



THE NEW YORK STATE PUBLIC EMPLOYEES FEDERATION TESTIMONY

Joint Legislative Budget Hearing—Transportation

2022-23 Executive Budget Proposal

February 15, 2022

Wayne Spence, President

Good afternoon Chairs Krueger, Weinstein, Kennedy, Magnarelli and other committee members.

My name is Wayne Spence and I am the President of the Public Employees Federation (PEF). I want to thank you for the opportunity to speak to you on behalf of our 50,000 members about the positive step forward that Governor Hochul's Executive Budget proposal represents and ways to improve on this proposal.

Our union is made up of professional, scientific and technical experts who provide critical services to the residents and taxpayers of New York State. Serving as the state's frontline essential workers during the COVID-19 pandemic, my members have risked their lives and those of their families to maintain the continuity and quality of services to New York's most vulnerable citizens. Our members care for the elderly, the sick and the infirm; they work to ensure the state's roads and bridges are safe and secure; they help to rehabilitate those who have violated the law and provide safety net services for at-risk New Yorkers. Our members take a great deal of pride in their work because they are professionals and they care.

DESIGN-BUILD

Our main concern with the Transportation Article VII bill is the five-year extension of the construction process known as design-build (S.8008/A.9008 Part AA). Design-build, also known as the Infrastructure Investment Act in the budget, allows for a single contractor to design, construct and inspect an entire project instead of the traditional design-bid-build procurement method which allows for a separation between designer and builder.

This results in the loss of fiduciary priorities—checks and balances of construction projects. Design-build bypasses competitive bidding laws, labor protections and other safeguards that ensure transparency, fairness and impartial oversight. More importantly, it also results in the loss of consistency of DOT engineering expertise applied in the field. This expertise includes knowledge of DOT specifications, best practices and site-specific needs. Such knowledge cannot be equaled by a for-profit entity, often not from the area or even the state. Non-compliance reports prepared by DOT quality assurance staff on projects are not treated seriously.

There have been reports of inspectors hired by these consultant firms telling state workers they work for the contractor, not the state.

When a design-build contract is let, only about 30 percent of the design phase has been completed. With greater risk to the design-build contractor comes greater cost. Also increasing costs are procurement procedures and additional administrative oversight. In traditional design-bid-build procurement, this cost would not be expended with in-house design. DOT is the owner of the infrastructure and should have an involvement in the product it receives. It is important that a DOT employee inspect these projects to ensure proper quality of construction and safety of the workers and the public. DOT employees are not only tasked with impartial inspections, but are also taxpayers who help pay for the projects and end users of the project for years to come. This can be resolved by requiring a state employee to be on site at all state-funded projects to inspect the work and ensure quality materials are being utilized. Legislation to mandate state inspection is pending in both houses (S.7244/A.6664).

Two different state Comptrollers as well as an audit from the firm KPMG have shown that private consultants for DOT cost between 65-87 percent more for the same work as compared to a state employee. We need to end this wasteful practice and wisely spend money where it is most beneficial—on the experienced professional state employees who work diligently every day for all New Yorkers. One way to accomplish this would be to include legislation in the budget which would require a cost/benefit analysis before a major contract is given to private consultants. We must determine if state employees could perform the work more cost-effectively. This legislation, S.5356/A.8159, has already passed both houses of the Legislature several times in the past and should become law this year.

Both cost overruns and potential lack of proper oversight have plagued the new Mario Cuomo (Tappan Zee) Bridge. Originally, this project was held up as an example of everything that is purported to be right with design-build. It would be built faster and cheaper than it would have been under traditional procurement methods. However, it has turned into an example of all the problems with design-build.

First, the initial cost was announced at \$3.98 billion, a supposed savings of \$1 billion, according to the estimates of the Federal Highway Administration. However, due to delays, cost overruns and change orders, the contractor sued the Thruway Authority for \$961 million last year, potentially negating the entire cost savings touted at the project's inception. As part of the lawsuit, the contractors stated, "What should have been a collaborative design review process...became a long, drawn-out, more costly, and bureaucratic design review process." Several of the contractors have indicated that they will no longer participate in design-build projects in New York after their poor experiences with the bridge.

In addition, the breaking of an unusually high number of bolts raised concerns about the inspection process and the contractors' efforts to rush to complete the project in a timely manner. A whistleblower questioned the bolts' reliability and the covert replacement of broken bolts to circumvent inspectors and avoid any further delays, which could cost the contractor up to \$120,000 per day. While independent studies later concluded the bolts were fine, the contractors did agree to pay the state a \$2 million settlement after the investigation.

BUDGET REQUEST: REJECT the five-year extension of design-build (S.8008/A.9008 Part AA) and instead include legislation which would require state inspectors on all state-funded capital work sites (S.7244/A.6664) and require a cost/benefit analysis for large consultant contracts (S.5356/A.8159).

DOT STAFFING

We are pleased that Governor Hochul lifted the state's hiring freeze and now has proposed the addition of 338 additional FTEs at DOT. This would bring the workforce at the Department up to 8,485. 241 of these new positions would be in the Design and Construction area. We are happy that the state is looking forward to using federal funding to improve our infrastructure in a timely manner with more state employees.

However, this is only a fraction of what is needed. DOT has lost nearly 1,000 professional engineers at the agency since 2000. In their place, the state has hired consultants, the equivalent of 1,456 individuals at an average cost of \$160,000 per person. The Governor's proposed budget would keep the same number of consultants as the last fiscal year. The state should reduce its reliance on these costly for-profit contractors and instead increase the number of state employees. By continuing to "Fund Our future," you will be investing in the services residents deserve and expect from its highly professional and skilled workforce.

BUDGET REQUEST: APPROVE the proposed increase in DOT staffing and, if possible, further supplement staff and reduce the reliance on expensive consultants.

DEDICATED HIGHWAY AND BRIDGE TRUST FUND

Two weeks ago, Comptroller Tom DiNapoli released a very concerning report about the Dedicated Highway and Bridge Trust Fund (DHBTF). He states that, "far too little of the money set aside to build or repair roads and bridges is being used for new capital projects by the state." In fact, only 17% of the fund is being used towards new projects. The remainder is to pay for state operations (43%) and debt service (40%).

DiNapoli included three recommendations:

- Maximize the share of trust fund revenue used for new capital projects by developing a multi-year plan to reduce state operations and debt service costs paid for by the DHBTF;
- Increase the share of transportation capital projects funded on a pay-as-you-go basis to reduce debt service costs; and
- Reduce the trust fund's reliance on annual General Fund transfers and consider augmenting the fund's dedicated revenue streams.

BUDGET REQUEST: We urge you to strongly consider these recommendations as the state currently has surplus funds and a portion should be used to reinstate the “trust” in the Dedicated Highway and Bridge Trust Fund and ensure its long-term sustainability.

Thank you for the opportunity to share our concerns with you. We look forward to working with the Executive and members of the Legislature to enact a budget that reflects the needs and priorities of all New Yorkers.

Respectfully Submitted,

Wayne Spence
President, New York State Public Employees Federation