PENNSYLVANIA HOUSE OF REPRESENTATIVES
TRANSPORTATION COMMITTEE HEARING

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IN RE: HB555, SENATE BILL 1158 AND
NATIONAL TRANSPORTATION FUNDING INNOVATIONS

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MONDAY, SEPTEMBER 8, 2008

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BEFORE: HON. JOSEPH MARKOSEK, CHAIRMAN
HON. RICHARD GEIST, CO-CHAIR
HON. PAUL COSTA, MEMBER
HON. KATE HARPER, MEMBER
HON. MARK LONGIETTI, MEMBER
HON. RON MILLER, MEMBER
HON. TONY PAYTON, MEMBER
HON. JOSEPH PETRARCA, MEMBER
HON. DANTE SANTONI, JR., MEMBER
HON. JAKE WHEATLEY, MEMBER

Held at the SEPTA Board Room, 1234 Market Street, 10th Floor, Philadelphia, Pennsylvania, commencing at 1:10 p.m., on the above date, before Virginia Mack, Professional Court Reporter and Notary Public.

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P R O C E E D I N G S

THE CHAIRMAN: Good afternoon, everybody and welcome to the Pennsylvania House Transportation Committee hearing today on House Bill 555 and Senate Bill 1158. These are bills dealing with public private partnerships in Pennsylvania.

And I would like to start the meeting by recognizing Representative Kate Harper. Lead us in the Pledge Of Allegiance.

(Pledge of Allegiance)

THE CHAIRMAN: Okay. Thank you very much.

I would like to first thank the folks at SEPTA for providing this very nice Board room for our use here today, in Philadelphia. SEPTA has shown us some great hospitality here, and I want to thank Joe Casey and Jean Neisse and Ray Masy and all of the rest of the SEPTA staff at the Board for allowing us to use this very beautiful and convenient venue here today.

I would like to get started just by briefly commenting that public private partnerships, for those who may not know, and I know we have PCN here, so there are some folks watching from home, public private partnerships is a method by which we can reach out to the private sector and have them provide money for transportation needs that we currently can't afford ourselves and then forming a partnership or a contract with them whereby there would be some agreement as to returning to them their return on investment for that particular contribution.

And we currently do not have legislation on the books to allow us to do that. The Turnpike does have some leeway relative to some of their projects that were provided in legislation, about 20 years ago, even that is not all encompassing and we -- certainly, for Penn Dot and for transportation and rail and airports, et cetera, et cetera, we feel it's necessary to put on the books a process, through legislation, by which we can legally reach out to the private sector and legally have contracts and partnerships with them for this very necessary funding that we have in our transportation system here in Pennsylvania.

With that, I would like to introduce Chairman Geist. Do you have some comments?

MEMBER GEIST: My comment are going to be very brief today. With the announcement by the Federal Transportation Secretary, Mary Peters, this past week, with the insolvency of the Federal Liquid Fuels Fund, it becomes incumbent upon us to find every tool that we possibly can so the State of Pennsylvania can rebuild and maintain over $2 billion of deficit spending on roads and bridges and also find money for new capacities. So I'm anxious to getting about the business of getting a bill passed.

THE CHAIRMAN: Thank you. We will proceed then with our first presenter today. It's Mr. Marcus Lemon, who is the Chief Counsel of the Federal Highway Administration.

Mr. Lemon is over here and do you have some powerpoint?

MR. LEMON: Actually, Sir, just a prepared statement.

THE CHAIRMAN: We have a written testimony in the packet. So Mr. Lemon, we will have you move to face the cameras here.

MR. LEMON: Thank you, Mr. Chairman. It's a great honor to be here, and I appreciate the invitation. It's a great honor because I'm both a citizen of Pennsylvania and having been born and raised in Lancaster County, as well as serving as the Chief Counsel to the Federal Highway Administration, so these issues are both near and dear to me both professionally and personally.

I also appreciate the opportunity to discuss the growing role of the private sector in financing and managing of U.S. highway systems. I ask that my full statement be made a part of the record for this hearing.

While the U.S. Department of Transportation has made development and expansion of these public-private partnerships one of our highest priorities, the decision to enable PPPs in your Commonwealth rightfully belong to the citizens of Pennsylvania and the Commonwealth's legislature. And I commend you for fully exploring this issue in an open process.

States and local authorities are enthusiastic about P3s because they reduce cost, they accelerate project delivery, transfer project risks to the private sector, including signs, construction, financing and operations and maintain risk and provides innovative and high quality projects. Projects that can be done using traditional approaches to funding a procurement may be viable as 3Ps.

If Commonwealth law makers wish to give

serious consideration to P3s they should consider providing State agencies with express authority to engage in a P3 for specific activities related to transportation development as one of many areas of government functions that P3s can serve.

To highlight the type of issues that a state should consider when enacting P3 legislation, the Department of Transportation prepared model legislation, based on a survey of existing state statutes that authorize public private initiative. The model is not a recommendation by the Department of the States to be adopted verbatim, as their home public private partnership legislation, rather the model legislation is an example of what basic elements to address in such legislation.

It is important to note that the extent and type of legislation enacted varies widely from State to State in, among other things, the types and amounts of projects that are authorized and in the breadth of the authorization delegated by the legislature to State or local transportation agencies.

I'm pleased to provide a copy of that with my statement and encourage you to visit our P3 website at dot.gov.

Enabling legislation to be comprehensive and provide adequate power to support P3s and be flexible enough to deal with unforeseen needs: To be an effective State public-private partnership, legislation should designate a leading state agency, usually the State Department of Transportation or a tolling authority. The designated lead agency should have the authority to act on behalf of the State; therefore, it must have certain statutory powers.

These powers may include the power to procure projects through negotiation, to accept unsolicited proposals, to enter into binding agreements, to acquire a right-of-way through eminent domain; and to blend federal, State, local and private funds on a project. Without some of these powers it will be difficult for a State to undertake P3 transportation initiatives.

Public private partnerships create a more marked-oriented perspective in the transportation planning, construction and management, which help to ensure that both private and public transportation dollars are allocated more efficiently. However, it is critical that public authorities, policy makers and elected officials protect public interest by fully understanding and analyzing the risk to the general taxpayer and transportation system user that can arise in connection with P3 transactions. These risk, such as lower than anticipated total revenues, construction cost increases and long-term maintenance are manageable and can be mitigated.

Public officials must take prudent and reasonable steps to ensure that they create well-balanced public private partnership programs, perform necessary due diligence before committing the project and negotiating well-structured concession agreements.

A July 18, 2008, DOT report described some of the risks that have been raised, in the context of public private partnerships, and explains how these risks may be managed. Over the last several years, we have seen increasing use of public private partnerships in U.S. Transportation projects. We believe that P3s are part of a long-term rethinking of how we provide highway and transit infrastructure.

The federal government must focus more closely on ensuring that national transportation objectives, such as system performance, are being achieved. These objectives are reflected in the surface

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transportation reform plan: Refocus, reform, renew a new transportation approach for America that was recently released by Secretary of Transportation, Mary Peters. The plan articulates the need for a more focused federal role in national transportation priority, including maintaining and improving the condition of the interstate highway system, reducing congestion in major metropolitan areas and making strategic investments to improve highway safety and using federal dollars to leverage non-federal resources.

In closing, Mr. Chairman, I want to reiterate my very strong support for these hearings and my appreciation for the Committee's consideration of the benefits that P3s can provide to the people in Pennsylvania.

Thank you, and I will be happy to answer any questions at this time.

THE CHAIRMAN: Okay. Thank you very much. Do you have any questions?

Representative Kate Harper, Montgomery County.

MEMBER HARPER: Thank you, Mr. Chairman.

I skimmed through the sample legislation, and I understand it's not meant to be a be-all and end-all. In the part of drafting legislation and writing appropriate legislation to allow a P3, to me, is this, there is an inverse relationship between the price that you get and the rights, responsibilities or other things you give up when you do a P3.

We had the example, we have been studying this for quite a while under Chairman Geist and Chairman Markosek, we have been studying different kinds of things. And we looked at the Chicago Skyway, I believe which is a bridge project, and in the lease agreement there was a non-compete, but the traffic grew to the point where they needed another bridge, but because of the non-compete with the private operator of the bridge, as I understand it, they were unable to build another bridge.

So my question to you is, where do you put that level of detail? If there is a lot of pressure on the Secretary of Transportation of any State to come up with the money, and there is a lot of pressure on all secretaries to come up with a lot of money, and you just give them carte blanche, they might go for the higher price, as opposed to some of these other things, and all you basically recommended was that we have a strong concession agreement.

Where, in the legislation, do we ensure that whoever has that responsibility does that?

MR. LEMON: Well, I think you have to properly delegate authority and you can look to other agreements that have been negotiated in the past. I think you can you look to other agreements as models and the states have been willing to share those. We're currently trying to develop some best practices that we would like to publish. Again, it comes down to the agreement itself. It's what you can negotiate.

Chicago was a very successful example, and as you know, the City was paid 1.8 billion up front, it catapulted them into a $500 million rainy day sort of account which therefore increased their borrowing capability because their credit rating increased.

Many of these agreements have holding caps on them, they have provisions for reversion back to the public authority if the private entity does not live up to certain standards. So there are a number of things that you can negotiate in without reinventing the wheel and you can look at some of the many state examples so far that have been very successful. And I think it comes down then, again, to who negotiates this and how strongly you can negotiate a strong agreement.

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I know that sounds very broad, but in many cases people are specifically empowered to do that, whether that be at the DOT level or the controlling authority. And of course, the DOT has provided technical support in this case too, so you can look to the DOT.

MEMBER HARPER: Just one follow-up, Mr. Chairman.

I guess the other way of dealing with it is to put out the exact agreement that you want; can we do that?

MR. LEMON: You could. You can put out -- if you're talking about a signed bill.

MEMBER HARPER: Right.

MR. LEMON: You can put it out and say, yes, if you provided us with a complete layout of what you would design, build and construct your response, if you could, but at the end of the day, you want to make sure that someone is representing the Commonwealth's interest very strongly when they negotiate that agreement because the agreement is pretty much open-ended. It's only constrained by what you put into State law to constrain it, you put in specific constraints.

Some states you put in a specific provision that, for example, prevent unsolicited bidding is one example. So I would remember broad legislation, but again that's up to each individual state and we don't generally get into telling what states should do.

MEMBER HARPER: Thank you very much.

Thank, Mr. Chairman.

THE CHAIRMAN: Thank you.

Representative Ron Miller, from York County.

MR. MILLER: Thank you, Mr. Chairman.

Mr. Lemon, in your testimony, and reading through your remarks briefly here real quick, the key thing I see is design build. It appears to me that most of this, and the agreement may be written towards something that doesn't exist now, new construction, new highways, new bridges, but then yet we talked about the experience in Ohio or Chicago and privatizing and has there an analysis been done on the appropriateness of trying to lease, sale, privatize an existing structure? Are we really taking a good enough look at that? I have long supported P3s for new construction. I question the wisdom of an existing construction that's already been paid for one way or

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another. Could you comment on that?

MR. LEMON: Sure, I can.

The state of Texas has also run into the same issue that actually legislated certain restrictions on tolling, for example. There are a limited number of studies out there, and we'll provide you with those that we have. P3s have been successful, though, and also looking at system performance, in a lot of cases, you have the system in the network already established, the congestion has become so bad, for example, in the District of Columbia, where I work, and in Virginia and other cities, the congestion has become so bad that when you go to use the facility, it simply isn't there for them. You're stuck in traffic.

