. So let me just ask one, if that is all right, Mr. Chairman. I want to ask the following.

Considering the already difficult financial environment that we, by the way, the Federal Government and also State governments are facing, it is imperative that we avoid any actions that might further impair the ability to access private resources. So to you, gentlemen, what actions should we talk to avoid that or, frankly, what actions should we not do to avoid that? And I don't know who wants to take that, maybe Mr. Parker. You want to start with that? Then we will see if anybody else wants to take a stab at it as well.

Mr. PARKER. Well, I think the interest of the private sector in infrastructure, and transportation infrastructure in particular, is keen and remains so. The financial markets have been very challenging, so we have to be taking a somewhat nuanced approach in how we present those opportunities. On the one hand, there is a concern that valuable federally funded assets will be sold off and come under the jurisdiction of private entities who will control the tolls. I think that we have amply demonstrated in some of the examples that you cited that there are many other types of public-private partnerships that we could pursue and that don't have those kinds of dire implications or connotations.

The critical issue is the allocation of risk and the fair compensation for risk. The financial situation as it has evolved over the past couple years has taught us that revenue risk is something which is going to be very difficult to share with the private sector at this time. Whether the projects are in Texas or Florida, Virginia, California, and whether they are in the airport sector or the road sector, the experience has been pretty clear that the private financial markets have stepped back from accepting revenue risk, which is why we have gained some acceptance with availability payments.

That situation is stabilizing at this time, and it is possible we could revisit it. Long-term financing is really the key. TIFIA provides 35-year financing, so we have been able to marry together relatively short-term bank financing of 8 to 10 years with 35-year TIFIA debt to make these long-term commitments. If we can access the capital markets with Build America Bonds, with private activity bonds, then I think we can open up some new doors for private investment, and that is a capital markets issue.

Mr. DIAZ-BALART. Thank you.

Mr. LEAHY. I would note that as regards—in Los Angeles we have a fair number of public-private partnerships and we lack those joint development activities around mostly our rail lines. I think that to a private firm, of course, risk and time are money, so at the current time, what the FTA will do—and they are cooperative with us, they are good partners—but what they will want to do is to approve a joint development project at the end of the negotiation process between, in this case, the MTA and the private developer. We would suggest that an earlier FTA approval, so that we can conclude the negotiations without being at risk of something going wrong, might be helpful.

In addition, I think to get projects speeded up and to reduce the time required for getting things going, we would suggest creating a presumption on the part of TOD projects, which are near transit locations with high density transit services. There should be a presumption that those projects will have less traffic and air quality impacts than a project which is not around a transit center. That would be a way of speeding up those sorts of TOD projects and encouraging them to occur faster.

Thank you.

Mr. WASHINGTON. And, Congressman, I would just sort of piggyback on the private sector involvement. I think that is very key, but retaining control, the public sector retaining control of fares, tolls, and that sort of thing. I think, as we look to rebuild our infrastructure, we need a Marshall Plan. We are looking at our highways and roads and bridges very old. I think we have an opportunity here to rebuild our infrastructure, at the same time retrain workers and job creation.

So we are coming at a point in time in our history, I think, where we have to rebuild our infrastructure, and at the same time we have high unemployment. That is coming together. I think we can create these jobs knowing that we have to rebuild that infrastructure. So I think it is a combination of all the tools in the toolbox, as Mr. Conti said, a range of tools available, whether it is public-private partnerships, whether it is railroad rehabilitation loans, whether it is TIFIA, all of these things. And, also, as we are doing in Denver, making sure that all of our lines are construction-ready even though we have a funding gap, just in case manna from heaven does fall.

Mr. DIAZ-BALART. Okay, thank you.

Mr. DEFAZIO. I thank the gentleman. The gentleman's time has expired.

I just want to follow up on his line of questioning because this goes back to—because time is money, and we all know that in terms of these projects. We had an earlier discussion of Penta-P and Mr. Washington says that they think they have gotten through the process and will get approval from FTA in a substantially reduced time period, but staff tells me we have never seen any guidance or gotten anything out of FTA in terms of how did they do that for Denver.

And if they could do it for Denver, why can't we do it for everybody and save the whole Nation tens or hundreds of billions of dollars as we try and rebuild our infrastructure? So that I am going to direct to Mr. Bertram, but first I want to hear briefly from Mr. Parker, because he has been involved in a Penta-P project, the Oakland Airport Connector project, that hasn't gone forward, and I am wondering what was your experience with the Penta-P.

Mr. PARKER. It has been troubling. Basically, the experience was that our involvement with Penta-P was sort of curtailed and a decision was made to allocate Federal funding below $25 million so that the New Start process was avoided entirely. BART went through the NEPA process, but not the formal New Start process, and the project was originally put out to bid as a P-3.

At that time there were insufficient funds to cover the true cost of the project and it was pulled back. With ARRA it was resubmitted to the marketplace as a design-build-operate-maintain on a very fast-track schedule with a $70 million ARRA commitment. It proceeded as one of the fastest procurements that has ever been done in the history of mass transit; got four bids, three of which were deemed responsive, one of which was $60 million under the budget.

The BART board was very happy with that. There was a huge amount of State and regional funding committed to the project to fill the original funding. After the project was submitted to the

BART board, FTA conducted an audit, found that there were certain exceptions to the Title VI program and basically pulled back the $70 million of ARRA funds.

Mr. DEFAZIO. What does that mean, exceptions to what? Oh, civil rights?

Mr. PARKER. There are certain civil rights procedures and there was an audit conducted which found certain exceptions, and FTA decided to withhold its approval of any funding for the project. So the status now is that BART is trying to fill the $70 million hole that was created when that money was pulled back. A civil rights plan is pending in front of FTA right now. BART is working feverishly with its stakeholders and funding partners to fill that hole and to retain the $24 million that was originally from Penta-P, but really is just hanging fire.

We have also put in for a TIFIA loan, and BART has been looking for a response on that TIFIA loan for over a year. They have been through two cycles with it. So it is really a very complex relationship with the Federal Government on that project right now.

Mr. DEFAZIO. And I guess, to Mr. Bertram, that is something we are going to deal with in our bill whenever we can get the Administration to sit down and talk about getting our bill done, but the issue he raises at the end there. Well, there are a number of issues imbedded in that, but when you talk about a TIFIA loan and it is for BART, but this is a spur of BART, but we have to consider it like a New Start—this is like BART doesn't exist, it hasn't been there for 30 years, it doesn't have an operating history, it doesn't have a history with the FTA, and they have to come in as though they are a greenfield project in some other city somewhere else. That is something we want to deal with in our bill, to say, look, you have to look at the history of this institution, BART, and that expedites things.

So there are two things. One is we have the civil rights rewrite hanging, waiting for approval; and, B, this other exception. We would really like to have some explanation of how Penta-P worked so well for Denver. Why it isn't working for BART; what is generally applicable from Penta-P that may have used—I shouldn't say very well for Denver because, who knows, some bureaucrat somewhere may still find some deficiency in Mr. Washington's application and say, well, yes, we were going to give you the money, but now we are not. But that comes back to Mr. Conti in terms of certainty, transparency, and all those things.

Could you just comment on that? Then we have to move on.

Mr. BERTRAM. I am not that familiar with the Penta-P process. If the staff or you have certain questions about that, I think we can get the Federal Transit Administration to explain that to you better; I really don't have enough background to really comment on that.

Mr. DEFAZIO. We will submit a question for the record, but, in my experience, I have never had an answer to any one of them, but we will be happy to try that. We will go right ahead.

With that, we are going to go to Chairman Oberstar. I am also going to hand him the gavel because I have to step out briefly.

Mr. OBERSTAR. [Presiding] Before you leave, Mr. Chairman, let me express once again my admiration for your persistence in following through on the financing issue. All the other issues are difficult, but this is the hardcore, the hard wood of the issue of surface transportation. You have held numerous hearings over the past three years and again this year. This is another critical issue. Thank you for your persistence, for your creativity. Great idea that you had that I think would have solved all of our problems except the Joint Tax Committee people didn't think we could impose a fee on speculators. That would have solved a great many of our problems. But thank you very much for your persistence.

Mr. DEFAZIO. Thank you, Mr. Chairman.

Mr. OBERSTAR. And thank you, Mr. Petri, for your participation here and your great contribution during all the deliberations on SAFETEA, SAFETEA-LU.

How many on this panel would support continuation of the Highway Trust Fund and the user fee as it is currently established? Just raise your hands. Think it is a good idea? Got a couple of dissenters. You don't think the Highway Trust Fund, Mr. Leahy, Mr. Washington, is a good financing mechanism?

Mr. LEAHY. Well, my hesitation was that obviously the revenues are not adequate to demand——

Mr. OBERSTAR. That is not the issue. Do you think the Highway Trust Fund as a principle, as a concept is viable?

Mr. LEAHY. Yes, sir.

Mr. OBERSTAR. Mr. Bertram?

For the record, let it be noted that the panel all nodded or raised assent.

Second, in the current situation, at 18.3 cents, is the current level of revenue into the Trust Fund sustainable, viable for the needs of transportation, highway and transit? No. The value of the construction dollar has eroded 47 percent in just the last five years; more if you go back ten years. The revenues into the Highway Trust Fund have declined over the past year and a half; actually, beginning in December of 2007, when the recession started.

So we are now at a revenue-in of roughly 36, $38 billion, with a program authorization of $53 billion. Stimulus money has come in to make up some of that shortfall, but stimulus is going to run out by the middle of August. We will have probably 400 or so projects yet to be built. An enormous success, by the way, enormous success. The $34.2 billion highway and transit funding under the jurisdiction of this Committee has produced—that and the Clean Water Revolving Fund produced 1,200,000 direct and stimulated jobs.

But direct jobs, those on construction sites and those in the supply chain, as I call it, the sand and gravel pit, the asphalt producers, the cement producers, the ready-mix producers, the steel, the rebar, high beam, fence posts, fencing, even landscapers all got jobs because of this; 1,200,000 jobs.

Just those on direct jobs, the 330,000 onsite construction jobs, that has produced $1.7 billion payroll as of our last hearing at the end using figures reported as of March 12. A $1,700,000 payroll. In addition to which the workers on job sites paid $393 million in Federal taxes and avoided $253 million in unemployment compensation checks. Those are stunning figures.

In the process, State DOTs have built, rebuilt, expanded 34,000 lane miles of highway. That is equal to three-fourths of the interstate highway system which took us 50 years—we did it in one year. And transit agencies purchased over 10,000 transit vehicles, in addition to a few thousand railcars for intercity passenger rail.

That is an extraordinary accomplishment in a year. People forget the recession didn't start January 21st, 2009, it started December 2007. So we have gone from losing 750,000 jobs a month to creating some 6,000-plus jobs last month.

But it is not sustainable unless we continue the investment, and the genius of the Highway Trust Fund was the user fee adopted in 1956. Of all the portraits on the wall here, only that gentleman in the corner, John Blatnik, my predecessor, was present at the creation. There is another one in the Democratic receiving room, Charlie Buckley from New York. He and Blatnik and George Fallon and Jerry Cooper. I forget who the other was, the five coauthors of the Interstate Highway Program in 1956.

The first proposal to finance this new highway system was from George Humphrey, Eisenhower's Secretary of Treasury, who proposed to finance it with bonding; we will just float bonds on Wall Street. That was his background before he came to Treasury. And the five wise men thought about it for a while and said, well, wait a minute.

First of all, you don't have a road map showing us where these highways are going to be built and, secondly, you mean we are going to pay the interest on the bonds, pay the capital on the bonds, and pay fees to the bond traders and build highways with that? And John Blatnik told me—we shook our heads and said, no, that is not sustainable.

In those days, Congress sensibly adjourned the end of June, beginning of July, and went home for six months. Members had only one paid trip back to their districts, by the way, in those days, so they had to use that judiciously. And over the summer and the fall they thought about it, convened, they talked by phone. Phone calls were very important in those days, you had a dial phone, you know? Didn't have touch tone phones, didn't have cell phones. Conversations were much more substantive. And they came back with a plan—connect all towns 50,000 population or greater—and with a user fee, 3 cents, to finance, deposit in a trust fund, to be used only for highways, not part of the general revenues of the Federal Government.

It passed the House, the Senate; Eisenhower signed in June of 1956; the first projects were underway in September. Talk about stimulus; they were ready to go. And two years later the Bureau of Public Roads came back to the Congress to say that 3 cents isn't enough; we need another penny to sustain what was then a 42,500 mile system, $22 billion. And that one cent passed the House on a voice vote.

Now, I don't think you could pass the prayer on a voice vote. You certainly can't do it in the Senate; someone will put a hold on it. But we need that same spirit in the Congress today that we had 54 years ago. A greater good, a good greater than your own immediate re-election, your own outlook for your district; a greater good for the Country. That is what the Highway Trust Fund represents.

I have visitations by parliamentarians from all over the world, ministers of transportation. They marveled at our highway system. How do you do it? I explained the Highway Trust Fund. No one has anything like it; no other government, no other nation, no other transportation program. They collect their dollars, put them all in one pot, then redistribute the dollars.

In 1956, our gross domestic product was $345 billion. Today it is over $13 trillion. In 1956, we averaged one car per household. Household we have three cars today. That one car drove, on average, 6,000 miles. We are driving 15,000 miles on average. We had a million trucks. We have 7 million trucks on America's roads today. And the trucks and the cars are pounding the daylights out of the highways. Highway speed was just under 50 miles an hour. That is why we had those very attractive, very beautifully designed cloverleaf interchanges. Now they all have to be rebuilt, so you have diamond interchanges, faster access and egress.

To sustain this system and to sustain this economic growth, we have to invest, and we have been caught up for 12 years—12 years before we won the majority—and 8 years of the Bush Administration of saying taxes are bad, taxes are awful. Even the current President ran on a platform, we are not going to raise your taxes. So an increase in the user fee is contrary to his campaign pledge.

I have become an equal opportunity complainer. I complained about the Bush Administration not doing the $375 billion transportation bill; now I am complaining about this one not doing a $450 billion transportation bill.

Either we invest, as two national commissions have proposed,—and they have studied the issue for over two years, with ample extensive documentation—or we do nothing and be ever more mired down in congestion, traffic jams, fatalities, and huge costs to our economy. The costs are real.

General Mills, in the Twin Cities, according to a study done by the Minnesota Chamber and a business alliance group and building trades just three years ago, to support an increase in the user fee gas tax in Minnesota, did a study of goods movement in Minneapolis-St. Paul, and General Mills spends $654 million a year moving Wheaties and Betty Crocker products in the Metro area. But for every mile an hour their trucks traveled below the speed limit, they lose $2 million. Overtime charges for drivers, late delivery fees to customers.

UPS did a survey, which reported that for every five minutes delay their trucks experienced nationwide, they lose $100 million.

Try to get a plumber. Well, we will be there between 8 and noon. Contractors are telling us we used to do eight calls a day; now we are doing four.

There is a business cost; there is a consumer cost; there is an economy cost to inaction. But now we need to come to a consensus. We can't ask people to pay more for what they are getting now because the current structure of our surface transportation program is not delivering projects in a timely fashion. It has caught up with complexities internally, and we have a bill that will address those issues; transform the Department, transform the agencies, create an office of project expediting, do a lot of things to move things better. But now we need a way to finance it, a way to pay for it.

These hearings that have been conducted in this Committee for the last three years have exposed a number of financing options, but nothing that is a sustainable financing mechanism as the Highway Trust Fund is and the user fee.

So among the financing facilities, at least 11, tax-exempt bonds, tax credit bonds,—you have discussed some of those during this hearing today—loans, loan guarantees, GARVEE Bonds, the GAN Bonds, lines of credit, public-private partnerships, congestion pricing, tolls, private activity bonds, State infrastructure banks. But my experience is that while those are targeted facilities, they don't add up to a sustainable program. You would agree with that?

GARVEE Bonds have generated $9.3 billion in financial activity, revenue activity. SIBs, $6.2 billion. That is against an overall program of $53 billion. We need to go much higher than that.

So while I think we need to retain all those financing facilities, as they are quaintly called in the language of the trade, we need to go beyond that.

Apart from how we would manage TIFIA, the questions are should there be a limit on the amount of interest; should there be no limit, but only the discipline of the marketplace, the lowest bidder wins. A good deal for the public provided there is enough competition, more than two, at least, competitors. There are those internal issues. The real question is how do we get over this hump. We need $140 billion over current revenue stream over the next six years, so a mechanism. And we have had a robust discussion.

I see Mr. Mica has joined us at the hearing. I thank him for his participation. He has been deliberate and thorough and participatory. He has several ideas of his own that we have tried out. We all come acropper with our ideas.

So a proposal that I initially thought was not viable but may be the answer, is to direct the Treasury to deposit $130 billion in Treasury notes into the Highway Trust Fund—it can be done at once or it can be done successively over a period of years—to be repaid with future revenues out of the Highway Trust Fund with a moratorium on repayment for, say, the first four years, giving the economy time to recover, the surface transportation program to become more robust. And then have an increase in the gas tax or user fee four years hence.

What is your reaction? Mr. Parker, we will start with you. You are on the firing line, the private sector.

Mr. PARKER. Well, my speciality is spending the money, not necessarily how to raise it. But I would say that that is a very complex question. It has to do with the budgetary processes of the government; it has to do with the credit markets ultimately. I think it is a concept that we are familiar with that we use in the private sector, but how it plays out in terms of governmental accounting is an area that I am just not an expert in. And I think that is really where a concept like that would need to be vetted, is really how it affects governmental accounting processes.

Mr. OBERSTAR. Mr. Leahy?

Mr. LEAHY. Thank you, sir. I think that, as you alluded to earlier, it is quite clear that revenues are not adequate to do the work which is needed to be done. I think the other activities that we have described, which you just listed, although important, do not solve the problem. So I think we do face the stark options which were referenced, which is we either shrink the program or we expand the revenues.

Speaking for myself now, I think that it is imperative for the good of the economy and for the transportation system, for the reasons that you referenced, to expand the revenue so that we can maintain and expand the program. I won't make an opinion about how that revenue expansion should occur, but it is clear that it has to occur.

Mr. OBERSTAR. Well, if it was good enough for President Ronald Reagan in 1982 to sign the authorization bill with a 5 cent increase in the user fee, then it ought to be good enough for President Obama. And at the time President Reagan said this user fee, this gas tax, does not increase the deficit; secondly, it is users of the system paying for its investment and upkeep and expansion; and third, he said at that time, the cost to the users of the system would be the equivalent of two shock absorbers over a year. You might save that money if your roads are improved.

Mr. Washington?

Mr. WASHINGTON. I agree with the approach. I do not think we can afford to do nothing. I think that our infrastructure is in bad shape, and I applaud the idea to raise revenues and, as you say, the gas tax. So I agree. I think we pay now or pay later. As we see our infrastructure fail all over the Country, as we see the maintenance in some of our older transit systems start to fail, I do not think we can afford to do nothing. So I agree with the approach. I think we need to raise revenues. If it is a gas tax, so be it; if it is user fee, so be it. I think we have to develop a plan and a strategy to address our issues here in America.

Mr. OBERSTAR. Thank you.

Mr. Conti?

Mr. CONTI. Thank you, Mr. Chairman. I think you have hit a very important point. We are looking for stability and predictability for long-term investment, so anything that is done at the Federal level to give us assurance that those dollars will be there over the next five to six years would be very critical to us being able to move forward at the State and local level to develop these projects and to deliver them in a timely way. So I would support anything that would guarantee that kind of long-term stability in the program, just as the Highway Trust Fund has for the last has for the last 50 years, as you said.

Mr. OBERSTAR. Thank you.

Mr. Bertram?

Mr. BERTRAM. I agree with you. Innovative financing techniques are limited financing options that can be used in certain types of projects that have revenue streams. There is heightened interest, but it is not sort of a solution to every transportation program. They have their place; they have been very useful; they have allowed sponsors to bring in projects more quickly and on time and also cheaper, but it is not this one-size-fits-all magic bullet for all of our problems.

I think the Department and Secretary LaHood has been clear, has been very supportive of the Highway Trust Fund as a mechanism. We support it, keeping the efforts to keep the Trust Fund solvent and to keep the highway and transit programs going.

Mr. OBERSTAR. He certainly has. He has done a great job as Secretary.

Well, Mr. Mica, I know that you concur in the view that we cannot afford to do nothing, but the something is a vexing issue, and I appreciate your partnership and participation in this quest for financing mechanisms. The floor is yours.

Mr. MICA. Well, thank you. I have to compliment you and Mr. DeFazio. He has gone? Jim, make sure you tell him that I complimented him on holding the hearing. But it is an important hearing, all kidding aside, and I do really appreciate Peter, you, Mr. Chairman, your interest in looking at these innovative financing means. I think we have come a long way.

I still think we have a long way to go in looking at some creative options in financing. I come from the private sector and you have heard me say a hundred times if you can finance the deal, you can do the deal. In business we say that term, and the same thing as it relates to building the infrastructure. We certainly know the need; American Society of Civil Engineers is estimating $2.2 trillion now over the term of the bill.

We have had some things that have been successful; the Build America Bonds and I was pleased to see some of that up.

Interested a bit in the Administration's proposal on their little fund and I have a question.

Mr. Conti, I have written you a letter at least ten times, but it has never gotten from my brain to paper, and I will cite it to you very briefly. I have a summer home in North Carolina, up in Blowing Rock, which is about as close to heaven as you can get without developing wings.

Mr. OBERSTAR. You don't have to worry, he doesn't vote there, though.

Mr. CONTI. I think Mr. Coble is a neighbor of yours up there, isn't he?

Mr. MICA. Yes, Howard, and Virginia Foxx is my Congresswoman.

Mr. CONTI. Right.

Mr. MICA. But I have been up there thirty-some years and I just admire what you have done in two areas. One is some of your bypass systems. Was some of that financed under GARVEE Bonds?

Mr. CONTI. I am sure we financed some of our bypasses with GARVEEs, yes.

Mr. MICA. But absolutely wonderful model of how the State has taken charge and done some things remarkable on some of the roads.

And then the other thing, Mr. Chairman and everyone else, North Carolina does one of the best jobs on enhancements, and they just beautify their highways, especially the springs. I can almost just go to North Carolina right about now and start looking at the right-of-way.

Mr. CONTI. We are very proud of that, Congressman.

Mr. MICA. It is absolutely magnificent. So that is the ten letters all in one——

Mr. CONTI. Thank you.

Mr. MICA.—complimenting you on what you have done in my part of my spare time home State. My kids are both Appalachian State graduates.

Mr. CONTI. Great.

Mr. MICA. Well, in any event, enough of the small talk here.

Actually, Mr. Bertram, your $4 billion a year, $25 billion over a couple years I think is sort of peanut sized thinking in what we need in infrastructure. Projects today, I can name you right now 20 projects that exceed the $4 billion mark. Don't you think that is small in terms of what size—and then why wouldn't we do with more of the infrastructure bank and use it in maybe a GARVEE Bond method of repayment of a small Federal stream back? And of course, if you have revenues coming in on any projects that have any revenues, transit or others, you can even expand that capacity. What is your thinking?

Mr. BERTRAM. Absolutely. I think——

Mr. MICA. What is the reason for your small thinking? I am a right wing conservative.

Mr. BERTRAM. You know, I think as we discussed at the hearing before——

Mr. MICA. But I don't think you have enough money.

Mr. BERTRAM. The TIFIA program I think currently is sort of a great demonstration of what the demand is for Federal financing.

Mr. MICA. And that is over-subscribed, I understand?

Mr. BERTRAM. It is absolutely over-subscribed. We currently have 39 letters of interest——

Mr. MICA. Totaling what?

Mr. BERTRAM. $14 billion.

Mr. MICA. See? So——

Mr. BERTRAM. Absolutely.

Mr. MICA.—again, $4 billion a year doesn't get us. I am thinking more in the $200 billion range fund.

Mr. BERTRAM. Well, I think, once again, the Infrastructure Fund wouldn't just be grants; the Fund would be able to make loans or loan guarantees to buy——

Mr. MICA. Right. Mr. Brown is gone, but Mr. Brown told me that they leveraged some of their State money for every public dollar, $6 to $8 leveraging.

Mr. BERTRAM. They have a very successful State infrastructure bank where they——

Mr. MICA. How about us adopting that one at the Federal level?

Mr. BERTRAM. Well, I mean, a State infrastructure bank program is a national program. I am not sure how many States are currently participating in it; I think the majority are. Some of them use it——

Mr. MICA. Thirty-two?

Mr. BERTRAM. Excuse me?

Mr. MICA. Thirty-two?

Mr. BERTRAM. Thirty-two or 34, yes. Some of the use——

Mr. MICA. How about taking that model, South Carolina, instead of your measly little stingy proposal and getting some real money?

Mr. BERTRAM. You know, I said before I think the $4 billion, once you leverage it and use it for loans and loan guarantees, would actually be able to support a substantial amount of projects, depending on what the applications are between grants and loans.

Mr. MICA. Well, again, it is not always how much we spend, it is how we spend it, too, and how we utilize that revenue stream.

Tell me, Mr. Parker, the RRIF loans have not been that successful. Have you dealt at all with those, and why, and what could we do to make them more successful?

Mr. PARKER. Actually, as Mr. Bertram indicated earlier, there are a number of applications of RRIF now. We work with the Port Authority in New York and New Jersey in buying about $500 million of railcars using that as a financing mechanism, and we see much greater application in public transit for the use of those monies.

Mr. MICA. I know, but is there anything we can do to make it even more attractive to utilization by the private sector or by public entities?

Mr. PARKER. Well, right now, this up-front risk premium is a challenge to a lot of projects.

Mr. MICA. Up-front risk premiums?

Mr. PARKER. Yes.

Mr. MICA. That is something that would help, an adjustment in that?

Mr. PARKER. Some adjustment there would be helpful.

Mr. MICA. Some adjustment. Is that set by Federal or is it Federal administrative law or rule?

Mr. PARKER. It is a calculated number.

Mr. MICA. But we could impact that through specific language.

Mr. PARKER. Yes. But it has remarkable flexibility.

Mr. MICA. No, the RRIF loans, we have been having trouble getting some of those out and I said what could we do that would enhance the attractiveness and potential expanded utilization of RRIF.

Mr. OBERSTAR. The problem—if the gentleman would yield.

Mr. MICA. No, go right ahead.

Mr. OBERSTAR. The problem on the RRIF loan was it took five years to get rules in place, to get it established, so some of the good projects that were envisioned at the outset just went away. Now they are coming back. And it is showing the ability to repay, and those have been impediments.

Mr. MICA. Well, he said the risk premium is——

Mr. OBERSTAR. There are a number of operational issues that I think we can resolve. Yes, I think we can address it.

Mr. MICA. The standard required for the risk premium is one thing. Anything else you can think of, Mr. Parker? We have things in place; TIFIA has been successful, the Build America Bonds successful. How do we make RRIF more successful?

Mr. PARKER. Well, I think RRIF right now is extremely attractive because of the flexibility that it offers and the possibility of doing 100 percent financing, and that really is something that has captured everyone's attention. It is being looked at in projects as diverse as Denver Union Station and the acquisition of railcars. We are looking at it in Atlanta in terms of an intermodal center. We are looking at it in Miami for the Grand Central Station portion of the Miami Intermodal Center.

And I think even in terms of some of the rail improvements in the Tampa-Orlando area I think there is option to incorporate those kinds of financing mechanisms. So we like it because it is extremely flexible right now, and we would like to retain that flexibility and take a look at the way the risk premium is calculated.

Mr. MICA. Okay. Well——

Mr. OBERSTAR. But—if the gentleman would yield again—RRIF is a rail infrastructure, which has been expanded now beyond freight rail, which I think is appropriate to do, but we may need to clarify that authority in our legislative language.

Mr. MICA. Well, again, I am looking for anything from folks that have dealt with this that they see as an impediment to actually getting even more money out there.

Then, again, my point with the Administration is thinking bigger in terms and maybe adopting more of a South Carolina infrastructure bank plan, which would give us much greater capacity, because we go through these projects. The tunnels in New York, the one to Long Island is $7.2 billion; the 2nd Avenue subway $7 something billion; the New Jersey Transit is $8 billion; the intermodal center at Miami is $1.7 billion.

I mean, I could just name projects in the multi-billion dollar category, and to build high speed rail we are using little pinking shears around the edges, and unless we use innovative financing—and I think some of these projects, for example, true high speed rail. I go back to the Northeast Corridor. The Administration proposal right now has $15.7 billion over the next 20 years, get us to 2030. We would be doing about 100 miles an hour, on average, up from 83 in the northeast corridor.

When we don't have high speed rail, we have used all Federal money in their proposal. Wouldn't you think it would be attractive to the private sector, with the potential revenue stream of millions? I mean, they have half the business of Amtrak right now. Amtrak has 28 million passengers and half of them are in the northeast corridor. I bet you could double or triple the number of passengers if you had a true high speed train.

I would just take 120 miles an hour, which is a slow high speed train. But couldn't we leverage 15.7 and get us to a higher speed a lot faster?

Mr. PARKER. I just returned from a trip to China and I took the train from Beijing to Tianjin at 350 kilometers per hour, and it was extraordinary and the ride was smoother than what I experienced going from Stanford, Connecticut to Providence; and it is something where I think if we can attract that kind of investment——

Mr. MICA. The vision we have right now is we are going to spend 15.7 or whatever it is, $15.2 in the next 20 years with Amtrak and end up at around 100 miles an hour, on average, in our busiest, most congested corridor that we would have the most beneficial results. For aviation we would free up a lot of the most congested corridor in the Nation. And if I took even $10 billion and leveraged it with the private sector with some innovative financing, I sure as hell know we could—am I smoking the funny weed here, Mr. Parker?

Mr. PARKER. No. I think there are private partners out there that would welcome that opportunity, particularly in the northeast corridor.

Mr. MICA. Mr. Washington?

Mr. WASHINGTON. Yes, sir. Thank you.

Mr. MICA. If you want to agree with me, you are recognized.

Mr. WASHINGTON. Well, I won't agree on the funny weed thing, but——

Mr. MICA. I don't do those things.

Mr. WASHINGTON. I just wanted to comment on the RRIF loan. Mr. Parker mentioned and Mr. Bertram also mentioned that we are using the RRIF loans for Denver Union Station. Denver Union Station is our hub where all of our lines for the FasTracks program will come into, our downtown hub. We were successful in working with the Department of Transportation to get both TIFIA and RRIF loans approved to the tune of about $150 million apiece. So the increased flexibility, the favorable rates, all of those things that have to do with the RRIF loan was very, very key to us in getting Denver Union Station off the ground.

Mr. MICA. Well, we welcome all of you, especially our guests that have dealt with some of these projects, to give us at the Federal level the input that we can improve what we have, expand innovative financing. We have a big shortfall and we need to bridge the gap.

Thank you, Mr. Chairman. I apologize, I have to run.

Mr. OBERSTAR. Oh, don't apologize. Apologize for running, but don't apologize for your presence. That was very valuable, very constructive.

Mr. MICA. Well, I apologize because I have to go downtown to a meeting. You know how it is.

Mr. OBERSTAR. I know. We are all pulled in different directions.

Mr. MICA. This is a good hearing and I appreciate these guys coming in. But anything you see, too, you can give us or the Committee as ideas, anything we can tweak to make what we have better or what we don't have implemented, it will help.

Mr. OBERSTAR. Well, we have pulled together all the financing mechanisms that we can to put into the Metropolitan Mobility and Access Program, and we have provisions in our bill to speed up and increase the capacity for TIFIA and for SIBs. The difference in our passenger rail system and that of China—or France, Spain, Italy, Germany—is they built new line. They are not sharing with freight—they didn't take aging infrastructure. In France it was all blown up in World War II. Seventy-five percent of the train stations were blown up. Two-thirds of all the rail lines were destroyed by Allied, as well as Nazi, bombing, and what the Allies and the Nazis didn't bomb, the Nazis pulled up the rail and melted it to make tanks. So they, in effect, started with a clean slate.

Mr. MICA. But——

Mr. OBERSTAR. And there was 100 percent capital funding from their governments.

Mr. MICA. Some of the Europeans, though, have gone through some of the most congested areas and achieved high speed rail.

Mr. OBERSTAR. Absolutely.

Mr. MICA. I think we can learn from the guys that have done it successfully. Some of them have screwed it up. Of course, we weren't exactly the bastion of the best rail service; the Federal Government ended up taking over freight and passenger rail, which was left in disarray, and have worked our way out of that at least partially.

But there are models, I believe, coming out of major densely populated metropolitan areas around the world where we have examples, and if we put out an honest RFP to construct in the northeast corridor with Federal participation—we don't even have to go to the $15 billion mark. I know sure as heck that we could achieve high speed 120 to 150 miles an hour on average in that corridor, and transform it dramatically. If the Government takes it over, takes 20 years to spend the money and do it in a half-baked fashion and get us to 100 miles an hour on average in 2030, I just think it is the wrong way to go. Amen.

Mr. OBERSTAR. Well, we are all in this enterprise together to get there and do this, taken your ideas, putting them into the Amtrak authorization bill, and now we want this Administration to implement them. But you didn't vote for the gas tax increase.

Mr. MICA. You want to get on the gas tax? [Remarks off microphone.]

[Laughter.]

Mr. OBERSTAR. So we can use all these other financing mechanisms, all these financial facilities that I cited and Mr. Mica cited. They don't add up to a program, do they? They don't add up to sustainable financing. If, in the end, to be successful, a credit facility has to show ability to repay, you are greatly limited in the number of projects you can finance, correct?

Mr. Conti, you have had extensive experience in government at the Federal level, the State level. This is not putting you in the position of being an advocate for, but what do you think would be the public reaction to, in North Carolina, a 5 cent increase in the user fee, a 10 cent increase in the user fee in the current context—Highway Trust Fund walled off, firewalls around it, not used for anything else, only for highways and transit?

Mr. CONTI. Well, I don't know what the polling would tell you. I will tell you that if you tell people what you are going to do with the money and you actually deliver on it, I think that is where you get the buy-in from the voters for that kind of increase. And if you use the example of the recovery program, which you outlined how successful it has been, I think you specify: here is what we are going to ask you to support, this kind of increase in the revenue stream, and out of that we are going to do these specific projects and build these facilities, which will then make your commute easier, make getting your kids to school easier and safer and all that. So I think you have to tie the revenue stream to specific actions and then be held accountable for delivering on that.

Mr. OBERSTAR. Well, that is my view. I have always trusted the collective wisdom of the public. I know that people generally don't know where their tax dollars go, what benefits they can point to specifically. But in the transportation arena they know when they are buying the fuel they are paying the gas tax, it is going to the road they drive away on, and it is going to be improved and it is going to make their lives better, and they can see the improvements as they drive away on them. So that is my view.

Mr. Brown, did you have anything further that you would like to comment on?

Mr. BROWN. I was here earlier today and we had a good exchange. I just saw Mr. Mica as he was leaving, and he was espousing my infrastructure bank plan that we had in South Carolina, which we would like to see get some national attention, and I know my good friend from North Carolina certainly understands some of the benefits that we have received from the northern part of South Carolina that connects up to Interstate 73 and Interstate 74, Mr. Chairman, which we have talked about a goodly amount of time on this Committee, and thankful for you and some others for helping us get some funding to make that move along.

But it is a big undertaking and I was hoping that we would have a vision that somehow or other we would go back and revisit the interstate system, which is getting overcrowded even at its capacity, but we need some new routes along the way.

I appreciate your leadership on this and I appreciate the input from these very responsible and intellectual members of this team. I don't know who put the panel together, but I commend whoever did, because it has been a good learning experience for me too.

And thank you, Mr. Secretary, for being part of the process and trying to solve some of these amazing problems we have here in the United States.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you, Mr. Brown. I regret your announcement to leave public service and return to private life. The only comfort I take out of that is the guarantee that you will be smiling more often. You will look more relaxed. They all do when they leave here.

Mr. BROWN. Mr. Chairman, nothing would make more smiling than the reauthorization bill.

Mr. OBERSTAR. We are going to try to do that, and with your help we will get there before the end of this session.

So we have a mix of financing mechanisms targeted to specific purposes and needs: tax-exempt bonds, credit bonds, loans, loan guarantees, the GARVEE Bonds that are actually repaid out of future revenues from the Highway Trust Fund, lines of credit, congestion pricing, tolls, private activity bonds, SIBs, public-private partnerships. All those targeted to specific maybe high-profile project needs. But the State Infrastructure Bank, the National Infrastructure Bank, or all these other loans and tolling are not going to repave that road in front of your home or on your drive home that is filled with potholes, because you can't generate a revenue stream from that.

So we need to continue the Highway Trust Fund and we need to increase the revenues into that Highway Trust Fund, even as driving declined for the first time since the Highway Trust Fund was established in 1956, over the last year and a half. It was the first time we had 62 billion fewer vehicle miles traveled than in any previous year. That is starting to come back now. There is a little more confidence in the economy; creating more jobs. And as that confidence returns to be some increase in revenues into the Trust

Fund, may get back to the $53 billion. But we need to go above that to compensate for the erosion of the value of the construction dollar and to accommodate the needs for just simple state of good repair, which is the engineering term for resurfacing our roadways.

I mentioned earlier the 34,000 lane miles, as of a month ago, rebuilt with stimulus funds; 1200 bridges. That is 4 percent of the need, 4 percent of the critical asset investment category that we have created for the future of surface transportation. At that rate, we would be here for a very long time trying to do resurfacing, and that is why we put $100 billion over six years into the critical asset investment or state of good repair category funding. You are going to pick, States are going to pick the projects, going to make the choices, make the determinations, but we need to attack this issue, as well as creating additional revenue streams for expansion of capacity in our surface transportation system and for freight goods movement in an uncongested fashion.

So with your thoughts at this hearing and good will, I know we can move a bill in this body; I am not so sure about the other. But if we do, then I think they might just come along with us.

Do any of you have—Mr. Brown, do you have further comment?

Mr. BROWN. Mr. Chairman, I just want to give some affirmation to what you said about financing. I know Mr. Conti lives next door to Horry County, which has 14 million visitors come in a year. They passed a penny option sales tax for roads. I represent Berkley County; they passed a penny option sales tax for roads. Dorchester County passed a penny option sales tax for roads. Charleston County passed a half a cent.

You are exactly on target, Mr. Chairman. If you can convince those people that they are going to be doing something about the roads, I think they are willing to pay more, which is evident in those four referendums in those four different counties.

Thank you.

Mr. OBERSTAR. Thank you. Those are very, very compelling examples. But we shouldn't be—is that a sales tax? Does that include food and clothing and other articles? We shouldn't be taxing your Cheerios and milk to pay for your roadways.

Mr. BROWN. I am not so sure it includes groceries, Mr. Chairman, but, you know——

Mr. OBERSTAR. Okay. Nonetheless, we shouldn't be in that position. The Highway Trust Fund revenue stream should be keeping pace with the cost of construction, with the capacity needs of the system, and we should be increasing that revenue stream, because the users are paying for what they are getting.

Mr. BROWN. Well, and that is exactly my sentiment, too. It is a user fee, but, Mr. Chairman, what concerns me with all the hybrids coming onboard, they are going to be riding free unless we find some way to charge them for their access to the highways. The electric cars, you know.

Mr. OBERSTAR. Well, the electric cars, I have a scheme. I have talked to a number of research firms on how we can charge them through their electric bill as they hook up their electric car at home or wherever the hell else they hook it up. But they have to pay too, because that car is rolling over the roadways and exacting its own toll on the roads and bridges of this Country. Everyone has to pay their fair share, you are right.

Does our panel have any closing comments? Observations? Disclaimers? Thank you. You made a wonderful contribution to our inquiry and to the furtherance of our cause of improving transportation in this Country.

The Committee is adjourned.

[Whereupon, at 12:45 p.m., the Subcommittee was adjourned.]

OPENING STATEMENT OF REP. STEVE COHEN

Subcommittee on Highways and Transit

"Using Innovative Financing to Deliver Highway and Transit Projects"

April 14, 2010

I am pleased to be here today to hear testimony from our distinguished guests about how the federal government can use innovative financing to pay for our increasingly expensive and expansive transportation infrastructure network.

The Recovery Act has made a crucial down payment on repairing our crumbling infrastructure, but much more work still needs to be done. As the Distribution Hub of America, Memphis has an extensive network of surface transportation infrastructure which includes two existing interstates and two more under construction, I 69 and the I 22 Corridor. Paying for new infrastructure projects, which also includes a new billion dollar seismically sound intermodal bridge across the Mississippi River, has proven to be a great challenge for my district. It is imperative for the economic competitiveness of Memphis and the rest of the nation to maintain and improve the efficiency and effectiveness of our surface transportation infrastructure.

