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Committee on Environment
and Public Works — Washington, D.C.

HEARING ON LEVERAGING FEDERAL FUNDING; INNOVATIVE SOLUTIONS FOR INFRASTRUCTURE

TUESDAY, MAY 16, 2017

U.S. SENATE

Committee on Environment and Public Works

Subcommittee on Transportation and Infrastructure

Washington, D.C.

The subcommittee met, pursuant to notice, at 3:17 p.m. in room 406, Dirksen Senate Building, the Honorable James Inhofe [chairman of the subcommittee] presiding.

Present: Senators Inhofe, Fischer, Ernst, Sullivan, Cardin, Whitehouse, Gillibrand, Duckworth, Harris and Carper.

Senator Inhofe. The hearing will come to order.

I want to thank all of you for being here today. I thank my friend, Ranking Member Cardin and his staff for the flexibility with the scheduling of today's hearing.

It is kind of interesting because Ben Cardin and I are maybe three of the last remaining of the class of what was that?

Senator Cardin. The 100th Congress in 1987.

Senator Inhofe. Yes, 1987. No, we have Lamar Smith and a couple more.

It is funny. We are on opposite sides and a lot of issues but we are always together in friendship as well as in infrastructure.

As this week is Infrastructure Week, it is a great opportunity for us to highlight the critical needs we have in this Country. Tomorrow, the full committee will have the chance to question Secretary Chao on the Administration's priorities. It is my hope today's hearing will be a productive lead into her visit.

Last Congress, the EPW Committee led the charge to pass the FAST Act and the sixth highway reauthorization bill that I personally worked on. This was the largest one since 1998. Nobody believed we would get it done and others thought we would only get an 18-month bill.

However, Senator Boxer and I, as the Chairman and the

Ranking Member, insisted on five years. It shows that people of opposite and different philosophies can get alone and make wonderful things happen.

However, the current investment is not enough to fully address our maintenance and the new capacity needs. The FAST Act authorization is about $305 billion over five years. Yet, according to the United States DOT report from this year, the backlog of highway and bridge work in the United States stands close to $836 billion.

As the Administration and Congress consider a potential trillion-dollar infrastructure package, we must keep in mind that the package will include more than just roads and bridges, but also our port system waterways, airports and energy needs as well. While the Federal Government will and should continue to be a leading partner in maintaining and building out our infrastructure, the current and proposed federal investment will not meet all of our needs.

Whatever action we take on infrastructure, our State and local partners have to be a part of the solution and prioritize transportation. Some States and local areas are doing this. Unfortunately, this weekend, in my State of Oklahoma, I learned about the effect of proposed budget cuts to the Department of Transportation.

My State of Oklahoma did not properly prioritize the need for transportation. Oklahoma and other States have to meet their modest match. We are talking about matches of either 10 and 90 or 20 and 80. It occurred to me, and I was not aware, that they were not prioritizing that.

Ben, I took my plane and loaded it up with media and went around to all the construction sites saying that if we do not do our portion of the match, we are going to be stopping some of the construction. I think you know what happens when that does happen.

In addition to States and locals prioritizing infrastructure, we also need to find responsible and meaningful ways to attract and leverage additional private investment to help close the gap.

Today's hearing will examine all these possibilities and what the Federal Government can do to help make it easier for our partners to leverage the federal investment with other opportunities. Though not all ideas will work everywhere, all options should be on the table. We should incentive our non-federal partners to pursue them.

I look forward to hearing from our witnesses.

Senator Cardin?

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF THE HONORABLE BENJAMIN CARDIN, A UNITED STATES SENATOR FROM THE STATE OF MARYLAND

Senator Cardin. Mr. Chairman, once again, thank you very much for your leadership in regard to infrastructure in our Country. It is a real pleasure to be the Ranking Democrat on the subcommittee to work with you on a bipartisan infrastructure bill.

We have never had a problem in bipartisan infrastructure. I expect that will be the same and I really do look forward to working with you to figuring out a way we can get this done.

