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UNLOCKING THE PRIVATE SECTOR: STATE INNOVATIONS IN FINANCING TRANSPORTATION INFRASTRUCTURE

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UNLOCKING THE PRIVATE SECTOR: STATE INNOVATIONS IN FINANCING TRANSPORTATION INFRASTRUCTURE

THURSDAY, JUNE 25, 2015

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Cornyn, Coats, Heller, Wyden, Menendez, Carper, Brown, Bennet, Casey, and Warner.

Also present: Republican Staff: Chris Campbell, Staff Director; James Lyons, Tax Counsel; and Nicholas Wyatt, Tax and Nominations Professional Staff Member. Democratic Staff: Ryan Abraham, Senior Tax and Energy Counsel; Robert Andres, Research Assistant; and Jocelyn Moore, Deputy Staff Director.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will come to order. I would like to welcome everyone to today's hearing on alternatives and additions to Federal and local infrastructure funding.

Last week we had a hearing on infrastructure funding specifically focusing on the status of the Highway Trust Fund and our looming deadline for renewal at the end of July. Today we will discuss a separate but important topic, which is how States are using innovative financing to facilitate construction of infrastructure projects.

At the outset, I want to make sure that it is clear that, while they are important, these financing alternatives and ideas are not meant to address the immediate shortfalls in the Highway Trust Fund. As long as our Federal highway program is based upon reimbursements to States made on a formula basis, there is no workable substitute for Federal funding, in the opinion of many.

Instead, today's discussion will be about additional tools that States can use to better determine and respond to their own infrastructure needs. I think we also need to be clear on what financing is and what it is not. Because of the large capital costs associated with infrastructure, financing alternatives can give States more flexibility in producing the capital they need to build projects faster. However, we should also remember that financing carries with it the expectation of repayment and future return.

During last week's hearing, Dr. Kile from the Congressional Budget Office noted that, "Regardless of its source, financing is only a mechanism for making future tax or user fee revenues available to pay for projects sooner. It is not a new source of revenues."

Pulling taxes and other revenues from the future into the present does not create new resources. It is also important to remember that there are various ways to use alternative financing mechanisms to shift risk, but financing tools alone do not get rid of risks.

Having said that, as Mr. Narefsky, who is on our panel today, notes in his written testimony, "There is bipartisan support for public-private partnerships at both Federal and State levels."

Now this is certainly true, and I think this distinguished panel of witnesses we have here today demonstrates that interest. However, while there is bipartisan consensus on examining alternative ways of financing for infrastructure projects, many obstacles facing infrastructure projects remain, including significant obstacles imposed by the Federal Government itself.

For example, as Governor Daniels notes in his written testimony today, it takes an average of 7 years for the Federal Highway Administration to complete an environmental impact statement on a single proposed highway project. By comparison, the Hoover Dam, often cited as an exemplar of robust infrastructure policy, was built and completed in only 4 years.

We need to do better. I hope today we can have a robust discussion on what we can do at the Federal level to make these processes more efficient. Working with States on innovative infrastructure financing allows for decisions to be made closer to the people whom the projects are intended to benefit.

I have an example from my own home State of Utah. In 2008, the Utah Department of Transportation, or UDOT, was in the process of designing and constructing the first phases of the Southern Corridor near St. George. The Southern Corridor is a brand new highway that provides regional transportation among multiple communities, plus a new access point for those communities to Interstate 15 and improved access to a new, larger airport constructed in St. George to accommodate the growing communities.

During the design of the Southern Corridor, a private developer expressed a desire for an interchange to access his property. This interchange was not in the original plans. However, the developer was willing to pay for the construction of the additional interchange himself.

Using a State Infrastructure Bank, UDOT partnered with both the city of St. George and the private developer in order to finance the interchange. Under the arrangement required by the State Infrastructure Bank, UDOT entered into a loan agreement with the city of St. George in the amount of $3.7 million to construct a bridge for the interchange.

Afterward, the developer repaid the cost of the loan to St. George and chipped in another nearly $2 million of his own capital to build the ramps and street network required for the new interchange.

I am recounting these transactions not because they represent high political drama or intrigue, but because they demonstrate how innovative financing arrangements with the private sector can be useful in improving our infrastructure by making new opportunities possible and relieving the burden on taxpayers.

For me, the larger questions for today's hearing are not whether we should encourage public-private partnerships and innovative financing, but how we can ensure that the taxpayers are the ultimate beneficiaries of these deals and not just bearers of risk. It is clear that done right, these types of financing mechanisms can help us cut through red tape and promote local control of infrastructure development.

Now, I hope that we can have a good discussion of these issues and work toward improving a system that clearly could benefit from increased efficiency.

[The prepared statement of Chairman Hatch appears in the appendix.]

The CHAIRMAN. With that, I yield to our ranking member, Senator Wyden.

OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM OREGON

Senator WYDEN. Thank you very much, Mr. Chairman.

Mr. Chairman and colleagues, I am sure a lot of Americans this morning wonder if the Congress can put together a two-car parade. When you look at 33 consecutive short-term patches for infrastructure, it certainly seems that the Congress may not be able to pave the parade route either.

Now, this is the second time in 8 days the Finance Committee has come together to take a hard and careful look at the Nation's infrastructure challenge. By now, there is a pretty good consensus with respect to the dire condition of our roads, highways, bridges, railways, and ports. You simply cannot have a big league economy with little league infrastructure. Yet, our transportation networks are crumbling. The price tag of maintenance down the road is growing, and America's infrastructure is falling far behind our competitors.

Now, last week our hearing focused on the drastic shortfall in transportation infrastructure funding, which leaves the Highway Trust Fund running on fumes every few months. Finding a pathway to a long-term source of revenue for the trust fund is absolutely essential so that projects can get underway and construction workers can stay on the job.

To solve this challenge, the Highway Trust Fund has to be solvent and healthy. But I want to make clear this morning, that is only one part of the solution. Our country needs more than $1 trillion of new investment just to get our infrastructure up to a level of good repair.

Even with a steady stream of revenue, there is still a big gap between the work that needs to be done and the resources needed to make it happen. That is why it is so critical that the Congress find some fresh ideas to get projects off the ground, including financing tools with proven records of success.

That is why today's hearing is going to focus on getting private dollars off the sidelines and into the game on infrastructure. Six years ago, when the Senate was looking for a way to spark investment in infrastructure, it turned to a proposal that I and a bipartisan group of colleagues had been supporting for some time, called Build America Bonds.

At that time, I think I was sitting down with my friends Senator Brown and Senator Casey. I was a little surprised I got called on. And people said, “Ah, that is kind of a nice little idea that the fellow has that might generate $4 billion or $5 billion in private investment.”

That was a pretty big underestimation. In less than 2 years, Build America Bonds sparked more than $180 billion worth of investment. My State took advantage of the program to build a new interchange in Eugene, improve the highways around Clackamas County and Bend, and a whole host of other projects around the State.

States all across America used these dollars to put similar projects together. So there should not be any question as to whether there is an appetite for effective financing tools for infrastructure.

Last month, Senator Hoeven of North Dakota and I introduced a bipartisan bill called the Move America Act to provide an effective new approach to financing. It picks up on several of the best features of Build America Bonds, and our new proposal, according to the Joint Committee on Taxation,* which is sort of our scorekeeper around here, states that our proposal would turn an $8 billion taxpayer investment into $226 billion worth of infrastructure projects.

Our bipartisan proposal cuts red tape that has been a bureaucratic nightmare for States, localities, and the private sector in the past. But unlike Build America Bonds, this is not a 2-year proposal. This is a proposal that would be permanent. The Congress should not put an expiration date on sensible bipartisan ideas.

I believe the Move America Act, and the smart approach to financing it represents, can be a key part of the long-term plan that solves our transportation infrastructure crisis. There is a lot of work to be done, and it cannot begin as long as the Congress keeps falling back on short-term funding patches. On this issue, the Congress has punted more times than the Oakland Raiders.

So it is time to do better. And I just want to make one last point, because I know Governor Daniels is here, and I just want to say that I think the Governor, in particular, has been a real force for State innovation in a whole host of fields.

I remember his tenure at the Office of Management and Budget, and the Governor helped me, in particular, with focusing on approaches to encourage State innovation in health care, the approach I got in the Affordable Care Act, which fortunately has now been sustained by the Supreme Court.

We are going to be able to build on that. We are going to be able to build on State innovation. States with progressive ideas and States with conservative ideas, they are all going to be able to use the States as a laboratory of ideas. And Governor Daniels had that conversation with me a number of years ago.

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*For more information, *see also,* “Overview of Selected Provisions Relating to the Financing of Surface Transportation Infrastructure,” Joint Committee on Taxation staff report, June 23, 2015 (JCX–97–15), *https://www.jct.gov/publications.html?func=startdown&id=4796.*

So I really welcome him here. I think he is going to get a formal bouquet-tossing from my friend and colleague, Senator Coats, but, Governor, we are glad you are here. And I want to thank all of you from the private sector as well, because I understand you sort of burned up the phone lines with my staff working on Move America.

[The prepared statement of Senator Wyden appears in the appendix.]

The CHAIRMAN. Thank you, Senator.

Yes. *King v. Burwell* was sustained, something I said this morning to a group that I thought would happen, and we can live with that, whatever the Court does.

But we have a very distinguished panel here this morning, and I want to thank all of you in particular for being with us today.

Our first witness is the former Governor of Indiana and current president of Purdue University, Mitch Daniels. Let me just say that Mitch came with Senator Lugar and me to the United States Senate back in 1977, and I have known him ever since and have been very privileged to know him as one of the truly great people on Capitol Hill, but also one of the truly great staffers, and also a really wonderful Governor.

A lot of us have always been a little bit miffed that you did not run for President so far. So if that is a little prod, pay attention.

We are glad to have you here. We have Senator Coats, who is our Senator from Indiana now, and he will introduce the Governor formally.

Senator COATS. Mr. Chairman, thank you. I really appreciate you chairing this hearing this morning. It is an important one as the committee continues to address the very critical needs of America's infrastructure and particularly the issue of building highways, repairing highways, and repairing bridges that are crumbling across the United States.

I am really pleased to have our former Governor and now president of Purdue here to testify. We in Indiana do not like to go into debt. We do not like to raise taxes. Governor Daniels found a way to address the issue of repairing and building roads in Indiana and repairing and building bridges in Indiana without having to do either one of those.

The purpose of our hearing is how we can address issues that would incorporate the private sector into helping us advance transportation improvements. Public-private partnerships, or P3s as they are called, get the private sector off the sidelines and create new resources to meet our growing transportation needs, and they also accelerate the process of addressing these needs.

Obviously, P3s do not solve all of our infrastructure problems, but they can play an important role.

So I am pleased to introduce Governor Daniels to talk about a major P3 success in my home State of Indiana that demonstrates the benefits offered by such partnerships. After his election in 2004, Governor Daniels tasked his Cabinet to find a way to fund the hundreds of road and bridge projects that had been promised to Hoosiers for years, but not accomplished.

They needed a solution that did not involve raising taxes or taking on more debt, and they began exploring the feasibility of leasing the Indiana toll road to a private entity. After a bidding process involving 11 proposals, a 75-year lease concession was awarded to a private consortium for a single lump-sum payment of $3.8 billion. That figure is nearly four times the yearly allocation that Indiana receives from the Federal highway programs under MAP–21.

Governor Daniels used the proceeds from the lease to fund a large number of highway construction and preservation projects under his monumental Major Moves initiative. Major Moves fully funded the State's 10-year transportation plan, including 65 roadway projects and 720 bridges rehabilitated or replaced by 2012.

Major Moves accelerated critical projects throughout the State, such as Interstate 69, the Hoosier Heartland Highway, US–31 from Indianapolis to South Bend, Fort to Port, and the Ohio River bridges. In addition, the seven counties through which the toll road ran received payments of between $15 million and $40 million for local transportation projects.

The 75-year lease that Governor Daniels secured was an extraordinary accomplishment with spectacular results for our transportation system. This is just one example of Governor Daniels's many visionary moves for the State of Indiana during his tenure. During that tenure, Indiana went from a bankruptcy situation to a AAA credit rating. He led the Nation in infrastructure-building and passed sweeping education reforms, as well as the Nation's first Statewide School Choice voucher program.

Governor Daniels is currently the 12th president of Purdue University. He has gone forward with his vision to prioritize affordability and student success. He froze tuition hikes and has committed to maintain that freeze for 4 years. He has called for greater accountability in higher education, and in recognition of that and his leadership, both as a Governor and now as a university president, he was named among the Top 50 World Leaders by *Fortune* magazine just recently.

His public service, Mr. Chairman, as you have acknowledged, included his engagement with Senator Lugar. He went on to be senior advisor to President Reagan, and then Director of the Office of Management and Budget under President George W. Bush.

I would like to welcome Governor Daniels to the committee. And again, Mr. Chairman, thank you for the opportunity for me to introduce our Governor.

The CHAIRMAN. Thank you, Senator. I thought you did a great job for a very fine, great man, as far as I am concerned.

Our next witness is the Executive Director of the Colorado Department of Transportation, Shailen Bhatt. He has previously served as the Cabinet Secretary of the Delaware Department of Transportation and served as an Associate Administrator at the Federal Highway Administration.

I recognize Senator Bennet to introduce Director Bhatt.

Senator BENNET. Thank you, Mr. Chairman. I am very grateful.

It really is my pleasure to introduce our second witness, Shailen Bhatt, Executive Director of the Colorado Department of Transportation.

CDOT maintains and repairs over 23,000 lane miles of highway and more than 3,400 bridges. Our roadways handle more than 28 billion vehicle miles of travel per year, and, if you are on our roads this weekend, the likelihood is you would see a license plate from almost any State in the Union, people who have come from all over the country to visit what we consider to be the most beautiful State in the country.

Before he moved to Colorado for this job earlier this year, Director Bhatt served as the Cabinet Secretary for the Delaware Department of Transportation. In that role, he developed a prioritization process for capital projects, tracked performance management, and reduced his agency's debt by nearly 40 percent.

Before then, he served as Associate Administrator at the Federal Highway Administration. There he established the Every Day Counts initiative, which helps States to identify and deploy proven innovations that shorten the project delivery process, enhance roadway safety, and reduce congestion.

He also served as Deputy Director of the Kentucky Transportation Cabinet and as chair of the I–95 Corridor Coalition.

As you can tell from his resume, he has a lot of experience with identifying innovative financing solutions for infrastructure projects. That is why I know the Governor wanted him to come to Colorado, even though he was coming from a State that is smaller than some of the counties in Colorado.

In Colorado, we have a few projects that we are particularly proud of that I believe can serve as models for the country in terms of multimodal transportation and public-private collaboration. I look forward to his testimony, as well as the other panelists.

Thank you, Mr. Chairman, for the honor of introducing this witness.

The CHAIRMAN. Thank you, Senator.

Next, we will hear from David Narefsky, who is a partner and co-leader of the Infrastructure Practice Group at Mayer Brown LLP. Mr. Narefsky is a graduate of the University of Michigan law school and has been involved in infrastructure agreements in both States represented here, Indiana and Colorado. He has also advised on numerous projects, including the Chicago Skyway Toll Bridge.

Last, we will hear from Baruch Feigenbaum, the assistant director for transportation policy at the Reason Foundation. Prior to that, Mr. Feigenbaum handled transportation issues for Representative Lynn Westmoreland. He has a master's degree in transportation from the Georgia Institute of Technology.

I want to thank you all for being here.

I also want to take a minute to recognize the roles of Senator Coats and Senator Bennet in putting this hearing together with the excellent panel we have before us.

So, Governor Daniels, we will start with you. Go ahead with your testimony.

STATEMENT OF HON. MITCHELL E. DANIELS, JR., PRESIDENT, PURDUE UNIVERSITY, WEST LAFAYETTE, IN

Mr. DANIELS. Thanks, Mr. Chairman.

These days I do wear the uniform of Purdue University, which, as it happens, has probably produced more engineers, specifically civil engineers, than any university in the country. But I know I was invited here for a different reason, and that is because of Indiana's unique status as a State which has, not solved its infrastructure problems forever and all time, but has advanced more directly against them than any I know of.

Indiana is now in year 9 of the 10-year program that Senator Coats referenced. By the time it is done, more than 100 new projects will have been completed, more than 1,000 bridges will have been repaired or replaced, and more than 6,000 miles of roadway will have been resurfaced.

It was a great joy of public service to watch literally the dreams of decades become real. Project after project that people said would never happen are now being completed in Indiana.

This was only possible because of the lease which we were able to secure. We essentially converted a toll road losing money to a tightly regulated public utility. The tolls on that road, by the way, are the same today that they were in 1985 and will only rise under regulated rates throughout the duration of the lease.

We received—and there was some good fortune and good timing involved—three times the status quo present value of that road in government hands. It is very important to say that every penny, we insisted from the beginning, had to be reinvested for long-term purposes.

So, having paid off the 50-year-old debt still on the books of the State and setting aside $.5 billion as a trust fund to augment highway money in perpetuity, all the rest went into long-term investment. Not one penny, I have to reiterate, was allowed to be spent on current operational problems or priorities.

This is a practice which is familiar in the rest of the world and is spreading, in fact, often with the active encouragement of government. I refer you to Australia as perhaps the single best example. But this was simply, as we saw it, a way to liberate the trapped value from an underperforming asset and then to reinvest it in assets, these new projects I talked about, that we thought were in the long-term interest of our State.

Along the way, we experimented with a variety of other ways to involve private capital, that capital which, as Senator Wyden correctly said, is sitting eagerly still on the sidelines in this country, although actively employed in other places, and each of those experiments was a big success.

At this moment, one of the mega-projects that I talked about is within a year or so of completion: two new bridges across the Ohio River at Louisville. Thousands of new jobs have already been associated in southern Indiana with the projects, and the bridges are not even open yet.

But by using a P3 approach, so-called availability payment approach, the bridge Indiana was responsible for came in 23 percent, which was $225 million, below the estimate. Plus, Indiana will never pay a nickel for the maintenance of that. That is all part of the winning bidder's proposal.

In another case, a bridge which was built conventionally years ago and turned out to be unsafe when it should have had another 2 or 3 decades to run, we are replacing with an entirely private bridge, where the constructor and operator will be entirely at risk.

Now, these approaches, I do not think even the strongest proponents, certainly not I, will ever suggest are a complete answer to the very real problem the committee is here to talk about, but I just submit that no answer will be complete without them.

Without the involvement, the creative involvement, of private financing—it is so ironic that this Nation, which prides itself on being the world's innovation leader, is such a laggard in this area, and even a cursory look around the world will show you that we are trapped in old practices when the rest of the world has left them behind.

I have mentioned in my written testimony other obstacles that I hope earnestly the Congress will deal with. The absurd, almost surrealistic permitting regime has sooner or later got to change.

I will just conclude by reminiscing that I was invited to talk about this very same subject 9 years ago. I sat here with then-Governor Kaine of Virginia, and I got that testimony out and looked at it, and I am discouraged to say that I almost could have Xeroxed it and submitted it again. Little or nothing has changed in the interim except the severity of the problem.

I will just say that, as I did then, in a Nation that is sometimes so divided over so many questions, this strikes me not only as an urgent national priority, but a huge opportunity for bipartisan cooperation, and I appreciate the chance to come here and implore the Congress once again to seize this opportunity and to do it in a cooperative way.

[The prepared statement of Mr. Daniels appears in the appendix.]

The CHAIRMAN. Thank you so much.

Mr. Bhatt, we will turn to you next.

STATEMENT OF HON. SHAILEN P. BHATT, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF TRANSPORTATION, DENVER, CO

Mr. BHATT. Thank you, sir. I first want to thank Chairman Hatch for the invitation to testify and to acknowledge our Colorado Senator who had to step away from the committee, Michael Bennet. I thank him for his many years of service to the State of Colorado and to my boss, who was then Mayor Hickenlooper.

And I am sorry that Senator Carper is not here. He is one of the nicest recovering Governors I know in the Senate, and I know transportation is very important to him.

It has already been listed where I have worked before. I will just say that I have been appointed by three Governors, I have worked as a presidential appointee, and I do it because, in public transportation and public service in transportation, you have this amazing ability to impact people's lives, hopefully in a good way. And I am just grateful for the opportunity to talk about ways that we can find more resources to make that happen.

I just want to begin with a story that illustrates the transportation situation or dilemma in Colorado. During my first 3 days as CDOT's executive director, I took an 1,100-mile tour around the State, which was not possible in Delaware.

As those of you who are familiar with Colorado know, I–25 is the major north-south artery tying urban communities together along our front range. It is also an important freight corridor for the United States, running all the way from Canada to Mexico.

The first leg of the journey was on I–25 heading north out of metro-Denver, and I got stuck in my first traffic jam in Colorado, not in the Denver metro area, but in a rural section of Colorado on I–25. I thought there might have been an accident. I asked my regional engineer where the crash was. He said, "This is just everyday traffic." And then I said, "Well, when will this road get widened," and I was told 2070—2070.

So, 18-year-olds who are getting their drivers' licenses today will be 73 years old before that road gets widened. That is just unacceptable. There is a commercial impact, there is a jobs impact, and there is a safety impact.

