New York State Senate
Standing Committee on Transportation
Senator Charles J. Fuschillo, Jr., Chairman

Public Hearing on Public-Private Partnerships

May 16, 2011 – 10:00 AM
Hearing Room A- Legislative Office Building

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Testimony of Joan McDonald
Before the Senate Transportation Committee

Utilizing Public-Private Partnerships to Fund
Transportation Infrastructure in New York State
May 16, 2011

Chairman Fuschillo, members of the Senate Transportation Committee, thank you for inviting me to provide testimony today. I am Joan McDonald, Commissioner of the New York State Department of Transportation (NYSDOT). The subject of public private partnerships as a tool to address financing for transportation infrastructure projects is important, and I appreciate the opportunity to provide NYSDOT's perspective.

As this Committee is well aware, the transportation system in New York State is vast. The State's transportation system encompasses:

- more than 240,000 lane miles of highway and more than 17,400 bridges which support about 133 billion vehicle miles of travel annually;
- more than 130 public transportation operators, serving more than 8 million passengers each day or one of every three transit trips taken nationwide.
- an extensive 3,500-mile rail network over which more than 8.5 million passengers travel and 70 million tons of equipment, raw materials, manufactured goods and produce are shipped each year;
- 464 public and private aviation facilities through which more than 80 million people travel each year; and
- four port authorities (the Port Authority of New York and New Jersey, Albany Port District Commission, Port of Oswego Authority and Ogdensburg Bridge & Port Authority), the Port of Buffalo and numerous private ports handling which handle more than 100 million tons of freight each year.

Our infrastructure, like the infrastructure in much of the Northeast region, is aging, and faces the challenges of harsh winters. The demands on our transportation system, particularly as the economy recovers, are increasing. Consistent with the findings of two federal commissions [1] and the American Association of State Highway and Transportation Officials (AASHTO), NYSDOT has found that infrastructure needs are far greater than the resources available to fund such needs. To address current and expected needs would require nearly a doubling of our current investment in transportation infrastructure annually. Despite these challenges, Governor Cuomo remains strongly committed to ensuring that our transportation infrastructure remains safe and supports the recovery of our State. The Governor's continuing support is evidenced by his support for NYSDOT's fulfilling the commitment to the current two year capital program.

[1] National Surface Transportation Policy and Revenue Study Commission; National Surface Transportation Infrastructure Financing Commission

Status of Infrastructure Investment Funding

New York's current and future transportation infrastructure needs traditionally have been addressed through a partnership of federal, state and local government resources. 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 seven extensions, with the current extension expiring on September 30, 2011.

To date, Congress has not found a way to sufficiently finance a long-term multi-year transportation bill. The House Transportation and Infrastructure (T&I) Committee is developing a six-year Surface Transportation Authorization bill that would significantly scale back funding levels, limiting them to only the funding levels supported by the trust fund receipts. This would provide states 25% less than what currently is provided under SAFETEA-LU. The Senate Environment and Public Works (highway title) and Senate Banking (transit title) committees have also indicated that they are working on a multi-year reauthorization bill but neither has released details of their proposal.

The President's FFY 2012 Budget for Transportation provided the conceptual framework for the still-to-be-released six-year $556 billion surface transportation reauthorization bill. However, it should be noted that adequate revenues to support the proposed funding levels have not been identified and the proposal would require an additional $200 billion in new revenues to implement.

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 avail such as infrastructure banks and public private partnerships.

Current Capital Program

NYSDOT will need all the tools that are available to be able to leverage federal and State resources. Design-build and other forms of public private partnerships (P3s) should be made available to NYSDOT.

P3s - or a sharing of risks, responsibilities and funding between a government entity and one or more private sector partners – encompasses a range of relationships. Traditionally, for highway

and bridge projects, NYSDOT uses a design-bid-build approach, where projects are designed either by NYSDOT staff or consultants, are put out for bid and are constructed by private contractors. The facilities are then operated and maintained by NYSDOT. Thus NYSDOT already uses a form of public private partnership to deliver its projects, but has retained most of the responsibilities and risks associated with project delivery and operation. P3s could range from the less involved design-build project delivery technique, to arrangements where a private entity could design-build-finance-operate and maintain a facility over an extended period of time.

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 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. 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 over the last decade and is available to about 40 state Departments of Transportation. This tool is also recognized by the Federal Highway Administration as one of 15 tools it will promote with State DOT's to accelerate project delivery as part of FHWA's Every Day Counts (EDC) initiative. The tool is also used by the MTA and the Port Authority of New York and New Jersey, and can be expanded to include other forms of P3.

For example, a particularly successful use of the Design-Build-Operate-Maintain model (D-B-O-M) is the Air Train/JFK project sponsored by the Port Authority of New York and New Jersey. The Air Train/JFK project provided transit access to JFK International Airport in Queens, part of New York City. The project broke new ground, both for innovative financing as well as for the contracting process. The agency won FAA approval to collect Passenger Facility Charges (PFCs) for this on-airport circulator and off-airport link to regional transit services, which were combined with Port Authority resources to fund this $1.8 Billion project.

Air Train/JFK also stands out not only as an example of the flexibility of this approach, but it allowed for coordinating Air Train's construction with other public works investments in the corridor. New York State DOT and the MTA's Long Island Rail road contracted with the same contractor, under separate contracts, to carry out highway overpass improvements and Jamaica Station improvements in conjunction with Air Train construction. This saved money and minimized impacts on travelers and the local community.

Accelerated Bridge Program

Bridges are an excellent example of our State's and the nation's aging infrastructure. 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 is rated as deficient – safe, but 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 should stress before I go any further that 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. NYSDOT defines a "deficient" bridge as one with a State condition rating less than 5.0. A deficient condition rating indicates deterioration to a level that requires corrective maintenance or rehabilitation to restore the bridge to its fully functional, non-deficient condition. **It does not mean that the bridge is unsafe.**

The average age of a bridge in New York State today is 46 years. The average service life for many of the Eisenhower Interstate Era bridges was 50 years. NYSDOT recognizes that the bridge infrastructure needs are great, and will grow rapidly in the near future without significant investment. The Department's objective would be to reduce the number of deficient bridges by accelerating investment. This would improve bridge conditions across the state and decrease the overall cost of maintaining the bridge system over time. Addressing the wave of soon-to-be deficient bridges and bringing these bridges into an ongoing asset management program, improves overall system condition and reduces the life-cycle cost of the bridges.

NYSDOT has not determined how such a program would be structured, but other states have undertaken similar efforts to package groups of bridges to accelerate delivery. For example, Missouri's "Safe and Sound" program is improving more than 800 bridges over a five-year period using a combination of design-build, a modified design-bid-build process, and its regular letting program. Pennsylvania's Accelerated Bridge Program is rapidly addressing more than a thousand bridges using design-build. As a first step, the Department, in cooperation with Empire State Development will be hosting a workshop next week to gain insights and ideas from those with experience in this type of project delivery, selection and finance.

NYSDOT also sees potential in P3 techniques to address uniquely large and complex projects as well as an opportunity and deploy new technology and innovation in our transportation network. Examples of large infrastructure projects include: The Tappan Zee Bridge Replacement, completion of the conversion of Route 17 to Interstate 86 and the Kosciusko Bridge. The Department is also undertaking a study to look at managed use lane strategies in New York City, joining at least 23 U.S. metropolitan areas that are now operating or implementing managed lanes, considering managed lane proposals or studying their feasibility. Managed use lanes

apply modern technology and real-time traffic information to efficiently manage the movement of traffic. In its more advanced forms, technologies can be used on specific lanes to vary the cost of using the lane based on the time of day or the number of vehicles in a lane. These are known as High Occupancy Toll or HOT lanes, and can be very effective in allowing reliable travel options in a highly congested area. HOT lanes are in operation in a number of locations throughout the country, including Seattle, Salt Lake City, Denver and Minneapolis. These strategies could be used in conjunction with high occupancy vehicle (HOV) lanes, where those traveling with more passengers in the car could avoid a toll, but other drivers, valuing time could opt to pay a toll to use such lanes. Technologies can be applied that vary the cost of the toll depending on the amount of traffic using the lane.

Another possible opportunity could include the state's efforts to bring high speed rail to the Empire Corridor between New York City and Buffalo, and other passenger rail service improvements in the state. It may be possible to engage private sector railroads and investors to advance the development of rail improvements. NYSDOT is currently exploring service options for the Empire Corridor in its Empire Rail Corridor Study.

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To conclude, P3s do offer possibilities to expand investment options available to NYSDOT as it balances the many needs of its vast transportation system with limited resources. All options to maximize and leverage resources should be available. This is particularly true as Congress, in reauthorizing federal transportation legislation is considering expanding opportunities to use P3s. New York State should be in position to take advantage of all funding opportunities. However, P3s can not substitute for the need for ongoing, stable, predictable funding needed to maintain the core transportation infrastructure. P3s are financing tools, and can be valuable options to leverage resources for certain types of projects, but these tools will not be appropriate for the vast majority of NYSDOT's projects. Most needs will continue to be core infrastructure rehabilitation projects that require ongoing funding streams and a stable Dedicated Highway and Bridge Trust Fund. NYSDOT would welcome the expansion of its ability to use P3s and design-build, but regardless of the tools available, NYSDOT will continue to deliver the vast majority of its projects using the traditional design-bid-build approach.

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

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Testimony

New York State Senate
Standing Committee on Transportation

Utilizing Public-Private Partnerships to Fund Transportation Infrastructure Projects in New York State

May 16, 2011

Thank you Senator Fuschillo and members of the Senate Transportation Committee for hosting today's hearing on Public-Private Partnerships and for providing me the opportunity to testify before you today.

My name is Pete Grannis. I am First Deputy Comptroller in the Office of the New York State Comptroller. I am testifying today on behalf of State Comptroller Tom DiNapoli.

I'll begin with the obvious: The state has a massive backlog of unmet infrastructure and capital needs, and limited funds to pay for them.

In large measure, New York's growing gulf between available funding and infrastructure and capital needs is the result of our state's heavy use of debt for non-capital purposes as well as to finance its capital program.

As of March 31, 2011, New York is projected to have more than $9 billion in outstanding state-funded debt that was issued for non-capital purposes, accounting for approximately 14.5 percent of total debt.

The State's annual debt service cost for these obligations is projected to exceed $1 billion in SFY 2011-12.

Even though the Debt Reform Act of 2000 restricted the use of State-supported debt for capital purposes, over $7.6 billion has been issued for non-capital needs since the law's enactment.

As state debt has grown, so too have New York's capital needs. A 2009 report by the Office of the State Comptroller estimated a staggering $250 billion price tag for just a portion of the infrastructure across the state over the next 20 years for transportation ($175 billion), municipal wastewater ($36 billion) and clean water ($39 billion).

Given the State's limited capacity for meeting its capital need, it is not surprise that the Governor and the Legislature are considering Public Private Partnerships (P3s), where government allows the private sector to control one or more of the activities traditionally managed by the state in order to reduce construction or service costs and/or control capital expenditures.

The concern is, in the haste to move forward, there may be a tendency for government decision-makers to view P3s as a "magic bullet" solution and solely focus on the potential financial benefits without fully considering the potential risks.

While P3 agreements have the potential to be attractive alternative means of constructing and maintaining facilities and providing services, there are many important questions that need to be answered and risks associated with public-private financing structures that must be taken into consideration before New York turns to P3 arrangements to fill the gap in its infrastructure needs.

While the private sector entities may shoulder a share of the cost and risk associated with a project or service, the introduction of a private profit motive into the public's cost equation requires the State to proceed with caution and foresight when considering P3s.

In January of this year, Comptroller DiNapoli released a report on this issue, *Controlling Risk Without Gimmicks: New York's Infrastructure Crisis and Public-Private Partnerships,* which examined both the opportunities presented by public-private partnerships offer and the underlying financial risks

associated with forming those partnerships. The report focused on the importance of creating an effective framework and structure to review potential P3 projects to help policymakers avoid some of the mistakes made with P3s elsewhere in this country and abroad.

The Comptroller's report outlined four primary financial risks associated with the P3 model:

Failure to Identify the Full Value of Public Property. P3 agreements may underestimate the value of public assets. This may occur because the private sector entity's market-based definition of fair value is different from that of the public, which is concerned with the long term worth of the asset, or simply because public assets are difficult to price fairly, since they have historically been operated on a nonprofit basis.

Unfavorable Pricing Mechanisms. P3 agreements may include contractually guaranteed increases in user fees or other financial contingencies that cannot be blocked and may burden the public with unwarranted expenses such as excessive fee and toll increases.

Unrealistic Expectations and Poorly Drafted Agreements. P3 agreements may create expectations that go unmet, either when a private entity promises more than it can deliver or when the contracts fail to lay out the private partner's obligations adequately. The most common problem is confusion about which partner is financially responsible for such activities as snow and ice removal, police protection, accident repair, employee benefits, and similar normal operating expenses. The result may be that the public fails to receive the anticipated benefit.

Budget Gimmickry. P3 agreements are sometimes used to provide a short-term cash benefit while pushing costs to the future and potentially increasing public debt. It is important to remember that one of the main reasons that P3 agreements are being considered is because of New York's past financial practices—pushing current expenses into the future, using dedicated capital project resources for current operating expenses, and borrowing far more than the State can reasonably afford. A risk to be considered is that the State will simply use any lump sum payments or revenue streams it is offered by the private sector as 'one-shot' revenues.

The Comptroller's report recommended four essential principles that New York must adopt before entering into in public-private partnerships to mitigate the inherent financial risks:

Full and Fair Value: We need to identify and use the best practices for the valuation of public assets to ensure that the public receives the full, fair value for the use of its property.

Reasonable Pricing: We must keep private sector profits within reason to ensure that P3 agreements do not burden the public with unwarranted expenses, excessive fees, or large toll increases.

Realistic Agreements: P3 agreements must be carefully drafted and publically vetted to ensure that they do not include unrealistic expectations or inaccurate financial calculations.

