SENATE STANDING COMMITTEE ON TRANSPORTATION

Senator Charles J. Fuschillo, Jr, Chairman

Tuesday, September 27, 2011, 10 am
Farmingdale State College
Lupton Hall, IRTT Room T-101
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Farmingdale, NY 11735

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Testimony of Stanley Gee, Executive Deputy Commissioner
New York State Department of Transportation
Before the Senate Transportation Committee

Utilizing Public-Private Partnerships to Finance
Transportation Infrastructure in New York State
Farmingdale, NY
September 27, 2011

Chairman Fuschillo, members of the Senate Transportation Committee, thank you for inviting the New York State Department of Transportation (NYSDOT) to provide testimony today. I am Stanley Gee, Executive Deputy Commissioner of NYSDOT. The concept of public-private partnerships as a tool to accelerate project delivery through innovative financing for transportation infrastructure projects is important. As you know, Commissioner McDonald provided testimony before this Committee back in May 2011, and I appreciate the opportunity to be here today to discuss the possibilities of public-private partnerships, as well as to provide some updates on our efforts since this spring.

Storm-Related Response and Recovery

I'd like to take this opportunity to personally praise the professionalism, dedication and hard work of our staff at DOT. NYSDOT's dedicated employees continue to keep our State's aging transportation system moving. Each and every day, the Department performs critical unscheduled maintenance on our State's highways and bridges and immediately responds to emergencies to protect the safety of the traveling public. In fact, because of our continued and collective actions, the infrastructure has been reliable making it possible for New Yorkers to take our transportation system for granted. These recent storm events have been no exception. Over the last month, tropical storms Irene and Lee damaged or caused obstruction to about one-third of the state's total highway system, resulting in the closure of nearly 400 road segments and bridges. As of September 19, all but eight bridges and 15 road segments have been repaired and reopened. Those that remain closed suffered the most extensive damage and require significant reconstruction or replacement.

To address the damage caused by hurricane related flooding, NYSDOT has deployed a daily average of more than 950 crew members and 650 pieces of equipment to assist with damage assessment and field work over the twenty-day period since the storms. NYSDOT fielded teams to complete approximately 4,560 damage assessments of pavement, bridges, roadsides, streams, signals, and utilities sites. This includes approximately 2,880 damage assessments on the state system and 1,680 damage assessments on the local system. Maintenance crews cleared storm debris and initiated restoration work on approximately 5,700 miles of roadway and repaired approximately 1,200 miles of roadway in response to the two storm events. In short, this has been a truly remarkable response to such unprecedented events and I applaud the Governor and Commissioner for their leadership during this difficult time.

Infrastructure Investment Needs

If nothing else, the recent storm-related flooding events should bring to the forefront the critical nature of our transportation infrastructure and transportation's importance to the State's economy and the quality of life for our citizens. Too often we take our transportation infrastructure for granted — that is, at least, until it is no longer available for use. More generally, it is clear that our infrastructure investment needs — like that of the nation — are far greater than the resources available to address such needs.

Our State's transportation infrastructure, like most of the Northeast's, was built before and during the Eisenhower Interstate Era. In addition to the infrastructure being old, it is more heavily utilized and subject to harsher weather conditions than Southern and Western states. These facilities are critical to providing transportation service that supports the economy and provides mobility for our citizens and travelers. But as these heavily used facilities continue to age, it is becoming a greater challenge to maintain them to ensure their continued use. As one example, the average age of a bridge in New York State today is 46 years, while the average life of a bridge is about 50 years. Consistent with the findings of two congressionally mandated national transportation commissions as well as the American Association of State Highway and Transportation Officials (AASHTO), NYSDOT estimates that meeting current and projected demands would require nearly a doubling of current investments in transportation infrastructure annually from all levels of government. Given the current fiscal climate, both within the State and nationally, this is not likely to occur in the short term. The use of public-private partnerships, infrastructure banks and other similar programs should be explored to leverage private funding as tools for accelerating projects or facilitating delivery of some projects (i.e., new capacity projects). Although innovative finance mechanisms cannot substitute for the critical need of ongoing, stable, predictable funding necessary to maintain the core transportation infrastructure, their use can serve as a complement to stable and predictable funding.

Traditional Funding for Infrastructure Investment

New York's current and future transportation infrastructure needs traditionally have been addressed through a partnership of federal, state and local government resources. As we discussed in May, the severe fiscal constraints at all levels of government have had an impact on the level of current investment and present significant challenges moving forward.

Federal aid has historically comprised approximately 50 percent of the State's multi-year capital programs. At the federal level, the Highway Trust Fund no longer remains solvent as a user-supported fund and has required more than $34 billion in general fund transfers since federal FFY 2008 to maintain current spending. In addition, the most recent federal surface transportation program, known as SAFETEA-LU, expired on September 30, 2009. The nation's surface transportation program has been operating under a series of extensions since this time. Most recently, on September 16, President Obama signed an eighth extension authorizing current funding levels to March 31, 2012.

A critical issue remains that, to date, Congress has not found a way to sufficiently finance a long-term multi-year transportation bill. While Congress and the Administration support increased funding for transportation infrastructure, neither has identified the resources necessary for this to occur. It is fully expected that, absent any clear ability at the federal level to support states in maintaining existing transportation infrastructure, Congress will move away from direct funding and will provide states more flexibility to leverage the use of limited resources through innovative finance techniques. As such, New York should position itself to leverage innovative finance efforts that Congress may provide such as infrastructure banks and public-private partnerships.

Innovative Finance Opportunities

NYSDOT welcomes the opportunity utilize innovative finance mechanisms, such as public-private partnerships, infrastructure banks, deign-build and other similar programs, to leverage the resources necessary to maintain infrastructure conditions. There is, however, some confusion between privatization and public-private partnerships (also referred to as "P3s"). NYSDOT is not advocating for private companies to own and operate public facilities — privatization. Rather, we support the use of P3s, where it makes sense. P3s involve the sharing of risks, responsibilities and funding between a government entity and one or more private sector partners.

Traditionally, for highway and bridge projects, NYSDOT has used what is referred to as a design-bid-build approach. Under this approach, projects are designed by the State, put out for bid and constructed by private contractors. The facilities are then operated and maintained by NYSDOT. While this represents a form of public-private partnership, most of the responsibilities and risks associated with project delivery fall to the State.

NYSDOT believes that P3s would be helpful tools to have available as we balance the needs of the transportation system. They would allow more leveraging of private sector expertise, risk and finance. However, these tools would not replace our traditional means of delivering projects, as only certain types of projects would be appropriate for P3s. Projects that would lend themselves to P3s need to be able to attract private sector interest while providing a benefit to the public. Approximately 90 percent of NYSDOT's capital program is devoted to core infrastructure projects required to maintain the system in a State of Good Repair. Design-bid-build will continue to be used to deliver the vast majority of our projects, but we believe there is a place and there are opportunities for P3s.

NYSDOT would be particularly interested in the ability to use design-build techniques to accelerate project delivery. Design-build is a project delivery technique that allows project design and construction to occur under a single contract. It is a tool that has been used widely and successfully over the last decade and is available to about 40 state departments of transportation. Here in New York, the MTA and the Port Authority of New York and New Jersey can utilize design-build. This technique is also promoted by the Federal Highway Administration as one of 15 tools to accelerate project delivery as part of FHWA's Every Day Counts (EDC) initiative.

While NYSDOT does not have the statutory authority to undertake design-build, under the authority of Governor Cuomo's Executive Order 19 issued on September 1, 2011 in response to the flooding caused by tropical storms Irene and Lee, the Department has issued a request for proposals using a modified design-build procurement process for emergency repair work within the Route 42 corridor in Greene County. This project consists of replacing two bridges, reconstructing washed-out roadway segments, removing debris and undertaking other miscellaneous work items needed to restore transportation access within this corridor. This project provides an opportunity to utilize the design-build delivery method for a project that includes a series of diverse repairs within a defined geographic corridor. The procurement process for this project will be based on NYSDOT's nationally heralded Design-Build Manual. Full quality assurance and quality control will be undertaken throughout the project.