The same thing is happening at the borders in the United States, we're looking at the borders program right now and P3s. And P3s really have been successful as much as they have been with new construction as they have with existing facilities. We are talking about reconstruction of a facility that is maybe 20 or 30 or 50 years old that will need to be maintained. And unfortunately, in today's environment, with earmarking and increasing fuel costs, with people driving less, the traditional method of funding through

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a gasoline tax just isn't working. It doesn't even meet the maintenance needs of financing, let alone new construction, but we can provide you with several examples of those studies and information on reconstruction or maintenance that were successful.

MEMBER MILLER: Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you.

Represent Mark Longietti, from Mercer County.

MEMBER LONGIETTI: Thank you, Mr. Chairman.

Thank you, Mr. Lemon, for your testimony this afternoon. In your prepared remarks you talked just a little bit about the federal rule in all of this in reference -- I think you mentioned during your oral remarks, the report -- the Service Transportation Report that was just released. I realize that report is probably a lengthy document. Could you just talk a little bit about what the federal role is, and I ask that question in the context of, for example, our interstate highways were built largely with federal dollars, and although Pennsylvania is exploring the pilot program, at what point does the federal government say, We're going to do a public private partnership, for

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example, with an interstate and this is what it's going to look like? Is that discussion occurring or is it just being left for the states to enable the states to take up this cause?

MR. LEMON: Well, as you know, there are a limited number of pilot programs right now that were authorized through various legislation, so we have totalling, in under Title 23, we have the value pricing pilot program, we have the interstate system reconstruction rehabilitation pilot program. We have 715. There are a number of areas where we can experiment, but the federal government's role is also limited by statute, so we have taken steps to, obviously, promote and develop P3s where ever we can.

I think we play both a facilitating role and a technical role. A week does not go by where the State DOT does not call my office and ask for some type of assistance on particular pieces of analysis or legislation or legal issues involved with P3s or generally with transportation. So we have a technical role that we need to facilitate, both for congress and for the states, but we also have a role in facilitating P3s generally and trying to solve the congestion problems that the Unites States is facing.

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Now, that's of course, worse in certain states than other metropolitan areas and if you look at the DOT's website, we lay out a six-point congestion relief plan. So I see the federal law as really as one of the facilitators, but you can't really tell the states what they should individually do. We can't lobby any specific legislation at the state level, all we can do is provide technical assistance and really explain to you what the options are, but I think each individual state really need to address its own issues because each state is different.

MEMBER LONGIETTI: Just so I understand, even though we have an interstate highway that connects through various states and even though that highway was largely built with federal dollars, if I hear you correctly, the federal government cannot unilaterally or even take the lead and say, Well, we're going to do a public private partnership to rehabilitate or reconstruct or improve this interstate; is that --

MR. LEMON: We can take the lead in trying to bring the parties together to do something, but we can't walk into a State and tell them they have to enter into a P3 program. So we can work to facilitate if there are willing parties present, but at

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law the interstate system is owned by the state individually in their own state.

The funding system is set up to reimburse them for that. The U.S. DOT sits over all that in a regulatory level, but we really can't tell a state how they should be spending their money. In many cases, we're constrained by Title 23 as well.

So I think we have a facilitating role, but we really can't force that upon a city.

MEMBER LONGIETTI: Thank you, Mr. Chairman.

THE CHAIRMAN: Okay. Thank you. I just have one brief question. In a previous hearing I asked this question. We had testimony, when we had a similar hearing in Pittsburgh. One of the folks that mentioned, I believe it was the State of Missouri, if I'm not mistaken, was dealing with P3s, and they have a clause whereby the local community had veto power over a project. How do you feel about that?

MR. LEMON: Are you talking about the Missouri State Town Routes program?

THE CHAIRMAN: I'm not sure. I can't recall off the top of my head. I believe there was a local State Department that was moving forward with P3s

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and they had the local community decide, No, we don't want that new bridge or we don't want that now, road or what ever it was.

MR. LEMON: Again, that goes back to State's right and the State being the best arbiter to decide what the State needs. If you write in the legislation a provision that local authorities should have input or some sort of veto power, that is certainly something that would not be permitted from a federal standpoint and I think it would actually add more detail at a State level so you can look at regional leads versus the overall State.

Being from Pennsylvania, I know that often times Southeastern Pennsylvania has different needs than Central Pennsylvania and Western PA, so that is certainly something that should be considered.

THE CHAIRMAN: Thank you. Any other questions of Mr. Lemon?

Thank you very much.

MR. LEMON: Thank you. I appreciate your time.

THE CHAIRMAN: Our next presenter, and we are very proud to have a visitor from Oregon here today. Mr. James Whitty, Manager of the Office of

Innovative Partnerships and Alternative Funding at the Oregon Department of Transportation, and I think Mr. Whitty, I think, you do have a presentation, a slide presentation; is that correct?

MR. WHITTY: I do, but I --

THE CHAIRMAN: Take your time.

In the meantime, the Chair would like to recognize Jake Wheatley, from Pittsburgh, who is here; Representative Mark Longietti, from Mercer, who you have met; Representative Dante Santoni, from Berks and Representative Joe Petrarca, from Westmoreland County; Representative Ron Miller, from York, who you have met; Representative Paul Costa, my neighbor, in Allegheny County; Chairman Rick Geist from Blair County; Representative Kate Harper, from Montgomery County and the last, but certain by far not the least Representative Dick Hess, from Bedford County.

So we have pretty good representation here today and we have come from all over the State to Philadelphia to learn about alternative funding and we have a very innovative form of alternative funding to talk about now, and we look forward to your testimony Mr. Whitty, and you may proceeded when ever you're ready.

MR. WHITTY: Mr. Chairman and members of the Committee, my name is James Whitty. I'm the Manager of the Office of Innovative Partnerships and Alternative Funding at the Oregon Department of Transportation. It's interesting today's topic is Public Private Partnerships because that's one of my primary responsibilities, but I'm not going to be talking about it. I'm going to be talking about a different method of funding or mode systems called VMT, otherwise know as Road User Charges or Mileage Fees. I'm happy to answer questions on public private roads if you want to get there after this presentation.

THE CHAIRMAN: Can you move the mike a little close? Can you hear back there? Thank you.

MR. WHITTY: I'm pleased to be here to talk to Pennsylvanians about this. I have done this in a number of states already. So this idea is emerging now as a potential solution to our nation's problem with the gas tax. Oregon was fortunate, back in 2001, to have a State Senator Bruce Star, who some of you may know, he's on the Transportation Committee for NCSO. I think he is chairing the reauthorization group.

Back in 2001, the House Transportation Committee -- he was a State Representative at the time -- decided to look at alternative fuel vehicles, just had an early session to check those out. They saw the early hybrid electric, they saw the natural gas vehicles, they saw bio diesel vehicles, they saw the hydrogen contact car. It was a lot of fun for them, then they started to wonder what would happen if people started buying these cars and they started using much less gas tax, and they thought about this in 2001, then created the Road User Fee Task Force.

I was hired to administer that task force and I have, since its inception, developed an alternative system to the gas tax.

In Oregon we get about 66 percent of our revenue on the gas tax state and federal, if you add the fact that our truck taxes, which are distance based, by the way, are paying the gas tax collection levels. We are 82 percent dependant on gas tax collection, very serious situation.

Four members of the State legislature were on this task force. The solution that the task force came up with is basically an electronically collected charge on the vehicle miles traveled within the State. Once they made this decision, they hand off how do you do this to the State DOT, which I was in charge of that effort. How do we create a system -- an electronic system that creates a charge on vehicle miles traveled?

Now, we knew we were going to be replacing the gas tax, that was the whole idea. So we looked at the gas tax and said that is going to be difficult. Because, really, up to now it has been a fabulous tax. It's broadly applied. Everybody on the road pays it. It raises a substantial amount of revenue. Our entire system basically was built on it. Easy to pay, even better than some commercial transactions.

It's easy to collect and it's basically paid by distributors. There are very few of those in the State of Oregon, 157. It's easy to administer ODOT. It has an auditing function. It's very inexpensive. There is minimal evasion or avoidance. There are only a few untaxed gasoline sales but most everybody pays, and there is a minimal burden on business. The only burden really is the evaporation that occurs from the time they receive the fuel until the time they sell it.

But as we know, it's no longer perfect. It needs to be replaced. There is revenue erosion that occur. This chart here was prepared in 2004. It's already out of date. We're going to update it later this fall. It's illustrative of what is going to happen. The blue line on the top is no change in 2004, no change in driving habits or the type of vehicles people are driving.

The other three lines, as you see it start to flatten out and you enter a point of permanent decline. You have an optimistic line, a pink line, and a green line and the middle line, of course. Congress always gives you three lines. As you can see, the pessimist line has us going off the deep end about 27, the optimist is a little further out, about 23 before you enter a permanent decline.

We do have some history in the recent four years, since this was done, and so far we are probably between the pessimist line and the middle, but again, we can't say exactly when that will happen. All we know is, as you can see now the gasoline taxes are dropping. So let's talk about how you collect an electronic charge on vehicle miles traveled.

This is the system Oregon designed. You have to do four things, basically, no matter how it's designed: One, you have to generate the data. You have to upload the data somehow, manage it and then payment.

Now, there are a lot of issues that pop forward when you start trying to figure out the system.

You have start up and operations costs. We want operations to be low, like the gas tax was. We don't want start up, i.e., the cost has to be fairly low. It has to be an affordable system. Collection enforcement, it needs to be something that's easily enforceable. You can't have tremendous expense there as well. It need to integrate with the current system. If we're going to replace the gas tax, then you have to have a way for a credit against the gas tax. Nobody should be paying both systems if you're going to replace one.

It should be a seamless transition. You can't lose revenue in the transition. There has to be system redundancy. If we use electronics, electronics doesn't always work. So there has to be a back up system to make sure we have revenue no matter what happens.

Finally, I kept telling the team, when we were developing this, that I wanted this to be easy on the public. I don't want too many steps for the public to do. If we can only have one new thing, that would be great.

So we chose, after sorting through a number of possible systems, collection at the fuel pump is the most viable. Operations are affordable, it integrates well with the fuel tax, enforcement is simple. If they don't pay the charge, they don't get the gasoline. It's motorist friendly. It solves a lot of structural issues that other systems have. The problem is it doesn't cover electric vehicles, but it does very well with liquid fueled vehicles or even gas fueled vehicles.

Central to our system, that we created in Oregon, is the creation of zones. The fundamental zone, of course, would be the State's boundaries. Zone 1 would be in State; Zone 2, would be out of the State, but the system has the ability to create other zones, either local options created for City or County, created time of day base for rush hour.

Here's the system very simply described, you have a receiver in the vehicle that can pick up signals from the GPS system to locate itself. The system in the car locates itself on a basic electronic map. You have latitude, longitude, markers in the device. So the device knows whether it's going pass a zone or not, whether it's in State or out of State, then at the fuel pump there is a mileage reader that reads, wirelessly, the information. The mileage totals are now developed through each zone. So as the vehicle drives around, the odometer runs and it assigns miles to each zone that the car is in.

So in State mileage, the odometer would be running the total of miles there. If it is out of State, then the total miles is in the out of state reading. So you have this wireless transfer to a mileage reader. That data is then transferred to a point of sales system at the pump.