Responsible Budgeting: We need to avoid budget gimmickry by adopting financing rules that prevent a disproportionate shift of current capital costs onto future taxpayers. This must be based on a comprehensive reform of the State's debt and capital financing practices. To the extent that this year's budget is much less reliant on temporary and non-recurring revenue than in recent years, it would be a shame if the repeated mistakes of past budgets were to reappear in P3 agreements.

Before authorizing P3's, the Governor and the Legislature must adopt policies that identify the types of projects that will be eligible for development and operation as P3s, adopt a methodology for determining the value of public assets that are involved, enact statutory changes to existing procurement law, and determine how to prevent potential negative impacts on users, employees, and taxpayers.

Finally, state policy makers must adopt a comprehensive plan for the integration of public-private partnerships into New York's budget, capital financing, and infrastructure planning procedures. That will go a long way toward protecting the public interest and ensuring that P3 agreements achieve the correct balance between public and private interests.

P3s are not magic. They are complicated financial transactions. In order to adequately protect public assets and dollars, they must be done correctly and thoughtfully.

Thank you.

Testimony of the Metropolitan Transportation Authority
New York State Senate Transportation Committee
Senator Charles Fuschillo, Chairman
Hearing on Public Private Partnerships
May 16, 2011

Good morning, Senators. My name is Hilary Ring and I am the Director of Government Affairs for the MTA. I am joined by Jeff Rosen, the MTA's Director of Real Estate.

First, I would like to thank you for holding this hearing on Public Private Partnerships or "PPP". As you know, the last three years of the MTA"s 2010-14 Capital Program remains unfunded, and I appreciate this opportunity to explore the role PPP can play in meeting our infrastructure needs.

Innovative financing and working with the private sector has been a hallmark of the MTA's capital financing plans for the past 30 years, and we have found many ways to creatively harness the expertise and resources of profit-making firms to lower our costs, facilitate financing and improve our infrastructure. To cite some important examples:

- Redevelopment of Grand Central: We enlisted private firms to help us create a world-class retail center at Grand Central Terminal, which enabled us to generate significant new revenues (now in excess of $25 million per year). Without these revenues we would not have been able to afford to redevelop the Terminal as the great public space it is today

- New developments: As we speak, a private developer is building a new rail yard for the Long Island Rail Road and improving a subway station for NYC Transit, in partial payment for development rights associated with our Atlantic Yards property. And the #7 Line is being extended with financing made possible by the creation and marketing of development rights associated with our West Side Yards property.

- Advertising: We generate some $120 million of advertising revenue per year through PPPs with advertising companies. Building on this base, we are incentivizing these partners to introduce a variety of digital advertising platforms that will allow us both to increase that revenue and to better communicate with our customers.

- Telecomms: PPP is our method of choice for enhancing telecomm service for our passengers. We have already contracted with telecomm companies that are investing their own capital to bring WiFi and improved cellular service to underground subway stations and the Grand Central Terminal train shed. And we are currently negotiating with others to install and provide WiFi service on our commuter trains.

- Design/Build: While not precisely a PPP, MTA has also partnered with the private sector to more efficiently deliver capital projects. We employ design-build contracts in appropriate cases, harnessing the collaborative benefits of the contractor's designer/builder team to get projects finished faster and on budget.

These sorts of PPPs are successful because they present relatively stand alone commercially viable profit-making opportunities, while also providing a benefit to the MTA and its customers. These partnerships present clearly-defined obligations for the private sector and require private investors to absorb risks they can control (or insure against) and are well understood by them because they are part of their core business. These projects traditionally generate their own dedicated revenue streams and can and will be operated independently, rather than as integral parts of a larger transit system.

However, the typical work of our capital program is part and parcel of the existing system, not the type of standalone projects amenable to such Public Private Partnership models. We are repairing old equipment; fixing up hundred-year-old stations, or extending existing subway or rail lines to add new capacity to very crowded system, all of which present untold unknown risks. And the risk inherent in such work is magnified when one overlays the challenges of operating in the year round, 24-7 New York environment. In these situations the risk is high for the private sector, increasing the rate of return they want on their invested capital and therefore the overall cost.

Moving forward, we have identified those elements of our capital program that fit the PPP model. We envision employing Public Private Partnerships to provide for the fitting out, maintenance and operation of the Fulton Street Transit Center we are building in lower Manhattan and the new East Side Access concourse we are building near Grand Central, as those facilities *will* lend themselves to stand-alone operations. And we will continue to pursue opportunities to generate money for our capital plan through the development of our real estate, as by enabling a private developer to erect a new tower on land we intend to make available by vacating our office buildings at 341-347 Madison.

In sum, innovation clearly has its place in the MTA Capital Program, and we look forward to more discussion of PPPs and other innovative partnership techniques. But we must recognize that, while we intend to include such arrows in our quiver as we seek to fund the out years of our approved capital program, they will not present the full solution. Public Private Partnerships should be viewed as measures to supplement – not substitute - the funding of our capital program.

Thank you again for the opportunity to testify, and we are happy to answer any questions that you may have.

Transports Québec

Draft
May 15, 2011 – 5p.m

NOTES FOR AN ADDRESS BY NORMAN MACMILLAN, MINISTER FOR TRANSPORT AND MINISTER RESPONSIBLE FOR THE OUTAOUAIS REGION

On the occasion of the mission to Albany

Presentation of the Québec experience with public-private partnerships in transportation infrastructure projects

Albany, May 16, 2011

(The version delivered orally will prevail)

Mr. Chairman,

Members of the Senate Transportation Committee,

It is my pleasure to represent the Québec government before this Committee, and I thank the Chairman, Charles J. Fuschillo Jr., for his invitation.

My presence is in continuity with the mission carried out here in Albany on March 15 by my colleague, the Minister of Transport, Sam Hamad, to discuss issues of common interest in transportation.

Accompanying me today are Dany Hubert, my Chief of Staff, Sandra Sultana, Director of the Public-Private Partnerships Office, Martin Breault, Head of the Rail Transportation Division, both representatives of my department, and Jean-Philippe Arseneau, a

representative of Québec's General Delegation in New York, present in your State since 1940.

It is thus as a longstanding partner, neighbour and friend that I have come here, on behalf of the Québec government, to present the experience of the Ministère des Transports du Québec (the MTQ) with public-private partnerships, known as "PPP".

The MTQ has been involved in PPP for a little over ten years now. We adopted the *Act respecting transport infrastructure partnerships* in December 2000, which gave us the legal power to resort to this project performance mode.

The interest in PPP

Why this interest in PPP?

In the conventional build mode, the Minister awards and manages many contracts to carry out a project: contracts

for design, construction and maintenance (winter maintenance, drainage maintenance, lighting, etc.), as well as operating and rehabilitation contracts over a project's entire life cycle. The Minister defines the precise means he wants to be implemented (plans and specifications) to carry out the projects and specifies these means for each stage.

In a PPP, all these activities – design, construction, operation, maintenance, rehabilitation and even financing – are combined in the same contract, which is awarded to just ONE supplier, the private partner, for a longer term than conventional contracts - 20, 30 or 40 years, or more.

The partnership agreement specifies the results the government wants to achieve. The means for achieving these results are the private partner's responsibility.

The objective of building a project in PPP is to obtain the best social and economic benefits in exchange for the costs incurred by the project, particularly thanks to vigorous competition among combinations of companies made up of builders, operators, financiers, engineers and various national and international suppliers.

The opportunity to proceed as a PPP or in the conventional mode to build major projects is determined by means of a business case, which compares the cost between building in PPP and the conventional mode.

The PPP approach is not an absolute. It is not our government's intent to apply it systematically, wall to wall. It is only applied when there are benefits for the taxpayers. Otherwise, another build mode is used.

Performance of projects in PPP remains an interesting approach, particularly in relation with the advantages that can be derived from it. One of the most important

advantages is that this mode allows transfer of a considerable portion of the risks to the private partner. The risks it is most able to manage efficiently, such as those related to design, construction, maintenance and operation of a road infrastructure, are assigned to the private partner. The MTQ can thus focus on its essential mission, namely to ensure transportation safety, mobility of passengers and freight, and the development and update of design, construction and maintenance standards.

The MTQ thus seeks to obtain the best value-for-money for the project and reduce the government's financial contribution. The other advantages of PPPs are acceleration or expediting project construction, introduction of the life cycle concept, and promotion of innovation.

Process

I was telling you that MTQ committed to PPP about ten years ago. Based on prefeasibility studies, the MTQ identified three projects that seemed to be suitable to carry out as PPPs: two new infrastructures, Autoroutes 25 and 30 in the Montréal metropolitan region, and the construction of new modern service areas. The MTQ produced the business cases for these projects to evaluate the expediency of building them as PPPs.

The objective of business cases is to perform a detailed financial analysis of the projects, by comparing the costs according to performance in traditional mode and performance in PPP mode. The financial analysis takes into account all costs, including the risk analysis and the maintenance and operating costs. Based on this analysis, the most appropriate mode is chosen.

Some transportation projects currently being carried out as PPPs

Based on the business cases, Autoroutes 25 and 30 and the service areas project were selected to be built as PPPs.

The projects were defined and the procurement process was implemented. A three-stage process, request for expression of interest, request for qualifications and request for proposals, was adopted for these projects.

Thirty-five-year partnership agreements were signed: in September 2007 for Autoroute 25 and in September 2008 for Autoroute 30. A 30-year agreement was signed in September 2008 for the service areas.

Autoroute 25 is the first project implemented as a PPP. This is an electronic toll autoroute 7.2 km long, including a 1.2 km bridge. The cost of the project is $220 million at 2007 net present value. The infrastructure will be opened

to traffic at the end of this week, on May 20th. The autoroute is being delivered 4 months in advance in relation to the initial schedule, and within budget.

Autoroute 30 is also a toll autoroute project: 42 km of new autoroute lanes are being built and maintained by the private partner, and an additional 35 km, built in traditional mode, will also be maintained by the private partner. The cost of the project is $1.5 billion at 2008 net present value. It is projected that the autoroute will be commissioned in December 2012. In this case as well, the project conforms to the initial schedule and budgets.

For the service areas, the cost of the project is $44.5 million at 2008 net present value, for the 7 sites stipulated in the agreement. Five sites are currently in service and 2 will be in service this fall. The private partner complied with its deadlines for this project as well. The MTQ is currently analyzing the feasibility of

Phase 2 of the service areas project, with 11 new sites under consideration.

Other projects in PPP in Québec

Apart from the projects in the transportation field, the Québec government also implemented projects performed in PPP in the hospital, cultural (museum, concert hall), justice (detention centres) and education fields.

Lessons learned

We learned some lessons from the PPP projects.

Each project must be analyzed on its own, on a case by case basis. It is not possible to generalize about the build mode to be implemented. It is appropriate to produce business cases that consider all the factors that must be analyzed.

It is also important to apply a rigorous approach regarding the procurement process. This ensures fairness, transparency and integrity in the process. A process auditor, hired by the government, assured the government authorities and the invited candidates that the selection process was rigorous.

State support is extremely important, and so is management leadership in the organizations, both in the public partner and in the private partner's team.

Optimizing risk allocation makes it possible to maximize efficiency.

Finally, PPPs propose a new business relationship that involves two partners, a public partner and a private partner. This business model is very different from traditional projects, in which the MTQ manages the project and its construction and maintenance. In PPPs,

the private partner manages the project; the public partner manages the partnership agreement and ensures that the requirements of the agreement are met. An independent engineer is also hired to ensure compliance of design and construction with the partnership agreement's requirements.

In conclusion, we are very satisfied with the results of our first experiments with PPPs.

I would like to conclude by wishing you productive discussions on this subject. We are, of course, available to answer your questions and provide you with additional information, if you consider it necessary.

Thank you for your attention.

Testimony of the

Public Employees Federation

PEF Executive Board Member

Edward Lucas

to the

New York State Senate Transportation Committee

Why Public Private Partnerships Are

A Bad Deal for New Yorkers

May 16, 2011

Mr. Chairman, my name is Edward Lucas, DOT Statewide Labor/Management Representative of the New York State Public Employees Federation.

We represent more than 56 thousand workers including 4,500 in the State Department of Transportation.

First, I want to thank you for the opportunity to address the important issue of Public Private Partnerships.

It is tempting to believe that a public private partnership would produce massive new funds for infrastructure construction. But that is a false promise.

There is no such thing as free money. In the end someone has to pay. And, when there are private investors or corporations this also means there is also the need for a monetary return on their investment. You can use nice words to describe it, but the fact remains, the source of revenue for transportation projects will always be the same- either taxes or tolls.

Today's buzzword is partnership. The term evokes warm and fuzzy feelings about cooperation and a sense that it is a smart way to save tax dollars while providing a profit for the private sector. A win-win situation.

But the reality is very different. History shows us that time after time, public-private toll road projects mean higher cost to all of the taxpaying public, but especially to those who rely on the roads for their livelihoods.

I would like to address today three dangers of PPPs. The potential to default, non-compete clauses and, finally, high costs.

Although not all of these were transportation projects, a global study of PPPs done by the analyst Dexter Whitfield showed that some 1,000 PPPs, valued at a half a trillion (with a "T") dollars, failed or were radically reduced in the decades since PPPs first became popular in the 1970s and 1980s.

Whitfield writes – and I quote – "there is now a significant evidence base to show that most PPP projects have little or no democratic control or transparency, are costly, (provide) poor value, lack innovation and flexibility, reduce employment and erode public service values. "

http://www.guardianpublic.co.uk/ppp-projects-investment-funds

Whitfield reports that there were 58 PPP failures in Europe, North America and Australia in recent years, the majority occurring between 2000 and 2008 with more than a third of which were transportation projects, according to his book, the "The Global Auction of Public Assets."

"There have been further PPP failures since I completed the book in late 2009," Whitfield told our researchers at PEF.

Nearly 10 years ago, in 2002, Business Week magazine quoted a municipal bond analyst who said that some $4 billion in U.S. toll-road bonds risked default within five years if they weren't refinanced.

One of the problem roads that Business Week pointed to was the $200 million, 16-mile Southern Connector in Greenville, S.C. A road designed to steer traffic toward some private developers' planned projects, the Southern Connector opened just as a recession hit in February 2001, Business Week reported.