Up front, let me put on the record my conflict with today's hearing. I commute back and forth from Baltimore to Washington every day. I know firsthand the problems of traffic and congestion. When I started in 1987, Mr. Chairman, when we were both elected, the roundtrip commute between Baltimore and Washington took me about two hours. Today, that exact same commute at the exact same time today takes 3 hours and 15 minutes.

My transportation people are telling me to expect 1 million more people in Maryland over the next 25 years. Twenty-five years from now when we are celebrating whatever anniversary that is together in Congress, that commute is going to take 4 hours and 15 minutes. We have to do something about it.

Mayor Garcetti, I am glad you are here because the congestion in Los Angeles is worse than our congestion. I have someone I can point to who has an even more difficult commute than we do.

We really need to address this. The congestion is very costly to our economy; it is costly to our public health. It is a circumstance that the public demands that we modernize our infrastructure.

We have neglected it. Yes, I agree with the Chairman we can always do things more efficiently and always find more creative ways for partnership, but the bottom line is the public investment must keep up with the need. We have not kept up with the need. We are here today to figure out how we can do this.

The Washington district has ranked anywhere from one to four to fifth as the most congested region in the Country. That is why we work on ways to get people out of cars. The transit programs are important.

WMATA, which has 700,000 riders a day, one-third of whom are federal employees trying to get to work, is an old system. It also needs help. It takes resources to rebuild our stations, to improve our lines, and to deal with the needs of additional lines. Some of this is extremely expensive. We have to figure out a proper way in order to finance our infrastructure.

We also need to deal with the flexibility issues. I appreciate that. Senator Carper is now here. Senator Carper is the Ranking Member of the full committee and a real champion on infrastructure.

He is very bold, by the way, in saying he is ready to pay for it. Senator Carper is very much in the leadership of saying, we have to pay for what we need and let us find a way to do it. I appreciate his leadership on this.

One of the things we try to do is give flexibility to local governments, which I think is very important. Baltimore was designed by Olmsted. Olmsted connected all neighborhoods together through green space. Over the years, that green space got developed and communities got isolated. Literally, people were trapped in their neighborhoods. The only way they could get around was if they had a car. Some had cars and some did not have cars but it put more traffic on the road.

We have given Baltimore the flexibility of using transportation money to reconnect neighborhoods so that people can literally walk and bike between neighborhoods without using their cars which takes cars off the roads, that preserves our roads for longer periods of time and improves the quality of life. That is what we did together, giving the flexibility in our transportation programs so local governments can make their own decisions rather than us trying to dictate from Washington how things should be done.

I would hope we would continue those types of efforts as we look at additional tools we can give our mayors and local officials so that they can do what is best for their community in order to restore their communities.

This is an area we should be able to get done, Mr. Chairman. We have a President of the United States making transportation one of his top priorities. We have had bipartisan proposals come out of Congress on revenues to deal with transportation. This committee is dedicated to working together, listening to every member of this committee. We come from different areas. Oklahoma and Maryland have different transportation needs, but we agree that we need additional help.

Working together, I think we can get this done. I very much look forward to our hearing and to working with the Chairman.

[The prepared statement of Senator Cardin follows:]

Senator Inhofe. Thank you very much, Senator Cardin.

Let me suggest we will go ahead and make some introductions. I want to get into the record all five important people we have here to testify. Senator Harris, why don't you start off by introducing the Mayor?

Senator Harris. I appreciate that, Chairman. As you know, I am also on the Senate Intelligence Committee which is meeting at the exact same time. Thank you for that.

I would like to introduce and welcome Los Angeles Mayor Eric Garcetti, a longstanding friend and a great leader in California. He is here to talk about our Nation's transportation needs.

Los Angeles freeways are infamous. The intersection between the 10 and the 405 is known affectionately as the biggest parking lot in America.

It is not just our roads that are overstretched. In 2015, 45.5 million visitors traveled to Los Angeles; and 6.7 million arrived from other countries. Los Angeles International Airport is the second busiest airport in the Country. LA County has the top two biggest container ports in the Country.