These are the three things that are transferred: The vehicle device identification, so you know who it is; secondly, the mileage totals for each zone by zone. Those are just total numbers by zone. Then finally, the fuel purchase amount. That information then is sent by DSL line to a central computer that the DOT holds. This is the only spot that the DOT is involved. The DOT is not involved with installing devices or getting information from the devices or making any rates. It is also not involved with the upload of data. It only receives the data from the fueling station. There it compares the date of tolls from the late fill up and then applies the mileage

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fee and rates, and it goes back to the fueling station where the customer is presented with a bill.

See the fuel tax is deducted from the bill and the mileage charge is added and the motorist does one new thing, pay something different, very simple for the motorist. It's designed that way on purpose.

Okay, what about non-equipped cars? You have cars coming from out of state, out of country even, and as you will find out here, during my presentation, we believe it should be phased in over time. If retro-fitting is problematic, difficult then I think public acceptance of the current owners of cars to retro-fitting is problematic. So if a motorist drives up and they're not equipped, then they're not read as a mileage fee paying vehicle, they pay the gas tax, it's that simple.

Heavy trucks: We didn't design our system for heavy trucks because we have the weight distance tax in Oregon for heavy trucks. I can tell you there is a lot of interest nationally and in Congress right now to have a mileage charge system for heavy trucks, and I think it would be a different system, however because with heavy trucks, it's already a regulated industry. They don't have the same expectation of privacy that the motorist do and passenger vehicle owners.

As I'll go through in a minute, we had to protect that very, very closely and we did do that for the Oregon test, but heavy trucks will be a different system because privacy is not expected at the same level.

Okay. It does integrate with the fuel tax quite well. Here's where we get into a little complexity, because you're a legislative committee, I put this in. The bulk of the mileage fees are not paid in full. They are prepaid by the distributors as the gas tax and so this allows the mileage fee to become gradually predominant, and the fuel tax is retained as a guard against system failure. There is a big advantage to this. This is 22-year phase-in period. We just chose 22 years, it could be anything, that described what the share of minor city charges are over two years.

The blue, of course, is the fuel tax. It gradually phases out, and the yellow at the top is the pure mileage charge that's not prepaid. The maroon, in the middle, of course, is the prepaid mileage charge and it's basically collected as the gas tax.

We are collecting basically the

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differential of the gas tax paid. This has as tremendous advantage of, as you see, making the risk much less over time. If you turn over to a complete collection of the mileage charge, you have to now put the whole system at great risk, and we thought we would want to put this on top of a system that's very reliable, which is the gas tax. So it has that advantage.

Let's talk about cost now. For vehicles, as I said, no retro-fitting is advisable at this point and time. We believe the components ought to be installed in vehicles prior to sale and then included as part of the purchase price for those vehicles. And the cost for this technology is going down overtime. The subject of Moore's Law, which means you've seen computers increase in capability and go down in price over time, that's what's happening with the equipment we're using here. By the time we implement this, it would be probably two digits for the cost of installing in that motor vehicle.

The service station capital cost, we estimated as 35 million statewide, which we thought was affordable because we could bond that over 20 years and that would result in less than 2 percent of the fee rate which is currently high. Annual operating cost essentially in an audited year, as well as for the gas tax, about $2 million a year we estimate it. We think this is affordable.

Okay, how did it adhere to good tax policy, which is, of course, the most important thing. First of all, it is broadly applied. Every individual who pay the gas tax pays this as well. It raises a substantial amount of revenue in taxes, as much the gas tax except for the road and fuel efficiency.

It's easy to collect. It's easy to administer. It's easy to pay, as you saw one pay one new thing at the pump. There is very minimal evasion/avoidance potential. We can make sure that the vehicles -- the prices in the vehicle, by working with manufacturers, are secure and that people would have to pay this if they are going to get their gas. There is a minimal burden on business. There is a new charge to pay but it's only done electronically through DSL lines. Also, directly to this system is highway use now and there is no revenue erosion for fuel efficiency.

We have a pilot program on this last year, mid-last year, funded partly by the Federal Government. What we did was we had 285 participant

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vehicles, passenger vehicles, each were paid to participate. There was a control phase to get their baseline data and then followed by an experiment phase. This test was designed to prove concept, not to prove readiness for implementation. That has to happen next.

So we had three zones, an in Oregon zone, a not in Oregon zone and a rush hour zone. There were three test groups: A control group who paid the gas tax; VMT group who paid one 1.2 cents per mile VMT charge but no state gas tax; we came up with the 1.2 cents by dividing the state gas tax in Oregon 24 cents by the average fuel efficiency of a motor vehicle about 20 miles per gallon to get the 1.2 cents. We have a rush hour group that paid 10 cents per mile in the congestion zone and we dropped their basic per mile charge of 43 cents a mile, we told legislature we wouldn't make any money out of the system.

This is the technology configuration. I put that up just to scare you. It looks complex, but in fact it's no slower than a credit card transaction, which also would look complex if you put it up on a schematic like this. This is the equipment that was tested. Up on the upper left you see the receiver and the GPS signals; in the middle you see the white box, that's the mileage counter. In the lower right you see the mileage reader.

In the upper right, you see a screen, which we wanted to have in the test so the motorist knew what zone they were in when they were driving. You can see a tally as it's going. The results, the zone differentiation and mileage counting worked perfectly. We had a little trouble with vehicle identification at the fuel pump because we can't use the optimum system. We couldn't change the nature of the vehicle at the pump. So we had 85 percent accuracy there, but that's enough to prove concept. Transmission accuracy, once it was identified, it was perfect. Administration worked well.

Peek period driving. Peek period driving was reduced 22 percent. At the end of the test we did a survey with the participants and asked them if they would be willing to keep the devices in the vehicle if the system were statewide, and 91 percent said yes.

We do know there is more work to be done. Again, this was just a pilot test to prove concept. We used prototype equipment, not commercially viable. So there has to be perfection of the vehicle identification at the pump. We probably would use a different manner to do that.

Cash transactions were also slightly slower than the cash at the pump. Again, we ask for the gas tax because we had an extra step in that what they were paying at the pump -- what they would have paid at the pump, they are no longer paying because the mileage charge was different.

Other parts and elements of system. We did congestion pricing this way, as I mentioned. We did it on an area pricing basis, then you have a separate rush our zone within the borders of the City. This is the outline -- this is the geographic boundaries of the NPO for the City of Portland, and basically they crossed that line. Unlike London, they didn't pay a charge for crossing the line, they paid a charge for every mile within the line and it was a lot higher, as you saw, within that congestion pricing zone.

The other possibilities with the systems that we hadn't tested yet, but we want to but that is the idea of charging specific facilities by charging to get on and off on ramps. And we could have a distance and point charge there. Another possibility, a toll booth on new bridges or roads in this manner.

Now, there are two big issues that have

probably popped up in your mind. It has to most of the public. We generally tell them to give 5 years on this, I have talked to them personally. I have sent them e-mails. We've tried to answer every one. I talked with the media, hundreds of reporters on this, so I know what the two big issues are, and these are the two big issues. If we can resolve these and if we can give a resolution to the public, we probably can have this system implemented.

First one goes to privacy and then rate structure. Privacy: We designed our system to protect privacy. Although it's not well understood yet that we have accomplished this goal. The way we designed this system, no data is transferred except the mileage totals by zones. There is no location point transferred. Nobody knows where anybody is driving or could find out. There is no location data stored within the vehicle. In fact, you have a location point identified. By the time the second one is identified, the first one is erased. There is essentially no data in the box, other than tick marks for the zone.

Let's talk about what people think is happening. They think that there is a signal going out from the device up to the GPS assembly. That is not the

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case. In fact, navigation units today do not operate that way. The way the navigation units do operate is they will send a signal out from the device that the third-party operator can't pick up. We eliminated that. There is simply no signal going out from those devices whatsoever. The only thing it does is operates like a receiver, much like a television or radio.

This could be a tracking device. You have to have that signal going out from the device somebody else can't pick up. So this cannot be the type of device that is designed that way on purpose, but nevertheless, you could design the system that does any number of things. You could invade privacy completely or you could design a system that has absolute privacy.

In fact they did a study, the report was issued in April, they designed a system where there was no privacy. They knew every step where everybody would have driven, every one. They did this as a data exercise, to test and guess the prices. They didn't do it as an exercise to (inaudible) the system, so it has to be recognized like that.

Now there is a way to do this system with absolutely protection of privacy. We simply have the device reset itself at the pump. That can be done.

That's where we were headed in Oregon before I was reminded by our fuel tax auditor. He wanted the ability to audit the system to make sure people weren't cheating and to give the customer a chance to validate. That's why we moved to the left a little bit. There is still no tracking of the vehicles, but there is, as I said before, a vehicle identification at the pump and the transfer of the fuel tax purchase amount and the mileage totals also.

That minimal amount of data allows us to investigate anomalies in the system. So if the vehicle should be getting 40 miles per gallon and is getting 60, we can go out and test that anomaly. So the system is still very much protective of privacy, but we have the ability to audit and have the customer challenge the bill for fraud that may be happening.

Let's talk about rate structuring. This comes up very often with, actually, my friends who know about what I'm doing. How could you charge a flat rate where my Prius gets charged more and the Hummer gets charged the same. That doesn't make a lot of sense. They will be saving money and I won't. The system is created with flat rate for revenue stability, that makes sense, but you can adopt other types of rates, variable rates for other policies.

Let's look at this. This is the charge. You see along the bottom, you have the fuel efficiency for various vehicles. On the left you have the charge paid per hundred miles. The pink line is the flat rate for the BMT charge, the green line is what they will pay for the gas tax. You have losers and they are just the ones that most people don't think you ought to have. And you have winners and those are really the ones people don't think you ought to have.

As I discuss this with people, I say look we need to have a flat rate on the upper end. That's important because we'll probably go to hundred miles per gallon on the higher rate. You have to have stability in the system. After a little arguing we tend to get there.

Then they get upset about the lower end. And they said we've got to fix that. So we have to see other ideas for that. For example, you could be paying fuel tax for those on the lower end. Even if they have a device in the car, you would have them pay a fuel tax for that.

Then there is another possibility, which is to create, what I call, the multiplier rate structure. You assign a value to each vehicle to be charged against a base rate. That multiplier would be based on what every you want it to be, but it could be based on the fuel efficiency. So if they have 42 miles per gallon plus, you have 1.0, that's your upper end flat rate. Then the multiplier goes up higher for a vehicle that has lower fuel efficiency. I chose 42 plus because my jet diesel gets 42 miles per gallon.

THE CHAIRMAN: Can you buy diesel?

MR. WHITTY: Yes, you can buy diesel. The point is that you create a rate structure to do any number of things at any number of policies. It's up to the legislature to decide what policies they want to have adopted and find the rate structure to fit those policies.

Next four slides talk about the future; where we need to go next. There are some things that have to be done before implementation can occur. Remember we used prototype equipment. We need to refine to commercial viability. Nobody ever takes prototype equipment to the market unless they want a big failure. Manufacturing standards needs to be developed. We have to address the concerns of fuel distribution industry. They don't want us to mess with their point of sales

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systems. So we have to provide specifications to them so they can change their point of sale systems. They did this every year, by the way. It's constantly changing. It's not a problem. They just don't want government to get into the system. We have to solve the cash transaction problem.