The Governor's Executive Order has expanded the array of tools available to respond to the needs of the State in making required emergency repairs. To respond to the need for emergency infrastructure repairs, NYSDOT is using not only design-build, but is also relying on more traditional mechanisms, including engaging our State forces, using emergency stand-by contracts, supplementing existing contracts with orders-on-contract, employing regional job order contracts and undertaking new quick response contracts. The design-build delivery technique is one additional tool available to meet needs where it makes sense. Similarly, the ability to undertake P3s, where appropriate, would expand the Department's ability to respond to its ongoing infrastructure needs with the broadest possible array of tools.

Accelerated Bridge Program

Another potential use for P3 techniques would to address the State's bridge repair needs. Bridges are a prime example of our State's and the nation's aging infrastructure. As mentioned earlier, New York and the Northeast led the nation in building new freeways more than fifty years ago at the beginning of the Eisenhower Interstate Era, making our infrastructure, particularly bridges built during this period, among the first in the nation to age to a point where replacement will become necessary. NYSDOT sees an opportunity to use the design-build technique to address the backlog of bridge improvement needs.

NYSDOT is exploring the possibility of addressing its growing need for bridge improvements through an Accelerated Bridge Program. Currently, 35% of the State's bridges (nearly 6,200 of the State's 17,400 bridges) representing 54% of the bridge deck area requires repair – while safe for travel, they are not meeting design expectations. Of those bridges, about half are local bridges, 40% are state bridges, and 10% are the responsibility of other owners (the Thruway Authority, MTA, railroads). I want to make it very clear: The Department continues to comply with all federal and State requirements for bridge inspections, and exceeds those requirements when a bridge's condition indicates the need for more frequent inspections. A bridge in need of repair **does not mean that the bridge is unsafe.**

The Department's objective under this program would be to reduce the number of bridges requiring repairs or replacement by accelerating investment. This would improve bridge conditions across the state and decrease the overall cost of maintaining the bridge system over time. NYSDOT believes that it is important to address the wave of soon-to-be deficient bridges and to bring these bridges into an ongoing asset management program.

To further develop this initiative, NYSDOT held a workshop in May of this year that brought together engineering consortia to discuss all aspects of an Accelerated Bridge Program, including project selection, delivery and finance. NYSDOT gained valuable insight from this and further outreach, and has since considered options for developing such a program. Enabling legislation for NYSDOT to utilize this innovative delivery method would be necessary.

Conclusion

NYSDOT welcomes the opportunity to work with you on developing and implementing the use of public-private partnerships and other similar innovative finance techniques to accelerate project delivery. While the use of P3s can serve as a complement to stable and predictable funding, it needs to be recognized that P3s are not applicable to most routine and recurring repair, rehabilitation and replacement activities. As such, the vast majority of projects delivered by NYSDOT will continue to use the traditional design-bid-build approach. All options, however, to maximize and leverage resources should be considered. NYSDOT appreciates that this Committee is considering legislation that would expand NYSDOT's ability to take advantage of a broader array of these techniques. This will become increasingly important as Congress, in reauthorizing federal transportation legislation, will be considering expanding opportunities to use P3s. New York State should be in position to take advantage of all funding opportunities.

Thank you again for the opportunity to provide testimony and to speak to you today.

The Voice of Long Island's Highway & Infrastructure Professionals

Marc Herbst, Executive Director
Long Island Contractors' Association, Inc.

NYS Senate Transportation Committee Hearing on how to utilize Public-Private Partnerships (P3s) to repair and improve New York State's transportation system

September 27, 2011

Farmingdale State College
Lupton Hall, 3350 Broadhollow Road
Farmingdale, New York

Good (morning). My name is Marc Herbst. I am the Executive Director of the Long Island Contractors' Association, Inc. (LICA). LICA is grateful for the opportunity to offer our testimony today.

LICA is an advocate for public works and what is the taxpayer's biggest investment: our State's infrastructure.

We also represent the interests of Long Island's premier heavy construction general contractors, subcontractors, suppliers and industry supporters. Focused primarily on building our transportation system, such as highways, bridges, we also build our sewers and other public works. LICA's member companies play a direct role in the economic vitality of Nassau and Suffolk Counties and its 2.8 million people.

Chairman Fuschillo and members of the committee, we compliment you for seeking views on how to utilize Public-Private Partnerships (referred to as "P3s") to repair and improve New York State's transportation system. Allow me to begin by suggesting we recognize that such partnerships now exist, and that building upon the strengths of both the public and private sectors can most effectively protect the taxpayer and their wallets. A common view is to look at P3s as a financial scheme to support the construction or repair of a major facility. LICA suggests this committee sharpen that view to properly include the overall administration, management and care of the public infrastructure investment. In doing so, the State can effectively achieve your goal to repair and improve our State's transportation system.

P3 Response to Natural Emergencies

We can reflect upon the emergency conditions in New York State created by Hurricane Irene, and the collaborative response of the State and industry as an example of the existing public-private partnership in the infrastructure sector.

As Hurricane Irene barreled up the Atlantic coastline towards New York, LICA mobilized our private firms' manpower and equipment for immediate dispatch. Before, during and even continuing today, we collaborated with the Offices on Emergency Management for New York State, Nassau and Suffolk Counties as well as many local municipal agencies. Our highly trained work force and heavy equipment, such as cranes, pay loaders, trailers and tub grinders, were instantly dispatched to aid in the emergency response. This response effort certainly is a public-private partnership.

In addressing the industry's leaders immediately following Hurricane Irene's aftermath, New York State Commissioner Joan McDonald conveyed Governor Andrew Cuomo's appreciation and thanks for the outstanding response our industry has already provided in response to the need for emergency assistance. McDonald praised the industry's response to date, observing, "(We have) painted a positive picture of what our industry is capable of doing in response to an emergency situation and what can be performed unrestrained in normal situations."

We believe formalized P3s offer the unrestrained environment the Commissioner correctly suggests.

P3 Response to Financial Emergencies

New York State is presently under siege by another type of storm that is battering the foundation of not only our roads, bridges and structures, but our overall economy. Our mindset to combat these battering forces should be the same as when we are compelled to face damaging felled trees, downed electrical wires, and flooded homes and businesses. An effective public-private partnership must be employed.

This disastrous "perfect storm" involves the collision of the aging and deteriorating infrastructure badly in need of safety upgrades with staggering government budget deficits and the incapability of the public to shoulder any crushing tax burdens. It's been three years now, three consecutive construction seasons, since our industry has been saddled with unprecedented unemployment levels hovering near 30%. For three years we have painfully watched idle government officials place more and more emergency red flag markers on structures in need of repair.

With empathy, we observe that our government partners can barely even post the emergency markers because of their own financial woes. Diminishing tax receipts, employee health care costs and ballooning public pension contributions are often cited as the cause. Here on Long Island, both County Executives have proposed 2012 budgets that combined include the elimination of over 1,400 positions. Practically all the towns and villages are enacting similar cutbacks, whether through attrition or layoffs. We know that you, as our state representatives, are faced with the same challenges at the state level.

In times of financial adversity lies the perfect opportunity for public and private partnerships to most effectively protect the taxpayer and their wallets.

Drastic Times Call for Drastic Measures

We are compelled to make a choice: either stand unprotected and risk the storm's deadly destruction, or strategically employ an emergency management strategy to protect our assets and livelihood. LICA suggests we fight for our survival by implementing a public-private partnership that maximizes each sector's strengths.

While leadership must come from the State, we boldly recommend significant changes to traditional transportation infrastructure private industry/government roles at various municipal levels of government. LICA provocatively calls for dramatically changing the customary function of the local highway department.

P3s are the platform by which local municipal governments can achieve substantial and effective efficiencies and cost savings.

Worsening Economic Crisis Requires Innovative Responses

Senator Fuschillo, we are cognizant of the precarious position you and your fellow elected officials find yourself. Public funds are scarcer then ever and the State DOT's current five-year capital program is only funded for the first two years of its planning period. That means that the State's capital funding for road and highway infrastructure dries up in only six months time with no new funds in sight. The viable innovative response that can be implemented in short order are P3s, engaging the private work force with local municipal entities to accomplish state priorities. Without P3s, the State has no ready mechanism to maintain safety and a transportation system in good repair.