Having quality infrastructure in Los Angeles is not just important for those who call it home, as do I, but it is important for the entire Country. When Los Angeles is moving efficiently, that means it is easier for the products, goods and people that we all need to move around the Country and the world, that they are able to move in an easier way.

Mayor Garcetti has a front row seat to the transportation challenges and needs of southern California while also running a city that is looking at new ways to address urban mobility and challenges and hopefully, a city that will also host the Olympics.

Los Angeles is investing in new highway and surface street infrastructure while it is expanding rail transit and looking at how to impact dedicated bus and bike lanes. Los Angeles residents just approved a measure to invest their own money in the infrastructure that helps keep Los Angeles and its region growing and moving. It is time for the Federal Government to do its part.

Residents are steadily seeing new options to get around their city but they need federal resources in order to provide businesses and tourists the experience they deserve. The City and County of Los Angeles has always had a history of working with the Federal Government to build bipartisan support in an effort to accelerate infrastructure improvement projects.

The work underway to address Los Angeles' urban mobility challenges requires innovation, combined with support from local, State and Federal Government. I look forward to hearing my Mayor's testimony today.

Welcome, Eric Garcetti.

Senator Inhofe. Thank you, Senator Harris.

Before we continue with the introductions, I would like to ask Senator Carper if he has any statement to make as he is the Ranking Member of the entire committee.

STATEMENT OF THE HONORABLE TOM CARPER, A UNITED STATES SENATOR FROM THE STATE OF DELAWARE

Senator Carper. Welcome one and all.

I am proud to be a member of this committee. I have been on it for about 16 years now. I am also a recovering governor and served for eight years as Governor of Delaware from 1993 to 2001. I care about these issues and have thought about them as well.

I want to thank the leadership of this subcommittee for holding the hearing today. I want to thank all of you for coming and sharing with us your perspectives on an issue on which we hope we can find some bipartisan agreement and make progress. We pretty much need to.

I like to say one of the major roles of government is to provide a nurturing environment for job creation and job preservation. I say that several times a day. That is one of my guiding principles.

It is hard to have a nurturing environment if you do not have good transportation systems. You folks know that from the work that you do. I support measures to enable public agencies to partner with private investors. I want to ensure that these agencies have the capacity and the support they need to be successful.

In Delaware, we have an interest in using public-private partnerships. Right now, our State is working on one agreement with a private developer to build a mixed use parking garage and transit center in Wilmington, Delaware where my family and I live. We would do that in order to try to facilitate access an increasingly vibrant retail district downtown.

If we are successful in this one endeavor, it will be the first transportation-related P3 for Delaware, the first. Although our State has bid projects on public-private partnerships in the past, they have never proceeded ultimately because of a lack of investor interest, I suspect because the investor figured out they could not make the kind of return on the investment they wanted to make.

In Congress, we have done important work to support agencies interested in partnering with private firms to transfer project risks and potentially to build projects more quickly. In the FAST Act, we restructured the Department of Transportation’s credit and innovation finance programs into a single, one-stop show to streamline and improve the process for agencies and for investors.

We also reduced the minimum project cost for the Transportation Infrastructure Financing Innovation Act, TIFIA, in order to expand access to TIFIA loans. I believe the private sector can play an important role in stimulating investment in our critical infrastructure.

However, I also know public-private partnerships and other financing tools are not the complete solution to our funding shortage even though sometimes we imply they would be. We need to be clear that leveraging public funding with private finances is not a replacement for public funding and will not solve either our Highway Transportation Fund insolvency crisis or the maintenance backlog for our roads, our bridges and for transit.

In just over three years, we will face an insolvency crisis for the Highway Trust Fund yet again. We will be facing a $115 billion shortfall for our next five-year transportation bill. That funding crisis will also be a crisis for private investors who similarly rely on certainty of public funding from the Highway Trust Fund.

Partnering with private investors can help public agencies complete large, complex problems more quickly. That is an important value, particularly with the number of major bottlenecks in transportation regional projects that need to be completed today where I live, and, frankly, where we all live.

On the other hand, there are only a small number of large, complex and transformative transportation projects where financiers are interested in investing. For example, in 2014, just four transportation projects were closed with a public-private partnership contract. They were all several hundred million dollar projects.