Finally, we have to develop a second system for all-electric vehicles because they don't pay at the pump. Let's talk about all-electric vehicles for a moment. First of all, they're coming. If you read the industry press, you'll see that they are predicting by 2010 we'll have the beginnings of all-electric vehicles that will be viable in the marketplace. They won't have 300 miles or more range, they will probably have more like 40 to 60 range, but they will be good as a commuter vehicle. They could be operated very inexpensively. Some people will probably start to move to them as a commuter vehicle and they will have a second vehicle for long distance. That is definitely viable. We have to be concerned about what happens.

I want to know how fast that can be adopted. We have a way of knowing that by checking on the hybrid electric adoption. Accordingly, we have the highest rate of adoption for the hybrid electric vehicle in -- they started buying them nine years ago. There were 300 and something that year and now we're at 30,000. It seems like a lot. It's less than 1 percent of the total number of vehicles in the State of Oregon 3.8 million. So at this point we're starting to see an effect, a little bit of an effect, on our bottom line but not an amazing amount. The point is we have time to figure this out.

The early thing we probably would do is collect a VMT charge of re-registration so every two years in Oregon you have to present the number of miles electronically collected probably at DMV. We couldn't do that very long because it would overwhelm the system once these vehicles are purchased in great numbers. In the short term, that would solve our problem, but in longer terms there would have to be some kind of centralized collection with the monthly billing or maybe collection through utility meters.

Electronic meters nowadays, we have them now in Portland, Oregon and they pay as part of the monthly bill. These are ideas for examination. We have not decided they need to be implemented yet. That's the next stage.

What might the State do in the State of

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Oregon? We are at pause now. We haven't identified additional funding for development. We have a legislative session coming up in '09 and I think it's likely. Let me say that Governor Kulongoski is highly supportive of our efforts. He wants to move forward to the next new development of the system and looking towards implementation.

One of the things we have asked for is to authorize the collection and re-registration for all electric vehicles. I believe we're getting acceptance of this by members of the Transportation Committee as well. If this is the case, we could have some in operation within two years and that's about the time we would need it.

For technology development funding, we are asking for funding there as well, to move to a level of commercial liability and then to do also some demonstration, multi-state simulation and to actually develop all electric systems.

These are a lot of steps, but it's what Oregon could afford to do for the system. Now, Congress, of course, can do a lot more and I've testified before DeFazio's Sub-Committee on the Highways and Transit, in July, and there was a lot of interest in

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this. In fact, 12 members of the Committee actually participated in a round table meeting and in that, to close out that session, I basically said we would be making a request for the authorization.

This basically outlines -- it's a little bit more detailed than what I gave them -- what that request is. First of all, it establishes a six-year timeline to complete preparation. I think it's difficult for Congress or the State legislature to adopt a broad based mileage charge now. The public haven't gotten use to it. We are still having conversations about the fact that the system is broken. Yet, until the public understands the system is broken, they are not going to accept the new step. So, what do you do during this period of time? You don't wait until they understand it, you prepare in advance. That's what I'm asking Congress to do, a six-year timeline to complete preparation.

So there will be a USDOT Action mandated that establishes interdisciplinary project teams. You can't let the technology people dictate the system, policy has to drive it. Work with the auto manufacturers and energy distribution industries and trucking industry; immediately commence technology work;

establish an Oversight Advisory Committee and have that Committee report on the short timelines to USDOT and Congress. Additional pilot projects should be put in place. There will be elements of what need to be tested, states should do that. There should be a broad-scale test that might go beyond a few states.

And finally, I will ask them to assess specifications for the vehicle mileage counting devices so that the manufacturers can begin to implement that in their manufacturing, as well as possibly mandate that implementation because we want to be able to hit go when the political will shows up. If we wait to hit go for development, you have to wait another six years. There is no point in doing that. We have to do that now.

Mr. Chairman, that concludes my testimony. We'll be happy to take questions.

THE CHAIRMAN: Thank you very much for your very compelling testimony.

Before we go to questions, I would like to recognize Representative Tony Payton, from Philadelphia, who has arrived, and also in the audience, the Former-Acting Chief Clerk of the House Brian Preski, who is retired now in the private sector, who is here. Welcome Brian.

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Representative Paul Costa.

MEMBER COSTA: Thank you, Mr. Chairman.

Mr. Whitty, thank you for the testimony. I was fortunate enough to see the Senator's presentation at NC South. Obviously, he didn't go into detail as you have. There were several questions and you started ticking them off as I went down. Some of the questions I still have are, What do you think of the pilot program? How much more or how much less did it cost for the driver to pay in taxes when they did the study under this proposed plan or if they would pay the regular tax?

MR. WHITTY: That would depend on the vehicle. We did a flat charge because it was simple. We didn't want to decide what the legislature might do. A flat rate was the simple way to do that. Some paid more and some paid less than the minimal gas tax, like that line showed you.

MEMBER COSTA: You've also talked about converting over the service stations. Am I correct in understanding that the states are going to pay for that?

MR. WHITTY: We believe the Oregon DOT, we believe the State ought to fund that. It could be a mandate and states put mandates on businesses all the time. That's something that could be negotiated in the political room in the realities of developing legislation.

MEMBER COSTA: I could see like the Exxon and the BPs, whoever could afford a filling station, but if you have a mom and pop gas station, it's going to cost you a lot of money for that. And the privacy issue you addressed, so thank you very much.

THE CHAIRMAN: Representative Mark Longietti.

MEMBER LONGIETTI: Thank you, Mr. Chairman.

Thank you for your testimony. If I understand the system correctly, for someone like me, I live on the border of Ohio. As it turns out, typically, Ohio's gasoline sometimes it's 20 to 25 cents per gallon cheaper, so a lot of residents in my area go over to Ohio to fill up. Under this system, correct me if I'm wrong, you really have to think about that, because I'm traveling in Pennsylvania and I'm filling up in Ohio and paying their gas tax. Eventually, I'm going to fill up in Pennsylvania and I'm going to get whacked for this tax; is that correct? So I got to really think about doing that.

MR. WHITTY: Usually that's the answer

to my question. The question I get on that issue is border jumping. Yes, people are thinking about it. The answer is if they do that regularly, they never can fill up in Pennsylvania because they would be hit with a big charge. Some people will try that for a while until they figure it out and they won't do it.

Now, in a small state or maybe in an urban area like here, you might see some of that going on. I'm never going to drive to Western Pennsylvania. I'm going go on the coast. So you have to think about your geography. Should other states join in? In Oregon it's not a problem. It's like the tenth largest state. We wouldn't have a problem with that, but as far as the eastern seaboard, you would have to think about operating on a state-only system, you may have to.

MEMBER LONGIETTI: You talked a little bit about your privacy continuum. I thought I heard you say you really don't track where somebody is driving, but how do you deal with a situation where, say, I'm driving, you have the rush hour zone. Now I pay my tax at the pump, and I want to contest the fact that I don't think I ever drove in the rush hour zone, but I'm being taxed. Is there an ability to do that?

MR. WHITTY: Probably not an ability to

do that because that would be a large enough anomaly to determine that. That's a difficulty. It may be that you have to do some kind of photo thing if that's a big concern, if you get a lot of that, to make sure that you got -- that's expensive and London has proved it's very expensive to do that. Challenging that would be difficult.

MR. LONGIETTI: The last question dovetails into some of what you just said. Since you've studied some of these systems, what do you think about a tolling system where I'm taking a picture of somebody's license place because they don't have a transponder in their car and they might be out of state, for example, and I'm billing them for the toll because they drove this distance before the toll. Have you looked at that at all, whether you think it's an efficient system?

MR. WHITTY: It works. It's done several places in the world. You just have to understand, it's a very expensive system. It solves some problems, but the London system is about 60 percent of the cost of the tolling is administration. One of the reasons we didn't go with tolling, the modern tolling system, as a way to do that is just that. Modern tolling systems have a significant part of toll

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administration, we're trying to replace the gas tax. We're trying to keep the administration as low as possible so we can do that. You do surrender some of those abilities that you are looking for.

Moving to a complete tolling system could be exorbitant and it is something I -- we did look at the numbers on that, but it's something that you ought to look at carefully from the cost perspective if you are looking at VMT charges.

MEMBER LONGIETTI: Thank you, Mr. Chairman.

THE CHAIRMAN: Representative Jake Wheatley, from Pittsburgh.

MEMBER WHEATLEY: Thank you, Mr. Chairman.

Good afternoon. I guess I want to follow-up on a couple of questions or some of the things you are saying. Can you help me understand, in Oregon, do you have a large public mass transit system that is supported through your gas tax now due to this alternative tax; what's the breakdown there?

MR. WHITTY: We do have, in the Portland area, a very fine mass transportation system bus and light rail. It is supported by a fair box and a

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business tax. We cannot, in Oregon, use a gas tax or any kind of charge levied against an operation of a motor vehicle for anything but roads so that's an Oregon Constitution so it does not go to mass transit.

MEMBER WHEATLEY: So most of what you collect and how you collect it is for your structural roads for your road improvement for the infrastructure most likely.

MR. WHITTY: That's correct. And one of the questions I tend to get on this, as I go around the country, is that some states don't have the constitutional provision we have. The citizens might be worried that this system would be used toward non-road purposes and therefore less acceptable. That's an issue for those states. In Oregon, and a number of other states, it isn't a problem.

MEMBER WHEATLEY: For Representative Longietti, he was talking about this rush hour alternative which, if I understand your presentation before, different legislative bodies will have to figure out what fits their needs better. Currently your technology, the way that you have operated -- because you think it's not necessarily something that will happen frequently -- a challenge to a reading of one of your readings that says, Oh, you are charged more because you are in a rush hour zone at this particular time. You, right now, say it doesn't happen enough for you to worry about to figuring that out.

MR. WHITTY: I think, in essence, that's the case. First of all, let's recognize, to add a rush hour zone or congestion zone, it would be probably not be a State action, it would be a local action.

MEMBER WHEATLEY: If we set up where we can have local zones and there is a local option to add a particular charge then it would really be the regional people who would monitor that?

MR. WHITTY: Most likely. Now the state roads are involved. We would have something to say about it. There would be some level of acceptance, primarily it's going to be motivated and some of the acceptance will be achieved by way of a mobile authority who have the authority to implement it. You can implement a minor charge statewide without the congestion charge. There is nothing that says you have to have it.

MEMBER WHEATLEY: And you had mentioned, when you first started, and I was reading through your bio, that you are also responsible for the public private partnerships. Tell me a little bit about how that operated in Oregon and what you see as the advantages for a system such as that or the disadvantages?

MR. WHITTY: With a sufficient amount of traffic, you might be able to have a public private partnership that shifts some kind of a risk that the public sector does not want to compare to the private sector. That's generally the thing you're looking for. A simple example is the Miami, Florida tunnel in Florida, where the state was nervous about building a tunnel in Florida. They never did it before, they didn't have the people to do it, they hired some pros from Europe, I believe it was, who did have experience doing that and they shifted the risk of making a mistake to the private sector.

Other probabilities for shifting risks had to do with financing, for example.

MEMBER WHEATLEY: Has Oregon engaged in the public private partnership?

MR. WHITTY: We have issued an RFP and gotten a quarter of the -- developmental basis. The first two, we decided did not work from a financial base, it didn't cancel out. They didn't have enough traffic to make the new road work. There is a second one that probably does work, but it hasn't gone forward just yet. So we haven't actually built the project and public private model, but we have hired firms to analyze it.

MEMBER WHEATLEY: Thank you.

THE CHAIRMAN: Representative Dick Hess from Bedford County.