P3s are the innovative response to the lack of public funding.

Economic Development Projects Should Top Priority Consideration for State Capital Projects

The downstate economy is thirsting for economic development to generate jobs and to move the region from its recessionary climate into an environment of sustained economic growth. There are a number of projects which are well advanced in the planning and approval process which require enhancement of State infrastructure. Those projects are ripe for P3 financial plans in which private developers and local governments are contributing financial assets to project development.

The Heartland proposal in Brentwood will require the expansion and improvement of the Sagtikos Parkway and other area roadways. The Ronkonkoma Hub plan will advance with direct rail access to Long Island MacArthur Airport. The eventual redevelopment of the Nassau Veterans Memorial Coliseum property will be enhanced with upgrades to the Meadowbrook and Southern State Parkways, and Hempstead Turnpike. The Cerro property in Syosset will only be redeveloped if the community is protected by a supporting transportation network that avoids infringement on the neighboring residential communities. It is clear that in order to succeed each of these projects will need a strategic public-private partnership.

We urge the State to concentrate on capital projects that are most conducive to P3 financial plans.

Antiquated Public – Private Transportation Roles

Typically, local governmental transportation agencies handle routine highway maintenance, such as pothole repairs, drainage cleaning, road sign replacement, snow/ice removal and leaf collection. Private contractors are selected through a competitive bid process for new construction or major rehabilitation projects. This arrangement calls for municipal employees and adequate equipment inventory to be available full-time for necessary response, regardless of actual need. Private employees are available for specific contracts at limited time periods. The structure contributes to public payrolls and in particular, to burgeoning public pension costs. This model also contributes to the increased unemployment benefits disbursed to private sector workers at the completion of government contracts.

Given that many public works departments are currently dramatically understaffed and additional layoffs are imminent, and the private infrastructure industry is already suffering unforgiving unemployment levels, now is the time to recognize the strengths of both the public and private sectors in this industry and act to create a framework that is cost-effective and efficient for the taxpayer.

P3s will measurably reduce local payroll and pension costs and state unemployment expenses.

Administration, Compliance and Enforcement

Government should concentrate its efforts in its areas of strength: that is on the administration, compliance and enforcement of public works contracts. The State of New York needs to undertake a leadership role in establishing standardized procedures and best practices at all municipal levels to ensure they meet their fiduciary obligation to taxpayers. LICA has long advocated this position. Our experience tells us that many municipalities have been unable to provide desired levels of oversight due to competing demands for their employee manpower. If municipalities were to focus their role on oversight, it would minimize the potential for unscrupulous activities. This monitoring should include enhanced inspections of quality and quantity of materials at asphalt plants and other source points, and at construction sites, as well as fiscal oversight such as comparison of employment records, certified payrolls and daily field inspection reports. The New York State Department of Transportation and the Office of the

State Comptroller should develop a uniform procedure for all government agencies.

Standardized best practices are an essential building block for a streamlined role of local governments in P3s.

Construction, Maintenance and Rehabilitation Projects

While government ramps up its compliance and enforcement roles, the private sector can absorb the traditional maintenance functions such as pothole repairs and snow removal. These functions should be subject to a competitive bid process, similar to new construction and rehabilitation projects. By transferring these maintenance responsibilities, the public can benefit from the extensively trained workforce and cost-efficient and task completion attitude the private sector demands. When private sector equipment is centralized it can be deployed more efficiently than maintaining duplicative and decentralized equipment, parts inventory and maintenance yards.

Taxpayers will continue to receive essential services, but they will be relieved of the full-time maintenance employee salaries, benefits and pension costs as well as the maintenance and capital expenses associated with heavy equipment. Most importantly, the currently displaced public employee will be afforded the opportunity to continue utilizing their skills and expertize in the expanded private sector market, and secure private sector and union benefits.

A collaborative division of labor between municipal compliance and enforcement and private sector maintenance will stabilize employment for the workers now suffering unemployment in the private sector and probable layoffs in the public sector.

Focus P3s on Process, Not Only Projects

Chairman Fuschillo, many of the experts you engage on a regular basis, including some testifying today, will steer the conversation towards specific projects, such as financing a new Tappan Zee Bridge or the Cross Long Island Sound Tunnel. These are important topics and LICA wholeheartedly endorses these proposals.

But, we respectfully ask you to recognize the greatest impact on the taxpayer. You are one of our State's most vociferous champions to relieve the crushing local property tax burden, and we commend you. Please know that the largest market share for infrastructure investment is in the towns and villages, the counties next, followed by the State. Each of those levels of municipal engagement in infrastructure contribute to the tax burden felt in each and every home and business.

We believe P3s can help alleviate the burden on the local level.

Chairman Fuschillo, we ask that you extend your passion and vision for local property tax relief to integrate public private partnerships as an essential tool in your fiscal management tool kit and consider the proposal we offered here today.

Thank you for the privilege of testifying before the committee today. If you have any questions, I am happy to respond.

UBS

Strictly Confidential

New York State

Tom Osborne

Head of Americas Infrastructure

September 27, 2011

Tom Osborne Testimony

September 27, 2011

Good morning Chairman Fuschillo and distinguished members of the Committee. My name is Tom Osborne, and I am a Managing Director and Head of the Americas Infrastructure Group at UBS Investment Bank. I am grateful for the opportunity to offer testimony today about the recently introduced Innovative Infrastructure Development Act.

By way of background, I have over 24 years of experience as an infrastructure investment banker. Having closed transactions with a total value exceeding $50 billion, I have extensive experience in the US equity and fixed income capital markets and in structuring and advising on mergers, acquisitions and strategic advisory transactions in the infrastructure and utility sectors. I joined UBS Investment Bank in 2001 as a Managing Director in the Power and Utilities Group, and was named Co-Head of the Americas Infrastructure Advisory Group in July 2006 and Head of that group in 2008. Globally, UBS's infrastructure advisory team has advised on over 100 successful P3 transactions to date.

Having reviewed the bill, we applaud the State for introducing comprehensive legislation that not only improves the long-term outlook for the State's infrastructure, but also provides a robust framework for all stakeholders. The future of the State's infrastructure rests on its ability to mobilize capital and structure P3s in the most effective manner. In doing so, the State will further benefit from jobs creation, efficiencies and innovation.

Over the past decade, we have been closely following developments in infrastructure legislation across the US and have worked with numerous government entities in structuring their P3 programs. In doing so, we have identified the key aims that all P3 legislation should seek to attain. First, clarity of process is vital to a successful P3. Given the history of P3s in the US, investors are wary of sinking capital and resources into lengthy P3 processes that fail to reach completion. In order to allay these concerns, legislation needs to explicitly lay out the process for effecting a P3.

This includes discussing the methodology for identifying projects, soliciting proposals, running a tender process, shortlisting bidders, evaluating proposals and selecting winners. The more transparency there is around the process, the more confidence investors and the public will have in the results.

Next, successful P3 legislation calls for the creation of a centralized P3 knowledge base. This collection of information serves as a resource that identifies best practices for managing solicitations and ensures that lessons and experience are not lost after changes of administration. This central knowledge base is best maintained by a single authority responsible for managing a state's P3 activities, and the Authority created in the Infrastructure Development Act should achieve this goal. In many cases, this authority is also the entity responsible for executing P3s.

Another hallmark of successful legislation is the provision to include a broad scope of assets, enabling the State to undertake more than just transportation P3s. The State's needs will vary over time depending on macroeconomic variables and capital needs, and comprehensive legislation will create a dynamic entity capable of adapting to these changes.

Lastly, and perhaps most importantly, individual project decisions should be independent from the political approval process. Uncertainty in execution combined with negative experiences of past P3s in the US have turned investors away from processes in which a P3 may be subject to a "last look" from a legislative body that has not been involved in the day-to-day project discussions and may not view projects solely on their merits. Too often, variables unrelated to the process cause a P3 to fail – a risk that investors will not take in today's market.