The hard truth is that public-private partnerships have not been as useful for routine maintenance and critical safety projects. This was a shock to me. Moreover, a total of a third of all States do not allow the use of public-private partnerships.

In Texas, a State that has allowed them in the past, the legislature recently voted not to use P3s because their constituents did not want to pay higher tolls. There are a number of questions that should be asked about when public-private partnerships are a useful tool, how we can ensure they are making good use of scarce federal dollars.

I use this analogy and my colleagues have heard we say it before. Usually when we come to funding transportation across the Country, there is no silver bullet. There are a lot of silver BBs, some are bigger than others. I have said the biggest silver BB is one that calls for those who use roads, highways, bridges, businesses and people should pay for them.

There are other ways we can use that money to help leverage other money, including public-private partnerships and we should do that.

Thank you so much.

[The prepared statement of Senator Carper follows:]

Senator Inhofe. Thank you, Senator Carper.

Let me introduce the next witness, Tim Gatz, the Executive Director of the Oklahoma Turnpike Authority. Before his current role, he worked for the Oklahoma Department of Transportation for over 25 years, starting as a drafting technician and working his way up to serving as the director of the department.

At the Oklahoma Department of Transportation, he was actively involved in developing their project management methodologies, as well as construction work plan which guides the department’s project development and delivery strategies.

With his new role as the Executive Director of the Turnpike Authority, Tim will oversee the continued development and implementation of the nearly $900 million driving forward plan which he will be sharing with us. Tim, it is great to have you here.

Let me say we have so many people right now really into this issue. I often sometimes say, these guys have heard me say it, there is an old, worn-out document nobody ever reads anymore called The Constitution which talks about what we are really supposed to be doing here, defending America and, they called it post roads then, but highways and construction.

We have a new President who has made this commitment a long time ago. People say, wait a minute, a trillion dollars, that is not going to work. It is time to think about what happened eight years ago. Eight years ago, we had another person elected as the President of the United States. He came out with an $800-plus billion program that was supposed to stimulate and it did not stimulate anything.

I can remember Barbara Boxer and I trying to put amendments on there to use that for that very reason.

Also, I was visited this morning by the Business Roundtable. I ask unanimous consent that their statement of support for what we are doing today be made a part of the record. Without objection, so ordered.

[The referenced information follows:]

Senator Inhofe. Mayor Garcetti, do you have to leave early? Does this alter your testimony?

Mayor Garcetti. I do have to leave early but I am ready to go whenever you say.

Senator Inhofe. Let me introduce the rest of the witnesses. We will start with you and when you have to leave, let us know. I appreciate your presence here very much.

Geoffrey S. Yarema is a partner at Nossaman LLP in Los Angeles, California. Kevin DeGood is Director of Infrastructure Policy, Center for American Progress, Washington, D.C. Welcome. Aubrey L. Layne is Secretary of Transportation for the Commonwealth of Virginia.

Senator Cardin. I should explain I asked my Maryland folks who would be the best person to testify in regards to our problems in this region and they recommended Secretary Layne. It is a pleasure to have you here Mr. Secretary. Virginia, Maryland and Delaware get along very well together.

Senator Inhofe. Your Honor, you are on.

I am going to try to encourage you folks to limit your statement to five minutes or a bit more maybe, but your entire statement will be made a part of the record, as is always the case.

STATEMENT OF THE HONORABLE ERIC GARCETTI, MAYOR, CITY OF LOS ANGELES, CALIFORNIA AND CHAIR, U.S. CONFERENCE OF MAYORS INFRASTRUCTURE TASK FORCE

Mayor Garcetti. Thank you so much, Chairman Inhofe. Thank you for your friendship. For the times we have met in the past, Ranking Member Cardin, thank you.

Senator Inhofe. What is it I always tell you when we meet? I say, I had a hard job once.

Mayor Garcetti. Yes, you did. I think we bonded over that and I appreciate the perspectives you have brought.

Ranking Member Cardin and Senator Carper, as well, thank you for your leadership, and also Senators Ernst and Fischer.