MEMBER HESS: Thank you, Mr. Chairman.

Thank you for your testimony. I appreciate it. I just have one question. What do you estimate the increase in revenue with this system over just basically the gas tax?

MR. WHITTY: Basically what would happen if the rate is comparable to the gas tax rate -- 1.2 cents in Oregon is comparable basically to have a stop loss. You're not going to lose revenue from people starting to buy and operate fuel efficient vehicles. When there is a gain in revenue depending on whether you're willing to bump the rate. So in Oregon, with 1.2 cents per mile and what's comparable to the gas tax, you begin to raise your revenue higher that way.

MEMBER HESS: Wouldn't you achieve the same thing by just raising the gas tax?

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MR. WHITTY: You could. That's something we didn't look at. That is raising the gas tax, you have to make it a perpetual increase. It would have to be fuel efficiency included, you would have to have some kind of a way to determine what goes on as the gas tax goes up by that amount.

The difficulty when you do that, however, is you have to figure out what segment of society is going to be operating the different vehicles, and this could become a societal issue. If the older vehicles are now in the secondary market and now are low priced -- which is what is happening with the SUVs. They're giving them away now. Who is going to drive them -- and are you then moving your incidents of tax to a different segment of society? Nobody has done any research on that, but it's something to consider when you take that option that you just mentioned.

MEMBER HESS: Thank you.

THE CHAIRMAN: Chairman Geist.

MEMBER GEIST: I have been following this stuff pretty close for a long time. And my question is simply this, where do you see this technology going in five years? Because if you look back with the microchip when we finally permitted it

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where it's going today. Has anybody -- do you have -- other than some of the companies that are developing this stuff, do you have any idea where it's going?

MR. WHITTY: No, not really. We know it's getting less expensive because its basically computers. We know that if you're receiving a GPS signal, you're getting more and more accurate; we know that much. It's five years, I can't predict that. That's one of the reasons, if you look at the slide for the congressional authorization, we didn't suggest a particular technology. They have to do a complete scan of everything and work with the IBMs and others that have been doing this all along to find the best architecture. We think we have done a good job, but it might not be a perfect architecture.

MEMBER GEIST: Let me follow that up where I was going. We know that when it comes to fare collection, from the mass transit system, that the private sector do it better and they also could reduce ridership, let alone collecting fares and having the money coming back to mass transit.

Has the State of Oregon looked at that at all, from your standpoint, of having that bid out to the private sector for your total system?

MR. WHITTY: That's an excellent idea and that's something we concede. As a matter of fact, we'll probably take step one about a year from now by kicking out the development of the technology to a finance commercial liability, say, next fall.

We did this with university professors and grad students. I think that makes a lot of sense to turn it over. You have to know what we want to accomplish from a policy perspective before we put out the technology to the private sector, but I think that's probably where we'll end up.

THE CHAIRMAN: I just have a follow up. Building on Representative Hess' questions. The vehicle miles traveled, one of the problems we're having or anticipating, because of the price of gas going so high, we're getting less vehicle miles traveled so we're getting less fuel tax. If we charge people by the number of miles that they're driving, when we switch to a system like this, and there are, in fact, less miles traveled, don't we run into the same problem with this system as we do with the current fuel tax system?

MR. WHITTY: In fact, over the short term the answer is yes. Although, it's not as severe as with the gas tax. With the gas tax you have two factors that are hurting you and with this one you only have one. I have been challenged by this, by a reporter of the New York Times recently on this very point. We are at a new point in our nation's history on gasoline consumption. Well, we were a few weeks ago. We're probably going to go back there, I think, where we were in a land we have never been before. Nobody's data is any good from this point forward really to predict anything.

We do know a bit about humans, though, and how they react to things. We do know they regard the purchase of a motor vehicle as a economic transaction. There are few people who regard it as an environmental transaction, and that's fine for them. Most people don't regard it that way. They look at it economically. So what happens first, when the gasoline price goes up you say, can I buy a new car? And you look at the price of the car payment compared to what you're paying in gasoline. You say, it doesn't make sense yet. What do I do, I drive less. I use mass transit. I use my better car that gets better gas mileage. You do different things to reduce your driving load.

Also the economy has an effect here.

Remember, if you look at the history, when ever you see VMT go down, it's always related to the economy and it goes back up again. It's probably both things happening at this moment. What we expect to happen though is a return to increase in the VMT because people will start to buy fuel efficient vehicles as part of their regular analysis of whether they need a vehicle. They might buy one sooner than before but they are going to buy a new vehicle when it makes economic sense individually. At that point, they will buy a fuel efficient vehicle most likely.

And when people buy a fuel efficient vehicle we know one thing, and this research has been confirmed, their vehicle miles traveled goes up because they can now afford it. So we don't have any economic analysis that is valid yet, but I think you can predict a return to increase the DOT depending on the road system. It is the most efficient way to get around, and people prefer it.

THE CHAIRMAN: Okay. Mr. Whitty, thank you very much. Thank you for traveling all the way to Pennsylvania from Oregon.

MR. WHITTY: My delight and these were great questions.

THE CHAIRMAN: You did a great job, sir.

We have one more question, Paul Costa.

MEMBER COSTA: I apologize. I didn't mean to keep you here longer. You showed the device, they're applicable to the motorcycles also?

MR. WHITTY: No. That's something we haven't tested, but it need to be tested. It doesn't have to be that size. It probably need to be a third of that size.

MEMBER COSTA: Okay. Thank you. I appreciate it.

THE CHAIRMAN: Okay. The next presenter we have is Mr. George Schoener, who is the Executive Director of the I-95 Corridor Coalition. George, Welcome.

MR. SCHOENER: Thank you.

THE CHAIRMAN: George and I had the pleasure of being on a panel together at Penn State last year, he had an interesting talk then.

MR. SCHOENER: Thank you, Chairman Markosek and Chairman Geist. I appreciate the opportunity to be here.

I have a power point presentation which, I believe, you have seen in advance and also included in the materials was a paper that represented testimony from Neil Pederson, who is the Chairman of the I-95 Corridor Coalition Executive Board and a testimony that he made to the National Service Transportation Policy and Revenue Commission about a year, year-and-a-half ago.

I am the Executive Director of the I-95 Corridor Coalition. As you can see, the Coalition represents the 16 states from Maine to Florida. It covers basically the entire East Coast and it includes primarily State Departments of Transportation, but also other transportation organizations up and down the eastcoast. It includes the toll authorities. It has the significant presence of law enforcement participation up and down the corridor.

Again, the goal of the I-95 Corridor Coalition, which has been in existence since the early 1990s, is to improved the flow of both passengers and freight across multistates in the corridor. I might add that Pennsylvania and Maryland, New Jersey and Delaware really were the initial states that started the I-95 Corridor Coalition, back in the mid-'90s, recognizing the need to coordinate transportation across state boundaries along the east coast.

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A lot of issues required ordination across state boundaries particularly in the east coast. I don't have a slide here, but there is a slide where, if you take California and you flip it over to the east coast, you basically capture 75 percent of the states on the I-95 Corridor Coalition. Again, a real strong compelling reason why we need to have this coordination across state boundaries.

You can see some statistics here, in terms of miles and highways seaports, airports, a lot of activity going on in this I-95 Corridor. And a significant percentage of the economy in the United States is captured by these 16 states.

The Coalition has always been interested in stimulating PPP activity. And what I would like to do is go through a few areas of some examples of where I think we have done some ground-breaking work in this area to promote public private participation.

I might add that I certainly applaud the work of the state legislature to advance PPP legislation. One of the goals of the Coalition would be to see all 16 states at some form of PPP legislation across the corridor.

The first thing I would like to talk

about is some work that we did a few years ago looking at public private financing in the Mid-Atlantic region and it had its initiation, with a rail operation study that we performed, which involved the states in the Mid-Atlantic region. Pennsylvania was the key participant, the Class-1 railroads and AMTRAK, federal agencies and, of course, the I-95 Corridor Coalition.

And it was clearly a cooperative public private effort to identity opportunities for addressing congested bottle-necks in this Mid-Atlantic region, primarily in the area of freight rail transportation. It was the first ever cooperative public private study involving the Class 1 railroads and the public agencies on the corridor, it's access, public and private benefits.

It basically spurred the discussion of the possibility of looking at a multi-state infrastructure to support the financing of the project. You can see on this map, numerous credible chock points were identified along the corridor and lots of money involved. Clearly, none of the states in the Mid-Atlantic region would have the resources. The railroads by themselves don't have the resources. It just begs for looking at public private partnerships to address the problem.

One example of a project that came out of this Mid-Atlantic rail study is, we call it a PPP implementation example, was a shell pot bridge in Delaware, which was a cooperative project between Delaware DOT and the Norfolk Southern and in effect, Delaware DOT funded the shell pot bridge reconstruction. The shell pot bridge is a rail bridge, but in the negotiation with Norfolk Southern, the deal that was cut was that the Norfolk Southern would pay tolls each time a rail car crossed the bridge, similar to what happens on I-95 or other toll facilities in this region.

In effect, the transponder would be identifying each crossing of a rail car and then the Norfolk Southern would be assessed a toll, if you would, to cover the cost. The Delaware DOT looked at it from the standpoint of significant public benefits to improve port access to the Port of Wilmington, improve the commuter rail in this portion of Delaware.

Obviously, the Norfolk Southern saw this as an opportunity to keep the rehab costs off their balance street and put, in their words, rail on par with the highways.

This is a good example where the

Coalition took the initiative to work with the states and the railroads to identify some critical projects and then this particular shell pot bridge toll project emerged and has been a significant improvement in the corridor.

Some other areas where we're advancing in the financing techniques, we have identified some positions, if you will, for the authorization of the service transportation program, the one that's highlighted. Here is a recognition for the need to fund large scale improvements along nationally significant corridors. We certainly think I-95 is a nationally significant corridor.

Many of the projects that were in the Mid-Atlantic rail study, as well as other studies that are being done, identify projects that are clearly beyond the means of any state to finance. So we need to find a way to come forward with some multi-state approaches on these projects where benefits accrued to not just the state in which the project is located, but also numerous states within the corridor.

We held a financing workshop about two years ago and here are some of the results of clearly the importance of policy and institutional consideration has to be front and center. It was recognized that you can't be constrained by existing funding institutions or programmatic context if you're going to make this work. Certainly your efforts to advance PPP legislation in Pennsylvania will go a long way to further that.

Another important factor that came out of here is that you need to be able to assess benefits. And it's basically who benefits, who pays scenario. That's the challenge in these PPP projects that we're looking at in the corridor.

We basically are in the process of trying to further refine the multi-state infrastructure proposal. We have some consultants working on some ideas. We hope to have something to present by the end of the year, something that we can make available to the reauthorization or the authorization process that might help further the ability to finance these major large projects.

New institutional structures: I alluded to that. The I-95 Corridor Coalition is one example. You heard the term "mega regions" the east coast corridor has three of the ten mega-regions that have been identified absolutely critical to looking at transportation within and between these mega regions.

We think the I-95 Corridor Coalition presents a model of an institution or an arrangement that can help deal with those issues. No operation or policy making authority, it just brings together the key decision makers in the corridor.

Another area where the Coalition has been taking an initiative within PPP activity is within the technology area. Let me just highlight one project, which is our vehicle probe project, where we're leveraging private resources to advance technology innovation in this corridor. And basically, we're trying to avoid public development costs and risks and achieving public benefits sooner with this effort.