However, we must also focus on ensuring that every American has true transportation options. In the 21st Century, we cannot afford to be a society that relies solely on the personal automobile as the only means of passenger transportation. Doing so will continue our dependence on foreign oil, exacerbate the effects of climate change, and continue to bankrupt the American people. We must as a nation embrace all forms of passenger transportation, especially mass transit, and develop effective financing mechanisms to pay for these essential systems.

I would like to thank the witnesses for attending this important hearing today. I look forward to hearing about how we can use 21st Century financing solutions to ensure that the United States continues to be a world leader in transportation infrastructure.

Statement of The Honorable Peter A. DeFazio
Chairman
Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure

Hearing on
Using Innovative Financing to Deliver Highway and Transit Projects

April 14, 2010

At one time the U.S. led the world in surface transportation investment, which created a transportation system second to none. But since the Interstate construction era ended our investment has declined and our infrastructure has deteriorated to the point it is approaching third-world status. The deterioration of the quality of our surface transportation system has been detailed in many reports, including in two blue ribbon reports commissioned by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The conditions of our nation's highways, bridges, and transit systems fall far short of being in a state of good repair. Almost 61,000 miles on the National Highway System are in poor or fair condition; more than 152,000 bridges are structurally deficient or functionally obsolete; and the nation's largest transit agencies face an $80 billion maintenance backlog to bring their rail systems to a state of good repair.

This aging infrastructure network has a direct impact on the economy. The congestion that results from our aging system impairs freight movements within the U.S. and raises the cost of American-made products. In this age of just-in-time delivery, the longer a delivery truck sits in traffic the more the product costs and the less competitive our businesses are in the global marketplace. Additionally, commercial trucks must often take detours to avoid weight-limited bridges, costing them precious time. By 2050, congestion costs could represent 14% of national GDP, up from 1.5% of GDP in 2003.

We are dramatically under-investing in our nation's surface transportation system. We aren't even keeping pace and maintaining the infrastructure built by the Eisenhower generation. According to the Department of Transportation's (DOT) 2008 Conditions and Performance Report we must dramatically increase our investment to improve the performance of our system. For instance, over the next 20 years an additional $96 billion per year from all levels of government is needed to make all cost-beneficial highway improvements and to eliminate our backlog of deficient bridges, and an additional $8.3 billion per year in capital investment is necessary to improve transit conditions and performances. Additionally, the American Society of Civil Engineers estimates the nation's infrastructure requires an investment of $2.2 trillion over the next five years to bring our infrastructure to a state of good repair. We are currently investing only $85 billion from all sources annually, and while China spends 9% of its GDP on infrastructure, the U.S. spends just 0.93% of its GDP on infrastructure investments.

While we continue to under-invest, our main source of federal transportation funding – the gas tax – hasn't been increased since 1993 and because it's not indexed it has lost 33% of its purchasing power over the last 17 years. We're losing ground every day and the results of that decline in purchasing power and the lack of increased investment are clear. We now have an economy threatened by congestion.

With diminishing federal funds and shrinking state budgets, state and local governments have had to get creative in how they deliver surface transportation projects. This hearing will focus on those innovative finance tools – such as bonding, tolling, private investment, and federal-credit assistance programs like TIFIA – that help states and municipalities leverage revenue sources to deliver projects.

Today we will hear from our witnesses on which tools work well and which could use improvement. We will also explore how the federal government can better partner with local governments that have raised significant funds and provide assistance to accelerate the construction of transit and highway projects. Innovative financing tools make limited dollars stretch farther.

This Subcommittee continues to work towards a long-term authorization of our surface transportation programs that will provide a significant increase in investment. The Surface Transportation Authorization Act (STAA) will create a well-funded, streamlined and efficient transportation program. Once the STAA is complete, these financial tools will allow us to even more effectively complete projects that will benefit generations to come.

I thank our witnesses for being here today and look forward to a robust discussion.

STATEMENT OF THE HONORABLE JOHN J. DUNCAN, JR.

HIGHWAY AND TRANSIT SUBCOMMITTEE

HEARING ON

Using Innovative Financing to Deliver Highway and Transit Projects

April 14, 2010

Thank you, Chairman Defazio, for holding this hearing on using innovative financing practices to deliver surface transportation projects. I would also like to thank all of our witnesses for attending this hearing.

This is an important hearing for this Subcommittee. The reauthorization of the highway, transit, and highway safety programs has been stalled for almost a year now and that is largely due to the fact that we are unable to agree on how we will fund these programs in the future.

Tax revenues are declining for all levels of government and everyone is being asked to "do more with less". As a result, innovative financing methods will play a bigger role in the next surface transportation reauthorization bill than they have before.

In the past "innovative financing" has been associated with toll road projects. But in recent years transit projects and highway projects that do not include tolls have benefited from innovative financing.

Today we will hear about Denver's Union Station project which will utilize two USDOT loan programs, and we will hear about a tunnel project in Miami that uses innovative financing but does not include tolls.

As the number of transportation projects that are financed with loans, bonding, or with private sector funding grow, there are important policy issues that must be addressed.

We need to make sure that today's governors do not leverage so much of their future Federal funding that future governors do not have any Federal money available to address the problems that they will face.

At the same time we do not want to give the Federal government veto power over every financing decision made by a State DOT or a local transit agency.

It will be difficult to strike the right balance between these two perspectives, but I believe that the witnesses today will provide us with valuable information that will help us move in the right direction.

Thank you Chairman DeFazio and I yield back the balance of my time.

Harry E. Mitchell

Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Subcommittee on Highways and Transit
4/14/10

Thank you, Mr. Chairman.

Today we will discuss federal surface transportation funding and discuss innovative financing tools and programs that can help alleviate the financing challenges surface transportation projects face currently.

As you know, Arizona's rapid growth has created a need for new transportation infrastructure.

However, between the nationwide recession and the state budget crisis, financing for infrastructure has been hard to come by. The American Recover and Reinvestment At has provided some much needed help, but we must continue to examine other ways to meet our infrastructure needs.

I look forward to hearing more from our witnesses on what innovative financing mechanisms may assist in successfully delivering highway and transit projects.

James L. Oberstar

STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
HEARING ON "USING INNOVATIVE FINANCING TO DELIVER
HIGHWAY AND TRANSIT PROJECTS"
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
APRIL 14, 2010

- I want to thank Chairman DeFazio and Ranking Member Duncan for holding this important hearing today.

- This nation is suffering from significant underinvestment in its surface transportation infrastructure, which has undermined both the condition and performance of the network.

- We must renew our commitment to make the investments required to rebuild and expand the nation's transportation infrastructure.

- If we fail, congestion will worsen, goods will move more slowly, people will spend more frustrating hours idling in traffic, air quality will continue to deteriorate, and quality of life will diminish.

- To address these needs, we have developed the six-year, $450 billion Surface Transportation Authorization Act. This transformational long-term authorization makes the programmatic reforms necessary to support surface transportation needs into the 21st century.

- The obstacle to moving forward with this important legislation is how to pay for it.

- Fully funding the $450 billion, six-year investment level called for in the Surface Transportation Authorization Act requires $140 billion in additional revenues over six years above what can be currently supported.
  - $65.5 billion a year to maintain the current year's surface transportation investment level, and
  - $75 billion over six years to finance the additional investment called for in the Surface Transportation Authorization Act.

- Even if we can identify the revenues necessary to fully fund the investment levels called for in the Surface Transportation Authorization Act, a significant surface transportation investment gap will remain.

- The National Surface Transportation Policy and Revenue Study Commission (Policy Commission) called for an annual investment level of between $225 and

$340 billion – by all levels of government and the private sector – over the next 50 years to upgrade all modes of surface transportation to a state of good repair.

- Similarly, the National Surface Transportation and Infrastructure Financing Commission (Financing Commission) projects a Federal highway and transit investment gap that totals nearly $400 billion in 2010-2015, growing to about $2.3 trillion through 2035.

- As the Committee continues to seek the best ways to build a robust intermodal system for the future of transportation, all funding options and financing mechanisms have been and will be on the table for this discussion.

- This must include full utilization of innovative financing tools to leverage additional public and private investment.

- While these tools should not be viewed as the silver bullet that can solve all our financing challenges, they clearly have played, and will continue to play, an important role in addressing the surface transportation investment gap.

- These instruments supplement—not supplant or replace—the primary financing mechanism of federal motor fuel tax and the Highway Trust Fund.

- Tax exempt and tax credit bonds, loans, loan guarantees, lines of credit, and private investment can play an important role in expanding on existing funding sources to assist transportation agencies in expediting the implementation of transportation improvements—but when utilized, the focus must first be on securing the public interest and providing the maximum public benefit.

- This hearing provides us an opportunity to examine the important role of innovative financing tools and programs that can assist in successfully delivering highway and transit projects.

- I want to welcome and thank all of our witnesses for being here today. I look forward to hearing your testimony on this important issue.

STATEMENT OF
THE HONORABLE CHRISTOPHER P. BERTRAM
ASSISTANT SECRETARY FOR BUDGET AND PROGRAMS AND CHIEF FINANCIAL OFFICER
U.S. DEPARTMENT OF TRANSPORTATION

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
UNITED STATES HOUSE OF REPRESENTATIVES

April 14, 2010

Introduction

Chairman Defazio, Ranking Member Duncan and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss innovative financing options available within the U.S. Department of Transportation (DOT) to deliver highway and transit projects.

My testimony will focus on the many innovative approaches to transportation investment that either currently support or could support highway and transit projects. The DOT administers two credit programs that provide credit assistance for surface transportation investments. The credit programs are authorized to issue direct loans, loan guarantees or lines of credit to support the construction of transportation infrastructure. Credit programs enable the Federal Government to maximize limited Federal resources by leveraging project investment models that invite non-Federal co-investment and enable eventual repayment of the taxpayer. In addition to the credit programs, the Department has various other innovative financing mechanisms available.

TIFIA Program

First, one of the Department's most successful programs over the last decade has been the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) program, which provides credit assistance for major surface transportation projects around the country. The program offers direct loans, loan guarantees or lines of credit for up to 33% of a project's eligible costs, with favorable repayment terms that make financing cheaper and encourage co-investment.

The TIFIA program provides credit assistance for surface transportation projects of regional and national significance. Eligibility is open to large-scale, surface transportation projects - highway, transit, railroad, intermodal freight, and port access - with eligible costs exceeding $50 million. TIFIA credit assistance is available for State and local governments, transit agencies, railroad companies, special authorities, special districts, and private entities. Since its inception the TIFIA program has executed 21 direct loans and one loan guarantee totaling $6.9 billion in credit assistance. This credit assistance supports transportation projects totaling $26.3 billion.

The primary goals of the TIFIA program are to use Federal funds in a way that promotes innovative models for financing large surface transportation projects, catalyze regional or national planning efforts, and attract substantial private and other non-Federal co-investment for critical improvements to the Nation's surface transportation system. The program achieves this by providing a number of flexible and favorable financing terms to help fill market gaps in financing plans. Because TIFIA is a Federal credit program and because it requires co-investors for at least two-thirds (67%) of project costs, TIFIA is also able to drive total investments that are a multiple of the actual Federal budget resources the program consumes.

While TIFIA has proven to be an extremely useful tool for financing toll roads and other user-backed transportation projects, it is also valuable for capital investment programs in other modes that are traditionally less reliant on user fees, such as transit. For transit projects, sales taxes and/or other revenue streams related to transit-oriented development can be leveraged to repay project financing sources.

For example, most recently, TIFIA provided a $171 million loan for the Transbay Transit Center, a major passenger transportation hub connecting San Francisco with other Bay Area communities. The TIFIA loan for the Transbay Transit Center reflects the variety of ways the Department can use innovative programs to demonstrate the potential for efficient transportation infrastructure finance and execution around the country.

Currently the TIFIA office is evaluating loans expected to close in the near term that will consume its available budget resources. Project sponsors submitted thirty-nine letters of interest for FY 2010 credit assistance in response to the March 1, 2010 deadline established in a Notice of Funding Availability. The letters of interest represent a range of different project types, including six transit projects, thirty-one highway and bridge projects, and one freight intermodal project. Project sponsors requested almost $13 billion in TIFIA credit assistance to enable over $41 billion in total combined Federal and non-Federal investment, significantly more capacity than TIFIA's budget resources can support.

RRIF Program

The Railroad Rehabilitation and Improvement Financing (RRIF) program provides direct loans and loan guarantees to acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings and shops and develop or establish new intermodal or railroad facilities. RRIF was established by the Transportation Equity Act for the 21st Century (TEA-21) and amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Under this program the Federal Railroad Administrator is authorized to provide direct loans and loan guarantees up to $35.0 billion. Up to $7.0 billion is reserved for projects benefiting freight railroads other than Class I carriers. The Federal Railroad Administration (FRA) has made 24 loans totaling $851 million dollars. FRA has not yet guaranteed any loans.

Eligible borrowers include railroads, state and local governments, government-sponsored authorities and corporations, joint ventures that include at least one railroad, and limited option freight shippers who intend to construct a new rail connection. The loans can fund up to 100% of a railroad project with repayment periods of up to 35 years and interest rates equal to the cost of borrowing to the government.

State Infrastructure Banks

State Infrastructure Banks (SIBs) are revolving infrastructure investment funds for surface transportation that are established and administered by states. A SIB, much like a private bank, can offer a range of loans and credit assistance enhancement products to public and private sponsors of Title 23 highway construction projects or Title 49 transit capital projects. SIBs may provide credit assistance in the form of loans, loan guarantees, lines of credit, letters of credit, bond insurance or capital reserves. SIBs give states the capacity to make more efficient use of their transportation funds and significantly leverage Federal resources by attracting non-Federal public and private investment.

SIBs may be capitalized with Federal-aid surface transportation funds and matching State funds. As loans or other credit assistance forms are repaid to the SIB, their initial capital is replenished and can be used to support a new cycle of projects. If the SIB is capitalized with Federal funds, the requirements of Titles 23 and 49 apply to all funds received as SIB repayments.

The current SIB program was established by SAFETEA-LU under which all states and territories are authorized to enter into cooperative agreements with the Secretary of Transportation to establish infrastructure revolving funds eligible to be capitalized with Federal transportation funds authorized through the SAFETEA-LU extension. States participating in the current SIB program may capitalize the account(s) in their SIBs with Federal surface transportation funds as follows:

- Highway account - up to 10 percent of the funds apportioned to the state for the National Highway System Program, the Surface Transportation Program, Interstate Maintenance, and the Highway Bridge Replacement and Rehabilitation Program
- Transit account - up to 10 percent of funds made available for capital projects under Urbanized Area Formula Grants, Capital Investment Grants, and Formula Grants for Other Than Urbanized Areas
- Rail account - funds made available for capital projects under subtitle V (Rail Programs) of Title 49

A state must match the Federal funds used to capitalize the SIB on an 80-20 Federal/non-Federal basis, except for the highway account where the sliding scale provisions apply. States also have the opportunity to contribute additional state or local funds beyond the required non-Federal match.

Thirty-two states and one territory have operational SIBs with loan agreements totaling over $6.2 billion.

Private Activity Bonds

A private activity bond (PAB) is a bond featuring tax-exempt interest payments issued by or on behalf of a local or State government but for the purpose of financing the project of a private entity. The bonds are purchased by private investors and the private entity is solely responsible for repayment of the bonds. SAFETEA-LU amended the Internal Revenue Code to add highway and freight transfer facilities to the types of privately developed and operated projects for which PABs may be issued. This change allows private activity on these types of projects, while maintaining the tax-exempt status of the bonds.

The law limits the total amount of such bonds to $15 billion and directs the Secretary of Transportation to allocate this amount among qualified facilities. The $15 billion in exempt facility bonds is not subject to state volume caps. The passage of the private activity bond legislation reflects the Federal Government's desire to increase private sector involvement in U.S. transportation infrastructure transactions. Providing private developers and operators with access to tax-exempt interest rates lowers the cost of capital significantly, enhancing investment prospects. Increasing the involvement of private investors in surface transportation projects generates new sources of money, ideas, and efficiency. To date, the DOT has approved more than $6.3 billion of PAB allocations for seven projects. Almost $1 billion of PABs have been issued for two projects -- the Capital Beltway HOT Lanes project in Virginia and the North Tarrant Express project in Texas -- in conjunction with financings that also included subordinate TIFIA loans.

Projects that are eligible to issue PABs include any surface transportation project which receives Federal assistance under Title 23 (this can include transit and passenger rail projects); any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Federal assistance under Title 23; any facility for the transfer of freight from truck to rail or rail to truck which receives Federal assistance under Title 23 or Title 49.

Build America Bonds

Although not a DOT program, the Build America Bonds are a new financing tool for state and local governments to help finance transportation infrastructure. The bonds, which allow a new direct Federal payment subsidy, are taxable bonds issued by State and local governments that will give them access to the conventional corporate debt markets. At the election of the state and local governments, the Treasury Department will make a direct payment to the state or local governmental issuer in an amount equal to 35 percent of the interest payment on the Build America Bonds. As a result of this Federal subsidy payment, state and local governments will have lower net borrowing costs and be able to reach more sources of borrowing than with more traditional tax-exempt or tax credit bonds. For example, if a State or local government were to issue Build America Bonds at a 10 percent taxable interest rate, the Treasury Department would make a payment directly to the State or local government of 3.5 percent of that interest, and the State or local government's net borrowing cost would thus be only 6.5 percent on a bond that actually pays 10 percent interest.

This feature makes Build America Bonds attractive to a broader group of investors, and therefore created a larger market than typically invests in more traditional state and local tax-exempt bonds, where interest rates, due to the Federal tax exemption, have historically been about 20 percent lower than taxable interest rates. Because the Federal support comes in the form of a subsidy to the issuer rather than a tax exemption to the investor, State and local governments are able to attract investors without regard to their tax status or income tax bracket (e.g., pension funds and other tax-exempt investors, investors in low tax brackets, and foreign investors).

Grant Anticipation Revenue Vehicles

A Grant Anticipation Revenue Vehicle (GARVEE) is a type of note or bond (debt instrument) issued when moneys are anticipated from a specific source to advance the upfront funding of a particular need. In the case of transportation finance debt instrument, the anticipated repayment source is expected Federal-aid highway grants. Specific to highways, a GARVEE is used as a term for a debt instrument that has a pledge of future Title 23 Federal-aid funding. It is authorized for Federal reimbursement of debt service and related financing costs. States can thus receive Federal-aid reimbursements for a wide array of debt-related costs incurred in connection with an eligible debt financing instrument, such as a bond, note, certificate, mortgage, or lease; the proceeds of which are used to fund a project eligible for assistance under Title 23. Each of these instruments is considered a GARVEE when backed by future Federal-aid highway funding, but most frequently, a bond is the debt instrument used. The issuer may be a state, political subdivision, or a public authority.

GARVEEs enable a state to accelerate construction timelines and spread the cost of a transportation facility over its useful life rather than just the construction period. The use of GARVEEs expands access to capital markets as an alternative or in addition to potential general obligation or revenue bonding capabilities. The upfront monetization benefit of these techniques needs to be weighed against the costs of consuming a portion of future years' receivables to pay debt service. This approach is appropriate for large, long-lived, non-revenue generating assets that are otherwise difficult to finance.

Grant Anticipation Notes

Under the general concept of anticipation vehicles, transit agencies also use similar mechanisms to borrow against future Federal-aid funds (Federal Transit Administration Title 49 grants) that are allocated by formula (Section 5307) or by project (Section 5309). These transit debt mechanisms are known as Grant Anticipation Notes (GANs), but are not officially termed GARVEEs because they utilize Federal transit funding under Title 49, not Title 23, and do not include debt-related financing costs such as interest and issuance costs.

Infrastructure Fund

Lastly, President Obama's budget for Fiscal Year 2011 provides $4 billion for a new National Infrastructure Innovation and Finance Fund (the Infrastructure Fund). This is the first year of a 5-year plan to capitalize the fund with $25 billion. The Infrastructure Fund will invest in high-value projects of regional or national significance, and marks an important departure from the Federal Government's traditional way of spending on infrastructure through mode-specific grants.

The Infrastructure Fund would have flexibility to choose projects with demonstrable merit from around the country and provide a variety of financial products – grants, loans, or a combination – to best fit a project's needs. The Infrastructure Fund would allow the Department to expand on current practices that encourage collaboration among, and co-investment by, non-Federal stakeholders, including States, municipalities, and private partners.

Conclusion

The Federal Government has many programs that facilitate and encourage State, local and private investment in transportation projects. Of particular note are the TIFIA program and the proposed National Infrastructure Innovation and Finance Fund. These programs reflect an acknowledgement that the Federal Government needs to take a more active role in supporting major transportation projects with targeted grants and credit assistance. The Department's experience is that competitive national programs facilitate creative and innovative approaches at the State and local level to leverage substantial revenue for major transportation investments.

Thank you again for the opportunity to discuss these important programs. I would be pleased to answer any questions you may have.

Questions for the Honorable Chris Bertram
Assistant Secretary for Budget and Programs and Chief Financial Officer
United States Department of Transportation

Highways and Transit Subcommittee Hearing
April 14, 2010

Questions from Chairman DeFazio

1. Mr. Assistant Secretary, Denver RTD is the only transit agency to successfully navigate FTA's Public Private Partnership Pilot Program (Penta-P), while the BART Oakland Airport Connector project seems to have completely dropped out of the pilot program, and Houston Metro has had mixed results with its Penta-P projects.
   - Other than the initial Federal Register Notice of establishment of the Public-Private Partnership Pilot Program, has FTA produced any other public documents detailing the Penta-P process?
   - At the time of DOT's Report to Congress on transit PPPs, transmitted by Secretary Peters on December 19, 2007, no projects had gone through FTA's Penta-P process. However, page A-7 of the report details the expected benefits of the pilot program. Were any of those benefits achieved for any of the Penta-P projects, and if so, which ones?
   - Please specifically describe the time- and cost-savings benefits that FTA offered to Penta-P projects that are not available to other projects, and the reasons that these benefits are not available to other projects.
   - Does the Department consider this pilot program a success, and should it be continued and expanded in the next authorization bill?

2. Mr. Assistant Secretary, is the RRIF program a potential source of assistance for transit commuter rail agencies that are required to install positive train control (PTC) by the end of 2015?
   - If so, does the Department believe that there are sufficient available RRIF resources to assist all commuter rail agencies in financing PTC while also meeting the needs of other applicants?
   - I was disappointed that the President's Budget failed to include any of the authorized grant funding for PTC. Why was that?
   - The Department has been appropriately focused on both the safety and state of good repair for our transit systems. However, if there is not sufficient grant funding available for PTC implementation, then it is possible that many commuter agencies will be faced with moving capital budget resources away from safety and state of good repair investments in order to meet the PTC mandates. How does the Department plan to guard against this possible negative outcome?

Questions from Rep. Napolitano

1. Mr. Bertram, would you agree that if the federal government provided low-interest loans to local and state transportation agencies that have long term revenue streams to accelerate their projects, this would lower the cost of the projects in the long run because

agencies are able to avoid inflation and get the economic benefit from the projects sooner?

2. Mr. Bertram, do you feel we should implement a national container fee at our ports to pay for projects to mitigate the public problems caused by goods movement that adversely and disproportionally deteriorates infrastructure and causes health problems in port regions? Do you have any ideas or concerns for implementing such a container fee?

Questions from Ranking Member Duncan

1. In your testimony, you mentioned that the Secretary is working on some proposals and principles for reauthorizing the highway, transit, and highway safety programs. Will the Secretary transmit these proposals and principles as part of a comprehensive reauthorization proposal? If so, when do you expect to transmit these proposals and principles to Congress?

2. There are several bills before Congress that propose to increase the maximum percentage of financing that can come from TIFIA for a project from 33 percent to 49 percent. Does the Administration support increasing this percentage from 33 percent to 49 percent?

3. Does the Administration support eliminating the "springing lien" aspect of TIFIA?

4. Does the Administration support the continuation and expansion of the Build America Bonds program?

5. Does the Administration support increasing the cap on Private Activity Bonds for highway projects beyond the current cap of $15 billion?

6. It is clear from your testimony that the TIFIA program is oversubscribed. How much contract authority a year does the Administration think Congress should allocate to the TIFIA program in order to maximize the program's effectiveness?

7. The fact that the TIFIA program is oversubscribed has forced DOT to ask applicants to share some of the subsidy costs of their loans. Does the Administration plan to continue this practice?

8. Several of the TIGER grants awarded earlier this year for large highway projects provided only a fraction of the cost of the project. DOT said in their announcement of these grants that this funding was designed to be used in conjunction with a TIFIA loan. How many of these project sponsors have taken DOT up on its offer to use their TIGER grants in conjunction with a TIFIA loan? If the project sponsor decides not to pursue a TIFIA loan, will they still receive their TIGER grant?

9. What is the Administration's position on allowing States more flexibility to use tolling to finance transportation construction projects? Does the Administration support tolling existing Interstate highway capacity? Does the Administration support allowing States to

toll new capacity on the Interstate system – either new lanes on an existing Interstate highway or to construct a new segment of the Interstate system?

10. In the beginning of April, the Secretary rejected Pennsylvania's application to toll I-80 under the Interstate System Reconstruction and Rehabilitation Pilot Program because the State's proposal would have used toll revenue on projects and facilities other than I-80. Does the Administration support a change in law that would allow States like Pennsylvania to toll existing Interstate capacity and use those toll revenues to fund highway or transit projects that are not related to the tolled facility?

Questions for the Honorable Chris Bertram
Assistant Secretary for Budget and Programs and Chief Financial Officer
United States Department of Transportation

Highways and Transit Subcommittee Hearing
April 14, 2010

Questions from Chairman DeFazio

***QUESTION 1**: Mr. Assistant Secretary, Denver RTD is the only transit agency to successfully navigate FTA's Public Private Partnership Pilot Program (Penta-P), while the BART Oakland Airport Connector project seems to have completely dropped out of the pilot program, and Houston Metro has had mixed results with its Penta-P projects.*

- *Other than the initial Federal Register Notice of establishment of the Public-Private Partnership Pilot Program, has FTA produced any other public documents detailing the Penta-P process?*
- *At the time of DOT's Report to Congress on transit PPPs, transmitted by Secretary Peters on December 19, 2007, no projects had gone through FTA's Penta-P process. However, page A-7 of the report details the expected benefits of the pilot program. Were any of those benefits achieved for any of the Penta-P projects, and if so, which ones?*
- *Please specifically describe the time and cost-savings benefits that FTA offered to Penta-P projects that are not available to other projects, and the reasons that these benefits are not available to other projects.*
- *Does the Department consider this pilot program a success, and should it be continued and expanded in the next authorization bill?*

ANSWER:

In December 2007, FTA produced a "Report to Congress on the Costs, Benefits, and Efficiencies of Public-Private Partnerships (PPP) for Fixed Guideway Capital Projects" as a requirement of the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA-LU). This report examined the costs, benefits, and efficiencies of applying PPP delivery approaches to transit projects.

FTA produced a report on four international case studies of transit PPP's and is in the process of developing a plan to evaluate the Penta-P program. FTA is also developing a PPP toolset for use by FTA staff to help evaluate the feasibility of transit PPP projects.

In regards to the benefits achieved for the Penta-P projects, FTA reviewed the Design-Build-Operate and Maintain (DBOM) contract Houston Metro is using for the North and Southeast Corridor Projects in November 2007, to determine whether it sufficiently transferred risk to the private sector – a key benefit of a PPP. While the Houston Metro contract includes some benefits from innovative risk mitigation strategies, Houston Metro retains the financing, project scope, price escalation and performance risks.

The Denver Regional Transportation District (RTD) selected a private concessionaire on June 15, 2010 for its East Corridor and Gold Line Enterprise (EAGLE) Design-Finance-Build-Operate and Maintain project, which includes not only two projects to be funded in part with federal New Starts funding, but also some elements funded entirely with local funds. FTA has not yet been given a chance to review the successful bidder's proposal to review its risk transference to the private sector and the benefits it provides. However, one clear benefit is that the project cost estimate from the successful bidder came in $300 million below RTD's estimate.

In December 2009, Bay Area Rapid Transit (BART) awarded a design-build operate and maintain contract for the Oakland Airport Connector (OAC) project after going through a second contracting process when the initial contracting process failed to result in a successfully negotiated procurement. BART is seeking to finalize funding arrangements.

In regards to the time and cost-savings that Penta-P provided, FTA reviewed the transference of risk from the public sector to the private sector in the contract documents of the projects selected to participate in the Penta-P program. The projects were afforded different New Starts process streamlining benefits based on the amount of risk transferred to the private sector on the theory that the private sector would do sufficient due diligence in the areas where risk was transferred to replace FTA's due diligence.

Because of the innovative risk mitigation strategies included in the DBOM contract, FTA granted Houston METRO several Letters of No Prejudice (LONPs) prior to the North and Southeast Corridor projects' approval into final design, which was earlier than the New Starts process at that time allowed. The LONPs allowed Houston METRO to purchase vehicles and perform utility relocation work with local funds, while maintaining eligibility for future federal reimbursement. Because there was insufficient risk transference to the private sector in METRO's DBOM contract, FTA was unable to streamline or reduce other aspects of the New Starts process.

FTA has since changed its policy and now allows all New Starts projects expanded pre-award authority, reducing the need for LONPs. With pre-award authority, just as with an LONP, a project sponsor has the ability to undertake work with its own funds, while maintaining eligibility for future federal reimbursement. Thus, upon completion of the environmental review process, whether or not a project is approved into final design, the project sponsor may purchase vehicles, perform utility relocation work, and purchase land. Upon entry into final design, project sponsors have automatic pre-award authority to purchase long-lead items and perform other non-construction activities. For those few items not covered by pre-award authority, essentially construction activities, FTA has streamlined the process for obtaining an LONP.

FTA thoroughly reviewed RTD's request for proposals and examined the risk transference to the private sector that RTD was hoping to achieve. Because RTD's proposed contracting approach was the only one of the pilot projects to include private sector equity contributions, FTA allowed RTD to exclude from the calculation of cost-effectiveness the private sector contribution. In addition, FTA agreed to wait to perform a detailed financial capacity review until the concessionaire was selected and financial close occurred. This allowed RTD to enter final design sooner than would have otherwise occurred. Lastly, if sufficient cost, scope and schedule risk is transferred to the concessionaire, FTA has agreed to reduce the scope and length of its risk assessment process, leading to quicker approval of the Full Funding Grant Agreement.

FTA has not reviewed the OAC contract documents for risk transference. The OAC project is pursuing less than $25 million in New Starts funding, making it exempt from the FTA project evaluation and rating process. Thus, there is little opportunity to streamline FTA's processes with this project. However, by law, exempt projects must still be approved by FTA into both preliminary engineering and final design. FTA did a concurrent PE and final design approval of the OAC to streamline the process.

It is too early to determine whether the pilot program is considered a success. FTA is developing an evaluation plan to assess the pilot program.

As far as reauthorization is concerned, the Department is developing a reauthorization proposal for surface transportation programs.

QUESTION 2: *Mr. Assistant Secretary, is the RRIF program a potential source of assistance for transit commuter rail agencies that are required to install positive train control (PTC) by the end of 2015?*

- *If so, does the Department believe that there are sufficient available RRIF resources to assist all commuter rail agencies in financing PTC while also meeting the needs of other applicants?*
- *I was disappointed that the President's Budget failed to include any of the authorized grant funding for PTC. Why was that?*
- *The Department has been appropriately focused on both the safety and state of good repair for our transit systems. However, if there is not sufficient grant funding available for PTC implementation, then it is possible that many commuter agencies will be faced with moving capital budget resources away from safety and state of good repair investments in order to meet the PTC mandates. How does the Department plan to guard against this possible negative outcome?*

ANSWER:

The costs associated with PTC implementation are eligible expenses for a loan under FRA's Railroad Relocation and Improvement Financing (RRIF) program. Furthermore, the Administration is supportive of efforts to leverage RRIF to advance improvements in rail safety across the Nation.

Specifically, the RRIF program is authorized to lend up to $35 billion. There is currently over $34 billion available under the RRIF program for immediate use. This funding level is sufficient to cover the estimated $6 billion that is needed by the freight, intercity, and passenger railroads to finance the initial acquisition and installation of onboard, wayside, and central office equipment sufficient to meet the December 15, 2015 PTC mandate. The RRIF program is actively holding regular pre-application meetings with rail entities seeking financing for a variety of purposes, including PTC.

In regards to grant funding for PTC, in FY 2010, $50 million was appropriated to FRA for the Railroad Safety Technology PTC grant program. FRA has acted swiftly to develop necessary administrative and program requirements. On March 29, 2010, FRA officially announced this $50 million funding opportunity on Grants.gov. The deadline for PTC grant applications was July 1, 2010.

In regards to maintaining the safety and state of good repair for our transit systems, commuter railroads are required to meet FRA's safety regulations. FRA will continue to ensure that all railroads are appropriately inspected to monitor their compliance with Federal safety regulations and programs.

Questions from Rep. Napolitano

QUESTION 1: *Mr. Bertram, would you agree that if the federal government provided low-interest loans to local and state transportation agencies that have long term revenue streams to accelerate their projects, this would lower the cost of the projects in the long run because agencies are able to avoid inflation and get the economic benefit from the projects sooner?*

ANSWER:

Low-interest loans to local and state transportation agencies will enable the projects to be built sooner. Although the economic benefits from the projects will be realized sooner, the interest costs for those projects must be borne by the revenue streams dedicated to these projects. Additionally, by providing the loans, the federal government must bear the risk that the revenue streams will not be sufficient to repay the loans. This transfer of risk from the local and state transportation agencies to the federal government requires a subsidy appropriation, which ultimately must be factored into the long-term cost of the projects. Without knowing for certain what inflation will be, it is impossible to be certain that providing low-interest loans will lower the costs of the projects in the long run.

QUESTION 2: *Mr. Bertram, do you feel we should implement a national container fee at our ports to pay for projects to mitigate the public problems caused by goods movement that adversely and disproportionally deteriorates infrastructure and causes health problems in port regions? Do you have any ideas or concerns for implementing such a container fee?*

ANSWER:

While many have argued that a mechanism is needed to provide funding for freight-related infrastructure, careful consideration should be given to how this is implemented. For example, although a container fee may seem like an attractive option, policy makers should note that this fee alone would exclude movements of general and most bulk cargoes, in the millions of tons.

Another factor to consider is whether container fees would be collected for imports only or for both imports and exports, which could provide unintended disincentives for some industries.

Domestic cargos moving in port areas can also contribute to the infrastructure problems near ports and might not be influenced by a container fee. Another option that has been argued for would be to assess a road utilization fee on all freight users that reflects the marginal cost of infrastructure maintenance attributable to each class of user and cargo origin.

In general, the Department of Transportation believes that funding is needed to support freight infrastructure and that such a mechanism, whatever option is chosen, should:

- Be implemented uniformly and nationwide to address supply chain needs;
- Equitably address all freight being transported on publicly funded water and land transportation routes;
- Appropriately address the marginal cost to both infrastructure and externalities (emissions, safety and energy efficiency/dependence); and
- Be deposited to a trust fund that is carefully managed to ensure the funds are reinvested only for the intended purpose at a rate commensurate with the rate of deposits.

Questions from Ranking Member Duncan

QUESTION 1: *In your testimony, you mentioned that the Secretary is working on some proposals and principles for reauthorizing the highway, transit, and highway safety programs. Will the Secretary transmit these proposals and principles as part of a comprehensive reauthorization proposal? If so, when do you expect to transmit these proposals and principles to Congress?*

ANSWER:

Earlier this year, Secretary LaHood stated that USDOT would be releasing reauthorization principles. USDOT has been conducting public outreach meetings throughout the country, consulting with Congressional Members and staff, and meeting with a wide range of transportation stakeholders as it formulates these principles.

Following the reauthorization outreach meetings and subsequent public comment and input, USDOT expects to finalize its reauthorization principles and continue its work within the Administration and with Congress, State DOTs, transit agencies and other transportation stakeholders in crafting more detailed proposals and legislative language.

QUESTION 2: *There are several bills before Congress that propose to increase the maximum percentage of financing that can come from TIFIA for a project from 33 percent to 49 percent. Does the Administration support increasing this percentage from 33 percent to 49 percent?*

ANSWER:

Increasing the maximum participation beyond 33 percent of project costs would increase the federal investment in projects. This change would decrease the percentage of non-federal participation in such projects and it would also increase the budget authority consumed by each project, thus requiring a higher funding level for the TIFIA program in order to finance a similar number of projects. However, increasing the percentage of TIFIA financing will lower the overall borrowing costs for a project and may ultimately lead to more projects being developed.

QUESTION 3: *Does the Administration support eliminating the "springing lien" aspect of TIFIA?*

ANSWER:

The "springing lien" clause of the TIFIA statute allows TIFIA to make credit assistance available that may be initially subordinate to senior obligations (i.e., credit assistance provided by private banks); however, in the event of bankruptcy, insolvency, or liquidation of the borrower, the borrower's indebtedness to the government is on par with other senior obligations. This aspect of the program protects the federal interest while providing needed flexibility to advance critical transportation projects. The current "springing lien" clause reflects the principle that the Federal government is willing to provide low cost credit on very flexible terms, but that the government's claim should be on par with those of other creditors should the project fail financially. This parity also ensures that the Federal government has direct involvement with other creditors in addressing projects that fall into financial distress.

QUESTION 4: *Does the Administration support the continuation and expansion of the Build America Bonds program?*

ANSWER:

Yes, the President's FY 2011 Budget proposes to make Build America Bonds (BABs) permanent after the program expires at the end of this year, with a 28 percent subsidy rate to make the program revenue neutral. The budget also proposes to expand the eligible uses of BABs, allowing them to support financing for nonprofits and a wider range of municipal borrowing, including refunding and short-term notes.

QUESTION 5: *Does the Administration support increasing the cap on Private Activity Bonds for highway projects beyond the current cap of $15 billion?*

ANSWER:

We would consider increasing the cap on Private Activity Bonds for qualified highway and freight transfer facilities as we draw closer to reaching the $15 billion national limitation for these bonds. To date, about $1.6 billion in private activity bonds have been issued to provide senior debt financing for three projects – the $1.8 billion Capital Beltway HOT Lanes Project in Northern Virginia, the $2 billion North Tarrant Express Project in Dallas, Texas, and the $2.6 billion LBJ Freeway HOT Lanes Project in Dallas, Texas. Current allocations amount to an additional $4.5 billion for six projects. So, about $6 billion of the $15 billion national limitation for these tax-exempt bonds has been allocated with roughly $9 billion remaining.

QUESTION 6: *It is clear from your testimony that the TIFIA program is oversubscribed. How much contract authority a year does the Administration think Congress should allocate to the TIFIA program in order to maximize the program's effectiveness?*

ANSWER:

In response to the March 1 deadline for the TIFIA Notice of Funding Availability, 39 letters of interest were received seeking approximately $12.5 billion in credit assistance for projects totaling more than $40 billion in transportation investments. Assuming subsidy rates consistent with recent TIFIA transactions, the current level of contract authority can support only a fraction of the demand level indicated by the NOFA response.

QUESTION 7: *The fact that the TIFIA program is oversubscribed has forced DOT to ask applicants to share some of the subsidy costs of their loans. Does the Administration plan to continue this practice?*

ANSWER:

The current requests for TIFIA credit assistance far exceed the budget authority available. A final decision as to what terms (including fee terms) might apply to those projects has not been made.

QUESTION 8: *Several of the TIGER grants awarded earlier this year for large highway projects provided only a fraction of the cost of the project. DOT said in their announcement of these grants that this funding was designed to be used in conjunction with a TIFIA loan. How many of these project sponsors have taken DOT up on its offer to use their TIGER grants in conjunction with a TIFIA loan? If the project sponsor decides not to pursue a TIFIA loan, will they still receive their TIGER grant?*

ANSWER:

Of the 51 projects selected for funding under the TIGER Discretionary Grant program, four projects were selected for "TIGER TIFIA Challenge Grants". These project sponsors were offered the opportunity to use $10 million in TIGER assistance either as a grant or as the budget authority needed to support a substantial TIGER TIFIA loan.

- One project, the U.S. 36 Managed Lanes/Bus Rapid Transit Project, has decided to use the $10 million in TIGER assistance to support a larger TIFIA loan, pending the outcome of an investment grade traffic and revenue study.
- Two projects, the I-85 Corridor Improvement and Yadkin River Crossing and the Bella Vista Bypass have decided to not use the $10 million in TIGER assistance to support a TIFIA loan, but instead to take the $10 million as a direct grant.
- The Department is still working with one project, the I-95 Interchange and Access Project in South Carolina, to determine how the funds will be used.