US Precedents

There are a number of North American precedents that highlight the strengths and weaknesses of P3 legislation. Puerto Rico, perhaps the most successful of the group, recently closed a $1.4 billion, 40-year concession of its PR-22 and PR-5 toll roads, and is advancing a process to award a concession for its international airport. Additionally, the Commonwealth has awarded over 60 contracts for the modernization of K-12 school facilities as part of the "Schools for the 21st

Century" program. Puerto Rico's legislation is regarded as clear and sensible, encouraging investor competition that leads to value-maximizing P3s for the government and its citizens. Among the key strengths of Puerto Rico's legislation are its centralized program, a broad scope of assets, and separation from the legislative process.

Puerto Rico's enabling legislation established the Public Private Partnership Authority, a centralized agency responsible for coordinating all P3 activity on the island. As opposed to many other states, which have individual agencies responsible for carrying out their own P3s, the Puerto Rico P3 Authority provides a central resource that helps individual agencies develop projects and then executes them in accordance with the legislation. This approach provides a central knowledge base, consistency across processes and significant cost and resource savings as a result of not having to "reinvent the wheel" for each P3.

Instead of focusing on specific projects, the Puerto Rico legislation identifies broad asset classes in its scope. This gives the Authority the flexibility to focus resources on projects that are in the most need or have the greatest chances of success. It also feeds the Authority with a pipeline of projects that can be pursued at a pace that is manageable for the government.

A number of states have also eliminated a "last look" requirement from their legislation. One such example, California, removed the need for legislative approval from individual projects with the passage of Senate Bill 4b in 2009. However, California's P3 legislation still contains a number of shortfalls. For example, it only allows for transportation projects and limits the number of projects to 15, five at the local level and ten at the state level. As a result, the State has failed to develop a strong pipeline as investors question the State's long-term commitment to P3. Additionally, the legislation lays out a process that is cumbersome and overly prescriptive, which can deter bidders from investing time in a process.

New York Legislation

We see the proposed New York legislation as a solid framework for executing P3s in the State. It takes into account many of the industry's best practices and is well structured in the view of the market participants we have canvassed. Additionally, the flexibility that S5445 provides the State's transportation agencies will be a boon not only to the State, but will have positive effects on private sector participants and will create jobs across the State. We see the creation of the Innovative Infrastructure Development Board as a close parallel to the P3 authority developed in Puerto Rico and expect it to function in a similar manner. This will allow the State to work effectively with the numerous agencies involved in managing its infrastructure. Additionally, the nine-person board structure could, in our view, streamline all components of the procurement process and provide efficient P3 structures.

However, one potential concern in the current legislation is its scope. While the breadth of "Transportation infrastructure" as defined in the bill is adequate to cover all potential transportation P3s, a more robust P3 pipeline could be created with the addition of more asset classes as was done in the Puerto Rico legislation. This would give the State more flexibility to pursue P3s where they may needed the most. Another potential concern is in the structure of the cost analysis. While we agree that doing the type of analysis proposed in the legislation – or "value-for-money" analysis as it is commonly known – is required to make sound economic decisions, we have learned from prior experience in the US that there can be variance in market perceptions of asset value. Assumptions around growth projections, costs of capital and process assumptions can vary significantly based on the perspective of the entity performing the analysis. To mitigate this potential conflict of interests, we recommend that the legislation require a third-party, independent value-for-money analysis and assessment of any potential P3. These reports would ensure that the State would receive the proper value for its assets.

Lastly, we would recommend better clarity around how different State agencies would interact with the Innovative Infrastructure Development Board. As currently proposed, it is not clear how a project could become a P3 or who would have oversight over this process. The State and its authorities should present a unified process and coordinated approval mechanism. We recommend that the legislation provide clarity around this issue, and would look to the Puerto Rico precedent as a strong example.

In closing, we support the efforts of Senator Fuschillo and his staff in drafting this important legislation. We believe that, if properly structured, this legislation will allow the State to mobilize capital and drive infrastructure development forward. It will provide citizens with safer, more reliable assets while creating jobs and cutting costs. I thank you for providing the opportunity to appear before the committee to discuss my views, and I am happy to answer any questions you may have.

LONG ISLAND FEDERATION OF LABOR, AFL-CIO

STATEMENT BY ROGER CLAYMAN, EXECUTIVE DIRECTOR
LONG ISLAND FEDERATION OF LABOR, AFL-CIO
TO THE SENATE STANDING COMMITTEE ON TRANSPORTATION

SEPTEMBER 27, 2011

The Long Island Federation of Labor, on behalf of our 250,000 members and their families on Long Island, would like to thank Senator Fuschillo and the Standing Committee on Transportation for exploring new ways to rebuild our transportation infrastructure. Nothing could be more significant for our region's economic recovery.

In recent years our labor movement has emphasized that our infrastructure needs on Long Island are fundamental to our concerns about jobs and the quality of life. Major investments in infrastructure are needed to attract new businesses, retain young men and women on Long Island, add to our available housing, and move the next generation of our workforce to their jobs efficiently.

What people are talking about on Long Island is creating vibrant downtowns. That means refurbishing older communities and considering some major new developments close to major transportation hubs. It is clearly the focus of the Regional Economic Development Council and countless other forums. But none of the best ideas will move forward without a better use of our capital resources. Transportation infrastructure has emerged as one of the top considerations for community redevelopment on Long Island. Projects like the third track from Bellerose to Hicksville; the second track to Ronkonkoma; parking at railroad stations; intersection and bridge upgrades; and improvements to our parkways are all essential.

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Two concerns about state investments for infrastructure have been well documented. First, our highway and bridge funds have lost billions of dollars over two decades because tax revenues intended for construction have been directed toward debt service and agency operations. Second, Long Island has not received its fair share of state and federal dollars, and that has undermined our efforts to keep the economy strong. It is clear that we have to find a better way to pay for the construction we need.

We support the goals of S5445: rebuilding our transportation infrastructure and creating jobs. Our concern is to ensure that when public agencies enter into public-private partnerships, they impact our workforce positively. The jobs created must be good jobs and the careers of our state workforce must not be jeopardized. The bill should state that all projects authorized as P3's are public works projects and must have prevailing rate, apprenticeship and other labor standards. It should be specified in the language of the bill that Project Labor Agreements should be incorporated into the delivery methods. The public sector workforce should not lose jobs in the design and maintenance aspects of the projects that are undertaken. In addition, the selection and financing of P3 projects should be transparent and well understood by the public.

Nassau County's intention to privatize Long Island Bus is a striking example of the dangers inherent in public-private partnerships. The selection of the private operator was handled secretly, with no information provided to the public or the County Legislature. The County's projected investment in the privatized bus system is completely unrealistic when compared to similar bus service in neighboring counties. It is very troubling that the terms of the contract beyond the first year have not been made public. Without such disclosure, fare hikes and service cuts seem to be inevitable. Moreover, it is clear that salaries, benefits and job security will be slashed in a race to the bottom on employee costs. This misguided privatization effort will surely inflict substantial damage on Long Island's economy.

The issues and principles outlined here are the same ones we are fighting for every day within local projects on Long Island and projects funded by the IDA's. We believe that community consensus and support will become key factors in the success of any projects. We urge you to consider that the workforce is an important component of our community and amend the bill to protect good jobs and good wages.

Billy Duffy, Chairman, Public Works Alliance

Mr. Chairman, I sit here wearing two hats. I am the President of Local 138 of the International Union of Operating Engineers and Chairman of the Public Works Alliance of Long Island.

There once was a time when the construction trades and the companies that employed its members would sit on opposite sides of the table. They viewed themselves as labor and management – with a great divide between them. They might meet to discuss projects and budgets but both were wary of each other's agendas and their motives.

That era is long gone.

The construction trades and the companies that seek to build Long Island now work closely together. There is recognition that we have far more in common than ever before. There is an appreciation that we are facing an economic crisis of enormous proportions that threatens the very viability of our industry.

If I can employ that totally misleading cliché, this is the perfect storm. We are facing failed federal stimulus strategies, a financially desperate state government and a sustained recession that is becoming historic in size and duration.

There is nothing "perfect" about it.

In retrospect, Washington was cynical in creating a program that failed the nation's construction industry. I has become obvious that the American Recovery and Reinvestment Act was political theater. Infrastructure was used as a backdrop to sell that plan. We were misled into believing it would be similar to the successful WPA programs of our nation's past. It was not and was never meant to be.