So, based on that story, it should be no surprise that this year, during the Colorado State legislative session, there was a bill introduced that was promoted by both the business community and primarily Republican elected officials along the north I–25 corridor that I just mentioned. The bill would have asked Colorado voters to bond against future Federal revenues for $3.5 billion and to take about $1 billion of that and widen I–25.

Now, we had to oppose that bill because expanding capacity by essentially doing a GARVEE bond, which would have pulled some of our Federal revenues, would have decimated our ability to maintain existing infrastructure assets. But the example illustrates how important the Federal revenues are to Colorado, where we spend 2 out of every 3 of our Federal dollars on construction. But more importantly, if we had some more revenue, we could enter into more of these public-private partnerships and quickly seek a bonding solution to accelerate some of these important improvements.

The bottom line and the most important thing I want to leave you with today is that, similar to Colorado's proposed bonding bill, Congress cannot fix a funding problem just through financing alone, and I know the chairman had mentioned some of that earlier on.

I cannot emphasize enough what is a critical point: financing mechanisms cannot correct what is essentially a funding problem due to revenue shortfalls. We need a stable funding source, first and foremost, if we want to move ahead in transportation.

I believe it is critical that we address these infrastructure improvements not only in Colorado, but for all the States in the Nation.

Mr. Chairman, by necessity, Colorado has turned to a variety of creative financing methods in an effort to move these critical projects forward. This week we had the ribbon-cutting on our first P3 project from the highway side, the first phase of US–36, which connects the urban centers of Denver and Boulder. Even with the great Federal and local support for this $450-million multimodal project, it would not have been possible without the State entering into a P3.

US–36 is one example of a P3, and it is one where our private partner is taking on the toll risk. Toll risk is not the only risk you are looking to transfer. Sometimes there is a lot of construction risk as well.

I have cited several other examples in my written testimony where CDOT is using managed toll lanes. We do not have a lot of appetite nor the ability to toll the entire interstate, but what we are saying is, we can add capacity, and we will toll that capacity that we are adding.

In one example, I–70 through Denver, we do not expect to move forward on the P3. We do expect to move forward on a P3 on another corridor, C–470. We did a Value for Money study, and we do not know that a P3 will provide the best value. So we are trying to find the right situations. In that case, a TIFIA loan we believe will be the right solution.

Mr. Chairman and members of the committee, it is important that States have different financing tools in the toolbox, driven by a constrained funding reality, to meet the transportation investment needs of the State and the Nation.

Colorado certainly needs to step up and do our part, and we are trying, but our transportation system has Federal interests, including interstate commerce and quality of life of all of our citizens, and we need to continue to have a strong Federal partner in transportation.

I appreciate the committee's time and attention to the important topic of transportation funding and financing, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Bhatt appears in the appendix.]

The CHAIRMAN. Thank you so much, Mr. Bhatt.

Mr. Narefsky, we will now turn to you.

STATEMENT OF DAVID NAREFSKY, PARTNER AND CO-LEADER, INFRASTRUCTURE PRACTICE GROUP, MAYER BROWN LLP, CHICAGO, IL

Mr. NAREFSKY. Thank you, Chairman Hatch. It is an honor for me to be here today to discuss the increased use of public-private partnerships to finance transportation infrastructure.

I prepared a map to just highlight representative transactions that we have seen implemented or in process over the last decade. There are many transactions to talk about. Many of them are described in some detail in my written testimony.

What I was hoping to do this morning was to highlight for the committee a number of what I think are the key lessons learned from this last decade of State and local governments partnering with the private sector to develop transportation infrastructure. And in most cases, many of the most significant infrastructure projects that have been undertaken in the United States in the last decade have, in fact, benefitted from this use of the public-private partnership model that has been developed and refined in Europe, Australia, and Canada and now increasingly is being used in the United States.

So, to highlight what I think are the key lessons learned, as the chairman noted before, there is bipartisan support for public-private partnerships at both the Federal and the State level. Federal financing incentives and regulatory flexibility have been encouraged by each of the Clinton, Bush, and Obama administrations and both Republican and Democratic Governors, who have been strong advocates for public-private partnerships supporting transportation infrastructure.

Protecting the public interest is paramount. Successful public-private partnerships require the private partner to comply with detailed and comprehensive operating standards, with noncompliance resulting in monetary penalties and/or default and the loss of the right to continue to operate the project.

A reliable legal framework is a critical precondition to getting things done. Private parties investing in a jurisdiction need to know that the identified sources of revenue will be available throughout the term of the agreement and that when the project procurement is initiated, it will get to the finish line.

Having a public champion is critical. Jurisdictions that have been successful in developing public-private partnerships have had a public champion who clearly articulated policy rationale for the project, moved forward with bold initiatives to develop new projects, and developed a vision in the face of uncertainty and oftentimes opposition.

And I really have to note, because Governor Daniels is sitting to my right and Shailen Bhatt, who works for Governor Hickenlooper, is also sitting here, that having had the pleasure of working on many transactions in both Indiana and in Colorado, they really represent kind of the best in class of public champions who have made these projects work and have really resulted in both Indiana and Colorado being models for how to get P3s done.

Continuing on, though, with lessons learned. Federal financing incentives, in particular tax-exempt private activity bonds and low-cost TIFIA financing, have been critical for the successful implementation of transportation public-private partnerships.

Important and critical government policy objectives can and are regularly incorporated into public-private partnership transactions. These objectives include labor protections, such as offers of employment to existing employees, and maintaining wages and benefits of current public-sector employees. They also include contracting requirements for women, minority, disadvantaged, and veterans' business enterprises, and they often include limitations on tolls or other fees that can be charged by the private-sector partner.

Successful public-private partnerships often result in significantly reduced construction costs, as well as lower and more predictable life cycle, operation, and maintenance costs over the useful life of the asset.

Finally, the successful models that have been developed for the transportation public-private partnerships that are on the map are being increasingly applied to other types of infrastructure in the United States, including water supply and public buildings, such as courthouses and university facilities.

As I noted, there are a lot of projects that have been accomplished in the last decade. I would be happy during the question-and-answer period to focus on any one in particular, and a number of them are described in my written testimony.

So, again, thank you very much for the invitation to speak today on what is a really important topic for U.S. transportation infrastructure.

[The prepared statement of Mr. Narefsky appears in the appendix.]

The CHAIRMAN. Thank you for being here.

Mr. Feigenbaum, we will now turn to you.

STATEMENT OF BARUCH FEIGENBAUM, ASSISTANT DIRECTOR FOR TRANSPORTATION POLICY, REASON FOUNDATION, LOS ANGELES, CA

Mr. FEIGENBAUM. Thank you, Chairman Hatch, Ranking Member Wyden, and fellow members, for the opportunity to testify today.

While the Federal Government continues to delay action on meaningful transportation reform, States are leading the way. Understandably, raising taxes is unpopular. While several States have increased their gas tax, moved to a gas tax/sales tax combo or begun testing mileage-based user fees, many others have chosen to stretch their resources further with innovative financing.

Given scant political support for funding increases at the Federal level, Congress should examine what States are doing to stretch their resources. At the same time, innovative financing is not a panacea for our transportation problems.

Financing is the act of obtaining full project funding up front from investors, while funding is the actual revenue itself. While financing can stretch resources, States must have some underlying funding, such as gas taxes, tolls, or mileage-based user fees.

States want to avoid a situation, such as New Jersey's, where the State has become so overly leveraged through borrowing that 100 percent of its annual gas tax revenue must go to repay its debt. And that is still insufficient, so the State would need to actually tap other funding in order to fully repay the debt.

Most of the innovative financial activity has taken place through public-private partnerships using TIFIA and private activity bonds, and a smaller source of innovative financing has been State infrastructure banks.

A powerful tool that fewer than a dozen States are actively using so far is the long-term public-private partnership, in which the private sector designs, builds, finances, operates, and maintains a major highway or bridge, typically on the scale of $500 million to several billion dollars in cost.

Over the past 12 years, the largest 16 P3 projects have involved a total investment of nearly $28 billion. Most of these projects involve some degree of State investment on the order of 20 percent to 25 percent, the rest privately financed by the winning concession team using a mix of debt and equity.

There are many advantages to this type of procurement. Because the same entity will be constructing and then operating the project over many decades, the incentive is to build the project more durably so as to minimize the life-cycle costs rather than minimizing only the initial construction costs.

The P3 company also accepts many of the risks that are usually borne by taxpayers: construction costs, overruns, late completion, inadequate maintenance, and, in many cases, traffic and revenue. Because these are examples of project finance, the total cost is raised up front and the bonds are paid off over many years, as highway users benefit from the improved infrastructure, and proper maintenance is contractually guaranteed for these high-profile projects.

A toll concession P3 is the best deal for taxpayers, as the toll can provide most of the revenue to repay the financing for the project. Availability payments, the other type of P3s, also need a source of revenue. However, both types of P3 projects transfer risk to the private sector, which is the biggest advantage of all P3s.

P3 contractors also deliver projects more cost-effectively. The I–70 Value for Money report prepared for the Colorado DOT HPTE unit looked at six projects, comparing the actual project costs with the costs estimated by the procuring agency if the project were delivered internally. All five U.S. projects, including I–595 in Florida, FasTracks in Denver, the Port of Miami Tunnel, the Goethals Bridge in New York, and Presidio Parkway in San Francisco, were delivered at a lower cost, typically 12.5 percent to 20 percent.

There are two financing tools which help make these projects possible: private activity bonds and TIFIA loans. The private activity bond program in recent years has been well used. At the end of 2014, about $5 billion of these bonds had been issued, another $5 billion have been approved for issuance by DOT, which leaves only $5 billion of the original $15 billion available. So if Congress were to enact a 6-year bill, we would recommend increasing the cap to $30 billion, with lower amounts for a lower bill.

The TIFIA program is also popular as a source of subordinated loans. We recommend several reforms to the TIFIA program, including reducing the total amount of loan coverage from 49 percent to 33 percent and streamlining the program so that more projects can get covered. We think some of the restrictions used by USDOT are perhaps a tad onerous.

I also want to briefly touch, in the time I have left, on State infrastructure banks. State infrastructure banks were authorized in SAFETEA–LU and in T–21. They were not authorized in MAP–21.

We think they are an important tool. There are 32 States, plus Puerto Rico, that have Federally capitalized SIBs. There are four other States that have either State-capitalized SIBs—Georgia and Kansas—or State and Federal—Florida and Ohio. The leader in SIB activity has been South Carolina, with $3.3 billion. Most of the State activity has taken place in Florida—$762 million.

Thank you for the opportunity to testify today on transportation finance. I would be happy to answer any and all questions either orally or in writing.

[The prepared statement of Mr. Feigenbaum appears in the appendix.]

The CHAIRMAN. Thank you so much.

Governor Daniels, your testimony identifies the remarkable statistic that it typically takes 7 years for the Federal Highway Administration to complete an environmental impact statement. And as you identified, by comparison, in countries like Canada and members of the European Union, none of which you would think of as lacking in environmental protection, those environmental reviews take far less time.

Now, lag times before infrastructure projects can even break ground associated with permits and reviews and studies and the like are simply inefficient and hard to justify.

Now, Governor Daniels, would you talk a little about the needless Federal red tape, inefficient wait times, and delays associated with clearing Federal hurdles and getting to the groundbreaking stage of an infrastructure project? I know you have covered it to a degree. And do you think it would be difficult to eliminate some hurdles and make the processes more efficient?

Mr. DANIELS. It would be hard to have a less efficient process than what we have now, Senator. And while there are people far more expert on the details of this, I can testify that I watched it get worse, not better, during the years in which I was actively involved in trying to make infrastructure and other projects real.

The multiplicity of agencies with hands on in this situation has aggravated the problem. I know one suggestion that makes common sense to me is that there really needs to be a lead agency designated, and I would absolutely prefer a system which we see elsewhere in the world in which there is a presumption of approval. We should shift the burden from those who would build, who would thereby trigger employment and growth and upward mobility for Americans, shift the burden off of them onto those who would stop a project, with some sort of time limit attached to that.

All these practices are in operation elsewhere, as you say, in places which do not take a back seat to anyone in their concern for the environment. But if we had set out to design a system guaranteed to thwart, delay, and often, therefore, kill needed projects of all kinds, we could hardly have done better than what we have today.

The CHAIRMAN. Thank you.

Mr. Feigenbaum, could you follow up on Governor Daniels's remarks and tell us which red tape is the most detrimental to infrastructure?

Mr. FEIGENBAUM. I think probably just the overall timeline and some of the environmental reviews that projects have to go through. The fact that it takes 12 to sometimes 15 years from conception of a project to actual completion increases the cost. And if there is a way that we can streamline the environmental process, some of which I think we did do in MAP–21, I think that is probably the biggest thing that we can do to help speed these things along and lower costs as well.

The CHAIRMAN. That is great.

Governor Daniels, let me come back to you again. Your testimony describes the Indiana toll road project as a large success for your State, the State of Indiana. The project brought in nearly $4 billion in revenue to Indiana while providing for hundreds of millions of dollars in improvements to be made to the toll road.

Now, despite this success, public-private partnerships have been slow to catch on in the rest of the States, and even last week the CBO said that the U.S. had relatively little experience with these deals when compared to the rest of the world.

Now, given your stated success with this arrangement, why do you think more States have not followed Indiana's example?

Mr. DANIELS. They would have to speak for themselves, Senator, but first of all, there were unique aspects to our opportunity. Not everybody has an existing asset of that size that would be subject to the actions that we took, although one of the great tragedies I saw was when Pennsylvania, with a toll road worth probably three to four times ours and with a tremendous infrastructure problem, when Governor Rendell was unable to persuade people in both parties to come along with it.

If people would simply start with the questions of, what result are we trying to reach and what tools, tools plural, will be necessary to solve a problem this big, I think you would see a lot more of these. But there are people with a theological, I would describe it, commitment to the old-fashioned mode who cannot see their way clear to anything that is not government-owned, government-built, and government-operated all the way through, and that is very shortsighted and I think ultimately very damaging to the interests of our country and particularly low-income Americans.

The CHAIRMAN. I loved your idea about presumption, your presumption of approval idea.

Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Narefsky, let me start with you. It seems to me what you are saying is, with the right government policies, there is a mother lode of potential for the private sector to invest in infrastructure; is that right?

Mr. NAREFSKY. Yes it is, Senator. I think that is quite right. There is no question that there is a large amount of capital, investment capital, private-sector investment capital, available to be deployed for the type of infrastructure projects we have been talking about. So what is really important is to find the right tools to incentivize the deployment of capital, which, in some cases, is either sitting on the sidelines or, frankly, is being deployed in Canada or in other jurisdictions where sometimes the projects are easier to move forward and get done.

Senator WYDEN. Let me get your suggestion on this question of the government tools. This committee has jurisdiction over one, and that is tax-exempt private activity bonds that can help the private investor put their money in infrastructure projects.

In your view, what is the potential of that tool, and do you have some ideas that our committee could pursue to improve that?

Mr. NAREFSKY. Yes. So I think building on the success of the current private activity bond program is one area to focus on. This was authorized back in 2005, a $15-billion authorization very much designed to encourage private-sector investment and public-private partnerships in transportation infrastructure.

As often happens, I think, with new Federal programs, it took a little while for the market to understand how the program could be utilized. But if you fast-forward, in the last couple of years, this is a very active program.

As Baruch had said, of the $15 billion, more than $5 billion has been issued. There is another $5 billion that has been allocated. So the inventory is really being spoken for.

So the Move America Act that you are a cosponsor of, I think is a very good way to build on the private activity bond program that is in place now. It builds on it, it expands it, it provides for additional types of projects that can benefit from tax-exempt financing.

It gets rid of the alternative minimum tax penalty that is associated with certain of the private activity projects. And the other aspect, I guess, of the Move America bill that is interesting to me is the potential use of tax credits.

I have worked before on some of the other tax credit programs for public-sector infrastructure, for energy projects. There was an earlier one for school construction. And they tended to suffer from being very small, so it was hard for a market to develop, and it was not clear that the pricing, the credit pricing, really was at the right level.

From what I have seen of the Move America bill, this could take place on a much larger scale and might allow the credits to be sold separately from the project itself.

Senator WYDEN. That is the key. That is one of the major features that Senator Hoeven and I have been pursuing.

Mr. NAREFSKY. Well, it is an important concept, because rules were never developed for some of the prior tax credit bond programs. There has been talk about the separate sale of the tax credits, but that never really happened. So I think this is a potentially interesting opportunity to raise additional capital and have it deployed in the service of these large-scale infrastructure projects.

Senator WYDEN. I appreciate your kind words for it. And in one of the other key areas, colleagues, Senator Hoeven, a former Governor—and this is apropos of Governor Daniels—said, in particular, one of the lessons learned from Build America Bonds is, we have a chance to use the States and localities to play a bigger role than was pursued in the Build America program. So I think that ought to be attractive as well.

I see Governor Warner down there as well, and he too very much wants to pursue this area and to have the States and localities play a bigger role.

Now, it is probably not a Finance hearing without at least one controversy. So I want to kind of start it a little bit, and perhaps we can have you comment on this, Mr. Bhatt.

You talked about the promising projects that you all had pursued in Colorado, the I–25 corridor between Denver and Fort Collins and the like. We have had some in the Senate and certainly in the academic community talk about the concept of devolution and, in effect, turning back the Federal highway program to the States.

What would have happened in Colorado if you were looking at a project like that, the one that you have considered so promising, if you had gone to this devolution concept?

Mr. BHATT. Thank you for allowing the controversy to start here. [Laughter.]

A couple of things. To build off of what Governor Daniels had talked about, you need two things to build a major project. You need the funding, and you need a record of decision to say that you have cleared through the environmental process.

In this case, we actually have a record of decision to build this project, which is a big hurdle. What we do not have is the funding.

On the devolution side—and I had heard this when I was in Kentucky, when I was in Delaware—the whole donor-donee State thing has sort of now gone by the wayside, since everybody is now getting these general fund transfers. I think that, to me, the Colorado example—and I think this would be true of Delaware as well—is that, if you devolve the Federal role—and I think that the way I understand this is that you just say, well, we will get rid of the Federal gas tax and we will let the States collect it themselves.

The particular challenge in Colorado is around this idea of TBOR, the Taxpayer Bill of Rights. So any gas tax increase, any tax increase, would have to go to a vote of the people. And so what you would have to then do is take that 18.3 cents and say to the Colorado voters, "Hey, would you like to just switch this over," right? "It is a Federal tax now, would you like to switch it over here?" And my fear is, just like there is no appetite for a gas tax increase, or limited appetite, there is no guarantee that when that Federal money was then no longer Federal, it would be at the State level, that the State itself would take the chance to make those investments. I think that is one issue.

The second part on the devolution side is one of the things that we are very focused on in Colorado right now, which is technology: connected vehicles, autonomous vehicles, how we can squeeze more toothpaste through this tube using technology.

I think there needs to be a strong Federal role in making sure that the technology that is adopted in Colorado works with the technology that gets adopted in Utah or works with technologies that are being adopted by many States so that you have consistency across the country.

Senator WYDEN. I am over my time, Mr. Chairman. Thank you. Thank you all.

The CHAIRMAN. Thank you.

Our next person will be Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

Mr. Chairman, I have been a long and consistent supporter of harnessing private-sector financing to invest in our infrastructure, and, to this end, we have introduced legislation to roll back the Foreign Interest in Real Property Tax Act, FIRPTA, to increase the use of private activity bonds in various ways.

But, while I recognize the role of the private sector, we should not lose sight of the fact that financing is not a replacement for funding. We saw this when, despite the fact that MAP–21, which I helped draft, increased the TIFIA financing program nearly tenfold, tenfold, but it failed to address the central problem, which is a lack of adequate funding.

And that fundamental problem is not going to go away. We are going to have to work together and make some tough choices in order to find the revenue necessary to fully invest in 21st-century infrastructure. I hope we do not fall into the trap of taking legitimate options off the table regardless of how unpopular they might seem at the moment.

I know that there has been some talk in this body about the need to focus on financing rather than funding because the House has no appetite for revenue increases, but I do not think the Senate Finance Committee should be giving the House veto power over its work.

There is a lot of support on this committee for investing in our infrastructure, and I would challenge the House at the end of the day as to where, in fact, they are willing to go as it relates to the critical infrastructure challenges we have in this country. I do not want to wait for the next bridge to collapse for them to come to an awakening of that need.

The private sector is not going to choose its investments based on whether it will bail Congress out of a funding crisis, whether it is good for the U.S. economy, or whether it will benefit the society as a whole. They are going to choose their investments based on their financial interests. That is the essence of why they exist, and that is what they are supposed to do.

So that is not going to cover every element of our transportation system, particularly if you are talking about smaller projects, if you are talking about rural projects, or projects that preserve access for the elderly or disabled.

So to that point, in a recent hearing of the Banking Committee Transit Subcommittee, which I serve as the ranking member on, we heard testimony from Jane Garvey, who has held senior roles in both the public and private sectors, and her testimony argued that if the only reason a public-sector agency is considering a P3 is for financial reasons, it is probably not the right model.

So, Mr. Bhatt, your State has a range of transportation challenges: highway and transit, rural and urban. Do you agree with Ms. Garvey's statement? Can private-sector financing serve as a replacement for any of your State's funding needs?