QUESTION 9: *What is the Administration's position on allowing States more flexibility to use tolling to finance transportation construction projects? Does the Administration support tolling existing Interstate highway capacity? Does the Administration support allowing States to toll new capacity on the Interstate system – either new lanes on an existing Interstate highway or to construct a new segment of the Interstate system?*

ANSWER:

We believe that States and local governments should have considerable flexibility to use tolling and pricing to finance transportation projects. Tolls are a significant source of revenue and can also be used to help manage congestion and provide new travel options. For example, the Department recently provided a TIGER Discretionary Grant to the U.S. 36 Managed Lanes/Bus Rapid Transit Project in Denver, which will use tolling to improve the corridor and provide new and enhanced Bus Rapid Transit service.

We believe that existing law and existing programs generally provide States and local governments with considerable flexibility to use tolling to finance construction projects, both on existing Interstate highways and to construct new capacity. These programs include: the Value Pricing Pilot Program, the Express Lanes Demonstration Program, Section 1121 of SAFETEA-LU regarding High Occupancy Vehicle Facilities, the Interstate System Reconstruction and Rehabilitation and Rehabilitation Pilot Program, the Interstate Construction Toll Pilot Program, and Title 23 Section 129 Toll Agreements.

As we develop reauthorization principles, we will consider whether additional flexibility or other changes would be desirable.

QUESTION 10: *In the beginning of April, the Secretary rejected Pennsylvania's application to toll I-80 under the Interstate System Reconstruction and Rehabilitation Pilot Program because the State's proposal would have used toll revenue on projects and facilities other than I-80. Does the Administration support a change in law that would allow States like Pennsylvania to toll existing Interstate capacity and use those toll revenues to fund highway or transit projects that are not related to the tolled facility?*

ANSWER:

We believe that the appropriate use of toll revenues is context-specific and that a one-size-fits-all approach is problematic. For example, on long-haul interstate corridors that need significant reconstruction and rehabilitation, toll revenues should be used to fix the facility and maintain it in a state of good repair. However, in congested urban areas where tolling and pricing is used to manage congestion, a portion of the revenue may appropriately be dedicated to transit alternatives.

TESTIMONY OF

THE HONORABLE EUGENE A. CONTI

SECRETARY
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

REGARDING

USING INNOVATIVE FINANCING TO DELIVER HIGHWAY AND TRANSIT PROJECTS

BEFORE THE

SUBCOMMITTEE ON HIGHWAYS AND TRANSPORTATION
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 14, 2010

Mr. Chairman, and Members of the Subcommittee, I am Eugene Conti, Secretary of the North Carolina Department of Transportation. Today I am appearing on behalf of my state to discuss a number of innovative financing tools that have been utilized to deliver critical transportation projects in North Carolina.

First, I want to thank you, Mr. Chairman, for holding this important hearing on innovative financing programs that currently exist and other financing enhancements that may be considered in the pending Surface Transportation legislation. This committee has clearly recognized, as have the two SAFETEA-LU-authorized Commissions, that we are dramatically under-investing in our surface transportation programs. This underinvestment is set against the backdrop of the Highway Trust Fund having to be injected with cash from the General Fund to maintain solvency in order to just extend the programs at current levels, let alone expand upon them. While innovative financing is not the solution to the infrastructure underinvestment challenge we face at all levels of government, it does play an important role in providing creative approaches to deliver capital programs that help to meet overall surface transportation needs.

INNOVATIVE FINANCING

It was my privilege to serve as Assistant Secretary for Transportation Policy in the US Department of Transportation during President Clinton's second term, which allowed me the opportunity to help usher in many of the innovative financing programs that we have in place today at the Federal level. They include the highly successful Grant Anticipation Revenue Vehicle (GARVEE) bonds and various federal credit programs such as the Transportation Infrastructure Finance and Innovation Act (TIFIA), Private Activity Bonds, the Railroad Rehabilitation Improvement Financing Program (RRIF). And most recently, the success of Build America Bonds (BAB) has shown great appetite for infrastructure investment in the capital markets. In addition to these programs, tolling and its subsets such as High Occupancy Toll (HOT) Lanes have become important tools for advancing transportation projects and reducing congestion.

Let me discuss each of these tools in more depth:

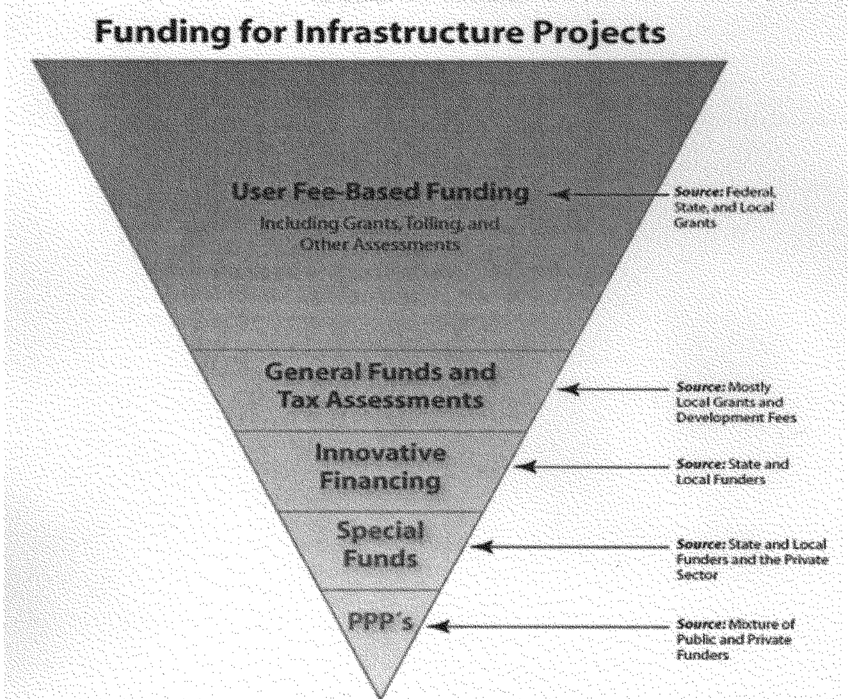
- ***GARVEE bonds*** have enabled States to issue debt that will be paid out from future Federal funds that are anticipated to be authorized by Congress in future authorization cycles. Allowing states to use federal funds to pay debt service payments conforms to the standard business practice of paying for capital improvements over the life of the asset. To date, an estimated $9.3 billion of GARVEE bonds have been issued by twenty three states. The real value of such bonds, like other forms of debt issuance, is to allow projects to be accelerated thus getting needed facilities in place sooner and saving inflation costs.
- ***The TIFIA credit program*** has been in existence since 1998 when it was enacted in TEA-21. To date it has provided $7.7 billion in credit assistance resulting in projects valued at $29 billion in construction costs. Its credit instruments include subsidized direct loans, loan guarantees and standby lines of credit. The program is very popular, and we in North Carolina have recently closed on a loan that has allowed the project to become financially feasible. North Carolina was the first state since the inception of TIFIA required to pay an up-front subsidy to get its loan. Our concern with this "pay-to-play" strategy is that it increases the cost of TIFIA financing and thus undermines its benefit as an alternative source of credit financing. Limiting the program to cash-rich projects would ignore the founding purpose of the program –

to subsidize critical investments in infrastructure and attract private capital to revenue generating projects.

With projects waiting in the TIFIA pipeline, we are also concerned about availability and adequacy of funding, the bureaucracy (slow speed) of the TIFIA process, and the insistence on restrictive debt covenants beyond those required by the rating agencies. These add to the cost and ultimate feasibility of projects. We also need better clarity of the new evaluation rules for livability and sustainability. Without this clarity, we risk investing in a futile TIFIA process which is a waste of scarce transportation resources.

- ***Private Activity Bonds*** have allowed private partners in transportation project delivery to realize the benefits from issuance of tax exempt debt for such projects. $15 billion was authorized in SAFETEA-LU and they have seen some success, especially after the Recovery Act provision exempting interest income on PABs from the Alternative Minimum Tax.
- ***Build America Bonds***, a recent addition to the financing toolbox, have been a critical tool in shoring up the state and municipal financing streams with $90.1 billion in overall issuance since its inception in April 2009. According to the Treasury Department report from early this month, up to $28.5 billion of BABs, or 27% of total volume; have been used for transportation infrastructure investment purposes. Needless to say, this Recovery Act tool has been crucial in helping to address transportation needs especially after the credit freeze in the traditional tax-exempt bond market at the start of the current economic recession.
- North Carolina has developed a ***toll authority*** and we are using that new financing mechanism to (State to fill in). North Carolina has developed a toll authority and we are using that new financing mechanism to advance four critical congestion projects that would not have been viable under traditional pay as you go. We are utilizing a number of innovative finance tools including Build America Bonds, TIFIA, public private partnerships, and public public partnerships. We are also advancing toll technology as NCTA is the 1st start-up toll agency to go completely cashless.
- ***State Infrastructure Banks***, which first emerged in the NHS Act in 1995, continue to be utilized by thirty two states to this day, which have resulted in 579 loan agreements valued at $5.6 billion. This program allows jurisdictions to use a percentage of Federal-aid apportionments to capitalize bank activity.
- The ***Railroad Rehabilitation and Improvement Financing (RRIF)*** program provides loans, loan guarantees, and lines of credit for class one freight railroads and has undertaken a number of projects since its inception.

As a word of caution, however, I must also note that the core of the federal transportation program still lies within the time-tested Federal-aid highway and transit grant programs that have served this nation so well over the past fifty-plus years. The reverse pyramid below shows the levels of feasibility we can expect from different sources of funding and financing.



NORTH CAROLINA

In North Carolina we are using many of these tools. Let me describe some of the projects and the benefits innovative financing has provided to advance infrastructure projects.

- **Value Engineering & Project Clustering**: Example: the replacement of 7 existing bridges on Ocracoke Island in 75 days on NC12

- **Design-Build & Design-Build Finance (DBF)**: Used on over 25 projects with time and multi-million dollar savings. By using DBF, the Charlotte Outer loop will be completed 5 years early.

- **GARVEE Bonds**: Two issuances ($530M) to date covering 42 projects across the state. NC created a flexible, evergreen borrowing structure that allows for project substitutions.

- **Tolling:** Closed financing on Triangle Expressway ($1.0 billion) using a combination of Build America Bonds – one of the nation's 1st issuances, Toll Revenue Bonds, and a TIFIA Loan. Partnerships included private ROW donation and DOT financial guarantees. Cashless toll collection – 1st totally electronic start-up toll agency. Enabling legislation for enforcement and future refinancing.

  Other "traditional" toll projects in pipeline: Monroe & Garden Parkway have received state "GAP" appropriations funding from the state legislature.

- **Pre-Development Agreement (PDA):** Mid-Currituck Bridge – Pre-development agreement (PDA) with Currituck Development Group (CDG). CDG is comprised principally of ACS, Dragados, and MMM Lochner who are providing value engineering, traffic and revenue studies, cash vs. cashless collection studies, and financial plan. We will decide in early 2010 if the project is attractive as a **Public Private Partnership (PPP) Concession**.

- **Public Public Partnerships**: Example: Charlotte New Starts Light Rail Project – opened 2008. NCDOT (25%) / City of Charlotte (25%) / FTA (50%)

- **Value Pricing**: Obtained one of the value pricing slots from FHWA for the rehabilitation and expansion of NC I-95 and are currently undergoing toll feasibility studies. There is also a potential for multi-state Corridors of the Future partnership with VA, NC, SC, GA, and FL as well as NC I-77 hot lanes.

FEDERAL CREDIT PROGRAM IMPROVEMENTS

Let me highlight a few areas of possible improvement for Federal credit programs that the Committee might consider. They include:

- Continuing and improving TIFIA by increasing the loan size up to 50 percent of project costs (as provided in your Committee's Surface Transportation Assistance Act), addressing the "springing lien", expanding assistance to all modes of transportation, and providing a stable budget authority for the program every year.
- Reviewing the need for multiple/overlapping Federal credit assistance programs such as TIFIA, RRIF, the proposed National Infrastructure Bank, and the Obama Administration's National Infrastructure Innovation and Finance Fund to see if one expanded but better-integrated program can address all transportation investment needs.
- Improving the State Infrastructure Bank program in Federal law by incentivizing multimodal investments and by enhancing capitalization of SIBs around the country.
- Removing or increasing the current $15 billion volume cap on Private Activity Bonds.
- Continuing the popular Build America Bonds beyond calendar year 2010 as provided in current law. In particular, I recommend that Congress also consider the authorization of higher subsidy

BABs for certain kinds of desired transportation investments requiring a larger financial subsidy.

CONCLUSION

I would like to close by saying that many project sponsors at state and local governments have taken advantage of tools and initiatives outlined in my testimony, thanks to the legislation initiated by your Committee. This has resulted in reduced construction costs and expedited benefits to the users of the transportation systems. This is a testament to a great progress made in the last decade by providing a much wider array of financial tools than the standard 80% grant program that was the mainstay of the federal highway program until just a few years ago.

Moving forward, we need to continue developing other beneficial finance techniques and looking for ways to improve the current techniques. Therefore, every innovative tool deserves full consideration for continuation and enhancement during the reauthorization process.

But while these tools can be valuable, the effectiveness of any of these finance techniques depends on the establishment of a reliable and substantial source of funding, as innovative financing generally assumes an associated revenue stream to support credit activity. There is no doubt to its usefulness when combined with grant funding which still remains as the core of the federal-state partnership. We need to pass a long-term and well-funded bill that will allow for much greater funding and program certainty to meet transportation investment needs. I would like to commend the Committee for your aggressive efforts to bring about that end.

Questions for the Honorable Eugene A. Conti
Secretary
North Carolina Department of Transportation

Highways and Transit Subcommittee Hearing
April 14, 2010

Questions from Ranking Member Duncan

1. In your testimony, you briefly mentioned a public private partnership in Charlotte built around a passenger rail station. Can you provide more details for the record about that project, specifically the private sector's participation in the project?

2. NCDOT is the recipient of a $10 million TIGER grant for I-85 corridor improvements and the Yadkin River crossing project. This award is a fraction of the $450 million project cost. How does NCDOT anticipate using this TIGER grant?

3. As part of the announcement of NCDOT's TIGER grant for I-85 corridor improvements and the Yadkin River crossing project, DOT offered innovative financing through the TIFIA program. Does NCDOT plan to pursue a TIFIA loan in conjunction with their TIGER grant for this project?

4. What role do you think the Federal government should play in overseeing Public Private Partnerships and toll road projects?

Answers to Questions Submitted by Ranking Member John Duncan to Eugene Conti, Secretary, North Carolina Department of Transportation

Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
U.S. House of Representatives

"Using Innovative Financing to Deliver Highway and Transit Projects"
April 14, 2010

Question #1. In your testimony, you briefly mentioned a public private partnership in Charlotte built around a passenger rail station. Can you provide more details for the record about that project, specifically the private sector's participation in the project?

Answer #1. The Rail Division is exploring the possibility of a Public Private Partnership to assist with the financing and development of the new "Charlotte Gateway Multi Modal Station" (CGS). NCDOT and our Board of Transportation worked with the NC Legislature to enact legislation that would allow the NCDOT to enter into PPPs. Internal guidelines have been established by the NCDOT staff that would govern how the Rail Division would solicit private participation in CGS. Basically it will be a multi step process. #1 - a Request for Qualifications (RFQ) will go out to private development firms that have expressed interest in the CGS project. #2 - from those responses 2 to 3 firms will be selected through a committee review/evaluation process. #3 - NCDOT will issue a Request for Proposals (RFP) from those firms. #4 - the RFPs will be evaluated by the committee and NCDOT will enter negotiations with the firm that is perceived to have the best proposal. If negotiations go well with that firm the Dept. will enter into a PPP agreement and proceed with the project. If negotiations do not go satisfactorily with the first firm NCDOT may move onto discussions with the second firm. NCDOT has assembled 9 city blocks for a major new multi-modal station. The Department plans to seek public private partnerships for multi-use air rights development for the station and surrounding properties.

Question #2. NCDOT is the recipient of a $10 million TIGER grant for I-85 corridor improvements and the Yadkin River crossing project. This award is a fraction of the $450 million project cost. How does NCDOT anticipate using this TIGER grant?

Answer #2. We intend to utilize that money quickly to support and enhance the initial hiring that is commonplace with any large infrastructure project. The project has been divided into two Design-Build contracts to further accelerate all the work along the corridor. The TIGER Grant money will be used to fund early construction work on the first contract. Construction is set to begin in October of 2010 once the appropriate designs and design reviews are complete.

Question # 3. As part of the announcement of NCDOT's TIGER grant for I-85 corridor improvements and the Yadkin River crossing project, DOT offered innovative financing through the TIFIA program. Does NCDOT plan to pursue a TIFIA loan in conjunction with their TIGER grant for this project?

Answer #3. No.

Question # 4. What role do you think the Federal government should play in overseeing Public Private Partnerships and toll road projects

Answer #4. There is no question that the public interest should be assured in transactions that combine public funds with private equity investment. We believe that there may be consensus on broad principles to assure the public interest, including for example --

- Public benefits need to exceed public costs
- Adequate controls need to be in place to assure rates of return are reasonable
- Independent assurance needs to be given concerning the viability of the investment proposal.

However, it is essential that any federal oversight and control, which is designed to ensure that public benefits accrue from private equity investment, not be counterproductive to generating needed private investment.

AASHTO believes that it is possible to establish a practical process for assuring the public interest is protected and achieves that objective as part of the front end of an approval process. There might be many ways to achieve this, but one option is to establish an independent non-profit organization to review proposed public/private partnership transactions for quality and reasonableness. Such an entity could develop and promulgate criteria for rating proposed investment deals to be approved by the Secretary using accepted financial and organizational criteria and would be on a scale that objectively documents public benefits.

Testimony of

Arthur T. Leahy

Chief Executive Officer

Los Angeles County Metropolitan Transportation Authority

House Committee on Transportation & Infrastructure,

Subcommittee on Highways and Transit

"Using Innovative Financing To Deliver Highway And Transit Projects"

April 14, 2010

Good morning Chairman DeFazio, Ranking Member Duncan and members of the Transportation and Infrastructure Committee's Subcommittee on Highways and Transit. On behalf of the Los Angeles County Metropolitan Transportation Authority (MTA), I appreciate the opportunity to share my thoughts with you on using innovative financing to deliver highway and transit projects.

The topic of this hearing is timely. The MTA and more broadly, Southern California, has a rich and long history of delivering transportation projects using new financial tools. I believe there are some important lessons we have learned that will help positively guide Federal policy for the authorization of our Nation's highway and transit programs.

Before delivering my testimony, allow me to very briefly describe the agency I serve.

The MTA is the third largest public transportation agency in the United States. We are responsible for transportation planning, coordination, design, construction and operation of bus, subway, light rail and Bus Rapid Transit (BRT) services for the 10 million residents of Los Angeles County. We also have strategic partnerships with Caltrans and Metrolink that helps support an extensive HOV and commuter rail network. We fund highway and street construction, bike paths, fund the freeway service patrol, among a number of other projects and services. The MTA serves a 1,433 square mile service area with approximately 200 bus routes, over 75 miles of rail lines, and over 400 miles of carpool lanes that crisscross Los Angeles County. We have over 9,000 dedicated employees and an annual budget of approximately $3.5 billion.

Prior to highlighting a number of innovative financial tools the MTA and our region have used to deliver transit and highway projects – on time and on budget – I think it would be worthwhile to frame the issue in a broader sense.

The greatest financial innovation that we – the MTA – have taken to deliver transit and highway projects is the fact that our voters in Los Angeles County have made the tough choice to tax themselves to create more mobility for them, their families and their community. I believe this is an extremely important characteristic of our region and it sets us apart from most of the rest of the country and it should be appropriately recognized in Federal policy; I will have more to say on that in a moment.

In 1980, Los Angeles County voters elected to support a half-cent sales tax on retail sales in the County. This was repeated in 1990. And most recently, in the middle of our current recession, Los Angeles County residents – by a two-thirds margin – voted in November of 2008 to authorize an additional half-cent sales tax to fund specific transit and highway projects.

Taken together, these funds will amount to approximately $1.5 billion this year. This means that worthwhile transit and highway projects identified by our Board of Directors can move from the drawing board to reality in our county. Being a self-help county, to be frank, is among the most innovative steps our agency, or any other agency, can take in accelerating the delivery of good transportation projects.

As you are aware, Southern California has tried varying examples of innovative financing using private equity and public-private partnerships; these efforts have yielded a wealth of knowledge and experience that I believe can help guide future Federal policy in this area.

The first of three projects in Southern California that are exceptional examples of the power of innovative financing is the Alameda Corridor.

The Alameda Corridor has served as national model for innovative financing. In the mid-1990's the MTA was a planning and funding partner with the Alameda Corridor Transportation Authority (ACTA). Established under California state law as a Joint Powers Authority (JPA), ACTA was responsible for the construction of a 20 mile trade corridor, which removed over 200 grade separations, consolidated rail lines operating from the San Pedro Bay Ports (Los Angeles and Long Beach), and increased container rail operating speeds from an average of 15 mph to over 40 mph. As a member of the ACTA JPA, my agency was involved in the development and implementation of an innovative financing plan for the Corridor project, which included over $340 million of MTA generated revenue (14% of the total funding). These local funds were instrumental in leveraging a precedent setting Federal loan guarantee for the Corridor project, totaling $400 million (16% of the total funding). This Federal loan guarantee was secured by a unique container fee collected by ACTA on all cargo moving through the Corridor, and we are told served as a policy template for the U.S. Department of Transportation's TIFIA loan program.

Let me add that another innovative element of the Corridor project was implementation of design-build as an essential delivery tool to keep the project on time and on budget. The Alameda Corridor has become the cornerstone of a Southern California trade corridor system, which extends beyond our metropolitan region into every area of the country. As the Subcommittee is aware, over 43% of all waterborne goods entering the United States are processed through the Port of Los Angeles and Port of Long Beach. The value of these goods exceeds $280 billion, creating over 3 million jobs, and generating over $30 billion in state and local tax revenues. Recently, the U.S. Department of Transportation issued a report entitled "America's Freight Transportation Gateways: Connecting Our Nation to Places and Markets Abroad" ranking our ports as the number one strategic gateway in the country, based on "value of shipments." We are pleased that the lessons learned from the Alameda Corridor experience has served as a model for National transportation policy.

The second example of employing innovative financing in Southern California that I would like to share with you concerns State Route 91 (SR 91). As the former CEO of the Orange County Transportation Authority, I worked closely to ensure the success of this innovative toll road. The Express Lanes, when they opened in 1995, represented the first privately financed toll road in our

Nation in more than 50 years. They were also the world's first fully-automated toll facility, and I believe the first application of value pricing in the United States.

Before being acquired by the Orange County Transportation Authority in January of 2003, the SR 91 was financed on a limited recourse basis with a private developer borrowing the necessary funds from capital market sources. The cost of the project, approximately $130 million, was fully paid for by the private sector.

Today, the SR-91 Express Lane Project is among the most successful examples of a toll road in America. Without the use of innovative financing, this project would have been difficult to build.

Now, while some people have pointed to this project as an example of the failures of private financing and ownership of a public-use facility, I beg to differ and offer up that the experience with SR-91 Express Lanes was instructive on the limitations of private ownership and provided an excellent learning experience for the development of future franchise agreements. It is noteworthy that under public ownership the SR-91 Express Lanes are producing the highest revenue, vehicle occupancy, and vehicle speed in the history of the project.

Much has been written and said about the restrictions contained in the original franchise agreement with the private operator, some of it before this very committee, and it has been offered up as an example of why private financing and ownership cannot be sustained for public-use facilities. I believe the conclusions some have drawn miss the vital lessons we take away from this particular experience. We learned from SR 91 two important perspectives: one, the view of a private concessionaire and their desire to protect a significant investment; and two, the view from a public sector policy standpoint and the limitations and incentives [specifically the desire for a non-compete clause] that can be tolerated by the traveling public in order to entice future private investment.

The third program that I would like to highlight is related to the innovative financing that our agency has successfully executed with respect to our joint development program. The MTA has smartly advanced our transit projects by actively promoting private sector investments utilizing a series of innovative financial tools such as ground leases of our park and ride lots, subway transit plazas and excess right of way to create transit oriented developments. These developments – fully paid for by the private sector - both provide substantial income to the agency in the form of ground rent as well as transit improvements such as bus layover facilities, commuter park-and-ride spaces, and attractive residential, retail and commercial spaces that facilitate and encourage use of public transportation.

Just one example of the more than 30 projects now built or underway utilizing these innovative financial tools and our transit system is the recently opened $600 million Hollywood and Vine project - built on a full city block above our subway facility and totally paid for by the private developer who also pays substantial ground rent to the agency. The facility includes a 300 room hotel, over 580 market rate and affordable residential units and over 30,000 square feet of retail shops and restaurants. Our bus layover facility for the area is situated beneath the structure at ground level as are bicycle storage and enhanced station entrance facilities -- all paid for by the private developer as a credit against ground rent.

These projects, now approaching $3 billion in total private developer cost, also provide many construction and permanent jobs and are significant contributors to the economies of the areas in which they are located.

To conclude my remarks, I want to address an exciting new transportation proposal in Southern California that will depend – in part – on using innovative financing tools – to get hundreds of thousands of people back to work in our region.

As members of this Subcommittee may be aware, the Mayor of the City of Los Angeles has proposed accelerating the transit projects identified in the half cent sales tax adopted by Los Angeles County voters in November of 2008. Specifically, the Mayor is seeking federal support to permit these transit projects to be built within 10 years, not the 30 years outlined in Measure R, the half-cent sales measure.

Similarly, I believe our highway projects identified in Measure R are ripe for innovative financing and public private partnerships that serve the public good and make economic sense.

Tomorrow, at a MTA Board subcommittee meeting back in Los Angeles, I will recommend to our full Board of Directors to support what has become known as the 30/10 plan. I believe the benefits we can realize from this plan will be great for the region and the nation and will demonstrate the importance of leveraging a strong local commitment with important federal support to accelerate the twelve transit projects identified in Measure R.

In testimony offered last month before the U.S. Senate Environment and Public Works Committee, the Mayor of Los Angeles cited the benefits of accelerating the transit Measure R's transit program – which included an annual reduction of over 568,000 pounds of mobile source emissions, 10.3 million fewer gallons of gasoline used, 77 million more transit boardings and 208 million fewer vehicle miles traveled annually.

In addition to the acceleration of transit projects, I also believe that accelerating the construction schedule of highway projects included Measure R is vital for our region.

According to a recent analysis conducted by the Los Angeles Economic Development Corporation (LAEDC), a well respected business leadership organization, Measure R's highway and transit projects could generate as much as $68.8 billion in economic output and create more than 500,000 jobs over a 30 year period. This is particularly important due to the significant impact it would have on the economy of California and the entire nation.

With double digit unemployment facing southern Californian's, the idea of accelerating, in a safe, operationally sound, and fiscally responsibly manner, transit projects that will benefit our region makes good common sense. And if this acceleration can occur by getting the federal government – through innovative financing – to spark a massive jobs spike in California – the question that begs an answer is – why not?

And likewise, if accelerating the construction of our highway projects identified in Measure R is feasible, we should take a careful look at how that can be achieved.

While our agency will certainly be seeking federal New Starts funds for two large projects and while we continue to effectively use federal funds from the highway formula program, there are three innovative financial tools that our region, and the Nation as a whole, could benefit from if Congress were to ensure their success. These tools could also be used to get a plan like 30/10 off the ground.

First, I believe the National Infrastructure Investment Finance Fund, as outlined by the President in his Fiscal Year 2011 Budget holds the promise of leveraging local dollars that self-help transportation agencies collect – to build our way out of this recession. If the NIIFF can offer flexible loan repayment at U.S. Treasury rates and guarantees, along with credit enhancements and commitments for financing – it can spur efforts like 30/10 that will build our economy without burdening our budget and negatively impacting our deficit.

Second, I believe that the Build America Bonds program can be modified to become more transit-specific. For example, setting aside a portion of Build America Bonds for massive transit projects – akin to the $10 billion plus transit investment envisioned in an accelerated 30/10 plan would encourage economic growth and get Americans back to work in a significant way.

Third, I believe Chairman Oberstar's proposal to create a Metropolitan Mobility Access Program in the next surface transportation bill would provide the type of innovative financing that would bolster efforts like 30/10 that seek to get our Nation's infrastructure in order – and spare us from becoming a third-world country when it comes to our roads and transit systems.

As a transportation professional, I can assure you that I cannot achieve my primary responsibility of moving people safely and efficiently throughout our region if Congress does not act to provide innovative financing tools.

Providing these tools, whether it is the NIIFF, transit focused Build America Bonds or the Metropolitan Mobility Access Program, holds the genuine promise of spurring efforts like 30/10 across the Nation.

Providing these innovative financial tools will, I believe, dramatically boost mobility in America and – and I emphasize this – at a relatively low cost to the Federal government.

It is my considered opinion that sparking an impressive growth in jobs in America by employing innovative financing for transportation projects is a sound course of action for Congress to pursue.

Chairman DeFazio, Ranking Member Duncan and members of the Subcommittee, thank you for the opportunity to testify before you today. I would welcome answering any questions you or your colleagues may have regarding my testimony.

Questions for Mr. Arthur T. Leahy
Chief Executive Officer
Los Angeles County Metropolitan Transportation Authority

Highways and Transit Subcommittee Hearing
April 14, 2010

Questions from Chairman DeFazio

1. Your testimony mentions a type of transit funding tool called "joint development" that MTA has used. Currently, the U.S. Government Accountability Office is conducting a study on several types of value capture mechanisms for transit projects, including joint development as well as tax increment financing, special assessment districts, and developer impact fees. While these mechanisms usually create funding – rather than financing – for projects, the funds that are captured can be used as a revenue stream to support larger financing endeavors such as a TIFIA loan or bond issuances.
   - What types of provisions should the next surface authorization bill include in order to support communities that use value capture tools?

2. Have you ever used Fare Box Revenue Bonds and if so, what has been your experience with them?
   - TEA-21 authorized the use of transit fare box revenues as collateral for bonds, but only if the level of State and local funding committed to transit for the three years following the bond issuance is higher than the funds that were committed in the three years prior to the bond issuance. Is this good policy or does this provision need a change?

Questions from Ranking Member Duncan

1. Looking at the Mayor's 30/10 proposal to accelerate 30 years worth of Los Angeles area transit project development and construction into 10 years, is there data to support the assertion that there will be sufficient Measure R sales tax receipts to repay federally secured loans of almost $9 billion? How have receipts from Los Angeles County's Measure R dedicated sales tax been affected by the recession?

2. Why does the Mayor's 30/10 proposal only include transit projects, and not highway projects?

3. LA MTA has been very successful in securing private sector investment for joint development projects at transit stations and parking locations and in excess rights-of-way. What are the direct financial benefits to MTA of these joint development projects?

4. Can you recommend any improvements to the Federal Transit Administration's joint development policy that would make it easier to enter into joint development agreements?

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Responses Prepared for:

Chairman DeFazio and Ranking Member Duncan
Highways and Transit Subcommittee

Responses Prepared by:

Arthur T. Leahy
Chief Executive Officer
Los Angeles County Metropolitan Transportation Authority

June 16, 2010

Questions from Chairman DeFazio

1. Your testimony mentions a type of transit funding tool called "joint development" that MTA has used. Currently, the U.S. Government Accountability Office is conducting a study on several types of value capture mechanisms for transit projects, including joint development as well as tax increment financing, special assessment districts, and developer impact fees. While these mechanisms usually create funding – rather than financing – for projects, the funds that are captured can be used as a revenue stream to support larger financing endeavors such as a TIFIA loan or bond issuances.

   > What types of provisions should the next surface authorization bill include in order to support communities that use value capture tools?

   Answer: The Los Angeles County Metropolitan Transportation Authority (LACMTA), believes that a broader "early approval" process and language that continues to allow, and in fact encourages, the FTA to approve development on and around transit improvements utilizing land originally purchased utilizing federal funds would be helpful in order to strengthen the use of value capture tools. This broader "early approval" would be appropriate so long as the development relates to promoting increased transit (bus and rail) ridership, multi modal transit improvements (e.g., bike facilities, shared vehicle stations/facilities) etc. with the consequent reduction in vehicle miles traveled and improved air quality as a consequence of fewer vehicle trips.

   In our opinion, the FTA has been quite forthcoming and effective in their approvals of our joint development projects. Specifically, the FTA Regional Office in San Francisco has been a strong partner on joint development issues. This effective partnership is largely the result of the large number of projects we have collaborated on with the FTA Regional Office and their familiarity with our processes.

With respect to final approval of joint development projects, FTA Regulations provide that their review of the actual documents (Joint Development Agreement and Ground Lease) not be executed until much developer expense in planning, negotiating, legal, zoning and entitlement etc.) has already been done. Coming so late in the process (after the developer has expended significant money) makes many developers nervous, and it would seem that so long as the FTA is made aware of the scope of the development (e.g., number of residential units, square footage of retail/office etc. ancillary improvements such as park and ride, bicycle etc.) their approval can come closer to the onset of the process as the documents themselves merely reflect the content of the overall joint development project.

Perhaps more substantively - granting the agency a "credit" against local match requirements on other allied federally funded transportation projects for the revenue and transit improvements funded by such land based revenue derived from private sources – commonly the ground leases from development fund additional transit improvements (enhanced public plazas and portals, park and ride structures, bicycle storage and repair facilities, tunnels/bridges connection transit to resolve pedestrian/auto conflicts, i.e. the tunnel connecting the Metro Orange and Red Lines at their termini in North Hollywood which are now separated by the busy Lankershim traffic and the bridge between our park and ride and bus terminals at Universal station that separate it from the Universal destinations). In addition to the direct revenue – often substantial – generated to LACMTA by the developments, we commonly fund such significant transit-related facilities from the ground rent generated as a credit against the ground rent due LACMTA. This "credit" could extend to other value capture methods (i.e. developer impact fees, special assessment districts and tax increment financing) as well – giving credit to local government and transit agencies for the enhanced value capture.

2. Have you ever used Fare Box Revenue Bonds and if so, what has been your experience with them?

> TEA-21 authorized the use of transit fare box revenues as collateral for bonds, but only if the level of State and local funding committed to transit for the three years following the bond issuance is higher than the funds that were committed in the three years prior to the bond issuance. Is this good policy or does this provision need a change?

Answer: We have issued, on two occasions, Fare Box Revenue Bonds. At present, we have approximately $191 million in these bonds outstanding. The final $11 million of one issue will mature on July 1, 2010, leaving about $180 million outstanding on the other issue. Both of these bonds were issued prior to the adoption of TEA-21. In the opinion of our agency's financial experts, they have worked well in providing low-cost, tax exempt financing for transit needs.

It is my understanding that there are no provisions in the Federal Tax Code which impose any limitations on use by LACMTA of fare box revenues as source of payment of its Series 2010-A Bonds (beyond the same limitations which apply to the use of sales tax revenues as a source of payment). Specifically, the Tax Code imposes no requirement on LACMTA concerning any level of state and local transit funding before our agency may pledge its fare box revenues to pay the Series 2010-A Bonds.

Questions from Ranking Member Duncan

1. Looking at the Mayor's 30/10 proposal to accelerate 30 years worth of Los Angeles area transit project development and construction into 10 years, is there data to support the assertion that there will be sufficient Measure R sales tax receipts to repay federally secured loans of almost $9 billion? How have receipts from Los Angeles County's Measure R dedicated sales tax been affected by the recession?

   Answer: Yes, given the assumptions of changes to existing Federal provisions requested in the 30/10 Initiative. With respect to receipts from Los Angeles County's Measure R dedicated sales tax and the impact of the recession, let me share the following:
   - Measure R was effective on July 1, 2009, some time after the beginning of the recession (closer to the end of the recession, Summer 2009).
   - The first year Measure R estimate in mid-2008 was $700 million.
   - First year FY10 Measure R revenues are currently estimated at $564 million, about 20% less than originally projected.
   - For the 30/10 Initiative analyses, first year revenues have been adjusted down to the current FY10 estimate of $564 million.

2. Why does the Mayor's 30/10 proposal only include transit projects, and not highway projects?

Answer: The LACMTA Board of Directors moved earlier this year to adopt the 30/10 Initiative proposal. At the same meeting, the Board adopted a motion to accelerate our highway program funded through Measure R, the half cent sales tax adopted by Los Angeles County voters in November of 2008. The LACMTA has, at the direction of its Board, been aggressively advancing our agency's twin goals of accelerating both our transit and highway programs. The 30/10 Initiative will generate over 160,000 much needed jobs to the southern California region when the initiative is put into place by the Federal Government. And more, the initiative will deliver enormous environmental benefits, reducing vehicle miles traveled in Los Angeles County by over 208 million miles, while simultaneously reducing 568,000 pounds of mobile source emissions. These benefits are profound and will help reshape southern California's economy to reflect the sustainable future Congress and the Obama Administration have been working so hard to advance in Washington, D.C.

3. LACMTA has been very successful in securing private sector investment for joint development projects at transit stations and parking locations and in excess rights-of-way. What are the direct financial benefits to MTA of these joint development projects?

   Answer: The direct financial benefits come in two principal ways:

1). The value of the underlying real estate originally utilized for only surface parking, plaza's etc. is captured via a joint development and a ground lease with the private developer funding the full development cost and operational responsibility and costs. LACMTA then receives annual substantial "ground rent" throughout the entire term of the lease and, at the termination of the lease, also owns the improvements and continues its ownership of the underlying real estate which can either continue in operation or be re-developed with new and/or improved facilities perpetually. The income goes to general fund uses and can be bonded etc. and used for any agency purpose.

2). As noted above, we often have the developer fund and build transit improvements at the location (new or expanded park and ride, tunnels, bridges, bike facilities, plaza, covered subway portal and walkway approaches and streetscape improvements) to make the stations more attractive and conducive to use. These improvements would otherwise have to be separately funded by the agency and we, instead, have the developer build them and give a partial credit against the ground rent for a number of years.

4. Can you recommend any improvements to the Federal Transit Administration's joint development policy that would make it easier to enter into joint development agreements?

Answer: The LACMTA believes that a broader "early approval" process and language that continues to allow, and in fact encourages, the FTA to approve development on and around transit improvements utilizing land originally purchased utilizing federal funds would be helpful in order to strengthen the use of value capture tools. This broader "early approval" would be appropriate so long as the development relates to promoting increased transit (bus and rail) ridership, multi modal transit improvements (e.g., bike facilities, shared vehicle stations/facilities) etc. with the consequent reduction in vehicle miles traveled and improved air quality as a consequence of fewer vehicle trips.

In our considered opinion, the FTA has been quite forthcoming and effective in their approvals of our joint development projects. Specifically, the FTA Regional Office in San Francisco has been a strong partner on joint development issues, this perhaps owing to the large number of projects we have collaborated on and their familiarity with our processes.

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Perhaps more substantively - granting the agency a "credit" against local match requirements on other allied federally funded transportation projects for the revenue and transit improvements funded by such land based revenue derived from private sources – commonly the ground leases from development fund additional transit improvements (enhanced public plazas and portals, park and ride structures, bicycle storage and repair facilities, tunnels/bridges connection transit to resolve pedestrian/auto conflicts, i.e. the tunnel connecting the Metro Orange and Red Lines at their termini in North Hollywood which are now separated by the busy Lankershim traffic and the bridge between our park and ride and bus terminals at Universal station that separate it from the Universal destinations). In addition to the direct revenue – often substantial – generated to LACMTA by the developments, we commonly fund such significant transit-related facilities from the ground rent generated as a credit against the ground rent due LACMTA. This "credit" could extend to other value capture methods (i.e. developer impact fees, special assessment districts and tax increment financing) as well – giving credit to local government and transit agencies for the enhanced value capture.

Jeffrey A. Parker
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TESTIMONY OF JEFFREY A. PARKER
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SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
COMMITTEE OF TRANSPORTATION AND INFRASTRUCTURE
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC

APRIL 14, 2010

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify today.

I founded our firm in 1981. We are an independent advisor on innovative finance and project delivery for more than $10 billion of newly-constructed infrastructure projects across the country. Our work encompasses tolled and non-tolled highway projects, transit, and intermodal facilities. We are a truly US firm – established in the basement of my home in Northwest Washington, DC and now with staff in Philadelphia, New York, Miami and San Francisco.

We advise the State of Florida on the internationally-recognized, $900 million Port of Miami Tunnel and $1.65 billion I-595 Corridor Improvements Public-Private Partnerships ("P3s"), as well as on the $615 million SunRail commuter rail project and the $1.7 billion Miami Intermodal Center. In addition to Florida, our advisory work includes transport projects New York, California, Georgia, and North Carolina. Our clients are all public agencies.