Basically, what we're doing is we're buying travel time information from a private provider, in this case it's the INRIX Corporation, a spin off of Microsoft. They basically have the ability to get information through vehicles that are traveling in this I-95 Corridor primarily fleet vehicles to allow it to get realtime travel time information throughout the corridor, and the initial project is going to focus on basically New Jersey to North Carolina.

We're going to be able to -- we're in the process now of providing realtime travel time

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information, updated every two minutes, along major interchanges from North New Jersey to North Carolina on I-95 as well as the parallel routes within the Corridor.

We think that this initiative Coalition providing money to a private sector organization to do this will provide superior and more cost-effective, more accurate results on travel time in this corridor than it would by spending a lot of public money on technology that would involve cameras, that would involve sensors, detectors, things of that nature. So from a long distance perspective, we think this is going to be a better way to get this information.

Our hope, our vision is that ultimately this travel time information that we're acquiring, that we're making available to the states to put into incident management programs, to put in the 511 system, Pennsylvania is currently working on that, putting travel time information up on the signs, but ultimately our vision is when you all have these in-vehicle navigation systems, you're going to be able to get some really accurate travel time being fed into those systems. So you're going to be able to know when there are incidents, when there are major congestion delays, to offer some alternative routing along the long distance I-95 Corridor travels.

Now looking to the future, one of the things that we have tried to do, over the last several months, is to establish a vision for the -- a long range strategic vision for the I-95 Corridor. In fact, look at the 16 states in their entirety and identify what needs to be done in the future. We're looking now probably at the Year 2040, 2050 in doing this.

Again, it's built around some sustainability principles both economic, transportation, environment, energy and quality of life principles that we have worked with the 16 states. We have worked with the members of the Coalition to identify what principles might be most appropriate for this corridor in the long term. Then what we did, we said, Okay, we have these agreed upon principles, what would it take to achieve these principles.

One was we need to reduce travel growth to 1 percent per year. In previous discussions, we heard that the VMT is down, but we think VMT growth is likely to come back and in the long-term perhaps settle down at a 1 percent growth per year, which would allow for some economic growth.

We also said we wanted aggressive

diversion of both people and goods onto other modes of transportation. And so in our long range proposal, we're suggesting a tripling of transit use in this corridor, in effect, through land use efficiencies, transit-oriented development, things like that, which would require a significant increase in investment.

Increase passenger rail by an eight-fold in this corridor, requiring basically a five- to six-fold increase in investment. Increase freight rail share -- we want to get trucks off of the highways -- from 13 to 16 percent we need a lot of more efficiencies, in terms of double-stacked train operations and things like that in the Corridor. And then develop a market share for marine transportation in the corridor.

Doubling vehicle fleet fuel efficiency, reduce green house gas emissions by 30 to 35 percent. We're going through all of these aggressive recommendations for transportation from the non-highway system and basically concluded that we still would need long-term a significant investment in highway infrastructure, both for reconstruction and capacity increase, even with significant increase in passenger rails, significant increase in the transportation use.

Here's the estimate of the numbers: Again, these are very gross high level estimates. Current trend, if we just continued where we're going with investments in inner city rail, passenger transit, et cetera, et cetera it would be about a $32 billion per year need. We're suggesting with this vision, if you will, that's grounded by these sustainability principles, it would be $70 million per year, significant increase.

Where would the funding come from for this vision, if you will? Obviously, we are thinking that we would need some kind of environmental fee. You have heard these discussions about reducing greenhouse gas emissions, carbon pricing, things like that, that obviously would have to be a main principle factor in this funding peek hour charges, congestion fees within the major metropolitan areas within these major mega regions that exist within the corridor.

And then, as you can see at the bottom here, what's in that box is what you heard on the previous presentation, basically VMT fee, which in effect would be one option. We are not saying that's the only option, but we're suggesting that might be one option to replace the gas tax and have an VMT charge to

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exist all the time throughout the I-95 Corridor.

Again, this reflects what we see as a sort of a long range vision grounded by these principles and some of the resulting requirements for transportation in the corridor and the impact that would have on various financing mechanisms.

In conclusion, obviously, every discussion we have had in the I-95 Corridor Coalition, discussing transportation financing, suggest that private financing is obviously going to be essential in order to be able to fund and finance the improvements that are needed both highway, rail all the various needs that exist in this corridor. And there is an array of innovative financing techniques which, I'm sure you're aware of, ranging from the standard loan programs from the Federal Highway Administration, infrastructure banks, PPPs, GARVEE Bonds, et cetera.

The bottom line is, in our analysis, in the future, if we are going to aggressively deal with the issues that exist, financing has to come from all sources. There really isn't one silver bullet that's going to do, if you will, that's going to do this. We're going to need to look at all the financing, both public and private, and clearly PPPs have to be a major element in that future financing.

That concludes my comments, and I would be willing to entertain any questions. Thank you.

THE CHAIRMAN: Thank you.

Representative Jake Wheatley.

MEMBER WHEATLEY: Thank you, Mr. Chairman.

Good afternoon. Right off the bat, I guess, do you have an agreement with all 16 states to do what you're suggesting your vision is?

MR. SCHOENER: We have an agreement among all 16 states to do the principles which we -- the analysis that I presented, a lot of that comes from what was done by a national organization American Association State Highway Officials, the tripling of transit. Those were assumptions that those groups would use. They're assumptions that -- I made reference to the National Policy and Revenue Commission, in their report they make similar assumptions. So we're working from those. There is not an agreement of all 16 states that we need to do what I was describing in terms of investment in transportation.

What we did was we got an agreement on principles and then we went through an analysis and

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suggested, in order to achieve these principles, this is one approach, transportation sustainable approach, that would get you there. We're hoping, over the next several months, we are going to hopefully generate a lot of discussion, a lot of dialogue among all the member agencies in the Coalition and at the end of this process it would be great if we could get 16 states to agree to this long-range vision.

Obviously, I think we need this at the national level, but we don't have a vision for transportation. What we tried to do is say, Okay, let's take a shot at what it might look like on the east coast.

MEMBER WHEATLEY: With that you mentioned, a couple of times, the P3s and you mentioned some of the things that, within your principles and your vision around the fact that you wanted to get, I think, it was doubling or tripling of people to use transit and other modes of transportation. How do you envision, one, several of those states or any of those states to pay for that?

MR. SCHOENER: That's a great question in terms of how would you pay for this. In that second-to-last slide, I suggested there are various mechanisms, the environmental fees, the congestion fees, the VMT charge. Obviously, the hope would be that this would generate enough interest that when you look at what this northeast corridor, the Mid-Atlantic, the south could look like and what the needs are, that that would get some folks, like you all, and other State legislatures to say, We need to step up. And this represents a future that we would like to see.

In order to get there, we're going to need to start making some different policy decisions. Clearly, on the tripling of the transit, obviously, in the northeast corridor, that's going to be the most critical, encouraging, maybe even suggesting incentives for transit-oriented development and things like that. And it's occurring, obviously, in Pennsylvania and New Jersey and other states, but this is sort of bringing it front and center. And again to try to get some enthusiasm and interest for we're one path that we can get to in order to have a sustainable future for energy or quality and other environmental factors in transportation and economics sustainability.

MEMBER WHEATLEY: How many of the 16 members of the Coalition have legislation or allow for P3 partnerships?

MR. SCHOENER: It's interesting. If you look at a map, you can take Maryland and go south and you'll find all the states have some form of PPP, actually, Delaware has PPP legislation. You go north and there is no PPP legislation.

Again our -- in the I-95 Corridor Coalition we're here to identify policy issues, technical issues to try to serve as a catalyst for some of these discussions we'd like to see, based on this vision study we've been looking at and other studies, we would like to see all 16 states of the corridor have some type of PPP legislation. So clearly Pennsylvania north, all the way up to Maine, those states do not currently have PPP legislation.

MEMBER WHEATLEY: Have you had an opportunity to look at several of the bills that are now before the general assembly around the P3s, and what are your comments around those legislations compared to what you have seen in those southern states, including Delaware?

MR. SCHOENER: From what I have seen, it's very encouraging what you are offering to both looking at non-solicited proposals to another kind of positive feature, at least if I read this correctly, the funding financing side if revenues that are generated go back into transportation. It's not money going off on into other areas, which is again similar to the Virginia PPP model. I think what you're considering is very encouraging.

MEMBER WHEATLEY: Thank you.

Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you.

Representative Tony Payton.

MEMBER PAYTON: Thank you, Mr. Chairman.

Thank you for your testimony, it was very insightful. One question I do have is how many of the states in the 16-member coalition currently toll I-95?

MR. SCHOENER: It's almost the reverse situation that I mentioned with P3 Legislation and that affected Maryland north currently toll portions of I-95. I don't believe there is any sections in Pennsylvania, but there are elsewhere through the corridor going north.

There is one pilot effort that's currently going on down in just a small section of I-95, in Florida, down in the Miami area, they receive funding from the USDOT under the Urban Partnership Program to do

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some variable pricing conversion of HOV to hot lanes along I-95 down into the Miami area, but it's basically other states have looked into it. I know North Carolina, South Carolina had plans to widen I-95. I think they have come to the conclusion that given the current resources that exist in those states there is no way they would be able to do that without some kind of financing arrangement that could include tolling.

MEMBER PAYTON: Thank you.

Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you.

Mr. Schoener, just real quick. About how much of I-95 is in Pennsylvania, would you know?

MR. SCHOENER: No, I don't. I can get you the mileage.

THE CHAIRMAN: I would presume most of it in Pennsylvania is elevated pretty much?

MR. SCHOENER: Yes.

THE CHAIRMAN: Which is one of the reasons we have such a problem here. We had a peer on I-95 collapse last year. It had a crack in it. Most of that is elevated so the cost of repairing it and reconstructing that highway --

MR. SCHOENER: Yes. I made reference to

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the Neil Pederson testimony to the National Commission, and one of areas that was highlighted was -- particularly in the northeast, was the aging infrastructure and the bridges and the requirements that would be necessary to deal with those.

THE CHAIRMAN: Okay. Mr. Schoener, thank you very much.

MR. SCHOENER: I appreciate it.

THE CHAIRMAN: Our next presenter is Mr. Art Smith, Chairman of the Board of Directors National Council for Public Private Partnerships. It's a topical issue here for today.

Welcome, Mr. Smith, thank you for attending.

MR. SMITH: Chairman Markosek, Chairman Geist, Committee Members, thank you for the opportunity to present some comments today.

As you probably surmised, this is a topic that is near to my heart. I guess I should begin by telling you a little bit about the National Council for Public Private Partnerships and what our organization is. The NCPPP is a non-profit 501C3 organization that was founded nationwide with the mission of building public awareness to public private partnerships and helping with the dissemination of information and best practices related to PPPs.

Our members includes public agencies at the Federal, State and local levels, Private sectors and firms, academic institutions and one of the strengths of our organization is that it brings the various sectors together to share information and engage in a dialogue of P3s.

Our funding comes, in part, from giving workshops under grants from various governmental entities. We had a two-year grant from the Federal Highway Administration to give workshops to State and local government on best practices and promote highway PPPs. We currently have a grant from the Federal Transit Administration. We work with the Environmental Protection Agency on water PPPs. So the experience reflects an array of different PPP models and sectors.