I am Eric Garcetti, Mayor of Los Angeles. I want to give a special thanks to my Senator, Senator Harris, for the introduction.

I am honored to appear before you, not only as Mayor of a great American city, but also as the Chair of the Task Force on Infrastructure for the U.S. Conference of Mayors.

When I heard folks talking about infrastructure a few months ago in the presidential election, as Mayor of the city that has the biggest port in America, the largest municipal utility in America, the number one airport of origin and destination, the most miles of road and as stated, the worst traffic, I got very excited. Contrary to what you might have seen in LaLa Land, no, we do not dance in traffic. We just sit there and stew.

I am here today to get you excited. Do not let this get out because 99 percent of the coverage tonight is not going to be about how we are all getting along; it is going to be about how we disagree. Right here, we truly do have bipartisanship and agreement on what this Country needs. That is the space mayors occupy every single day.

For all of us in the municipalities who have heard the words "a trillion dollars," in the election in November when everyone was focused on the national elections, throughout cities in America, $230 billion of infrastructure initiatives were approved by voters, a quarter of that down payment people are talking about happening over a decade.

My message from America's cities is loud and clear. We can do this. We should be excited to do this. I want to share our lessons in Los Angeles about how we did this. Republicans and Democrats agree, as well as Independents, on the need for this. We looked at this in Los Angeles, not just as an infrastructure need, but really as a jobs and quality of life initiative.

We get excited about the word "infrastructure," but normal Americans want more time with their kids to tuck them in. They know the billions of dollars in our local economy that were taken from us, millions of hours taken away from us through the traffic that chokes our cities.

We started crisscrossing a 4,700 square mile county with 10 million people, bringing in Republicans and Democrats. My wingman on this was somebody you may know, Supervisor Mike Antonovich, the most conservative member of the Board of Supervisors in LA County, and we crossed over to say, this is something we have to figure out a way.

In California, you need a two-thirds vote to raise a tax. It is an incredibly high threshold. A long story short, we had a 71 percent vote for a $120 billion package, the largest in American history times two at the local level, to fix our roads, 15 rapid transit lines, repair our freeways and give local money back to our cities and the county for the road repairs they need.

What led to that success? I think we each gave up a little something of who we were. As a Democrat, I came in skeptical as a Mayor about public-private partnerships and the role of leverage and banks. Today, I am a convert. Somewhere the fiscal conservative in me did not feel great about grants that come in with little accountability but I see how critical and how crucial they are.

The days of cities coming or States coming to this esteemed Senate or the House of Representatives saying, look, I have an empty hat in hand and a great project, please fill it up are long gone. We know that.

We have been immensely successful in Los Angeles in coming to you with a hat that is half filled saying, can we have our federal tax dollars along with our local tax dollars to make this happen?

I spent three days last week with the International Olympic Committee members who came to Los Angeles. I do want to bring the Olympics back home to America. They were blown away by what we are doing with infrastructure: $14 billion in our airport; $120 billion, as I said, in public transportation and roads; and another $2.6 billion at our port.

However, the jobs piece of making sure these are American jobs, because there is no port equipment manufacturer in the United States, there is no railcar manufacturer in the United States, we have real opportunities in passing this not just to talk about the needs of infrastructure, but the need for middle class jobs in America.

What leads to success policy-wise? I hope to lay that out in my last minute here. There are three things. We are calling this the I-3. You have heard of P3; this is the Infrastructure Incentives Initiative.

One is leverage. Two is to think about the life of projects. Three is innovation and technology. Leverage, I think, is clear. I just came from a discussion with members of the House and Senate, leaders in industry and a few of us mayors. They were talking the same language.

You need to leverage localities; reward those that step up; but also put out there that if you do have local money, you have a better chance of getting federal money. Similarly do that between public and private partnerships, knowing the advantages and the shortcomings that P3s have.

We have seen this in Denver where in 75 percent of the time and seven years less, they got a transit line from downtown to the airport. Leverage has to be the central principle of what we write.