With respect to federal financing of transportation, we have advised on multiple Full-Funding Grant Agreements in Pittsburgh, Charlotte and Virginia, as well as five closed TIFIA loans totaling $1.5 billion. In its early days, our firm advised the Federal Transit Administration on innovative financing and financial management oversight of megaprojects in Los Angeles, San Francisco and Puerto Rico.

However, I would like to stress that my remarks today are my own and are not intended to be made on behalf of any of our clients.

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We believe strongly there is no "one size fits all" solution to America's transportation financing and project delivery needs. However, our involvement in the P3 market has developed quickly for a number of reasons.

First, for some projects, our public clients view P3 as a desirable option for transferring risk, gaining cost certainty for initial construction and over the project life cycle, matching cash outlays to available revenues, and assuring high service quality.

Second, our firm has introduced a broader view of P3s to the US market that addresses many of the concerns raised by early transactions in the field. As advisors to the public sector and therefore advocates for the public interest, our experience demonstrates that international P3 frameworks can be adapted to the US in win-win solutions that address issues expressed by Members of the Subcommittee regarding public benefit, jobs, interstate commerce, and acknowledgement of the federal interest in our nation's strategic infrastructure assets. While I personally understand the Committee's concerns that budgetary pressures at the federal, state and local levels could be used during these hard times to serve as a justification for transactions we may regret in the future, our experience demonstrates that P3s can be managed and applied selectively to advantage today and in the challenging years ahead.

Third, transport markets in ports, roads, rail, transit and aviation have been evolving to encompass increasing levels of private risk – Denver's T-REX and Utah's I-15 design-build are examples, as are New Jersey's Hudson-Bergen light rail system, Minneapolis' Hiawatha Light Rail, Miami International Airport's Intermodal Center, and Seattle's Union Station. We are privileged to have advised on these success stories, some of which extend back more than 20 years. Current P3 practices build on these early collaborations, as well as subsequent international experience and have yielded increased competition (particularly for technically challenging projects and those too large for conventional surety bonding), upgraded technology, and higher service standards – all while meeting federal mandates regarding labor practices, Buy America, civil rights and other social equity goals.

What is different about the I-595 and Port of Miami Tunnel P3s that can help in developing federal policy and legislation?

- The Port of Miami Tunnel Project charges no tolls. The $900 million cost, as well as 30+ years of operations and maintenance (and capital renewals), are financed by the private sector using a stream of payments made by the Florida Department of Transportation – these payments are known as "Availability Payments." The amounts are capped and subject to deduction if strict performance requirements are not met. The Availability Payments do not begin until the tunnels are open to the public – since the concession period is fixed at 35 years, delays in completion mean fewer availability payments and reduced revenues to the concessionaire. The State is also making $100 million in payments during construction that are tied to the attainment of specific milestones and a $350 million final acceptance payment that is due upon completion – these arrangements align the private sector's interest in realizing timely payment with the State's interest in avoiding delays and cost overruns.

- Tolls on the I-595 Managed Lanes are set, collected and retained by the State of Florida. The Concessionaire is responsible for construction, operation and maintenance of the entire facility – both the tolled managed lanes and the non-tolled general purpose lanes, together representing $1.65 billion in new construction for additional capacity, interchange and safety improvements. Again, the State will make Availability Payments once the project is completed, transferring the risk of delay and cost overruns to a private concessionaire. In the case of I-595, no payments are made during construction. The State will make $686 million of "final acceptance payments" in addition to the availability payments after the construction works are completed and Florida DOT will retain all toll revenues.

- Difficult cost and construction risks are transferred to the private sector with substantial cost savings to the public. For the Port of Miami Tunnel, the technical challenges of boring 41-foot diameter tunnels in soft, porous rock, under water, with limited ground cover and difficult geometry led many traditional bidders to advocate for "cost plus" arrangements, or request new environmental approvals in order to blast the sea bottom for "sunken tube" construction. New market entrants readily accepted the challenge and submitted compliant bids. Florida's in-house cost estimates pegged construction costs north of $1.2 billion, yet superior technical know-how available to Bouygues Travaux Publics allowed for a winning bid that assumed construction costs almost half the State's engineering estimates. Despite years of delay resulting from negotiations between the State and its local government partners, the availability payment at financial close on October 15, 2009 was $32.5 million (in 2009 dollars) per year compared to the State's "affordability limit" of $68 million (in January 2007 dollars) per year when bids were received on March 5, 2007. Similarly, innovations in reusing existing civil structures on I-595 led to overall project cost savings to Florida of $200 million, with the State's private partner accepting the risk of 30+ years of operating and maintenance costs.

- The federal role was essential to closing both transactions. I-595's bids were received five days before the Lehman Brothers' bankruptcy filing. During those dark financial times, the State and ACS Infrastructure Development, a Spanish concession company, worked feverishly to save the project and the thousands of jobs it represented. When the capital markets froze and bond insurers disappeared, the parties shifted to bank financing. When their 50% equity partner was unable to deliver its $75 million share, ACS stepped up provided 100% of the equity. When the banks insisted on an additional $50 million in equity, ACS once again stepped up. When the long term debt markets evaporated, USDOT's commitment to provide a $600 million TIFIA loan became essential to reaching financial close. When falling State transportation revenues, delay costs, disruption in the financial markets, currency exchange gyrations, and skyrocketing commodity prices pushed the Port of Miami Tunnel's costs beyond Florida's reduced affordability range, USDOT stepped up and worked with the State to federalize the project after its award and deliver a $340 million TIFIA loan. Neither project, which together represent $2.5 billion in new construction and thousands of jobs, could have closed in 2009 without TIFIA and support from the Federal Highway Administration and USDOT.

- Availability payments allowed public priorities to be preserved. Toll revenue alone will not be sufficient to cover the cost of I-595. However, it may be possible to argue that I-595 could have been financed using tolls – by limiting the throughput on the general purpose lanes, delaying improvements on the non-tolled elements, and permitting revenue maximization in pricing the managed lanes, Florida might have squeaked by with a tolled solution. However, the State's policy was to view I-595 as part of a congestion management system that also included its very popular I-95 Express Lanes and to maximize traffic throughput, rather than revenue. Therefore, Florida DOT opted to build all of the non-tolled improvements as quickly as possible and to control the tolling itself by using an availability payment to compensate the Concessionaire. On the Port of Miami Tunnel, imposition of a toll could have harmed the competitiveness of the Port, the community's second largest employment generator. Financing using toll revenues also was problematic because traffic is dependent upon the Port and outside the control of the concessionaire. Both projects advanced to closing with strong public support. The availability, milestone and final acceptance payments are all capped – there is no "windfall" if traffic or revenues exceed initial expectations. The incentives to maximize returns within the fixed limits of the financial model are for: high quality service delivery (fewer deductions from the availability payments), timely completion (potentially more availability payments and less interest during construction), and lower construction and life cycle costs – all of which are fully aligned with the public interest.

- Transparency and "sunshine" can be difficult to manage, but are essential to long term success. Attached are the key financial metrics of the I-595 and Port of Miami Tunnel transactions. Further details are available on the Florida DOT's website. Both transactions were subject to "before" and "after" Value for Money analysis to demonstrate the benefits of a P3 approach. Florida's Value for Money analysis precedents have been studied by the General Accounting Office. The entire procurement process for both projects occurred in "the sunshine." Full disclosure allows all the stakeholders and funding partners to be at ease with the process and its results.

What else can we do to adapt P3 experience to the US market and address federal concerns?

First, respond to the challenge of revenue-risk transfer. Availability payments may not be appropriate in all cases. For several clients we are examining transaction structures involving variable length concessions that set firm targets for expected gross revenues through a competitive process. If traffic and revenue is more favorable than forecast, the concession terminates earlier and, if reality proves less favorable, the concession can be extended until the agreed targets are achieved. At the same time, if the public decides to terminate the concession for any reason, the compensation is simply the difference between the agreed targets and the amounts collected to date. We believe a "present value of revenue" approach could yield a favorable cost of capital and greater transparency. These concepts have been proven in other countries and testing in the US may be timely.

Second, strengthen TIFIA and other federal lending programs. As noted above, TIFIA proved to be a critical success factor in achieving financial close when the financial markets were disrupted. As conditions in the capital markets hopefully continue to stabilize, TIFIA's role may become less important. However, TIFIA, RRIF and other potential federal lending programs will always remain critical counter-cyclical tools that should be adequately funded, and administered consistently and transparently. Our public clients recently submitted letters of interest for new TIFIA loans representing close to $3 billion of new investment in transport infrastructure in New York, California and Florida. The more financing tools and flexibility states and localities have available, the greater the opportunity to craft finance arrangements best suited to the characteristics of individual projects.

Third, broaden the range of long term finance options. By approving $15 billion of transport Private Activity Bond (PAB) capacity and subsequently exempting these bonds from the Alternative Minimum Tax (AMT), Congress created an important new tool for long term debt financing. Unfortunately, capital market disruption has precluded the use of PABs to the extent we all had hoped. Going forward, expansion of the PAB provisions, continuation of the AMT exemption and introducing an option for a Build America Bond PAB will be essential to maintaining competition for long term debt financing between the banks and the capital markets. A BAB/PAB would facilitate participation by pension funds and other institutional players in the infrastructure finance market.

Fourth, increase federal program flexibility and equity. Many of our clients are frustrated by prescriptive federal program categories, set asides and mode-specific funding. Equitable revenue return to states that encourages asset preservation, flexibility to meet capacity needs and a fresh look at the federal role in project selection and oversight are needed to "tune-up" the intergovernmental transportation funding partnership. Our experience with negotiating commercial terms and financial models gives us confidence that P3 transactions can be structured to withstand public scrutiny and demonstrate fair returns in exchange for legitimate risk allocation without additional federal oversight – in fact federal grant and lending programs already offer Washington a clear window into virtually every aspect of a proposed transaction.

Finally, expand the discussion of which projects are appropriate for P3 finance and delivery. High speed rail, public transit, freight rail, and intermodal facilities for goods movement and passenger operations are the next phase of evolution in P3 practice. Use of availability payments demonstrates that bidders will respond to projects like public transit that have no net revenue potential.

To date, I have been concerned that communities frequently view P3s as a way to fund projects that fall outside of their revenue forecasts – that somehow the private sector will invest the resources to allow marginal or otherwise uneconomic projects with strong political constituencies to advance. We do a disservice to potential private partners, as well as the public, to suggest that important investments can be made without tangible revenue streams from taxes or user fees, or other transfers of real value, such as tolls on existing facilities, real estate development, and so forth.

There is no magic in P3s. Continuing and growing federal appropriations that are matched at the state and local levels are the only way we will meet the transport infrastructure needs of the country. In many, but not all cases, public-private partnerships can help us deliver, finance, operate and maintain these essential projects in order to get more product for the money and higher levels of service for the public.

Thank you again for the opportunity to enter these ideas in the record and I look forward to your questions.

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Port of Miami Tunnel *($USD millions)*

Closed October 15, 2009

Sponsor	Florida Department of Transportation
Concessionaire	Miami Access Tunnel (Meridiam/Bouygues)
Concession Tenor	35 years
Availability Payment (2009 $USD)	$32.47

SOURCES AND USES OF FUNDS

Uses of Funds		*Sources of Funds*	
Construction	$607	Equity	$80
Reserves	$41	Senior Bank Debt (Milestone Pymts)	$313
SPV, Insurance, Commissioning	$60	Senior Bank Debt (Availability Pymts)	$28
Financing & Other Capital Costs	$195	US DOT Loan + Accrued Interest	$381
	$903	Sponsor Milestone Payments	$100
			$903

COSTS OF FINANCING

Return on Equity	11.33%		
Senior Debt	(MP & AP)	US Dept of Transportation Loan (TIFIA)	
Base rate	3.38%	Base rate	4.30%
Margin	3.00%	Margin	0.01%
Swap spread	0.25%	All-in rate	4.31%
All-in rate	6.63%	Tenor	34 years
Tenor	5 Years and 6 Years		

I-595 Express Lanes and Corridor Improvements *($USD millions)*

Closed March 3, 2009

Sponsor	Florida Department of Transportation
Concessionaire	I 595 Express (ACS/Dragados/Iridium)
Concession Tenor	35 years
Availability Payment (2008 $USD)	$65.91

SOURCES AND USES OF FUNDS

Uses of Funds		*Sources of Funds*	
Construction	$1,197	Equity	$208
Reserves	$35	Senior Bank Debt (FA Pymts)	$526
SPV, Insurance, Commissioning	$114	Senior Bank Debt (Availability Pymts)	$256
Financing & Other Capital Costs	$322	US DOT Loan + Accrued Interest	$678
	$1,667		$1,667

COSTS OF FINANCING

Return on Equity		11.54%		
Senior Debt	*(FAP)*	*(MAP)*	US Dept of Transportation Loan (TIFIA)	
Base rate	3.28%	3.84%	Base rate	3.63%
Margin	3.00%	3.00%	Margin	0.01%
Swap spread	0.30%	0.30%	All-in rate	3.64%
All-in rate	6.58%	7.14%	Tenor	34 years
Tenor	10 Years	23 Years		

Questions for Mr. Jeffrey A. Parker
President
Jeffrey A. Parker & Associates, Inc.

Highways and Transit Subcommittee Hearing
April 14, 2010

Questions from Ranking Member Duncan

1. Are there any provisions in the Committee Print of the Surface Transportation Authorization Act that would have a detrimental impact on the use of innovative financing and public private partnerships?

2. Would Florida have been able to move forward with the Port of Miami tunnel project if they were not able to transfer the potential risks associated with construction cost overruns to the private sector?

3. In your testimony, you spoke about how availability payments related to highway projects. Are availability payments also an option for transit projects?

4. You have been involved in five different successful TIFIA loans. What role do you think TIFIA should play in the next reauthorization bill? As the credit markets begin to recover, do you think there will be as high a demand for TIFIA as there is today?

Jeffrey A. Parker & Associates, Inc.

June 10, 2010

Please find below my responses to the questions posed by the Subcommittee:

Are there any provisions in the Committee Print of the Surface Transportation Authorization Act that would have a detrimental impact on the use of innovative financing and public private partnerships ("P3)?

Yes, there are a number of impediments that would arise from the bill as now drafted, as well as many favorable changes. On the positive side, the legislation provides adequate resources to meet identified funding needs, introduces a simplified program structure with greater predictability of funding, puts increased emphasis on system performance and intermodal solutions to alleviate congestion, creates Metropolitan and National Infrastructure Banks, and establishes a separately-funded high speed rail program.

Some suggested changes include:

- *Office of Expedited Delivery*
    - The Committee may wish to consolidate the proposed new offices in FHWA and FTA into a single office. The bill's shift toward modal neutrality can be reinforced by locating the expediting function in the Office of the Secretary and by directing the new office to "level the playing field" of federal decision-making processes across the different modes. At this time, the transit program continues to suffer from delays and ambiguity relative to the highway program.
    - All USDOT loan and intermodal programs should be accessible through a single office that can cut across the modal silos.
    - In general, it would be beneficial to limit the amount of federal oversight and review whenever the federal share falls below, say [33%] and cost overruns or future operational costs will be absorbed by non-federal sources. This would not only facilitate public-private partnerships, it would expedite projects, reduce overhead and project administration costs for all parties including USDOT, and provide a real incentive to lower the federal share.
- *Office of Livability*
    - The proposal in the draft legislation could result in yet another silo within USDOT just for projects with livability characteristics, rather than encouraging all the modes to address this dimension in their normal planning

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and project delivery activities. Establishing this function in the Office of the Secretary with a cross-cutting mandate would reinforce the need to address livability considerations in all USDOT endeavors.

- *Office of Public Benefit*

    - The proposed functions are limited to toll road projects; however, public-private partnerships ("P3") pertain to all modes (transit, rail, port, airport, as well as highway and intermodal). Provisions for P3 also are mentioned in Sec 6001 pertaining to high speed rail. Congress' concerns and interests should be expressed consistently across all of the modes and addressed at the Office of the Secretary level.
    - Much of the compliance oversight proposed is already a feature of federal grant and loan programs, as those of us who operate daily in this space can attest. Creating the new office will prolong and duplicate the review process, while adding uncertainty to implementing costly and complex financial transactions. The net result may be to discourage innovative financing and procurement methods with potentially significant public benefits.
    - Congress' important concerns regarding interstate commerce might be better addressed by setting forth policy guidelines that offer a clear framework for the States and USDOT to follow. The States could then develop their own policies and submit them to USDOT for approval. USDOT's role would be to periodically audit compliance, rather than "approve" each transaction. This approach would offer private entities a transparent framework for evaluating and executing P3 opportunities with broad federal and state approvals in place. Airport, seaport, transit and other federally-funded transport assets can be similarly addressed so that a level playing field is preserved.
    - The items enumerated in the draft legislation that would be subject to approval and oversight by USDOT reflect many "best practices" for public owners engaging in P3 transactions. However, the introduction of new layers of USDOT oversight on a transaction-by-transaction basis will inevitably raise fears of delay, micromanagement and lack of transparency. Congress' desire to see States (and other grantees / designated recipients) apply these "best practices" is positive, but also can be realized by having USDOT approve in advance the general processes States intend to follow in their P3 procurements and contracts. Grantees would then follow the approved approaches or seek a waiver if needed from time to time. Compliance would be audited periodically. This approach would assure that Congress' concern for sound stewardship of assets with a strong federal interest is addressed, but allow for a more efficient and predictable procurement and project development process at the state and local levels.
    - Setting "fair" toll rates (also referenced in Sec 1301) is far from a science and the criteria for what is "fair" can vary widely from one project to another.

Attempting to establish objective measures to make such determinations could subject projects of national significance that have been carefully adapted to unique conditions to ad hoc decision-making by USDOT. That said, there are legitimate social equity and interstate commerce issues at stake and it should be possible for Congress to give policy guidance to the States and USDOT without triggering a new level of lengthy and potentially intrusive federal review. In addition, P3 projects can take numerous forms that would complicate administration of these provisions. For example:

- Florida, California and other states are now implementing toll projects under P3 structures which involve availability payments. In these cases the private concessionaire will have no ability to set toll rates and will not have direct access toll revenues. Would such transactions be subject to review?
- Toll roads using congestion charging to maintain free traffic flow may require user fees at very high levels. How would the approval process accommodate dynamic pricing strategies that fluctuate in real time?
- Our firm is developing a project for a public client using a "present value of revenue" concession approach that would introduce the concept of a variable length term. Any federal review process would need to take the novel risk allocation benefits of this structure into account in making its analysis. Our experience with introducing similar innovations (availability payments, ultimate recovery TIFIA loans) is that federal review processes are not always welcoming to change and take a long time to get up to speed.
- In other cases, "private" toll roads that are not subject to the legislation may connect to facilities that would be subject to review and compromise many of the equity considerations that the Committee is raising.
- It is possible that evolution in pricing, targeted subsidies and fare media could permit "congestion pricing" for mass transit that also may require similar guidance.

- ***Section 1504 Public Private Partnership Agreements***
  - See concerns expressed above with regard to the Office of Public Benefit.
  - Additional concerns:
    - Calculating "fair market value" in instances of termination for convenience can be a contentious process that may yield unintended consequences and higher costs for the Government as the bill is currently drafted. As evidenced by the disparity among bids on given

projects, there is a wide range of potential values that can be legitimately defended as reasonable.[1]

- Value for money ("VfM") analysis is subject to many methodological interpretations, particularly insofar as the discount rate and cost savings attributable to private sector implementation are concerned. Prior to determining the preferred project delivery approach, both the private sector and public sector delivery scenarios are developed using entirely hypothetical assumptions about construction pricing and financial market conditions. Even for post-procurement analysis, one delivery scenario will remain entirely based on hypothetical outcomes. These ambiguities have been the cause for controversy over the results of VfM studies in various countries, as well as some states. Given that the analysis is based on assumptions, there is no end to the amount of debate that can go on – VfM is best used to test a range of scenarios and as a decision support tool rather than as a precision instrument. Again, Congress may unintentionally trigger a complex and unwieldy oversight process unless this language is carefully crafted and focused on encouraging best practices.[2]
- Finally, it should be noted that the VfM of a project is different from a federal perspective than from the perspective of a local procuring entity: in publicly financed scenarios, the local entity enjoys a federal subsidy from the use of tax-exempt debt (or Build America Bonds) that is in fact a cost to the federal government; while in privately financed scenarios, the local entity faces higher costs due to the need for the private financiers to pay federal tax on equity dividends and interest on taxable loans or debt. In other words, from a federal perspective, the cost of capital on a P3 may be lower than on a municipally-financed project, while the reverse may be true from the procuring agency's perspective.

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[1] For this reason, we believe that on some projects the "Present Value of Revenue" (PVR), variable-length concession approach has substantial merit. Under this approach, bidders stipulate in their offers the total present value of gross revenue they require before the concession ends. In the event of termination for convenience, compensation is largely arithmetic, with the present value of the revenue collected to date subtracted from amount bid to determine the outstanding balance. The amount due is then adjusted for breakage costs and avoided costs. We hope that the House legislation will encourage P3 structuring innovations like PVR that address existing concerns.

[2] VfM analysis is most appropriate for comparing assumptions involving the *costs* incurred over the lifecycle of a facility under different public and private delivery methods. Using VfM analysis to compare expected differences in *revenue* forecast assumptions between public and private entities may not be methodologically sound.

Would Florida have been able to move forward with the Port of Miami tunnel project if they were not able to transfer the potential risks associated with construction cost overruns to the private sector?

No.

Florida DOT and Florida's Turnpike Enterprise had studied the project extensively before deciding on the public-private partnership approach. Construction risk was a central issue and drove many finance and procurement considerations. Two construction methods were evaluated to build the Tunnel -- sunken tube and boring. The sunken tube approach was preferred by many contractors because it has less risk. However, the Port of Miami Tunnel had to be bored because of the environmental impacts blasting the sea bed for a sunken tube would have triggered. In addition, the cruise ship lines were concerned about disruption of their berths from surface operations associated with constructing a sunken tube.

Tunnel boring came with many risks – soft, porous rock under water with flowing sands and potential for large cavities; limited ground cover above the roof of the tunnel; challenging turning movements for the boring machine; and all associated with deploying a very large diameter machine (over 40-feet - the largest ever used for a transport project in the US to date). Florida had no experience with design or construction of this nature, or the future operations and maintenance that would be required. There was concern that the risks of traditional design-bid-build or even design-build (without long term operations and maintenance) would be unacceptable and could have required such large contingencies as to make the project infeasible.

European contractors did have extensive experience with large diameter machines in difficult ground conditions and were comfortable with the construction risks, as well as with accepting the long term maintenance and operations responsibilities at a fixed price. These contractors preferred the transparent risk allocation structure, the opportunity for technical innovation and the long term cash flow associated with a P3 framework. Under the concession agreement, letters of credit, surety bonds and parent company guarantees were all supplied to back-up the construction risks assumed by the private parties.

The competitive bidding process for the P3 structure resulted in three responsive bids and a guaranteed fixed price for construction and 30+ years of operations, maintenance and life cycle investment at well under FDOT's engineering estimate. Construction is now underway (the "official" groundbreaking ceremony will be held tomorrow in Miami).

In your testimony, you spoke about how availability payments related to highway projects. Are availability payments also an option for transit projects?

Yes.

We are pleased that the I-595 and Port of Miami Tunnel transactions have proven the concept of availability payments in the US and see considerable opportunity for broader applications in transit and other modes. In order to better explain the availability payment concept please refer to Attachment A, a background paper prepared by our firm.

Availability payments can have multiple applications in a public transit context:

- For new systems, a full turnkey procurement can be structured covering design, construction, finance, operations and maintenance (DBFOM). North American examples include the Denver RTD Gold Line and the Canada Line in Vancouver. A private entity performs all of these functions and is compensated through availability payments, with the public owner setting and retaining fares. Failure to deliver agreed service levels (number of scheduled trains, headways between trains) or meet service quality standards (cleanliness of vehicles and stations, lighting, safety, customer service) results in deductions from the maximum availability payment due. Hybrid variations could involve use of construction milestone and final acceptance payments to adjust future availability payments to fit available budget resources and take advantage of available public funds (the same principle as using down-payments to size future monthly mortgage payments), or allowing the concessionaire to retain advertising and other ancillary revenues.

- Availability payments also may be applied to procurements involving components of transit systems, rather than a complete service. This set of options also allows more flexibility in applying availability payment-based P3 structures to delivering improvements on existing rail systems. Public agencies can still perform system operations, as well as utilize existing rolling stock and train control systems.[3] Availability payment models that can be applied to components of new systems, or extensions of existing systems include:
  - Civil works - track bed, structures, tunnels, drainage systems, etc.
    - Payment to a concessionaire is based upon the readiness of the infrastructure for train operations
    - Payments can cover initial construction and future inspection, routine maintenance and rehabilitation
  - Rolling stock and maintenance, including maintenance facilities

[3] In Europe, many heavy and high speed rail P3 projects have been procured for the design, construction, financing and maintenance of the civil works components – leaving the rolling stock procurement, management, customer interfaces and fleet operations to public agencies.

  - Payment can be based upon having a specified number of trains ready to enter revenue service according to an agreed operating schedule
  - Payments may cover the capital cost of the vehicles and potentially maintenance facilities, routine maintenance and life cycle costs (periodic overhaul)
- Electrification (can be combined with civil works, or split with "systems")
- Signaling (often combined into a "systems" package with vehicles)
- Vertical and horizontal circulation systems (elevators, escalators, moving sidewalks)
- Parking and station facilities
  - Arrangements involving stations and parking facilities may have the potential to generate income to offset future availability payments
  - There is a rich body of European and Asian experience combining station construction and operations with joint development and transit oriented development programs

You have been involved in five different successful TIFIA loans. What role do you think TIFIA should play in the next reauthorization bill? As the credit markets begin to recover, do you think there will be as high a demand for TIFIA as there is today?

The TIFIA program has proven to be invaluable in making these three projects (which involved five loans) possible. Our experience offers clear examples of why TIFIA should be highlighted in the next reauthorization bill.

First, it is important to recognize that the five loans referenced above represent a wide range of projects, borrowers and project delivery mechanisms:

- Miami Intermodal Center
  - Land acquisition, design and initial construction
    - Loan Amount - $269 million
    - Borrower – Florida Department of Transportation
    - Secured by – future gasoline taxes collected in Miami Dade County
    - Lien - Senior Debt
  - Rental Car Facility design and construction
    - Loan Amount - 2 loans totaling $270 million
    - Borrower – Florida Department of Transportation
    - Secured by - Customer Facility Charges assessed daily to rental car transactions originating at Miami International Airport and contingent rents from tenant rental car companies triggered by certain financial metrics
    - Lien - Senior Debt

- I-595 Corridor Improvements and Express Lanes
    - Design and Construction of $1.6 billion reconstruction of 10.5 miles of existing interstate highway and addition of three reversible, congestion-priced managed lanes
        - Loan Amount - $603 million
        - Borrower – 1-595 Express, LLC, a private concessionaire
        - Secured by – future payments for capital construction beginning after Final Acceptance and future availability payments made by the Florida Department of Transportation beginning upon substantial completion
        - Lien - Subordinated Debt subject to springing lien

- Port of Miami Tunnel
    - Design and Construction of $900 million tunnels, related approach roads and bridge improvements
        - Loan Amount - $341 million
        - Borrower – MAT Concessionaire LLC , a private concessionaire
        - Secured by – future availability payments made by the Florida Department of Transportation beginning upon substantial completion
        - Lien - Subordinated Debt subject to springing lien

The diversity of these projects demonstrates how TIFIA can be used creatively to bring public or private, toll or non-toll, road or intermodal, and senior or subordinated lien transport projects to fruition.

Second, we have found the main advantages of TIFIA are:

- Favorable loan terms that limit interest accumulation during construction (i.e. "negative carry"), as well as the ability to capitalize interest during the initial start-up period after substantial completion;
- Long term repayment (35 years after substantial completion) at US government borrowing rates;
- Ability to strengthen senior debt structures (and shorten its term) to minimize the cost of capital and maximize bank / bond competition for senior debt;
- Low transaction costs; and
- Allowing public agencies to utilize subordinated debt structures that increase their financial capacity to build new facilities.

We believe these advantages merit highlighting TIFIA prominently in any reauthorization measure by an increase in resources allocated to cover the cost of federal credit subsidies.

For the benefit of the Subcommittee, my staff has undertaken an analysis of several projects we have advised which have either gone through to financial close, or we are currently assisting in order to quantify the benefit of TIFIA relative to Build America Bonds, Private Activity Bonds, or more conventional finance tools. The results are summarized in the table below.

The two projects that are "in process" are not identified by name. In these cases, broad ranges are shown for the inputs in order to avoid providing information that could affect future procurements. However, the benefits of TIFIA are derived from actual financial models. Finally, in all cases except the Port of Miami Tunnel, the TIFIA loan subsidy payment is paid (or is assumed to be paid) by USDOT.

We have expressed the "benefit of TIFIA" as the increased amount of construction that could be supported by the same public outlays if a TIFIA loan is introduced. The results will vary depending on: relative interest rates for debt as well as interest earnings on fund balances, whether the loan subsidy is paid by USDOT or the borrower, and the timing of TIFIA loan draws (at the start of construction, or later in the construction process with grants or other fund sources spent first).

In all cases TIFIA makes an important difference in stretching both federal and non-federal resources to deliver more production for the same dollars:

	Port of Miami Tunnel (POMT)	I-595	BART Oakland Airport Connector (OAC)	Project A**	Project B**
Sponsor	FDOT	FDOT	BART		
Type of Transaction	PPP	PPP	DBOM	PPP	PPP
Closing Date	10/19/2009	3/3/2009	Pending		
Construction Expenditures (millions)	$607.0	$1,197.0	$361.0	$800.0	$1,000.0
Total Project Cost (millions)	$903.0	$1,667.2	$484.0	$1,500.0	$1,300.0
Final Acceptance Payments (FAPs)	N/A	$501 Million*	N/A	N/A	N/A
Milestones at Final Acceptance	$350 Million	N/A	N/A	N/A	$350 Million
Financing Sources (millions)					
Grants	N/A	N/A	$378.4	N/A	N/A
PABs	N/A	N/A	N/A	$700.0	N/A
BANK LOANS	$341.5	$781.2	N/A	N/A	$600.0
TIFIA					
TIFIA Loan Draws	$341.0	$603.4	$104.8	$450.0	$500.0
TIFIA Capitalized Interest	$40.1	$74.9	$0.9	$150.0	$50.0
Total TIFIA	$381.1	$678.3	$105.7	$600.0	$550.0
Equity	$80.3	$207.7	N/A	$200.0	$100.0
Milestones prior to Final Acceptance	$100.0	N/A	N/A	N/A	$50.0
TOTAL	**$903.0**	**$1,667.2**	**$484.0**	**$1,500.0**	**$1,300.0**
TIFIA Summary					
TIFIA Loan Subsidy Paid by USDOT	Partial	Yes	Yes (Assumed)	Yes	Yes
TIFIA Rate	4.31%	3.64%	4.25%	4.25%	5.25%***
Alternative to TIFIA	All Bank Debt	All Bank Debt	BABs financing	All PABs	All Bank Debt
Value of TIFIA to Project (expressed as an increase in construction cost that could be supported by the same public outlays)	**$150 Million**	**$330 Million**	**$25 Million**	**$125 Million**	**$175 Million**

** Valued in June 30, 2009 dollars, discounted at 5% - $685.6 million in nominal dollars*

*** Projects currently in process and figures have been modified, but TIFIA benefit is per financial model testing*

**** Based upon a PPP scenario tested assuming a period of higher interest rates*

The leveraging of federal budget outlays permitted by TIFIA is extraordinary – the closed TIFIA transactions we advised on involved less than $125 million of federally-funded loan subsidies (and about $4 million of non-federal loan subsidies paid by the borrower for the Port of Miami Tunnel). These subsidies supported approximately $1.5 billion of TIFIA loans, which in turn resulted in approximately $4 billion of construction. Few, if any, federal programs yield that type of "bang for the buck," especially when considering that the loan subsidies are unlikely to ever actually be needed because of the secure financial structures underlying these particular transactions. In my view, the only way Government can come close to meeting the transportation investment needs we all know exist will be to include TIFIA, or programs like TIFIA, in a package of future financing tools.

With regard to the state of the financial markets impacting demand for TIFIA credit, we have found TIFIA to be of benefit during "normal" times as well as during periods of market disruption. As the relationship between Treasury rates and municipal bonds fluctuates, demand for TIFIA will naturally vary. However, as seen in the examples in the table above, the structuring benefits of TIFIA can out-weigh the apparent disadvantage of a higher interest rate.

Large-scale infrastructure projects, by their very nature, require extended planning horizons. Rapidly moving financial markets mean that finding a suitable financing solution today does not guarantee its availability or competitiveness at the time when the funds are actually needed. In addition to market fluctuations, Congressional adjustments to the Build America Bond (extension of the program and reducing the level of subsidy) and Private Activity Bond programs (alternative minimum tax exemption) also can affect the mix of financial tools that allow a project's financial structure to be optimized at any given point in time.

The I-595 and Port of Miami Tunnel ("POMT") transactions would not have been possible without TIFIA. Recent episodes of extreme market disruption meant there were no taxable or tax exempt debt options available for a 35-year maturity period to finance projects with POMT or I-595's credit characteristics, or that the borrowing costs would not have been economically feasible. It is impossible to predict when short or long term periods of disruption in the financial markets will occur – for example, the troubles in Greece and Europe have unexpectedly driven down the price of Treasury securities relative to other forms of borrowing and made TIFIA rates attractive today.

As a result, the market needs a strong TIFIA program to be available in the federal tool kit on a stand-by basis for the good times, as well as for the challenging times. The importance of initiating POMT and I-595 in 2009 cannot be understated. Thousands of direct and indirect jobs arising from these projects simply would not exist at this time were it not for TIFIA. Similarly, the Miami Intermodal Center's ("MIC") Rental Car Facility, which will open this summer, has been constructed during the height of the financial crisis and depended on $270 million of TIFIA loans. The MIC has provided hundreds of jobs at a time when Miami-Dade County's construction market basically shut down.

The following adjustments to TIFIA are suggested:

- Avoid having borrowers pay the loan subsidy cost of TIFIA credit by adequately funding the program in relation to demand.[4]
- Return to the "rolling application" and approval approach that allows project sponsors to launch procurements with reasonable assurance that a TIFIA financing option would be available, if desired.[5]

[4] For those concerned about the subsidy cost of TIFIA, it is important to note that whenever TIFIA is not used, then it is likely that additional tax-exempt debt, Build America Bonds, or Private Activity Bonds will be used, each of which also entails a cost to the Treasury.
[5] TIFIA should be encouraged to establish procedures that promote hard-bid price competition for P3 projects. This requires that bidders have sufficient comfort that TIFIA will be available under

- Clearly define eligibility criteria consistently with the original program objectives.
- Permit broader and easier application to rail, intermodal and transit projects by a fair and reasonable approach to combining TIFIA and RRIF loans with New Starts grants, as well as other forms of Federal Transit Administration funding.
- Raising the allowable TIFIA proportion of project costs up to a maximum of 49% could be considered under certain clearly-defined conditions but should not be allowed in all cases.[6]
- Promoting a comprehensive and coordinated view of federal lending programs for transportation (TIFIA, RRIF, PABs, GARVEEs, State Infrastructure Banks, future National or Metropolitan Infrastructure Banks) by managing all of these programs through a single office.
- During times of extraordinary market disruption[7] allowing public borrowers to access TIFIA for up to 80% of project cost, if TIFIA is the senior debt and an investment grade rating is obtained, and requiring re-financing when market conditions stabilize.

Finally, we would like to suggest consideration of creating a form of Private Activity Bond that is similar to a Build America Bond. This type of credit instrument offers an opportunity for commercial banks, pension funds and foreign investors to provide competitively priced debt for infrastructure projects. Many of these entities cannot benefit from and/or hold tax-exempt Private Activity Bonds, but possess considerable expertise in the realm of transportation infrastructure finance. The introduction of such an instrument would increase liquidity for infrastructure investment, bear little or no additional cost to the Treasury over "regular" Private Activity Bonds, and could reduce the appetite for TIFIA loans over the long-term by allowing private lenders to "compete" more effectively with TIFIA. These expert lenders are able to understand complex infrastructure transactions,

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clear terms at the time of contract execution in order to assume the benefits of a TIFIA loan in their firm, fixed-price proposals.

[6] This is a sensitive matter requiring technical analysis. Raising the TIFIA proportion above current levels for public borrowers where TIFIA is the senior debt and receives an investment grade credit rating could be beneficial. However, in other instances where TIFIA is subordinated or private equity is invested, raising the TIFIA proportion could expose the Government to new risks (despite the springing lien feature) and introduce market distortions. TIFIA relies heavily upon the due diligence, monitoring and ongoing technical support of senior lenders (as well as their capability to "work out" troubled loans and when "step in" rights are exercised). Raising the allowable TIFIA proportion above current levels in certain P3 transactions could result in a small amount of short term senior debt that would leave the Government exposed to long term economic, management, and life cycle risks. As a consequence, raising the TIFIA debt level in these cases could potentially misalign the interests of TIFIA and senior debt holders or eliminate the need for private senior debt, substantially reducing the very risk transfer and due diligence benefits sought in using P3s.

[7] "Extraordinary Market Disruption" would need to be defined specifically so as to avoid ambiguity - e.g. Treasury rates at [110%] of tax exempt debt rates for [90] days, or spread between "BBB" and "AAA" tax exempt rates of [200] basis points for [90] days.

not only providing liquidity but stronger diligence and oversight – functions that banks offer and were also previously performed by monoline bond insurers.

Thank you for the opportunity to provide additional input to the Subcommittee and please do not hesitate to let me know if further questions arise.

Sincerely,

Jeffrey A. Parker
President

Attached: Appendix A, **Background Paper on Availability Payments**

Attachment A

Background Paper on Availability Payments

Jeffrey A. Parker
& Associates, Inc.

Introduction to Public-Private Partnerships with Availability Payments

Dr. Silviu Dochia, Manager
Michael Parker, Managing Director

Summary

Public-private partnerships ("P3s") can provide the public sector with greater flexibility and efficiency in building, financing and managing infrastructure assets – provided that PPP contract structures and procurement processes are actively designed to ensure these goals are achieved.

While a number of recent domestic P3 transactions involve toll roads, the transfer of demand/revenue risk to a private concessionaire is not inherent in a P3. Many P3s involve projects that generate no revenues from users or inadequate revenues to cover their full cost of construction and ongoing operation. For example, in the I-595 Corridor Improvements and Express Lanes Project in South Florida, the facility will generate user fees, but those fees are not part of the concession -- the State will set and retain all tolls, and will pay the Concessionaire an *availability payment.*

As discussed below, an availability payment is a payment for performance made irrespective of demand. Availability payments can be an attractive financing and project delivery alternative for projects which, for reasons related to policy, public perception and/or profitability are not feasible or advisable under a user-fee based concession.

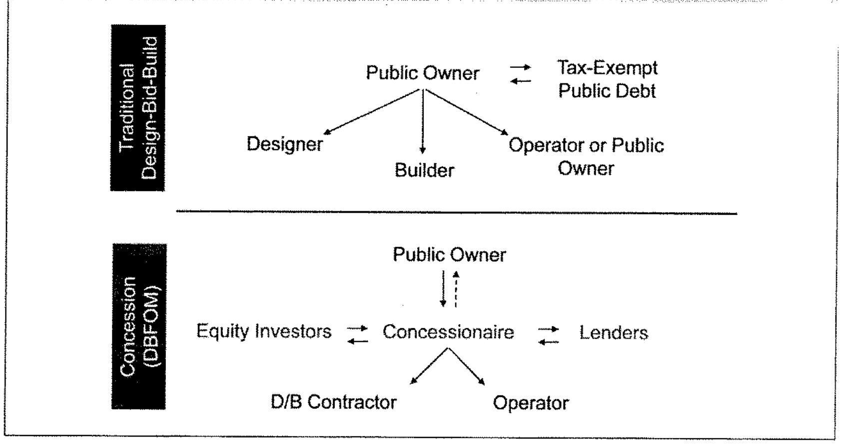
As an overview, an availability payment-based P3 structure:

- Transfers the risks of designing, building, financing and operating/maintaining a project to a private partner;
- Is generally appropriate for a project if:
  - It does not generate direct revenue;
  - Performance / operational outcomes are easy to define and monitor;
  - Government wishes to retain direct rate setting authority;
  - Revenue and/or demand is difficult to predict and/or influence through operational changes; or
  - Service quality is more important or applicable goal than revenue maximization;
- Caps both the government's obligation AND private upside and therefore can compare favorably to public debt;
- Results in public retention of demand risk, reducing the risk premium in private cost of capital but potentially increasing public exposure to shortfalls and volatility;
- Preserves strong incentives for concessionaires to provide efficiency gains in the construction, operations and maintenance of a project; and
- May be subordinated in part or whole to other government debt.