So where does that leave us? If we are to build our way out of a recession it is going to take a public private partnership to fund the projects that put men and women back to work. It will take public private partnerships to give us the means to build our future.

But these funding mechanisms are under attack – some – like Senator Dick Durban from Illinois – are suggesting the taxpayer is poorly treated in these scenarios. Try me, Senator...I have 30 percent unemployed in my industry and they would be happy to pay their taxes if only they had a job.

Let's bust the fictions surrounding the triple "P's."

Critics say they create windfall profits for the private sector. The truth is, revenue sharing between public and private sectors is based on gross revenue or maximum return to shareholders, and that formula is usually built into P3 agreements. In addition, that agreement often creates a profit sharing structure with government so that a percentage of the revenues go back into the public coffers.

Critics say the cost of money for the project is higher. The truth is, competition forces the private sector to deliver projects as cheaply as possible. The private entity assumes the risk of cost overruns during construction and operation. Not the taxpayer. The private sector is better positioned to leverage third party investment to reduce the cost. They are compelled to comb the financial marketplace to find the lowest cost capital to get a P3 funded so that men and women in unions like mine can go back to work.

Critics say P3 ultimately leads to complete privatization of public infrastructure. The truth is, the public sector defines project requirements and the private sector gets paid only for services that meet those standards. There is no "mission creep" here – simply a performance based contract to get the job done and put people to work.

What irony that AECOM, an American based management company, has won a $23 million public private partnership award to help the Russians rebuild one of their most important highways between Moscow and St. Petersburg. It is a reflection of how other nations intent on building their future are using the power off P3 to get started.

This crisis in our economy has given us reason to reexamine how we build the infrastructure that powers our nation and our state. This hearing needs to become the agent of change that puts P3 to work on behalf of New York.

The First Steps in the Process:
A Public Agency Plan for Implementing a P3 Program

New York State Senate Standing Committee on Transportation
Tuesday, September 27th, 2011

LOCHNER MMM GROUP
specialists in public-private ventures in transportation

Issues for Consideration Before P3 Launch

- Political Commitment / Public Acceptance
- Interest Groups
- Span of Control / Risk Transfer
- Development Process
- Commercial Terms / Ability to Finance

Integrated Team

- Building the Right Integrated Team
  - Legal Team
  - Financial Team
  - Engineering Team

Government and Public

- Government Policy and Public Opinion
  - Education
  - Internal Communication
  - External Communication
    - Public Protections
      - Toll Rate
      - Toll Escalation
      - State/Federal Standards
      - Hand Back Standards
      - Term of Lease

Risk Management

- Risk Management
  - Who best can handle the risk?
  - Ultimately risk adds cost to a project
  - Balancing what is in the best interest of the public at the lowest project cost

Cost/Schedule Risk Allocation

Risk	Traditional	P3 Team
Approvals	Owner	Contractor
Utilities	Owner	Contractor/Designer
Design Scope	Owner/Designer	Design
Weather	Contractor	Contractor
Construction Cost	Owner/Contractor	Contractor
Additional Property	Owner/Designer	Contractor
Design Growth	Owner	Designer
Site Conditions	Owner/Contractor	Contractor
Schedule	Owner/Contractor	Contractor/Designer
Soil Conditions	Owner/Designer	Contractor

Cost/Schedule Risk Allocation

Risk	Traditional	P3 Team
Quality Oversight	Owner	Financier/Contractor
Workplace Safety	Contractor	Contractor
Maintenance	Owner	Operator
Operations	Owner	Operator
Inflation	Owner	P3 Team
Revenue	Owner	Financier
Financing	Owner	Financier
Liquidated Damages	Owner	Contractor/Designer
Permitting	Owner	Financier/Contractor/Operator
Development Agreement	Owner	All

Select Projects

- Potential Project Filters
  - Public Support
  - Political Champion
  - Environmental Clearance
  - Financial Viability
  - Value for Money
  - Public Sector Comparator

Implementing a Program

- Creating a Program
  - Not Just a One-Off Project
  - Real Deal Flow
  - Industry Partners

SB 5445 - Innovative Infrastructure Development Act

- Good Bill
- 35 Years – Term Length
- Role of the Board

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Michael Polimeni

Public Private Partnerships for Public Works

Good morning Mr. Chairman. My name is Michael Polimeni and I am chief operating officer of Polimeni International located in Garden City, Long Island. I am also a member of the Association for a Better Long Island.

On November 14th 1963, just about a week before his life would end in Dallas President Kennedy told a Maryland gathering that it was a pleasure to join them in opening a new portion of the interstate highway. He said, and I quote, "This great interstate highway represents a cooperative effort between the United States Government and the people of the various States, through which this long ribbon will pass."

He told his audience, "It symbolizes, first of all, the partnership between the Federal Government and the States, which is essential to the progress of all of our people; and secondly, it symbolizes the effort we have made to achieve the most modern interstate highway system in the world… And third, it symbolizes the effort which we are giving and must be giving to organizing an effective communication system here in the United States of America."

Of these public works projects JFK would observe, "No industry has a greater impact upon the Nation and no industry has a greater opportunity to affect our economic progress. This administration has proposed a new, comprehensive, national transportation policy…. and our goal is the development of the most efficient, economic, and the safest transportation system for all of our people."

President Kennedy closed by stating, "Because people several years ago made the plans and took the initiative, this highway is now being dedicated. I hope in the year 1963 we will again take stock of the needs of the country over the next decade and we will begin today, this year, this decade, the things which will make this country a better place to live in for the rest of this century."

And so Senator Fuschillo, here we are. Living in an era when "can't do" has replaced the vision and energy that John Kennedy expressed during his last days on earth. The infrastructure he dedicated is still doing its job buts it's probably being ignored, poorly maintained, indifferently funded and woefully inadequate to the task.

The harsh realities are that public infrastructure such as highways and roads don't have a large political constituency. People use it but don't want to pay taxes at the pump to pay for it. An MTA tax for mass transit brought about the end of some political careers. And yet without a viable infrastructure this country – our state – our region – will come to a screeching halt. Some would argue we already have – we just haven't acknowledged it yet.

Polimeni International has proposed the outrageous. We have suggested that not only can we strengthen in our infrastructure in a profound and strategic manner – but we can do so with private investment. We are proposing to build a tunnel beneath the Long Island Sound that brings commerce, investment, jobs and tax revenues into a region in danger of stagnating. The technology is there; the financing is there; the engineering is there – the benefits are obvious. There couldn't be a better time than now.

What is not there is a regulatory structure that would allow a public-private partnership to proceed on a project that would be as important as the introduction of an electrified Long Island Railroad into Manhattan. There is a disconnect among concept, opportunity and execution. Lets revisit what Polimeni International is proposing.

Entitled, "The Sound Link," plans call for the creation of a $10 billion tunnel that goes underground at the existing northern terminus of the Seaford Oyster Bay Expressway on Long Island and reappears 16 miles later in Rye, New York, significantly reducing vehicular air emissions and energy consumption in the region, greatly prolonging the life span of the Whitestone and Throgs Neck bridges, adding strategic depth to emergency response options on Long Island and Westchester and creating thousands of jobs at time of historic economic pain.

The tunnel will enable as many as 70,000 vehicles per day now on the road to bypass congested roads in Westchester, the Bronx and Queens. In addition, high speed rapid bus will directly link to LIRR and Metro North stations, adding additional access to the mass transportation options available to the region. Government will decide whether rail goes through one of the tubes.

We are challenging the region to consider a very big idea and one's whose time we believe has arrived. We are proposing that 21st Century technology be employed to create solutions to environmental and transportation issues that are guaranteed to grow if left unaddressed. Polimeni International has already invested nearly a million dollars to document whether a tunnel beneath the Long Island Sound should be considered as a strategic response to strategic problems.

A Public private partnership is the only mechanism by which this – or any other strategic project is going to achieve John Kennedy's vision. Tax free bonds would be employed and investors around the world would have the option of purchasing them as they do for any significant infrastructure project. The bonds would be paid off by the vehicular drivers who will pay as much as $30 dollars to use the tunnel, but whose price would rise or fall depending on congestion pricing strategies employed in concert with transportation officials throughout the region.