Mr. BHATT. Sir, I think the private sector plays an important role and a critical role, and in Colorado, over the next 20 years, we have about a $1 billion a year shortfall in transportation investment. We have projects, and these are not fluff projects. These are really good projects that could go. I think the challenge in transit is that transit does not pay for itself. When I was in Delaware, our fare box recovery is the metric that people look at, and it was around 20 percent, 20 cents on every dollar that we put in is what we would get out. And lots of people point to that and say, look, transit does not pay; we should not pay for it.

But there are millions of people in this country who do not make a decision on how they get to their destination based on the choice of taking a car or taking transit. They rely on transit to get to jobs.

So to me, I think that there needs to be a mix of private-sector profit motive and government sense of what is a social responsibility in terms of providing for——

Senator MENENDEZ. I agree with you that the private sector is important. I started my prefatory comments in that regard. The question is fundamental, though. Can financing solve all of your transportation problems in your State?

Mr. BHATT. No, because there has to be the profit motive in the transportation property to get out——

Senator MENENDEZ. So you mentioned that Colorado is considering a public-private partnership for the viaduct along I–70, and you go on to say you do not expect the private-sector partner to take on the toll risk.

Given the Indiana toll road concession, where the private-sector partner assumed the toll risk and ultimately went bankrupt, why would the State not seek to put more of the toll risk on the private sector?

Mr. BHATT. Well, sir, they are two very different projects. Obviously, the Indiana toll road, and I do not want to speak for Governor Daniels, was much longer and the entire facility was tolled. This is a managed lane. So this is one lane in each direction that is being tolled, and it just does not throw off enough revenue.

So on a $1.2-billion project, the State and local partners are putting in, I want to say, $900 million of that.

Senator MENENDEZ. So the bottom line is, there is not enough potential profit in order for the private sector to come in.

Mr. BHATT. Only if you toll the entire facility, and that is just not allowed.

Senator MENENDEZ. Right. And then finally, when the private sector invests in a project, they are rightly working to earn a return on investment. That is the very essence of what they do, and I applaud that. But the role of the public sector is much broader. It is more than getting people from point A to point B. It includes questions of access, equity, and service quality for people of all incomes and all abilities.

So is that not part of the factor that we have to put into these equations as it relates to how we are going to go ahead and achieve some of the transportation projects that are critical, whether it be for your State of Colorado or mine in New Jersey or others similarly situated?

Mr. BHATT. Yes, in my opinion.

Senator MENENDEZ. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. I have to go to the floor for an important reason. So I am going to turn the committee over to Senator Coats, who has graciously agreed to follow up.

I am grateful to all four of you for being here. Your testimony has been very important.

So I will turn it over to Senator Coats, and he is next anyway. Senator Coats?

Senator COATS. Mr. Chairman, I have only been a member of the committee for 6 months. To be given the gavel for a short amount of time is one of the singular accomplishments of my service in the United States Senate. [Laughter.]

The CHAIRMAN. You make me feel very, very powerful. [Laughter.] But I know better. We are really happy to have you on the committee.

Senator COATS. My concern is, once I have the gavel in my hand, you might have to pry my cold dead fingers from it. [Laughter.]

The CHAIRMAN. I could not be succeeded by a better person, is all I can say. [Laughter.]

Senator Coats [presiding]. Mr. Chairman, thank you.

I am up next. In deference, though, to my colleagues here, as my first action as chairman, I am going to defer my questions and turn to the next in line, Senator Cornyn, who is significantly more senior than I, and seniority means something in the Senate.

Senator CORNYN. I am enjoying the tenure of Chairman Coats already. [Laughter.]

This is great. Well, the Environment and Public Works Committee recently passed a $278-billion 6-year highway bill, and we are only $90 billion short—$90 billion short.

It strikes me that we have gotten into a bad habit here in Congress of thinking tactically in terms of how to deal with our transportation infrastructure, rather than coming up with some sort of strategy, because what invariably happens is that Environment and Public Works passes a highway bill and then they kick it over to the Finance Committee and say, you pay for it, and we are not really thinking, I think, in a big way about what the Federal role in the Nation's infrastructure and highways and bridges should be.

The ranking member talked about devolution as if it were all or nothing, and I just would be interested in your comments, starting with Governor Daniels.

But here is the problem we have, particularly in a big State like mine. In Texas, we get about 95 cents back on the dollar. So why should we raise the Federal gas tax so we get 95 cents back? As a matter of fact, like your State, Governor, and like other States represented here, we have not been waiting on the Federal Government. Governor Abbott and the Texas Legislature and Texas voters have taken important steps to put $4 billion to $5 billion additional State funds into our transportation infrastructure, because frankly the Federal Government has been unreliable when it comes to those funds.

But if you talk about the red tape issue that has also been raised here, a lot of that red tape comes from the fact that it is Federal dollars. And if it was done at the State level, these projects could be done much more quickly and in a less costly sort of way.

But can you help us think about this in a way that would deal with those problems? Is there some sort of way to think about what is the Federal versus State responsibility when it comes to this?

Mr. DANIELS. Well, I will try. We are a long way from the Interstate Highway Act and the benefits it brought to the Nation, but yet we are living with basically the regime that it created.

It is a legitimate question how much of that we still need. I cannot speak for anybody in Indiana these days but myself, but I will say, and did then, that if the Federal Government had been willing to step back from some of its gas tax, I would have advocated for its replacement at the State level.

But I will give you a small example. Because we managed to harvest such an enormous amount of money for reinvestment through the toll road success, we undertook, almost as an experiment, some projects, smaller road projects and trails. I said, use entirely State money; I want to know what the result is. And the result was, they were built in less than half the time at about half the cost, just as a rough measure of what one might expect if we could disentangle, to some extent, the necessary reconstruction of America from the Federal requirements and limitations that are placed on States.

I would also say that that committee you talked about, in an indirect way, could do a lot here. If we would commit to exploit the magnificent opportunity that is right in front of us for a long-term run of more affordable energy prices, if we were to liberate fully, maximize that opportunity, you could make a lot stronger case for the gas tax at today's levels or a higher level if the cost of the underlying product you knew was going to be moderate on a sustained basis.

Senator CORNYN. I would be delighted to hear from each of you in turn if you have some views about the question I have posed to Governor Daniels.

Mr. BHATT. Sir, just very briefly, I would applaud Texas and any other State that is raising its own resources, because I do not think people are doing it because it is a nice thing to do. I think it is not only the right thing to do, it is an economic imperative and an economic competitiveness question, and countries around the world are making massive investments in transportation.

They are not doing it because they like to have these things. They want to compete with us. They want to take our jobs and they want to come after the U.S. economy, and we need to compete. So I applaud any investment like that.

I think, on the red tape issue, I have worked now in three different States and struggled with some of the Federal requirements, but I also say that the people who attend the school beside the highway that we want to widen, if my children went to that school, I would want them to have a forum, a place to be able to stand up to the government, to the State that wants to widen that road, and that is one of the things that the Federal Government provides through the National Environmental Policy Act.

Yes, it takes more time and, yes, we can probably be much more efficient with doing it and doing things concurrently, but like I said, there are lots of people who do not get to testify and who do not get to come to these sorts of hearings, and those laws protect their interests.

Senator CORNYN. I apologize. It looks like my time has expired, Mr. Chairman. Thank you.

Senator COATS. Senator Bennet?

Senator BENNET. Thank you, Mr. Chairman. I am happy to support a coup, if that is what you want. [Laughter.]

Senator COATS. A bipartisan coup has more chance of succeeding. [Laughter.]

Senator BENNET. Just picking up on where Senator Cornyn was, I think that maybe we should be having a debate about what the Federal and State role is. In fact, I would invite that.

The problem that we have is that, because of the stasis here in Washington and because we keep extending highway bills month to month to month more than 20 times now, I think we have created huge uncertainty in America at a moment when our competitors are investing heavily in their infrastructure.

As I often say, at this point, because of our politics—and it really is because of our politics; I am not blaming anybody; it is just true—we do not even have the decency to maintain the assets and infrastructure that our parents and grandparents built for us, much less build the infrastructure that our kids and grandkids are going to need in the 21st century, and time is wasting.

When you look at the last 6 years and you consider how low interest rates have been over that period of time, the idea that we were allowing deferred maintenance to pile up and pile up on the roadways and bridges of America is a travesty from a fiscal point of view.

If all you cared about was the fiscal condition of the country, you would not defer maintenance that could have been dealt with at a relatively cheap price, because every dollar that we did not spend 6 years ago is a dollar we are going to have to spend 6 years from now or 10 years from now, unless we really are going to let our infrastructure crumble into dust, which is what is happening.

This is the committee that has to figure out how to pay for this, and I hope this committee will do its job.

Even though our State is recovering, our economy is doing incredibly well, the businesses that are engaged in building roads in our State are actually laying people off during this economic recovery because of the uncertainty being caused by this Congress and, to be precise about it, this committee.

So I hope we can act in a bipartisan way to create a 6-year bill. And with that, what I would just ask the panel is to describe for the committee what kinds of projects are better-suited for public-private partnerships than others and which kinds do we need to continue to rely on the public sector to underwrite?

Mr. NAREFSKY. That is a very good question.

Senator BENNET. Finally, I asked a good question. Sorry for the long windup.

Mr. NAREFSKY. But it is a very good question. I often say that it is important to note that, when you are talking about whether to do a P3 or not, you should not flip the coin in the air and always assume it is going to come up heads. You really need to think carefully, Senator, about exactly the question you pose: what projects are the ones that make the most sense?

So I think part of it is a size issue and maybe a complexity issue, because I had the good fortune, for example, to work on the Denver FasTracks project in your State, and I think that is a perfect example of where a P3 does make good sense.

There was, first of all, the need to accelerate project delivery. It obviously was very important for the region to get that transit line going between the airport and downtown Union Station. Also, there were some real engineering challenges in how the line was going to be constructed, and there were cost constraints.

One thing that we have seen in that project, and I think you see in a lot of successful P3s, is the creativity of the private sector reducing construction costs considerably. And in the Denver project, it was probably about 25 percent under what were the original Regional Transportation District estimates.

And I think the last point—and this actually ties into what you were saying in your earlier remarks—is projects where it is so important not just to have the project constructed well, but to have it maintained well, require the private sector in the agreement to have long-term operation and maintenance responsibility and avoid the problem you described of having infrastructure built well, but maintained poorly, if at all.

Mr. FEIGENBAUM. Building on what Mr. Narefsky just said, the big projects—what we call mega-projects of $500 million or more—are the ones that most lend themselves to the private sector, because usually there is some profit in those projects. Usually there is a lot of risk, and so it is easy to transfer. And usually, as was just said, the maintenance is better.

I think your point about maintenance is really excellent. Oftentimes, there is a sort of public give-and-take between building a new sexy infrastructure project which people want and maintaining the roads which people need, and I think most State DOTs have actually done a really good job of trying to maintain roads. But anytime you have sort of that political decision there, it is really tough. So when you have the private sector involved, they can make those decisions.

I would also say Pennsylvania has done what I think is a really innovative project they are just entering into with their bridges—and Pennsylvania had a large number of structurally deficient bridges. And what they have done is, by bundling the contract with these bridges together, they have actually been able to get some of these smaller bridges which might not normally work as a P3 bundled with the larger bridges. And for smaller projects, I think that is a really good model.

Mr. BHATT. I would just say I agree that with larger projects, there has to be a profit motive. There usually has to be some toll revenue that is involved, but there is risk. There is risk on the construction side, and there is risk on the revenue side, and that is where you want to defer that risk. That is where the P3 model makes sense.

Nobody wants to put money into maintenance and resurfacing. It is just not sexy.

Senator COATS. Senator Warner?

Senator WARNER. Thank you, Mr. Chairman.

I want to build off what my friend, Senator Bennet, said; first, that financing is great—and I have a proposal I want to talk about—but we have to have funding as well.

It is also great to see Governor Daniels, somebody whom I have enormous respect for. I want to add to what Senator Hatch said. If you want to run for President, you have a lot of folks on your side, so jump on in. The pool is pretty big, and you would be a great addition.

I think there are a couple of things that have not been brought out in the testimony yet. We actually have an office in the Treasury Department—I am not sure you know about this—that advises American pension funds on how to invest in European or Canadian infrastructure, because there is not a real tool on a national basis to do it here, number one.

Number two, on Monday, 57 nations are going to sign, led by China, a $100-billion Asian infrastructure bank deal. It is fundamentally changing—we do not have any such tool here on our side.

I appreciate what Governor Daniels said about his testimony a number of years back with Governor Kaine. I would remind him there was another Governor there who started on these public-private partnerships, and I think Virginia has, Mr. Narefsky, probably as much history as anybody, some going back into the 1990s. And while we celebrate our successes today on public-private partnerships, we have also had some dogs, and, quite honestly, one of the things I am concerned about is that we have relatively large States here that can do sophisticated financings.

But sometimes there is a lack of sophistication at the State level. I remember when I was Governor and some people came and there was a proposal, say, we will give you $100 million for the Dulles Toll Road or the Dulles Access Road, and the legislators felt like they were coming out of an Austin Powers movie—$100 million! [Laughter.] If you put pen to paper on it—and anybody with a first-year MBA would have realized it was a total sucker deal.

So I think we need to have, at the Federal level, an infrastructure financing authority, and I support what Senator Wyden has done on Move America Bonds, but we need an infrastructure financing authority.

Senator Coats is familiar with my effort. We have actually got legislation that has 11 Senators on it—six Democrats, five Republicans—and there are others, if we get a better pay-for, whom I think we could add to the effort.

For a $10-billion initial capitalization, $6 billion scored—this would only be a debt support program—we could leverage $300 billion of projects. And one of the things that is important is, if you look at your map, Mr. Narefsky, most of these are larger States. Smaller States sometimes do not have the expertise.

I think there is a place, as Mr. Feigenbaum said, where we could do smaller projects, but you have to have the expertise to go toe-to-toe with Wall Street.

So the idea of this financing authority that would only have creditworthy projects, that would only have public debt guarantees on the 49 percent, that would have first dollar loss, so it would have to be the private-sector partner, that would also have a set-aside so smaller projects would be in the mix, I really think ought to be on the agenda.

If we start with 11 Senators—and there are a number more who I think would be supportive—this ought to be something subject to discussion. It is called the BRIDGE Act. I am going to try to get to a question here, but I want to finish my commercial.

Because really, at the end of the day, a lot of these projects do not get done for three reasons. One, we need long-term debt, which we can sometimes only get, I think, with a bigger entity; second, we need a lower debt price, and obviously some level of guarantee lowers that price; and third—and I do not think we can emphasize this enough—you have to have the expertise to go toe-to-toe with Wall Street.

I believe from a financing standpoint—and I am a great supporter of the TIFIA program, and TIFIA is a kind of a one-off inside of DOT—the idea that someone is going to have the expertise to be able to go toe-to-toe at the State level or as a one-off in TIFIA is just wrong.

This needs to be a long-term career path so that we can guarantee the taxpayer the best value, because what we do not have on this, while we do have the Midtown Tunnel project, we do not have the project in Virginia, the Route 460 project that the State spent, under a certain Governor, not this one or Kaine, $200-and-some-plus million on and did not move an ounce of dirt, and we basically put an end to it because the deal was not negotiated well.

So the question, Governor Daniels, is, we all applaud good projects, but do we not have to be careful that not all projects fit the bill?

Mr. DANIELS. Senator, just to put it delicately, dogs are not the exclusive province of the private sector or P3 projects, and I will be wise enough not to name any, but the biggest canine experiences I can remember happened under conventional funding and financing mechanisms.

Senator WARNER. There is a certain project in Boston that might fit in that category.

Mr. DANIELS. I will not specify. I see a couple more coming on the other coast, but each of us can think of his own examples.

I will just use the opportunity to say I have appreciated our past conversations. You know from them that I see a lot of appeal in the approach that you are suggesting. I think properly crafted, it too should be a part of the solution. This problem is so big and so urgent that there is not going to be any one fix, in my opinion, and each of the ideas that I have heard mentioned here today and elsewhere I think is legitimate for consideration.

But I will just say that it would be a huge missed opportunity to sit out while the rest of the world takes advantage of the possibility of major private participation in addressing this shortfall. But no solution will be complete without that being a significant part.

Senator WARNER. I know I have gone over, Mr. Chairman. I would simply ask to make a final comment. Based on Governor Daniels's suggestions, in our BRIDGE proposal, we did put in that any project that would qualify for this financing would have an expedited permitting process.

Senator COATS. Thank you, Senator.

Senator Carper has dedicated an extraordinary amount of time to this issue, calling on me numerous times and bringing me up to date. Senator Carper, you are on.

Senator CARPER. Thank you, Your Eminence. [Laughter.]

From one recovering Governor to another, welcome. From one Delawarean to an immediate past Delawarean, Shailen, it is great to see you too. Our other colleagues who are here today, welcome.

I think one of the things that Senator Warner said at the beginning of his comments is that, while financing is important, funding is critical. And the financing, it is not that it is easy, but it is easier, and the really tough thing is, how are we going to fund these investments that we all know we need?

The President has actually said—here is his idea. He has given us a big idea, and basically it says that $2 trillion is part of the overseas profits of American companies, that they are just not bringing it home. Why do we not deem it repatriated and tax it at 14 percent and use the revenues derived therefrom to fund a robust transportation and infrastructure program?

At least he has an idea, and it is not just a cheap idea. It is something that would create a whole lot of money for investment.

Several years ago, when Bowles-Simpson was being stood up, they invited input from all of us, and George Voinovich and I suggested that we raise the gas tax and the diesel tax by a penny a month for 25 months, and 10 cents of that would go for deficit reduction, and 15 cents would go for roads, highways, bridges, and transit.

They took that idea and said, we are not going to do it by a penny a month for 25 months, but a penny a quarter, every 3 months, for 15 quarters and then index it to the rate of inflation going forward. If we had done that 5 or 6 years ago, we would not be sitting here having this conversation today. We would be well on our way to meeting the concerns.

I think long-term increases in the gas or diesel tax are not the solution. They are not the solution. They can be and need to be part of the solution for the next 5 or 10 years or so. But I think at the end, what we want to do is come up with a better tool, a better way to ensure that folks who are using these services, using the roads, highways, bridges, transit systems are actually paying for them and we have a fair way to do that. And that is our ultimate goal.

Speaking of responsibilities, I serve on the Environment and Public Works Committee, and I am privileged to serve here as well. The Environment and Public Works Committee reported out yesterday unanimously a bill. I think Senator Cornyn may have said it was a $750-billion bill. It is not. It is about a third of that. He overstated it by threefold, I believe, if I heard him correctly. But it is still a decent amount of money we could spend. Obviously, we could use a whole lot more.

But the Environment and Public Works team, in reporting out the authorizing bill, is like a kickoff team, and this committee, in football, is the receiving team. I serve on both. I get to be both. Imagine in a football game, I am on the kickoff team, and serving here I would help receive the ball and try to move it up the field.

I think if things are worth having, they are worth paying for, and I have heard so many of my colleagues at hearings like this just bemoan the situation that we face: the awful roads, highways, bridges, transit systems we face. And people come up with ideas to finance this stuff, but not to really fund it.

So, having said that, let me just ask a couple of questions, if I could.

I am a believer in private-public partnerships. I believe in tolling and trying to find ways to do this, rogue user charges, vehicle miles—I am all for doing that. I think some of the financing works. It is not a majority solution. It may help, 5 or 10 percent of it, but it is not the real deal.

Would each of you give us one idea on funding, just one piece? If we are going to, what should we do?

Governor, just give us really briefly one good funding idea, please.

Mr. DANIELS. Well, I think the fairest and most efficacious way is a major expansion of user fees and tolling. There is nothing novel about it. It is more equitable and it is more flexible, and I have advocated for it in multiple contexts now and am perfectly prepared to do it again. I think that is the single biggest opportunity I see.

Senator CARPER. Thank you, sir.

Secretary Bhatt?

Mr. BHATT. The gas tax, for all of its inequities, is incredibly efficient, and I think that, to me, the easiest and the right thing to do is just to take a tough vote and raise the gas tax. I think that tolling and user charges are another way.

Any way you slice it, it is a tough choice. The money has to come from somewhere. So I think, to me, we have a gas tax, it should just be raised.

Senator CARPER. Thank you.

Please?

Mr. NAREFSKY. I think one idea worth consideration that I think is already on the table in one of the administration's proposals is to significantly expand the ability to toll existing interstates. That idea combined with some additional flexibility for how those projects could be financed and to keep existing tax-exempt debt outstanding, I think could provide States with an additional significant source of money.

Senator CARPER. Good. Thank you.

Mr. FEIGENBAUM. I agree with the idea of expanding tolling on the interstates. I think that is something that is really needed. I think there is a lot of interest. It is not forcing States to do it. It is an option that might allow them to shift the gas taxes around to other projects. And, over the long term, it is definitely mileage-based user fees. There is testing in Oregon right now. We are not there nationwide, but in 10 to 15 years we should be there.

Senator CARPER. Oregon has been doing this for 10 years. They are a good laboratory of democracy, and hopefully we can learn from them.

My time has expired. Could I ask just one quick follow-up on tolling, Mr. Chairman?

Senator COATS. Given the privilege of being the chairman, I can say, yes, you surely may.

Senator CARPER. Thank you so much.