Eight years after it opened, the traffic on the Southern Connector was at 16,000 vehicles a day – or less than half of the 33,000 forecast in 1998 when the original forecasting was done.

When it filed for bankruptcy in 2010, the Southern Connector lacked sufficient revenue to reimburse the South Carolina DOT for anticipated maintenance and repairs

Accumulated deficits on the connector are $163 million, and they are being added to at about 14 percent a year, according to Peter Samuel of TollRoadNews.

But the Southern Connector wasn't the only toll road that went bankrupt last year, according to Samuel, who is a policy fellow at the Reason Foundation and a strong supporter of toll roads.

The South Bay Expressway in San Diego went bankrupt March 22, 2010, after it became clear traffic and revenue would not support the debt incurred building the $635 million, 9 mile expressway.

On May 6, just 10 days ago, the newspaper *The Bond Buyer* reported that the Expressway has emerged from Chapter 11 with the taxpayers effectively taking a $73 million loss on the restructuring of the loans for this highway.

In both of these cases, it appears that the only parties that benefited were the financial advisors and investment firms that were paid at the front end of the deal.

In most of these cases, the failure was due to wildly optimistic predictions on the use of the toll roads.

But, as far as the taxpayer is concerned, a debt restructuring isn't the answer to the pain of a toll road. The Dulles Greenway in Virginia, a 14-mile $340 million, defaulted on its loans in 1996. In 2005, an Australian firm bought the Greenway and raised the average toll from about $2 dollars to roughly $3.50, or a 75 percent hike, in its first five years of ownership.

I would like to point to one PPPs that is especially horrific: The 2008 lease of Chicago parking meters.

In August of last year, Bloomberg Businessweek reported that Chicago drivers will pay the private parking meter contractor more than $11.6 billion in parking fees over the 75-year contract of the franchise. That is more than 10 times the $1.15 billion the City of Chicago received for the parking franchise in 2008.

Who bought the parking franchise? Why a partnership made up of the investment bank Morgan Stanley.

Businessweek called it "A Windfall for Investors, A Loss for Chicago."

http://www.bloomberg.com/news/2010-08-09/morgan-stanley-group-s-11-billion-from-chicago-meters-makes-taxpayers-cry.html

The deal illustrates how Wall Street banks, recipients of more than $300 billion in bailouts in the worst financial meltdown since the Great Depression, are profiting by selling bonds and leasing public properties, according to Businessweek.

But there are many other problems with this so-called "free market" solution to our infrastructure problems.

In July 2008, the Denver Post reported that Coloradans were shocked to learn that the private contractors who leased the 8-mile Northwest Parkway for 99 years could put a halt to improvements on public roads that the private businessmen thought might hurt the toll receipts on the Parkway.

This is done through "non-compete clauses," typical aspects of PPPs

Gregory Cohen of the American Highway Users Alliance warns that – and I quote – "Non-compete clauses are designed to prevent market competition from new roads and capacity improvements to nearby roads. The use of "non-compete clauses" brings into doubt the claim that privately-operated roads are "free market" innovations. Non-compete clauses effectively create monopoly-like restrictions to prevent competition."

In the case of Colorado's Northwest Parkway, contractors have the right to receive compensation for lost anticipated revenues if new roads or transit systems are built during the term of the 99-year contract.

This caused a Colorado state legislator to tell the Denver Post that "The purpose of toll roads is to augment state transportation infrastructure, not act as a roadblock to the construction of new transportation infrastructure in the northwest metro area."

In many cases throughout the nation, PPPs have been exactly that: a roadblock to the future.

There have been lease agreements in Chicago, Virginia and Indiana that range from 75 to 99 years. These are essentially leases that can't be changed in several generations.

That means no competition for up to a century.

For others where the PPP is considered the asset being sold or leased is the only viable transportation corridor in the area, one of the projects frequently mentioned is the Tappan Zee Bridge, which due to the limited number of points across the Hudson is already virtual monopoly.

Finally, I want to address the cost of PPPs.

Many experts we talked to on the issue of PPPs, the American Trucking Associations, the American Highway Users Alliance and others, have pointed to the high cost of financing PPPs.

Privately financed road projects cost more to finance than publicly financed projects. This is because the cost of private bonds are higher than government, tax-exempt bonds.

Also, the private operator must make a profit, usually by charging higher tolls. The SOLE goal of a PPP is profit, not public service.

Finally, it is clear that PPPs will result in the greater use of private engineering consultants on State road and bridge projects for both design and construction inspection. This is exactly the opposite of what is needed to make our bridge and road construction dollars go further.

Numerous studies by the Office of State Comptroller and several independent groups that find DOT engineering consultants cost between 50 percent and 75 percent more than DOT engineers to do the same work. The best example of state wasteful spending on engineering consultants is the bridge inspection program. Consultants hired by DOT for bridge inspection cost on average 94% more than state employed engineers to do the same work.

One of the main reasons why PEF opposes a public private partnership program is that it would only increase our reliance on more expensive consultant engineers. We calculate that DOT could save between $55 million and $83 million per year by reducing its use of consultants for engineering

As I said before, it is tempting to believe that a public private partnership would produce massive new funds for infrastructure construction. But that is a false promise. There is no such thing as free money. The underlying source of revenue is the same- either tolls or taxes. Public financing and public design will produce better results at lower cost.

Thank you for the opportunity to present our point of view.

Testimony of Samara Barend,
AECOM Vice President & Director of Public-Private Partnerships,
at a Public Hearing on Public Private Partnerships

May 16, 2011

It's a real pleasure to be here with all of you today. I want to thank Chairman Fuschillo and members of the Senate Committee on Transportation for recognizing the importance of generating a dialogue about how PPPs can finally become a reality in NYS.

My name is Sam Barend and I am Director of Public-Private Partnerships for AECOM, a global provider of construction, architectural and engineering services and a leading player in the alternative delivery market. AECOM has participated in at least 19 of the top 25 transportation PPP projects delivered in North America.

Today I come before you with a dual PPP perspective, representing my experience from the public and private sector. From 2008-2010, I served as Executive Director of the State Asset Maximization Commission, which was charged with developing a unique approach for how NYS can deliver public-private partnerships, taking into mind diverse stakeholder concerns.

At least 30 U.S. States, along with numerous nations, are not only saving billions of dollars for taxpayers but have undertaken more projects, in less time, and with greater accountability, by utilizing PPPs to deliver critical infrastructure. Unfortunately, despite our best efforts, New York State isn't one of them yet.

As many of you here know – and you likely have the battle wounds to prove it - for nearly two decades NYS has tried to pass legislation enabling public-private partnerships and it has consistently failed. In each instance, broad legislation was introduced that was criticized for overlooking labor concerns, offering an unclear process for project oversight, and providing little rationale for when and why such projects should or should not be advanced. Labor unions generally viewed these projects as a means to bring the state cost savings at their expense, to reduce the use of in-house engineers, and to scale back their hard fought wage protections. Worse, legislators have often viewed PPP legislation as giving blanket authority to the DOT to create windfalls for the private sector on the backs of taxpayers.

In 2008, when it was becoming clear that the State must become more creative and do more with less, the State Asset Maximization Commission was created to curtail these widespread misperceptions and figure out a path forward on PPPs by bringing everyone to the table on both sides of the issue. By approaching PPPs in a collaborative nature, we found remarkable support from 20 organizations and little opposition due to the Commission's emphasis on using PPPs to generate real cost savings through innovation and efficient infrastructure delivery rather than to extract money from an asset to close a budget gap. The Commission consistently stressed that performance based infrastructure, not privatization, was the answer.

Labor's willingness to participate stemmed from the tremendous effort we made to gather their input, through private meetings and public hearings, and to specifically listen to and understand the root of their concerns. Providing the first comprehensive compilation of labor considerations for PPPs, the SAM Commission's Final Report is being utilized by other states to ensure that such concerns are addressed so that the benefits of PPPs can be realized.

The Commission's Final Report proposed 27 specific public-private partnership projects across multiple asset classes, representing over $30 billion in needed infrastructure investment. In addition, the Commission recommended the creation of a new PPP entity, a State Asset Maximization Board, to serve as a transparent oversight and implementation vehicle, enabling a consistent framework through which to assess the merits of proposed projects and execute a successful procurement process that reaches financial close.

The creation of such an entity, through which all PPP projects are identified, screened, prioritized, assessed for value for money, and procured is essential to the success of New York's PPP effort. Globally the governments that have proven the most successful at implementing these projects on an ongoing basis have done so by creating a governing entity with oversight for PPP efforts. As these entities mature they are able to become better counterparties to the private sector with an understanding of what works and what does not as their expertise grows with each project. In addition, given the long-term view of these entities, they are better able to advance a pipeline of PPP projects instead of a few one-off projects.

Another key reason for a state entity wholly focused on PPP is that these projects are highly complex and the delivery and procurement approach is new to the public sector. PPP contracts, for instance, must include lengthy performance specifications that provide great detail around the exact risks that will be transferred to the private sector. Therefore, it is imperative that whatever authority is created to oversee and advance these projects it must have adequate resources to retain financial, legal, and technical advisers, while establishing a core of full time staff developing the necessary experience in this market.

While PPPs can be a powerful tool in the State's toolbox, it is not a delivery approach that is suitable for many infrastructure projects. But, for major technically-complex projects, that are part of a capital plan, that need to be delivered faster, that could realize a cost savings through alternative delivery, that lack financing, and that are greater than $200 million (as a general rule of thumb), then a PPP approach should be explored. For instance, the Tappan Zee Bridge will, at some point, be an ideal candidate for a PPP given its cost and technical complexity. However, since the Tappan Zee will likely be the most expensive bridge ever undertaken in the world as a PPP, it would be highly advisable for the State to undertake a few smaller PPPs first, such as the replacement of the Kosciuszko Bridge, or undertake a bridge bundling program given the State's dire replacement needs of short and long span bridges. 500 state and local short span bridges could be bundled together in a few regions, or alternatively 4-5 long span bridges, such as the Robert Moses Causeway, could be grouped together – to reap the potentially significant cost and time savings as well as a lifecycle focused maintenance regime of a bundled procurement.

Throughout the course of this day and in the future you will likely hear from people who are not particularly supportive of PPPs and alternative delivery. They will perpetuate a common myth that has inhibited NYS from passing PPP legislation and realizing significant economic and quality of life benefits. So, beware if you hear that the cost of private capital does not justify the use of a PPP. That notion is simply untrue.

To start, there are federal financing programs to support PPP's such as TIFIA and Private Activity Bonds which has resulted in very comparable costs of debt with typical tax exempt financing. In addition, experience has proven that the benefits of transferring project delivery and long-term maintenance risks to the private sector can result in significant cost savings. In a traditional design-bid-build approach, the public sector assumes all major risks, leaving the private sector with little incentive to deliver a project on time and on budget, let alone consider the long-term performance of the asset. For instance, had the State

employed a PPP on the I-287 project it would have saved at least $67 million in cost overruns and the project would have been delivered much sooner.

Further, a PPP allows the private sector to harness design innovations to drive down costs. A recent example of such value for money through the PPP approach is the Port of Miami Tunnel project which entailed a 35-year contract with a private consortium to design, build, finance, maintain and operate three miles of tunnel. The final bid of the winning private consortium proved to be $500 million less than the preliminary cost estimate prepared by the State's technical advisor of undertaking the project through traditional means.

In closing, I have confidence the Senate Transportation Committee and the Governor will not allow history to repeat itself and will learn from the mistakes of the past, utilizing the roadmap laid forth by the SAM Commission to pass comprehensive PPP legislation. I have high hopes that PPP legislation will serve as NYS's own economic stimulus plan – one that doesn't rely on tax increases or more spending, but uses an efficient allocation of risk to stretch our tax dollars, create jobs, and do more with less.

Thank you very much for this opportunity to testify.

UBS

New York State Senate Testimony on Public-Private Partnerships

Tom Osborne
Head of Americas Infrastructure Group

May 16, 2011

Tom Osborne Testimony

May 16, 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 Public-Private Partnerships ("P3"s) for New York State.

By way of background, I have over 23 years of experience as an infrastructure investment banker. Having closed transactions with a total value exceeding $50 billion, I have extensive experience in the U.S. equity and fixed income capital markets and in structuring and advising on major 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.

There are two important messages I'd like to convey today.

The first is that there is substantial private sector capital that is targeted for deployment in public infrastructure but a dearth of P3 opportunities to use it. The same can be said of private sector development, construction and operating expertise. Given the current fiscal strain at every level of government in New York, and the need for greater and more efficient infrastructure investment in the future, it is vital that the legislature pass, and the

Governor sign, legislation enabling true public-private partnerships as an alternative to traditional public procurement.

The second message is that, in order to craft effective legislation that will properly balance the interests of the State and the private sector, the legislature must give thoughtful consideration to the following important issues: (1) cost-benefit analyses, (2) a straightforward and transparent approval processes, (3) the need for flexibility in setting public policy goals across varying asset classes, and (4) using any P3 proceeds carefully.

P3s are an increasingly attractive funding alternative for addressing the infrastructure problem in New York. The State's infrastructure is generally in poor condition, the result of a long legacy of underinvestment and persistent undercharging relative to the true cost of service. At the same time, capital budgets at both the State and municipal levels are increasingly strained. Federal aid has historically provided significant relief, but as capital investment requirements increase and the available Federal dollars shrink, Federal support can no longer be relied upon to bridge the growing gap. In many cases, P3s can provide necessary infrastructure funding by recruiting private sector equity and debt capital as complements to traditional municipal bonds and government aid.

Stimulating investment in infrastructure not only funds badly needed asset improvements critical to the State's competitiveness and economic growth, but also creates much needed jobs to support the economic recovery. The US Department of Transportation and the Milken Institute both estimate that every $1 billion spent on transportation infrastructure

creates 25,000 jobs[1]. Macroeconomic models indicate that $1 of infrastructure spending boosts GDP by $1.59 which is a larger effect on GDP and employment than most other kinds of government spending[2]. Many of the jobs created through infrastructure spending are in the construction industry and related sectors that have sustained the largest job losses during the current economic turmoil. Infrastructure projects often take well over two years to complete, so P3s initiated this year will provide ongoing support for a long-term economic recovery.