Often times the words of a visionary are not enough to create the environment for positive and sustained change. Sometimes one needs a crisis to create the momentum that provides us with the will and the resources to get the job done. The Depression built our 20th Century infrastructure. The Soviets launched our mission to the moon. A cogent, viable public private partnership will allow us to escape the clutches of an aging and obsolete infrastructure that is now wrapped around a destructive recession.

I would argue that JFK's vision on the eve of his death can still be accomplished by the work of those on this committee and those who preside in Albany.

Thank you Mr. Chairman for the opportunity to present our thoughts.

THE USE

OF

PUBLIC-PRIVATE PARTNERSHIPS

TO

EXPEDITE INFRASTRUCTURE DEVELOPMENT

New York State Senate
Committee on Transportation

September 27, 2011

John Buttarazzi

Skanska

Mr. Chairman and Members of the Committee, my name is John Buttarazzi. I am here today on behalf of Skanska. Skanska is a leading international project development and construction company, developing offices, homes and infrastructure projects, such as schools and roads. We create sustainable solutions and aim to be a leader in quality, green construction, work safety and business ethics. Here in New York, you may have seen the Skanska sign on projects such as the FDR Drive, CitiField, Brooklyn Bridge Park, and the World Trade Center. Furthermore, Skanska is a leader in public-private partnerships, also referred to as P3. In partnership with governments around the world, Skanska has financed and developed roads, hospitals, schools, hydro-power, water treatment facilities and power plants.

For six and a half years, during Governor Pataki's Administration, I served as a Senior Vice President at the Empire State Development Corporation. There, under the Governor's leadership and that of ESD Chairman and New York-New Jersey Port Authority Vice-Chairman Charles Gargano, I coordinated State P3 efforts. Since leaving State service in 2001 I have continued to work on public-private partnerships on behalf of public sector entities as well as private sector firms such as Skanska.

Today I would like to provide a very brief history of public-private partnerships in the United States, how such partnerships can accelerate and augment infrastructure construction in New York, some issues surrounding P3, and specific thoughts on legislation for you to consider.

Brief History of Public-Private Partnerships in U.S. Transportation

Public-private partnerships for complex, multi-billion dollar transportation projects have been used for decades in Europe, and more recently in Australia and Latin America. In fact, P3 has become the conventional way to provide new highway capacity in many countries. The private sector is financing, building, and operating most of the major new highways in countries as diverse as Canada, Britain, France, Spain, Italy, Greece, Poland, China, India, Indonesia, South Africa, Australia, Argentina, Brazil, Chile, and Jamaica.

Public-private partnerships are not a new concept to transportation infrastructure development. From the earliest of colonial times to the present, the U.S. private sector has had an active and sometimes leading role in building what we now consider public transportation facilities.

The earliest major roads in the 18th century were private toll roads. In 1792, the first private turnpike was chartered in Pennsylvania. The boom in turnpike construction resulted in the incorporation of more than 100 private turnpike companies, 67 of which were in New York.

Public-private partnerships between the federal government and the private railroads drove the expansion westward in the late 19th century. The government provided the right-of-way and related development property while the railroads used private capital to build the rail facilities and rolling stock.

For many years, private bus and rail transit companies provided service under exclusive franchises from local governments.

After World War II, however, road and transit responsibilities in the United States became more and more concentrated in the hands of government. Passenger rail, transit systems, and virtually all highway construction and maintenance moved into the hands of the state and local governments.

Yet, public funds have not kept pace with the demand to maintain and improve the nation's extensive surface transportation network. At the state and local levels, governments face fiscal challenges that are testing their abilities to provide services themselves. While the ability of government to perform is being constrained, demands for services still increase, due in part to unfunded mandates handed down from the federal government and from the continual pressure from citizens to look to government to improve service quality and quantity.

Beginning with the federal reauthorization bills of 1991, which made it easier to blend federal aid with private financing and authorized more flexible operating arrangements, Congress opened the door for the private sector to once again participate in transportation. Presidents George W. Bush and William Clinton even issued executive orders (Executive Orders 12803 and 12893, respectively) to promote private sector involvement in infrastructure investment. However, private sector participation was tepid at best, because the states had statutes on their own books that were aligned with the traditional funding and procurement mechanisms. In addition, long-standing practices embedded in the federal and state bureaucracies, as well as in the contracting community, limited private sector investment.

Most of the early legislation regarding public-private partnerships in the 1980s and early 1990's authorized single projects or provided for a limited number of "pilot" projects utilizing public-private partnerships.

The legislative landscape began to change in 1994 when Virginia enacted the Public Private Transportation Act ("PPTA"). The PPTA streamlined the process for private participation. Importantly, it did not limit itself to highways but is applicable to all modes of transportation. Moreover, it allowed for unsolicited proposals. Now, as in business, the private sector could recommend an approach to the public sector and engage in arms length negotiations.

Building on the success of PPTA, Virginia enacted in 2002 the Public Private Education Facilities and Infrastructure Act, which opened up P3 to all forms of infrastructure and public sector buildings at the state, county and city levels. Today half the states have laws facilitating public-private partnerships – New York being a notable exception.

Need For Public-Private Partnerships in Transportation

The "open road" is no longer. Built in the 1950s, the interstate ribbons that lace throughout this country are currently in a tragic state of disrepair. They are beyond capacity, in poor condition and in some cases, such as the 2007 I-35 West bridge collapse in Minnesota, tragically dangerous. Quite literally, the state of America's transportation infrastructure is crumbling. The need for new and upgraded transportation infrastructure in the U.S. is at a key juncture. However, the funding and procurement process is unable to meet the requirements of citizens.

As we know, New York State is not immune from the deterioration contagion. A 2008 Infrastructure Report Card, compiled by the American Society of Civil Engineers, made the following transportation findings:

- 42 percent of New York's bridges are structurally deficient or functionally obsolete;
- 46 percent of New York's major roads are in poor or mediocre condition; and
- 45 percent of New York's major urban highways are congested.

Also in 2008, the New York State Department of Transportation ("NYSDOT") completed a Needs Study that examined what it would take to bring the State's multi-modal transportation infrastructure to a state-of-good repair. The study documented $175 billion in infrastructure needs, and this did not include the needs of the Metropolitan Transportation Authority, the Thruway Authority or the New York State Bridge Authority. In the words of then Transportation Acting Commissioner Stanley Gee, "let me give you a sobering example;" the study showed that, based on the average life of a bridge, nearly 1,500 additional bridges will likely be deficient by 2013. That number will increase to 3,000 in the next three to seven years without significant investment. Maintaining and slightly improving the condition of our State's bridges alone over 20 years is estimated to cost $30.6 billion. Through traditional means, the State can fund less than half of its 20-year needs.

In its 2009 report, Governor Paterson's Commission on State Asset Maximization noted that "New York State lacks the necessary resources to even maintain its current infrastructure, let alone upgrade or improve capacity...Consequently, the State's transportation system is deteriorating and no longer fully satisfies current or projected demands...If the State seeks to be competitive in the twenty-first century and, at a minimum, ensure the public safety of its citizens, it ought to add more tools to its tool kit, including enabling the selective and appropriate use of alternative procurement and financing methods, including [public-private partnerships]."

Benefits of Public-Private Partnerships

Public-private partnerships combine the capital and expertise of the private sector with the management and oversight of the government to provide public services. Public-private partnerships effectively finance, manage and operate roads while minimizing taxpayer costs and risks.

Public-private partnership strategies must balance the interests of society, state, taxpayers, industry, and the market for ultimate success. P3 is an alternative – it is not the only option – but it is a concept that is rooted in the tradition of matching public and private strengths to accomplish goals or tackle big problems. One does not need to look too far to see that public-private partnerships work – Canada has a robust P3 programs.

There is a misconception that somehow governments are "giving away" public assets. This is furthest from the truth. Through a performance-based contract, P3 projects remain in near total control of the government, who can fine or fire a developer if it fails to perform. Private developers have every incentive to build and operate the asset with maximum care to make the partnership with government as profitable for all sides as possible.