With respect to tolling, if we were to loosen the Federal restrictions on tolling highways—several of you mentioned tolling—how would that impact the ability to develop strong public-private partnerships? Anyone, please.

Mr. NAREFSKY. Well, I will be happy to speak to that, Senator. So it would not necessarily require public-private partnerships. Obviously, the State could choose to proceed in the way existing toll road and toll authorities exist purely in the public sector.

But I believe that if the States had this enhanced authority to toll existing interstates, with the right financing solutions that either exist now or could be provided, I think you would be able to have a real opportunity for States to expand these public-private partnerships and use the toll revenues to pay for all this badly needed infrastructure that we have all been talking about that we cannot find a way to pay for.

Senator CARPER. Maybe one more view, please.

Mr. FEIGENBAUM. Yes. I actually think that is a critical tool, because in my view, the best kind of public-private partnerships are the ones supported by revenue.

We have all discussed how there is a revenue problem. You can enter into an availability-payment P3, but that is supported by gas taxes. So you are doing some financing, but you are not really solving the revenue.

If you have tolling, you are going to have a lot more States that can make use of that and are going to enter into P3s. So, as we talk about how the U.S. is in some way behind on P3s, I think that tolling is both a great source of funding and a way to allow States to enter into more P3s.

Senator CARPER. Good. Thanks.

Mr. Chairman, could I just say, Shailen Bhatt was our Secretary of Transportation for not long enough, and he has left us for Colorado. We miss him and have a good successor, but we will always be grateful for his service.

The other thing I would say, on the bill that we reported out yesterday unanimously, out of the Environment and Public Works

Committee, in the authorizing legislation, one of the things—and I have met with everybody on this committee, asking what would you do, what should we do, what do you think we ought to do to help fund this stuff, and among the ideas that I got were, find out and figure out how to build roads, highways, bridges, transit systems in a more cost-effective way.

And one of the things I asked Secretary Anthony Foxx, our U.S. Transportation Secretary, is, "Do you guys have any ideas?" As it turns out, they do, and the bill we reported out of committee yesterday includes a number of those ideas, for what it is worth.

Thank you, and thanks very much for being so generous with the time. Shailen, nice to see you; Governor, everyone, thank you.

Senator COATS. Thank you, Senator.

Senator Casey?

Senator CASEY. Thank you, Mr. Chairman. I am grateful for the opportunity. I know we are late in the morning, and I will be probably under my time.

I wanted to say to Senator Coats, you gave a great introduction of Governor Daniels, but you did not mention that he has roots in Pennsylvania. Monongahela?

Mr. DANIELS. Yes. My dad is from Monessen, and I have an uncle from Charleroi.

Senator CASEY. So we just want to add that to the record. But we are grateful for the opportunity to talk about what I think is among the most pressing issues we have in the country, both from a safety perspective, but also because of the economic benefit that we derive from these investments.

Several of the witnesses referred to an effort in Pennsylvania. In fact, Mr. Narefsky mentioned in his testimony, and I am quoting, "The Pennsylvania Department of Transportation undertook a new initiative to address the State's growing inventory of structurally deficient bridges, the initiative to replace 558 of those bridges in just 3 years."

The reason why we need efforts like that is because we have a big problem. Pennsylvania leads the country, unfortunately, in a category we do not want to lead in, and that is the number of structurally deficient bridges.

We are not alone though, just looking at a number of States, frankly, that are smaller by way of population but proportionately have an even greater problem than we have: Iowa, structurally deficient bridges 5,022; Missouri 3,310; Nebraska 2,654; Mississippi 2,275; Oklahoma 4,216; North Carolina, just a little less than 2,200. So we have a major problem with bridges and a good idea in Pennsylvania.

I guess for my first question, I would start with Mr. Narefsky. Analyzing this Pennsylvania idea, this initiative, what would you hope or what do you think the Federal Government could do to encourage more ideas like this? And I realize that some of this is redundant, but I just want to go through it again.

Mr. NAREFSKY. One idea is to provide more of the financing incentives. With the Federal Government, that has been one consistent role that they have played, whether it is through the TIFIA program or through an expansion of tax-exempt financing opportunities.

The Pennsylvania Rapid Bridge Replacement Project is the kind of project that certainly can benefit—both the public sector and the private sector can benefit from additional access to those programs.

Senator CASEY. Is there anything that you are seeing, any idea that has been proposed lately here or as part of the new transportation initiative or actually the new transportation bill that would match this, or do you think we have the existing authority or programs to do that?

Mr. NAREFSKY. No. I think we should be building on the existing authority, but we need to expand it. I know the administration has its QPIB proposal, Qualified Public Infrastructure Bonds, and there is the Move America Forward Act that Senator Wyden was talking about before. Both of those build, I think, on what has been a very successful framework.

Senator CASEY. I appreciate that. I want to leave that question open to the panel but also add a question on the challenges that State and local governments might have when they are trying to enter into public-private partnerships.

Are there any concerns there from the panel? Maybe just start from my right to left.

Mr. FEIGENBAUM. I guess one thing that I think is important, especially for States and also for local governments, is to have someone in the State government who is really an expert on P3s.

I know one of the Senators before mentioned the frustration that sometimes the State does not know if it is getting a good deal, and it has to be a two-way street. The State has to have someone who knows what is going on partnering with the private sector, because public-private partnerships are a great tool and I think a big solution.

But obviously, nothing is right for everything, and so sometimes there has to be someone in the State who can make the decision whether this is good or not for the taxpayers.

Mr. NAREFSKY. Sometimes when people ask me this question, I say, "Make sure you hire good lawyers." But personal promotion aside, I think beyond what Baruch said, it is not just having the right people to decide whether to do the deal or not, it requires a kind of different skill set, and I think Governor Daniels saw this in Indiana.

It requires a different skill set to manage these projects in the implementation and oversight stage, because it really is a long-term agreement. And you can have the best-drafted agreement with the best public-sector protections, but you really need to have people in the government who know how to manage those kinds of long-term arrangements and make sure that the private sector is doing what it committed to do and the public is really getting the benefit that was negotiated.

Senator CASEY. Mr. Bhatt?

Mr. BHATT. I think one of the challenges is that there is a lot of distrust among the public for public-private partnerships. I think that they just have this picture of bankers in suits skimming money out of their pockets as they drive by, and we have to do a very good job of explaining to them why it is a good deal.

Second, I think that there is a perception that, in the public sector, we bring a knife to a gun fight, that we are going up against these sharks in suits and we just do not stand a chance, and that is why it is important to have the right people in place.

We have a high-performance transportation enterprise, and we have some good people on it, but it is tough because there are some of the sharpest, brightest minds talking about LIBOR, 50 basis points, and that is not the conversation that a lot of the public have often. So we have to be careful of that.

Senator CASEY. Governor?

Mr. DANIELS. I just do not buy it. Potential incompetence is not an excuse for inaction. And besides, you can hire, and we did, advisors. You can hire people with the same pricey suits as the other side. But it is just part of the responsibility of government.

If you are trying to achieve the result, it is your job to make certain you do not get the short end. In our case, you could argue it the other way. We knew what the valuation of our road was, and when we got a big three times the status quo—or even if you assumed the impossible, namely, the escalation of tolls, which had not happened in 25 years, for all time with inflation, we still got two times the value, so, who lost their shirt in our deal? The investors. Sorry about their luck.

But I just think that it is a legitimate concern. If the shackles are taken off, as I hope they will be, there probably will be some mistakes, but the Federal system is all about learning from mistakes and being accountable, politically, if you make them. So I really hope that this concern will not interfere with the possibilities of moving aggressively forward.

If I could just have 30 seconds, since it is you asking this question—one of my most vivid memories of back then was, after Pennsylvania saw what we had done in Indiana, I had a lot of exchanges with then-Governor Rendell. He told me, if I remember correctly, he had 10,000 substandard bridges. This was shortly after Minnesota had experienced its tragedy.

And I tried to help him with Republicans in his State to see the opportunity that was in front of them. They tore up a lottery ticket for $13-point-something billion that could have done wonders for the economy and the safety of that State, and it is just an enduring tragedy that things like that get in the way of progress.

Senator CASEY. Well, we are at about 5,000 structurally deficient bridges now, a little more than 5,000. So we have made some progress, but we have a ways to go.

Thanks very much. I appreciate your testimony.

Senator COATS. Well, hearing that last statement about your bridges, I may alter my route on the way back to Indiana. [Laughter.] I usually go up to the toll road and pay the fee.

Senator CASEY. I might have the Indiana number here; let me check. [Laughter.]

Senator COATS. I am told Senator Thune may be on his way. I do not want to hold anybody longer than we need to. I think it has been a very substantive hearing, and we have had a panel of experts that has given us a range of alternatives, and that is what we are looking for.

I think that, if there is a consensus, it is that the current system does not work anymore, for whatever reason and a variety of reasons, one of which is that no one wants to add a penny of taxes. Here, there just simply is not the political consensus for that.

I was struck by the fact that—I think it was Mr. Narefsky who said, you have to have a champion. That champion usually has to be the Governor, and it is not without significant political risk for those Governors to step out and essentially market and sell to their constituents that the State needs to take action because the Federal Government no longer is able to provide everything that they need.

Governor Daniels experienced that, I think, balancing the choice between asking Hoosiers to pay an increase in taxes to fix the bridges and roads as opposed to looking at alternatives. And in this case, a P3 that turned out to be very successful for the State was not without very considerable political risk for the Governor, and it took a major selling job.

So, when Mr. Narefsky mentioned that it takes a champion, whether it is a champion like in Tennessee where the Governor had sold the ability to fix the roads and bridges on the basis of a tax increase, whether it is engaging in the potential risk of a P3, or adding additional tolls and so forth, all of this is part of the process that we have to go through.

But I think what has been laid out here for us today is a very significant range of options, and maybe a combination of those options—depending on what the situation is in the State and how the State applies that and how it sells its constituency that this is the best way to go—is clearly something that needs to be addressed.

We bear responsibility here too, as was mentioned, because we have failed, I think, in trying to reach and test some alternative ways in which we can help the States and help our country have better infrastructure. If there is a consensus here, it is that we are behind the curve and that responsibility falls on us also.

With that, let me just ask one last question, and it would be to each of you. If you had one thing that you wanted us to take away, this committee, one thing you would want us to take away, and I know this has been somewhat asked, but what would that one thing be?

We are walking out of here, and if we want to look back on the record and say, what is the most important thing that each of the four witnesses thought we ought to be focused on or think about as we go forward here, what would that be?

I will start with you, Governor Daniels, and then we will just go down the line.

Mr. DANIELS. Say "yes" to each other's ideas this time instead of vetoing each other's ideas. I think that, as we said earlier, this is a matter of enormous national urgency. I think history teaches that a pretty reliable sign of a declining society is when it stops investing in its future, and in its infrastructure specifically. And this is so ripe, I think, for the bipartisan cooperation that has been scarce lately. And since it will take multiple pieces to make a sufficient dent in the problem, I hope that you will all find a way to each accept the other's ideas and aim big and, for goodness's sake, take the wraps off.

Pouring more money, wherever you get it, through the same filter of all of the processes that we are made to live with now would be really shortsighted.

Senator COATS. Thank you, and thank you for your testimony.

Mr. Bhatt?

Mr. BHATT. I would just say two things. I know that the gas tax or whatever the funding is—we are competing in a global economy, and other economies are investing in infrastructure, and, as the Governor said, it is incredibly important that we do that. So, if we do not want to raise the gas tax, we should at least index it.

And the second thing would be, financing is incredibly important. It is an incredible tool that is being used, but financing is not funding, and we just need more in the system.

Senator COATS. Thank you.

Mr. Narefsky?

Mr. NAREFSKY. I would say, recognize that there are multiple solutions required. Do not believe that there is one answer. This is a problem that has grown and increased, and I think everyone recognizes it needs to be addressed. It is going to need to be addressed by a series of complementary solutions, whether it is funding, financing, or other regulatory flexibility. Do not get convinced that there is one answer. This is a problem that has multiple solutions required.

Senator COATS. And, Mr. Feigenbaum?

Mr. FEIGENBAUM. I would want to echo what Governor Daniels said about thinking creatively and really looking at other's ideas. And I think sometimes, when something new is introduced, it is kind of scary and, oh, we do not really want to go with it.

But if you look at something like mileage-based user fees in terms of funding for the long term, I think there is a lot of potential, and it is really an issue of just having the courage to look at it.

I would also say, in this committee's jurisdiction, I think the most important thing is an increase in the private activity bonds, which are really critical for P3 projects. If we want to move forward, that really needs to happen.

Senator COATS. Well, thanks to each and every one of you. I thought it was a very, very constructive panel—the questions that were asked and the discussion that was held.

I hope that somebody is taking a picture of me gaveling out the Finance Committee. [Laughter.]

Let me say this. Any written questions for the record that will be submitted need to be submitted by Monday, July 6th. With that, the hearing is adjourned.

[Whereupon, at 11:56 a.m., the hearing was concluded.]

APPENDIX

Additional Material Submitted for the Record

Prepared Statement of Hon. Shailen P. Bhatt, Executive Director, Colorado Department of Transportation

First of all, I would like to thank Chairman Hatch for the invitation to testify, and acknowledge our Colorado Senator on the committee, Michael Bennet and thank him for his many years of service to the state, including his time as Chief of Staff to then Denver Mayor John Hickenlooper, and as Colorado's Senior Senator. For those of you who do not know, before coming to Colorado I served as the Cabinet Secretary for the Delaware Department of Transportation, served in the Administration at the Federal Highways Administration (FHWA) and also served as a Deputy Director of the Kentucky DOT. My testimony today will be Colorado focused.

I want to begin with a story that illustrates the transportation situation in Colorado. During my first 3 days as CDOT's Executive Director, I took an 1,100 mile tour around the state. As those of you who are familiar with Colorado know, Interstate 25 (I–25) is the major North/South artery, tying urban communities together along the Front Range. It also is an important freight corridor for the United States, running all the way from Canada to Mexico. The first leg of the journey was on I–25 heading north out of metro Denver. Outside Denver we drove through a pretty rural area on the 4-lane interstate (2 lanes in each direction). It was a Thursday morning, after rush hour, and we were stuck in traffic. I assumed there was an incident ahead but my Region Engineer informed me that was how the corridor travelled. It reminded me of Washington D.C.'s beltway traffic, and was a striking demonstration of the need to add capacity. When I asked what the plan was for widening, the response I received was based on current funding availability, we expect to be able to add one managed lane (a toll lane) in each direction, from Denver to Fort Collins (45 miles) by 2070. Think about that—18 year olds getting their driver's license this year will be 73 years old before they will benefit from a capacity increase—most of them will never get to enjoy the benefit.

Like the rest of the nation, funding for transportation in Colorado is at a crossroads. Our primary source of funding, the gas tax, hasn't increased in over 20 years (neither the federal gas tax nor Colorado's gas tax), and the recession eliminated General Fund investment by our Colorado Legislature in transportation in 2009. To update our infrastructure, keep pace with population growth, and improve safety and promote multimodal options, Colorado currently has an almost $1 billion annual shortfall and a budget that is inadequate to avoid a steady decline in the condition of our assets.

It is no surprise that this year during the 2015 Colorado legislative session there was a bill introduced that was promoted by the business community and primarily Republican elected officials along the North I–25 Corridor I mentioned earlier to ask voters to bond against future federal revenues for $3.5 billion in transportation improvements, including over $1 billion to fix the North I–25 Corridor between Denver and Fort Collins. As much as CDOT would love to improve the I–25 Corridor, we had to oppose the bill because expanding capacity by simply bonding against our federal revenue without any additional revenue to pay for bonds would have decimated our ability to maintain existing infrastructure assets. It would have been akin to the example of building an addition on the house while ignoring our leaking roof. Our priority here in Colorado has been to build a strong asset management program to make the very best use of our limited funds in an effort to keep that roof from leaking even more. The North I–25 example illustrates how important the federal revenues are to Colorado, and shows that if Congress were to expand revenue, Colorado could enter into a Public Private Partnership (P3) and quickly seek a bonding solution to accelerate the improvements on this and other critical transportation corridors across Colorado.

About 65% of CDOT's capital budget (dollars CDOT uses for maintenance and capacity improvements) comes from the federal government. We rely on those funds. Other states that have more clearly recognized the critical link between economic health and transportation tend to be less reliant. In our neighbor state to the west, the Chairman's home state of Utah, for example, you can almost flip the Colorado situation around. Utah relies much less on funds from the federal government and therefore is better equipped to handle any ebbs in federal transportation funding.

As Senator Bennet has expressed to the committee, Colorado is a rapidly growing state. Currently, our population is 5.3 million people and is expected to increase by almost 50% by 2040. As mandated by federal regulations, CDOT just adopted our 2040 Statewide Transportation Plan and the results are stunning—CDOT expects to have over that time $21 billion in revenue and a need of $46 billion. That leaves an unfunded gap of $25 billion over the next 25 years. These are numbers that reflect real, quantified need. If we can't fill the gap, CDOT will not have the money to maintain the system in its current condition, and will have increasing travel times and decreasing traveler convenience with ripple effects on the economic vitality of the state. Mr. Chairman and members of this committee, in Colorado we have a funding problem and we need your help—not to solve our problem for us, but to partner with Colorado to address these critical needs.

The bottom line and most important thing I want to leave you with today is that similar to Colorado's proposed bonding bill I talked about earlier, Congress can't fix a funding problem through financing. I cannot emphasize enough that critical point: financing mechanisms cannot correct what is essentially a funding problem due to revenue shortfalls. We in Colorado would love to bond and accelerate our most important projects, but we need a revenue stream to pay for it—our nation's highways need a stable funding source first and foremost if we want to move ahead in transportation. I believe it is critical we address these infrastructure improvements not only in Colorado but nationally. As Senator Bennet has repeatedly said back in Colorado while touring CDOT infrastructure projects—we should have the courtesy to maintain the infrastructure our parents and grandparents provided for us so that our children and grandchildren can enjoy the same quality of life that was given to us. In that spirit, I implore you to find a way to secure a stable, long-term revenue base for a robust, 6-year surface transportation bill this year.

Mr. Chairman, these times have also led CDOT (by necessity) to enter into an innovative era of how we meet the transportation needs of our state. In the past, we built more general purpose lanes to meet capacity needs. Now, we increase choice in travel, promote walking and biking, work to increase mobility through the use of operational improvements, and use pricing on new express lanes to manage travel reliability and growth. We have no "planned for" funds for capacity improvements and please remember that in Colorado any taxes must be approved by a vote of the people in accordance with our Taxpayer Bill of Rights (TABOR). That difficulty has made us very focused on squeezing the most out of the dollars we do have. The department has many successful "LEAN" process improvements that have allowed us to stretch our dollars and become a better, more efficient, customer-focused agency.

By necessity and as this hearing is focused on, our use of partnerships has changed as well. In the past we delivered a project through the federal and state gas tax and we would design, bid and then build the project. Today our toolbox includes working with the private sector on a wider variety of project delivery options, such as Design Build or Construction Manager General Contractor (CMGC). Of course, these and other project delivery options are only available if you have the funds to deliver the project.

Colorado has turned to a variety of options, including creative financing methods, in an effort to fill the investment gap and move critical projects forward. In 2009 Colorado created the High Performance Transportation Enterprise (HPTE), a Division within CDOT whose mission is to pursue innovative financing partnerships to move forward badly needed projects.

I'm sure the committee has already heard about the Denver area's transit agency—Regional Transportation District (RTD)—and its successful use of partnerships with the private sector with the Eagle P3 light rail line and the rehabilitation of Denver Union Station. The state has joined RTD with our first P3 by entering into a 50 year agreement with a concessionaire to design, build, operate, finance and maintain the second phase of our U.S. 36 improvement project. Just this Monday, we had the ribbon cutting on the first phase of U.S. 36, which connects the urban centers of Denver and Boulder. It is amazing to think this project started with a $10 million TIGER "Challenge Grant" from the first round of the U.S. Department of Transportation's TIGER grants in 2009 which we leveraged into two TIFIA loans totaling $114 million for the project. But even with state funds, and funds from RTD and the Denver area Metropolitan Planning Organization (DRCOG), the full $450 million multimodal project wouldn't have been possible without the state entering into a P3.

I believe Colorado has an interesting perspective to offer on this subject, because we are utilizing so many options to deliver transportation improvements in this new environment. U.S. 36 is one example of a P3, and it is one where our private partner is taking on the toll risk for the project, but that is not the only option for delivering managed lane projects in our state.

Another example is Colorado's major East/West corridor, Interstate 70. In Denver I–70 includes a viaduct that is over one mile long and is in critical need of replacement. It was constructed in 1964 as a four-lane bridge, and today carries more than 115,000 vehicles per day. The viaduct made news this month as repairs made to the bridge in 1997 are beginning to fail. Several tension rods that were installed to stop additional cracking in have broken. The bridge remains safe for travel, but we are increasing our inspection frequency and developing repair plans should further components deteriorate before we reach a Record of Decision (ROD) and move forward with the permanent improvements for this project.