Traditional funding of infrastructure projects through the municipal debt market is no longer the only investor-funded financing tool available to governments. The recent volatility in the municipal market has underscored the risks in relying too heavily on that market and the potential to lose access to capital when it is needed most. There have been net outflows of investor capital from the municipal bond market for the last 26 weeks in a row, the longest weekly string of such outflows ever. More than $40 billion of capital has fled the municipal bond market since November 2010.

Private sector capital is both substantial and often willing to fill the infrastructure investment gap where other funding sources might not be adequate. In fact, according to Preqin, a private equity industry consultant, over $120 billion of equity capital targeting infrastructure has been raised to date. Preqin also indicates that nearly two-thirds of that money, or approximately $75 billion, remains uninvested[3]. However, investors are increasingly turning to opportunities abroad given the dearth of viable infrastructure

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[1] Based on a basket of projects over a three-year period (DeVol, Ross, and Perry Wong. *Jobs for America: Investment and Policies for Economic Growth and Competitiveness.* Rep. Milken Institute).
[2] Zandi, Mark. "The Economic Impact of a $750 Billion Fiscal Stimulus Package." Moody's Economy.com (6 Jan. 2009).
[3] Preqin. Database of Infrastructure Funds (All vintages and locations as of April 28, 2011).

investment opportunities in the US. Without strong political support, including a proper legal framework for P3s at the State and local level, that money will continue to flow out of the country. By passing the appropriate legislation and creating workable regulatory structures, the State will take critical first steps toward attracting additional capital needed to help rebuild the its infrastructure.

Furthermore, introducing private sector capital does more than alleviate fiscal burdens on the State. It creates the opportunity for the State to shift risk to the private sector, enhance efficiencies, enforce operating standards and optimize whole-life project costs. A recent example that illustrates the value of shifting risks to the private sector is the South Bay Expressway in California. That P3 project was capitalized in 2003 with a combination of senior debt in the form of project loans from eleven banks, subordinated debt provided through the Federal government's TIFIA program, and private sector equity. In March 2010, due in large part to the economic crisis that resulted in lower-than-expected traffic and revenues, the road was forced to file for bankruptcy. The private sector equity was wiped out entirely, thus taking the first loss in the project. But the taxpayer-funded TIFIA debt was elevated to the same priority as the senior debt due to a built-in "springing lien" feature. As part of the restructuring, the overall quantum of debt was reduced, and the TIFIA creditors were given a pro rata equity stake and a vote on the board of directors. Had this project been funded through traditional Federal and state grants and municipal debt, taxpayers and municipal bond holders would not have been cushioned from any of the losses in this bankruptcy.

My second key message is that, in order to create New York P3 legislation that properly balances control, risk and value to the State, the Legislature needs to consider four important issues.

First, P3s should only be undertaken where benefits outweigh costs, including by comparison to traditional procurement methods. Under numerous proven P3 models around the world, including in the UK, Canada and Australia, extensive value-for-money analyses are conducted before determining the procurement method for any given project. When properly conducted, this type of analysis takes into consideration a number of critical project elements, including risk transfer as it pertains to cost overruns and delays, private sector efficiencies and whole-life project costs. Projects should be further considered as P3s only when, in the aggregate, these factors generate benefits that exceed the costs of procuring the project through traditional funding sources.

Another important consideration for any state's P3 legislation is providing for straightforward and transparent project approval processes. A number of P3s have failed to reach final close due to ex-post facto legislative reviews. Given the considerable human and financial capital that any serious investor is required to invest in a P3 process, experience has shown that a lack of clarity around the approvals process will seriously dampen investor interest in a project. The State should establish a process for approving P3 transactions that is readily understandable and based as much as possible on economics and project merit alone.

Further, transparency around the public policy objectives for any potential P3 transactions will allow private sector participants to better formulate their approaches to any

transaction. It is important, however, that the State not be overly prescriptive as to legislating required standards. Every project will present unique circumstances that will shape the eventual transaction structure. Thus, the State's flexibility in adjusting the level of public sector control across a variety of project circumstances will prove to be critical for structuring financeable deals that attract sufficient private sector interest.

Lastly, a successful P3 program is one that responsibly allocates any proceeds from transactions. If a transaction results in payments from investors, these payments should not be viewed as a way to fill one-time budget gaps or to plug operating deficits. Proceeds from capital projects should be reinvested in the State's capital budget to avoid the legacy of underfunding we face today.

In closing, P3s have a proven track record across the world and it is time for the State to consider legislation that will make P3s an option for New York. Properly structured legislation will help mobilize private capital to address the State's extraordinary infrastructure needs and to create long-term employment for its citizens. Again, I thank you for providing the opportunity to appear before the committee today to discuss my views, and I am happy to answer any questions you may have.

TESTIMONY OF

D.J. GRIBBIN
MANAGING DIRECTOR
MACQUARIE CAPITAL (USA), INC.

BEFORE THE

NEW YORK STATE SENATE
STANDING COMMITTEEE ON TRANSPORTATION

MAY 16, 2011

Good morning, Mr. Chairman and Members of the Committee. My name is D.J. Gribbin, and I am a Managing Director for Macquarie Capital (USA), Inc. Thank you for inviting me to join you at this hearing to discuss the opportunities to use Public-Private Partnerships (PPPs) for transportation projects. I have spent over a dozen years working on PPP transactions in both the private sector and the public sector, during my time as Chief Counsel for the Federal Highway Administration and General Counsel for the United States Department of Transportation.

Macquarie is a global provider of banking, financial advisory, investment and fund management services. Regionally headquartered in New York City, Macquarie has a well established presence in the U.S. with more than 1,400 employees across 19 offices. Macquarie's experience with infrastructure projects is unique and unparalleled in its scale and diversity. Macquarie has experience across multiple types of assets and serving in various roles as a bidder, as an advisor to other bidders, and as an advisor to governments interested in entering into public-private partnerships.

The Macquarie Infrastructure and Real Assets (MIRA) division of Macquarie Group Limited operates and manages infrastructure and infrastructure-like businesses across the world. MIRA and its managed funds have extensive existing infrastructure holdings including rail, buses, roads, airports, parking, marine terminals, utilities, and other essential infrastructure. MIRA manages over $94 billion of investments located in 25 countries around the globe. Of these investments, approximately $25 billion, or 27%, are located in North America. Those investments are managed by a global team of 400 asset professionals with deep expertise in managing infrastructure businesses.

Macquarie has an established global track record as a responsible manager of essential social infrastructure. Every day approximately 100 million people use essential services provided by Macquarie-managed businesses. In each year, Macquarie's business supports over 340 million bus passengers, 47 million rail passengers, and over 48 million airport passengers. In addition, Macquarie manages roads that are utilized by over 2 million vehicles per day.

PUBLIC-PRIVATE PARTNERSHIPS

Today, I would like to leave you with two over-arching points. First, public-private partnerships are a very effective way to deliver infrastructure, and second, legal authority to do P3s is not enough; governments must also structure themselves to execute P3 transactions.

What is a P3?

Let us start talking about why P3s are effective by clarifying what a P3 is. Public-private partnerships are long-term contracts which allow the public sector to access private capital and expertise to construct, operate, maintain and finance the operation of a governmental service or asset under a contractual arrangement or "concession" with the private sector. Public-private partnerships are inherently flexible and can be modeled to meet the specific needs and goals of government.

There are two basic types of public-private partnerships.

User Pays. In this approach, the government uses payments from those using the infrastructure to design, construct, finance, operate and maintain an asset such as a road or airport. The private investors finance the project and the return on their investment is the user fees paid during the term of the contract or concession. Legal ownership of the asset would remain at all times in government hands. And government sets the levels of fees that can be charged.

This model can be applied to existing infrastructure, where the private investor would typically provide an upfront payment, allowing the public sector to reinvest the capital liberated from the existing infrastructure in more productive areas or to new infrastructure – examples in the United States include the Chicago Skyway and Indiana Toll Road.

The model can also be applied to new infrastructure allowing the public sector to deliver new infrastructure perhaps decades earlier than under traditional funding sources –

examples in the United States include the Dulles Greenway in Virginia, a Macquarie-owned property that I use frequently.

Fixed Payment. Under this model the public sector provides an annual payment to fund the design, construction, financing, operation and maintenance of new infrastructure under a long term contract. The annual payments are sometimes referred to as "availability payments", because the payments are only made if the facility is open to use. Examples of this type of public-private partnership include the Port of Miami Tunnel Project and the I-595 Corridor Roadway Improvements Project (both in Florida), as well as the Sea-to-Sky Highway, Golden Ears Bridge and Edmonton Ring Road in Canada. This type of public-private partnership is suited to circumstances where the user fees are not sufficient to cover the cost of the project.

Of course there are an infinite number of variations on these models which combine user fees with governmental payments. I am currently working on a project in Virginia which has both user fees and an up-front payment by government to help reduce the user fees that will be charged.

P3s are not new in the U.S. The first major P3 in the U.S., the E-470 toll road east of Denver, Colorado started construction in July of 1989. Twenty-four states, DC and Puerto Rico have P3 laws that have produced 96 transportation projects worth over $54 billion. Of that value, almost 75% is accounted for by only eight states – Texas, California, Florida, Colorado, Indiana, Virginia, Utah, and New Jersey. In developing P3 legislation, I would encourage you to follow the lead of Virginia, Florida, and Texas. The P3 highway contracts signed since 2008 represent 11 percent of total national capital investment in new highway capacity.

Why does a P3 work?

P3s have historically provided governments an opportunity to develop infrastructure assets faster, at a lower cost, and with much less risk. P3s accomplish this by allowing

private developers greater flexibility in project delivery, while holding them accountable for the performance of the asset. The private sector's ability to innovate, incentivize, and streamline produces value throughout the life of the project; value that can be captured by the public sector and passed along to taxpayers. The key is that the public sector structures the P3 in a manner that provides appropriate incentives and disincentives.

One of the harder aspects to understand about P3s is how they can produce savings when private capital is involved, capital that is more expensive than the taxpayer financed, or tax-exempt capital available to the public sector.

P3s expose projects to the forces of competition and innovation, driving project costs down. The considerable efficiencies that can be realized under a P3 typically more than offset the additional cost of capital.

The real value of concession agreements however, comes from basic economics and market forces.

Benefits of Competition

In his book, *The Mystery of Capital*, Peruvian economist Hernando de Soto explained how so-called "dead" or "captive" capital has contributed significantly to the poverty in the developing world. Dead or captive capital is composed of investments made within a legal structure that prohibits those investments from being used as capital. For example, poor workers who build a home on land without clear title have created dead capital. This is because they cannot borrow against their investment and it is very difficult for them to sell it. While their newly constructed home has value, that value is now captive.

Inadequate legal structures in developing countries have locked up $9.3 trillion in investments of this type, preventing them from potentially being utilized as capital to develop businesses, create jobs, and lift people out of poverty.

Transportation infrastructure in the U.S. is analogous. Inadequate markets and legal systems in this country have locked up billions of taxpayer dollars in our transportation infrastructure, money that could otherwise be used to create jobs and fuel economic growth.

Fortunately, two transactions, the long-term leases of the Chicago Skyway and the Indiana Toll Road, have demonstrated that the captive capital invested in these assets can be freed.

The most notable aspect of the Indiana Toll Road concession is that this relatively simple transaction freed $2 billion in captive capital. The state of Indiana did a study of what the highway would have been worth had it raised tolls and operated the highway according to the provisions of the concession agreement. The study found that it would be worth approximately $1.8 billion. Yet Statewide Mobility Partners, a partnership between Macquarie Holdings, Inc. and Cintra Concesiones de Infraestructuras de Transporte, S.A (Cintra), has signed a concession agreement to pay $3.8 billion to the state of Indiana.

So how did this transaction liberate $2 billion in captive capital that can now be spent for the benefit of Indiana citizens? Simply put, the $2 billion was freed by placing the Indiana Toll Road in a market environment. The Indiana Legislature created a legal construct that allowed the state to transfer legal property rights to whichever entity in the world placed the highest value on the Indiana Toll Road; in this case, it was Statewide Mobility Partners. This new legal construct liberated the captive capital, allowing Statewide Mobility Partners to pay more than twice the value that the state had placed on the asset.

So how can a private investment model generate more value? The traditional bond financing approach has layers of conservatism built into valuing the asset and that conservatism tends to undervalue the asset. In addition, bond covenants require a debt coverage ratio, i.e. that the revenues of the asset must exceed debt payments by a defined percentage. This debt coverage ratio provides a cushion for investors, but at the same time, it prevents that cushion from being used to help finance the asset. By contrast, a privately financed model is able to use the equity investment as the cushion or assurance that those holding the debt will be repaid. As a result, the private financers are able to free up more capital than those using traditional bond financing, producing a greater payment to the owner of the asset.

On a more basic level, concessions create value by allowing more bidders to value the asset. No state would sole-source a billion dollar construction contract because the lack of competing bidders would result in a higher price. Similarly, allowing only one entity the opportunity to value the operations of billion dollar transportation assets has resulted in those assets being significantly undervalued. By allowing additional, experienced bidders into the process, the Chicago Skyway and Indiana Toll Road transactions allowed the public to benefit from the full value of assets they owned.

Other Benefits

In addition to liberating the capital locked in infrastructure assets, concession agreements also provide a number of other benefits, including:

Revenue risk transfer. Whenever government funds the construction of highway infrastructure through public debt, this exposes taxpayers to the risk that toll revenues may not be sufficient to cover the bonds issued. This risk is particularly true of new, so-called "greenfield" projects, i.e. newly built projects. Funding via private investment shifts this revenue risk to the concessionaire.

Operations and maintenance cost risk transfer. Operation costs and the liability for future maintenance are the responsibility of the concessionaire. As a matter of public policy, this is a significant benefit in that maintenance will be done when needed, as opposed to when funding is available.