In public transit, availability payment P3s can be used to deliver entire systems (e.g. Denver RTD's proposed commuter rail lines) or self-contained components of systems (e.g. rolling stock, vertical circulation systems, orfare collection systems). In the UK and Canada, well over 500 projects have been initiated using availability payment frameworks, including P3s for school buildings, hospital buildings[1], courthouses, roads, mass transit, street lighting, water and other infrastructure.

[1] Note that under this framework, the school and hospital buildings are procured as a P3, while the teaching and medical services are provided by public servants.

FIGURE 1
DIFFERENCES IN CONTRACTING AND FINANCING STRUCTURE



STRUCTURING PUBLIC PRIVATE PARTNERSHIPS

A public agency can use a wide range of contractual structures to deliver or manage a project. Traditional design-bid-build ("DBB") contracts, for example, leave many risks with the public side but provide significant control over the outcomes. Design-build ("DB") contracts reduce design risk, but can require extensive specifications as they offer no opportunities for the design-builder to share in lifecycle cost risk or savings. An alternative to DBB and DB structures is the design-build-finance-operate-maintain ("DBFOM" or P3) contract, which provides stronger incentives for concessionaires to optimize project lifecycle costs.

An important feature of DBFOMs is that they encourage otherwise unrelated private parties to work together more closely. For example, in a DBFOM, any schedule or quality problems which may surface during the construction phase will impact the future costs and revenues of equity holders, lenders and operators, who thus have a direct interest in closely monitoring the designers and builders. This integrated structure aligns the private parties' incentives with those of public sector – they make the most money when the project opens on time and performs as specified in a properly structured P3. Well-designed P3s can greatly improve project efficiency, provide financing term flexibility, and improve schedule and budgetary adherence.[2]

[2] A study on P3's in the UK found 22% of such projects had cost overruns vs. 73% of traditionally procured construction projects (National Audit Office, *PFI: Construction Performance*. London, UK: Stationary Office, 2003), with the P3 overruns primarily arising from owner changes. A similar study on P3 projects in Australia found P3s were completed 3.4% ahead of schedule on average, with no significant cost overruns as compared to traditional projects, which were completed 23.5% behind schedule on average and were AU$673mil over budget for the AU$4.9bil in traditional projects studied (The Allen Consulting Group, *Performance of PPPs and Traditional Procurement in Australia*, Melbourne, Australia: The University of Melbourne, 2007). In a study undertaken for a major lender, Robert Bain, PhD identified that, of 66 P3 projects analyzed, 85% were completed on or under budget; and that, of the 15% that overran, 3/4 were within 30% of estimates (Robert Bain, *Construction Risk – What Risk?* Project Finance International, Feb 2010). Bain also consolidated his dataset with those of numerous other studies, including the NAO's and Allen Group's, finding: "[T]he average construction cost overrun on PPPs, at 13%, is around half that observed from conventionally procured projects, and the range of outturn costs is significantly narrower… [T]he studies almost unanimously attribute [the PPP

FIGURE 2
PROFILE OF SAMPLE PROJECT COSTS

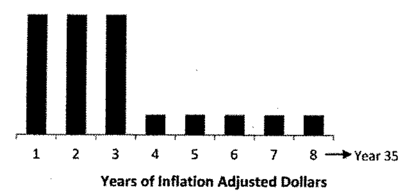
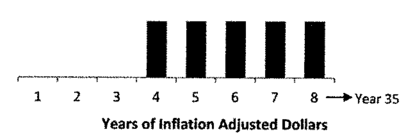


FIGURE 3
PROFILE OF SAMPLE AVAILABILITY PAYMENTS
(MADE BY PUBLIC SECTOR TO CONCESSIONAIRE)



Figures 2 and 3 summarize the differences between the stream of payments for construction and future operations associated with conventionally-procured and financed undertakings compared to P3 projects financed through availability payments.

Financing costs are typically higher for project-specific private companies than they are for government entities[3]. Therefore, successful P3s should generate sufficiently large efficiency gains in the design, construction and operation of a project or other qualitative benefits in order to more than make up for this increased cost of financing. The P3 contract and financing structure also can reduce the need for and/or serve as an alternative to conventional performance security such as surety bonds. *Value for Money* ("VfM") analysis is used in many countries and in some U.S. states to consider these tradeoffs prospectively and then in post-contract award analysis.

Finally, note that owner changes under a P3 can be more expensive as they often lead to additional private financing-related costs. Public entities newly considering using P3s should be mindful that, as with design-build contracts, overly prescriptive specifications or ambiguous contract terms can give rise to claims or change orders and/or render some performance requirements unenforceable.

AVAILABILITY PAYMENTS

Infrastructure projects typically cover their expenses from two revenue sources: user fees and public sector subsidies. Once these funding sources are identified, there are a number of options to structure the compensation received by the private sector in a P3. Typical "payment mechanisms" can include any/or a combination of: full rights to collect user fees, rights to secondary revenue collection (e.g. parking, advertising, commercial rentals), subsidies tied to the usage of the facility (e.g. shadow tolls), upfront subsidies, payments for reaching certain construction milestones, flexible lease periods (lasting until a target NPV of revenues is reached) or *availability payments*. In a well-designed P3, the concessionaire should make the most money when the infrastructure most fully meets the government's objectives.

An availability payment is a payment for performance (irrespective of demand). The availability of a facility is generally defined in two ways. "Pure availability" requires the asset, or a section of the asset, to be open, functioning

overruns] to procurer-initiated scope or specification changes." Bain goes on to suggest that many studies of overrun levels undertaken to date may be unsound because they do not uniformly "control for construction cost estimates made at different stages in the procurement process."

[3] A number of financing options are currently available in the U.S. to help lower this financing cost gap. These include TIFIA credits and tax-exempt private activity bonds ("PABs"). In addition, availability payments are often subordinate in part or whole to senior government credit obligations which can suggest a different credit profile / financial opportunity cost.

and unobstructed, permitting full use by the public. "Constructive availability" goes further. In addition to meeting the "pure availability" requirements, the asset, or a section of the asset, must meet performance, safety and quality criteria specified in the contract – often providing the public owner with stronger metrics and management tools to assure a high quality service than it may be able to apply to services it self-performs.

For example, in a case of a tunnel, the tunnel must be dug and the lanes must be passable (pure availability), but the facility must also be clean, safe, well-ventilated, properly lit, etc. (constructive availability). Depending on the type of facility, some aspects of constructive may be monitored constantly, while others may be determined through sampling, inspections, or other protocols specific to the facility and the performance standards established in the P3 contract.

For determining "price" under an availability payment-based procurement, prospective concessionaires bid the *maximum availability payment* amount they would earn for providing 100 percent availability in a given year.[4] However, if the concessionaire fails to meet the pure or constructive availability requirements, the payment for the given year is reduced by a pre-determined formula taking into account the duration, time-of-day, and severity of the failure. This ties payments to asset performance. Significant and/or persistent underperformance also will lead to default and contract termination on terms adverse to the concessionaire. Lenders and equity investors finance the construction of availability payment projects solely based on the expectation of repayment through the successful earning of the future payments (similar to the financing of a "take-or-pay" contract). This aligns their incentives with the public sector performance goals for the facility – poor performance reduces the payment stream and places their expected returns at risk.

Availability payments deal structures offer a number of important benefits:

- Guaranteed, long-term budget certainty for the public owner (payments will never exceed the maximum availability payment);
- Payments typically only begin at the start of project operation, incentivizing the private partner to provide timely delivery and to fulfill the requirements for substantial completion;
- The private operator is focused on meeting a specified standard of service (with consequences);
- Maintenance and future capital renewal and replacement are fully funded, and there are typically lifecycle cost efficiencies realized;
- Flexibility for the procuring agency to define the accounting treatment, contractual nature and seniority of availability payments relative to other obligations and commitment;[5]
- The public partner maintains complete control over user fees, if any; and
- Because the cash flows to the private partner are not subject to volatile demand risk,
  - Feasibility in a risk-adverse market is enhanced, including lower cost of capital and reduced debt service coverage ratio requirements; and
  - There is little risk of unexpected private sector windfall.

Deciding Between Conventional Project Delivery and an Availability Payment P3

Not all projects can or should be considered potential P3s. For example, the scope and specifications should be able to defined in such a way that the private partner can be held responsible for the long-term availability of the

[4] Note that the operating period for a concession may run for 25 or more years, so relatively small differences in the annual availability payment bids that are received (as compared to say, the construction cost) often result in large costs to the public owner over the life of the project. In addition, two proposers having similar construction costs may have a wide variation in proposed annual availability payments because their financing or long term operations and maintenance costs may be quite different.

[5] Provided that the commitment of the procuring agency to pay the availability payments over the long term must be legally certain and sufficiently credit worthy for equity investors and their lenders to participate in the contract and provide attractively priced financing.

facility. Ideally the private partner should be able to bring innovation and have flexibility to optimize lifecycle costs (including routine and major maintenance).[6] If there is no legal barrier to an availability payment-based P3 contract, then both qualitative and quantitative analysis can play a role in determining whether a P3 might be preferable.

In order to help public owners make this type of assessment a Value for Money ("VfM") analysis is typically performed – comparing a publicly financed project versus a P3. The VfM analysis seeks to determine if the higher private financing cost of a P3 can be offset by lower exposure for the public owner for construction and operating cost risks and overall efficiency gains. Financial models can be constructed for the P3 and non-P3 options and a net present value of the cash flows compared under a range of scenarios to help the public owner better understand the sensitivity of outcomes to different assumptions. The outcomes often depend upon how risk retained by the public sector is represented in the model. The public owner's experience with past projects, to the extent applicable, can be used to frame these assumptions.[7]

In comparing different procurement strategies, policymakers should also strongly consider qualitative factors, such as: faster delivery; higher quality service; management and oversight capabilities; available performance guarantees and warranties; effects on debt capacity and cash flow; or achieving greater and longer term budget certainty. Some factors, such as the depth and aggressiveness of the potential bidder markets for different procurement strategies can be taken into account qualitatively and/or via adjustments[8] to estimates used in the VfM sensitivity analysis.

We have found that VfM analysis at the pre-procurement stage can more reliably be used to test sensitivities to various factors in order to identify a range of conditions under which a P3 may or may not deliver value, subject to qualitative considerations. Reducing the analysis to a one number, financial model output may mask the imprecision that is inherent in preliminary forecasting of project costs, risks, interest rates and other factors, and could engender bias or contention.

DRIVERS OF SUCCESS

The full, anticipated benefits of a P3 will only be realized if the P3 contract is properly structured. "Structuring" a P3 is the process of allocating risks, rights, and responsibilities among the public and private partners and determining how the concessionaire will earn its revenue.

A driving tenet of P3 practice is that risks are allocated to the party best able to mitigate them. For example, a private partner may be held accountable for construction costs, schedule, operating performance, closing the necessary financing, and adhering to a budget for delivering a specified level of service. The public owner may be held accountable for achieving certain environmental approvals, assembling needed right of way, securing the necessary funding to meet its contractual obligations and obtaining the necessary legal authorities to implement the procurement and deliver the project. In some cases, responsibilities can or should be shared to best align incentives. Structuring should be undertaken prior to issuing a request for proposals so that competition is focused and proposals may be compared on an apples-to-apples basis.

P3 procurements succeed by offering projects which are credible and ripe – defined, buildable within a realistic schedule, and feasible with an acceptable risk allocation.

In summary, success factors for enduring and successful P3 programs include:

- Publicly defensible rationales and actual programmatic benefits for using P3s;
- Procurement processes that are predictable, transparent and, when needed, flexible;

[6] Labor agreements are not necessarily incompatible with P3s if the motivations of the parties are properly considered and consistent with collective bargaining understandings.

[7] We encourage the VfM analysis to be re-run and finalized after the procurement in order to see if the anticipated benefits were actually realized and to improve the quality of future analysis.

[8] The incorporation of too many adjustments could reduce the transparency of quantitative analysis.

- Contract terms that are efficient, enforceable performance-focused and practical;
- Interdisciplinary project teams, that integrate internal staff with experienced outside legal, financial and technical advisors;
- Executive-level support commitment and to decision-making in real time;
- Track records of, and commitments to, only bring credible projects to market;
- A long-term commitment to contract management, monitoring, and appropriate, timely approval processes; and
- An internal feedback process to identify and incorporate lessons learned as well as new ideas.

FOR MORE INFORMATION

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TESTIMONY OF

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GENERAL MANAGER AND CHIEF EXECUTIVE OFFICER
REGIONAL TRANSPORTATION DISTRICT
DENVER, COLORADO

BEFORE THE

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
OF THE
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HEARING ON

"USING INNOVATIVE FINANCING TO DELIVER HIGHWAY AND TRANSIT PROJECTS"

APRIL 14, 2010

Submitted by

Regional Transportation District
1600 Blake Street
Denver, CO 80202
Tel: (303) 299-2300
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RTD

Chairman DeFazio, Ranking Member Duncan, and Members of the Subcommittee, I thank you for the opportunity to testify today as your subcommittee seeks to examine innovative financing methods being pursued by transit agencies in order to provide transportation for the people of our regions. These innovative financing tools have been critical to the success of our T-REX Project and the ongoing FasTracks Project. We would encourage Congress to increase its focus on these alternative financing methods to spur faster development of transit assets. The SAFETEA-LU reauthorization bill could be the vehicle to assist and reward transit agencies using these innovative financing methods—perhaps through streamlined processing of the projects. The Regional Transportation District in Denver is pleased to discuss the results of our search for innovative financing tools to assist us in building the single largest voter-approved mass transit system expansion in the United States.

Introduction

The transportation sector is an undeniably critical component of the economy. It allows for the movement of merchandise and supplies between destinations and provides the essential mobility which is fundamental to the well-being, health and welfare of the passengers and end-users which it serves. Transportation options affect economic development and competitiveness along with the welfare of the U.S. population. Unfortunately, the demand for significant transportation infrastructure investment currently exceeds the funding available for such purposes.

Significant financial resources are required to expand mobility and to address issues caused by years of delayed maintenance. However, given state and local fiscal pressures and increasing competition for federal funding, it has become increasingly challenging to finance, deliver and operate critical transportation elements. The scarcity of funding options makes innovative funding approaches a necessity for the providers of transportation systems. As demands increase, transportation agencies are looking to take advantage of all existing funding approaches and are increasingly looking to the private sector to assume some responsibility in financing, delivering and operating projects.

Traditionally, public transportation entities have relied on a design-bid-build approach to project delivery, with the distinct phases of project development progressing in a linear fashion. This method of project management is time consuming and may add significant cost to projects versus other approaches which are being increasingly utilized in today's construction market. Additionally, the design-bid-build approach keeps much of the responsibilities and risks of the projects on the public entity sponsor.

As national transportation demands increase and funds become more scarce, transit properties and other transportation entities are looking to take advantage of alternative project delivery and/or financing approaches. In attempting to maximize all revenue and funding sources, transportation providers are increasingly relying on the private sector to assume additional responsibility in the delivery, finance and/or operations of public projects.

This paper is intended to examine some of the innovative approaches which have been developed and utilized in order to more effectively deliver transportation assets to end-users. Several of these approaches have been employed by the Denver Regional Transportation District in conjunction with the expansion of passenger rail and transit facilities in the Denver metropolitan area. While this paper deals primarily with transit, the tools described may be employed to maintain and expand other infrastructure needs, as well.

Regional Transportation District

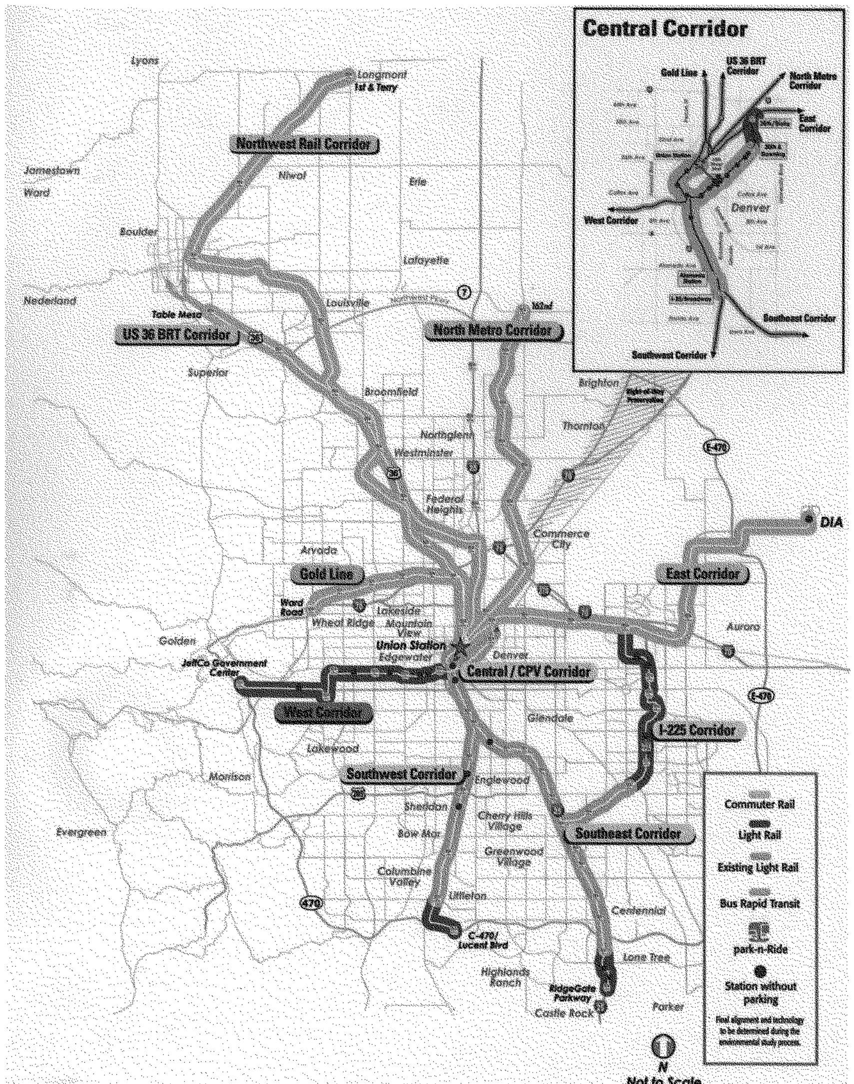
The Regional Transportation District (RTD or the District) is an operating entity responsible for developing, maintaining and operating a mass transportation system for the benefit of the inhabitants in its service area. RTD's service area encompasses portions of an eight-county region comprising the Denver metropolitan area. RTD's area consists of the City and County of Denver, most of the City and County of Broomfield, the Counties of Boulder and Jefferson, the western portions of Adams and Arapahoe Counties, the southwestern portions of Weld County, and the northeastern and Highlands Ranch areas of Douglas County. RTD currently services 2,337 square miles and 40 cities and towns. RTD is governed by a fifteen-member elected Board of Directors with each member elected from one of the fifteen districts comprising RTD's geographical area.

The Regional Transportation District is currently pursuing a transit expansion plan known as FasTracks (map on page 3). The FasTracks plan includes:

- Six new rail corridors
- Enhancements to three existing light rail corridors
- 122 miles of new light rail and commuter rail track
- 18 miles of bus rapid transit infrastructure
- 57 new transit stations
- 21,000 additional parking spaces
- Expanded bus service throughout the Denver metro area

The FasTracks transit expansion program was approved by 58 percent of the voters within the 8-county area which comprises the Denver metropolitan area and is funded from a sales tax increase of 0.4 percent which became effective on January 1, 2005. FasTracks had strong regional political support, benefitting from the backing of all metro mayors and enjoying backing from the Denver Metro Chamber of Commerce, industry and the general business community.

Since the passage of the FasTracks initiative, the RTD has experienced escalating program costs along with a lessening of the sales and use taxes which support the transit program in the Denver metropolitan area. Taken together, the increased costs and reduced revenues have resulted in a $2 billion funding gap in the FasTracks program. This funding gap has pushed the District to examine every possible approach which could be used to maximize the number of program elements which may be constructed and operated within the boundaries of the 8-county RTD. Below we describe some programs and methodologies which are available and have been of use and/or are currently being pursued by the RTD in capitalizing on the funds available for its FasTracks Program.


Central Corridor
Gold Line
US 36 BRT Corridor
North Metro Corridor
East Corridor
West Corridor
Denver
Southeast Corridor
Southwest Corridor
Lyons
Longmont
1st & Terry
Northwest Rail Corridor
Jamestown
Ward
Niwot
Erie
Boulder
Lafayette
Nederland
Table Mesa
Louisville
162nd
US 36 BRT Corridor
North Metro Corridor
Superior
Broomfield
Brighton
Thornton
Northglenn
Westminster
Federal Heights
Commerce City
DIA
Arvada
Gold Line
East Corridor
Ward Road
Lakeside
Wheat Ridge
Mountain View
Golden
Union Station
Edgewater
Denver
Aurora
JeffCo Government Center
Central / CPV Corridor
West Corridor
Glendale
Lakewood
I-225 Corridor
Morrison
Southwest Corridor
Englewood
Sheridan
Cherry Hills Village
Evergreen
Bow Mar
Southeast Corridor
Greenwood Village
Columbine Valley
Littleton
Centennial
C-470/ Lucent Blvd
Lone Tree
Highlands Ranch
RidgeGate Parkway
Parker
Castle Rock
Commuter Rail
Light Rail
Existing Light Rail
Bus Rapid Transit
park-n-Ride
Station without parking
Final alignment and technology to be determined during the environmental study process.
N
Not to Scale

Innovative Finance Methods/Approaches

I. Public-Private Partnership (PPP)

Public-Private Partnerships (PPPs) have been successfully utilized in delivering and/or operating various transportation assets in the United States and abroad, including toll roads, airports, bridges, tunnels, transit projects and ports. At its most basic level, a PPP involves a contract between a governmental entity and a private firm or consortium in which the private partner assumes substantial financial, technical, delivery and/or operational risk on the project.

There exists a spectrum of PPP models which range from design-build contracts on public projects to private ownership of infrastructure assets. The specific form of PPP utilized in the delivery of infrastructure investments depends upon the particular policies, needs and desires of the public entity sponsor.

Some of the more established forms of PPPs are:

- Design-build
- Design-build-operate-maintain
- Build-operate-transfer
- Design-build-finance-operate-maintain
- Build-own-operate (private ownership)

Each PPP approach transfers certain risks which would normally be borne by the public sector transportation provider to the private sector. As evidenced in the list of PPP alternatives above, any of a number of projects risks may be transferred to a private participant. The risk allocation matrix on the project ideally assigns risk to the party (public or private) which can most effectively manage it and can therefore most efficiently price it. It also holds the private sector partner responsible for certain elements inherent in project delivery and/or operation and involves financial compensation dependent upon efficient delivery, performance or non-performance of the involved asset.

In addition to effective risk transfer, PPPs provide a new source of capital for state and local governments and may result in additional benefits such as:

- Reduced exposure to inflationary pressures
- Increased efficiencies
- More predictable operations and maintenance costs
- Increased financial flexibility (freed up capacity/funding to be utilized on other projects)

RTD T-REX Project:

In 1999, the District received voter approval for the incurrence of debt related to the construction and operation of a light rail transportation project in the District's southeast transportation corridor.

The T-REX Project was a joint project of both RTD and the Colorado Department of Transportation (CDOT) and involved both light rail and highway improvements in the corridor. Named T-REX (short for "Transportation Expansion Project"), the project involved 17 miles of improvements on Interstate 25 and the construction of 19 miles of light rail in the corridor.

By utilizing a design-build procurement approach in a PPP between RTD, CDOT and the Project's design-builder, T-REX was finished 3.2 percent under its $1.67 billion budget and 22 months ahead of schedule. The design-build approach saved both time and money by allowing construction of some project elements while other components were still undergoing design. This parallel process, compared to the more traditional and linear design-bid-build process, worked to the benefit of both agencies while minimizing costs and inconvenience to the public.

RTD Eagle Project:

In order to maximize the components built out as part of its FasTracks program (described above), and in order to deliver transit components in the most cost effective manner possible, the RTD is pursuing a public-private partnership for two of its planned commuter rail corridors (the East Corridor and the Gold Line) along with a segment of the Northwest Rail Corridor and the electrical systems at Denver Union Station, the planned hub of its transportation system.

The East Corridor is a 23.6-mile commuter rail transit corridor between Denver Union Station and Denver International Airport (DIA). The Gold Line is an 11.2-mile rail transit corridor from Denver Union Station to the vicinity of Ward Road in Arvada, passing through northwest Denver, unincorporated Adams County, Arvada and Wheat Ridge. The electrified section of the Northwest Rail Corridor is a commuter rail line which originates at Denver Union Station and terminates at 71st Street in South Westminster. The commuter rail maintenance facility will be designed and constructed to repair, maintain, fuel and store the vehicles that will serve all FasTracks commuter rail vehicles. Taken together, these transit improvements make up the "Eagle Project."

The Eagle Project is currently in procurement for a concessionaire team which will design-build-finance-operate-maintain the Project. Funding for the Eagle Project consists of federal funds, local contributions, private capital (including both debt and equity) and RTD funding. RTD contributions to the Project include costs related to the acquisition of right of way, construction payments and service availability payments which will be made to the concessionaire over the operating term of the concession. The majority of the funding for the initial phase of the Project will be contributed by the selected concessionaire team and will consist of both debt and private equity.

Because the RTD has not yet been awarded an expected $1 billion in federal funding under an anticipated Full Funding Grant Agreement (FFGA), it was necessary to procure the Eagle Project in phases, with Phase I commencing upon project award and the Phase II notice-to-proceed following the award of an FFGA on the Project.

Through the utilization of this procurement methodology, the District is availing itself of financial resources (in the form of concessionaire-provided debt and equity) which would otherwise have not been available to it and making the project deliverable to transit riders throughout the region.

Under the Eagle PPP contract, the District will be transferring financing risk, construction risk and operating risk to a private party concessionaire. The Eagle project is structured as an availability-based concession, under which RTD will make availability payments beginning upon the commencement of revenue service in 2017 and continuing for a 40-year operating term. Construction payments on the Project will consist of annually capped amounts based upon earned value. These payments will be due each month as work is completed on the Project.

Upon the commencement of revenue service, RTD will make monthly availability payments to the concessionaire which will be calculated based on the percentage availability of the transit assets and the performance and achievement of RTD specified service, maintenance and operating standards. Penalties will be netted against availability payments for failure to achieve the minimum standards set under the contract. It is important to note that, under the contract, the concessionaire is not allocated ridership/revenue risk due to the desire of RTD Board of Directors to maintain control over passenger fares and service frequencies. Additionally, the security of passengers, staff and assets will be a joint effort under RTD's direction.

While the PPP procurement approach may provide advantages to public sector transportation providers, it does have its drawbacks. Among those are some reduced day-to-day control over the project, significant transaction costs and increased financing costs due to higher return requirements in the private sector versus tax-exempt debt. Reduced project control may be mitigated somewhat through the structuring of the concession agreement such that the expectations and operational requirements are well defined and availability payments are structured to incentivize the concessionaire to meet or exceed those requirements. The concession agreement which accompanies the RTD Eagle Project outlines clear standards and expectations in regard to ongoing operations and maintenance requirements and assigns penalties to the concessionaire (in the form of reduced availability payments) for unsatisfactory performance. Because the returns on private equity contributions are tied to performance in this way, members of the consortium are motivated to efficiently design, build, operate and maintain the project over the entire course of the contract term.

The significant transaction costs associated with PPP procurements (i.e., legal fees and advisory fees) along with increased financing costs have been mitigated by the increased efficiencies (both operating and capital) that the private sector typically provides on projects. A competitive procurement process provides tension between bid teams which should act to drive down capital and operating costs on the proposals to their most economical levels.

The public entity project sponsor may take steps to reduce PPP financing costs somewhat by availing the project concessionaire of financing structures which may allow for the most efficient financing solution on the project. RTD has endeavored to reduce funding costs on its Eagle Project by working with the U.S. Department of Transportation (USDOT) to receive a portion of the $15 billion the agency has been allocated for Private Activity Bonds on qualified projects. More information on PABs and their potential use in lowering capital costs follows later in this paper.

The District was honored when its Eagle PPP was selected as part of the FTA's Public-Private Partnership Pilot Program (Penta-P) and has been working closely with the FTA in delivering the Project.

The FTA's Penta-P Program was authorized by Congress in 2005 to demonstrate the advantages and disadvantages of PPP approaches in transit and to determine how FTA's New Starts program could be modified or streamlined to accommodate the PPP project structure. Selected Penta-P projects were made eligible for a simplified/accelerated federal review process envisioned to reduce both time and costs related to New Starts transit projects. In addition to these benefits of Penta-P designation, the FTA, through the Penta-P program, may include modified project requirements, oversight and/or risk assessments. This is due to the fact that the private concessionaire, having a significant equity stake in the project, is incented to perform in order to achieve the service and delivery objectives delineated in the concession agreement. District staff has been working diligently with the FTA in streamlining, as much as possible, the New Starts process on the Eagle Project in order to complete the Project without procedural delays and associated time-related cost increases.

II. Private Activity Bonds (PAB)

Public transportation issuers have typically financed large infrastructure investments with tax receipts and proceeds of tax-exempt bonds. Until recently, the U.S. tax code limited the amounts of private activity associated with the issuance of tax-exempt bonds such that private development and operation of transportation projects could not benefit from the tax-exemption otherwise available to the transportation entity.

In 2005, pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Congress amended the U.S. tax code to allow qualified highway or surface freight transfer facilities issued by state or local governments for the benefit of private developers to enjoy the same tax exemption provided to public transportation entities through the issuance of Private Activity Bonds (PABs).

This modification to the U.S. tax code provided the U.S. Department of Transportation with up to $15 billion in Private Activity Bonds allocation for qualified transportation projects including:

- Any surface transportation project which receives Federal assistance under Title 23, United States Code;

- Any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Title 23 assistance; and
- Any facility for the transfer of freight from truck to rail or vice versa which receives Title 23 or Title 49 assistance.

The tax exemption allowed through this provision and modification to the U.S. tax code serves to dramatically reduce the cost of capital for private parties involved in transportation infrastructure projects, thereby allowing them to make more cost effective proposals to the public sponsors.

RTD Eagle Project:

In order that the selected concessionaire may have access to low cost tax-exempt funding, the RTD requested a portion of the U.S. Department of Transportation's Private Activity Bonds allocation. Through that process, the RTD requested and has received $1.1 billion in Private Activity Bonds (PAB) allocation which may be utilized by the successful Eagle Project consortium in lieu of alternative, and likely more expensive, taxable financing vehicles. The reduction in cost of financing offered by PABs is expected to amount to approximately $400 million over the life of the Project (approximately $190 million in savings on a present value basis). Under this structure, the RTD will act as conduit issuer on the debt while repayment on the PABs will be the sole responsibility of the successful bid team.

In addition to the lowered cost of capital provided through PABs financing, PABs will reduce market capacity concerns about raising nearly $1 billion of private capital and will incentivize banks to provide more attractive pricing in order to compete for concessionaire business.

III. Transportation Infrastructure Finance and Innovation Act (TIFIA)

The Transportation Infrastructure Finance and Innovation Act (TIFIA) was passed by Congress in 1998 and established a Federal credit program for eligible surface transportation projects. Funding available through TIFIA includes direct loans, loan guarantees and standby letters of credit. In the current market environment, TIFIA remains the most cost effective and flexible source of subordinated financing for projects and can substantially reduce the level of additional public monies that would otherwise be required to complete such projects.

Benefits provided through the use of TIFIA funding include flexible repayment terms and the ability to lock in funding at rates available to the U.S. Treasury for comparable maturities. TIFIA allows for a maximum borrowing term of 35 years following substantial project completion with the ability to defer debt service for up to five years following the completion of the project. Additionally, as mentioned above, TIFIA loans may be subordinated to other project borrowings although the lien level may be increased upon the occurrence of a bankruptcy or other significant credit event.

Projects eligible for TIFIA funding must satisfy several requirements including:

- Minimum anticipated costs
- TIFIA funding cannot exceed 33 percent of reasonably anticipated eligible project costs
- Project senior debt must be rated investment grade by a nationally recognized rating agency
- Project must be included in its State Transportation Improvement Program (STIP)
- Project must have a dedicated revenue source pledged to secure the TIFIA debt
- Projects must comply with the National Environmental Policy Act (NEPA)

To receive TIFIA assistance, agencies must apply to the U.S. Department of Transportation and be invited to participate in the project. Ultimately, a credit council consisting of the Office of the Secretary of Transportation and the Administrators of the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Railroad Administration (FRA) and the Maritime Administration determines which projects will be recommended to receive TIFIA assistance. The Secretary of Transportation holds final approval authority for projects receiving support under the TIFIA program.

Denver Union Station:

In order to further the development and construction of RTD's transit hub at Denver Union Station and the surrounding area, the Denver Union Station Project Association (DUSPA), a governance organization which includes representatives of RTD, the City and County of Denver, the Colorado Department of Transportation (CDOT) and the Denver Regional Council of Governments (DRCOG) along with board members nominated by the Mayor of the City and County of Denver and approved by City Council, applied for and was ultimately awarded a TIFIA loan. This TIFIA loan, along with a loan made available through the Railroad Rehabilitation and Improvement Financing (RRIF) Act (discussed below), serves as the backbone of the financing of the project, which has and will continue to be a vital part of Denver's transportation system and a project of regional and national significance. Along with the design and construction of transit infrastructure, the project includes significant expansion of a mixed use neighborhood surrounding Denver Union Station, integrating a sustainable mix of rail, bus and urban development.

The TIFIA loan will be repaid with funds received from a variety of sources including annual payments made by RTD, revenues received through property, sales and lodging taxes collected in the Denver Union Station area and mill levies pledged by Metro Districts within the larger 40-acre district which surrounds Denver Union Station. In addition, the City and County of Denver has provided a moral obligation commitment on the debt.

TIFIA funding benefits the project in several ways. First, the ability to defer principal payments past project completion allows the Project Authority to institute and accumulate the tax revenues which will, along with RTD's payments, serve to repay the loan. Second, the attractive rates offered by the TIFIA loan reduce the debt service burden placed on the project. Third, interest-only debt payments on the TIFIA loan allow RTD payments to flow to and support subordinate loan payments from 2014 to 2018, thus allowing DUSPA to match principal repayment to the anticipated total revenue stream, which is expected to grow significantly as commercial and residential development in the area expands. Without the attractive features and flexibility offered through the TIFIA (and RRIF) programs, the Denver Union Station Project would not be able to achieve its potential as a model intermodal transit hub incorporating sustainable, mixed-use, transit-oriented components.

IV. Railroad Rehabilitation and Improvement Financing (RRIF)

The Railroad Rehabilitation and Improvement Financing Act (RRIF) was established in TEA-21 and amended by SAFETEA-LU. Similar to TIFIA, the RRIF program provides direct federal loans and loan guarantees to finance development of railroad infrastructure. The Federal Railroad Administrator (delegated by the Secretary of Transportation) is authorized to allocate up to $35 billion in loans or loan guarantees to qualified borrowers for the acquisition, improvement or rehabilitation of intermodal rail equipment or transportation facilities, the refinancing of related debt, or the development or establishment of new intermodal or railroad facilities.

Qualified borrowers under the RRIF program include railroads, state and local governments, government-sponsored authorities, joint ventures which include at least one railroad and limited option freight shippers who intend to construct new rail connections.

Direct RRIF loans may be used to fund up to 100 percent of project costs, have repayment terms of up to 35 years from date of execution and are funded at U.S. Treasury equivalent borrowing rates.

Denver Union Station:

A direct loan under the RRIF program is being combined with a TIFIA loan to finance the majority of the Denver Union Station Project. The RRIF loan will be repaid through the same revenue sources as those listed under the TIFIA section above, namely, annual RTD payments, tax and lodging revenues, and mill levies placed upon Metro Districts in the surrounding 40-acre district.

As with TIFIA funding, the RRIF loan benefits the project in that it provides flexible loan terms at attractive interest rates, allowing for the development of the Project and growth of associated taxes and revenues over time.

V. Inter-Agency Coordination and Cooperation

An approach which has proven successful for the RTD and the Colorado Department of Transportation (CDOT) was the coordination of transit improvements with the construction of highway improvements in the same corridor. On the T-REX Project (described earlier in this paper), RTD and CDOT entered into intergovernmental agreements to apportion their respective responsibilities and costs relating to the multimodal transportation project.
The joint development of the T-REX Project allowed both agencies to benefit from, among other things, reduced infrastructure costs. Expenditures required for dirt work and the demolition of

existing bridges and reconstruction of replacement structures, for instance, were shared by the agencies, thus reducing the financial burden on each agency from what would have existed had either agency funded these improvements on its own. The T-REX Project is an excellent example of the benefits which may accrue to transportation projects as a result of inter-governmental agency cooperation and coordination.

The T-REX Project was the first of its kind and provided a model through which a state transportation department and a transit agency may come together to build one project under a single financial plan in order to provide travelers within the Denver metropolitan area with an integrated transportation solution.

VI. Build America Bonds (BAB)

Build America Bonds (BAB) were instituted as part of American Recovery and Reinvestment Act of 2009 (ARRA) to stimulate the economy and encourage investments in capital projects in 2009 and 2010.

BABs provide state and local governments with a new, optional, alternative direct federal payment subsidy for a portion of the borrowing costs on taxable bonds. BABs allow municipal issuers to access the deep and liquid taxable bond markets at attractive rates and provides an alternative source of financing to traditional tax-exempt debt. Currently, the federal subsidy available through the BABs program is 35 percent of gross interest cost, with the program slated to expire at the end of 2010. However, there are currently proposals to extend the BABs program, albeit at lower subsidy levels in the future.

Importantly, BABs, due to their taxability, makes these municipal bonds attractive to a larger market of investors (conventional corporate debt markets, low income tax brackets, IRAs, public pensions and foreign investors) than that market of investors interested in traditional tax-exempt municipal capital markets. By appealing to a larger market of investors, thus cultivating additional demand, the interest rates on the bonds are forced downward, making a BABs financing attractive versus a traditional tax-exempt borrowing, in today's market. The ability of municipal issuers to access the taxable debt markets was particularly important during the financial crisis when financing costs in the less liquid tax-exempt market increased substantially.

Regional Transportation District:

While the RTD has not yet issued Build America Bonds, it is being examined as a vehicle through which the District may substantially lower its borrowing costs in order to ultimately deliver more and better services to the residents of the Denver metropolitan area.

Conclusion

An efficient transportation system is of fundamental importance to the movement of freight and passengers from one location to another and is critical to the well-being, health and welfare of the people which it serves. Unfortunately, the demand for significant infrastructure investment currently exceeds the funding available for such purposes.

As long as the need for transportation solutions exceeds government's ability to fund transportation improvements, operations and maintenance, alternative and innovative approaches will be required to effectively address both freight and passenger transportation demands.

Specific to RTD, without the financing mechanisms previously mentioned, we would not be able to move forward with plans for the construction of the Eagle P3 Project nor the development of Denver Union Station. To facilitate the continued buildout of the FasTracks plan and other projects around the country, we encourage Congress to include these innovative financing methods in the reauthorization of SAFETEA-LU.

As the demand for infrastructure increases and traditional funding resources become more difficult to obtain, more creative solutions become necessary in addressing critical transportation needs. While the approaches described above have been of use in addressing *current* funding demands, additional programs and methodologies will be required in order to further the transportation projects of the future and address the needs which are critical to the economy and the health and welfare of individuals in the U.S. and around the globe.

Questions for Mr. Phillip A. Washington
General Manager and Chief Executive Officer
Regional Transportation District

Highways and Transit Subcommittee Hearing
April 14, 2010

Questions from Chairman DeFazio

1. Mr. Washington, Denver RTD is the only transit agency to successfully navigate FTA's Public Private Partnership Pilot Program (Penta-P).
   - What are the benefits of and impediments to this program?
   - Did the FTA produce any documents regarding RTD's participation in Penta-P? If so, please attach those for the record.
   - Did your involvement in this pilot program move the Denver project through the FTA New Starts process any more quickly than it would have otherwise, and what evidence is there of that?
   - Please specifically detail the time- and cost-savings benefits that FTA offered to the project that are not available to other projects.