The improvements needed to replace the existing viaduct and improve mobility on the corridor are estimated to cost $1.2 billion, and CDOT anticipates the replacement will include managed lanes in each direction (again, we have not completed a ROD and therefore these elements are not final at this time). If all goes well, we hope to have a P3 for that project as well. We don't expect the private partner to take on the toll risk. In fact, the tolls expected to be collected will not help pay for the cost of construction but instead will help defray a portion of the costs for maintenance and operations. Colorado would make what is known as availability payments to the private partner in exchange for arranging the financing for the project up front and covering all capital and annual maintenance of this critical Interstate section for the next 35 years.

As we assess our project delivery and financing options, we are considering many variables, but the one that seems to rise above the others is risk. What risks does the state want to transfer or optimize between the public and private sectors? What is the value of transferring the risk of the toll collection? What is the value of transferring the risk of long-term capital costs? What is the value of transferring ongoing maintenance operations versus maintaining those operations ourselves? When we assess those risks, sometimes we determine a P3 is not the way to go and other times a P3 provides the taxpayers with the best option in going forward.

Colorado's highway 470 (C–470) is another managed lane example, where we will be building an express toll lane in each direction. We have determined that a P3 would not be the best option for the state on that $200 million project, but we hope to secure a federal TIFIA loan and utilize toll revenue to cover about half the construction costs of that project.

On a different section of I–70 west of Denver we are converting the shoulder for 13 miles eastbound which carries traffic into Denver into a weekend travel lane during the peak periods. While we can't afford new lanes, travelers will have the option to travel in the shoulder lane for a toll. CDOT is financing the project in part with the expected toll revenue from the corridor, but without any private sector or federal financing assistance. To put in perspective the benefit states could see from creative ideas from Congress, Colorado's own Senator Michael Bennet introduced bi-partisan legislation last year to create a National Infrastructure Bank that proposed to provide loans at a 1% interest rate. The I–70 mountain corridor project I just referenced is a $72 million project. The financing included a 10 year, $25 million commercial loan at what we consider to be very favorable rates and terms given the infancy of the project and the speculative nature of the pledged revenues. Had Senator Bennet's proposal been enacted and if Colorado could have made use of that financing for this relatively small but important project, the taxpayers of Colorado would have saved the state over $6 million during the 10-year life of the loan.

Mr. Chairman and members of the committee, in conclusion it is important that states have different financing tools in the toolbox—driven by a constrained funding reality—to meet transportation investment needs of the state and the nation. From a project delivery perspective, since January 2008, CDOT has advertised 29 Design Build Projects worth about $953 million in total project budget. Since January 2010, we have advertised 11 CMGC projects worth about $418 million in total project budget. From a financing perspective we now have one public private partnership on a $450 million project and one on the way for an additional $1.2 billion.

Not to be forgotten is what we have learned about the importance of public engagement in the discussion of project delivery and project financing. A financing partnership with the private sector is not only new to us but new to the taxpayers and not only can a P3 change how we finance and deliver a project, but it has changed how we discuss a project publically. In the past, project financing and project delivery was a much more internal discussion. Now, we recognize the need to engage the public and stakeholders at different milestones, from project visioning during the environmental review process, to how we plan to build it, how it will operate once complete, and who will maintain the new facility.

Our funding crisis only increases the importance of engaging the public, stakeholders, local governments and more into a broader conversation regarding the needs of the transportation system. Colorado certainly needs to step up and do our part, and we are, but our transportation system has federal interests, including interstate commerce and quality of life of all citizens, and we need to continue to have a strong federal partner in transportation.

I appreciate the committee's time and attention to the important topic of transportation funding and financing, and I am happy to answer any questions you may have.

QUESTIONS SUBMITTED FOR THE RECORD TO HON. SHAILEN P. BHATT

QUESTIONS SUBMITTED BY HON. ROBERT P. CASEY, JR.

Question. Public-private partnership agreements can often be complex and need to be carefully negotiated. Do you believe that local and State governments are equipped with the resources and expertise necessary to negotiate public private partnership deals? Could the Federal Government provide more resources to assist them in these complex negotiations?

Answer. Thank you, Senator Casey, for this question. In Colorado, we have created two specific resources for the Department to address Public Private Partnerships and their formation. CDOT identified a shortfall in expertise several years ago when working to create innovative project delivery methods. First we have created the High Performance Transportation Enterprise (HPTE) that is a government sponsored enterprise that has some independent authority outside of the traditional CDOT structure to identify, create, and negotiate P3 projects that are more private sector facing. Also, CDOT created the Office of Major Projects (OMP) to help identify, create, and negotiate P3 projects that are more traditional facing but have innovative project delivery methods.

Specifically, the USDOT should create an office of excellence within the Department that would help States and local governments with the best practices clearing house for P3 negotiations. This small but efficient office could be a tremendous help for those entities without resources to create programs as CDOT did, but also could help those of us who have created these offices for those staff members to associate with their peers to exchange ideas among themselves for new innovative delivery methods.

Question. I have been interested in exploring tax credit bonds for transportation infrastructure projects. Similar bond programs already exist for forestry conservation, renewable energy, energy conservation, and new school construction. This initiative could augment the Highway Trust Fund and provide another tool to fund our aging infrastructure, thereby creating jobs and spurring our Nation's economy. Do you think this type of tax credit proposal could be a useful tool to help finance our Nation's transportation infrastructure?

Answer. Thank you, Senator Casey, for this question. Tax Credit Bonds are a good example of how CDOT could use a financing tool to help deliver a project faster. Here in Colorado, we are always looking for ways to speed project delivery. However, we need additional revenue to re-pay the bonds or other financing tools used to speed project delivery. As I stated in my testimony, financing is not a sustainable solution to our funding problems. At the end of the day, without increased funding for projects, CDOT's ability to use financing tools to deliver more projects is limited.

QUESTION SUBMITTED BY HON. JOHN THUNE

Question. I understand that this hearing is meant to focus on financing, but given your intimate knowledge of the planning process that goes on at the State level, I thought it might be useful to hear about how, from your perspective, not having a long-term bill in place has impacted States—particularly those with a short construction season. Can you talk about the transportation planning process and how the timing of congressional action when it comes to funding impacts States—including the impact felt by State DOT's this construction season?

Answer. Thank you, Senator Thune, for this question. Short-term extensions of the authorization program have coincided with short-term extensions in the appropriations process. These together do have a direct impact on project delivery as well as project selection in cold weather States.

Another important factor is the flat funding amounts. As you know, CDOT is federally mandated to produce two significant planning documents that affect project selection and funding (the 20 year fiscally constrained plan and a 5 year financing document called a STIP)

When delays in either authorization or appropriations by Congress happen, they directly impact the STIP and how CDOT is able to move projects into construction in any given year. Here in Colorado we are somewhat sheltered from this problem because we have maintained a cash balance. However, we are rapidly spending down that cash balance and this will become a more significant issue moving forward.

Finally, I would be remiss if I did not highlight how the lack of additional Federal revenue is having a significant impact on project planning here in Colorado. Specifically, CDOT has completed several large scale environmental documents to address large financial corridors within the State. Unfortunately, we do not have funding available to construct these critical projects nor the ability to use P3s in large ways to accelerate these projects because CDOT does not have the ability to repay large new bonding projects outside of the projects already identified.

The impact of this is tremendous. In my testimony before the committee I reported that the Interstate 25 North of Denver Corridor that links Colorado and Wyoming has a build-out schedule through the year 2075 with current funding levels. Think about that. We have identified improvements that need to be addressed today, but will not have the revenue to build these projects until the year 2075. That means a 16 year old getting their driver's license today will be 76 years old before they see all of the project completed.

PREPARED STATEMENT OF HON. MITCHELL E. DANIELS, JR.,
PRESIDENT, PURDUE UNIVERSITY

Chairman Hatch, Ranking Member Wyden, and members of the Committee on Finance, thank you for the opportunity to testify before you about the critical issues facing our nation's transportation system.

No country can have first-rate infrastructure without first-rate engineers. I am proud to represent Purdue University, a land-grant school with a long history of infrastructure research and the second largest engineering program in the country. We are home to the Center for Aging Infrastructure, the Center for Road Safety, and the annual Road School, a conference that for the last 100 years has attracted thousands of infrastructure professionals who gather to share best practices.

We graduate quality engineers who are prepared to maintain the structures of our past and to invent the infrastructure we will need in the future. Through research and our growing engineering programs, Purdue supports infrastructure that is cheaper, safer, more resilient and more environmentally friendly.

My interactions with the next generation of American engineers make me confident in the nation's technical ability to build infrastructure that is state of the art.

I am less optimistic about how we go about approving and financing the projects these engineers will oversee.

Nine years ago, as a first-term governor, I was on the Hill, testifying hopefully with then Governor Tim Kaine about these same issues, which were highly topical already. Federal progress since then has been disappointing, and we now have an even bigger problem today than we did back then. The size of our infrastructure gap presents a growing challenge. We cannot continue to be timid and traditional in our actions. We need new thinking and strong partnerships that harness the potential of private dollars. Public-private partnerships (P3s) are not a complete answer for all our challenges, but Congress will not find a complete answer without them.

I wish I could come here highlighting progress, but instead the facts require that I give a very similar message today as I gave 9 years ago: We may be a very innovative country in other areas, but the way we approve and finance infrastructure projects is antique compared to the rest of the world. We will never bring our economic endoskeleton up to date with the regulatory morass we have created; we will never assemble the resources to rebuild without involving private capital as a significant part of the solution.

REGULATORY EFFICIENCY

While the financing of infrastructure is of vital national interest and the jurisdiction of this committee, upgrading our nation's roads, ports and bridges will depend at least equally on a national agreement to reexamine the system that makes "shovel ready projects" a myth. No conversation about infrastructure would be complete without acknowledging that the permitting process is costly and broken.

At the center of the need for reform is the National Environmental Policy Act of 1969, which requires all federal agencies to generate detailed assessments of the environmental impact of "major federal actions." The implementation of NEPA has evolved over time, becoming more burdensome with every decade. According to one observer, in the 1970s a final EIS was typically 22 pages long. Today, an EIS commonly exceeds a thousand pages, despite regulations directing that statements should normally be less than 150 or 300 pages, depending on the complexity of the assessment.[1]

Similarly, 40 years ago it took the Federal Highway Administration 2 years on average to complete an EIS.[2] Today, it typically takes 7 years.[3] Wasting time and money has become the standard operating procedure.

This contrasts with much of the developed, environmentally conscious world. In Canada, regulations stipulate that after a 20-day public comment period, that nation's environmental assessment agency has 25 days to determine whether an environmental assessment is needed. If one is necessary, the agency has 1–2 years to complete the assessment.[4] Likewise, European Union regulations allow for a maximum of three and a half years for cross-national energy infrastructure projects.[5]

Our inability to meet such standards in this country stymies growth and is costly to the environment. How many gallons of gasoline are wasted as Americans sit idly on congested roads? How many pollutants are emitted while projects that improve energy efficiency are mired in red tape? In my state, we reduced collective emissions by thousands of tons per year by clearing out a backlog of some 450 expired air and water permits. In some cases, these had been pending for more than 20 years, even though new permits invariably require lower limits and tighter restrictions than the expired version. Moving fast in government is one of the most pro-environment things you can do. As much as anyone, the most devout of environmentalists need efficient permitting and economic growth if they are to realize their goals and the purpose of NEPA.

The overarching problem is a culture where the burden of proof is always on the pro-growth side, which has to prove that creating a new job won't hurt the environment, in even some infinitesimal way, interfere with some previously unheard of

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1 Todorovich, P., and Schned, D. (2012). Getting Infrastructure Going. RPA. Also, 40 CFR 1502.7.
2 FHWA, and Louis Berger Group, Inc. (2001). Evaluating the Performance of Environmental Streamlining: Phase II.
3 FHWA. (2011). Estimated Time Required to Complete the NEPA Process. *http://www.environment.fhwa.dot.gov/strmlng/nepatime.asp.*
4 Canadian Environmental Assessment Act, 2012 (S.C. 2012, c. 19, s. 52).
5 Regulation (EU) No. 347/2013 of the European Parliament and of the Council of 17. (2013).

species, or disrupt some ground of alleged, often highly debatable historical value. Our national interests would be better served if we switched the presumption so that requests for more study beyond a reasonable review would need to prove that the additional delays wouldn't unnecessarily cost jobs and hinder growth. Today's regulatory regime can fairly be described as cruel in the damage it inflicts on unemployed and underemployed Americans.

As the chair of Common Good, Philip K. Howard has stated, "Red tape is not the same as good government. . . . Congress must create clear lines of authority to make decisions. . . . [A]n environmental official should have responsibility to draw lines on how much review is sufficient. Similarly, one agency should have overriding permitting authority, balancing the concerns of other agencies and departments."

Sen. Portman and Sen. McCaskill's "Federal Permitting Improvement Act," which was recently reported out of the Committee on Homeland Security and Governmental Affairs with strong bipartisan support, is a good first step. Quantifying the costs and benefits of federal regulations is a goal of Indiana's Sen. Dan Coats through the "Sound Regulation Act" which he will soon reintroduce and which will hopefully lead to more reasonable policies.

THE ROLE OF PUBLIC-PRIVATE PARTNERSHIPS

A notable exception to our national capital deficit is in Indiana, now in year 9 of a 10-year, multi-billion dollar infrastructure plan with no new debt, no new taxes and no significant permitting delays.

When I became Governor of Indiana, my administration inherited a transportation infrastructure gap of at least $3 billion, equal then to 10 years of new road construction.

We looked at every option to address this funding shortfall, including raising the state gas tax, indexing the gas tax, transferring state sales tax on gasoline revenue to transportation, issuing more debt, increasing heavy truck fees, and increasing vehicle registration fees, to name just a few. After assessing the traditional options it became clear that we would never break ground on our backlog of 200-plus priority projects with a business-as-usual approach.

Instead of allowing long-sought, long-delayed projects to languish on the drawing board, we launched a search for partners who could augment state resources through a series of P3s. These partnerships varied significantly in size, location and circumstance, but each had at least one thing in common—they allowed the state to build vastly more than Indiana could have by traditional means alone. While the complete highlight list is long, three partnerships in particular illustrate the problem-solving way we approach every infrastructure challenge.

Ohio River Bridges Project

Southeastern Indiana and Louisville, Kentucky comprise one metropolitan community separated by the Ohio River. For decades, both states struggled to implement plans to improve transportation between the cities, and to better connect the regions economically. The question of how to finance and efficiently construct two necessary new bridges, various interchanges and miles of roadway was a subject of much debate.

Initially, both states planned to pay for the project with state and federal tax revenue, but that proved cumbersome, dilatory and unrealistic. A breakthrough came when the Indiana and Kentucky legislatures gave a bi-state authority the power to explore innovative project delivery options, including a P3. That resulted in Indiana taking the lead on what's known as an "availability payment" P3 on the new East End Crossing, in which a private partner will bear the risk of building and financing the bridge, while the state, in partnership with Kentucky, will maintain authority over tolls. Using revenue from the tolls and other state funds, Indiana will now compensate its private sector partner as milestones are met during construction and operation of the East End Crossing.

The partnership streamlined the project and saved the state millions. For example, after the market had spoken, the actual cost to build the East End Crossing Bridge was $225 million lower (or 23 percent less) than the original estimate. The agreement also committed our partner to decades of operations and maintenance services, saving the state tens of millions of dollars in future expenses, and guaranteeing that Indiana will receive a bridge that is in excellent condition at the end of the 35-year concession. Most importantly, over the next 50 years the project is expected to generate an average of 15,000 jobs a year and a total of $30 billion in personal income and $87 billion in economic output for the region.[6] Construction will not be complete until late 2016, but the region has already reported the addition of 5,000 new jobs and millions of dollars in business expansion along the river.[7]

Cline Avenue Bridge

The Indiana Harbor Canal extends from Lake Michigan into the Indiana community of East Chicago, near the Illinois border. For most of the last 35 years, the Cline Avenue Bridge has passed over the canal, connecting several commercial sites in the area. The lengthy bridge, which was financed using traditional methods, opened in 1983 and should have lasted for at least another 25 years without serious issues.

But in 2009, the state discovered significant weaknesses in the bridge's structural integrity and was compelled to condemn it a short time later.

Although the bridge was an important asset in the community, the expected usage levels could not justify the enormous expense it would take to rebuild the structure in its original form. Our cost-benefit analyses concluded that unless we could find a way to make taxpayer funds go farther, the wisest action would be to help the community adapt to life without a bridge by strengthening the surrounding roads.

For months, that outcome seemed the most likely. But in an arrangement becoming more and more common throughout the world, we were eventually able to craft an agreement with a private partner to construct a replacement bridge. Under the agreement, the partner is building the structure using entirely private funds, with no risk or cost to government at any level. The contract also obligated the partner to invest $3 million in improvements on the state road that leads to the new bridge, and to return a share of all toll revenue back to the local community for economic development.

Indiana Toll Road/Major Moves

By far the most successful of our efforts to find new revenue for infrastructure came through a P3 agreement that leased the 50-year-old Indiana Toll Road. The agreement was unique in the United States, but fairly common globally.

Nations such as Australia and the United Kingdom have long understood that, just as many business units are more valuable if separated from their conglomerate parent, an asset like a highway can be worth vastly more under different management. If it were merely a matter of bringing forward money that would otherwise come in over the years, such a tactic would make little sense. The goal is to capture far more value than an asset would be worth operated in public hands.

Under these partnerships, many existing roads, bridges, and other public facilities are operated by private companies who are more efficient in running them and have private funds to upgrade and maintain them better than the governments that contracted with them for the operations. There is nothing remotely radical about this idea; these are simply a new form of regulated public utility, like our electric companies, few of which are owned by government.

The Indiana Toll Road, which runs 156 miles from Illinois to Ohio, was an obvious candidate to become such an asset. At the time, instead of making money for the state, the road had operated at a loss for 5 of the previous 7 years. It was badly in need of an expansion, repairs and the installation of electronic technology that makes tolling convenient. In political hands, it was a chronically underperforming asset. Political timidity had kept tolls locked at the same price since 1985. In one section, motorists waited in a long line to pay a political patronage worker 15 cents in cash.

Even if we raised the tolls, there was little reason to believe that the governors who would come after me would have the inclination or the political ability to do the same. I once asked how much it cost to collect that 15-cent toll on the road and the answer came back at 34 cents. I joked that we would have been better off with the honor system and a fishbowl for occasional donations.

The estimated net present value of the road in state hands was no more than $1.92 billion. Even that valuation assumed the state would begin raising tolls with inflation, a total change in the state's historic behavior. It made for an easy decision when we received a high bid of $3.85 billion, three times the road's realistic status quo value, to enter into a long-term agreement that, under intensive state oversight,

[6] Economic Impact Study of the Ohio River Bridges Project, 2014 Update.
[7] Inside Indiana Business (2015). Regional Approach Boosts Jeffersonville.

would give a private concessionaire the responsibility to upgrade, operate, and maintain the road in exchange for the right to collect tolls. To acquire revenues of that magnitude, we would have had to roughly triple our gas tax, an economically ruinous and politically impossible idea.

As thrilled as we were with the bid, we knew the details of the contract would determine whether the deal was good for Indiana in the long run. We negotiated a highly detailed legal document that keeps rigorous oversight of the road in state hands. Performance expectations were clearly identified for a long list of metrics including litter removal, pavement quality, pothole repair, sign maintenance and safe lighting, with penalties and fines for shortfalls. The agreement also obligated the private operator to upgrade the road, add electronic tolling, expand lanes, and make other improvements valued at about $450 million—in addition to the original $3.85 billion.

The agreement locked in the 1985 toll rates for passenger car drivers for an additional 10 years, and it limited increases in rates to inflation, GDP growth or 2 percent. If the concessionaire makes a profit on the tolls, it will pay income taxes, and unlike with government procurement, it pays sales taxes on all its purchases.

An often overlooked benefit of P3s is that when agreements are properly constructed, as ours was, the P3 shields taxpayers from some of the risks that are unavoidable with the construction and operation of any infrastructure. For instance, our transaction shifted the risk that revenues might not meet expectations away from Hoosier taxpayers and back on our private partner. The timing of the agreement, made months before the economy imploded, could not have been more fortuitous for the state. Absent our transaction, the state would have endured disappointing toll revenues as the economy collapsed and more drivers stayed home.

Instead, that burden fell on the lessee. Indiana taxpayers had already received the nearly $4 billion lease payment in upfront cash, and the agreement was locked in place. Even when traffic levels were still not meeting expectations years later and the concessionaire succumbed to bankruptcy, all of the taxpayer protections and benefits were preserved. The lease simply shifted to another lessee and the agreement continued unchanged.

Of crucial importance, every penny of the $4 billion went to long-term purposes. Whether in business or government, no asset should be monetized for current operational spending. The only defensible transactions are those that redeploy the proceeds to a different long-term capital purpose that yields a higher ROA. That was a non-negotiable tenet of our 2006 proposal, and we stuck to it.

After paying off the 50-year-old toll debt, we created a $500 million dollar permanent trust fund that earns interest for future projects. We invested the rest in a 10-year transportation plan. Known as "Major Moves," it's paying for 104 new roadways by 2015, the rehabilitation or replacement of 1,000 bridges, and more than 6,000 miles of highway to be resurfaced. We became the only state in the union to have a fully-funded, 10-year infrastructure plan that required no new taxes and no new debt.