Accelerated project delivery. Concession agreements can help accelerate project delivery in three ways: (1) concessionaires have incentives to complete projects on time or ahead of schedule, accelerating design and construction timetables; (2) concession agreements on existing facilities or new facilities with a great deal of traffic can provide an infusion of cash to accelerate the construction of other transportation projects by providing the funding they lack; and (3) concession agreements can help projects short of funding to bridge the financing gap, and with the concession model, non-viable projects can become financially viable, the Port of Miami Tunnel is a good example of this.

Economic development. By advancing projects not otherwise feasible or by generating cash payments, concession agreements can significantly further economic development.

Rational pricing. Inflation forces all toll operators to increase toll prices. Concessionaires, however, are free from the political pressures that government operators face because their toll increases are included in the original concession agreement. As a result, they can keep toll prices more stable. Prices under a concession agreement increase in a more gradual, less disruptive fashion than under government management

where political pressure keeps tolls frozen until operational demands force sharp, sudden price increases.

Innovation. Competition for investment opportunities breeds innovation, the benefits of which flow to users and tax payers through reduced capital and operating costs or better service. Examples include - a project where the private investor was able, after significant study, to offer a $200 to $300 million benefit by retaining and strengthening existing infrastructure with no reduction in service or asset standard when the public sector assumed the existing structures would have to be demolished and removed - and a project where a private investor was able to offer additional connectivity for a small additional cost and thereby service a larger customer base, reducing the cost for all users in the process.

Investment opportunities. Currently, there are limited opportunities for those interested in investing in our nation's infrastructure. Under a concession model, pension funds and other groups interested in investing in infrastructure will be allowed to do so. Hundreds of billions of dollars are moving around world markets looking for long-term investments. For U.S. pension funds, especially those of labor unions, a concession agreement can provide them with a great opportunity to invest in American infrastructure.

Policy Concerns

Notwithstanding the numerous benefits of a concession approach to financing and operating transportation infrastructure, a number of concerns have also been raised about the ability of the private sector to meet public policy objectives under a concession model. These concerns include:

Toll Increases. As mentioned above, all toll facilities have to increase tolls to cover the cost of inflation and the costs associated with expansion. The tolls in concession agreements are set by the public owner of the facility in the concession agreement, not

the concessionaire. So whether a toll road is publicly owned or managed by a concessionaire, tolls are established and regulated by a public authority.

Length of concession agreements. Concession agreements have spanned up to 99 years. The long-term nature of these agreements has caused some to express concern about the ability to adequately protect the public's interest over time. The length of a concession agreement is driven by the need to mitigate revenue risk and the importance of giving the concessionaire enough property rights in the asset that the concessionaire views itself as an owner and not a renter. However, the length of the concession agreement will ultimately depend on the needs of the community in which the facility is located.

Safety and security. Some have expressed concerns that a concessionaire will try to maximize revenue by skimping on maintenance and allowing unsafe road conditions to exist. Under a concession approach, these concerns are mitigated in two ways. First, the concession agreement is a legally binding contract with clear performance standards and severe penalties for non-compliance. Violating the concession agreement can lead to the forfeiture of the concession payment and the operating rights to the facility. Second, notwithstanding the penalty for non-compliance, the concessionaire also has another strong financial incentive to provide a safe facility for its customers — drivers in this country always have a non-tolled alternative. Concessionaires understand that they have to keep their facility in a condition that will encourage drivers to pay for premium service.

Operating characteristics. Concerns have been raised over how concessionaires will respond to a number of operating challenges, including issues as varied as landscaping, emergency vehicle operations, and free access for public transportation vehicles. Again, the concession agreement governs all these issues, and it is often in the private operator's interest to provide considerable amenities to maintain community support. For example, on the South Bay Expressway in California, Macquarie built trails, sports fields, camping grounds, and engineering berms, as well as doing extensive landscaping, all of which were of great interest to the community.

Loss of toll revenue. The fact that future toll proceeds go to the concessionaire instead of a public toll entity has caused some to express concerns about how the facility will pay for future maintenance costs and the potential need for additional capacity. However, under the concession agreement, liabilities for operations and maintenance, in addition to future capacity needs, are the financial responsibility of the concessionaire. Thus, the loss of toll revenues does not inhibit the state's ability to maintain or expand the facility because those duties are the responsibility of the concessionaire.

As several of the points above indicate, the key to mitigating many of the concerns about a concession approach is the concession agreement itself. Reviews of the concession agreements for the Chicago Skyway and the Indiana Toll Road may be found at www.fhwa.dot. gov/ppp/agr_chic_skyway.htm. A copy of the Indiana Toll Road concession agreement and its amendments may be found at www.in.gov/ifa/tollroad.html.

The concept of concessions has encouraged state departments of transportation to view transportation facilities as assets, not just liabilities. This subtle shift in thinking promises to provide significant value to taxpayers as states compare the value of assets under traditional operational models to their value in a concession agreement.

Project Execution

With the exception of Puerto Rico, and more recently Virginia, most states utilizing P3s have passed legislation allowing P3 procurements but have not addressed the challenges of project delivery. A transportation department is not more capable of managing a P3 procurement process just because a new law has passed giving them the authority to engage in such a process. Government procurement agencies have developed intricate procurement models to ensure that there is adequate competition, pricing is reasonable, and a number of policy goals are accomplished. These agencies are not equipped to efficiently manage a P3 procurement process. Obviously, a number of states have

figured out how to do this, but as someone who has watched this process over the last dozen years, U.S. P3 procurements have been very labor-intensive and inefficient.

British Columbia, the United Kingdom, and Puerto Rico have all developed variations on a model in which the government creates an authority to specially manage P3 procurements. This approach has a number of advantages including –

Appropriate project selection. These P3 authorities engage in a public sector comparison process in which the P3 proponents are required to demonstrate that a P3 delivery model will produce better value than traditional procurement. A number of governments have launched P3 processes only to discover that the asset or the structuring of the P3 did not make commercial sense or meet public policy goals. A P3 authority will help ensure that a P3 process is used when appropriate.

Command focus. Most states try to run P3 projects with the same team that executes traditional procurements. As a result, the P3 team has their attention divided amongst multiple projects and multiple forms of procurement. Virginia has recently remedied this problem by creating a team dedicated to P3s because in the past it found that having a non-dedicated team slowed the process and complicated decision making. Any state seriously pursuing P3s should do likewise.

Internal expertise. P3 projects are very complicated transactions involving dozens of decisions that will bind states for generations. When executing P3 projects, we have found that having a well-informed and experienced public sector partner helps enormously in executing these projects in a timely and commercial manner.

Holistic approach. Finally, if the state is going to pursue P3s it should do so as a matter or procurement policy not the urgent need to construct or monetize an asset. P3 procurements are effective across a wide range of asset classes – roads, schools, water, airports, government buildings, etc. Governments that make the best use of P3s consider them as a procurement alternative to be applied across all infrastructure procurements.

Conclusion

In conclusion, P3s offer great opportunity to New York in that they can allow the state to develop and improve its infrastructure in a cost effective and timely manner. However, the optimal use of P3s will require the legislature to provide both legislative authority and execution ability to the executive branch.

Good Morning

My name is Jonathan Turnbull and I am a Managing Director at Lazard, a 163-year-old global independent financial advisory and asset management firm listed on the New York Stock Exchange. The firm has advised Governments all over the world for the past many decades on topics ranging from privatizations to restructurings.

I appreciate the opportunity to testify at this hearing regarding the use of Public-Private-Partnerships, or P3s, in New York State. My comments are based on years of advisory experience from assignments all over the world. I believe my comments will echo many of the statements made by my peers; namely, that P3s are common place in most of the developed countries of the world and that New York State should learn from those foreign (and select domestic) experiences to develop a P3 program that can accelerate its infrastructure investment and help drive economic growth for the benefit of New York State and its residents.

I would also like to take a few minutes to talk about a few other P3 initiatives that may not be front-and-center to this discussion but view to be very important in executing a successful P3 program for the State. Items such as (a) the development of a state-wide master plan for its P3 program as well as (b) the development of a financing strategy to support possible P3s (which includes a State Infrastructure Bank). I believe both these initiatives will be important for the State as it thinks about using P3s effectively.

On the history of P3s, I'm sure many of you are by now familiar with the statistics on P3 usage around the world. One of the biggest users of P3s, the United Kingdom, has closed over 700 projects since 1992 with a total value in excess of $120 billion. To put that statistic in the context of New York State, the GDP of the UK is approximately 2 times that of NY State implying an equivalent P3 spend of $60 billion in New York State infrastructure over the past 20 years. Such capital spending over the last 20 years, grossed up to current dollars, would make a substantial dent in the future 20-year infrastructure funding gap of $80 billion outlined in the 2009 report by the Office of the State Comptroller.

P3 projects around the world have ranged from building and re-building of highways, waste management/recycling programs for municipalities, new high-speed rail-lines, electric transmission lines for off-shore wind, new hospitals and new schools. The list of projects types is nearly endless.

P3s are now common-place in most developed countries around the world including France, Germany, Spain, Italy, Australia and Canada. The use of P3s is also spreading into emerging economies such as India, Brazil and China. The United States is new to the P3 world but may have the greatest potential to attract capital to help pursue P3s over the next 20 years. Infrastructure investment in the US is underweighted relative to its global peers and focus/interest exists among the largest global

infrastructure investors to put more money to work in the US market. Harnessing that pent-up demand and getting the most from it is going to be an important element to any P3 execution strategy for New York State.

The terms and conditions of P3s have varied and evolved over the past two decades. P3's have matured. P3 programs around the world have learned from prior mistakes and have also adapted to various financial market conditions. There is no "one-size-fits-all" mentality in the global P3 market as structures are now tailored to the specific project that is being pursued. P3 Advisory specialists can figure out the best structure available for different projects in NY State – such recommendation will be based on (a) the State's objectives, (b) the underlying asset characteristics and (b) current market conditions.

I believe New York State needs to increase its utilization of P3s to advance its infrastructure capital spending and maintenance program. The sooner many of these infrastructure projects can be completed, the quicker the State can drive economic/top-line growth and help reduce its heavy deficit.

One of the key lessons learned over the years with P3s is that they provide much more than "just capital" to fund infrastructure projects. Some additional P3s benefits include:

a) Providing attractive "value for money" alternatives to the typical public procurement process
   - Given the speed to market and cost benefits of the private sector, the cost to the State on certain projects maybe cheaper with a P3 than a typical procurement process
   - Many government sponsored reports around the world have confirmed the value "advantage" of selected P3s
b) Leveraging private sector expertise to the benefit of the State
   - Using the latest technological advancements to provide a better service or maximize asset utilization
c) Transferring significant execution and operating risk away from the state to the private sector
   - Many project cost over-runs or operating shortfalls make them prohibitively expensive to the State as compared to the transfer of such risks to a private investor
   - A perfect example of such risk is the Big Dig in Boston which witnessed cost overruns of approaching 100% -- debt used to finance the over-runs continues to burden the state with annual financing charges of almost $1 billion
d) Accelerating speed to market on major projects by years
   - Projects such as Florida's I-595 P3 accelerated completion by as much as 15 years compared to the Florida Department of Transportation typical budgetary process

e) Increasing budget certainty on major capital plans
f) Accelerating job creation and follow-on economic benefits
g) Improving long-term asset maintenance and support

One of the most important components to a successful P3 program, based on our experiences from around the world, is the development of a central plan and team to execute your program. Many other countries or regional governments have turned to advisors and internal groups to help oversee and coordinate their entire P3 program. The creation of a master plan and oversight group will help the State prioritize P3 projects based on (a) a project's economic growth and development implications, (b) New York's aggregate goals and objectives, and (c) a complete stakeholders analysis. These groups will not only help prioritize the various projects that need to be considered for a P3, but they will also manage the entire P3 procurement process and help orchestrate the required P3 financing to maximize value realization by the State.

An organized P3 program will help manage the process and will help generate greater interest and support from the global investment community. Such a process will (a) bring appropriately structured transactions to the market, (b) manage the timing of projects based on market interest/appetite, (c) ensure that projects are financeable in current market conditions, and (d) build a successful track record of negotiations and execution certainty. This will result in greater investor belief in any new project reaching financial close and therefore create a preference to work with New York State over other less organized States where completion risks are much higher.

A master plan needs to consider all possible projects across the spectrum of categories – transportation, energy, social, communications, etc

One last thing that I would recommend the State consider along-side its Master P3 Plan is the development of a targeted Financing Strategy that includes the creation of a State Infrastructure Bank to help drive P3 execution over the next 20 years. Financing of P3s has become more important to execution success for any P3 than the underlying transaction structure and terms. The global capital markets correction in 2008 has forced US infrastructure projects to rely on new alternative sources of capital and/or multiple government agencies for the capital needed to ensure launch and completion. The State needs to develop a mutli-pronged strategy to help deliver the needed capital for its P3 projects. Possible financing alternatives that the State should consider include traditional revenue bonds and the like; however, the State needs to also consider new sources of capital such as the IPO market and/or the creation of a robust State Infrastructure Bank.

A State Infrastructure Bank could be an attractive alternative for New York State to help ensure execution success of its planned P3s. A State Infra Bank will allow the State to control its own capital sources and not rely on programs/grants from Washington to get deals done quickly and effectively. Federal programs such as TIFIA have become the key source of debt capital to new transportation infrastructure projects. New York State should not have to rely on TIFIA to get P3 projects moving forward. A State Infrastructure Bank can work with TIFIA (and similar initiatives) but can also replace TIFIA debt on projects if needed. Properly structured, the State Infra Bank will help prioritize projects, garner focus/attention from global infrastructure investors and generate a return for the State (beyond economic growth from completed projects).

P3s are used successfully around the world and it is important that New York State embrace this mature and developed technology to advance its own infrastructure agenda. Investment in its infrastructure is critical to long-term economic growth. The key to maximizing the success of any P3 agenda is not just hidden in the details of each possible P3 transaction but more importantly in the development of an overall plan of action that prioritizes transactions and helps source needed financing.