The PPPs have been used in a wide variety of sectors, both in the United States and abroad, including transportation, water, power, urban development, schools. I personally live in the State of Virginia. Virginia has been very active within this area. Within the past six years, since the passing of the Virginia Public Private Education Act, in 2002, we have seen, within the State of Virginia, PPPs utilized to implement facilities as varied as municipal parking lots, police stations, court houses, schools and utilities, not to mention roads. So it's a very flexible mechanism.

Within the area of transportation, again, you see it used for virtually all modalities, including roads and highways, which is where I will focus the bulk of my comments today: Bridges, rails, mass transit and so on. I think most people don't really recognize how widely utilized PPPs are in the transportation arena in the United States.

If you have been to Washington, D.C. recently and you've used our subway system, Metro, as we call it, when you get to the New York Avenue Metro Station, Penn Station was built through a public private partnership. If you've flown from JFK airport and you've used the New International terminal, it was built through a PPP. If you have gone on vacation on the Gulf of Mexico, your cruise ship was docked at the Port of Galveston, PPPs were utilized to help support, construct those port facilities. So again, you see a lot of flexibility in the types of infrastructure that you can generate through public private partnerships.

Road and highway PPPs are being utilized more and more, not just in the United States, but around the world, and I had the opportunity, in June of this year, to participate in the delegation that was sent by Ashco and the U.S. Department Of Transportation, to look at best practices of public private partnerships and other funds that were utilized in PPPs. The delegation was primarily State and local transportation officials.

I was the private sector representative and we went to Spain, the United Kingdom, Portugal and Australia and what struck me, as I was preparing to comment here, was the Portuguese example, Portugal is a country with a population of 10.6 million 53,645 square miles, which is about 80 percent of the size of the State of Pennsylvania. And in the early 1990s Portugal had essentially no national highway system.

They made a strategic decision to utilize public private partnerships to develop a national highway system. Today they have more than 2,000 miles of national highway. '94 percent of it constructed and operated through the utilization of PPPs. To me, that's a very compelling example of what public private partnerships could do to leverage scarce public funds. The Portuguese public officials were very

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clear to us, in their comments, that they could never have accomplished this had they needed to wait for the availability of public funds.

In the U.S., we see high growth highway PPPs. In a number of states now, including my home state Virginia, Texas, Massachusetts, Indiana among others.

I wanted to walk through a couple of examples of recent PPP projects for roads and highways, and the first one is Massachusetts Route 3 North. Massachusetts Route 3 North connects the northern part of metropolitan Boston with the New Hampshire state line. It has a lot of commuter traffic, it was heavily congested and in significant need of improvement, about a 21-mile stretch of highway, and the Commonwealth of Massachusetts regarded this as a priority project, but the estimated cost was about for $400 million, and I'm sure that you can appreciate how daunting a prospect of raising $400 million for that project that it was.

So the State decided to seek a public private partnership solution. In 1999, the Legislature enacted the project-specific legislation to enable a PPP to be utilized. They used a design to build, finance and operate DBFO model in which they used IRS Ruling

6320 to create a non-profit entity whose sole purpose was to build, operate and maintain the needed improvements along this roadway.

The non-profit entity issued bonds, which was utilized to finance the project and the state legislature, with appropriate funds, over a period of just over 30 years, 30 years for the operation of a project that was used prior to that construction to repay the private partner for the cost of the project.

So by utilizing this mechanism, the state was able to avoid entering into a holding arrangement, but to stretch the payments over a 30-plus period of time to make the project affordable now instead of later without increasing the State's debt.

To help control the price of the project, they sought to utilize some other innovative means, such as allowing the private partner to a fiber optic, down the median strip and sharing the revenues from that to allow them to sublease the service plaza and other measures assigned to, again, control the project cost.

Construction began in October 2000, the exit lanes were completed and in use by 2004. The project is now complete and it's an example of one

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successful model for public private partnership.

I would like to talk next about the Chicago Skyway, which was addressed a little bit earlier today. The Skyway, which is an existing 7.8 mile elevated roadway, it connected the City of Chicago to the Indiana border actually to the Indiana toll road, it was built in 1958, and by 2004 it was carrying about 50,000 vehicles per day, generated $44 million in revenue a year, which a lot had operated a profit and in fact it had operated at a profit for about a decade.

But the City decided to look at this and they asked the question, even though we are profitable, is this the best utilization of this resource? Is there some other way that we can utilize this resource and generate more revenue for the City than by continuing to operate it ourselves.

So in March of 2004, the City announced they would seek public private partnership proposals. They had ten expressions of interest, the qualified 5 bidders to commit final proposals. They received proposals in October of 2004, awarded a contract and the private partner assumed operations in January 4, 2005.

Now, the way that this agreement was structured was that the private partner paid $1.83

billion up front to operate, maintain and develop the skyway for 99 years. The lease payment was so large and in fact significantly larger than the City had anticipated, and that allowed them to create several infrastructure and investment funds.

They had a number of infrastructure projects immediately and over the next five years around the City, but I think the most remarkable thing about this particular partnership is that the amount generated by this long term lease was so great that the annual interest that the City receives now on that investment is greater than the entire 44 million a year in revenue not profit that they were generating before they entered into the PPP.

You had a couple of questions when Chief Counsel Lemon was presenting his testimony earlier today, and they were excellent questions, and I would like to briefly address them as well. One of them was, Does it make sense to inter into a long-term lease for a project like this, where the public sector has already paid for the asset? And my answer would be, That depends on your objective. In this case, the City of Chicago wanted to maximize the return of that taxpayer investment and they felt that over the long-term, by entering into this type of lease, by getting the money now, it could be invested and both in terms of interest and in terms of some of the immediate infrastructure needs of the community, that was in the best interest of taxpayers. Had their objectives been different, had they felt, for example, that maintaining operational control and flexibility, in terms of this infrastructure asset, it was the most important thing, then an agreement like this would not have made sense.

I would like to emphasize that there are a number of different models of public private partnerships, which you chose, that are very closely related to your specific objectives for that project. One of the other questions that we have related to the non-compete agreement that the City entered into. I would say that non-compete agreements, one sort or another, are fairly standard for P3 agreements of this type, and whether that non-compete is exclusive non-compete, the duration of the contract or whether the public partnership is divulging its plan and saying that we are not going to develop anything, but we will complete this roadway within the next 20 years, but in 2030, our long-term plan indicates that we might need to expand and put another roadway into place and you need to take this into account. Which ever type of approach you utilize, what the non-compete clause does is to allow a private partner to evaluate and quantify the risk so that they can submit a proposal that offers the best deal possible for both parties.

If they can't evaluate the risk adequately, then financing the risks costs money and increases the cost of the public sector to the project. So allowing the private sector to quantify and limit that risk is generally an appropriate thing to do.

Now, in this particular case, the City of Chicago offered the project in 2004, first asking for expressions of interest, and by 2007 they were already expressing some regret about the growth of the traffic and the severity of the non-compete they had signed.

And personally, I feel that this indicates a failure of planning process that they should have been able to anticipate in 2004 what the demands were going to be in the future, that's not to say it's always easy, but in terms of what type of non-compete you decide and how much you limit the risk of the private partner composition is an important consideration.

So you've seen now two different models

in my two examples. Some of the advantages of P3s are providing project financing, reducing the level of public sector investment necessary to accomplish projects. Accelerating project delivery, mobilizing underperforming assets to maximize public revenues, transferring risk to the private sector.

But if you want to maximize the benefits of these projects to the State, I think an important consideration is to be as flexible as possible. Allow yourself to chose from amongst many models of the public private partnership to select that model that is most appropriate for the specific project and your objectives as the state legislature.

Both the House and Senate bills that I have looked at appear to be sound pieces of legislation for significantly advancing the ability of the State to enter into the agreements. However, I thought that the House Bill appears to be more flexible, in that it provide capability for the long-term lease agreements.

And what I would emphasize is that even if you don't want to enter into a long-term lease agreement on a specific project today, if you are implementing legislation that will be in effect for years to come, having that capability to be utilized for

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a future project, which you might want to enter into a long-term lease, it makes more sense rather than going back to amend the legislation at a later date.

As we look at P3s and your transportation needs, sometimes these things seem controversial, they seem new, but Pennsylvania is actually one of the nation's pioneers of highway PPPs. 1791 Governor Thomas Mifflin observed that there was some severe short falls in the State's road infrastructure and they were an impediment to the economic development. He expressed the sentiment not terribly different of Governor Rendell today. The state looked at building a highway between Philadelphia and Lancaster, but the cost of this highway would have been $450,000 which, in 1791, was a lot of money and beyond the State's ability to finance.

So the Legislature began to consider the possibility of venturing into public private partnerships. This was a very controversial proposal. The mayor of Philadelphia, and other dignitaries of the time, went on record as opposing this radical new concept, but in April of 1792, the state legislature passed an act which allowed the creation of Philadelphia Lancaster Toll Road Company, which built the

Philadelphia Lancaster Toll Road, and the project was completed by 1795, and it was greatly facilitating the economic development for Pennsylvania for decades to come and served as a model, due do its success, for future PPPs that the State entered into, such as the Lewisburg and Mifflin Turnpike Company and the Centre Turnpike Company, which connects the Reading and Sunberry.

So the model that the state has utilized in the past, with success overtime, as the State became more prosperous and populous leveraging private funds with private funding became less of a priority, but given the funding needs that -- not just Pennsylvania, but the rest of the country, the rest of the world are facing now, in terms of the infrastructure and funding deficits, perhaps it's time to consider it again.

Those with an interest in history, I have a copy of one of the original stock certificates for Philadelphia and Lancaster Turnpike in 1795.

With that, Mr. Chairman, I conclude my comments, and I would be delighted to answer any questions. Thank you.

THE CHAIRMAN: Good. Thank you very much.

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Representative Harper.

MEMBER HARPER: Thank you for your testimony. You actually, more eloquently than I did, stated what I was trying to state in my first question, which is to the extent that you put restrictions on what the private entity can do, it's going to lower the price that the government gets, the Commonwealth gets, fair enough?

MR. SMITH: Absolutely correct.

MEMBER HARPER: So the problem I'm having with enabling legislation where I don't know what project will be on the table or don't know what project will actually be subject to this is how much control do we put in the legislation or do we just leave it up to some agency, Penn Dot or somebody else to craft deeds, leases or long-term agreements or PPP agreements; what's your recommendation with regards to that?

MR. SMITH: Typically enabling legislation provides an overview of the types of things that should be considered by the individual transaction agreement without going into a whole lot of detail about the specific cost benefit ratios project relations, et cetera and price to provide as much flexibility as possible. I think that that's probably the best way to go, based on the experience of Indiana, Chicago, Commonwealth of Virginia and other places where such legislation has been put in place.

MEMBER HARPER: I think that probably would result in better prices and possibly better arrangements. My worry is that if we give some agency, who is under tremendous pressure to raise money, the sole ability to negotiate a lease or sale or PPP that the need for money will trump the public's interest in say the need for rate caps on tolls or the need for not agreeing to non-compete clauses and things like that. Have you seen that in your examples?

I mean, the example that was used was the Chicago skyway. They agreed to, or whoever negotiated that deal, agreed to a non-compete clause and you called it a failure of planning. Well, that's probably the first failure of planning that's ever occurred when the government negotiates something -- I'm kidding. I mean, you ought to expect that, right? That whoever is doing a lease might fail to perceive a certain risk that will come back and haunt the public.

My question is, how are we going to make sure the public interest is -- and I'm not saying the public interest doesn't have an interest in getting money with these assets, I'm a little worried. How do we preserve the public interest if we give carte blanche to any agency who can negotiate these things; what's your experience there?