Another misperception is that public-private partnerships cost union jobs. Yet without private financing, many public projects and the jobs they create would not even exist. In fact, among the largest investors in P3 projects are union pension funds. As an aside, Skanska is among the largest employers of construction union trades in New York State.

Needed are leaders willing to commit to creatively solving the infrastructure challenges we face, a reliable procurement process, and a slight shift in public expectations of government. Government should focus on delivering results; not how the results are delivered.

The benefits of public-private financing include:

Access to large new sources of capital. Public-private partnerships are attractive to many different types of investors, including equity investors and lenders. More importantly, they open the door to institutional investments, such as pension funds. By the way, the New York State Pension Fund has invested in overseas P3 projects;

Reallocation of risk from taxpayers to investors. Public-private partnerships distribute duties and risks to the parties best able to handle them. For example, the state is best equipped to handle right-of-way acquisition and environmental permitting, so those tasks and risks are assigned to the state. The private sector generally takes on the risks of construction cost overruns and possible traffic and revenue shortfalls;

Delivering tomorrow's infrastructure today while maximizing scarce public sector capital. Public-private partnerships allow necessary new capacity to be delivered much faster than is possible under the current pay-as-you-go funding system, which is ill-suited to delivering large-scale projects in a timely manner. Public-private partnerships offer a methodology for financing and building needed capacity now, when we need it, instead of decades from now or possibly never. Moreover, they free up resources to deliver other projects that will not have to wait for funding to become available. This is a win-win for taxpayers and drivers, as partnerships deliver projects to strategically connect the state, enabling greater mobility of goods and people.

Driver of economic growth. Sound infrastructure is essential to economic growth. When it is planned, funded, and maintained well, infrastructure plays a vital role in supporting a high standard of living and facilitating commerce and trade. But despite the well-documented link between high-caliber infrastructure and economic expansion, governments operating with their backs up against the fiscal wall may not be equipped to make the necessary investments. Policymakers are learning that in addition to the injection of capital, public-private partnerships are also catalysts for economic growth.

P3 projects tend to be large undertakings that bring capital into the market while creating long-term employment. Job growth drives more consumption, generating more wealth and fueling a stronger economy. Private investment of this nature also attracts other private investors to the market, creating a sustainable model for economic growth. There is also a fiscal impact. In addition to potentially reducing reliance on state spending or making state dollars go further, private entities building and operating toll roads, bridges, etc., may not be tax-exempt, hence they provide incremental tax revenue.

S. 5445 - The Innovative Infrastructure Development Act

The Innovative Infrastructure Development Act ("IIDA") when enacted will promote an investment in the State's transportation infrastructure that has not been seen since many of the aging roads and bridges were first constructed more than a half century ago. Such activity would result in the employment of thousands of workers, reinvigorated communities and a substantial jolt to the State's moribund economy.

The IIDA will catalyze transportation infrastructure development in New York State. In fact, we would recommend that eligible projects not be limited to transportation, but be allowed for all modes of infrastructure such as water filtration and treatment plants, education facilities, health buildings, among others. Public-private partnerships have proven themselves across the built environment. Moreover, such an expanded law should be applicable at all levels government – state, county and municipal – as well as other state agencies and authorities.

A recent PFM Group white paper suggests that public-private partnership authorities are critical to the success of implementing P3 programs.[1] The study noted that beyond legislation, few states have developed an institutional framework for public-private partnerships. Virginia and Arizona have established P3 offices in their departments of transportation and California has assigned specific responsibilities related to P3s to certain agencies. But, only Puerto Rico has established a formal public-private partnership Authority. The IIDA provision to create the Innovative Infrastructure Development Board to expedite P3 transportation projects is a welcome step in the right direction.

[1] "Why Your State Needs A P3 Authority," Brien Desilets, The PFM Group, September 2011.

From the public sector perspective, the Innovative Infrastructure Development Board would establish a transparent and standardized process for analyzing and procuring P3 projects. From the private sector perspective, the Board would serve as a one-stop shop for deal flow and reduce transactions costs by standardizing bidding documents, procedures and contracts. While the initial reaction of many in the public sector is to reject P3s altogether or to regard them with skepticism, the establishment of a Board that manages the project development process and establishes clear criteria for evaluating the merits of P3 can answer their concerns and ensure net benefits to the public sector of any P3 project. While the initial reaction among the private sector parties may be against regulation and additional government bureaucracy, international experience shows that deal flow is generally increased and marketing and other transaction costs decreased with the establishment of a centralized entity.

I would strongly recommend that the committee examine the operation of the Puerto Rico Public-Private Partnerships Authority.

Another idea would be to allow for both solicited and unsolicited proposals, thus tapping into the creativity and innovation of the private sector. Competitiveness may be maintained by requiring unsolicited proposals to be posted for a period of time, during which others could offer competing proposals. As noted earlier, Virginia has done this with success. There, Skanska proposed a conceptual public-private partnership plan to replace aging tunnels in the Tidewater region. Virginia subsequently decided to compete the project, which Skanska won. Skanska and the Commonwealth negotiated an agreement where in return for a long-term concession, Skanska and its private sector partners will fund the $1.2 billion construction cost as well as the $1.3 billion in operations and maintenance. That is a $2.5 billion investment by the private sector in the Commonwealth of Virginia.

Conclusion

Business as usual will not deliver the infrastructure that New York needs to meet the transportation needs of the 21st century economy. New York policymakers need to embrace a new paradigm for highway funding and operation. The success of existing private sector participation in transportation services highlights the potential benefits for many transportation projects needed in the State. While not a panacea, these partnerships have proven successful when done properly with a strong contract, continual oversight and strict accountability.

The potential for New York is tremendous. Private capital is flowing to those states that have created the right conditions for investment. Foreign money is pouring into Texas, California, Georgia, Indiana, North Carolina and Virginia to invest in highways and bridges. Without the proper legal framework, other states will continue to reap these benefits at the expense of New York's economy and business climate. Funding for transportation projects goes to those states that have created the right conditions - where the law facilitates public-private partnerships and where private investment and participation is embraced. Why shouldn't New York also benefit?

New York is at a crossroads. It can choose to open its doors to this innovative approach or not. New York law needs to be changed to encourage the aggressive pursuit of private sector participation in not only transportation services but in all forms of infrastructure.

Thank you for inviting Skanska to participate in your deliberations. I would be happy to address any questions or concerns that you may have.

Oral Testimony of Kevin J. Thibault, P.E.
Vice President, Parsons
To the
NEW YORK SENATE STANDING COMMITTEE ON TRANSPORTATION

Tuesday, September 27, 2011, 10 am
Farmingdale State College
Lupton Hall, IRTT Room T-101
3350 Broadhollow Road
Farmingdale, NY 11735

Thank you Mr. Chairman, committee members – my name is Kevin Thibault and I am a Vice President with Parsons Corporation, a leading international consulting firm specializing in the development of infrastructure projects with offices here in New York as well all over the world. With over 10,000 employees, Parsons has been a part of some major infrastructure projects including the Tacoma-Narrows Bridge in Washington State, and has served as the consulting engineer for the Thousand Islands Bridge Authority for several years.

Prior to my joining Parsons, I served 16 years with the Florida Department of Transportation, with six of those years as Assistant Secretary and Chief Operating Officer for the agency. I also was privileged to serve as Chief Engineer and then Executive Director of Florida's Turnpike.

I am here today, Mr. Chairman, to share my experiences on the evolution of Florida's use of alternative delivery methods to meets its growing transportation needs, and how that experience has allowed them to be successful in using design/build and public private partnerships in delivering their transportation program, with clearly the strong support from private industry.

First, I firmly believe that the use of public-private partnerships should be just one tool in the tool box for a state to address its transportation needs. Since these partnerships can take a number of different forms, which I will discuss in a moment, they can be flexible enough to also be used in many different applications – from the normal project level to an entire program level. But please note that they are just a tool, and a valuable too when responding to the reduction of traditional transportation funding. The biggest benefit is getting projects underway in a more realistic time frame – but it does take commitment from all to provide a process that is open to innovation and dedicated to the project's delivery.