Thank you

Public-Private Partnerships: Understanding the Tradeoffs

Dr. Joshua Schank
President and CEO, Eno Transportation Foundation, Washington, DC

Introduction
Thank you, Mr. Chairman, for inviting me to testify here today. I am honored to be back in New York State, where I spent many years as a student observing transportation policy from the sidelines, to be a part of the transportation policy conversation.

The Eno Transportation Foundation is a 90-year old nonprofit organization that works to advance and improve transportation through policy research and leadership training. Founded by turn-of-the-century traffic pioneer William Phelps Eno, we provide neutral, objective, research-based analysis of complex transportation policy issues.

With grim fiscal pictures facing most states and the federal government there is greater interest in private financing of transportation infrastructure projects. In this testimony I will attempt to outline how P3s can be most useful to the state of New York. This testimony contains three basic points:

1) P3s are not a substitute for funding
2) P3s can provide substantial benefits to the public
3) P3 success or failure hinges on the contract

Defining P3s
For the purposes of this testimony, I will assume that the P3s under consideration are those wherein the private sector brings financing to the table. Most transportation projects involve the private sector to some degree. What distinguishes what we typically think of as a P3 is that the private sector takes on some of the financing and thus some of the risk for the project. These projects often follow the design, build, operate, maintain (DBOM) model wherein the private sector assumes all of those roles. The comments in this testimony are intended to address this type particular of P3.

P3s are not a Substitute for Funding
While it may be tempting to think of P3s as a way to replace government funding that is unavailable due to budget cuts, this is a false assumption. New York State is interested in building transportation infrastructure for public consumption in order to improve the economy, safety, or possibly the environment. The private sector, by contrast, is mostly interested in generating revenues and profits. These two widely different objectives mean that the two entities may not share the same goals in terms of delivering transportation projects.

This of course is why P3s involve a partnership. Transportation is a natural monopoly that distributes costs and benefits widely to many different parties. The role of government is to ensure maximum benefits to the public at the lowest possible or most reasonable costs, whereas the role of the private sector is to maximize revenues while minimizing costs.

This key difference means that while the public sector may see transportation as a good investment because of the returns in terms of public benefits, the private sector will only see transportation as a good investment if they will see a return in terms of financial benefits. The private sector is understandably uninterested in donating funds for the purpose of constructing transportation. They are only going to invest if they see an opportunity for a revenue stream.

This means that private investors will need the same thing that government needs in constructing a facility – a revenue source. These can be taxes, tolls, user fees, bonds, loans, or any other fancy financing tool you can come up with, but at the end of the day these are all just ways to raise revenue. Without revenue there is no investment, private or public.

This brings up an essential point about P3s. When considering a P3, the public sector must carefully consider the tradeoffs of avoiding the initial capital outlay and possibly the operation obligations of the investment versus the creation of a revenue source that will flow directly to the private sector. Many times this can be attractive to public officials because the private sector takes on the political and financial risk. Instead of having to go to voters and ask for a tax increase, or to drivers and ask for them to pay a toll, elected officials can have the private sector shoulder that burden. By allowing the private sector to be the face of the project they contract out the political risk, and by allowing the private sector to finance the project they contract out the financial risk.

This means that P3 projects do not create money. They might allow a project to go forward that otherwise could not have. They might shift some risk away from the private sector. They may even result in some operational efficiencies and innovations. But they will never be, and should not be considered, a substitute for funding.

P3s Can Provide Substantial Public Benefits

The fact that P3s are not a substitute for funding in no way precludes them from potentially generating substantial public benefits. Under the right circumstances, and with a properly negotiated agreement (see below), a P3 can be a more efficient and effective method of providing infrastructure than the alternative. These benefits boil down to the answers to three core questions about a given P3–

- What are the alternatives to a P3?
- Is there an opportunity for true competition?
- How will users be charged?

What are the alternatives to a P3?
Given the fiscal picture faced by New York State and others, public revenue that can be spent to fund infrastructure is scarce. In many cases it is difficult if not impossible to generate the political consensus necessary to raise additional revenue from the public for transportation investment. Under these circumstances, a P3 may make sense in part because without private investment, certain infrastructure projects essential to current and future economic activity would have to be postponed indefinitely. A P3 has inherently more value when it is the only available means by which an essential transportation investment can be made.

This of course means that potential investments, P3 or otherwise, must be judged based on how essential they are to achieving New York State's transportation (and economic or environmental) goals. There is no point in moving forward with any project, regardless of its source of financing, that does not demonstrate a highly positive cost-benefit ratio for the state. In the case of projects that could potentially provide substantial economic benefits, it may be worth using a P3 because there is no other viable alternative and delay could be costly.

Is there an opportunity for true competition?
The private sector has a reputation for better efficiency and innovation than government. However, these benefits are not generated from thin air. Efficiency and innovation occur only when there is true competition. Without true competition, public and private sector authorities perform identically in transportation investment and operations.

This means that the P3 must be designed in a way that encourages competition. Much of this comes down to how the Request for Proposals (RFP) is structured, but it also is determined by how many firms are in the required space. If there are only one or two businesses that could reasonably perform the project, competition is likely to be reduced and benefits minimal. If there are multiple firms, and they are forced to be competitive with each other, there could be substantial benefits from a P3 in terms of efficiency and innovation.

How will users be charged?
This is perhaps the greatest opportunity presented by P3s for generating public benefits. The public sector model for constructing transportation is to use sales taxes or fuel taxes to build infrastructure that has relatively low or non-existent user fees. While this has worked effectively to construct many projects, it is often regressive, and it is not a good method of managing demand or ensuring adequate maintenance. This is why many highways are congested and deteriorating – the price of use is too low and there is no consistent revenue stream to provide adequate funds for preservation.

The private sector model is to extract more accurate user fees from a given facility. This is more progressive than sales taxes because only users of the facilities are

charged, and it is about equally as progressive as fuel taxes. Ideally it is done through variable pricing that charges users based on distance, weight, and time of day. The more accurate price signal not only serves to generate more revenue for maintenance, but also serves to keep the facility free-flowing, getting more people to their destinations faster and with less fuel consumption. While there is nothing that inherently prevents the public sector from adopting this model, politically it is often challenging to implement. A P3 can be a valuable method of implementing a better pricing system if there is no alternative means by which this could be done.

P3 Success or Failure Hinges on Contracts

All of the benefits described above will only materialize if the contract between the public and private entities is constructed effectively and in a way that maximizes benefits to the public. While this may seem obvious, there is strong evidence that a lack of adequate negotiation skills on behalf of public sector workers is the number one reason for the failure of P3s. The private sector comes to the table with much less to lose, and typically more experience in negotiating such agreements. They understand their bottom line much more clearly than the public sector, and are more willing to walk away.

One big issue in such agreements is the length of the lease or ownership of a given facility. While the private sector will push for a long-term lease, this is potentially dangerous for the government. A long-term lease may mean high costs to future governments if needs or priorities change. Forecasting, while helpful, is never perfect and adjustments will need to be made. Strong flexibility and short-term duration are essential ingredients of a P3 in order to ensure greater benefits to the public.

Another issue in negotiating such agreements can be a non-compete clause. The private sector will want to ensure that the government cannot simply build another facility parallel to the one they are building. But government cannot and should not provide such a clause, not only because of the changing needs and priorities mentioned above, but because the government should not be in the position of ensuring maximum profits for a transportation facility. It is in the government's interest to maximize public benefits. In cases where public benefits are maximized by providing parallel competing facilities, the public sector should not be prohibited from doing so. The public sector challenge is to decide when in time a parallel facility is appropriate and desirable to implement, in order to assure both transportation and economic goals are satisfied.

The bottom line is that the details of a P3 contract matter. They are the primary factor in the success or failure of a P3. Poorly negotiated contracts can mean greater financial risk to the public sector, or greater constraints on policy. Well-negotiated contracts can provide substantial public benefits by transferring risk to the private sector. The negotiations have to proceed with specific objectives set up front so that the deals can be appropriately evaluated.

Conclusion

The private sector should be a welcome partner in the provision of transportation infrastructure in New York State. Enabling more P3 agreements can be a way to provide greater investment levels than might otherwise be possible due to fiscal constraints. And the private sector can potentially provide infrastructure that is more innovative, more efficient, and more capable of generating economic benefits for the State. However, it can only do so if New York ensures true competition for P3 contracts, and then effectively negotiates those contracts with an eye towards maximizing public benefits. If done correctly, P3s can be a valuable strategy for infrastructure investment, with substantial benefits to the people of New York.

The Voice of Long Island's Highway & Infrastructure Professionals

Marc Herbst, Executive Director
Long Island Contractors' Association, Inc.
NYS Senate Transportation Committee Hearing on
Public-Private Infrastructure Investments
Legislative Office Building
Hearing Room A
Albany, New York
Monday, May 16, 2011

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.

It is clear to all that the State of New York is no longer capable of building or sustaining the type of infrastructure projects that have created one of the most powerful economies in the United States. The roads and bridges that have been built with public monies over the last three quarters of a century are now at risk

because the state is incapable of putting down the cash that will keep our bridges up.

There is a political aversion to even discussing the concept of new sources of revenue for fear that the elected official will be promptly retired by his or her constituents. Projects that could assure New York's economic leadership far into the 21st Century are quietly shelved. Across the board, we are watching the lowering of expectations in a manner that should be chilling to any taxpayer who values their infrastructure investment.

Without the political will to fund a five year capital plan, without the discipline to create a "lock box" where infrastructure dollars will be protected for exactly that purpose, and without the means to suspend the aging process on every road, on every bridge and every tunnel – we had better start looking at alternatives.

Senator Fuschillo has begun that process by putting into motion a process that compels us to look at public private financing of public works. It is an area that has been explored before but not in our political lifetime has there been such a threat to our roads and bridges, and affirmative leadership is required if we are to protect the present and the future.

There will be questions. For example, are there viable models of public private financing? Are they applicable to such urgent projects such as replacing the Tappan Zee Bridge? Can they be applied to such strategic projects as the proposed tunnel beneath the Long Island Sound? Can they add dollars to existing mass transportation projects such as East Side Access where its current funding to completion is not guaranteed?

In a state and a nation where debt is placing the republic at risk, there needs to be an appreciation that the only effective and proven means of driving the economy forward is a viable, robust and working infrastructure. Our own history validates that statement. Nations around the world have embraced infrastructure projects because they know that roads and bridges, water works

and similar projects create the framework for growth, prosperity and commerce. If one could point to one specific tool in the creation of a viable middle class, it would be the ability of moving goods and services, people and employees from one point to another.

New York's continued refusal to fund these core building blocks of our economy means we are required to look at other means to do so, or we will abdicate the future to others who are prepared to make the investment.

There is no small irony that much political capital is being spent to protect the future of the New York Stock Exchange for fear that it will be overshadowed by London, Frankfurt, or the emerging financial centers in China and Southeast Asia. And yet, the underlying infrastructure that makes Wall Street the financial center of the world is ignored, an irritant to those who seek to balance the state's books.

Senator Fuschillo has recognized the political realities and the economic landscape in which we live. We fail to examine his proposal of public private partnerships at our own risk. Without a new and dynamic means of financing our infrastructure, we will create a bleak and barren future. Are there questions? Absolutely. Will our citizens be afforded fair and equitable treatment if State resources are sold or leased? Will public employees be protected? Will their right to be represented by a union be protected?

These are important and serious question, but we also recognize that the status quo will destroy the future of New York.

As a reminder, on Long Island alone, the heavy construction industry contributed $3.8 billion to our local economy. A commitment by the State to leveraging new funding sources to improve its infrastructure would be the economic powerhouse that allows us to build a vibrant future.

Thank you.

Testimony Before the New York State Senate Standing Committee on Transportation

Re: Public Private Partnerships to Fund Transportation Projects

Hearing Room A – Legislative Office Building, Albany NY

Monday, May 16th, 2011

Thank you for the opportunity to present information to you on this topic. Before I get into specific issues with P3s, I would like to clarify some things so that we are all speaking the same language. P3s, in the true sense of the proposals and privatization, are not the right fit for every project. Several states have already used P3s and many more are looking into them. Success and failure also need to be defined because in one case a road consortia went bankrupt which was a failure for the investors but the owner – the state of Texas – was able to acquire a new road for almost no cost when the contractor defaulted part of the way through the project.

The biggest advantages to using P3s to develop and deliver projects are that it broadly increases the resources available for investment, encourages innovation and efficiency, shifts risk away from the state, and more investment means more jobs. P3 projects often include a design-build component to do the design and construction. This arrangement can allow for faster delivery of the project and will still maintain the designer's legal obligations with respect to public health and welfare. It is also important to note that not all projects, large or small, are suitable for a P3 delivery method, and there are industry methodologies already established to determine what delivery option may be best for a particular owner or agency on any given project.

While P3s provide great opportunities for public entities, they must also make sure to protect themselves, the tax payers and the facility users so that the service being provided meets certain performance standards at reasonable cost. In California, one private project includes tolling a relatively short road at $10 per trip – but that $10 saves 30-60 minutes. For businesses and many people, that is a low cost for the ability to get goods delivered more timely and competitively, save on overtime, or just be able to spend more time with your family each day. Goods and services in our state must be delivered faster and cheaper without sacrificing quality in order to stay competitive as a state. In the California case, there are enough individuals and businesses willing to support this venture and an expansion of service is now under consideration.

As noted previously, using P3 can result in projects being delivered more quickly. With revenues often tied to completion or putting a project into operation, the private operator wants to have the project on-line as soon as possible in order to receive the revenues associated with the project. The private sector is also known for innovation and efficiencies and if there are ways to do things more effectively and efficiently, the private sector will find those ways to make things better. Historically, P3 projects have resulted in fewer change orders, fewer claims and less litigation, and this occurs because the designer and contractor are involved in the project throughout its planning stages through completion, and in some cases through a period of operations and maintenance, as in the case of the Port Authority's Goethals Bridge project.

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With private funds being invested and set returns or ranges on investment, the public owner reduces their risk on cost overruns with the project. If it is a lease of an existing asset, there is greater predictability for revenue and services, again minimizing risk.