2. Your testimony states that some of the drawbacks of PPPs are the significant transaction costs and financing costs associated with private procurements. Could you elaborate on that?

Questions from Ranking Member Duncan

1. Do you think the PPP model for the Eagle P3 project will work in building and operating other transit systems around the country? What are the characteristics of a successful transit PPP project?

2. The Government Accountability Office has recommended that the US DOT develop guidance, provide technical assistance, and create financial assessment tools to assist transit agencies in utilizing PPPs. Do you think this would be helpful?

3. Will RTD be able to use federal transit funds to make availability payments to the concessionaire team?

General Manager and Chief Executive Officer
Regional Transportation District (RTD)
Denver, Colorado
Mr. Phillip A. Washington

Responses to Written Questions from an April 14, 2010 hearing before the Subcommittee on Highways and Transit of the House Committee on Transportation & Infrastructure

Submitted on June 18, 2010

RTD - Project Status Update

The RTD Board of Directors, on June 15, 2010, voted unanimously to select Denver Transit Partners as the concessionaire to build RTD's Eagle P3 project. The Eagle P3 is being developed under the Federal Transit Administration's Public-Private Partnership Pilot Program (Penta-P). RTD is the first transit agency in the United States to pursue this type of comprehensive public-private partnership that includes not only the design and construction, but the financing and ultimate operation and maintenance of the end product.

Denver Transit Partners' proposal is $300 million lower than RTD's budget estimate and it plans to open the line to DIA by January 2016—*11 months ahead of RTD's deadline*. Denver Transit Partners' proposal along with RTD's project costs total $2.085 billion, compared with RTD's budget estimate of $2.385 billion. The RTD "best-value" evaluation rated it both the higher technical proposal and the lower cost proposal of the two bidding teams.

The sponsoring members of Denver Transit Partners are Fluor Enterprises Inc. and Macquarie Capital Group Ltd. They are joined by major partners Ames Construction, Balfour Beatty Rail Inc., Alternate Concepts Inc., and HDR. (See accompanying sheet for company profiles.) (*Attachment #1*) With this decision, RTD will have 47 miles of new rail under construction or under contract, more than double the amount of rail in RTD's existing light rail system. It also represents nearly 40 percent of the total FasTracks rail network now under contract.

The Eagle P3 Project packages several FasTracks projects into a single contract to design and construct the East Corridor 22.8-mile commuter rail line to DIA, the Gold Line 11.2-mile commuter rail line to Arvada-Wheat Ridge, a short segment of the Northwest Rail corridor to south Westminster, and the commuter rail maintenance facility in north Denver. This design-build method is similar to how RTD and the Colorado Department of Transportation (CDOT) implemented the Transportation Expansion (T-REX) light rail and highway project, which was completed under budget and ahead of schedule in 2006.

Eagle P3 takes public-private partnerships to a broader level. In addition to final design and construction, Denver Transit Partners is bringing private financing to the table and, under a concession contract, will also operate and maintain the rail service on these lines for 40 years. In return, RTD will make annual payments to Denver Transit Partners based on its performance in meeting RTD's service standards. Through this arrangement, called Design-Build-Finance-Operate-Maintain, RTD reduces its need for upfront cash. With the Administration's full support, RTD is also pursuing $1 billion through FTA's Full Funding Grant Agreement (FFGA) process.

Early construction work, such as relocation of utilities and freight tracks along the East Corridor, is projected to start by late summer.

FasTracks is RTD's voter-approved transit program to expand rail and bus service throughout the RTD service area. FasTracks will build 122 miles of commuter rail and light rail, 18 miles of bus rapid transit service, add 21,000 new parking spaces, redevelop Denver Union Station, and redirect bus service to better connect the eight-county District. The FasTracks investment initiative is projected to create more than 10,000 construction-related jobs during the height of construction and will pump billions of dollars into the regional economy.

Questions from Chairman DeFazio

1. Mr. Washington, Denver RTD is the only transit agency to successfully navigate FTA's Public Private Partnership Pilot Program (Penta-P).

   - What are the benefits of and impediments to this program?

     Response: *The primary benefit of being in the program and implementing a public-private partnership was realized on June 15, 2010, when the RTD Board of Directors was able to select a proposer to deliver the Eagle P3 Project with a capital cost of $300 million less than the RTD estimate and 11 months ahead of RTD's schedule. Other benefits include:*

     1) streamlining of New Starts approvals as outlined below;

     2) the opportunity to discount private at-risk equity, protecting public interest while facilitating project development and New Starts funding opportunities;

     3) limitation of certain FTA New Starts risk assessments as a result of risk transfer to the private sector;

     4) strong FTA staff support to address challenges.

     The challenges/impediments include:

     1) uncertainty of the timing of the FFGA award, requiring RTD to split the project into two phases and FTA to grant a letter of no prejudice for the first phase of the project, in advance of the FFGA award;

     2) the structure of the Public-Private Partnership deal with a focus on transit performance standards as the driving project goals and metrics for RTD, as opposed to traditional New Starts projects which are based on a defined project capital scope.

   - Did the FTA produce any documents regarding RTD's participation in Penta-P? If so, please attach those for the record.

     Response: *FTA approved RTD's East Corridor and Gold Line projects to be part of the Penta-P in July 2007 and issued a press release dated July 30, 2007. FTA signed a*

Memorandum of Understanding (MOU) with RTD in December 2007. FTA reviewed the draft Request for Proposals and issued a report in April 2009. Each of these documents is attached. (Attachments #2, 3, 4, and 5) *In addition, FTA has produced many documents relative to the RTD's Penta-P project as part of the FTA New Starts project development and annual review process.*

- Did your involvement in this pilot program move the Denver project through the FTA New Starts process any more quickly than it would have otherwise, and what evidence is there of that?

  Response: *Yes. RTD entered the Penta-P program in the summer of 2007. RTD applied to FTA to enter Preliminary Engineering (PE) in September 2008 and was granted entry into PE in April 2009. RTD submitted the Final Design (FD) application to FTA in September 2009 and received entry into FD in April 2010. RTD expects to receive the Full Funding Grant Agreement (FFGA) in 2011. RTD believes this represents an expedited process, as this represents a 4-year (+/-) process to an FFGA. As a point of comparison, in order to substantiate this conclusion, RTD references the information contained in the August 2009 GAO report to Congressional Committees entitled "Public Transportation Better Data Needed to Assess Length of New Starts Process, and Options Exist to Expedite Project Development." This report reviewed nine New Starts projects nationwide and found that the New Starts process from initiation to an FFGA ranged "from about 4.5 years for 3 projects to over 14 years for 2 projects."*

- Please specifically detail the time- and cost-savings benefits that FTA offered to the project that are not available to other projects.

  Response: *As described above, the FTA worked to streamline the New Starts process under the auspices of Penta-P, including allowing RTD to combine select project development submittals and working to limit certain FTA risk assessments, consistent with the transfer of risks to the private sector under the Public-Private Partnership structure. By shortening the length of time required to move through the New Starts process, RTD is realizing some cost savings related to resources required to produce and update New Starts documentation over time. RTD also is moving to concession award of Phase I of the project in the summer of 2010, in advance of receipt of the FFGA, with FTA's concurrence through a Letter of No Prejudice. This accelerated project schedule is allowing RTD to save money and decrease the risks associated with cost escalation that would likely occur if the project were not funded until after receipt of the FFGA.*

2. Your testimony states that some of the drawbacks of PPPs are the significant transaction costs and financing costs associated with private procurements. Could you elaborate on that?

   Response: *The procurement of RTD's Eagle Project formally commenced on August 4, 2008, with the issuance of a Request for Qualifications (RFQ) to which three teams responded and were deemed qualified by RTD. Shortly after conclusion of the RFQ process, RTD issued a draft Request for Proposals (RFP) to the prequalified teams, FTA, and other stakeholders for review and comment. The review and comment period extended for 9 months during which the proposer teams were deeply involved in discussing the RFP with RTD and building their teams* *in preparation for the issuance of the formal RFP. RTD issued the formal RFP on September 30, 2009, and allowed approximately 6 months for detailed proposals to be developed. The proposals included designs of the entire project at the 30 percent level; development of operations, safety, quality and management plans; detailed cost estimates; and financial commitments in readiness for the execution of financial close following selection of the concessionaire. RTD has estimated, and anecdotal evidence from the proposer teams confirms, that each team has invested approximately $20 million in the qualification and proposal process through the engagement of design consultants, attorneys and financial analysts and bankers, along with extensive internal resources.*

<u>Questions from Ranking Member Duncan</u>

1. Do you think the PPP model for the Eagle P3 project will work in building and operating other transit systems around the country? What are the characteristics of a successful transit PPP project?

   Response: *RTD believes the model developed for RTD's Eagle Project can be leveraged for other transit projects around the nation. Having said that, it is RTD's firm recommendation that each project be viewed as a unique project and assessed for its suitability for delivery using a PPP model and that the objectives of each project be carefully identified so that an RFP may be tailored to assure achievement of those specific objectives and to address the unique characteristics of that project. As RTD developed the RFP for the Eagle Project, each element was carefully analyzed, the risks systematically considered, and decisions made based on what best suited RTD's goals in an affordable and deliverable manner. RTD deliberately accepted that many design and construction decisions could, and should, be left to the concessionaire, but the key objectives of provision of a safe, reliable, quality service remained inviolate throughout the process. Interfaces with existing and other planned services were carefully integrated into the requirements to assure RTD was able to maintain the same operational characteristics across the network. RTD believes it is the careful consideration of such requirements that leads to a transit system that is viewed by its users as world class and will result in high utilization and deep satisfaction.*

2. The Government Accountability Office has recommended that the US DOT develop guidance, provide technical assistance, and create financial assessment tools to assist transit agencies in utilizing PPPs. Do you think this would be helpful?

   Response: *RTD is strongly in favor of the development of a center of excellence for development of PPP projects. RTD engaged experts in PPPs in the areas of procurement, design and operations development, financial and legal advice, while leveraging the experience RTD has gained from implementation of other major design-build projects and significant private operation of transit service. Many lessons have been learned along the way and good public policy would result from having the examples of RTD's experiences, as well as that of others, made available to others. Lessons from other countries where PPPs have been used for many infrastructure projects can also be illustrative including the use of public sector comparators, as a means of assuring that the financial implications of a PPP are fully understood and are consistent with an agency's goals. The financial plans are significantly* *more complex than traditional project implementation measures. For example, on RTD's Eagle Project the evaluation of project cost is not based on the capital investment value directly, rather it is based on the net present value of the financial, operational, maintenance, and capital replacement costs over 40 years.*

3. Will RTD be able to use federal transit funds to make availability payments to the concessionaire team?

   Response: *The Full Funding Grant Agreement funds will be used to make construction payments, not availability payments. Based on current guidance, RTD would not use grant funds to pay for debt or operations.*

   RTD may be able to use some of the 5307 formula funds to pay for preventive maintenance items, such as service, overhaul of the rolling stock, and repair-type replacement of rails at the appropriate times. Other funds, such as 5309 Fixed Guideway Modernization funds, may be applied to the maintenance portion of the availability payments.

Attachment #1

RTD FASTRACKS

FOR IMMEDIATE RELEASE
June 15, 2010

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RTD Board selects Denver Transit Partners for Eagle P3, FasTracks' single largest contract

PRIVATE TEAM PROPOSES TO BUILD RAIL LINES TO DIA, ARVADA-WHEAT RIDGE AND WESTMINSTER $300 MILLION UNDER RTD'S BUDGET AND AHEAD OF SCHEDULE

Denver, June 15, 2010 – The Regional Transportation District (RTD) has selected Denver Transit Partners for the single largest FasTracks contract to build and operate commuter rail lines to Denver International Airport (DIA), Arvada-Wheat Ridge and south Westminster.

Denver Transit Partners' proposal is $300 million lower than RTD's budget estimate and it plans to open the line to DIA by January 2016, 11 months ahead of RTD's deadline. Denver Transit Partners' proposal along with RTD's project costs total $2.085 billion, compared with RTD's budget estimate of $2.385 billion. The RTD "best-value" evaluation rated it both the higher technical proposal and the lower cost proposal of the two bidding teams.

The sponsoring members of Denver Transit Partners are Fluor Enterprises Inc. and Macquarie Capital Group Ltd. They are joined by major partners Ames Construction, Balfour Beatty Rail Inc., Alternate Concepts Inc. and HDR. (See accompanying sheet for company profiles.)

"It is a remarkable achievement for RTD to get a project of this magnitude through a public-private partnership that meets our goal of contracting under our budget and ahead of our schedule," said RTD Chair Lee Kemp. "We said three years ago that public-private partnerships would be a vital part of keeping our FasTracks program moving forward. The decision tonight shows that the faith placed in us by the Federal Transit Administration and our stakeholders

RTD FASTRACKS

Eagle P3 contract awarded under budget
Page 2

through some difficult times was justified has been rewarded."

With this decision, RTD will have 47 miles of new rail under construction or under contract, more than double the amount of rail in RTD's existing light rail system. It also represents nearly 40 percent of the total FasTracks rail network now under contract.

The Eagle P3 Project packages several FasTracks projects into a single contract to design and construct the East Corridor to DIA, the Gold Line to Arvada-Wheat Ridge, a short segment of the Northwest Rail corridor to south Westminster and the commuter rail maintenance facility in north Denver. This design-build method is similar to how RTD and the Colorado Department of Transportation (CDOT) implemented the Transportation Expansion (T-REX) light rail and highway project, which was completed under budget and ahead of schedule in 2006.

Eagle P3 takes public-private partnerships to a broader level. In addition to final design and construction, Denver Transit Partners is bringing private financing to the table and, under a concession contract, will also operate and maintain the rail service on these lines for 40 years. In return, RTD will make annual payments to Denver Transit Partners based on its performance in meeting RTD's service standards. Through this arrangement, called Design-Build-Finance-Operate-Maintain, RTD reduces its need for upfront cash. RTD also expects the project to attract $1 billion next year through the Federal Transit Administration (FTA) Full Funding Grant Agreement process. Anthony Loui, FTA's Eagle Project Team Leader, attended the RTD board meeting from Washington as a representative of FTA Administrator Peter Rogoff. The FTA has been a fully supportive partner in RTD's pursuit of a P3 project.

Early construction work, such as relocation of utilities and freight tracks along the East Corridor, is projected to start by late summer.

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Two teams spent the past two years working on proposals. RTD will pay the other team, Mountain-Air Transit Partners, a $2.5-million stipend in exchange for the intellectual property in its proposal. That gives RTD the option to use cost-saving ideas from the non-selected proposal.

The two proposals were thoroughly evaluated over two months by more than 120 people including RTD staff and representatives of cities and counties on the Eagle corridors – Adams County, Arvada, Aurora, Denver, Westminster and Wheat Ridge – along with staff from CDOT and DIA. RTD had technical, financial and legal input from consultants Jacobs Engineering, Goldman Sachs, J.P. Morgan and Freshfields Bruckhaus Deringer.

"This is a significant, prestigious and strategic selection," said Patrick Flaherty, head of Fluor's Infrastructure business. "We expect this to be the first of many public-private partnership transit projects procured under the available method in the U.S. in the coming year. We are delighted to have been selected by the Denver RTD. Our entire team is looking forward to helping the RTD realize its FasTracks vision and we are committed to working closely with local businesses and other stakeholders to involve them in the project and increase the long-term competitiveness of the Denver area," said Flaherty.

Eagle P3 is a key part of RTD's strategy to keep FasTracks moving forward in the difficult economic environment that has affected large public projects nationwide.

"RTD is the first transit agency in the United States to pursue this type of comprehensive public-private partnership that includes not only the design and construction, but the financing and ultimate operation and maintenance of the end product," said RTD General Manager Phil Washington. "RTD has always been on the front line of finding innovative methods for delivering projects. Now this project can get on with creating thousands of jobs."

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Eagle P3 contract awarded under budget
Page 4

FasTracks is RTD's voter-approved transit program to expand rail and bus service throughout the RTD service area. FasTracks will build 122 miles of commuter rail and light rail, 18 miles of bus rapid transit service, add 21,000 new parking spaces, redevelop Denver Union Station and redirect bus service to better connect the eight-county District. The FasTracks investment initiative is projected to create more than 10,000 construction-related jobs during the height of construction, and will pump billions of dollars into the regional economy.

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RTD FASTRACKS

FOR IMMEDIATE RELEASE
June 15, 2010

Media Contact:
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Profile: Denver Transit Partners

Denver, June 15, 2010 – The principal members of the Denver Transit Partners team that was selected to build, finance and operate the single largest FasTracks project, Eagle P3, have worldwide experience developing some of the largest public infrastructure projects in use today.

The sponsoring partners are Fluor Enterprises Inc. and Macquarie Capital Group Ltd. The two companies have completed more than $10 billion in transportation-related project financing in North America in the past five years.

Fluor Enterprises Inc., a wholly-owned subsidiary of Fluor Corporation. Fluor, based in Irving, Texas, is one of the world's largest publicly traded engineering and construction services companies. As a Fortune 200 company with more than 36,000 employees, Fluor is an industry leader in delivering large, complex infrastructure projects and is consistently rated as one of the world's safest contractors. In 2009, the company reported revenues of $22 billion and had $27 billion in projects under contract. Fluor has been active in Colorado for several decades on projects for clients such as the E-470 Public Highway Authority, the National Renewable Energy Laboratory, Chevron and many others. Some of Fluor's recent high-profile projects include the reconstruction of the World Trade Center Transportation Hub in New York City; construction of the new San Francisco-Oakland Bay Bridge and completion of the Netherlands' new high-speed rail line from Amsterdam to the Belgium border.

Macquarie Capital Group Limited, a subsidiary of Macquarie Group. Headquartered in Sydney, Australia, Macquarie Group is a global provider of banking, financial, advisory and funds management services. Macquarie Group operates in more than 70 office locations in 28

RTD FASTRACKS

countries and employs more than 2,500 people in the United States. As owner and manager of significant public assets, Macquarie Group works closely with governments around the world to deliver essential community services, including transportation, airports and utilities. Macquarie Group manages assets of approximately $307 billion as of December 31, 2009.

Core Contractors:

Balfour Beatty plc. Balfour Beatty Rail is the largest, most diverse rail contractor in the world. It is currently the systems contractor for FasTrack's West Corridor light rail project and provides on-call services for RTD's existing light rail network. In addition to being a core contractor with the design-build entity, it will also be part of the operations/maintenance entity.

Alternative Concepts Inc. ACI is the operations service provider for the Massachusetts Bay Transportation Authority (MBTA), the largest privately operated commuter rail system in the U.S. It will provide operations and maintenance services for the completed system

Hyundai-Rotem USA. An affiliated company with Hyundai Motor Group of South Korea, Hyundai-Rotem is the manufacturer of the electified commuter rail cars that will be used on the corridors.

Ames Construction. Ames, based in Burnsville, Minn., has a regional office in Aurora. It will be a design-build subcontractor for Denver Transit Partners.

Highlights of Denver Transit Partners' proposal:

- Affordable Price – DTP offers a price, spelled out in Annual Service Payments, that is nearly half of RTD's estimated affordability limit for the project. DTP was able to achieve significant cost efficiencies without sacrificing system safety, performance or flexibility to accommodate future needs.

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Eagle P3 contract awarded under budget
Page 2

- Innovation – DTP has incorporated a number of enhancements that yield substantial life-cycle cost savings, improved operational performance and greater safety. Some of these enhancements include approximately six miles of single track on the East Corridor to reduce construction costs without negatively impacting operating performance; track configuration changes including the addition of "pocket" tracks and the rearrangement of turnouts and crossovers to enhance operational flexibility; standardization of bridge elements to simplify construction; modifications to the Commuter Rail Maintenance Facility to improve efficiency, and a new high-quality commuter rail vehicle design that provides greater seating capacity, storage for bicycles/luggage and enhanced security features such as interior CCTV monitoring.
- Early Completion – DTP plans to complete all three commuter rail lines ahead of schedule and will complete the East Corridor by January 2016 – nearly one year earlier than RTD's deadline.
- Safety First – DTP's proposal incorporates a state-of-the-art train control system, including a fully redundant communications system and full Positive Train Control (PTC) functionality that will meet all of the requirements of the 2008 Railroad Safety Improvement Act.
- Community Commitment – DTP is fully committed to maximizing small and disadvantaged business participation on the project; to mitigating potential impacts associated with the construction of the project; and to assuring the public remains informed and involved with the development of the project over the term of the concession period.

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RTD FASTRACKS

EAGLE P3 A GLANCE

- The East Corridor, Gold Line, Commuter Rail Maintenance Facility and an initial segment of the Northwest Rail Corridor are all included in the Eagle P3 project.
- The project is a public-private partnership (P3), which is an innovative approach to efficient project delivery. A Design-Build-Finance-Operate-Maintain (DBFOM) contract is being pursued for the Eagle P3 Project.
- A P3 transfers certain construction and operational risks to the private sector.
- P3s allow RTD to spread out large upfront costs and preserve cash in early years; this is similar to the concept of 30-year versus a 15-year mortgage.
- RTD will own all assets and make payments to the private partner for a 46-year period.

PROJECT OVERVIEW

- The East Corridor is a 22.8-mile electric commuter rail corridor that runs from Denver Union Station to Denver International Airport. Five intermediate stations are included: 38th/ Blake, Colorado, Central Park Blvd., Peoria/Smith Rd. and Airport Blvd/40th Ave.
- The Gold Line is an 11.2- mile electric commuter rail transit corridor that connects Denver Union Station to Ward Road in Wheat Ridge. It passes through northwest Denver, Adams County and Arvada. There are six intermediate stations, including 41st Avenue, Pecos, Federal, Sheridan, Olde Town Arvada and Arvada Ridge.
- The Commuter Rail Maintenance Facility will be the site to repair, clean, fuel and store the vehicles that will serve the four FasTracks commuter rail corridors: East, Gold Line, Northwest Rail and North Metro.
- The portion of Northwest Rail included in the Eagle P3 includes shared tracks with Gold Line from Denver Union Station to Pecos Street, plus an additional two miles north, to the South Westminster Station, at 71st Avenue and Lowell Boulevard in Westminster.

PROJECT SCHEDULE

- The entire Eagle P3 project is scheduled for completion in 2016.
- Phase I of the project includes property acquisition, construction of the East Corridor, construction of the Maintenance Facility and control center, the purchase of Electric Multiple Unit (EMU) rail vehicles and the electrical systems at Denver Union Station. Phase I is scheduled to begin in August 2010.
- Phase II of the project includes the Gold Line and the short segment of Northwest Rail. Phase II is scheduled to begin following the award of a Full Funding Grant Agreement (FFGA) by the Federal Transit Administration in 2011.

SELECTION PROCESS

- RTD selected the concessionaire determined to offer the best value for the design, construction, financing, operation and maintenance for the project.
- Financial scoring was weighted 60 percent; the technical proposal was weighted 40 percent.
- A very thorough evaluation took place over the last two months. More than 120 people were involved in various elements of the process, with half the evaluators from external community organizations.

Attachment #2

U.S. Department of Transportation
Federal Transit Administration

Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

July 23, 2007

Mr. Clarence W. Marsella
General Manager
Regional Transportation District
1600 Blake St.
Denver, CO 80202

Dear Mr. Marsella:

Thank you for your continued interest in the Federal Transit Administration's (FTA) Public-Private Partnership Pilot Program (Pilot Program). I am pleased to inform you that FTA has selected the Regional Transit District's (RTD's) Gold Line and East Corridor commuter rail projects to participate in the Pilot Program, subject to the execution of a Memorandum of Understanding (MOU).

Please note that FTA's selection of RTD's proposal for participation in the Pilot Program is not final until we execute a Memorandum of Understanding. For Pilot Projects, FTA may make expedited procedural approvals, eliminate certain risk assessments and forecast reviews, and issue Letters of No Prejudice to facilitate pre-construction activities. In the near future, FTA will transmit a MOU describing these benefits as well as the actions required by both FTA and Denver RTD to move this project forward. You will be given an opportunity to review the MOU before we execute the document.

FTA encourages you to implement the strong public-private partnership agreement and innovative financial incentives to achieve the cost estimates and operating performance as described in your proposal. If Denver RTD can implement a public-private partnership agreement as described, we believe this project would have significant demonstration value for the transit industry.

If you have any questions please contact FTA's Acting Regional Administrator in Denver, Terry Rosapep, at (720) 963-3320 or FTA Headquarters Staff Person, Steven Lewis-Workman, at (202) 366-1868.

Sincerely,

James S. Simpson

James S. Simpson

Attachment #3

You are here: News & Events → News Releases 2007 → **Denver's East Corridor and Gold Line Corridor Rail Projects Selected to Participate in USDOT's Public-Private Partnership Program**

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What is this?

Denver's East Corridor and Gold Line Corridor Rail Projects Selected to Participate in USDOT's Public-Private Partnership Program

07-30-07
Contact: Paul Griffo
Telephone: (202) 366-4064

U.S. Transportation Secretary Mary E. Peters today announced two Denver rail projects will take part in a U.S. Department of Transportation pilot program to evaluate the benefits of forming public-private partnerships for federally-funded transit construction projects.

"Transit projects like this one not only prove that partnerships can work, they set a precedent for implementing new and innovative practices," Peters said. "By partnering the public-private sector you combine the best of both worlds to effectively and efficiently lower costs and decrease build times."

The East Corridor extends 23.6 miles from Denver Union Station (DUS) in downtown Denver to Denver International Airport (DIA), and connects DUS and DIA with existing residential, commercial, and industrial areas. DIA is a critical link in both the regional and national transportation network. DUS is the central hub of the multi-modal network proposed in Regional Transportation District's FasTracks regional rail system.

The Gold Line, a proposed 11.2-mile rail transit corridor, will begin at DUS, passing through Northwest Denver. Upon completion there will be six park-n-ride facilities and 2,050 new parking spaces. Construction on both the East and Gold Line Corridors is scheduled to begin in 2011, with service to both corridors commencing in 2015.

Unlike conventional procurement methods for new construction, in which specific jobs are bid out separately, public-private partnerships transfer responsibility for performing construction and operating responsibilities to a single private entity or a consortium of private companies. This allows for greater innovation and project integration, as well as lessening the burden on taxpayers.

The Public-Private Partnership Pilot Program, known as Penta-P, was authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU") for certain new "fixed guideway capital projects," meaning public transit systems that use rail or a dedicated road, such as a bus rapid transit system.

The pilot program will allow the USDOT to study whether public-private partnership projects speed completion, allow more reliable projections of project costs and benefits, and improve project performance.

The pilot will study projects that, among other things, use methods of procurement that integrate risk-sharing and streamline project development, engineering, construction, operation, and maintenance. The amount and terms of private investment in such projects is a significant factor in selecting projects to participate in the program.

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Attachment #4

NON-BINDING MEMORANDUM OF UNDERSTANDING
Denver Regional Transportation District's Participation in FTA's Public-Private Partnership Pilot Program

1.0 Purpose

The Federal Transit Administration ("FTA") and the Regional Transportation District of Denver, Colorado, ("Denver RTD") are executing this Non-Binding Memorandum of Understanding ("MOU") to set forth their mutual understandings and expectations concerning FTA's financial support of Denver RTD's East and Gold Line commuter rail lines (collectively, the "Project"), Denver RTD's participation in FTA's Public-Private Partnership Pilot Program (the "Pilot Program"), and the Major Capital Investment ("New Starts") requirements that may apply to the Project. The undersigned acknowledge that this MOU may be amended from time to time by written agreement executed by FTA and Denver RTD to account for any statutory or regulatory change, change to the Project as proposed, or change to Denver RTD's project management or financing plans or as otherwise necessary or appropriate.

2.0 Background

On July 23, 2007, FTA selected the Project as a Pilot Project under the Pilot Program. The Project consists of the East and Gold Line commuter rail lines and their shared commuter rail maintenance facility. The East Line will extend 23.6 miles from Denver Union Station in downtown Denver to Denver International Airport. The Gold Line will extend 11.2 miles from Denver Union Station to the vicinity of Ward Road, passing through northwest Denver, unincorporated Adams County, Arvada and Wheat Ridge. The Project is scheduled to begin construction in 2011 and to be completed by 2015.

Denver RTD plans to deliver the Project as a Public-Private Partnership ("PPP"). A detailed description of the PPP structure planned for this project can be found in Denver RTD's application to the Pilot Project, a copy of which is incorporated into this MOU by reference and attached hereto as Attachment 2.

Denver RTD plans to solicit private-sector partners to design, finance, build, operate and maintain both lines and their shared maintenance facility as a single project. FTA and Denver RTD will consider both lines a single project for purposes of the Pilot Program even though the corridors are separated into two projects for purposes of FTA's New Starts program.

3.0 The Pilot Program

On January 19, 2007, FTA established the Pilot Program to demonstrate the advantages and disadvantages of PPPs for certain new fixed guideway capital projects. The Pilot Program is authorized by Section 3011(c) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU"). In particular, the Pilot Program is intended to study whether, in comparison to conventional procurements, PPPs better reduce and allocate risks associated with new construction, accelerate project delivery, improve the reliability of projections of project costs and benefits, and enhance project performance. Section 3011(c) of SAFETEA-LU sets forth generally the terms and conditions of the Pilot Program. The definitive terms of the Pilot Program are described in FTA's January 19, 2007, Federal Register Notice, 72 *Federal Register* 2583 (the "Definitive Program Terms"), attached hereto as Attachment 1. Nothing herein shall supersede or modify the Definitive Program Terms.

4.0 Benefits

FTA may confer certain benefits on Denver RTD through the Pilot Program, subject to the Definitive Program Terms. FTA budget recommendations and other final approvals with respect to the Project—together with any procedural or rating benefits received by the Project under the Pilot Program prior to a funding recommendation—will be conditioned on Denver RTD and its private partner(s) entering into a Public-Private Partnership Agreement with respect to the Project that, in the opinion of FTA, safeguards the "Federal interest" in the Project. If Denver RTD fails to enter into such a Public-Private Partnership Agreement, FTA will rescind the procedural and substantive benefits received by Denver RTD and remove the Project from the Pilot Program. Budget recommendations and funding decisions will be subject to approval by the U.S. Office of Management and Budget ("OMB").

Potential benefits include but are not limited to the following:

4.1 Federal Financial Assistance. To the extent the East or Gold Lines are candidates for funding under FTA's New Starts program in an amount of $25 million or more, FTA will rate and evaluate separate New Starts submissions for each line in accordance with the rating scheme of the New Starts program, as adjusted to account for its "demonstration value," including benefits discussed in the Definitive Program terms. Subject to approval by the OMB, FTA will include each line in the President's Budget to Congress for New Starts funding upon receiving an overall rating of Medium or higher and a cost-effectiveness rating of Medium or higher, as adjusted for demonstration value.

In the event the East and/or Gold Lines qualify for funding under the New Starts program and a Letter of Intent (LOI) is issued, FTA may allocate funds from amounts appropriated for the New Starts program for Fiscal Year 2009 or subsequent Fiscal Years, in each case subject to approval by OMB.

4.2 Procedural and Regulatory Benefits. FTA may afford Denver RTD certain procedural and regulatory benefits, including but not limited to streamlining environmental review and approval; expediting and consolidating preliminary engineering and final design approvals; expediting right-of-way acquisition approvals; issuing LOIs to allocate New Starts funds prior to signing Full Funding Grant Agreements; relying on contractual terms and conditions, cost and schedule controls, and cost and performance guarantees in the Public-Private Partnership Agreement instead of FTA's standard Risk Assessment and financial reviews; accepting without further review projections of transportation user benefits on the basis of which cost-effectiveness and mobility measures for the Project's rating will be developed, subject to Denver RTD's Public-Private Partnership Agreement.

5.0 Project Development and Reporting

Denver RTD will submit grant applications to FTA by December 31, 2009. Such applications shall include an updated project schedule, finance plan, description of the Project and other reasonably significant updated Project information. The conditions for funding for the Project may include a number of mutually agreeable reporting requirements for purposes of FTA's evaluation of the Project as a Pilot Project.

6.0 Information

With its application to the Pilot Program, Denver RTD submitted a schedule and finance plan for the construction and operation of the Project and an analysis of the costs, benefits, and efficiencies of the proposed Public-Private Partnership Agreement (the "Application Documents"). FTA expects Denver RTD promptly to provide FTA and its consulting contractors all successive iterations of the Application Documents prior to FTA's approval of the Project for funding, together with any amendments to (or notice of disputes arising under) any of the Application Documents once executed. FTA expects Denver RTD to make available to FTA and its consulting contractors all documents and information that FTA deems necessary for an evaluation of the Project as a Pilot Project, subject to FTA entering into confidentiality agreements with Denver RTD or other parties, as appropriate.

7.0 Review and Comment

FTA and Denver RTD will expedite their review of the administrative drafts of NEPA documents, if applicable, project management and financing plans, scopes of work, budgets, schedules, and the like by forwarding those documents to the contact persons identified below. FTA and Denver RTD will make every reasonable effort to complete their reviews of study deliverables, technical reports, and the like, within thirty days of receiving the material for review.

8.0 Contacts

FTA and Denver RTD have designated contact persons who will act as day-to-day liaisons on all matters related to the Pilot Program. The contact persons shall be available, with adequate notice, to attend and participate in coordination meetings or otherwise provide timely input into the preparation and review of all documents necessary to the development of the Project.

FTA has designated David Beckhouse as the contact person for FTA who will act as FTA's day-to-day liaison with RTD and whose contact information is:

David Beckhouse
12300 West Dakota Ave.
Suite 310
Lakewood, CO 80228-2583
(720)·963-3306
david.beckhouse@dot.gov

Denver RTD has designated Bill Van Meter as the contact person for Denver RTD, whose contact information is:

Bill Van Meter
1560 Broadway
Suite 700
Denver, CO 80202
(303)299-2448
Bill.VanMeter@rtd-fastracks.com

9.0 Amendments

Amendments to this MOU may be proposed at any time by either party and will become effective only upon approval in writing by both FTA and Denver RTD.

10.0 Attachments

For reference by the parties, the attachments identified below are made part of this MOU.

Attachment 1 January 19, 2007, Federal Register Notice Establishing the Public-Private Partnership Pilot Program

Attachment 2 Denver RTD's Pilot Program Application

Dated: 12/6/2007

Sherry Little
Sherry Little
Deputy Administrator
Federal Transit Administration

Dated: 12/10/07

Clarence W. Marsella
General Manager
Denver Regional Transportation District

Attachment #5

Eagle Project – Denver
Draft RFP and Concession Agreement Documents

Comments

April 2, 2009

1. Introduction

The review is based on the draft Eagle Project contract documents, received through February 20, 2009. These documents include the:

I. Draft Request for Proposal (RFP) No.18FH012
II. Draft Concession Agreement
III. Draft Design Build Contract Term Sheet
IV. Draft O&M Contract Term Sheet
V. Draft Rolling Stock Supply Contract Term Sheet
VI. Draft Form of Lenders' Direct Agreement

2. Methodology

The assessment was conducted in accordance with Federal Register Notice Volume 72, No. 12 regarding the Public Private Partnership Pilot Program. The assessment:

I. reviewed the structure of the Eagle Project and the procurement process as represented in the documents;
II. reviewed the degree to which, according to the documents, risks may be transferred to private parties; and
III. reviewed the potential implications for elements of FTA's due diligence.

All documents were provided in draft and, therefore, findings identified here are draft and may change based on, among others, changes in the documents and final agreements reached.

3. Eagle Project RFP Document

The Eagle Project RFP contains key elements generally recognized as important for an effective PPP procurement process, including:

I. Clear performance based scope definition
II. Clear and uncomplicated bidding process
III. Reasonable timelines, a clear communications plan, a process that allows for bidder innovation
IV. Submission requirements that incorporate attached forms
V. Detailed financial and technical specifications
VI. Descriptions of the key procurement terms
VII. Clear evaluation criteria and RTD's rights and disclaimers

Additional measures might also be considered in the following areas:

- *Timelines and milestones:*
  i. In the current environment, reaching financial close is very challenging. Increasing the time allocated to reaching financial close from 3 months to 4 months may merit consideration.
  ii. Selection of the Best Value Proposal benefits from a thorough evaluation of the proposals. Increasing the time allocated to identifying the Best Value Proposal from one month to two months may merit consideration.
  iii. In the event the overall timeline cannot be extended two months, reducing the proposal submission stage from nine months to seven months may be sufficient to allow bidders to properly develop their designs.

- *Design Review and Feedback:*

  The RFP does not identify an interactive process through which proposers are able to present their preliminary designs and obtain feedback from RTD. Nor is it clear how the Draft Proposal will be evaluated and what feedback, if any, it will trigger. RTD may consider utilizing an interactive design review process, consisting of meetings between proponents and user groups followed by formal feedback sessions, to help align the expectations of the users with the designs of the bidders. Further, the design review process could incorporate Commercially Confidential Meetings in which commercially sensitive subjects (e.g. innovation submissions) may be discussed and negotiated.

- *Evaluation of Proposals*:

  The evaluation criteria is heavily weighted towards the ABASP, given the use of a double-declining system for awarding ABASP points, making the ranking of proponents highly sensitive to pricing. There is a risk that a poor technical proposal may be selected because of price as shown in the following example:

	Bidder A	Bidder B	Bidder C
Financial Proposal Criteria			
ABASP (in millions of dollars)	60	65	70
ABASP Score	50	41.7	33.3
Feasibility of Financial Proposal	5	5	5
Rolling Stock Option	2	2	3
Technical Proposal Criteria			
Technical Approach	13	20	22
Quality of Team and Approach	6	7	9
Value-Added Proposals	3	3	4
Total	79	78.7	76.3

  Consider subjecting the evaluation criteria to a detailed sensitivity analysis. Decreasing the total number of points available to the ABASP from 50 to 40 or increasing the denominator factor to 1 may be considered.

- *Proposal Security*

  The $50 million proposal bond may prove high enough to discourage some bidders from responding. To maximize market interest in the Project, RTD could consider alternative options. One option might be a 2 stage proposal bond consisting of a $25 million submission LC and a further $25 million LC due upon notification of the Preferred Proponent.

- Financing Considerations

  RTD will assume the Benchmark Interest Rate risk seven days prior to bid submissions through Financial Close. In the current market, this may not be enough to ensure best pricing from lenders given uncertainties around fluctuating margins and rates. RTD could consider allowing for price flex whereby lenders get an opportunity to refresh their margins at a set time (one or more) after RFP close.

4. Eagle Project Concession Agreement

The Concession Agreement and associated agreed forms reflect a typical PPP structure and appear designed to achieve a level of risk transfer to the Concessionaire consistent with other similar PPP structures. The Concession Agreement addresses key areas that are important for proper risk transfer, including:

I. Equity requirements;
II. Design/build incentives;
III. Operations incentives;
IV. Concessionaire liabilities;

V. 3rd party liabilities; and

VI. Insurance.

However, the following are identified areas where Risk Management Enhancement could be considered:

- Overall Transaction Structure

  Some clauses of the Concession Agreement and attachments contain blanks which require the input of the proposers at bid submission. From a risk management perspective, RTD could identify an indicative or minimum accepted amount, especially for items that are not scored. This would prevent proposers from submitting low values for critical elements without being penalized in their score. RTD might consider identifying minimum accepted amounts for, among others:

  True Equity Participation – current market trend is for an equity participation of no less than 10% of the project cost.

  Retainage/LC – industry practice is to specify in the RFP the Retainage/LC the Proponents are required to provide. This will ensure consistency amongst Proponent responses.

  Default Interest Rate – industry practice is to set an acceptable Default Interest Rate in the RFP to ensure all responders use the same rate.

  Escalation – industry practice is to set an acceptable escalation rate in the RFP for both inflation costs and labor increases. The industry standard is to use the long term inflation rate as projected by the US Federal Reserve.

  Discount Rate – industry practice is to identify a specific discount rate in the RFP to ensure all Proponents use the same discount rate and are therefore evaluated consistently.

- Performance Risk

  With the Design Build Contract and Rolling Stock Supply Contract having security packages and step in rights for RTD in the event of a Suspension of Work or Concessionaire termination, the overall security package in the Concession Agreement appears reasonable under certain circumstances to complete the project in case of Termination. However, to further strengthen the security package and reduce RTD's exposure to performance risk, RTD could consider: parent company guarantees and a payment regime that allows for performance holdbacks on each Payment.