CONGRESSIONAL SUPPORT FOR INNOVATION AND NEW REVENUES

P3s are more the rule than the exception in Asia, Europe and the developing world. The United States, in so many ways the world's leading innovator, lags behind in the area. While that is starting to change, most U.S. P3s are designed to directly finance new construction, or so called greenfield projects. These partnerships, as in the case of the Ohio River Bridges project, diversify risks across sectors and allow public investments to go farther. But in contrast to P3s on existing assets, they still create new debt.

In addition to P3s on greenfield projects, Congress should also encourage states to create new revenue by making P3s on existing assets common. As my state proved through the Indiana Toll Road, these so called recycled assets can be very effective at creating new and unprecedented means to finance new infrastructure. And again, I cannot stress enough that all new revenue generated by these agreements should go towards long-term infrastructure funding, as we did in Indiana. It would be irresponsible to use the funds for current government operations.

The most basic way to promote P3s on existing assets is to make sure our tax code doesn't discourage them. One issue Congress should address is how the law treats tax-exempt government bonds when a government enters into a P3. For example, as we were negotiating the Indiana Toll Road partnership, Indiana still owed

$200 million on 50-year old tax-exempt bonds, a common scenario for large infrastructure. Current law does not allow such debt to continue into public-private partnerships. Before the program could go forward, we either had to pay off the debt or refinance it as taxable bonds at a higher interest rate.

Because we achieved such a spectacular lease payment, 19 times the outstanding debt, it was no problem to pay it off and we did so immediately and eagerly. But for other potential agreements, the tax code has been an impediment both practically and politically. For instance, some commentators blame the P3 tax penalty as one factor in the collapse of a deal explored by Mayor Rahm Emmanuel to lease the Midway Airport.

The P3 tax penalty contrasts starkly with the practice in Australia, the global leader in this area. Not only does Australia refrain from penalizing P3s on existing assets, its federal government has set aside $4 billion USD to reward states and territories that make such agreements. As long as the new revenues from the private partner "are allocated to new infrastructure investment," states receive a 15 percent bonus from the national government.[8]

According to former U.S. Associate Attorney General John Schmidt, Australia expects to earn $200 billion from P3s on existing infrastructure. Here in the United States, untapped potential revenues appear to exceed half a trillion dollars.[9] The valuation Indiana received for the Toll Road lease was so high, no state is likely to repeat our success to the same degree. But significant revenue potential remains and it would be senseless to leave the option out of the toolbox as we look to expand the resources available for U.S. infrastructure investment.

With the persistent and growing shortfall in the Highway Trust Fund, Congress must consider alternative funding sources for our surface transportation infrastructure. One such alternative would be to reform and expand the existing programs that permit state tolling of new, expanded or reconstructed interstate facilities. Tolls, after all, are simply a direct "user fee" and are thus consistent with the principle of user-pays/user-benefits on which the Highway Trust Fund was founded. If the federal tolling programs were expanded or liberalized, more states would have the opportunity to explore and pursue P3 projects, with these user fees serving as the funding source.

CONCLUSION

Throughout this testimony I have focused on the "how" of infrastructure approval and funding instead of the "why." I have assumed it unnecessary to describe the near unanimous consensus among economists and policy experts that smart investments in infrastructure are essential for our economy and our future. I felt certain that each of you understands the problems we face and the economic potential we can reap through large-scale infrastructure investments. If any issue is ripe for bipartisan cooperation in a Congress that needs more bipartisanship, this is that issue.

The future engineers and infrastructure scholars at Purdue University are ready to get to work building the next generation of American infrastructure. But real progress must start with Congress through an agreement that fixes our broken permitting system and maximizes funding dollars by incentivizing effective public-private partnerships.

PREPARED STATEMENT OF BARUCH FEIGENBAUM, ASSISTANT DIRECTOR FOR TRANSPORTATION POLICY, REASON FOUNDATION

Chairman Hatch, Ranking Member Wyden, and fellow Members:

My name is Baruch Feigenbaum. I am the Assistant Director for Transportation Policy at Reason Foundation, a non-profit think tank with offices in Los Angeles and Washington DC. For almost four decades Reason's transportation experts have been advising federal, state and local policymakers on market-based approaches to transportation.

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[8] Commonwealth of Australia. (2014). Budget 2014–15. *http://budget.gov.au/2014-15/content/glossy/infrastructure/download/Infrastructure.pdf.*

[9] Schmidt, J. (2015). A Sane Way to Upgrade Bridges, Ports and Transit. *Wall Street Journal.*

MY CREDENTIALS ON TODAY'S TOPIC

I am a graduate of the Georgia Institute of Technology with degrees in Public Policy and Transportation Planning with a concentration in Engineering. My Master's Thesis studied Induced Demand in growing areas and potential solutions. With Reason, I have authored studies on mobility, highway quality, highway congestion, transit options, funding alternatives and innovative financing. I have worked with the states of Georgia and North Carolina as well as numerous counties to implement transportation policy and funding reform. I currently serve on two National Academy of Sciences Transportation Research Board Committees, Bus Transit Systems and Intelligent Transportation Systems. Further, I assist the committees on Transportation Revenue and Financing and Metropolitan Planning. My testimony today draws on these experiences.

OVERVIEW OF TESTIMONY

While the federal government continues to delay action on meaningful transportation reform, states are leading the way. Understandably, raising taxes is unpopular; while several states have increased their gas tax, moved to a gas tax/sales tax combo or have begun testing Reason's preferred option of mileage based user fees, the majority have chosen to stretch their resources further with innovative financing. Given scant political support for funding increases at the federal level, Congress should examine what states are doing to stretch their resources.

At the same time, innovative financing is not a panacea for our transportation problems. Financing is the act of obtaining full project funding up-front from investors, while funding is the actual revenue itself. While financing can stretch resources, states must have some underlying funding such as gas taxes, tolls, or mileage based user fees. States need to avoid a situation such as New Jersey's where the state became so overly leveraged through borrowing that 100% of its annual gas tax revenue must go to repay its debt, and still be insufficient, so the state would have to tap still other funding to repay the debt.

There are numerous financing tools that states use. These can be divided into several categories:

- Federal credit assistance which includes TIFIA, Section 129 Loans and State Infrastructure Banks;
- Bonding which includes Revenue Bonds, General Obligation Bonds, Limited and Special Tax Bonds, Hybrid Bonds, Grant Anticipation Notes, Private Activity Bonds, Tax Credit Bonds;
- Non-profit Financing; and
- Methods to Leverage Federal Aid including Matching Flexibility and Advance Construction.

However, most of the innovative financial activity has taken place through public-private partnerships (P3s) using TIFIA and Private Activity Bonds. A smaller source of innovative financing has been state infrastructure banks. The rest of my testimony focuses on these tools.

RECOMMENDATION NO. 1: INCREASE USE OF PUBLIC-PRIVATE PARTNERSHIPS

A powerful tool that fewer than a dozen states are actively using so far is the long-term public private partnership in which the private sector designs, builds, finances, operates, and maintains a major highway or bridge—typically on the scale of $500 million to several billion dollars in cost. Over the past 12 years, the largest 16 P3 projects of this kind have involved a total investment of nearly $28 billion. Most of these projects involve some degree of state investment, on the order of 20–25%, analogous to a down payment. The rest is privately financed by the winning concession team, using a mix of debt and equity.

Infrastructure investment is growing in popularity in the private sector. Many entities such as insurance companies, investment banks, and pension funds invest through an infrastructure investment firm. Since it is not possible to invest equity into infrastructure owned and operated by governments, these companies seek to invest in infrastructure that has been privatized (or was always private such as utilities) or in P3s. Private infrastructure raised from investors set a record in 2014 of $48.3 billion, the latest year for which numbers are available.

There are many advantages to this type of procurement. Because the same entity will be constructing and then operating the project over many decades, its incentive is to build it more durably so as to minimize its life-cycle cost, rather than minimizing only the initial construction cost. The P3 company also accepts many of the mega-project risks that are usually borne by taxpayers—construction cost overruns, late completion, inadequate maintenance, and in many cases traffic and revenue. Because these are examples of project finance, the total cost is raised up-front, and the bonds are paid off over many years as highway users benefit from the improved infrastructure. And proper maintenance is contractually guaranteed for these high-profile projects.

A toll-concession P3 is the best deal for taxpayers as the toll can provide most of the revenue to repay the financing for the project. Availability payments, the other type of P3, also need a source of revenue (typically existing fuel tax revenue). However, both types of P3 projects transfer risk to the private sector, which is the biggest advantage of all P3s. In design-build projects, the private sector takes on the risks of late completion and construction cost overruns. But in a toll concession P3, the private sector not only takes on delivery and cost overrun risks, but also takes on traffic and revenue risk. In the Great Recession, when people were driving less, certain toll roads did not meet their traffic projections. For those procured as P3s, the private company—not taxpayers—shouldered the financial responsibility. However, for those procured through conventional methods, taxpayers were on the hook for the difference.

P3 contractors also deliver projects more cost-effectively. The I–70 Value for Money Report prepared for Colorado DOT's HPTE unit, looked at six projects comparing the actual project cost with the cost estimated by the procuring agency if the project were delivered internally. All five U.S. projects, I–595 in Florida, FasTracks in Denver, the Port of Miami Tunnel, the Goethals Bridge in New York and Presidio Parkway in San Francisco were delivered at lower cost, ranging from 12.5% to 20% savings. The report also examined the life-cycle costs of the LBJ Express Lanes which were 15% lower than for the public sector comparator.

There are two financial tools which help make these projects possible. So that the private investors can compete on a level financial playing field, Congress authorized states to issue tax-exempt revenue bonds, whose interest rates are similar to revenue bonds for state-led projects. These are called Private Activity Bonds (PABs), having a statutory cap of $15 billion.

The PABs program in recent years has been well-used. As of the end of 2014, about $5 billion of these bonds had been issued, and another $5 billion had been approved for issuance by DOT. That leaves only $5 billion of the original $15 billion available for a growing pipeline of P3 projects. Congress is encouraged to double the cap to $30 billion, for a 6-year bill, increase the cap to $25 billion for a 4-year bill, and increase the cap to $20 billion for a 2-year bill.

Congress also created the popular Transportation Infrastructure Finance and Innovation Act (TIFIA) credit support program, under which P3 projects can obtain subordinated loans to complete a financing package. Each dollar of Federal funds can provide up to $10 in TIFIA credit assistance.

I recommend Congress make several reforms to the TIFIA program as well. First, in order to stretch resources further I recommend decreasing the maximum percentage of project costs that a TIFIA loan can cover from 49% to 33%. While the USDOT's TIFIA office has never approved a loan for more than 33%, there is no guarantee that this will continue in the future. Second, I suggest reforming the TIFIA process, so that all projects that meet the criteria receive funds. When Congress reformed TIFIA in 2012's MAP–21, it intended for the program to become a check-the-box process. Instead USDOT has been applying discretionary criteria to the TIFIA program. Congress should direct USDOT to approve all projects that meet TIFIA criteria, subject to the availability of TIFIA funds.

RECOMMENDATION NO. 2: INCREASE USE OF STATE INFRASTRUCTURE BANKS

State infrastructure banks are revolving infrastructure investment funds for transportation that are established and administered by states. Similar to a private bank, an SIB can offer a range of loans and credit assistance to public and private sponsors of highway and transit programs. SIBs allow states to make more efficient use of transportation investments and leverage federal and state funds by attracting other public and private investment. SIBs can be used as collateral for the bond market or as reserve funding. However, under current legislation, states may not use any federal funding to capitalize SIBs.

There are three different kinds of SIBs, using appropriated funds from TEA–21 and SAFETEA–LU: federally capitalized, state-capitalized and federally and state-capitalized. Thirty-two states plus Puerto Rico have federally capitalized SIBs. While SIB usage is widespread, similar to P3s, most of the loan activity, 87%, is concentrated in a few states. South Carolina is the leader with $3.3 billion in activity to 13 large projects. Two states, Georgia and Kansas have state-only capitalized SIBs; while two, Florida and Ohio have combined federal/state capitalized SIBs. However, the vast majority of state activity, $762 million, has taken place in Florida.

Future legislation should allow states to capitalize up to 10% of certain parts of their highway and transit funding. This provision existed in both TEA–21 and SAFETEA–LU.

Thank you for the opportunity to testify today on transportation finance. I would be happy to answer any and all questions, either orally or in writing.

QUESTIONS SUBMITTED FOR THE RECORD TO BARUCH FEIGENBAUM

QUESTION SUBMITTED BY HON. ORRIN G. HATCH

Question. It seems that all the witnesses at this hearing are supporters of public-private partnerships and certainly have shared compelling examples in their testimonies of their success around the Nation. However, not every partnership ends in success, and in a decision as important as this, it is necessary to consider both sides of the equation before making any decisions.

Mr. Feigenbaum, in your testimony you cite New Jersey as one example that did not end as hoped. Could you tell us what New Jersey didn't do that a successful project should do in order to avoid similar consequences?

Answer. New Jersey's problem was that it could not find a way to legally authorize a P3 project.

First, the State does not have enabling legislation otherwise known as a bill that passes a State's General Assembly and is signed into law by the Governor. The most important component of enabling legislation is authorizing P3s, since State departments of transportation need specific language to enter into P3s. Well-written P3 legislation may also create a State office dedicated to P3s, standardize and promote best practices, and protect the public interest. Each of these steps makes taxpayers more comfortable with P3s and leads to wider use.

Some States such as North Carolina and Texas have authorized a P3 for a specific project. New Jersey explored this option, but since some lawmakers wanted P3s for a multitude of projects and other lawmakers did not want P3s for any project, that effort failed.

New Jersey has very strong unions, and they, along with many legislators, are under the impression that P3s and unions do not work well together. This is not accurate. There are many States with strong unions that have robust P3 laws including California, Illinois, Ohio, and Pennsylvania. Pennsylvania is particularly noteworthy for its bridge replacement project. New Jersey legislators need to work across the aisle to create a P3 project that is acceptable to all.

QUESTION SUBMITTED BY HON. JOHN THUNE

Question. In your testimony you touched on risks associated with the utilization of infrastructure financing, including the possibility of a public entity being overleveraged. I think financing can be an important tool when it comes to infrastructure investment, but I think it is important we also understand the risks. How do States ensure the long-term public interest is protected in public-private partnership arrangements?

Answer. Becoming overleveraged can be a major problem but it is avoidable using a few common-sense practices. First, senior department of transportation/metropolitan planning organization staff need to explain to political leaders the difference between funding and financing. Funding is the actual revenue to complete the project. Financing is the means to secure that revenue. Financing is not a substitute for funding. All projects need funding either from the State, the private party, or most likely a combination.

Since funding is critical and many States lack monetary resources, I prefer toll concession P3s compared to availability payment P3s. In toll concessions, the toll is the source of revenue. With the equity the private sector brings to the table, little or no additional State revenue is needed. An availability payment typically requires additional taxpayer revenue for the deal to work. While both transfer risk and lead to cost efficiencies, the toll concession typically requires less public money.

State DOTs should have at least one high-ranking official whose job it is to protect taxpayers. This person could be the director of P3s or a specific consumer watchdog. Regardless, the person ensures that taxpayers are protected by examining all aspects of the deal such as the use of public funds, inclusion of specific conditions such as non-compete clauses, type of P3 structure, length of contract, and operating conditions. States that have specific consumer watchdogs such as Virginia have more P3 projects and a higher public satisfaction with the P3 process.

QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

Question. While this hearing is focused on alternative financing for highways such as through private activity bonds, I would like to highlight a related issue for water infrastructure. The EPA and GAO estimate the current water infrastructure funding gap to be as high as $1 trillion. According to a report by the American Society of Civil Engineers, not addressing this need could cost businesses $147 billion, households $59 billion, and result in the loss of nearly 700,000 jobs by 2020. Clearly, we have an infrastructure crisis with water in proportion to what we face with our Nation's highways, but people take it for granted because the pipes are underground and when they turn on the tap, water comes out—out of sight, out of mind. Thousands of residents in New Jersey are serviced by at least three private, investor-owned water companies. Because these companies operate over multiple jurisdictions, and often multiple States, they, private companies, offer economies of scale that bring efficiencies such as mass purchasing power and technology and expertise. During the last highway funding bill, I joined Senator Crapo in successfully including a proposal to lift the volume cap on private activity bonds for water infrastructure. Unfortunately, the provision was not retained during conference negotiations with the House.

Mr. Feigenbaum, I have two questions for you.

Does it make sense for the residents in one locality in New Jersey serviced by an investor-owned utility to not benefit from low-cost financing provided by tax-exempt bonds while residents of neighboring towns and cities serviced by municipal systems do?

Do you support removing barriers to tax-exempt financing, like lifting the volume cap—as is already done for other types of infrastructures such as airports, high-speed rail, wharves, and solid waste disposal industries—for truly public purpose projects like water infrastructure?

Answer. Much of our water infrastructure is deficient; improving our water system is a major problem that receives little publicity because pipes are hidden underground. Our sewer infrastructure may be in worse shape than our roadway infrastructure. Due to this pressing need, I am a big supporter of providing the same tax benefits to private activity loans as municipal bonds. Therefore, it makes no sense for residents of one New Jersey locality but not another locality to benefit from low-cost financing.

I am also a big supporter of removing the volume cap for tax-exempt financing. Before 2005, tax-exempt private activity bonds for surface transportation infrastructure were not available, even though tax-exempt bonds were permitted for maritime and aviation purposes. As a compromise between those who wanted to allow unlimited private activity bond use and those who wanted to prevent all usage, The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), set a cap at $15 billion. U.S. projects are expected to hit that cap by 2018.

While some questioned whether private activity bonds were sound investment tools, 10 years of usage have shown that private activity bonds are a cost-effective, safe-for-taxpayers method of financing infrastructure. Since infrastructure needs to be added and modernized, there is no logical reason why any project that is a sound investment should not receive the benefits of tax-exempt financing. I will continue to push for an increase in the private activity bond cap, and I am hopeful that the cap will be significantly increased, if not eliminated altogether.

PREPARED STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH

WASHINGTON—Senate Finance Committee Chairman Orrin Hatch (R–Utah) today delivered the following opening statement at a committee hearing examining financing options for the Highway Trust Fund:

I'd like to welcome everyone to today's hearing on alternatives and additions to federal and local infrastructure financing.

Last week, we held a hearing on infrastructure funding, specifically focusing on the status of the highway trust fund and the looming deadline for renewal at the end of July. Today, we'll discuss a separate, but important, topic, which is how states are using innovative financing to facilitate construction of infrastructure projects.

At the outset, I want to make sure it is clear that, while they are important, these financing alternatives and ideas are not meant to address the immediate shortfall in the Highway Trust Fund. As long as our federal highway program is based upon reimbursements to states made on a formula basis, there is no workable substitute for federal funding.

Instead, today's discussion will be about additional tools that states can use to better determine and respond to their own infrastructure needs.

I think we also need be clear on what financing is and what it is not.

Because of the large capital costs associated with infrastructure, financing alternatives can give states more flexibility in producing the capital they need to build projects faster. However, we should also remember that financing carries with it the expectation of repayment and future return.

During last week's hearing, Dr. Kile from the Congressional Budget Office noted that "[r]egardless of its source, financing is only a mechanism for making future tax or user fee revenues available to pay for projects sooner. It is not a new source of revenues."

That is important to remember: pulling taxes and other revenues from the future into the present does not create new resources. It is also important to remember that there are various ways to use alternative financing mechanisms to shift risk, but financing tools alone do not get rid of risks.

Having said that, as Mr. Narefsky, who is on our panel today, notes in his written testimony: "There is bi-partisan support for public-private partnerships at both Federal and State levels." This is certainly true, and I think the distinguished panel of witnesses we have here today demonstrates that interest.

However, while there is bipartisan consensus on examining alternative ways of financing for infrastructure projects, many obstacles facing infrastructure projects remain, including significant obstacles imposed by the federal government.

For example, as Governor Daniels notes in his written testimony today, it takes an average of seven years for the Federal Highway Administration to complete an Environmental Impact Statement on a single proposed highway project. By comparison, the Hoover Dam, often cited as an exemplar of robust infrastructure policy, was built and completed in only 4 years.

We need to do better. I hope today we can have a robust discussion on what we can do at the federal level to make these processes more efficient.

Working with states on innovative infrastructure financing allows for decisions to be made closer to the people whom the projects are intended to benefit. I have an example from my own state of Utah.

In 2008, the Utah Department of Transportation, or UDOT, was in the process of designing and constructing the first phases of the Southern Corridor near St. George.

The Southern Corridor is a brand new highway that provides regional transportation among multiple communities, plus a new access point for those communities to Interstate 15, and improved access to a new, larger airport constructed in St. George to accommodate the growing community.

During the design of the Southern Corridor, a private developer expressed a desire for an interchange to access his property. This interchange was not in the original plans. However, the developer was willing to pay for the construction of the additional interchange himself.

Using a State Infrastructure Bank, UDOT partnered with both the city of St. George and the private developer in order to finance the interchange. Under the arrangement required by the State Infrastructure Bank, UDOT entered into a loan agreement with the city of St. George in the amount of $3.7 million to construct a bridge for the interchange. Afterward, the developer repaid the cost of the loan to St. George and chipped in another nearly $2 million of his own capital to build the ramps and street network required for the new interchange.