In our current economy, the access to more funds to invest in infrastructure really means one critical thing- more jobs. Statistics vary but a conservative estimate puts 24,000 people to work for every $1 billion in investment. There are resulting spin off dollars as these workers spend money, greater tax revenues for the public sector, and the reduction of corresponding unemployment expenses and other government support.

The fact that our infrastructure in New York is among the worst in the nation adds to the cost of living. This also translates to lost productivity, more damage to vehicles, more injuries on our roads, longer commutes, less time available for our families, and a significant increase in our carbon footprint. States like Florida, Texas, Virginia and others are looking for innovative ways, such as the use of P3s, to solve the lack of funding/high need projects that will make their communities more livable, businesses more profitable and generate an economic legacy once the project is complete.

If there are appropriate projects and companies willing to invest in New York, we should have the ability to say yes and help them help us. New York also needs to consider some safeguards in moving forward with P3 projects. The state must also recognize that there are many state-owned risk factors that get shed or mitigated with such arrangements and that the liability gap that the state generally has on their assets or projects, can get significantly reduced. One clear reduction in risk associated with P3 projects will be reducing or eliminating the consequences of the Spearin Doctrine, which is the source of numerous change orders by contractors and designers on state agency run projects.

Maintenance and operational standards must be maintained so the end users can have a safe and reliable service whether it is a road, a water system, an airport, or a building. The conditions of an asset should also be guaranteed at their time of return to the public owner. The state has a compelling interest in the on-going attributes of an asset. For example, developing new stations on a rail line or new exits on a roadway could change the value and the characteristics of a neighborhood or area.

The state should also make sure that they address the issues surrounding competition. Does a company that operates a project have the right to exclusivity? What impact would normal population expansion have on a project and what are the on-going needs of the people affected by the project operation.

The private sector has many resources and some history with these types of projects and if the public sector moves forward with P3 projects, the private sector can be a resource to guide the public owners through the process and to help protect and maximize the value of their assets.

Finally, in looking at P3 opportunities, they may exist in many areas; water, energy, transit, roads & bridges, ports and airports. By establishing a process to use P3s, the types of projects that the state should consider for P3s and set of guidelines for a public entity to use when going down this path, the state can be in a better position to take advantage of these opportunities.

We look forward to working with you on this in the future and thank you again for the opportunity to speak here today.

Jay Simson, President

The Business Council

Testimony to the

Senate Standing Committee on Transportation

Utilizing Public-Private Partnerships to fund Transportation infrastructure projects in New York State

Presented by

Heather Briccetti
Acting President & CEO
The Business Council of New York State, Inc.

Date: May 16, 2011

Senator Fuschillo and members of the Senate Transportation Committee, thank you for holding this hearing on such an important economic development subject. I am Heather Briccetti, acting president & CEO, of The Business Council of New York State. The Council represents more than 2,500 employers in New York State of all sizes. Our members employ more than one million New Yorkers. Our members are very interested in the opportunities presented by public-private partnerships or P3's.

The nation and New York state face daunting infrastructure needs: from education facilities, to water and wastewater facilities; to public safety centers; to information technology infrastructure; to IT services and transportation needs.

P3's offer a means for New York State to address these needs in a way that helps further community economic objectives; "infrastructure" means much more than roads and bridges and P3s should be thought of in the broadest sense of 'infrastructure'.

P3s are not THE solution – they're a part of a solution; that's where the partnership aspect of the process plays a pivotal role in determining whether a P3 is a success or a failure. P3s should not be viewed as the solution to a budget crisis – or a way to supplant public investment. The P3 process by its nature works best when there is a strong and trusted relationship among the public and private partners who advance the process together. An open and collaborative process between the public and private sectors helps to ensure that P3 projects go well and also provides for an atmosphere which encourages innovation and creativity.

The P3 process also must include the public and other stakeholders – and it is a process which makes its objectives clear from the outset. There are longstanding P3 successes around the world – many countries in Europe and Australia have been using a P3 model for many years. P3s represent between 10 and 15% of all UK investments in public infrastructure.

Recently, Canada, our state's largest trading partner, has had demonstrated P3 successes.

Much P3 research has already been done in New York State. On June 1, 2009, the NYS Commission on State Asset Maximization issued their Final Report of Recommendations on public-private partnerships in New York State. Six months in the making, this report was very supportive of advancing public-private partnerships in the state.

Their report recommended that the state move forward on public-private partnerships in the areas of Transportation, Social Infrastructure, Higher Education, Energy, Information Technology and Underutilized Property.

Transportation is a key sector where P3's can be beneficial. The state's transportation needs are large and continually growing, far exceeding our reliance on fuel taxes, tolls and borrowing to fund the infrastructure.

This requires serious consideration of alternatives to the standard approach to financing, constructing, and operating our transportation system. Key elements driving private sector transportation infrastructure investment are:

- Finance and Energy
- Government Budgetary Constraints
- Maintenance and Obsolescence
- Demographic Trends
- Global Competitiveness
- Availability of Private Capital

Private sector transportation investment would help accelerate projects and keep them on-time and on-budget by implementing:

- Management Efficiencies
- Newer Technologies
- Workplace Efficiencies
- Cash Flow Management
- Personnel Development
- Shared Resources

There are specific transportation projects in New York that have great potential for this kind of collaboration.

Bridges

- Full replacement of the aging Tappan Zee Bridge as part of the I-287 corridor improvement plan with a rail link to Stewart Airport.
- Peace Bridge to help facilitate trade between the U.S. and Canada.
- Grand Island Bridges to improve travel between the City and suburbs of Buffalo.

Rail

- High Speed Rail linking the major cities across upstate New York and New York City

But, public-private partnerships should go well beyond transportation needs. State government has many talented people and access to expertise which can ensure that we not be constrained by near term needs. In an era when state revenues are declining, the opportunity ought not be lost to review the core missions of state agencies. Many worthwhile services provided by state agencies can no longer be met through existing resources and those needs should be evaluated through a P3 lens: whether it's the rethinking of how wastewater treatment facilities are funded; to thinking broadly about state-owned resources such as our vast network of parks where revenue maximization may not be realized because resources to maintain and expand them may be constrained.

It may be as simple as looking to neighboring states, such as New Hampshire, which in 1998 entered into a 30 year lease agreement for the operation of their state-owned ski facilities. In entering into a lease which protected and ensured the broadest public access (and thus keeping to the state's objectives) but allowed for the operation of the facility to be professionally managed and operated after competitive procurement. This was NOT privatization of assets; this has served as a means to increase access and use; increase capital investment in the ski area; and ultimately increase revenues to the State of New Hampshire from both lease payments and through a percent of gross revenues generated by the facility. Increasing the state's return on its assets – while maintaining those assets in the public domain — should be fully explored, and, as New Hampshire has shown – with clear objectives, a tightly written lease and revenue agreements, the goals can be met for a true P3.

We can also look at New York's leadership role with its public and private universities in support of research, development and technology transfer for examples on how P3s can be used to further economic and infrastructure objectives. The P3 partnership which created the College of Nanoscale Science & Engineering demonstrates how complex issues such as intellectual property ownership didn't impede private sector investment and commitment to achieving the outcome — an example of having an equitable transfer of risk and reward.

P3 initiatives with our public universities — SUNY and CUNY — ought to be fully evaluated. The asset portfolio within SUNY and CUNY represent real opportunities to provide P3 solutions for these systems' capital needs and perhaps for ways to leverage research into broader economic P3 partnerships.

In conclusion, New York State needs to improve infrastructure while providing taxpayers needed relief by accessing private capital.

We cannot rely upon Washington to bring our fair share of funding back to New York and P3's would help to supplement our infrastructure needs.

The growing use of P3's for transportation and other projects in the United States and across the globe demonstrates a sensible alternative to traditional funding and procurement. Carefully crafted P3's would help to avoid additional taxes;

reduce the State's reliance on borrowing; green the environment; adapt to a changing global economy; and create jobs.

Thank you for the opportunity to testify at your hearing today.

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STATEMENT BY AAA NEW YORK STATE BEFORE THE NEW YORK STATE SENATE COMMITTEE ON TRANSPORTATION ALBANY, NEW YORK MAY 16, 2011

My name is Jeffrey A. Frediani, Legislative Analyst for AAA New York State, which serves more than 2.7 million AAA members that reside in the State of New York.

We appreciate the budget challenges the state now faces and the fact that those challenges are now growing more severe by the day as the state's fiscal position continues to deteriorate. However, one area the state needs to ensure is addressed is the ever growing challenge of funding New York's infrastructure.

When it comes to addressing this challenge, "public private partnerships" or P3's, are certainly one of the options, and I am here to say that AAA believes that such arrangements have a role to play.

However, that being said, P3's are not the only answer and they must be implemented with care.

More specifically, the more we learn about how public private ventures have been executed or structured in other states, the more concerned we are about the direction P3's could be headed elsewhere.

In the United States, judging by public-private partnerships involving the Chicago Skyway and Indiana Toll Road, and the doomed plan in New Jersey, among others, P3's are the invention of investment bankers who tend to view these transactions through a lens of "financial deals" with their primary objective of raising money.

However, our members, through numerous surveys conducted by AAA around the country and right here in New York State, have stated clearly that they are wary of these deals. Indeed, in a survey of AAA New York State members 55% said they would oppose the sale or lease of public roads to private companies as a way to raise transportation funds.

That's because, our members, like all of us in this room, know that our roads and bridges are not just financial assets to be sold to highest bidder.

There are other objectives that need to be part of any potential deal.

Objectives such as:

- Ensuring that the private partner is really adding value;
- providing the customer a better service in return for the higher tolls they will be required to pay and;
- balancing the interests of all stakeholders.

Several years ago, we issued a "Motorists' Bill of Rights" with respect to transportation funding, which included ten guiding principles, and two are particularly relevant to P3's.

Those two principles will guide us as we decide whether to lend our support to individual P3's.

Firstly, public-private partnerships must be structured to ensure that fees paid by motorists are not diverted to non-transportation purposes.

Secondly, transportation revenues collected from motorists should fairly represent the costs of using the system.

Many of the P3's done to date and some that are currently being contemplated do not get very high marks when graded against these commonsense principles. Indeed, cash raised from some P3 transactions have been diverted to non-transportation purposes and high prices paid for the concessions will result in higher tolls with no assurance of better service.

As the debate over the merits of P3s gets underway in New York State we believe that it is imperative that, instead of just figuring out how to turn our transportation assets into cash cows, we consider those issues.

Let me conclude by saying that there are two "line-in-the-sand" issues for us with respect to P3's:

One: If the motivation for a P3 project is to generate upfront cash that can be used to solve statewide budget problems or finance other expenditures not related to transportation, we would oppose that deal.

Two: P3's must be subject to an open, forthright and deliberative process that allows time for adequate public input and debate.

These are complex financial and operational arrangements and they warrant close scrutiny.

The privatization process must be transparent and involve all of the stakeholders from the beginning.

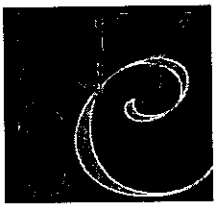
The problems we now face have been years, if not decades, in the making. Unfortunately, P3's have been put forward elsewhere as THE answer... a painless way to fund our transportation infrastructure.

I hope we are now past the initial hype that the first generation of P3's caused and that the dialogue has matured to the point where we can engage in an objective and considered debate about how and where P3's are appropriate.

We look forward to being a productive voice in those discussions. Thank you for the opportunity to comment.

Statements/NYS Senate Transportation Committee 5-16-11

Testimony of
Richard T. Anderson, President
New York Building Congress
at a Public Hearing on
Public Private Partnerships



NEW YORK
BUILDING
CONGRESS

May 16, 2011

The Building Congress is a broad coalition of the design, construction and real estate industry. Part of our mission is to support public policies that promote economic development and infrastructure investment in our region.

It has been demonstrated in other states, in Canada, in Europe and elsewhere that public private partnerships are an important tool for the design, financing, construction and maintenance of critical transportation infrastructure.

The Building Congress believes that public private partnerships – or P3s – should be more broadly used in New York, particularly on transportation projects. P3s can also be a useful tool for the creation of water supply, education and public healthcare facilities.

For P3s to be a viable option, legislation must be passed which contains some key elements:

First, legislation should authorize the creation of an Office of Public Private Partnerships to oversee the selection and implementation of P3s. We recommend that the Office be located within Empire State Development to leverage ESD's financing expertise and background in managing large projects. The Office would then work with individual agencies like the Department of Transportation to design and implement individual projects.

The Office should also be authorized to establish clear rules and guidelines for project selection and to be the entity that selects projects for implementation as P3s. Giving the Office sole responsibility to establish best practices eliminates duplication, focuses limited private resources on priority projects, and reduces conflicting mandates that would arise if this responsibility were left piecemeal to individual agencies.

One specific best-practice that should be required is the industry-standard "value for money analysis." A value for money analysis compares the total project costs of traditional project delivery with an alternative, P3, procurement method. The difference between two models is referred to as the value for money.

The Office should be required to hire a dedicated staff with expertise in the selection, management and financing of public private partnerships. P3s involve complex relationships between government, concessionaires and financial institutions. The public's welfare should be protected with a commensurate level of expertise.

Second, a broad spectrum of public private partnerships must be permitted. For example, the Design-Build model may be the most effective tool for certain bridge reconstructions. Whereas a Design-Build-Finance-Operate-Maintain model may be the most cost effective approach for the creation of a brand new bridge. There is not a one-size-fits-all approach, and the P3 format used should be appropriate to the project under consideration.

Third, the selection and implementation of P3 projects should not require additional specific legislative authorization. P3s maximize the value of public dollars by permitting the private entity to manage projects from beginning to end, shrinking traditional procurement schedules. Time saved is one of the most important benefits of the P3 model.

We understand legislative authorization will be required for new toll lanes or other new revenue streams on specific projects. But the overall selection and implementation process should not be compromised by political considerations or the legislative calendar.