MR. SMITH: Well, I think the issue you raised is certainly a valid one. It applies not just to long-term lease types of agreements, but any type of complex transactions between multiple parties. As an example, the Pocahontas Parkway, in the Commonwealth of Virginia, it was originally built by a public benefit corporation. The demand projections were over optimistic and the total revenues that were raised by the project were insufficient to support the project, and the eventual solution entered into by the Commonwealth of Virginia was to turn it into a different type of PPP and convert it from a public benefit corporation to a long-term lease with an up front payment, all of the Chicago Skyway, and that appears to have solved that problem.

These types of risk do exist in any type of transaction and then if you, without having individual approval by the legislature of each individual project --

MEMBER HARPER: Which might be

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cumbersome.

MR. SMITH: I expect it would be. That has been the experience of that type of approval process. I think an immediate solution that has been utilized is to have a PPP unit at the State government level that would look at individual projects and ensure the technology and the financial rationale appears to be logical or used as the State's audit agency to take a look at the individual numbers prior to signing off on the specific transaction.

MEMBER HARPER: It also appears that both of the bills that we have in front of us actually put some responsibility on the State Transportation Commission?

MR. SMITH: Yes.

MEMBER HARPER: So it's a public entity so maybe that's the solution. Thank you very much.

Thank you, Mr. Chairman.

THE CHAIRMAN: Representative Wheatley.

MEMBER WHEATLEY: Actually, I think Representative Harper kind of asked the question I guess I was thinking about in a different way, being that I know there is some concern or some interest in having the general assembly have more of a say in some of these types of engagements and I look at it from a very different type of angle. It's hard for us sometimes to respond in the best way that we should for future situations. We have our own political pressures to make decisions not necessarily based on long-term ramifications, but what's best for our political interest at the time.

How do you define -- really, to those other states that you have initiated these types of activities, and I think you mentioned at least two. I thought I saw one on your presentation, four states. When they have their legislation, what types of processes are in place to allow for or to enable these types of things to happen?

MR. SMITH: The legislation at the state level vary significantly. For example, within the State of Virginia, the Virginia Public Private Transportation Act, in 1995, gives the authority to the Virginia Department Of Transportation to approve and enter into PPPs projects. It includes a very specific process by which each contemplated PPP is evaluated. Public hearings are held, a request for proposal interests, there is a requirement for evaluating its continuity conformance with the State transportation plan, a

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certification that missed something that is needed and utilized, PPP models will provide a better deal in using entirely State financing. So it's a fairly rigorous framework that is developed, but it avoids the legislature having to approve individual agreements.

Indiana, which is another example that I used, does not have the capability to do that without approval by the legislature and that proved the case of Indiana toll roads, they're both municipal projects. On the state level, to be a source of significant debate, controversy and delay they processed what should have been, in my view, a business decision on the part of the State, became highly criticized and eventually passed by a single vote.

MEMBER WHEATLEY: One of the things I keep hearing over and over at these hearings and as we talk about PPPs is the advantage of doing them allows for quicker responses, allows for an investment that typically the taxpayer, the government cannot afford so it would almost be like we would be putting another barrier in front of what we are saying we want to streamline, for quicker response and a more streamline process to get our critical infrastructure need taken care of and at the same time protect the interest of the public.

I guess, the balance is always what we are struggling to get to, but I definitely appreciated your interpretation. It simplified a lot of things in my mind that was still very complex around this conversation.

And Mr. Chairman, I look forward to not only these bills, but the other bill that is coming before this Committee.

Thank you.

THE CHAIRMAN: Okay. Thank you.

I have a couple of questions myself.

As I understand, from your testimony, the Massachusetts Route 3 North project, just for my own edification here, is that a toll route?

MR. SMITH: No, it's not. The reason the State had to finance it over a period of 30 years is that they did not want to implement a toll on the road; therefore, State financing was necessary, but since the State didn't have $400 million available immediately, they used this particular structure PPP, it's a method for spreading the total over a long period and making the annual payments affordable to the state.

THE CHAIRMAN: What would be the

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difference in, say, for a State like us here, in Pennsylvania, where we have no P3 laws on the books yet, if we need to widen a road similar to that? We would think in terms, in some cases, like we did for our bridge program, simply put, floating bonds and borrowing the money. I guess I'm trying to see what the difference between doing that and what is done in Massachusetts?

MR. SMITH: The State of Massachusetts did not want to borrow the money to finance this project. Under the IRS Ruling 6320, the IRS allows the probation of a non-profit entity, which is not part of the State government, not part of a private entity which has the sole purpose of developing an infrastructure asset. Now, normally, when a private party issues bonds to finance a project, the Revenue wants those bonds as taxable, but under IRS Ruling 6320, if a private entity, non-profit, with the sole purposes of developing an infrastructure, for the public benefit issues bonds, then the interest of those bonds is non-taxable.

So you have the same tax benefits for the investor as you would with the government bond, but it's not government debt. The debt is on the book as a non-profit entity. So the state was able to embark upon

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this project with a private partner assuming the construction risk, finance risk, et cetera without incurring any additional State debt other than it gives the obligation to annually appropriate funds for the annual payment, but the state does not incur any debt.

THE CHAIRMAN: First of all, the advantage, from what I understand, from what you just said, is that they got a tax break on the bonds, but in terms of the actual payments by the State, it sounds like at the end of the day the Legislature still has to come up with payments. Whatever you might want to call them or how it's on your books, it's a payment by the State?

MR. SMITH: Well, there is certainly a moral obligation to make those payments, but legally the State is not obligated to be responsible for those payments.

THE CHAIRMAN: The other question I have is relative to the Chicago Skyway. You mentioned they took that money and floated some other bonds and whatnot, if I understand your testimony. Is that money -- what's that status of that money now? Is it still around? Is it gone? Has it been spent on a transportation entity?

MR. SMITH: They did not spend it entirely on transportation efforts. What they did was to put aside $100 million to be spent over a 5-year period on area neighborhood social service and infrastructure projects. They invested about $800 million in various interest generating investments. They have plans to spend some of the remaining funding over a period of time on some of their transportation projects.

What they did was set enough aside in investment funds, bonds, et cetera to create more revenue than they would generate from the entire toll proceeds from the skyway previously, not just the profit, but the total revenue. So they acquired several 100 million that they can spend over the next few years. We are still retaining these long-term investments for the taxpayer.

THE CHAIRMAN: Is that interest revenue that they now get from these investment more than or less than the current tolls. Because when the private owner came in, they have now raised the tolls, if I'm not mistaken.

MR. SMITH: That's correct.

THE CHAIRMAN: Are you comparing the

investment income that they're getting now compared to the new toll rate or to what the old toll rate was?

MR. SMITH: That's to the old toll rate. They are comparing the 2004 revenue, which is the last year in which they operated for the whole year, to what they now receive each year. And I have not seen published figures on the revenues that the private partners are receiving now, but just to make sure that we're comparing apples and apples, we're talking the total revenue was $44 million previous. Their profit was much smaller than that. We're talking 1 to 2 million dollars. They are making that interest more than $44 million a year now and they have no expenditures. That's all the profit. This is a tremendous increase.

THE CHAIRMAN: One last question. I think Represent Miller also have some questions. The Portuguese example that you had, that they spend or they have about 94 percent of their new construction -- I'm not sure how you described it -- from PPPs. Do they get the same -- is their federal system, if you want to call it that, the same as ours when they get the tax breaks similar to what we would have here with public bonding as opposed to private bonding? Do you know the answer to that? Do you understand what I'm asking?

MR. SMITH: I do, but I don't know how their bonding system works.

THE CHAIRMAN: Okay.

Representative Miller.

MEMBER MILLER: Thank you, Mr. Chairman.

Just one quick question. When I talk to my constituents, I often hear my constituents say they have concerns about leasing, what they consider to be public property, and that's fine, but they really express a concern when it might be a lease to a foreign entity.

Has your organization, the NCPPP, addressed that in anyway? Do you have any white papers that might be useful to us?

MR. SMITH: I will check and I will let you know whether that's something we specifically addressed on one of our white papers. We do, at our website, have a couple of white papers intended for public officials, on some of the issues that have come up here.

Just to give you a brief answer. That concern is certainly one that we have heard expressed before. That was one of the most political aspects of the Indiana Toll Road contract, for example.

As you look at this, what is the real source of concern here is because the roads or the means of profit vary from different property of the public sector. The State of Pennsylvania will still own any road which you entered into over a long-term lease agreement.

It's a foreign company, but they can't roll up the road and take it back to Australia or the United Kingdom or where ever they may be based. The maintenance of the road still needs to be done where the road exist physically exist. So a job base remains clear in Pennsylvania related to that road.

And what I see, from my perspective is that when you have a foreign partner, whether it be from Spain or Australia, you can or where ever it may be, that is willing to come and invest in Pennsylvania, that's a good thing and once they have made that investment, they want to make the deal work because they are here for the long-term.

As we look at some of the major transactions that have occurred in long-term leases across the United States; The Chicago Skyway, the primary partners were Australia and Spain. The

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Pocahontas Parkway Project was a different Australian toll road operator that was the primary private partner, but to me, if major companies in other countries regard the United States as a good sound place in which to make long-term investments, that will build our infrastructure, keep jobs here and work to the economic development of our communities, I don't see a problem with that.

REPRESENTATIVE MILLER: I appreciate that answer. It's pretty much been my response to constituents, but I think it's one of those issues we're going to have to continue to address as we move forward.

Thank you, Mr. Chairman.

THE CHAIRMAN: Chairman Geist.

MEMBER GEIST: Thank you, very much.

The Wall Street Journal had a really good article as well as the New York Times, within the last few weeks, with public private partnerships. One of those stories mentioned that the availability right now, of identifiable funds of $250 billion in America to invest in P3s. Is that number accurate or what do you think the real number is?

MR. SMITH: I have seen a variety of estimates.

MEMBER GEIST: So have I.

MR. SMITH: Then you are aware that they vary considerably and I really can't tell you whether the $250 billion is the right number or whether there are $350 billion available, but here, within the U.S., if the right projects were offered up, I think the key thing is the projects compete in a global market and it's a matter not of how much money there is to invest here, but in how competitive our projects are against those that are being offered up to American companies to invest in opportunities in Australia or Spain or the United Kingdom or other countries that use those types of arrangements.

That's one of the things that makes it so difficult to assess.

MEMBER GEIST: You are actually a good politician to jump overall the place. Thank you.

THE CHAIRMAN: Okay. Thank you. Yes that was a very good answer and it was a very good presentation. We appreciate that.

We want to thank you for attending here today, traveling again from out of state and coming to visit us here in Philadelphia, we really appreciate that a lot. Thank you very much.

We have scheduled some Representatives from the US Government Accountability Office. They have informed us that they could not attend, but they have sent their written testimony to us.

So that will conclude our presenters. I just want to, for the information of members, let them know that tomorrow morning, at 9:00, is our next meeting here in this room. We will have a briefing then a tour of transportation issues and venues here in the Southern Pennsylvania area.

With that, again, I want to congratulate the members for their fine questions, and thank you all for coming. Meeting adjourned.

(Whereupon, the above-entitled matter was adjourned at 3:00 p.m., this date.)

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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the stenographic notes taken by me on the hearing of the within cause and that this is a correct transcript of the same.

VIRGINIA JONES-ALLEYNE
PROFESSIONAL COURT REPORTER