- Design Risk

  The Concession Agreement does not identify the level of allowances to be carried in the design/build component of the project. A fixed price contract with a high level of allowances is not preferable and leaves considerable risk to the public sector. In the case of the Eagle Project, it was uncertain what level of allowances were being contemplated. RTD could consider limiting allowances to 3% of the Total Price. This could be achieved by encouraging proposers to reach a design level that would allow them to fix almost all of their prices prior to proposal submission, and allowing adequate time to do so.

- Construction Risk

  RTD could substantially increase the liability of the Concessionaire and the Lenders in the event of non performance by withholding all payments until Substantial Completion is reached. This would increase the Project's cost of financing but would completely transfer all delivery risk and RTD could consolidate the Design-Build and Service Payments into one payment stream. RTD could also involve user groups in the planning efforts and implement a rigorous change management protocol during the construction phase, to lower the number of significant Scope Changes.

  To ensure that the Concessionaire remains committed in case of downscoping, RTD could consider including a minimum guaranteed scope, below which the Concessionaire would be allowed a price adjustment to indemnify it for lost economies of scale. Consistent with industry practices, a 25% downscoping cap and an option for the Concessionaire to refresh pricing in the event scope reductions exceeded the cap, might be considered. Scope increase options, if any, should be considered at the initial bidding stage and could be priced at that time by bidders. Where an affordability envelope limits the total cost of the project the public sponsor is able to afford, RTD may consider a scope ladder that ranks the importance of the major components of the project and allows Proponents the option of designing a system that falls within the affordability envelope while still meeting all the requirements of RTD.

- Financing Risk

  The Concessionaire is required to arrange financing for the Project. Interest rate variations during the term of the financing will have to be hedged or otherwise absorbed by the Concessionaire. The current market turmoil has made it extremely difficult for lenders and investors to arrange long-term, fixed rate financing that still generates value for money. RTD needs to be aware that even high quality, well structured deals face significant hurdles in reaching financial close and non-traditional financing strategies are likely to be employed (mini perms, rate resets, sponsor co-funding).

- Rolling Stock Design Defect and Compliance

  The Concession Agreement stipulates that the Concessionaire needs to ensure that the Final Project Design complies with the Output Specifications requirements, Third party Agreements, Permits, and Good Industry Practice. Any design defect or non compliance of the vehicles can be enforced by RTD by withholding payments or deducting costs from payments. RTD could consider a Liquidated Damages clause specifying an amount per day for non-excusable or non-compensable delays caused by the Concessionaire which would indemnify RTD for lost revenues in the event of such a delay.

- Service Performance

  During the O&M phase, monthly payments will be adjusted upwards or downwards based on deductions due to unavailability and service failures. These deductions should theoretically provide incentives / liabilities for good / poor performance. However, projections showing the expected monthly upward or downward adjustments were not available. These projections are obtained by running a Monte Carlo Simulation over a number of years (typically 1,000) to estimate what the coefficients found in tables 1 & 2 of Attachment 11 of the CA would yield in terms of adjustments. If not yet been done, RTD could consider calibrating the Payment Mechanism to ensure that the expected deductions / adjustments provide a sufficient level of risk transfer, reflecting the severity of breaches while respecting the bankability of the transaction.

- Utilities Consumption

  The Concession Agreement stipulates that RTD would reimburse the Concessionaire the costs of electrical power required for the operation of the Rolling Stock (the Reimbursable Traction Costs). Therefore, RTD retains both the Price and Volume risks for Energy Consumption. RTD could consider transferring energy consumption risk to the Operator through benchmarking and provisions for gain/pain sharing on variances in energy consumption. The Pain/Gain sharing could be layered onto the Service Payments in the form of monthly adjustments. Attachment A includes an example of indicative language for a utilities consumption gain/pain sharing provision.

- Capital Asset Replacement Plan

  The Concession Agreement requires the Concessionaire to "replace and upgrade, to the extent necessary, the Concessionaire-operated Components and any part thereof". The Rolling Stock is specifically excluded and is addressed separately in the Concession Agreement. As drafted, Sections 22.3 (Quality Management) and Section 29.5 (Maintenance and Repairs) of the Concession Agreement address both the maintenance and lifecycle replacement requirements together. From a risk management perspective, RTD may consider addressing lifecycle replacement separately from Maintenance and Repairs by specifying that a Lifecycle Replacement Schedule will be developed based on information included in the Concessionaire's proposal submission.

ATTACHMENT A (Example)

ENERGY MATTERS

1. Procedures for Determining Energy Cost Sharing

1.1 Transit Authority will reimburse the Concessionaire for the cost of consumption and use by the Concessionaire of Energy Utilities at the Facility (the "Pass Through Costs") based on service invoices provided to Transit Authority as part of the Monthly Service Payment Invoices; such amount to be paid by Transit Authority as part of the invoice issued for each Monthly Service Payment in accordance with Section [•] of the Concession Agreement. For purposes of optimizing Energy Utilities costs, Transit Authority may, at any time and from time to time, direct the Concessionaire to use a particular type of fuel energy source at the Facility.

1.2 The Discrete Energy Targets shall form the normalized thirty (50) year benchmark for calculating the Energy Services cost sharing in respect of each discrete Energy Service at the Facility. The Discrete Energy Service Actual Consumption for each discrete Energy Service shall be corrected to reflect actual degree days for each Contract Year. The Corrected Discrete Energy Consumption for each discrete Energy Service shall be used to calculate Painshare Adjustments and Gainshare Adjustments. The Aggregate Energy Target and the Discrete Energy Targets shall not be altered or adjusted, except by the process described in Section 3 of this Attachment

1.3 The Concessionaire shall provide Transit Authority with a draft Energy Analysis Report within ninety (90) days following the end of each Contract Year, which report shall include copies of all working papers to fully support the draft Energy Analysis Report. The draft Energy Analysis Report shall be consistent with the format and content requirements set out in Section 2 of this Attachment.

(a) As soon as practicable and in any event within one hundred and twenty (120) days following the end of each Contract Year, the Concessionaire and Transit Authority shall convene an Annual Review Meeting to be attended by the Concessionaire Representative and the Transit Authority Representative. At the Annual Review Meeting, the Concessionaire shall present the draft Energy Analysis Report to the Transit Authority, and the Transit Authority and the Concessionaire shall discuss the Aggregate Actual Consumption and the Discrete Energy Service Actual Consumption for each discrete Energy Service for the preceding Contract Year.

1.4 the Concessionaire shall assist the Transit Authority Representative and afford the Transit Authority Representative such information and access to the Facility, building management system records, utility meters, and by other means as may reasonably be required for the Transit Authority Representative to confirm the draft Energy Analysis Report provided by the Concessionaire to determine the Aggregate Actual Consumption and the Discrete Energy Service Actual Consumption for each separate Energy Service at the Facility for the Contract Year. The Transit Authority shall promptly notify the Concessionaire of the details of any disagreement of all or any aspect of the Energy Analysis Report, and the parties shall then seek to agree to any matters in dispute, but where matters cannot be resolved within such twenty (20) Business Day period (or such other period as may be otherwise agreed between the Transit Authority Representative, acting reasonably) it shall be dealt with in accordance with the Dispute Resolution Procedure.

(a) Within twenty (20) Business Days following each Annual Review Meeting, or within such period as may be otherwise agreed between the Transit Authority Representative and the Concessionaire Representatives, acting reasonably:

(i) Transit Authority shall confirm its acceptance of all or any aspect of the Energy Analysis Report; and

(ii) Subject to Section 3 of this Attachment, the Concessionaire and Transit Authority shall agree to any adjustments to the Aggregate Energy Target and the Discrete Energy Target(s) after taking into account load or usage changes as a result of any changes in occupancy.

(b) Subject to Section 1.4(c), the Concessionaire or Transit Authority, as the case may be, shall be entitled annually to a Gainshare Adjustment or a Painshare Adjustment, as the case may be, calculated in accordance with this Attachment, provided that neither the Concessionaire nor Transit Authority shall be entitled to a Gainshare Adjustment or a Painshare Adjustment until the Facility has reached Full Completion.

(c) Claims made by either the Concessionaire or Transit Authority for a Gainshare Adjustment or a Painshare Adjustment shall be made at an Annual Review Meeting. If the Concessionaire makes a claim for Painshare Adjustment, the Concessionaire shall within ten (10) Business Days after acceptance of the Energy Analysis Report by the Transit Authority Representative or within such other period as may be agreed by the Transit Authority Representative and the Concessionaire, acting reasonably, submit an account to Transit Authority setting out its calculation and justifying the quantification of the Painshare Adjustment. If the Transit Authority makes a claim for a Gainshare Adjustment, the Transit Authority shall, within ten (10) Business Days after acceptance of the Energy Analysis Report by the Transit Authority Representative or within such other period as may be agreed by the Transit Authority Representative and the Concessionaire, acting reasonably, submit an account to the Concessionaire setting out its calculations and justifying the quantification of the Gainshare Adjustment.

(d) If either the Concessionaire or Transit Authority wishes to dispute any account presented pursuant to Section 1.4(c) of this Attachment, it must do so by notice to the other Party within ten (10) Business Days of receipt of such account. The Transit Authority Representative and the Concessionaire representative shall use reasonable efforts to resolve the dispute for an additional ten (10) Business Days. If there is no agreement following such negotiations, then either Party may refer the matter to the Dispute Resolution Procedure. If neither Party objects in accordance with this Section 1.4(d), or following final determination of the disputed account in accordance with this Section 1.4(d), the Concessionaire shall include the relevant Gainshare Adjustment or Painshare Adjustment as a separate item within the next invoice prepared by the Concessionaire in accordance with Section [•] of the Concession Agreement. No adjustments shall be made to the Service Payment for any claimed Gainshare Adjustment or Painshare Adjustment except in accordance with the procedure set out in Section 4 of this Attachment.

2. Content and Format of the Energy Analysis Report

2.1 The Energy Analysis Report shall present findings of Aggregate Actual Consumption and the Discrete Energy Service Actual Consumption for each separate Energy Service for the relevant Contract Year and shall include the following:

(a) a summary of actual usage, degree days, and breakdown by utility in mega joules and cubic meters, or other utility rate units. The summary should also highlight any exceptional changes in consumption or pattern of use since any previous survey;

(b) accurate and precise consumption data; and

(c) identification of potential cost savings in respect of Energy Utilities usage by the Facility and provide an estimate of potential Energy Service consumption savings broken down by fuel type, implementation costs, Simple Payback periods and projected savings along with identifying potential risks associated with each proposed cost savings measure. The Concessionaire shall categorize these cost savings measures in the following categories: No Cost Measures, Low Cost Measures and High Cost Measures. The Concessionaire shall also advise the Transit Authority of projected Energy Utilities usage at the Facility for the next five (5) years and cost projections in respect of such projected Energy Utilities usage along with pricing trends and potential risks associated with each.

2.2 The objectives of the Energy Analysis Report are to confirm Aggregate Actual Consumption and Discrete Energy Service Actual Consumption for each individual Energy Service at the Facility in the relevant Contract Year and to provide data to calculate Corrected Aggregate Energy Consumption, Corrected Discrete Energy Consumption for each individual Energy Service and Gainshare Adjustment or Painshare Adjustment for each individual Energy Service.

2.3 Consistent with the objectives set out in Section 2.2 of this Attachment, the Concessionaire shall ensure that each Energy Analysis Report has the following components:

(a) presentation of Aggregate Actual Consumption, Discrete Energy Service Actual Consumption for each individual Energy Service, and calculation of Corrected Discrete Energy Consumption for each individual Energy Service and the Corrected Aggregate Energy Consumption;

(b) presentation of degree day data for the relevant Contract Year;

(c) establishment of a basis for continued monitoring of energy and utility consumption and adjustments to the Aggregate Energy Target and/or the Discrete Energy Targets; and

(d) utility data collected by the Concessionaire

(e) Detailed analysis of metered end-uses:

(f) Procedure for determining the Corrected Discrete Energy Consumption for each individual Energy Service will be calculated using the following formula (with separate calculations to be conducted and provided for each discrete Energy Service):

(g) Outline any outstanding issues from any previous Energy Analysis Report.

(h) Adjustments to the Aggregate Energy Target and Discrete Energy Target(s).

(i) Table showing the percentage variation in Energy Utilities consumption against the Discrete Energy Target(s) and the Discrete Actual Energy Consumption for each discrete Energy Service.

(j) Tables and graphs showing the consumption, unit costs, and total costs for all purchased Energy Utilities for the previous twelve (12) months. Breakdown of Energy Utilities types and costs for each energy use described in Section 2.1(c) of this Attachment and any other major energy use for the previous twelve (12) months.

(k) Appendices - The appendices shall include graphs, calculations and miscellaneous data that are relevant to the Energy Analysis Report.

(l) Summary tables from all previous Energy Analysis Reports delivered by the Concessionaire to the Transit Authority.

2.4 The Concessionaire shall, and it agrees that it will participate in the [Local or State Green program]

3. Corrected Discrete Energy Consumption and Process for Amending the Aggregate Energy Target and the Discrete Energy Targets

3.1 Following the acceptance of the Energy Analysis Report by the Transit Authority Representative in accordance with Sections 1.4 of this Attachment, the data set out in the Energy Analysis Report will be used to determine the Painshare Adjustments or Gainshare Adjustments.

3.2 For each Contract Year the Corrected Discrete Energy Consumption for each Energy Service shall be compared to the Discrete Energy Target for each Energy Service, and:

(a) if the Corrected Discrete Energy Consumption in respect of any discrete Energy Service is greater than 105% of the Discrete Energy Target in respect of such Energy Service then the Concessionaire shall calculate the Painshare Adjustment and credit Transit Authority's Monthly Service Payments, or

(b) if the Corrected Discrete Energy Consumption in respect of a discrete Energy Service is less than 95% of the Discrete Energy Target in respect of such Energy Service, then the Concessionaire shall calculate the Gainshare Adjustment.

3.3 At any time commencing after the first anniversary of the Completion Date, the Concessionaire and Transit Authority shall, acting reasonably, agree to make any adjustments to the Aggregate Energy Target and the Discrete Energy Target(s) only in the event of:

(a) substantial climate change for the relevant time period as reported by [Environment Agency] compared to the 1958 to 2008 thirty (50) year average meteorological data for Denver, Colorado as reported by [Environment Agency]. Climate change can only be evidenced by a climatic authority such as [Environment Agency] and must be presented to the Transit Authority with documented evidence of increased consumption trends in similar facilities in the [comparable zone];

(b) changes implemented in accordance with the Concession Agreement that would cause load changes or other changes in Energy Utilities usage; or

(c) changes in the utilization of the Facility from that described in the Concession Agreement.

3.4 Pursuant to Section 3.3, the Concessionaire may elect to propose a correction to the Aggregate Energy Target and the Discrete Energy Targets in direct proportion to any substantial change in occupation hours of the Facility.

3.5 The Party requesting an amendment to the Aggregate Energy Target and the Discrete Energy Target(s) shall appoint, subject to the other Party's approval (acting reasonably) and pay for a complete energy audit to be conducted by a third party auditor. The energy audit shall include a detailed computer simulation of Energy Utilities use by function and a comprehensive evaluation of Energy Utilities use patterns. The energy auditor shall prepare a report making a recommendation regarding amendments to the Aggregate Energy Target and Discrete Energy Target(s). Both the Transit Authority and the Concessionaire must agree to the amended Aggregate Energy Target and Discrete Energy Target(s) within twenty (20) Business Days following receipt of such report. If there is no agreement within a further ten (10) Business Day period, then either Party may refer the matter to Dispute Resolution Procedure.

3.6 Any amendment to the Aggregate Energy Target and the Discrete Energy Target(s) shall only affect the Monthly Service Payment (as a result of any Painshare Adjustments or Gainshare Adjustments) from the date on which the amendment is effective and shall not, for greater certainty, have a retrospective effect on any other previous Monthly Service Payments.

4. Calculation of Gainshare Adjustment or Painshare Adjustment

4.1 The table below shows the banding mechanism used for calculating the Painshare Adjustment or the Gainshare Adjustment to the Concessionaire and Transit Authority for each Energy Service.

Variance from DET in Year "x"	the Concessionaire's Pain
0-5%	0%
>5%	100%

Variance from DET in Year "x"	the Concessionaire's Gain
0-5%	0%
5-20%	50%
>20%	100%

4.2 The formulae to calculate the Gainshare Adjustment and the Painshare Adjustment set out in this Section 4.2 are based on the table in Section 4.1 of this Attachment. For the avoidance of doubt, if Corrected Discrete Energy Consumption in respect of a discrete Energy Utility falls within a set band above or below the relevant Discrete Energy Utility Target (i.e. no more than 5% above or below the benchmark) no Gainshare Adjustment or Painshare Adjustment will be made for that Energy Utility in that year.

(a) For the purposes of Section 4.2(b):

A = the Corrected Discrete Energy Consumption during the relevant year for a particular Energy Service in units e.g. mega joules; m^3, etc.

B = the Discrete Energy Target for the relevant year for a discrete Energy Service in units e.g. mega joules; m^3, etc.

(b) In respect of every year following the Substantial Completion Date:

IF: A< 95B then the Concessionaire Shall be entitled to claim and be paid a Gainshare
100
Adjustment ('GS') for that year, where

$$\text{if} \quad \frac{80B}{100} < A < \frac{95B}{100} \quad \text{then} \quad GS = 0.5\left[\frac{95B}{100} - A\right] * \quad \text{Average Unit Rate Price}$$

$$\text{but if} \quad A < \frac{80B}{100} \quad \text{then} \quad GS = \left[\left(\frac{80B}{100} - A\right) + \frac{B}{13.3}\right] * \quad \text{Average Unit Rate Price}$$

(In the above formula, a factor of 13.3333 is used to divide B. This is obtained by multiplying the range of the 2^{nd} band by the percentage of the Concessionaire pain/gain. The range of the 2^{nd} band is 20%-5%= 15% and the Concessionaire gain percentage is 50%. The product is 7.5% which results in the factor of 13.3333.)

BUT IF: A< 5B then the Transit Authority shall be entitled to deduct a Painshare Adjustment ('PS")
100
where

$$\text{if} \quad A < \frac{105B}{100} \quad \text{then} \quad PS = \left[\left(A - \frac{105B}{100}\right)\right] * \quad \text{Average Unit Rate Price}$$

5. Definitions

The following definitions shall have the following meanings:

5.1 "Aggregate Actual Consumption" means the actual consumption of all Energy Utilities as invoiced by the relevant utility companies for each Contract Year;

5.2 "Aggregate Energy Target" or "AET" means the number set forth in the Energy Target Letter submitted by the Concessionaire with its Design Development Submittals and which has been accepted by the Transit Authority.

5.3 "Annual Review Meeting" means meetings between Transit Authority Representatives and Concessionaire Representatives to occur within ninety (90) days of each anniversary of the Substantial Completion Date (or such other date as may be agreed between Transit Authority and Concessionaire) to discuss Energy Services;

5.4 "Average Unit Rate Price" means the average price for each standard unit of each discrete Energy Utility in a Contract Year as reported by the applicable utility companies responsible for the supply of such Energy Service;

5.5 "Corrected Aggregate Energy Consumption" means all Energy Utilities consumption at the Facility for such Contract Year, corrected for each Contract Year in accordance with this Attachment to reflect the climatic conditions for that Contract Year;

5.6 "Corrected Discrete Energy Consumption" means the Discrete Energy Service Actual Consumption for each discrete Energy Service (calculated for each discrete Energy Service) corrected for each Contract Year in accordance with this Attachment X to reflect the climatic conditions for that Contract Year;

5.7 "Discrete Energy Service Actual Consumption" means the consumption of an individual Energy Service of the Facility as invoiced by the relevant utility company for each Contract Year;

5.8 "Discrete Energy Targets" or "DET" means the numbers set forth in the Energy Target Letter submitted by Concessionaire with its Design Development Submittals and which have been accepted by the Transit Authority.

5.9 "Energy Analysis Report" has the meaning given to it in Section 2 of this Attachment

5.10 "Energy Service" means any metered provision of Energy Utilities of the Facility;

5.11 "Energy Target Letter" means the letter submitted by the Concessionaire with its Design Development Submittals setting forth the AET and the DET;

5.12 "Energy Utilities" means energy/power including electricity, natural gas, fuel, oil and any other energy source used by the Facility;

5.13 "Gainshare Adjustment" means the amount payable by the Transit Authority to the Concessionaire (which amount will be included in the calculation of the Monthly Service Payment for the Contract Month following the date in which such adjustment has been determined in accordance with Section 4 of this Attachment) based on Energy Utilities consumption for each discrete Energy Service that falls outside the set bands set out in Section 4 of this Attachment;

5.14 "High Cost Measures" means, in respect of a Contract Year, energy saving measures that incur capital expenditure with a Simple Payback of greater than 36 months;

5.15 "Low Cost Measures" means, in respect of a Contract Year, energy saving measures that incur capital expenditure with a Simple Payback of no greater than 36 months and are considered to be revenue items as opposed to capital investment measures;

5.16 "No Cost Measures" means energy savings measures, including those related to good house-keeping, involving no material additional expenditure and/or no capital expenditure to carry out;

5.17 "Painshare Adjustment" means the deduction which may be claimed by Transit Authority from the Concessionaire which amount will be deducted from the calculation of the Monthly Service Payment for the Contract Month following the date in which such adjustment has been determined.

5.18 "Pass Through Costs" has the meaning given in Section 1.1 of this Attachment.

5.19 "Simple Payback" means the number of years after which an investment will have paid for itself. Simple Payback is calculated by dividing the initial cost of the retrofit by the energy cost savings. Those projects with the shortest paybacks are assumed to be the most cost effective. Simple Payback = initial cost of energy retrofit / energy savings.

	Discrete Energy Targets		Actual Consumption		Corrected Discrete Energy Consumption		Percent Variance between vi and ii	Painshare Adjustment or Gainshare Adjustment
Total Energy Summary	Usage	Cost for Contract Year (calculated based on Discrete Energy Targets multiplied by average unit cost of each discrete Energy Utility)	Usage	Cost for Contract Year	Usage	Corrected Cost for Contract Year (calculated based on for each of the discrete Energy Utilities multiplied by average unit cost of each such discrete Energy Utilities)		
	i	ii	iii	iv	v	vi	vii	viii
Electricity								
Natural Gas								
Oil/Other								
Aggregate sums	**[To include Aggregate Energy Target]**		**[Aggregate Actual Consumption •]**		**[Corrected Aggregate Energy Consumption •}**			

American Road & Transportation Builders Association

Using Innovative Financing to Deliver Highway and Transit Projects

Statement of the American Road and Transportation Builders Association

Submitted to the United States House of Representatives Highways and Transit Subcommittee

April 14, 2010

On behalf of its 5,000 member firms and public agencies nationwide, the American Road and Transportation Builders Association (ARTBA) would like to thank Chairman DeFazio and Ranking Member Duncan for examining opportunities to use innovative financing to deliver highway and transit projects.

ARTBA's membership includes public agencies and private firms and organizations that own, finance, plan, design, supply and construct transportation projects throughout the country. The industry we represent generates more than $200 billion annually in U.S. economic activity and sustains more than 2.5 million American jobs. ARTBA has a long history of working to find common-sense solutions to financing issues and has been pleased to work with this committee on many prior occasions to fashion policies to deliver much needed infrastructure investments.

In its recommendations for SAFETEA-LU Reauthorization, ARTBA advocates an evolutionary approach to meeting the nation's growing infrastructure demands by proposing significantly better-funded and more efficient federal highway/transit programs aimed at improving regional mobility and protecting past investments in the nation's transportation infrastructure network, particularly in Interstate highways and bridges.

Accomplishing this goal will require a multi-modal strategy that includes new capacity, programmatic improvements, and a wide array of funding options. There is no silver bullet or single solution to the nation's transportation challenges.

ARTBA supports strengthening the core federal surface transportation programs and supplementing those investments with innovative financing methods to meet the nation's growing infrastructure needs.

To achieve this goal, ARTBA believes the imposition of motor fuel excises at the federal, state, and local levels should continue to serve as the primary funding mechanism for highway and bridge improvement programs. Perhaps this may not be considered "innovative," but it is a mechanism that has served users of transportation infrastructure well over the last 56 years and can continue to provide the needed revenue base with an adjustment in the excise rate, last increased in 1993.

While we recognize and support the need to find a new user fee mechanism in the near future, there is an immediate need to increase investments from the Highway Trust Fund. Both commissions created by SAFETEA-LU to explore solutions to the nation's infrastructure funding challenges found that increasing the traditional user fees in the near-term and transitioning to another user fee mechanism within 10 to 15 years was the most viable solution. The predominate challenge to the Highway Trust Fund has been the fact that while construction costs have been tied to real world increases in costs, the motor fuels excise has stayed locked in the same price since 1993. We strongly support efforts to act on this common sense solution.

However, this is only one part of the solution to our infrastructure crisis. Recognizing the nation's enormous infrastructure needs, other "non-traditional" funding mechanisms should be considered for use when appropriate to supplement core federal programs. These could include, although, are not limited to, expanded use of toll highways and bridges, public-private partnerships, creation of other financing mechanisms like infrastructure banks and revolving loan funds, and bond financing for capacity enhancing surface transportation infrastructure projects.

ARTBA supports providing states with toll financing options, including congestion pricing, high occupancy toll lanes, and truck only lanes, if the revenue generated is used exclusively for transportation capital improvements. Furthermore, states should be able to use appropriately structured toll systems on existing portions of the Interstate Highway System. Debt financing is also a viable funding source for long-term capital improvements to complement the core highway and transit programs.

These mechanisms should not be advanced for the purposed of reducing existing levels of highway user taxes, avoiding necessary increases in highway user fees, or diverting highway user generated revenue to non-highway uses.

In continuing to support public-private partnerships, ARTBA recommends the following principles be applied in the next surface transportation bill to serve the public interest:

- The proceeds from lease arrangements should be dedicated exclusively to transportation infrastructure in the state or locality where the project is based.

- Decisions about future needed investments should be based on publicly disclosed criteria.

- The expectations of affected communities with respect to environmental issues and public involvement should be balanced with the needs of private investors to deliver on their contractual obligations effectively.

- A framework for determining how contractors and consultants are selected for these projects should be established and made publicly available.

- Federal and state transportation agencies should be encouraged to develop and fund proposals for using a public-private partnership approach to construction, improving and operating highway transportation projects when public funding is inadequate or not available for such projects.

- When federal or other public funding is involved, public-private partnerships projects should be constructed in cooperation with applicable federal and state transportation agencies and in accordance with all relevant laws, including those applicable to competitive bidding for construction contracts.

- Congress should increase investment in the Transportation Infrastructure Finance and Innovation Act (TIFIA) program. This successful program provides Federal credit assistance in the form of direct loans, loan guarantees, and standby lines of credit to finance surface transportation projects of national and regional significance. Through SAFETEA-LU, Congress authorized $122 million for each Federal fiscal year from 2005 through 2009. The program is now oversubscribed and increased funding would enable the TIFIA program to provide credit assistance to many more infrastructure projects in turn creating more jobs and economic development.

- Appropriate types of tax incentives, such as arbitrage relief, public benefit bonds (which would be suitable investments for 401(k) and other employee benefit plans), private activity bonds, and volume cap flexibility should be considered to facilitate the private financing of private and public-private federal-aid transportation infrastructure projects.

As this Subcommittee continues its efforts to produce a multi-year reauthorization of the federal surface transportation program, we urge you to support policies that will promote public-private partnerships as a complement to robust core federal investment in highway and public transportation improvements.

ARTBA welcomes your efforts to ensure transparency and accountability in the public-private partnership agreement process and pledges to work with you to develop policies that achieve this goal. To that end, we support efforts to develop best practices and technical expertise in the Federal Highway Administration.

It is important that the goal of protecting the public interest in public-private partnerships not erect barriers that serve as an impediment to these non-traditional endeavors. ARTBA is convinced that the goals of an open and responsive process for public-private partnerships can be achieved in a manner that will not serve as a deterrent to these initiatives at a time when the nation needs every available option to address its transportation challenges.

ARTBA looks forward to continuing its long tradition of working with the House in order to meet the nation's growing infrastructure needs with common sense solutions to finance and deliver improvements in all modes of transportation.

Testimony of the High Desert Corridor Joint Powers Authority
Before the Subcommittee on Highways and Transit

April 14, 2010

The High Desert Corridor Joint Powers Authority ("JPA") greatly appreciates this opportunity to appear before the Subcommittee on Highways and Transit. This is an important time for our Nation's transportation system and we applaud the Subcommittee's initiative in addressing the difficult and complex issues we are facing.

The JPA was created for the purpose of accelerating the development of a new freight expressway from California State Road 14 to Interstate Highway I-15 through the rapidly growing High Desert area of Los Angeles and San Bernardino Counties as a public-private partnership ("PPP"). We are a joint powers authority comprised of the Counties of Los Angeles and San Bernardino. The five cities impacted by the High Desert Corridor in those two counties: Adelanto, Victorville, Apple Valley, Lancaster, and Palmdale are voting members of the JPA Board of Directors. Our project, called the High Desert Corridor, was designated as a High Priority Corridor (the "E-220") in the National Highway System by section 1305 of Safe, Accountable, Effective Transportation Equity Act: A Legacy for Users ("SAFETEA-LU").

I. <u>BACKGROUND</u>

The SAFETEA-LU designation of the High Desert Corridor as a National Priority Corridor reflects the critical importance of this project and the enormous benefits it will bring. Currently, traffic through California heading to and from Nevada and Utah must pass through the densely populated and heavily congested counties of Los Angeles and San Bernardino. The High Desert Corridor will enable freight and people traveling along the I-5 and I-15 corridor to avoid these areas, thereby relieving congestion in Los Angeles and San Bernardino Counties and making through travel far more efficient. The High Desert Corridor provides the missing link in the National Highway System between California's two major north-south interstates, I-5 and I-15. This project is the first phase and will connect State Road 14 to I-15. Importantly, this project will generate significant environmental benefits by efficiently moving traffic out of the existing congested Los Angeles and San Bernardino Counties transportation corridors. We anticipate improved traffic flows will reduce fuel consumption and the corresponding emissions of greenhouse gases in the San Fernando, San Gabriel, and San Bernardino Valleys.

When completed, the first phase highway portion of the project will be a 50-mile long, 6 lane facility. Another important feature of the project under consideration is the inclusion of a corridor for a high speed rail connector for this region to Las Vegas. The High Desert Corridor may also in the future connect to an intermodal terminal that will provide truck, rail and air services to this rapidly developing area and could someday serve as an inland port. The $4 billion High Desert Corridor project will create almost 43,000 sustainable jobs following the creation of 28,000 construction jobs.

Building this project in the current economic climate and in the face of significant shortfalls of traditional transportation funding will not be easy. The JPA appreciates the fact that this Subcommittee is acutely aware of the problems facing entities such as the JPA as we seek to rebuild and expand this Nation's infrastructure. Great flexibility and creativity will be needed to find adequate financing for expensive, but extremely valuable, PPP projects like the High Desert Corridor.

Our project will not be possible unless we can make maximum use of traditional sources of transportation funding, take advantage of long term credit assistance, utilize innovative finance techniques, introduce tolling, and establish it in California as one of the first few PPP projects under recently passed legislation. This will require a legal framework and policy environment that supports and attracts private investment. Existing programs, such as the Transportation Infrastructure Finance and Innovation Act ("TIFIA"), private activity bonds ("PABs") and Build America Bonds ("BABs") must be extended and improved. The JPA fully endorses the ideas presented by the San Bernardino Association of Governments ("SANBAG") and the Los Angeles County Metropolitan Transportation Authority ("Metro"), but would like to discuss them in the context of the High Desert Corridor and the Surface Transportation Authorization Act ("STAA") as approved by this Subcommittee.

II. STAA AND THE HIGH DESERT CORRIDOR

The JPA understands the tremendous amount of work that was involved in developing a legislative initiative of the magnitude of STAA. Such legislation will be the foundation for the future of our federal highway, transit, and other surface transportation programs. We are pleased to offer our views on several provisions of STAA and comment on how those provisions may affect the development, financing and operations and maintenance of the High Desert Corridor PPP. There are also issues not addressed in the proposed legislation that we would recommend be added.

A. Credit Program Tools

The lack of tax revenues at the state and federal levels and the dire condition of the Highway Trust Fund necessarily make innovative, expansive and flexible credit programs an important part of any plan to enable transportation projects to be built at the time they are needed. Credit programs can include loans, bonds, loan guarantees, and lines of credit. Credit programs available under current law are effective because they are sound investments and generally provide a highly predictable revenue stream. Thus, these credit programs encourage both public and private investment that can leverage and supplement traditional public funds for developing transportation projects, making it possible to provide additional transportation projects with limited traditional grant funding. Because of these important advantages, expanding and improving these programs will be particularly useful to the JPA and the High Desert Corridor. Such programs include the following:

1. TIFIA

For projects like the High Desert Corridor, it will be critical to have access to low cost financing such as that offered by TIFIA. TIFIA provides federal credit assistance through direct loans, loan guarantees, and standby lines of credit to finance transportation projects of regional or national significance costing in excess of $50 million. TIFIA loans may provide funding for 33% of eligible project costs. TIFIA provides immediate capital resources for projects like the High Desert Corridor, but can be repaid over many years, typically 30 years. TIFIA interest rates are tied to Treasury rates, which are lower than commercial rates, thus reducing the cost of borrowing. Moreover, except in the case of default, the repayment of principal and interest on a TIFIA loan is subordinate to senior, commercial, debt. This means that senior lenders are more certain of getting timely repayments of principal and interest. With PPPs, both the TIFIA loan itself and its subordinate position help attract private investment at a lower interest rate. Access to TIFIA low cost financing is often the difference between "go" or "no go" for a transportation project.

For the federal government, a key advantage of the TIFIA program is its low cost to the federal budget and the fact that it is a loan, which ultimately gets repaid. TIFIA loans cost relatively little to issue and are very secure. Hence, they "score" very low. For example, a $100,000,000 TIFIA loan might typically score at less than $10,000,000, and thus require the obligation of only that amount. This score is called the subsidy cost of the TIFIA loan, loan guarantee, or line of credit.

SAFETEA-LU funded TIFIA at an annual level of $122,000,000. This level of funding has resulted in $17.366 billion of new projects. Additional TIFIA funding was provided in The American Recovery and Reinvestment Act ("ARRA"). But the SAFETEA-LU TIFIA authorizations have been fully utilized and we have every expectation that the demand for TIFIA funds will only increase exponentially. Recognizing this fact, the program level should be greatly increased. Program expansion will provide a significant spur to infrastructure development. For example, simply doubling the annual funding level to $240 million will provide more than $2 billion of additional transportation funds each year. However, the documented needs to rebuild and expand our surface transportation system argue for an annual TIFIA funding level that is significantly higher. We urge this Subcommittee to approve an annual TIFIA funding of at least $500 million. The $500 million number reflects the increased demand for major surface transportation projects that has occurred since the February 2009 report of the National Surface Transportation Infrastructure Financing Commission that recommended an increase in annual TIFIA authority to $300 million. Events of the past year strongly suggest the $300 million number may not longer be adequate, particularly given the economic recovery now underway.

We also urge the Subcommittee to consider a number of other focused improvements to TIFIA.

- We support the provision in STAA to allow TIFIA loans for up to 49% of the total project cost. This would expand the types of projects that could use TIFIA even though there would still have to be substantial investment from other sources and capital contributions from the owner or equity and debt contributions from the private sector. However, we suggest that the 49% number be raised to 50% or higher.

- TIFIA loans should always be subordinate to senior lenders. However, in a bankruptcy situation, the TIFIA loan "springs" to parity with other senior creditors. This is often referred to as a "springing lien." Although bankruptcy is unlikely, this theoretical possibility increases the cost of the senior (commercial) loans which factor in the possibility of a springing lien. The additional risk to the government would be small if such loans always remained in a subordinate position. Further, the limited additional risk to the government, if any, could be covered by a higher budgetary score and credit subsidy.
- There should be streamlined integration of the TIFIA program with other transportation credit programs. For example, because the High Desert Corridor potentially includes high speed rail, we may apply for credit assistance under the Rail Rehabilitation and Improvement Financing ("RIFF") Program. However, to obtain a RIFF loan and a TIFIA loan, we would have to submit two applications subject to different application rules, even though both applications would be scrutinized by the DOT Credit Council and would be evaluated under similar policy criteria. The Secretary of Transportation should be authorized to combine loans from different DOT credit programs into a single application and single

agreement. This change would be more efficient and encourage true intermodal project planning and financing.

- We are also concerned about a recent action by DOT that could discriminate against certain TIFIA applications and may adversely affect the JPA. In the most recent TIFIA Notice of Funding Availability ("NOFA"), DOT changed the statutory criteria for evaluating and prioritizing TIFIA applications to include a factor related to "livability." Livability is ill-defined in the NOFA, leaving the applicant to guess at its meaning. This criterion is not found in the current law and would burden a particular loan program beyond the general requirements applicable to all types of transportation projects. The High Desert Corridor greatly benefits the communities in which it will be located as well as residents in the Los Angeles area and throughout the San Bernardino Valley. The High Desert Corridor will add to quality of life and community sustainability through its provision of a safer, more efficient and less congested means for commuters, residents, and commerce to move across the High Desert and across Los Angeles and San Bernardino Counties. By improving transportation access, the High Desert Corridor will provide an improved balance between job location and high desert housing, thereby reducing the number of vehicle miles traveled, with corresponding benefits for the environment. Nevertheless, we have no idea whether this is what the new DOT livability criterion encompasses, whether the project would meet this criterion, and what we would have to show to persuade

DOT that TIFIA credit assistance should be provided. By contrast, STAA strengthens the overall transportation planning requirements, includes criteria related to livability, and provides for a process that would clarify what this standard means.

2. Transportation Private Activity Bonds ("PABs")

The transportation PAB program was created by SAFETEA-LU and provides access to tax exempt financing for qualified highway and freight rail-highway transfer facilities. Both types of projects are part of the High Desert Corridor. The reduced cost of tax exempt financing makes the transportation PAB program a very attractive financing tool for the JPA.

We support the improvements to the PAB program suggested by San Bernardino Association of Governments that would make this program even more useful.

- The program should be made permanent. SAFETEA-LU established a ceiling of $15 billion for transportation projects, not including rail, to be allocated by the Secretary of Transportation. Once this $15 billion is allocated, the transportation PABs program will end. We recommend that the PABs program be incorporated into permanent law. Without this change, projects like the High Desert Corridor may never have the opportunity to use PABs.
- The ceiling on PAB allocations should be eliminated. When PABs are used, state and local transportation agencies are less dependent on grants from the Highway Trust Fund, reducing the direct cost to the federal government. Moreover, unlike many of the projects that use other types of PABs, transportation projects benefit interstate commerce in ways that

reach well beyond the jurisdictions in which they are located. The High Desert Corridor, with its potential high speed rail, potential inland port, improved access to the Southern California Logistics Airport (a large air freight facility located at the old George Air Force Base) and its more efficient re-routing of freight and commercial goods through and out of California, appears to be precisely the type of project that PABs was intended to promote. However, eliminating the cap is central to our recommendation that rail be included in the transportation PABs. If the cap is not eliminated, all we will have done is add more claimants to an already limited program. If this Subcommittee is not comfortable with eliminating the cap, then the cap should be raised to a level sufficient to accommodate all claimants and a fixed allocation provided to highway and rail programs.

- Interest earned on transportation PABs should be exempt from the alternative minimum tax ("AMT"). Interest earned on all types of PABs, although exempt from the general income tax, is subject to the AMT applicable to taxpayers with higher incomes. This makes PABs less attractive, reducing their utility. ARRA exempted PABs issued in 2009 and 2010 from the AMT, which results in immediate increased interest and use of the PABs financing tool. This change should be made permanent.
- Proceeds from transportation PABs should be available to finance the acquisition for as much right-of-way as is needed for a project. In general,

PABs proceeds must be used to fund new construction, but may be used to acquire only a limited amount of property. This makes no sense for transportation PABs, as these projects require a disproportionate amount of land, making this restriction a particular problem. Moreover, right-of-way acquisition has long been regarded as a routine part of highway construction. Indeed, the definition of highway construction in federal law includes right-of-way acquisition. For a project like the High Desert Corridor, with its extensive reach, right of way acquisition is a key component and the ability to use PABs proceeds for such acquisitions will be very important.

3. <u>Build America Bonds (BABs)</u>

BABs, created in ARRA, are not tax-exempt but are partially subsidized by the federal government which contributes 35% of the interest paid to investors. BABs are not available for projects built by PPPs. We see no purpose in this restriction. Transportation agencies such as the JPA should have as many credit tools available as possible and be able to take advantage of the lowest and most attractive forms of capital.