I'm recounting these transactions, not because they represent high political drama or intrigue, but because they demonstrate how innovative financing arrangements with the private sector can be useful in improving our infrastructure by making new opportunities possible and relieving the burden on taxpayers.

For me, the larger questions for today's hearing are not whether we should encourage public-private partnerships and innovative financing, but how we can ensure that the taxpayers are the ultimate beneficiaries of these deals, and not just the bearers of risk. It's clear that, done right, these types of financing mechanisms can help us cut through red tape and promote local control of infrastructure development.

I hope that we can have a good discussion of these issues and work toward improving a system that clearly could benefit from increased efficiency.

With that, I yield to Senator Wyden for his opening remarks.

Prepared Statement of David Narefsky, Partner and Co-Leader, Infrastructure Practice Group, Mayer Brown LLP

Dear Chairman Hatch and Members of the Senate Finance Committee:

It is an honor for me to be here today to discuss the increased use of innovative public-private partnerships to finance, construct and operate major transportation infrastructure projects. My name is David Narefsky. I am an attorney and partner at Mayer Brown, an international law firm headquartered in Chicago. I am coleader in the Firm's Global Infrastructure Practice Group and regularly advise both state and local governments and private clients in the development and financing of major transportation infrastructure projects.

State and local governments across the country are responding proactively to what is widely recognized as a crisis in the state of our nation's infrastructure by partnering with the private sector to finance, develop and operate major transportation projects. In the last decade or so, we have seen an increasing use of the public-private partnership model, building on approaches developed and refined in Canada, Europe, Asia and Australia and utilizing the innovative financing and regulatory incentives authorized by the Federal Government. As a result, public-private partnerships have played a major role in the successful development most large-scale transportation infrastructure projects completed or under construction in the past decade. Many of these projects are highlighted on the map which is attached to these remarks.

LESSONS LEARNED

Reflecting on the experience of state and local government efforts over the last decade to partner with the private sector in the development of our transportation infrastructure, I would highlight the following as key "lessons learned":

- There is bi-partisan support for public-private partnerships at both Federal and State levels. Federal financing incentives and regulatory flexibility has been encouraged by each of the Clinton, Bush and Obama Administrations. Both Republican and Democratic Governors and Mayors have been strong advocates for public-public partnerships supporting transportation infrastructure.
- Protecting the public interest is paramount: Successful public-private partnerships require the private partner to comply with detailed and comprehensive

operating standards, with non-compliance resulting in significant monetary penalties and/or default and loss of the right to continue to operate the project.

- A reliable legal framework is a necessary precondition to getting things done: Private parties investing in a jurisdiction and its infrastructure need to know that the identified sources of revenue will be available throughout the term of the agreement—and that when project procurement is initiated it will get to the finish line.
- Federal financing incentives, in particular tax-exempt private activity bond and low-cost TIFIA financing, have been critical to successful implementation of transportation public-private partnerships.
- The successful models developed for transportation public-private partnerships are increasingly being applied to other infrastructure assets, including water supply and public buildings such as courthouses and university facilities.
- While there are many types of public-private partnerships, it is critical to know when a public-private partnership is the right structure for the project and to know what type of public-private partnership should be implemented on a project. Not all projects are well-suited for public-private partnership contracting. Certain types of projects are more suited than others for public-private partnerships because of the ability to reduce cost, introduce innovation, and accelerate delivery through a public-private partnership. Knowing which projects those are and then implementing the right public-private partnership model for those projects is critical.
- Important government policy objectives can be incorporated in public-private partnership transactions: These objectives can include labor protections, including requirements for project labor agreements, labor neutrality and card check procedures, wage and benefit requirements and required offers of employment to existing employees; disadvantaged, minority, female, disabled and veterans' contracting requirements. In addition, they can include limitations on toll increases and other fees imposed by private sector partners.
- Having a public champion is critical: Jurisdictions that have been successful in developing public-private partnerships have had a public champion who clearly articulated policy rationale for the project, moved forward with bold initiatives to develop new projects, and developed a vision in the face of uncertainty and at times opposition.
- Successful public-private partnerships result in significantly reduced construction cost as well as lower and more predictable "life cycle" operation and maintenance costs over the useful life of the asset.
- Credibility is important: Successful jurisdictions have credibility with their constituents that they are making the best decisions on projects to implement and the availability of revenue sources; credibility with private sector partners that they will accomplish what they set out to do; and credibility with investors and financing parties that will meet their obligations.

GROUND-BREAKING PUBLIC-PRIVATE TRANSACTIONS

In the United States, the market for long-term leases of existing infrastructure assets—sometimes referred to as "brown field transactions"—was catalyzed by two transactions that closed in 2005 and 2006—the Chicago Skyway and the Indiana Toll Road. In the Skyway transaction, the City of Chicago received an upfront payment of $1.8 billion, which it used to retire high interest rate debt, establish reserve accounts that significantly strengthened the City's financial position and funded quality of life "safety net" programs for residents most in need. In addition, the winning bidder was obligated to implement significant capital improvements, including long overdue electronic tolling and to comply with comprehensive operating standards.

In the Indiana Toll Road transaction, the State received an upfront payment of $3.8 billion, which it used, after paying down debt, to fully fund its "Major Moves" multi-year transportation program, as well to provide $150 million to each of Indiana's 92 counties for local road improvements. In addition, the winning bidder committed to deliver and additional $500 million in improvements to the Toll Road—including electronic tolling technology, upgraded toll plazas and new lanes to reduce congestion—and to comply with comprehensive operating standards.

You may have heard recently about the private investors in the Indiana Toll Road going through a bankruptcy proceeding. The public-private partnership transaction documents worked as intended through this bankruptcy, protecting the interests of the State and the traveling public by ensuring the continued smooth operation of the road.

The success of transactions like the Chicago Skyway and Indiana Toll Road led the Commonwealth of Puerto Rico to establish a Public-Private Partnerships Authority. The Authority's mission is to partner with the private sector to make infrastructure projects viable when the funds needed for development were not available in the Commonwealth's Treasury and thereby increase the reliability of services, reduce congestion, provide routine maintenance, improve safety and environmental performance and generally enhance the value of Puerto Rico's infrastructure assets.

In 2013, the Public-Private Partnerships Authority and Aerostar Airport Holdings successfully reached financial closing of a long-term lease for the Luis Muñoz Marín International Airport in San Juan. The San Juan Airport became the first major airport in the U.S. run by a private operator under the Privatization Pilot Program established by Congress in 1996 and administered by the Federal Aviation Administration. Highlights of this transaction include a 35-year contract with over $2.6 billion in value to Puerto Rico through a $615 million up-front payment, fixed annual payments and long-term revenue sharing expected to total at least $500 million, and with the operational risk and responsibility for $1.4 billion in airport capital expenditures shifted to a private entity held to strict operating requirements. The transaction enabled Puerto Rico to pay off significant infrastructure-related debt and also included protections for existing employees of the airport.

The San Juan Airport transaction closed approximately 2½ years ago and is widely viewed as a major success: by the traveling public that is benefiting from improved passenger amenities, by the airlines who are benefiting from lower and more predicable rates as well as from implementation of deferred and overdue airport capital improvements, and by the Commonwealth which is realizing increased passenger traffic notwithstanding the island's current economic downturn.

As noted above, San Juan is now the first U.S. airport operated by a private party under the Federal Aviation Administration's Privatization Pilot Program. This program requires the private party to operate an entire airport—both airside and landside facilities—and to obtain operating certifications from the FAA and the Transportation Security Administration. Two major U.S. airports are currently exploring use of public-private partnerships to achieve major capital improvements without transfer of full operating responsibility to a private consortium and proceeding outside of the Privatization Pilot Program.

In New York City, the Port Authority of New York and New Jersey has just selected LaGuardia Gateway Partners to finance and implement the badly needed and long overdue construction of a new Central Terminal, expected to cost between $3.5 billion and $4 billion. This consortium will also operate and maintain the new Central Terminal under a long term agreement with the Port Authority. Highlighting the long overdue nature of the Central Terminal Project, Vice President Biden recently referred LaGuardia to as "an airport from a third world country."

Denver recently launched the procurement for its Great Hall Project, with the intention of benefiting from private sector imagination and financial expertise to relocate TSA checkpoints and related security facilities from the Airport's main passenger terminal and repurpose this space to provide "best in class" passenger amenities, including public meeting spaces and enhanced food and retail concessions.

PUBLIC-PRIVATE PARTNERSHIPS TO DEVELOP NEW TRANSPORTATION INFRASTRUCTURE

The public-private partnership model described above is no means limited to long-term leases of existing transportation infrastructure. In fact, public-private partnerships are increasingly and more commonly used by state and local governments to access private sector expertise in the construction, financing and operation/maintenance of major new or upgraded infrastructure assets (sometimes referred to as "greenfield transactions"). To illustrate this trend, I have highlighted below several of the most innovative public-private partnerships recently implemented in the U.S. In each of these transactions, the objectives of the government sponsor have been similar: accelerated project delivery for critically needed new infrastructure assets, reduced construction and life-cycle costs and significant risk-shifting to the private sector.

Texas has been a market leader in the use of public-private partnerships (referred to in that State as comprehensive development agreements) in the construction, financing and operation of new highway and bridge infrastructure. Projects in Texas have ranged from design-build projects, with the State providing all necessary financing and retaining all revenues to full toll concessions, with the private sector retaining all toll revenues and, in some instances, making an up-front payment to the State for the right to collect such revenues. Among the innovative projects currently being implemented by the Texas Department of Transportation (TxDOT) are:

SH 288 Toll Lanes Transaction: Development of new toll express lanes in the Houston area where a private developer is paying TxDOT for the right to develop toll lanes and receive revenues from those toll lanes. TxDOT is receiving the benefit of an expansion of an existing state highway, along with several connecting roads and a new Interstate interchange with the cost and risk shifted to the private sector.

SH 183 Managed Lanes Transaction: Development of new toll express lane facilities in the Dallas-Fort Worth area. In this case, the private developer is constructing the road, financing a portion of the construction costs, and operating and maintaining the facility for 25 years after construction. The Texas Department of Transportation is retaining the tolls from the project. The project procurement was structured so that the bidding parties competed to develop the largest-sized project for a total of $850 million that TxDOT had available for the project. The winning bidder agreed to construct not only the base scope of the project but all four additional optional components offered by TxDOT.

Denver FasTracks Eagle P3 Project. On June 2010, the Denver Regional Transportation District awarded the $2 billion Eagle Project P3 concession to the Denver Transit Partners consortium, which achieved financial close on August 2010. The private sector partner will design, build, finance, operate and maintain two commuter rail corridors, and an associated maintenance facility under a 34-year availability payment. One of the new rail corridors will connect Denver International Airport with Denver Union Station. The Eagle Project is a core component of RTD's $6.75 billion voter approved FasTracks transit expansion program, and the only successful project under the Federal Transportation Administration Penta-P Program. This is the first design-build-finance-operate-maintain project for mass transit in the United States, and it is providing significant benefits to RTD:

- Unprecedented risk transfer to the private sector;
- Accelerated project delivery from participation in FTA's Penta-P program;
- Significantly reduced total project cost versus internal estimates;
- Attractive funding through the use of Private Activity Bonds, tax-exempt bonds, and Federal New Starts Funding;

The Eagle P3 Project was the first US public-private partnership structured with government sponsor retaining all project revenues and making annual payments to its private partner, with these payments subject to annual appropriation by the transit agency. These payments are subject to reduction if the project is not constructed by certain time periods or is not constructed or operated and maintained in accordance with the detailed and comprehensive certain standards in the public-private agreement. Eagle P3 also represents the first use tax-exempt Private Activity Bonds for a mass transit project.

Seagirt Maritime Port Terminal. In 2009, the Maryland Port Administration and Ports America Chesapeake, LLC entered into a 50-year, $1.3 billion agreement to expand and operate the Seagirt Marine Terminal in Baltimore. Ports America agreed to make at least $500 million in capital investments to enlarge the Seagirt Terminal, positioning Baltimore as one of only twoU.S. East Coast ports with a 50 foot draft to handle the new Super-Post-Panamax cargo ships and help maintain its global competitive position when the Panama Canal expansion is completed. In addition, the State of Maryland received an upfront payment of $140 million that was reinvested in the State's transportation infrastructure, including along the Interstate 95 Corridor and the Chesapeake Bay Bridge. Maryland will also receive both fixed annual payments and variable revenue share payments that will be used to support on-going transportation infrastructure improvements. The project is projected to generate significant economic growth, over 5,000 new and high-paying jobs, and incremental tax revenues of $16 million per year.

East End Crossing. In a transaction that closed in 2013, the private developer, WVB East End Partners, will be responsible for the financing, construction and operation of a new toll bridge over the Ohio River connecting Southern Indiana and metropolitan Louisville, Kentucky. The transaction, which was undertaken by the Indiana Finance Authority, is structured as an availability payment transaction. Under this approach, the state receives revenues from the toll bridge and utilizes those and other revenues to make payments to the private developer during construction and during a 35-year operations-and-maintenance period. The private developer does not take toll revenue risk and instead offers a fixed price for these annual payments from Indiana during the term and finances the transaction based on the promise of the government to make the payments during the term of the agreement. However, Indiana has the ability to reduce its payments if the project is not made "available" either because it was not constructed by certain time periods or was not constructed or operated and maintained up to certain standards in the contract. As a result of this structure and the competitive procurement between four different contracting teams, the price received by Indiana for this project was approximately 20% less than construction estimates.

Rapid Bridge Replacement Project. Taking advantage of public-private partnership legislation signed into law in 2012, the Pennsylvania Department of Transportation undertook a new initiative to address the State's significant and growing inventory of structurally deficient bridges. This initiative resulted in the recently awarded 28-year agreement to Plenary Walsh Keystone Partners to replace 558 of these bridges in just three years, with construction to be completed by the end of 2017. In addition to significant acceleration of construction schedule, it is expected that the average cost for design, construction and maintenance per bridge will be approximately 20% lower than Pennsylvania's estimate of the cost if the work had been performed under standard contracting processes for bridge design, construction and maintenance. As with East End Crossing and Denver FasTracks, the private developer will not take revenue risk and instead will receive fixed annual payments during the term of the agreement and finances the transaction based on the promise of the government to make the payments during the term of the agreement.

Again, I thank the committee for the opportunity to discuss the increased use of innovative public-private partnerships to finance, construct and operate major transportation infrastructure projects.

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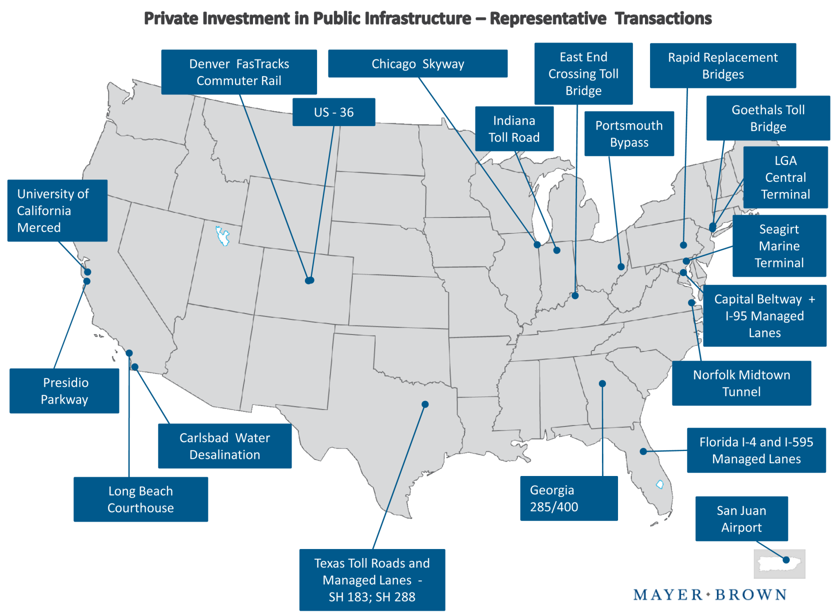

QUESTIONS SUBMITTED FOR THE RECORD TO DAVID NAREFSKY

QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

Question. Mr. Narefsky, I noticed in President Obama's fiscal year 2016 budget that the President's proposal for America Fast Forward Bonds resulted in an outlay of over $58 billion. Outlays are defined as spending under the Congressional Budget Act. Therefore, the President's America Fast Forward Bonds' proposal would increase spending by more than $58 billion. And it would increase revenues by over $53 billion. Aren't these bonds mainly the same thing as Build America Bonds with a new name?

Answer. The President's proposal for America Fast Forward Bonds is similar in many ways to previously authorized Build America Bonds, with eligible projects being surface transportation facilities eligible under title 23 or chapter 53 of title 49: highways, bridges, and tunnels; transit and intercity passenger bus or rail; and intermodal freight transfer facilities and private freight facilities conferring a public benefit. America Fast Forward Bonds would be taxable bonds and would provide a 28-percent subsidy to State and local issuers from the Treasury Department on the interest rate of the bonds. These taxable bonds are intended to appeal to a wider variety of investors beyond traditional tax-exempt investors, including public pension funds, corporate pensions, sovereign wealth funds, insurance companies, and taxpayers in lower income brackets. I would also note that a competing America Fast Forward bond proposal has also been proposed that uses a different subsidy structure. Instead of receiving an interest payment or a direct subsidy, bond holders would get an annual tax credit that can be applied to all forms of their taxable income, including Federal benefit and wage withholdings. Much like the Obama administration's proposal, this tax credit proposal is designed to open up the market for infrastructure debt to a much larger group of investors.

Question. Mr. Narefsky, in April of 2015, the Treasury Department Office of Economic Policy issued a report titled "Expanding the Market for Infrastructure Public-Private Partnerships." This report notes that one reason that public-private partnerships are more prominent in Canada and other parts of the world is that the U.S. municipal debt market is already an attractive option for investment. The report states, "The challenge is for PPPs to demonstrate overall cost savings and efficiencies that outweigh the lower-cost financing advantage of traditional procurement."

Is there a way to take advantage of the existing municipal bond market to lower the rate of return that a public-private partnership needs to generate in order to be successful, for example by having governments and non-profits, which are able to issue tax-exempt debt, enter into contracts with private-sector partners? Is this an arrangement that could work for large-scale infrastructure projects?

Answer. The answer to this question is "absolutely." And in fact there is currently in place a Federal financing initiative that has been quite successful in lowering the required rate of return for public-private partnerships: The Surface Transportation Private Activity Bond (PABs) Program authorized in 2005. This program provides for $15 billion in nationwide authorization for the issuance of tax-exempt bonds to lower the cost of capital for large-scale transportation infrastructure projects. These projects include the Eagle P3 FasTracks commuter rail project in Denver, the East End Crossing Bridge Project in metropolitan Louisville and the Goethals Replacement Bridge Project in metropolitan New York. Congress should consider increasing the amount of this bond authorization as well as expanding authorized purposes beyond surface transportation to include "social infrastructure" projects such as courthouse and higher education facilities. Furthermore, the Move America Bonds proposal introduced by Senators Wyden and Hoeven would build off of the Surface Transportation PABs Program and expand opportunities to use tax-exempt financing to support infrastructure public-private partnerships.

QUESTION SUBMITTED BY HON. ROBERT P. CASEY, JR.

Question. Over the past decade, Amtrak funding levels have averaged approximately $1.3 billion per year. While funding in real terms is still slightly higher than the FY 2005 levels, it has not kept pace with inflation. The reality is that Amtrak and intercity passenger rail, like every other national rail network in the world, needs so much more than this baseline amount from Congress. Do you think initiatives like Move America Bonds could help Amtrak in the short-term?

Answer. Yes. The Move America Bonds proposal introduced by Senators Wyden and Hoeven would build off of the 2005 Surface Transportation PABs Program and expand opportunities to use tax-exempt financing to support infrastructure public-private partnerships, and these partnerships could specifically include improvements to our national rail network. Moreover, initiatives like Move America Bonds could be combined with existing rail infrastructure financing incentives such as the existing Railroad Rehabilitation and Improvement Financing (RRIF) program to accelerate improvements to our national rail network.

QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

Question. While this hearing is focused on alternative financing for highways such as through private activity bonds, I would like to highlight a related issue for water infrastructure. The EPA and GAO estimate the current water infrastructure funding gap to be as high as $1 trillion. According to a report by the American Society of Civil Engineers, not addressing this need could cost businesses $147 billion, households $59 billion, and result in the loss of nearly 700,000 jobs by 2020. Clearly, we have an infrastructure crisis with water in proportion to what we face with our Nation's highways, but people take it for granted because the pipes are underground and when they turn on the tap, water comes out—out of sight, out of mind. Thousands of residents in New Jersey are serviced by at least three private, investor-owned water companies. Because these companies operate over multiple jurisdictions, and often multiple States, they, private companies, offer economies of scale that bring efficiencies such as mass purchasing power and technology and expertise. During the last highway funding bill, I joined Senator Crapo in successfully including a proposal to lift the volume cap on private activity bonds for water infrastructure. Unfortunately, the provision was not retained during conference negotiations with the House.

Mr. Narefsky, I have two questions for you.

Does it make sense for the residents in one locality in New Jersey serviced by an investor-owned utility to not benefit from low-cost financing provided by tax-exempt bonds while residents of neighboring towns and cities serviced by municipal systems do?