Two is to think about life of projects. I am glad you brought up WMATA. We have seen this not just in Washington where people were killed, where yesterday you saw the line shut down, but in Boston where people kicked out windows of the railcar because it was smoking and places like the Bay Area in my State where folks are trying to get on the ballot something for maintenance. Make sure you reward those places that are not just thinking about the construction, because we all love ribbon cuttings, but think about the maintenance and the long term.

The third is innovation and technology both in the process as well as the technology itself. We are looking at changing American tunneling technology. Elon Musk, who you all know, in my city is looking at changing boring machines. I know this sounds like a boring topic but it is actually quite exciting. Boring machines have not changed in 50 years and he thinks he can get SpaceX engineers to increase the speed that they drill by as much as ten times.

We do not know what we do not know, but you need to put aside some funds, as we did in our initiative, for new, innovative technologies because we could be getting around in a very different way in five, ten, we for sure will be in 20 years from now.

Those three concepts of leverage, the full life of projects, and innovation technology is what the U.S. Conference of Mayors is putting forward as our plan to help assist you.

I will close with this. I will work off my tail to help you get Republican and Democratic mayors from every single town and city in this Nation to help get this passed. There is no better thing we could be doing for jobs, for the quality of life of all Americans and it is the one thing that unites all of us.

I will say, on behalf of America’s cities, we have stepped up; we cannot wait for you to join us too.

Thank you for all your support.

[The prepared statement of Mayor Garcetti follows:]

Senator Inhofe. Thank you, Mayor.

Tim Gatz.

STATEMENT OF TIM J. GATZ, EXECUTIVE DIRECTOR, OKLAHOMA TURNPIKE AUTHORITY

Mr. Gatz. Mr. Chairman, Ranking Member Cardin and members of the committee, for the opportunity to come and testify this afternoon.

My name is Tim Gatz and I serve as the Executive Director for the Oklahoma Turnpike Authority. Today, I want to emphasize several points.

The conditional deficiencies of a long underfunded national transportation system cannot be resolved by the States alone and will requires an increasing and congressionally-influenced federal investment, combined with a long term-national transportation strategy.

The focused investment of federal resources is necessary, but should in no way be restricted from use as leverage for financing opportunities and private sector partnerships. The advancements in tolling technologies and equipment along with toll tag interoperability efforts by tolling authorities across the Country, indicates that tolling should be clearly recognized as a viable, long term and sustainable transportation revenue mechanism.

The Oklahoma Turnpike Authority was legislatively-created in 1947 to construct a modern transportation link between Oklahoma City and Tulsa. Today, the more than 270 miles of the

Turner, the Will Rogers and the H.E. Bailey Turnpikes carry the Interstate 44 shield and are part of a combined toll network of 605 miles.

Oklahoma has utilized a balanced and responsible investment strategy, including tax-supported and toll-supported highways to meet the transportation needs of our citizens. To be clear, long term, consistent federal funding remains vitally important to the development and delivery of transportation improvement projects.

States must be able to anticipate the availability of resources in order to properly plan, design and construct projects. Recognized and documented critical needs and our clear understanding of long-term resource availability factors heavily into our investment decision-making.

In 1956, the Federal Highway Act included a general prohibition on tolling remains largely in effect with tolling allowed only under very specific circumstances. However, public-private partnerships and other debt financing options requiring long term revenues are encouraged.

Simple tolling can be a very flexible and effective revenue component in a bold, new national transportation strategy and is the purest representation of an equitable user fee. That being said, 3Ps, innovative financing and tolling options will not work in every case and should not be held as the Federal

Government’s best or only solution to stemming the further deterioration and operational deficiency of our national transportation system.

Recognizing that a 3P project must have sufficient liquidity to provide an adequate return to investors, we believe carefully vetting potential projects, selecting the appropriate risk sharing model and preparing a structured financial plan is paramount to project success.

In Oklahoma, the Gilcrease Expressway was part of the original Tulsa region expressway master plan created more than 50 years ago, including a segment to serve west and north Tulsa. Some development work has progressed over the years funded with very limited traditional federal, State and local revenue streams.