It will benefit the committee if I go back just a little to understand where Florida is today – back in the mid-1990s there was genuine concern among the Florida Legislature and Governor on how transportation projects appeared to be behind schedule and over budget. The Florida DOT worked with policy makers and legislators to allow it to use alternative contracting methods to provide Floridians with the best value for their transportation dollars. These alternative methods included the 'A+B' method where both time and cost is bid on a project, the use of 'No Excuse Bonuses' that give contractors an extra incentive to complete projects on time, and a more expansive use of design/build (prior to this point, Florida could only use design/build on major bridge projects like the Sunshine Skyway, or on the construction of buildings). In working with industry on the implementation of this new program, Florida has since achieved significant results and consistently has its projects completed on time and within budget. The most important aspect is that these alternative methods do not make up the majority of the program, which was feared by the industry initially. It has rather been part of an appropriate balance between traditional contracting (low bid) and these methods that meet the needs of each project.

With Florida being a growth state, revenues from traditional transportation sources (primarily the state gas tax) continued to grow until 2006, when the first of a consistent decline in revenues began to occur. In 2007, Florida DOT worked with the Governor and the Florida Legislature to make sweeping changes in Florida law that would allow the Florida DOT to use Public-Private Partnerships (P3) to continue to deliver a safe and efficient transportation system for the people of Florida. This new law is broad and gives great flexibility in the implementation of P3 proposals, including design/build/finance, design/build/operate/maintain & finance, availability payments and full concession contracts. Since its inception, Florida DOT has used these practices on a number of projects, a few of which I would like to highlight.

In southwest Florida, traffic growth had caused significant delays on Interstate 75 between Ft. Myers and Naples, but the cost to widen the facility to six lanes was over $400 million and well beyond the amount that can be allocated to a single project in one year. So, Florida DOT had split the project up into multiple segments and funded it over a 5-6 year window. In lieu of the community seeing constant construction for many years, Florida DOT used the design/build/finance delivery method in which a single contractor was awarded the entire 30 mile corridor to widen, and would receive payment for its efforts in the exact same years already programmed. The cost to finance the project was obviously in the proposer's bid, and safeguards were in place to make sure that the proposal did not exceed the amount budgeted in the program. But, in the end, the project was delivered well ahead of originally scheduled (and actually one year ahead of the revised schedule based on this new proposal), the community benefitted from the improvements earlier, and the contractor was paid according to the schedule. Similar use of this concept has now been done on a number of projects, including the widening of Interstate 95 along Florida's Space Coast, and the widening of US 1 along the Florida Keys.

The results of this new tool have clearly given Florida the indication that there is private sector interest in the investment of transportation improvements, as long as they see a benefit for that investment (appropriate returns, appropriate risk allocation and adequate revenues). Florida DOT then proceeded forward with two major transportation improvements that each cost close to $1 billion to implement. The first of these was the Port of Miami Tunnel project, which has long been envisioned by the community as a new and improved connection to the Port of Miami. Currently, all motor vehicle traffic (including truck traffic) has to exit the expressway system and travel through downtown Miami to reach the port. This new tunnel would provide a direct access from I-395 to the port which would improve not only the port connection but ease the traffic congestion downtown. A partnership was first reached between the state, the city and the county to come up with the funding mechanism for the project (capital costs were split evenly between the state and the local governments), and then a solicitation occurred where the private sector was given the opportunity to not only design and build Florida's second tunnel (yes, there is another one in Ft. Lauderdale), but also be responsible to operate and maintain the facility for a 30 year period. In return, milestone payments and availability payments would be structured throughout the term as the payback for this investment. Availability and milestone payments are very simply this – the vendor is paid a specified amount upon completion of certain milestones identified in the contract, and then receives annual availability payments as long as the facility is open to traffic. The schedule risk is clearly under their control – if they delay, they do not get paid. And if the facility is closed due to repairs, etc., they do not get paid for those times that it is closed.

Three characteristics were important in the selection of the concessionaire team – they had to be technically qualified to perform the work envisioned, they had to accept the milestone payments as identified, and they had to propose the lowest annual availability payment that still met the needs of the project. Since the milestone payments did not equal the total cost of the capital portion of the project, it was well understood by all parties that the annual payment included the remaining portion of the capital cost spread out over the term of the contract, as well as the normal operation and maintenance cost. In the end, the community is now seeing construction underway for a project that has been over 20 years in the making and will position the port to be ready for future opportunities when the project opens in 2014.

Mr. Chairman, members – thank you for the opportunity to share a little bit on what has occurred to date in another state in the use of P3s, and I would be happy to answer any questions you may have.

<u>Reasons for a LI Regional Infrastructure Bank</u>

- <u>LI's 2 counties rate among the highest taxed in the country</u>
- <u>Unemployment nationally is over 9% - LI construction trades unemployed is a staggering 30-35%</u>
- <u>LI's Infrastructure is failing. 46% of our roads and bridges are either functionally obsolete or obsolete</u>

These are 3 reasons why LI needs to seek another way to do business. There was a time in our nation's history where the New Deal could stimulate the economy. In a nut shell, government would fund public works projects and put middle class America to work. Today, government at every level is broke. We need a new New Deal! We need to think outside the box. While 40% of this country's wealth is concentrated in the top 1% of the population, it is no wonder why our economy is stuck – this 1% can not purchase enough goods and services to provide the economic stimulus that is needed. What do we do?

The 8 biggest building trades on LI have a combined pension of $4 Billion. If they were willing and government was willing, we could create a regional infrastructure bank that could be replicated throughout NYS and the country. Just 5% of that $4 Billion would produce $200 Million to invest in a LI Regional I-Bank. If government matched that number, we would have $400 million to start a regional bank. If other unions or union funds participated, then we could have close to $1 Billion to start a regional I-Bank.

How it would work:

- The bank would be jointly run by labor and government to fund Infrastructure needs on LI.
- The bank would provide direct funding to certain projects where a user fee would be attached to the project (i.e. sewer and water districts). Thus increasing the ROI for the bank on its investment.
- Generally, Infrastructure nets a max ROI of 3-7% and some projects (i.e. non-toll roads) produce no profit at all. So user fee projects could offset the lower ROI project.
- The bank could also provide low interest loans to developers/contractors that met certain criteria.
- The bank would also collect revenue through fee applications.
- The BT would insure that LI's infrastructure needs were addressed into perpetuity because they would have a vested interested in seeing that infrastructure is addressed as it would mean an increase in work for their membership.
- Government would now be paying for infrastructure at ½ of what it would normally cost because it would have a partner in this endeavor.
- The taxpayer wins because it doesn't have to worry about increased taxes to address our failing infrastructure needs.
- The BT funds would not only be producing additional revenue for its pension through man-hours into the pension fund – but all their funds would benefit.

- The additional monies in these funds could be used for additional capital to the bank.

Why we need to do this.

- The economy (local, state and federal) is stalled and government and LI can't afford the stimulus needed.
- The BT funds have most of their money invested in Wall Street where they have no control over their investments other than periodic reallocations.
- The public would have its dilapidated infrastructure addressed at 1/2 the cost.
- Government would have a partner in addressing infrastructure needs.
- If proven successful, this model could be replicated throughout NYS (mirroring the REDC) and throughout the country.
- These banks would then be able to partner with NYS and Federal I-Banks (should they ever come to fruition) to handle bigger projects in the respective regions.
- Most importantly, the monies from the pensions would directly benefit those that contribute to the funds as well as those that receive the benefit.
- The LI taxpayer would see instant improvement in its infrastructure at ½ the normal cost.
- Local people would see benefits of its investment locally. Whereas a state or federal I-Bank would fund projects outside of LI and the local BT funds would see an even more diminished ROI and more importantly, less job creation locally.

In the end, LI would have its infrastructure addressed at ½ the cost. LI businesses would benefit because there would be an increase investment in local infrastructure and the working middle class will now have more disposable income to purchase local goods and services – a recipe for real economic stimulus.
The BTs would be putting their members back to work on high paying public works jobs. This not only provides income for those working on these projects, but it also generates income and sales tax on their revenue that could also be used by government to fund more projects without increasing the tax burden on LIers. This creates a WIN/WIN/WIN scenario. Government wins. The taxpayer wins. The unemployed construction workers win. In the end, LI wins as the economy is stimulated with real economic benefits.

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