4. <u>National Infrastructure Bank</u>

The current version of STAA does not contain a provision relating to the National Infrastructure Bank, although the Subcommittee signaled its support of such an institution by a reference in its summary of the bill. To the extent the Bank would provide additional, less costly financial resources, the JPA supports this proposal. Our only concern with establishing a Bank is that Congress should not eliminate or make less accessible existing well established sources of credit assistance or other funds. We also recommend that the Bank be dedicated exclusively to transportation projects.

B. Public Private Partnerships ("PPPs") and Tolling

TIFIA, PABs, BABs, and other credit enhancing devices do not by themselves raise additional capital. They provide incentives to attract capital and reduce the costs of financing that enable accelerated construction of additional transportation facilities with the repayment of invested funds occurring in the future. What is particularly significant about these tools is that they can be packaged in a way that attracts private investment and encourages the formation of PPPs. It is by this pathway that the credit program tools discussed above become part of a permanent solution that secures our transportation future. And it is in that context that the JPA is considering the use of these credit programs.

Although the JPA has not made a final decision regarding tolling and how to enter into a PPP, given the complexity of the High Desert Corridor project, such an arrangement is certain. A PPP would attract additional capital to the project, allow the JPA to transfer a material portion of the development and financial risk to private investors, and take advantage of the expertise, innovations, experience, and efficiency that a private partner can bring. Should the JPA proceed in this direction, we will employ the services of Metro's experienced advisors to ensure that a robust and competitive procurement is implemented and the PPP agreement is equitable and that the public interest is served and appropriately protected.

1. Make the Value Pricing Pilot Program Permanent

We agree with the provisions in STAA that build on and expand the Value Pricing Pilot Project found in current law. The flexible and comprehensive provisions of that program should apply nationally, not just in the 15 states permitted now. Unfortunately, the STAA amendments would not apply outside of urban areas, although the Value Pricing Pilot Project has demonstrated useful results in both urban and rural areas.

2. Planning

We applaud the Subcommittee's decision to account for PPPs, tolling, and pricing in the transportation planning process. This will result in these mechanisms being considered earlier and in a systemic manner. We also applaud the creation of new types of transportation plans, supplementing the statewide and metropolitan planning processes, to better focus the nation's long term needs. These plans include the National Transportation Strategic Plan, Freight Corridor Plans, High Energy Safety Improvement Plans, Critical Asset Investment Plans, and Metropolitan Mobility Plans, all of which look to the possibility of pricing to meet some of their objectives.

However, tolling and PPPs are just one of the many possible ways of implementing transportation projects and should be treated as such in the planning process. State and local transportation agencies should not be required to go through additional procedures or perform extra analyses simply to include PPPs and tolling in the transportation plan. These tools, like other tools, should be readily available for use. Their value and importance is well documented and there is no need to reinvent the justification wheel each time a transportation agency wants to select a PPP or tolling tool from the menu of proven options. The JPA has full confidence in our existing procedures which have served the people of our constituent counties well for decades. Those procedures allow us to carefully weigh the costs and benefits of our transportation plan.

3. Certain STAA Provisions Will Discourage the Use of Tolls and PPPs

Given the critical importance of PPPs in attracting investment capital, we are deeply concerned that a number of provisions in STAA will discourage private investment and undermine the use of tolling and PPPs in the future. These provisions could make projects like the High Desert Corridor much more difficult, if not impossible. Under STAA, federally funded projects involving tolling and PPPs:

- will be subject to ongoing, centralized federal regulatory oversight through a new Office of Public Benefit;
- will be subject to extensive and unique federal approval procedures, including public hearings and public review of financial agreements that will make it much more difficult to establish a PPP;
- cannot be changed to account for future needs without being subject to the same procedures as the initial approval;
- will not be allowed to include non-compete clauses which means that there is no protection for the value of the private investment;
- will be required to fund competing projects that could provide an alternative to the tolled road, thereby significantly reducing any incentive for a private investor to participate in building a highway since the investor will be forced to fund its competition and, for publicly owned toll facilities, will jeopardize the ability of the agency to obtain financing at optimized rates; and
- will be subject to extensive, expensive, and time consuming litigation since each and every decision made in the PPP and tolling process will be subject to challenge in federal court.

In short, if a state or local transportation agency wishes to obtain federal funding, including credit assistance, in association with private investment through a PPP, DOT would have to determine that a PPP represents a better value than building the project exclusively with tax and other government revenues. These transportation decisions should be made at the state and local levels, as has always been the case. This federal determination required by STAA, challengeable in court, coupled with the restrictions described above, will send many investors in search of other places to put their dollars and will significantly and adversely affect the viability of these tools at a time when they could be a material answer to our infrastructure needs. The result will be that governments at all levels, including the Congress, will need to raise taxes or raid other important programs to pay for necessary transportation infrastructure projects or, even worse, avoid or further delay the necessary improvement of our crumbling national infrastructure.

Congress does not have to take these draconian steps. PPPs and new tolling proposals are already subject to close public scrutiny under existing procedures and current state law. Public awareness of these types of proposals is high and public acceptance of tolling and PPPs varies from one state to another. Not only are state review and approval procedures adequate, but such local processes better reflect the outcome desired by those citizens most likely to be affected. With this in mind, we offer the following specific comments.

- The decision to build a project with tolls and a PPP should be left to state and local governments. STAA proposes that a decision to build a project with tolls and to use a PPP, even when otherwise allowed by law, shall now be subject to federal approval based on broad "public interest" criteria applied after a public notice and comment period. However, the decision about which sources of funding are most appropriate has always been a state and local decision. STAA ends that historic deference to local authority.

- The role of the Office of Public Benefit ("OPB") should be to act as a clearinghouse of best practices and as a resource for states considering a PPP or toll project. Under STAA, the OPB will be responsible for overseeing the operation of PPPs and toll rate schedules and making recommendations to the Secretary about whether to approve tolling and the use of a PPP on federal-aid projects, as well as acting as an information resource. Except for information services, the functions STAA assigns to OPB belong to the states and local agencies.
- Current law, which largely defers to state and local decisions regarding the toll rate, should not be changed. STAA requires DOT to seek public comment on the initial toll rate and the toll rate structure. After the use of tolls has been approved by DOT, and before the approved tolls may be implemented, the toll authority is required to consider "to the satisfaction of the Secretary, mitigation measures that reduce the impacts on interstate commerce and low income users." This is an entirely new impediment to tolls and will create a new federal toll bureaucracy. Decision making authority on how to structure tolls should be left to local government.
- Congress should consider repealing the ban on commercialization of state-owned safety rest stops. The issue is not who is selling food to weary motorists but how we can maintain our interstate highways to serve motorists in the face of shrinking budgets that have caused the closure of

many publicly owned rest stops. Commercialization of rest stops through appropriate PPPs offers another tool to provide funds to operate and maintain our highways while also providing valuable services to motorists. For example, California, along with other Pacific Coast states, is attempting to ensure the availability of alternate fuels along the I-5 corridor from British Columbia to Baja, California. An appropriately structured PPP could facilitate this objective while also providing much needed revenue for our highway system.

We urge the Subcommittee to consider these recommendations carefully. The federal-state and local relationship in transportation is based on a careful definition of the roles of each. The provisions about which we are concerned will erode that relationship and will diminish the ability of state and local agencies to meet their infrastructure challenges. We agree that serving the public interest is an essential part of any public road or transportation project, whether tolled or not and whether through a PPP or public operation. However, we think that the current approach, which largely makes the states responsible for these decisions, is the correct way to deal with these issues. Roads and streets are owned and operated by the states and local governments. It is these governmental units that should be responsible for ensuring that these roads are operated in a manner serving the public interest. Moreover, the centralized regulatory scheme in STAA would apply the same standards in all states. Yet, we suspect that the citizens in each state will have vastly different ideas about the propriety of tolls or the efficacy of a PPP. After all, the PPP agreement and any toll rate schedule are implemented under state law. State processes are more than adequate to protect the public interest.

III. OTHER PROCEDURAL IMPROVEMENTS IN STAA

So far, we have focused on provisions of STAA specifically relating to PPPs and tolling. However, there are a number of general provisions in STAA that also affect PPPs and toll projects because PPP and toll projects are subject to the same requirements applicable to traditionally funded federal aid projects.

A. Environmental Streamlining

STAA continues and refines the environmental streamlining provisions of SAFETEA-LU. The provision creating the Office of Expedited Project Delivery has particular promise. This new office will have the specific responsibility to continually monitor the environmental review process and to make specific recommendations for improving that process to facilitate project delivery. The office will also focus on specific projects and become a consistent advocate for expeditious decision making, problem solving, and conflict resolution. Past experience has shown that such focused attention can lead to positive results.

B. Program Consolidation

We support the proposed reductions in the number of Federal-aid highway funding categories to six major programs. The current law is unnecessarily complicated and, for a local transportation agency like the JPA, difficult to use to our best advantage.

C. Safety

We applaud the emphasis STAA places on highway safety. We have every intention of building the High Desert Corridor to the highest possible standards. The increased focused on safety in STAA is consistent with our goals.

IV. CONCLUSION

There are many things to like in STAA. However, Congress has yet to identify a dedicated funding source to carry us into the future. At the JPA, we have committed substantial local resources, time, and energy to the High Desert Corridor Project because it will produce significant benefits for our area, while also serving regional and national needs. We think that this model, a model we have adopted at the JPA, will integrate well with achieving STAA's overall goals. We thank the Subcommittee for allowing us this opportunity to offer our views and look forward to working with you as you continue with your legislative efforts.

<u>Executive Summary</u> of Testimony by the San Bernardino Associated Governments (SANBAG) Before the House Subcommittee on Highways and Transit

San Bernardino Associated Governments (SANBAG) is a regional transportation planning agency and council of governments in the "Inland Empire" region of the greater Los Angeles basin, home to approximately 2 million people. This rapidly growing strategic region of Southern California is in great need of infrastructure investment for regional mobility and livability needs as well as national goods movement imperatives. Along with eighteen other counties in California, San Bernardino County has a voter-approved sales tax dedicated to transportation infrastructure over a 30-year period. These "self-help" measures are prime opportunities to leverage local funds, enhance the federal government's partnerships, and use innovative financing to deliver projects of national and regional significance while accelerating job-creation and economic benefits.

SANBAG is in the process of assessing opportunities for using innovative financing to enhance projects included its voter-approved sales tax expenditure plan as well as increase mobility options for its constituents. The Subcommittee is aware of a similar effort in neighboring Los Angeles County; the Subcommittee should be aware that many "self-help" entities throughout California and the nation could benefit from an enhanced federal innovative finance policy. It is clear to our locally-elected leaders that existing sources of funds are not enough to address the enormous congestion problem in San Bernardino County. While no final recommendations have been developed for specific projects, SANBAG is interested in having as many responsible financing tools available as possible to achieve locally-preferred transportation objectives.

National policy should not limit restrictions on tolling and allow states to set responsible policies for tolling and public-private partnerships. TIFIA should be expanded and borrowing limits should be raised to allow greater access to capital. Private Activity Bonds (PAB's) and Build America Bonds (BAB's) can be critical components of project finance and should have broader eligibility and availability. The Administration's proposed National Infrastructure Innovation and Finance Fund (NIIFF) could hold promise as a clearinghouse for innovative financing. Federal leadership can reduce the cost of borrowing to implement regionally and nationally significant projects while accelerating their delivery for beneficial use by the traveling public. For agencies such as SANBAG, the motive to pursue these tools is not profit, but rather to provide more infrastructure in a more expeditious fashion to improve the quality of life and economic vitality of our region.

SANBAG applauds the Subcommittee for holding a hearing on this issue and extends an offer to be a practical resource for the Subcommittee as an example of an entity seeking to use innovative financing for maximum public benefit.

Testimony of the San Bernardino Associated Governments
Before the Subcommittee on Highways and Transit

April 14, 2010

The San Bernardino Associated Governments ("SANBAG") is pleased to submit this testimony regarding innovative financing for major infrastructure projects. It is a well-documented fact that this country's existing surface transportation infrastructure is in disrepair and SANBAG thanks this Subcommittee for its commitment to authorizing a bold new national surface transportation program. SANBAG hopes to offer you a series of realistic ideas to allow transportation agencies such as SANBAG to leverage local, state and federal dollars to advance major job-creating and congestion-relief infrastructure projects.

I. SANBAG AND INFRASTRUCTURE DEVELOPMENT

SANBAG serves as the Council of Governments for the 24 cities and towns that comprise California's San Bernardino County, one of the nation's fastest growing regions. We are the largest county in California geographically and the fifth most populous. San Bernardino County is also one of the fastest growing counties in California, expanding at more than twice the rate of California at large. In 2008, San Bernardino County added 17.9 percent to its population. San Bernardino County is on the eastern end of the greater Los Angeles basin. Providing the infrastructure necessary to accommodate this growth presents serious challenges as we strive to meet the needs of our constituency.

SANBAG's responsibilities to meet the needs of our county include serving as the transportation planning agency for the County. SANBAG develops and implements short and long term transportation plans. SANBAG supports congestion management initiatives, including ride sharing programs; rail and mass transit projects; regional and local road improvements, including freeway construction; and highway safety programs, including call boxes and railroad crossings. In short, SANBAG is responsible for planning and implementing a multi-modal transportation program for San Bernardino County's 1.9 million citizens. To support these efforts, the citizens of San Bernardino County have enacted a dedicated sales tax to support transportation projects, making San Bernardino County one of California's nineteen "Self Help Counties." By taxing our citizens to pay for transportation infrastructure projects, we are adding revenue to fill the gap left by declining state and federal revenues.

Unfortunately, when it comes to transportation programs and projects for this growing region, the magnitude of the demands placed on us far outweigh our resources, and we are forced to ask for help to meet our County's needs. However, the state and federal programs that are available to provide that help are themselves grossly underfunded and have far too many competing demands placed on them. As discussed below, we believe that innovative finance tools that establish a partnership among federal, state and local governments and, for certain projects, private parties can help us meet our need for infrastructure development.

Among the major projects SANBAG is assessing are establishing managed lanes along three different interstate corridors within San Bernardino County and constructing and operating various highway projects using strategic partnerships and tolling. In undertaking these assessments, SANBAG is acutely aware of its responsibilities to its citizens to assure that each project is a good value for all of our citizens, contributes to the livability of our area, and is sensitive to the environment. Transportation planning is an important public trust, and SANBAG treats it as such. To help us fulfill our responsibilities, we have retained technical, financial, and legal experts. With their assistance, we are carefully evaluating the full range of social economic, financial, engineering, and environmental issues associated with each possible project.

What is already clear, however, is that if we ultimately decide to move forward with any of these projects, we will need to employ a number of innovative financing tools. While SANBAG has not yet adopted a definitive plan, having these tools available will enable the agency to leverage scarce federal dollars by attracting the financing and private capital needed for certain potential projects.

We will also need to rely on federal programs such as the Transportation Infrastructure Finance and Innovation Act ("TIFIA"). Without the financing made available through TIFIA, major surface transportation projects such as our potential projects will not be possible. The importance of TIFIA to SANBAG and other transportation agencies is amply demonstrated by the extraordinarily high demand for TIFIA loans. This program needs to be expanded to address the needs of our aging surface transportation system.

In the same way, should SANBAG move forward with its projects through a public-private partnership, SANBAG will need to rely on private activity bonds as another innovative tool to finance planned transportation projects. These bonds provide an invaluable opportunity to access capital at reasonable rates that make important projects economically viable.

The work of building and modernizing of the transportation system in our county and throughout the country will provide work for tens of thousands of people and accelerate economic recovery. While transportation received only 6% of the American Recovery and Reinvestment Act ("ARRA") funds, transportation provided more than 30% of the jobs directly created. For example, San Bernardino County is home to the fourth largest ARRA funded highway project in the nation, the widening of the I-215 which will create an estimated 8,000 jobs during the four-year duration of construction. The significance of this project is seen in the sad fact that an Bernardino County is considered "economically distressed" by federal definition and continues to experience an unemployment rate hovering around 15%.

SANBAG also believes there are significant environmental benefits from improved infrastructure usage. The Environmental Protection Agency reports that approximately 23% of all greenhouse gases emitted in the U.S. in 2007 were from cars, buses, and trucks. Reducing congestion by providing for more efficient use of highways and our existing infrastructure and providing for improved mass transit and rail facilities will reduce these air emissions and significantly impact our energy consumption. SANBAG is also the recipient of a Department of Energy ARRA grant to construct alternative fueling stations for trucking fleets in southern California thus promoting a cleaner goods movement system.

II. SANBAG'S SURFACE TRANSPORTATION PROGRAM

SANBAG is responsible for all types of road and transportation projects. A key focus of our current efforts is congestion reduction. These projects result in an improved quality of life and sustainable livable communities for road users, particularly commuters, enhanced productivity, improved commerce including freight movement corridors, and reduced greenhouse gas ("GHG") emissions and energy usage. The transportation congestion relief projects we are considering are prime candidates for development using innovative finance tools, including through tolling and public private partnerships. Equally important, by using our existing infrastructure more efficiently, we can avoid or minimize the need to build new transportation corridors. Congestion relief programs are among the most cost effective and environmentally beneficial of all transportation projects.

Congestion relief projects take many forms, all of which are under active consideration by SANBAG. For example, managed lanes regulate access according to vehicle eligibility (*e.g.*, number of occupants and vehicle type) and generally use access restrictions and/or tolls to reduce congestion, maximize capacity and to ensure free-flowing traffic conditions. Such projects include the high-occupancy vehicle ("HOV") lanes that are a familiar feature in many urban areas. Other types of managed lane programs that are being considered include truck-only lanes, truck-only toll lanes, and high-occupancy/toll ("HOT") lanes.

With HOT lanes projects, drivers of vehicles not meeting the occupancy requirements can choose to purchase access to these lanes. HOT lanes often have sensors along the roadway that continuously monitor traffic levels and speed. Tolls on HOT lanes can be set using a schedule of prices or can be based on congestion levels, including dynamic pricing where toll rates can adjust almost on an instantaneous basis. Under a dynamic pricing scheme, toll rates rise and fall according to traffic volumes and other indicators of congestion. The goal of such adjustments is to manage the number of toll-paying customers entering the lanes. When traffic increases, tolls go up. When traffic decreases, tolls go down. These variable tolls are designed to maintain free flowing conditions in the HOT lane. Variations of this are under successful operation in Southern California in San Diego and Orange Counties, with new facilities soon to be built in neighboring Riverside County.

The benefit of HOT lanes is not limited to drivers paying the HOT lane toll. They also provide relief on adjacent general purpose travel lanes because they draw cars off those lanes. HOT lanes provide far more predictable travel times because of their generally free flowing condition, which may be important for people who must reach their destination at a specific time. HOT lanes provide road users with choices. Studies have regularly shown that users of HOT lanes cross all user demographics – from high income to low income, from commuters to commercial users and from the regular user to the infrequent user who has a specific reason to enter the HOT lanes.

Another important program for congestion relief is the use of fully tolled managed lanes. Managed lanes may include an entire freeway or specific lanes parallel to the existing route, and require tolls from all customers regardless of vehicle occupancy.

By maintaining a free flow of traffic and reducing congestion, managed lanes can reduce fuel consumption, directly impacting our energy needs. Equally important, by reducing travel delays, managed lane strategies reduce emission levels of volatile organic compounds and carbon monoxide associated with vehicle idling. This improves air quality, with positive impacts on public and environmental health. Given the interest in Congress and the Administration to curtail emissions, it is important that agencies such as SANBAG have the tools available such as HOT lanes and managed lanes to help meet potential new standards.

At this time, SANBAG is analyzing the potential use of HOT lanes projects along several interstate corridors within San Bernardino County. SANBAG is also a key supporter of the High Desert Corridor project, designated as a High Priority Corridor in the National Highway System. This $4 billion combined highway and rail project is expected to generate almost 43,000 sustained jobs. Not only will this project link rapidly growing population centers, but it will provide the foundation for a new air, rail and truck inter-modal facility that will be the engine for significant new economic growth in our region.

III. INNOVATIVE FINANCING

California transportation agencies have come to rely on "self-help" voter-approved transportation sales taxes as the primary means of funding projects, with federal and state governments taking a minority partner role. A new federal partnership is needed to leverage these voter-approved investments, especially as fuel taxes generate less revenue. As part of this new partnership, reform of project delivery governance is also needed to remove cumbersome processes that can inhibit innovation.

It can take years to plan, design and implement a new transportation project. The FHWA reports that implementing a major project can take 13 years from start to finish. While state and federal transportation agencies are working to reduce this delay, there is only so much they can do within the bounds of current law. For example, the design-bid-build model used for the typical construction project leaves all of the risk with the owner – the state or local transportation agency responsible for the project. This means that contractors have no incentive to use innovative, time saving, and cost cutting measures.

Congress has begun to recognize these problems and provide for a variety of programs that offer credit assistance, innovation in contracting, an ability to implement user fees such as tolls, and enhanced opportunities for private investment. All of these programs have worked well, are critical to meeting our infrastructure mission, and should be expanded. Indeed, SANBAG believes there are many creative and innovative financing tools that are or should be available to repair and rebuild America's transportation infrastructure. And state and local governments should have the flexibility to use all available mechanisms that work, albeit in a way that respects our environment and safeguards the public interest. Today, we would like to focus on six such tools.

A. TIFIA

The TIFIA program, created by the Transportation Equity Act for the 21st Century ("TEA-21"), provides credit assistance for projects of regional or national significance exceeding $50 million. TIFIA is designed to bridge the gap between the capital available to the project owner or investor and the money available through commercial, investment-grade loans. Through the TIFIA program, DOT participates as a subordinate lender in large surface transportation projects that have dedicated revenue sources (either from the project itself or otherwise) with which to repay the loan. TIFIA may also provide loan guarantees and standby lines of credit for surface transportation projects. TIFIA loans lessen reliance on grant funds by providing foundational financing that encourages other lenders to participate in funding the project. However, TIFIA is currently limited to providing a maximum of only 33% of "eligible project costs." In other words, TIFIA funds are basically available for the same things that are eligible for federal aid funding generally. To obtain TIFIA financial assistance, the applicant must demonstrate that at least two-thirds of the project's eligible cost will be covered by direct investment, commercial loans, etc. The interest rate for TIFIA loans is pegged to Treasury rates, thus offering attractive lending terms that can compete with tax exempt municipal bonds. In fact, TIFIA can offer a significant advantage over the tax-exempt municipal bond market because TIFIA can extend credit to a broader array of borrowers and projects.

TIFIA loan agreements and other types of credit assistance are generally available for a period long enough for the project sponsor or its private partners to build the project and to then operate it long enough so that the loan can be repaid from project income (typically 30 years). It also is very patient financing, in that any loan payments can be delayed for up to 5 years after completion of construction and principal amortization can start later in the life of the project to match the expected receipt of revenues. If credit conditions change, the TIFIA loan can be repaid with no penalty or expensive processing costs. When TIFIA loans are used as stand-by lines of credit or loan guarantees, the applicant can reduce the cost of obtaining commercial financing because these guarantees and standby credit lines provide a critical safety net for all parties.

Another significant advantage of the TIFIA program is that the budgetary cost to DOT is a fraction of the loan's face value. This is because the combined cost of issuing the loan and the risk of non-payment is low. This combined cost is called the budget "score" of the project. The typical TIFIA loan (or other TIFIA credit assistance) scores at about 10% of the face value of the loan. This "score" is also referred to as the subsidy cost of the loan.

- TIFIA Needs More Funding. There is tremendous appetite for TIFIA assistance given the difficulty under current market conditions in finding attractively priced, long-term fixed rate financing. TIFIA's lending capacity is constrained by its budget authority. Federal lending policies require TIFIA to set aside a "subsidy" amount equal to the budgetary score described above. Applications have substantially exceeded available lending capacity since 2008. In response, DOT has done two things. First, DOT has instituted a competitive application process that pits projects and regions against each other. Second, DOT has proposed a pilot program that asks borrowers to fund 100% of the "subsidy" amount for projects that are not selected under the new competitive program. Neither of these new DOT approaches is a solution to the problem. Indeed, a clear indication of the pent up demand for TIFIA funding is the response generated by the ARRA discretionary grant program which authorized DOT to use up to $200 million to subsidize TIFIA credit assistance. DOT received more than 1,400 applications for this assistance. We urge this Subcommittee to recognize the expanding need for the TIFIA program and the fact that TIFIA has had a proven track record of success since its inception. Since created, TIFIA has provided $7.714 billion in financing for important infrastructure projects, supporting $28.967 billion in total investment. These numbers clearly demonstrate the significant leverage potential and utility of the program. Congress should reauthorize the TIFIA program, increasing its annual budget authority from $122 million per fiscal year to at least $300 million, consistent with the recommendations of the National Surface Transportation Infrastructure Financing Commission. Although we do not know the precise amount of requests currently pending at DOT, we believe the $500 million number is a reasonable estimate of the amount necessary for the TIFIA program given current and projected needs.

- Make TIFIA more broadly available. We also recommend elimination of the artificial constraints on project participation. The current requirement that TIFIA funds can be available for only 33% of the project cost should be increased to at least 50%. This change will make the TIFIA program more broadly available to meet the needs of local governments such as SANBAG.

TIFIA has a proven record of achievement and should be continued with the modifications we have suggested. TIFIA is also a particularly useful tool in forming public-private partnerships ("P3s") because it bridges that gap between direct equity capital and commercial credit. The flexibility in repayment terms also makes TIFIA an important component of the capital structure of a P3 transaction that relies on tolls or user fees as its revenue source. Without this kind of credit assistance, it may be impossible to assemble the complex financial "deal" that is often needed to make a P3 workable.

B. Private Activity Bonds ("PABs")

The federal tax code classifies state and municipal bonds as governmental bonds or private activity bonds. When governmental bonds are issued to finance capital projects such as schools, public buildings, and roads, the interest received by bond purchasers is generally exempt from federal tax. Bond buyers will accept lower interest rates because the interest is tax exempt, allowing states and municipalities to finance major capital projects less expensively. But states and municipalities may also issue bonds to finance long-term capital improvements such as docks, wharves and airline terminals used by a private entity. Interest on these PABs is not tax exempt unless the project falls within one of 22 Congressionally approved categories. These categories include surface transportation, solid waste disposal facilities, certain residential projects, and certain educational programs. Bonds within such categories meeting certain other requirements qualify as tax exempt PABs. SAFETEA-LU expanded the PABs program, creating a new class of PABs for qualified highway and rail highway freight transfer facilities, and capped the total amount of bonds that are allowed to be issued from this class at $15 billion, to be allocated at the discretion of the Secretary of Transportation.

The PABs program has made important transportation projects possible because of the lower cost of financing a project with tax-exempt debt and the ability to utilize this lower cost financing in the context of a broad array of public-private partnerships.

PABs are a powerful tool to accomplish our goal of rebuilding America's infrastructure because they offer a less costly way to finance critically needed projects. The following improvements can be made:

- <u>The Cap on PAB Transportation Funding Should be Lifted.</u> For PABs to continue to benefit transportation projects and the jobs they produce, the $15 billion cap now limiting the use of PABs should be eliminated. To date, DOT has approved $6.3 billion in commitments but pending requests will likely soon absorb the remaining PAB ceiling. The reason the available cap was not exceeded more quickly was the AMT issue (discussed below) and that economic recession effectively shut down the tax exempt bond market. Given the enormous benefits PABs provide, the cap should be eliminated. Alternatively, an annual fixed ceiling (with unused portions carrying over to succeeding years) should be provided so that states can reasonably plan on using PABs as a routine part of project financing.

- Make the PAB Transportation Program Permanent. The $15 billion PABs transportation program expires once the $15 billion is used. When Congress reauthorizes the surface transportation program, the PABs transportation program should be made permanent with no cap or a sufficient annual allocation.
- Extend the Alternative Minimum Tax ("AMT") Exemption. Before enactment of ARRA, the interest income from tax-exempt PABs was included in the AMT base and was taxable for taxpayers whose income was high enough to be subject to the AMT. Interest income from other governmental bonds was not included in the AMT, thus putting PABs at a significant competitive disadvantage in capital markets. ARRA leveled the playing field by making qualified PABs issued in 2009 and 2010 exempt from the AMT. This provision, expiring at the end of 2010, should be extended. PABs and other tax exempt bonds are commonly purchased by pension funds for the benefit of individuals. Moreover, transportation PABs serve interstate commerce and enable non-federal financing of projects that might otherwise need scarce federal grant funds in order to proceed. Thus, freeing transportation PABs from the AMT might actually reduce the pressure for additional direct appropriations of federal funds.
- Allow Deferred Interest on Transportation PABS. New toll facilities often do not generate sufficient initial revenue to cover interest payments. Recognizing this, private lenders and the federal TIFIA credit assistance program allow borrowers to defer interest payments for the first few years of operation by adding the

interest to the principal. PAB interest cannot be deferred and added to the principal. PABs should be treated the same as other credit instruments and reflect how transportation funding actually works. Otherwise, the utility of the PAB program is needlessly limited.

- Allow Use of PABs for Right-of-Way Acquisition. The tax code generally limits PABs to new construction. No more than 25% of a PAB can be used to acquire land. But, without the land, construction cannot occur. For transportation projects, this is especially important because of the disproportionally large amount of right of way required. Transportation PABs should be allowed to be used for 100% of land acquisition when necessary. This would be consistent with federal highway laws. For example, the definition of "construction" in Title 23 of the United States Code includes the acquisition of right-of-way. Similarly, PABs cannot be used to acquire land that already contains a transportation facility (i.e. land with a bridge or interchange) unless substantial improvements equal to 15% of the acquisition cost are made within two years following the bond issue or purchase of the facility, whichever is later. It is often necessary to acquire the interchange, bridge, etc. as part of the new project and improvements are not needed. PABs should be allowed for this as well when the facility is a necessary part of the new project.
- Allow Accelerated Depreciation for PAB Financed Property. To incentivize investments, the tax code allows accelerated depreciation for many business investments. However, projects financed with PABs may only be depreciated

using the straight line method. Allowing accelerated depreciation for PAB projects would allow project savings of 5-10%.

- Remove the Arbitrage Cap for Public/Private Partnerships. The "arbitrage" cap limits the amount of interest a state or local government can earn when temporarily investing the proceeds it receives after issuing a tax exempt bond. State and local governments are generally exempt from paying taxes when carrying out governmental functions. When new bonds are issued, these governments receive an infusion of cash that is spent in time for the purposes for which the bond was issued. This cash is typically invested until it is needed. Current law limits the amount a state or local government can earn from such investments. This cap, called an "arbitrage" cap, limits the interest state and local governments can earn from temporarily unused funds. Included in the arbitrage cap are any payments received by the state or local government from a private party participating in a public-private partnership program for infrastructure development when the bond issuer is also an actual or related party to the contract. This can artificially cap the money a state or local government can receive as a payment from its private partner. Such payments should not be included in the arbitrage cap.

C. Build America Bonds ("BABs")

The BABs program, created by ARRA, provides much needed financing for state and local governments at lower borrowing costs. BABs are taxable bonds but the Treasury Department makes a direct payment to the issuing state or municipality equal to 35% of the interest payable on the BAB. For example, if a BAB is issued at 10% taxable interest, the 35% federal payment reduces the government's net borrowing cost to 6.5%, although the bond pays

10% interest to the investor. This feature lowers net borrowing costs and makes BABs attractive to a larger group of investors such as investors in lower income brackets, pension funds, and foreign investors who traditionally do not invest in local tax exempt bonds. A Treasury Department report found that state and local governments will eventually save $12.3 billion from bonds issued in the first year of the BABs program when compared with traditional tax exempt bonds.

- Include Additional Infrastructure Projects in the BABs Program. BABs cannot be used for transportation infrastructure projects created as public-private partnerships. The only public-private partnerships now eligible for this program are energy conservation projects. The BABs program should be extended and transportation infrastructure projects structured as public-private partnerships should be eligible for the BABs program. Allowing the use of BABs in this manner would optimize possibilities for leveraging tax-exempt financing and limited public funds with private investment.

D. Tolling Programs

Tolls on highways built in whole or in part with federal funds are severely restricted under current law. Toll fees, whether paid to a public entity or a private owner/operator, account for only 5% of highway revenues. For highways not part of the Interstate System, only bridges, tunnels, and new road projects may be tolled, thus preventing tolls on existing roads unless a project adding new capacity is built. On the Interstate System, only bridges and tunnels may be tolled, unless the project falls in one of the very limited demonstration or pilot program categories that have been created over the years. Although there are 47,000 miles of highways in the Interstate System, only 3,000 are toll roads. However, the traditional funding for interstate highway construction and maintenance, the Highway Trust Fund, is no longer adequate to cover the costs associated with this immense system. The reality is that tolling is one tool that should be available to finance transportation infrastructure projects where tolling is appropriate.

- Tolling Authority Should Not Be Limited. Congress should work toward a goal of allowing states and regional authorities to determine whether tolls on a particular highway are appropriate or not. States have very different views about toll roads in general, as is evidenced by the fact that some states rely on toll roads extensively and some have none at all. Transportation agencies at all levels of government are facing a true funding crisis, and no revenue creating tools should be taken off the table. Toll roads do not make sense on every project, and some roads must be constructed even if they would not provide a return on investment sufficient to sustain toll based financing. However, the decision as to which roads should and should not be tolled should be made by the agencies that plan, own and operate those roads – state and local governments. If Congress does not simply eliminate current restrictions on tolling, then the pilot and demonstration programs created over the years, which have all have proved successful, should be made permanent and expanded to additional states and projects. These include:

The Value Pricing Pilot Program (VPPP) deserves special mention in the context of SANBAG's needs. California is one of 15 states that submitted timely applications to qualify for the VPPP program. Under California's VPPP agreement, SANBAG could develop toll projects and other congestion relieving measures involving pricing and other techniques, subject to approval from FHWA.

E. Public Private Partnerships

Growing demands on the transportation system and constraints on public resources have led to calls for more private sector involvement in the provision of highway and transit infrastructure through what are known as P3s. P3s involve contracts between a public agency and a private entity that allow private sector investors to participate in the financing, building, and operation of transportation projects in exchange for receiving toll or other revenue from the project over a specified number of years. P3s can also be structured in a manner where the private sector receives scheduled payments from the public agency in return for financing the up front cost of the project and meeting specified performance standards.

P3s can take many forms and should be uniquely tailored to the needs of a particular project and the goals, programs and requirements of the public agency sponsor. These projects can involve new construction, expansion and rehabilitation of out-of-date facilities, or leases of existing transportation facilities. P3s can play an invaluable role in providing much needed capital, accelerating project delivery, and supporting user fee funding approaches to help address the country's escalating backlog of unfunded transportation needs. P3 projects have already delivered tens of billions of dollars of transportation investments by shifting the cost and major project-delivery risks of projects to private entities, enabling transportation agencies to preserve scarce state and local funds to pursue other projects and programs that provide vital services and enhance this Nation's transportation network.

DOT has estimated that we need to increase capital spending on highway projects from the $ 78.7 billion invested in 2006 by all units of government to $105.6 billion annually from 2007 through 2026 just to maintain the current level of performance of our highway system. For transit, DOT has estimated spending will need to increase from the 2006 level of $12.8 billion to $15.1 billion annually over the same 2007 through 2026 period. Investment transportation infrastructure will not likely be possible without funding from public private partnerships.

Traditionally, States have taken the lead in the innovation and utilization of P3s. For P3s to exist in a state, that state must pass enabling legislation to allow for these partnerships. Twenty-three states have done so already, including California. In authorizing state and local transportation agencies to enter into P3 contracts, state legislatures, and ultimately state transportation agencies, are developing industry standards and "best practices" for P3s. Thus, states are truly acting as incubators for new methods to deliver projects using the P3 tool faster, more efficiently, and in a manner that protects the public interest.

FHWA's role has been appropriately limited to project approval, leaving P3 structuring, procurement, project decisions, and day-to-day oversight of operations and maintenance to state agencies. Recognizing the important contributions of P3s to financing major infrastructure projects, two commissions appointed by Congress to study our infrastructure needs and financing have suggested that Congress encourage the use of tolling and P3s. These commissions, chartered by Congress and made up of transportation experts from across the political spectrum, unanimously agreed that "public-private partnerships should play an important role in financing and managing our national surface transportation system."

The National Surface Transportation Policy and Revenue Commission found that "[P3s] can be another important financing tool for State and local governments. ... Congress [should] encourage the use of [P3s] where States or local governments are willing to use them." The National Surface Transportation Infrastructure Financing Commission supported this vision, urging Congress to "[e]ncourage private-sector investment where it can play a valuable role in providing capital, accelerating delivery, and supporting user fee–based funding approaches and tax-based availability payment structures to help meet the country's capacity needs."

The American Association of State Highway Transportation Officials ("AASHTO"), speaking for the state departments of transportation, also concluded that federal policy must be strengthened to enable and encourage innovative finance tools and innovative contracting tools such as P3s. AASHTO has asked Congress to "grant states maximum access and flexibility to use a mix of funding and financing tools most appropriate for each state… [including] use of public-private partnership opportunities that combine the management efficiency and innovation of the private sector with public sector social responsibility and job generation concerns."

- <u>Federal Oversight Should be Limited to Distinct Federal Interests in P3s.</u> Federal regulation of P3s should be limited, relying on states to develop programs that meet local needs and are consistent with local procurement laws. P3 facilities are generally subject to the quality requirements applicable to other highway facilities – e.g. P3s on the Interstate system must be designed, constructed, operated, and maintained to ensure Interstate quality performance. While these are common elements of P3 agreements in most states, it is clear that one size does not fit all and that the implementation of significant federal oversight or prescriptive standards or mandates is destined to curtail the use and viability of the P3 tool to help fill the growing gap in available funding. Specifically, state and local agencies should be empowered to develop P3 structures, procurement approaches, toll regulations, performance specifications (for design, construction, operation and maintenance) that meet their individual project and program needs and are consistent with the appropriate federal interests of fair and transparent processes, quality and safety.

There are areas where federal regulations could require the application of common standards without delving into costly and time-consuming detailed oversight of state and local public agencies, which already have unparalleled expertise in delivering critical transportation infrastructure to their constituents. For instance, when a P3 project receives federal funding, it may be appropriate to require that a state use any public proceeds it receives and is entitled to retain through the P3 for surface transportation infrastructure purposes.

- Congress Should Support Information Sharing on "Best Practices" in P3s. Congress should require DOT to develop a clearinghouse or other information sharing program that will facilitate the distribution of knowledge and experience about best practices in designing and implementing P3 projects.

F. National Infrastructure Innovation and Finance Fund ("NIIFF")

NIIFF, proposed as a $4 billion merit and performance-based program in the President's FY2011 budget, would establish a new direction in Federal infrastructure investment. Instead of providing money to states and local governments to allocate as they deem appropriate, NIIFF would create a national program to which project sponsors could apply for TIFIA-like assistance. Financial assistance could be provided to projects scoring high on allocation criteria established by statute and regulation. Administration spokespeople have indicated such criteria would likely include consideration of livability and sustainability, economic stimulus, etc. According to the DOT, NIIFF would encourage (1) collaboration among states, local governments, and private investors, and (2) coordination of transportation investments with investments in other infrastructure sectors (*e.g.*, power, water, wastewater). DOT has not yet provided any explanation for how this coordination with other infrastructure projects would be accomplished.

Transportation experts have speculated that the NIIFF, acting as a "one-stop shop" for financing and funding high-value multi-modal transportation projects, could eventually fold in the TIFIA, Railroad Rehabilitation and Improvement Financing ("RRIF"), and other federal financing programs. This sort of consolidation could reduce costs for projects that contemplate applying to several programs simultaneously, *e.g.,* instead of submitting a TIFIA application, and RRIF application, and a PABs application, a transportation agency contemplating a large multi-modal project could consolidate its applications and deal solely with the NIIFF rather than the several offices assigned to administering the program above.

NIIFF could become an important vehicle to provide grants to bridge the "gap" between the total project cost and what can be financed with existing sources of revenues, user fees and potential private capital. NIIFF grants would create incentives for state and local officials to employ more direct "user pay" approaches, expanding the revenues available for surface transportation investment and minimizing reliance on tax revenues for, or the continued deferral of, the largest capital projects.

IV. CONCLUSION

SANBAG strongly encourages Congress to continue examining innovative financing programs that already exist and expand their application and utility. While there has been much discussion of creating a "National Infrastructure Bank" and other new financing mechanisms, SANBAG encourages Congress to be practical; SANBAG and other "self-help" agencies have projects that can be delivered in the near term and need financing sooner than a new federal institution would be available. Innovative financing, using expansions and enhancements to existing programs can be used to maximize public benefit of new infrastructure. We look forward to working with the distinguished Members of this Committee toward achieving this end.