Answer. As a general matter, this would not seem to make good public policy sense. And there should be ways to allow for the residents in the locality serviced by the investor-owned utility to benefit from low-cost financing while still making sure that these benefits flow to the residents and not only to the shareholders of the investor-owned utility.

Question. Do you support removing barriers to tax-exempt financing, like lifting the volume cap—as is already done for other types of infrastructures such as airports, high-speed rail, wharves, and solid waste disposal industries—for truly public purpose projects like water infrastructure?

Answer. Yes. As noted, America's water infrastructure needs are increasing significantly and receiving increased attention. As such, removing the currently applicable volume cap for water infrastructure projects is justified, especially when considering that private activity bonds for water infrastructure bonds separately require some form of rate-setting regulatory oversight. Consistent with this recognition of the importance of supporting investment in water infrastructure, another barrier to the most effective use of tax-exempt financing for water infrastructure was recently removed: specifically, the prohibition on combining tax-exempt bonds with loans or other financial support under the Water Infrastructure and Investment Act or WIFIA Program.

QUESTION SUBMITTED BY HON. JOHN THUNE

Question. In your testimony you mentioned a number of P3 projects. In your opinion, what is the single biggest obstacle that inhibits the use of P3s? Conversely, what is the single most important aspect of making a P3 successful?

Answer. The most important aspect of making a P3 successful is effective executive leadership from the State or local government that is implementing the project. As examples, I would point to the leadership provided by former Indiana Governor Mitch Daniels (projects such as the Indiana Toll Road and East End Crossing Bridge Project) and Colorado Governor and former Denver Mayor John Hickenlooper (projects such as Denver Union Station, Eagle P3 FasTracks Commuter Rail, and U.S. 36 Managed Lanes Highway Improvements).

The single biggest obstacle that inhibits the use of P3s is failure to clearly articulate and advance public-sector objectives and obtain buy-in and support from affected stakeholders—legislative, neighborhood, and civic organizations, as well as the design, engineering, and contractor industries, etc.

PREPARED STATEMENT OF HON. RON WYDEN,
A U.S. SENATOR FROM OREGON

A lot of Americans wonder if Congress can organize a two-car parade. When you look at 33 consecutive short-term patches for infrastructure funding, it sure seems like Congress can't pave the parade route either.

This is the second time in 8 days the Finance Committee has come together to take a hard look at the nation's infrastructure crisis. By now, there's a good consensus with respect to the dire condition of our roads, highways, bridges, railways and ports. You cannot have a big-league economy with little-league infrastructure. Yet our transportation networks are crumbling, the price-tag of maintenance down the road is growing, and America's infrastructure is falling far behind our competitors'.

Last week our hearing focused on the drastic shortfall in transportation infrastructure funding, which leaves the highway trust fund running on fumes every few months. Finding a pathway to a long-term source of revenue for the trust fund is absolutely essential so that projects can get underway and construction workers stay on the job. To solve this crisis, the Highway Trust Fund has got to be solvent and healthy. But that's only one part of the solution.

The U.S. needs more than a trillion dollars of new investment just to get our infrastructure up to a level of good repair. Even with a steady stream of revenue, there's still a big gap between the work that needs to be done and the resources to make it happen. That's why it's so critical that Congress find some fresh ideas to get projects off the ground, including financing tools with proven records of success. That's what today's hearing will focus on—getting private dollars off the sidelines and into the game on infrastructure.

Six years ago, when the Senate was looking for a way to spark investment in infrastructure, it turned to a proposal I and a bipartisan group of colleagues had been supporting for a long time called Build America Bonds. At the time, people thought it was a nice little idea that would generate $4 or $5 billion in private investment. That turned out to be a big underestimation. In less than 2 years, Build America Bonds sparked more than $180 billion worth of investment.

Oregon took advantage of the program to build a new interchange in Eugene, improve the highways around Clackamas County and Bend, and a whole host of other projects across the state. States across the country saw their own projects get off the ground. So there shouldn't be any question as to whether there's an appetite for effective financing tools for infrastructure.

Last month, Senator Hoeven of North Dakota and I introduced a bill called the Move America Act to provide an effective new approach to financing. Picking up on several of the best features of Build America Bonds, our new proposal, according to the Joint Tax Committee, will turn an $8 billion taxpayer investment into $226 billion worth of infrastructure projects.

Our proposal will cut red tape that's been a bureaucratic nightmare for states, localities, and the private sector in the past. And unlike Build America Bonds, this proposal is permanent. Let's not put an expiration date on a good idea.

I believe the Move America Act, and the smart approach to financing that it represents, are going to be a key part of the long-term plan that solves our transportation infrastructure crisis. There is a lot of work to be done, and it can't begin as long as Congress is falling back on short-term funding patches. On this issue, Congress has punted more times than the Oakland Raiders. So in my view, it's time to do better.

I hope this hearing will help bring the committee closer to a comprehensive solution to this crisis and drive home the message that Congress has to adopt some fresh ideas like Move America.

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Statement for the Record

On

"Unlocking the Private Sector: State Innovations in Financing Transportation Infrastructure"

United States Senate

Committee on Finance

June 25, 2015

Introduction

The American Society of Civil Engineers (ASCE)[1] appreciates the opportunity to submit our views on private investment in transportation infrastructure to the U.S. Senate Finance Committee. There is an urgent and timely discussion taking place about the future of federal transportation funding and the need to secure long-term, sustainable funding to support the federal Highway Trust Fund (HTF). Given yesterday's positive action by the U.S. Senate Environment and Public Works (EPW) Committee, there exists now heightened urgency on the Finance Committee to accommodate funding levels that can provide 6 years of growth for the federal highway and transit program.

Private sector financing of transportation projects does not help address the current HTF funding challenge. However, coupled with a strong federal, state and local funding program, innovative financing mechanisms can help fill transportation infrastructure gaps by leveraging tax revenues and user fees. Funding cannot be separated from the financing discussion because the availability of private sector capital, or ability of governments to repay transportation-related debts, is tied to public acceptance to pay more in tolls fees or taxes.

[1] ASCE was founded in 1852 and is the country's oldest national civil engineering organization. It represents more than 146,000 civil engineers individually in private practice, government, industry, and academia who are dedicated to the advancement of the science and profession of civil engineering. ASCE is a non-profit educational and professional society organized under Part 1.501(c)(3) of the Internal Revenue Code. *www.asce.org*.

Bridging the Gap: A Public and Private Sector Challenge

ASCE's *2013 Report Card for America's Infrastructure*[2] graded the nation's infrastructure a "D+" based on 16 categories and found that the nation needs to invest approximately $3.6 trillion by 2020 to maintain the national infrastructure in good condition. The $3.6 trillion figure is the total needs funding amount across all infrastructure sectors, with federal, state and local transportation shortfall being $1.7 trillion. The following are the grades and the investment needs by 2020 for the surface transportation area:

- Bridges received a grade of C+;
- Transit received a D; and
- Roads received a grade of D.

The current spending of $91 billion per year, from all levels of government, for highway capital improvements is well below the estimated $170 billion needed annually to improve conditions. The Federal Transit Administration (FTA) estimates a maintenance backlog of nearly $78 billion needed to bring all transit systems up to a state of good repair.

To meet these transportation needs, it will take:

- Increased leadership in infrastructure renewal;
- Strategic plans to guide investment towards increased system performance; and
- A robust program of both public and private sector investment.

The Nexus Between Funding and Financing

ASCE encourages the full utilization and expansion of innovative financing methods like revenue bonds, tax exempt financing, federal credit assistance programs, public-private partnerships (P3s), and state infrastructure banks, among other tools. Innovative financing tools can greatly accelerate infrastructure development and can have a powerful economic stimulus effect compared to conventional methods. However, innovative financing tools should not be viewed as an alternative to funding, but rather financing is often dependent upon securing public support for increased revenues.

A full menu of financing options should be available to federal, state and local policymakers and asset owners as they seek to identify the best way forward to build and modernize America's surface transportation infrastructure. However, it should be noted that while infrastructure investors such as private-equity firms, sovereign wealth funds, and public pensions have indicated a renewed interest in investing more in U.S. infrastructure, the investment that they make should not be mistaken as a charity donation: Investors are looking for a rate of return on that capital which will require some sort of general public or transportation user payment.

There exists a clear yet underappreciated connection between our nation's ability to generate significant funding for transportation improvements and an investors' interest in financing transportation projects. Repayment options on debt for surface transportation projects often include general taxes, gasoline taxes, sales taxes, transportation fees, toll receipts, and federal grant funding to name a few. The following chart[3] from a 2009 Transportation Research Board (TRB) National Cooperative Highway Research Program (NCHRP) report on debt financing provides a ranking of the most utilized sources of state revenue for debt repayment when it comes to surface transportation:

[2] *www.infrastructurereportcard.org.*
[3] *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_395.pdf.*

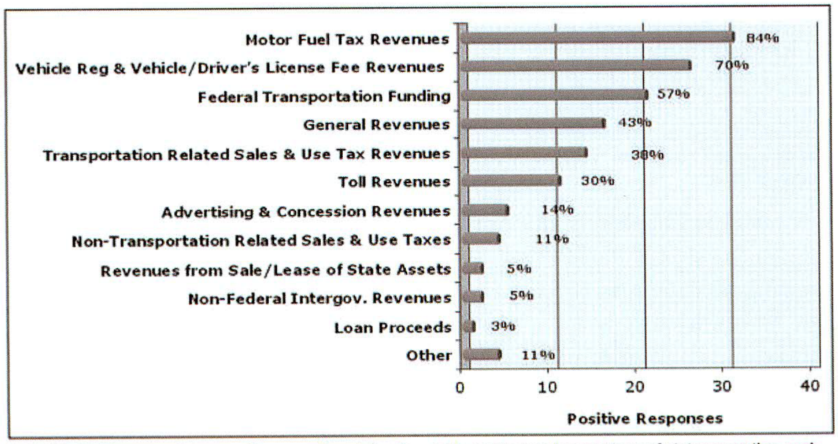

FIGURE 19 Repayment sources for currently outstanding debt, number and percentage of states reporting each source ($n = 37$).

In addition to repayment on debt, P3s often utilize transportation user fees as their primary payment mechanism to provide investors a guaranteed rate-of-return. There are differing payment models that have been developed for P3s as it relates to collecting toll revenue, and some are more risky to the private investor than others. But regardless of the method of collection, absent a strong appetite by both policymakers to secure these revenues and the public to pay any tolls, taxes or fees, the P3 model in the U.S. will remain severely constrained.

The attractiveness, availability and experience of state and local governments when it comes to utilizing low-interest, tax-exempt municipal bonds certainly has some effect on depressing the domestic P3 market, but as Fitch [4] noted in 2014, "Identifying and allocating revenue for repayment of project debt is the biggest obstacle to the renewal of aging infrastructure in many developed economies." Fitch studied developed economies outside of the U.S. and consistent throughout was not the lack of attractive financing options available, but rather the lack of political will to raise revenues to build and maintain existing infrastructure. "The problem requires an often-difficult political decision on who should pay for facilities that only a fraction of the population will use and that will also be used by future generations," stated Fitch in their report summary.

In order to help increase private investment, the federal government should make every effort to assist public asset owners to engage in P3s and also facilitate engagement with private investors who are oftentimes in search of clear, accurate asset and project data to help inform their infrastructure investment strategies. Programs like Transportation Infrastructure Finance and Innovation Act (TIFIA), bonds, and other innovative solutions like President Obama's proposed Qualified Public Infrastructure Bonds (QPIBS) are attractive instruments to both the public and private sector that can help fill the nation's infrastructure investment gap.

Need for Robust, Long-Term Funding

A key challenge before the Committee is to ensure future HTF solvency. Since the creation of the Interstate Highway System in 1956, the HTF has been supported by revenue collected from road users. This "pay-as-you-go" system has served the nation well over the past half a century, allowing states to plan, construct, and improve the surface transportation network. Additionally, the reliable stream of user-supplied revenue has been critical to the legislative process, because it has enabled Congress to guarantee the availability of multi-year funding to states.

The federal gas tax was last changed over 20 years ago in 1993, and since that time a revenue shortfall has developed in the HTF that increases each year. Currently, the HTF is allocating more than the revenues it receives, with the trust fund allo-

[4] *https://www.fitchratings.com/gws/en/fitchwire/fitchwirearticle/Revenue,-not-Financing,?pr_id=939115.*

cating $15 billion more than raised in 2014 alone. The Congressional Budget Office recently projected that the 6-year cumulative gap in the HTF will grow to approximately $90 billion by 2020.

Despite this freeze in use fee revenue rates, every year demands on the system grow and the purchasing power of those 1993-dollars degrades further. As a result, current levels of highway and transit investment cannot be maintained solely with HTF resources. Over the last 6 years, Congress has had to dedicate approximately $60 billion from general fund revenues to shore-up the HTF. When the choices are either to cut funding, raid the general fund, or raise additional revenue, there exist no more easy options. It's time for Congress to lead the way on a solution to fix the HTF.

ASCE supports a reliable, long-term, sustained user fee approach to building, maintaining and improving the nation's highways and transit systems and believes that all funding options should be considered by Congress. We recently endorsed House legislation that would raise the federal fuels tax by 15 cents per gallon over the course of a 3 year period. In recent years the Simpson-Bowles Commission [5] and the National Surface Transportation Infrastructure Financing Commission,[6] among others, have come to the conclusion that additional user-based revenue is needed, with each suggesting an increase in the federal motor fuels tax rate. While the motor fuels tax remains the best long-term solution to solving the HTF shortfall in a fiscally responsible, deficit neutral way, a full range of options must be considered within the context of reauthorization, either within or outside of any broader tax reform package.

Of utmost importance is the need to maintain the current fuels tax rate's purchasing strength as it is not currently indexed to economic indicators such as the Consumer Price Index (CPI). An indexing of this sort is applied to many other government revenues and would allow the gas tax to remain strong despite the rising costs of steel, other building materials and labor rates. If adjusted to the projected CPI over the next 10 years, the current fuels tax would raise [7] an additional $27.5 billion, which is enough to plug the HTF shortfall for about 2 years. ASCE recommends raising the motor fuels tax by 25 cents per gallon and indexing for inflation to help meet our nation's near-term surface transportation needs.

Conclusion

Innovative financing does not produce revenue and should not be viewed as an alternative to increasing user fees, taxes or other revenue. While recognizing that innovative financing is not a replacement for new funding, ASCE fully supports innovative financing programs and urges incentives and federal policies to make these programs available and utilized in all states. Additionally, the federal government should make every effort to develop new programs. These types of programs could include QPIBS, lifting the cap on Private Activity Bonds (PABs), reintroducing Build America Bonds, creating Transportation and Regional Infrastructure Project bonds, establishing a National Infrastructure Bank, expanding Transportation Infrastructure Finance and Innovation Act, (TIFIA), and further supporting State Infrastructure Banks, among other instruments.

Surface transportation infrastructure is the critical engine supporting the nation's economy, national security, and public safety. To compete in the global economy, improve our quality of life and raise our standard of living, we must successfully rebuild America's surface transportation infrastructure for the 21st century utilizing both public and private sector resources. To achieve that goal, Congress must approve a long-term, sustainable HTF revenue solution before the law expires on July 31, 2015, and federal, state and local governments must continue do more to attract and properly leverage private sector infrastructure investment.

[5] *http://momentoftruthproject.org/report/recommendations.*
[6] *http://financecommission.dot.gov/.*
[7] *http://renacci.house.gov/index.cfm/2015/4/bipartisan-group-of-lawmakers-introduce-long-term-solution-to-address-highway-trust-fund.*

Public Citizen

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June 23, 2015

United States Senate
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Re: Funding for infrastructure investments

Dear Chairman Hatch and Honorable Committee Members,

On behalf of Public Citizen's more than 400,000 members and supporters, we appreciate the opportunity to submit this statement for the record outlining our recommendations for securing long-term funding for transportation and infrastructure funding.

Public Citizen strongly urges the committee to consider funding options that both maximize the benefit for taxpayers and that are sustainable over the long term. For these reasons, we recommend that you avoid short-term fixes such a repatriation tax holiday for multinational corporations' profits stashed overseas and concentrate instead on long-term funding sources that would also create an incentive to reduce harmful emissions from vehicles such as increasing the gas tax or implementing a tax on carbon.

It's clear that America has an infrastructure crisis: bridges are crumbling, roads are in desperate need of repair and mass transit options are too few and far between. The American Society of Civil Engineers 2014 "Report Card for America's Infrastructure" estimates that $3.6 trillion in investments are needed to modernize and repair U.S. infrastructure.

The short-term funding for the Highway Trust Fund will run out again this summer, and it is encouraging that this committee is searching for long-term funding solutions instead of continuing to move from patch to patch as has been done in the recent past. However, as you weigh your options, it is important to not choose solutions that would be a losing proposition for American taxpayers.

One such losing proposition is a repatriation "holiday" for taxes owed on profits listed as being earned by foreign subsidiaries of American corporations. Because of the current system of deferral, where taxes may be indefinitely put off until profits are repatriated or "brought back" to the U.S. in the form of dividends or other shareholder payments, multinational corporations are able to play games with their accounting books and transfer profits between entities, usually to companies located in low or no tax jurisdictions (or "tax havens.")

This type of corporate tax haven abuse costs the federal government $90 billion in lost revenue every year. In total, more than $2 trillion in profits are booked offshore. It's true that without changes to our tax code, those monies will continue to be stashed in offshore accounts. But, it is not a good solution to allow corporations to voluntarily repatriate those profits at much lower tax rates than would have otherwise been due, using a tactic that is known as a "repatriation holiday." This experiment was tried and failed in 2004, and as a country we must learn our lesson and not repeat the same mistake.

A 2011 Senate report analyzing the tax repatriation holiday in 2004 found that much of the profits that multinational corporations were supposedly holding offshore were actually sitting in U.S. bank accounts and other assets, undercutting the concept of "bringing the money back." And, the repatriated taxes came from a small number of corporations that used the money to pay dividends instead of reinvesting in the economy and at the same time ended up cutting workforces.

Proposals like the one offered by U.S. Senators Barbara Boxer (D–CA) and Rand Paul (R–KY) would allow companies to choose to repatriate offshore taxes at the bargain-basement rate of only 6.5 percent, slightly more than 1 percent higher than the rate used in the 2004 tax holiday. The Joint Committee on Taxation scored the Boxer-Paul bill as costing $118 billion over 10 years. In addition to losing money in the long run, as a funding option, a repatriation holiday would only be a one-time-source of money that would do nothing to fix the long-term funding shortfall for infrastructure investments. Additionally, allowing another repatriation holiday would reward corporations that have for years avoided paying taxes by using accounting gimmicks to shift profits to the books of related foreign corporations.

Mandatory "deemed repatriation" proposals, such as the 14 percent rate put forward by President Barack Obama in his FY 2016 budget proposal, are still not a good deal for taxpayers. This is because corporations are given a break on the tax rate, forcing the U.S. to give up the other 21 percent of taxes that could have been assessed if loopholes like deferral were ended and companies were forced to pay the full 35 percent statutory rate on offshore profits (after receiving a credit for foreign taxes paid.) Research by the Institute for Policy Studies and the Center for Effective Government in their April 2015 "Burning our Bridges" report examines the myriad of infrastructure investments that could be made if loopholes were closed and offshore profits were taxed at the full statutory rate.

Though the President's budget proposal was encouraging in that it proposed to require a minimum tax on offshore profits of 19 percent moving forward, meaning it could be used for a long-term funding source, given the difference between that rate and the normal statutory rate, it would continue the incentive for companies to play accounting games and shift profits to overseas subsidiaries.

A better alternative would be to instead fund transportation and other infrastructure investments with long-term funding pots that are not only sustainable, but that are tied to the use of highways and would incentivize positive behavioral shifts to reduce emissions that contribute to climate change. Examples include increasing the gas-tax and instituting a carbon tax.

The gas tax has not been raised for more than two decades and because of inflation, the value of the 18.4 cent tax continues to fall. The gas tax provides a disincentive for fuel use, and it makes sense to raise the tax since it has not been changed since 1993. It should also be tied to inflation in order to ensure its value holds steady.

Another great option for long-term funding for infrastructure investments (among other things) would be to implement a tax on carbon dioxide pollution, with a refund given to U.S. consumers on a per capita basis as a way to balance out the regressive nature of the tax. Since transportation produces around a third of our nation's C02 pollution, which causes climate change, it makes sense to tie a portion of the proceeds from a carbon tax to fund improvements to highways and mass transit.

Either way, both the gas tax and a carbon tax would be directly tied to the use of our highways and provide long-term solution to funding infrastructure investments, as opposed to a one-time option like a corporate tax repatriation holiday.

The American people should not have to settle for a repatriation holiday's discounted tax revenue at the expense of further incentivizing activities by multinational corporations that disadvantage responsible small business owners and ordinary taxpayers. Instead, the incentive we should be creating is to reduce carbon pollution and limit the harmful impacts of climate change.

Thank you again for the opportunity to submit our thoughts on this important topic.

Sincerely,

Lisa Gilbert
Director
Public Citizen's Congress Watch division

Susan Harley
Deputy Director
Public Citizen's Congress Watch division

Tyson Slocum
Director
Public Citizen's Energy program