Fourth, a State infrastructure bank should be created that enables the State to assist in the financing of complex P3 projects. The private sector will bring new sources of financing to the table for the construction of infrastructure. However, flexible, affordable public financing options must remain a key ingredient in order to secure this private money.

While we are supportive of public private partnerships, it must be understood that the creation of expanded P3 authority <u>will not solve</u> the enormous funding gaps at the MTA and DOT.

P3s can create cost efficiencies through consolidated project management and private financing. But at the end of the day, the public must still pay for this infrastructure. And today there is no money for the Kosciuszko Bridge, no money for a Tappan Zee bridge replacement, and not enough money to bring all of the State's thousands of small span bridges up to a state of good repair.

For years, Albany has diverted money from the Dedicated Bridge and Highway Trust Fund and played shell games with revenues dedicated to the MTA. Gas taxes have not changed since 1996. In the midst of this funding crisis, there is even discussion of reducing the Payroll Mobility Tax.

So, in closing, P3s certainly need to be part of a final agreement on the financing of our transportation agencies. They can significantly reduce the cost of new infrastructure to the public while getting projects completed years ahead of when they might be done using traditional procurement methods.

But they can only be a part of the funding equation. Government leaders must demonstrate the value of infrastructure to the public and they will have to ask the public to pay more for the roads and bridges that support our economy and way of life.

Thank you for this opportunity to testify.

New York State AFL-CIO
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SENATE STANDING COMMITTEE ON TRANSPORTATION
SENATOR CHARLES J. FUSCHILLO, JR., CHAIRMAN

PUBLIC HEARING ON UTILIZING PUBLIC-PRIVATE PARTNERSHIPS TO FUND TRANSPORTATION INFRASTURCTURE PROJECTS IN NEW YORK STATE

TESTIMONY SUBMITTED BY:
DENIS HUGHES, PRESIDENT
NEW YORK STATE AFL-CIO
MAY 16, 2011

On behalf of the New York State AFL-CIO, it is a pleasure to present testimony today with regard to establishing effective public/private partnerships (P3s) in New York State. We believe the use of P3s is worth serious discussion and consideration and I appreciate the opportunity for input.

As this issue has evolved over the last decade, the New York State AFL-CIO has been intricately involved in the discussion and research into how public/private partnerships work in other countries and states and how they can apply to New York State's infrastructure.

As President of the NYS AFL-CIO, I served on the State Asset Maximization Commission, which was put together by Governor Paterson several years ago. Within the labor movement, I also formed a committee made up of representatives of both public sector and private sector workers who could be impacted by P3s, but who would also be responsible for ensuring that P3s work for the public benefit.

There is no question that we all need to work together to find creative and new ways to fund our infrastructure needs. There is no debate that our roads and bridges need an immediate and substantial infusion of capital to rebuild, repair and maintain our vast transportation system both upstate and downstate. This equally applies to our mass transit systems, railroads, airports and other transportation avenues. It is not an exaggeration to say that the safety and health of the general public is at stake, and that our capital needs are far greater than anything we have experienced in the past.

It is our feeling that statewide bond proposals and other funding mechanisms should be considered and on the table, but knowing that even that will not be enough for the short term, and certainly not enough over the long term. Long term planning for infrastructure will help with our ongoing fiscal and budgetary problems. We are continually taking funds away from capital projects to offset short-term revenue deficits that cause cuts in education, health care and

other vital public services. Both areas are critical and we need to end the cycle of choosing between infrastructure one year and then cutting jobs and services the next. It happens over and over in various state agencies, at the MTA and elsewhere. Considering the state of our infrastructure, and the budgets of these entities, we can do better.

Transportation is not alone as we also know that our public sector building needs are going to require vast retooling across the state. Public private partnerships have already been under discussion with regard to SUNY. Our constant need for capital and technological upgrades in schools, state offices and other areas of our infrastructure also should be considered as we approach the long term.

Therefore, the first question that must be addressed is: Can public/private partnerships help alleviate the taxpayer's cost for capital needs, yet still produce the results in terms of quality. The NYS AFL-CIO believes that P3s can and should be a part of the solution, but as with everything else, care and caution must be taken as we develop a sensible, long-term P3 strategy and program.

Worker protections are the first and foremost concern of the NYS AFL-CIO. In addition, assurances for quality, an appropriate level of oversight, and definitive accountability standards must be a part of any P3 policy.

Further, a statewide process on the selection of eligible projects, methods of project delivery, appropriate availability for public comment, input on individual projects and ongoing input on the overall policy should be clearly and definitively established. This will help ensure that all parties, including investors, developers, government officials and labor are on the same page and understand the terms and obligations of a particular project.

Equally as important to the labor movement is that P3s must also be an economic development generator, creating good jobs that pay prevailing rate,

as would any other public works project. Public/private partnerships are primarily designed to lure infrastructure investments and thereby designed to maximize the return on investment. Unlike the past development of our state's other economic incentive programs, P3s must do more than just lure investors. It must also lure developers, construction companies and workers back to New York. Without prevailing rate, union representation on the construction side and ongoing union representation for the maintenance and operations of our facilities, P3s will not work and will end up suffering the same fate as many other failed economic development schemes, which reward investment but do nothing to create jobs and generate revenue for communities.

Public/private partnerships should not reward out of state labor but instead should reward companies and developers that are located in the state or relocate here and create jobs. Further, prevailing rate, apprenticeship and other labor standards all must remain mandatory, not optional.

Since P3s also suggest a process other than the traditional competitive bidding process, as required by law, any new statewide standards for P3s must utilize Project Labor Agreements as part of that alternative process.

We must also ensure that our state and local employees who currently provide related services continue to play a role and have the opportunity to participate and grow as would a private entity. As we have learned over the years, the state's use of outside consultants often costs much more than when using its own employees. As such, any technical, design and professional assistance needed as a result of P3s should also ensure the state's use of its own highly qualified, professional workforce to grow that particular agency's role in that area, not replace it.

The same is true for the administrative, operational and maintenance end of things as we establish infrastructure. It is obvious that no current employees should lose work, and certainly their job, as the result of a P3.

But we believe there is potential for a greater need to expand the public's role in the important servicing of P3 assets that would be established.

Again, P3s should not be considered as the privatizing of public services or the replacement of public workers, but instead as a method of financing and growing the entire infrastructure of our state.

We look forward to being a part of the discussion as we move forward. And while there are always obstacles and hurdles to overcome, we believe that through open, honest dialogue, inclusion and cooperation, we can make P3s a win-win for all of the stakeholders and most importantly, for the taxpayers and citizens of our state.

Thank you for the opportunity to offer our input on this very important issue.

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NEW YORK STATE
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SENATE STANDING COMMITTEE ON TRANSPORTATION
PUBLIC HEARING
UTILIZING PUBLIC-PRIVATE PARTNERSHIPS TO FUND TRANSPORTATION INFRASTRUCTION PROJECTS IN NEW YORK STATE

Testimony submitted by:
Edward J. Malloy, President
New York State Building & Construction Trades Council

May 16, 2011

It is often said that the building trades workforce is the foundation of the middle class, as it takes new and innovative infrastructure to draw businesses and jobs to the state. The building and construction industry is currently battling unemployment rates between 40% and 60% so we are pleased to submit testimony on any issue that could potentially put our members to work.

The NYS Building & Construction Trades Council recognizes the commonly discussed issues of transparency, accountability, and risk related to public-private partnerships, and we agree that all of those issues must be considered and addressed before moving forward. However our focus is specific to the relationship that P3s have with the construction industry.

P3s, if properly implemented, can be creative, successful mechanisms used to expand the buying power of the public tax dollar and to put state resources to their most efficient use. We are supportive of the state's efforts on this front, but we feel that P3s can only serve the interests of the state if they also PROTECT the interests of the state's taxpayers and workforce. New York simply cannot afford to implement any funding scheme that will undermine the state's construction workforce or the payment of prevailing wages because doing so would only add to the heavy burden currently felt by our middle class.

The NYS Building & Construction Trades Council believes that Project Labor Agreements (PLAs) used in conjunction with all P3s will

provide the measure of security necessary to ensure that the state's construction industry is protected, as well as state resources. P3s, by their very nature, are complex in terms of the technicalities, financing, taxation, and documentation required for successful implementation. A PLA, on the other hand, is a tool which can simplify the construction portion of these agreements to eliminate the risk involved in the construction portion of any project. Particularly useful for complex, expensive jobs that require a highly skilled workforce and an assurance that there will not be cost-overruns or delays, PLAs are successfully used in both the private and public sector across the country.

Any private entity engaging in a P3 with the State should be required to employ a PLA for the construction portion of the project. Since many P3s involve alternative project delivery mechanisms, it's crucial that the state's construction workforce be protected by the prevailing wage law. Otherwise, a construction manager could be tempted to increase his own profits or reduce his own risks on the backs of construction workers.

P3s and PLAs are both concerned about financial feasibility and efficient use of resources, so coupling these tools can fuel the growth of New York's communities, protect state resources, and provide valuable job opportunities for New York's workforce. We hope we can be a part of future discussions on this topic, and we are confident that this endeavor can be successful provided these opportunities for discussion and participation continue. Thank you for allowing us to provide our input.

May 16, 2011 Public Hearing on Public-Private Partnerships
Written Testimony Submitted to
the Senate Standing Committee on Transportation by
the New York State Thruway Authority and
New York State Canal Corporation

Thank you for providing the Thruway Authority the opportunity to submit testimony regarding Public Private Partnerships (P3s).

The Thruway is a vital economic engine for New York. It is the principal artery of travel and commerce within New York that keeps business and people moving in and through the State. The Thruway Authority manages nearly 3000 lane miles of highway and more than 800 bridges. Approximately 80 percent of the Thruway's underlying pavement and 85 percent of its bridges date from its original construction in 1954. As such, the Thruway's aging infrastructure requires more frequent attention and repair. It is imperative that the Thruway Authority's highway and bridge assets remain in good condition to ensure the continuation of a high level of safety and service for our customers. In addition, the Thruway is a critical component in the efficient movement of people and goods between the State's principal cities, its many tourist attractions and educational institutions, and is a vital link for long distance interstate travel.

The Thruway Authority has implemented operating cost containment measures and is continually reviewing options for further reducing its expenses in order to maximize the funds available for its Capital Program. As such, the Thruway Authority has been supportive of attempts to expand opportunities for greater private sector participation in the delivery and financing of transportation projects. P3s provide for innovative private sector financing opportunities that may reduce public sector funding

requirements and costs. P3s may be structured in a variety of forms to provide a range of options including the amount of control a public entity has over the project. There is flexibility within agreements for P3s to provide for a sharing of the risks for project cost, design, time and cost overruns and unexpected costs (like life cycle related costs including maintenance).

The integration of project development, financing, engineering and construction can accelerate capital programs through the delivery of on-time projects or projects that are completed earlier than scheduled. This coordination of the phases of a project promotes final project costs falling within or under budget.

Key issues in determining how to utilize P3s include establishing an acceptable procurement process with an appropriate evaluation and selection methodology; formulating P3s contract language; and addressing labor issues.

Through its agreements with its concessionaires for the 27 Thruway travel plazas, the Thruway Authority has engaged in P3s to improve its facilities and maximize the service and amenities provided to Thruway customers. These arrangements allow for a variation in the food and snacks available along the Thruway and require that satisfactory customer service be provided to its users. While the Thruway Authority is the ultimate owner of the travel plaza facilities and Thruway personnel monitor performance under the contracts, its contractors are responsible for the day to day operations at the travel plazas, including the services available and provided to travelers using the Thruway System.

The Thruway Authority/Canal Corporation, consistent with Governor Andrew Cuomo's efforts and initiatives to make New York State Government smarter, better, and

more efficient, will continue to be open to innovative options for project delivery that will contain costs, maximize its ability to address the needs of the Thruway's most critical infrastructure and deliver high levels of safety and service to its customers.

Senator Fuschillo, and members of the Committee, thank you again for the opportunity to submit testimony on this important issue.

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The Empire State Chapter, Associated Builders & Contractors, Inc. Public-Private Partnership Testimony Presented to the New York State Senate Transportation Committee May 16, 2011

The Empire State Chapter of the Associated Builders and Contractors (ABC), represents over 600 merit-shop construction contractors and sub-contractors employing thousands of workers throughout New York State. A majority of the contractors and sub-contractors belonging to ABC work on public construction projects and can attest to the economic importance of well-maintained infrastructure.

Like many states, New York finds itself at the convergence of several intersecting trends that demand policymakers' attention. A recession, annual budget deficits and dwindling revenues reduce the funding available for non-discretionary items such as infrastructure. As the economy shows signs of improvement, the recovery is fragile so it will require New York State to provide everything it can to ensure continued recovery. This predicament is made worse as roadways, bridges and public water systems are quickly approaching the end of their life expectancy. If this situation is not addressed, New York's aging infrastructure will not be able to facilitate the growth of New York's economy. The situation requires this state to consider every tool at its disposal, including public-private partnerships (PPP).

Most of the nation's transportation projects are still funded by traditional sources – taxes, fees, municipal bonding- but changing public budgeting constraints merit the full consideration of adding to those revenue streams public-private partnerships. PPPs will never replace traditional forms of funding but instead should be considered another "tool in the box" to draw from.

By utilizing PPPs, the state can invest in its aging infrastructure without burdening already constrained budgets. As this committee moves forward, ABC encourages public-private legislation avoid costly regulations that could prove counter to the intentions. We strongly encourage such legislation preclude accompaniments such as compulsory project-labor agreements and prevailing wage mandates. Instead, any regulations should seek to enhance efficiency and urge contractor involvement to ensure the citizens of New York receive the most for their partnership.

Should any proposed legislation include the establishment of a Public-Private Partnership Board, ABC strongly encourages the state to ensure at least one of the members be a contractor from the effected industry. Contractors who specialize in public work projects

provide a wealth of knowledge and could help ensure a PPP reaches its fullest potential for all parties involved.

In closing, ABC would like to restate its support for the development of legislation for public-private partnerships in New York State. With aging infrastructure, shrinking budgets and the need for sustained economic recovery, the Empire State should add this important tool to its public work financing options.