Completing this $300 million, five mile leg of the Expressway between Interstate 44 and US Highway 412 with a bridge over the Arkansas River is vital to providing access for businesses and economic activity in the region and to provide a reliever route for growing congestion concerns for travel into downtown Tulsa.

After many years of discussion, the Oklahoma Turnpike Authority, the City of Tulsa, Tulsa County, the Indian Nations Council of Governments, the Oklahoma Department of Transportation, and the Federal Highway Administration have crafted an innovative partnership.

The Oklahoma Turnpike Authority will leverage the investment and work that has been accomplished to construct the Gilcrease Expressway segment as a federalized toll facility. It is anticipated that OTA will develop a process to solicit interest from potential third party contractors and investors in a delimited public-private partnership.

The proposed partnership will share only in the cost of construction which will be partially offset with a defined cash contribution from the OTA and from the sale of GARVEE bonds.

While many variables with the Gilcrease project are yet to be solved, it is evident that a variety of funding and financing methodologies can be combined and leveraged to successfully and quickly deliver transportation improvement projects that might not be financially viable otherwise.

Innovation to address well-defined transportation system needs and, in turn, generate a user specific revenue stream in order to finance or partially finance construction, operation and maintenance should be enhanced in the federal program and should not be unnecessarily restricted.

In conclusion, any proposed federal infrastructure initiative seeking to attract private sector investment must be flexible enough to equitably accommodate potential projects in all stages of completion and in all types and sizes, not just mega-projects. Likewise, State and national tolling strategies should be supported and enhanced for the future.

Mr. Chairman and members, thank you again for the opportunity to visit with you today and I will be happy to try and answer any questions you may have.

[The prepared statement of Mr. Gatz follows:]

Senator Inhofe. Thank you, Mr. Gatz.

Mr. Yarema, I appreciate your being here today. You are recognized.

STATEMENT OF GEOFFREY S. YAREMA, PARTNER, NOSSAMAN LLP

Mr. Yarema. Chairman Inhofe, Ranking Member Cardin, Ranking Member Carper, and members of the committee, thank you for inviting me to testify today.

My name is Geoff Yarema. I am a lawyer and partner at the Nossaman law firm.

My testimony today reflects a long career advising State and regional governments across the Country in more than $40 billion of infrastructure projects and in my service on the bipartisan congressionally-mandated National Surface Transportation Infrastructure Financing Commission.

As our commission reported, the Nation faces a crisis. Our surface transportation system has deteriorated to such a degree that our safety, economic competitiveness and quality of life are at risk. That view remains true today.

Thanks largely to this committee’s action and, Mr. Chairman, to your leadership in particular, the last two authorization bills represent real progress. There is still much work to do, however, which is why we are all here today collectively determined to seize the opportunity.

If we are to remain the leader of the global economy, we must have, as Chairman Barrasso has repeatedly called for, a significant supplement to existing federal infrastructure spending.

Today, I would like to focus on the importance question of how to spend any newly-secured discretionary funds in the most impactful way possible. By working together, Congress and the Administration can achieve this paradigm shift through what Mayor Garcetti has called the Infrastructure Incentives Initiative or I-3.

I-3 would expend new discretionary resources expressly to serve four outcomes. First would be creating significant leverage by incentivizing government infrastructure owners to secure and commit their own revenue measures and project revenues beyond historical federal-State funding splits.

Second is assuring long term performance of new capital improvements by incentivizing owners to achieve life cycle cost efficiencies and avoiding any further deferred maintenance.

Third is modernizing business practices by incentivizing owners to update procurement policies to better capture the best of private sector capabilities.

Finally would be incorporating rapidly-evolving technology by incentivizing infrastructure owners to design their spending programs to maximize innovation.

Applying these principles to the allocation of new federal funds would move the Federal Government away from selecting what it deems to be the most worthy projects and move it towards spurring its non-federal partners to achieve better, long-term infrastructure outcomes and permanent program-wide enhancements.

I-3 can be scaled to match whatever size funding program is created, can be adapted to all government owner infrastructure classes, and can be designed to benefit rural as well as urban areas.

The recent State gas tax increases in Wyoming, Iowa, Idaho, Nebraska, Georgia, Vermont, Tennessee and Indiana stand alongside Measure M in Los Angeles, Proposition 1 in Austin, Texas and Sound Transit 3 in Seattle to demonstrate how rural and urban regions alike can generate billions of self-help dollars as supplemental transportation investment. These results are entirely replicable around the Country with the right federal incentives. Funding is only part of the solution, however. We need better outcomes from long-term maintenance technology and procurement practices.

In conclusion, I-3 would have our Nation be more ambitious for the outcome of its hard fought infrastructure investment than just to fund a federally-selected basket of shiny new projects or add more to highway apportionment.

It would expressly urge every State and city with major infrastructure challenges to partner more aggressively in exchange for new funding. That partnership would result in outsized program responses with each area around the Country selecting for itself, what kind of self help leverage to commit, what projects are most worthy of completion, and the types of procurement models to use.

The result would be a lasting paradigm shift in the federal, State, local and private infrastructure partnership.

Thank you for your attention. I stand ready to assist the committee as it pursues its legislative efforts.

[The prepared statement of Mr. Yarema follows:]

Senator Inhofe. Thank you, Mr. Yarema.

Mr. DeGood.

STATEMENT OF KEVIN DEGOOD, DIRECTOR, INFRASTRUCTURE POLICY, CENTER FOR AMERICAN PROGRESS

Mr. DeGood. Thank you, Chairman Inhofe, Ranking Member Cardin, and members of the committee, for inviting me to testify. It is an honor to contribute to this committee's work.

Transportation infrastructure is essential to our economy and local communities. Unfortunately, public investment has not kept pace with overall needs. As a result, the United States faces a well-documented infrastructure backlog.

Throughout the presidential campaign, Donald Trump repeatedly vowed to spend $1 trillion to rebuild America's infrastructure. Unfortunately, this promise has given way to a call for State and local governments to "maximize leverage" through public-private partnerships, or P3s.

At their core, public-private partnerships are an alternative method of procurement. Importantly, P3s are not a means of closing the infrastructure gap. The binding constraint facing State and local governments is insufficient tax revenue, not a lack of access to financing. Let me say that again. The binding constraint facing State and local governments is insufficient tax revenue. Public-private partnerships and tax credits do not solve this problem.

Instead, the true value of P3s is risk transference. Unlike traditional procurement models, P3 allow the State to draft a contract that shifts the responsibility for delivering a large, complex project on time and on budget to a private entity.

This transference does not come cheaply as the private companies rightly demand a premium price for assuming the project risks. Proponents of P3s talk about the need to get private capital "off the sidelines." This assumes project sponsors face capital scarcity. This is simply wrong.

The municipal bond market is robust with more than $3.8 trillion in outstanding issuances and a strong appetite for new offerings. Additionally, the TIFIA Loan Program, run by USDOT, offers flexible, low cost financing to project sponsors.

The current interest rate on municipal bonds with an AAA rating over 30 years is only 3 percent. By comparison, equity investors look for annual returns of between 10 and 15 percent. This raises costs significantly.

For instance, the financing charge on $100 million of municipal debt at 3 percent over 30 years is just $90 million. Over the same period, $100 million in private equity capital at 15 percent has a finance charge of $450 million.

Even factoring in the Trump Administration's plan to offer investors tax credits, equity capital is still vastly more expensive than municipal debt.

Additionally, P3s have very limited applicability. The average cost of highway P3s with a TIFIA loan and equity capital is $1.28 billion. However, maintenance and incremental expansion projects represent the majority of the infrastructure needed across the Country.

For example, for the 1,657 highway projects included in the State of Ohio's transportation program, only two have a cost of over $1 billion and another six a cost of more than $200 million. The average project cost in Ohio is just $9 million.

The lesson is that outside of urban mega projects, public-private partnerships have little value. For rural communities, small towns and economically struggling urban areas, an infrastructure plan based on tax credits is the same as no plan at all.

Wall Street is eager to see more P3s. A 2015 report by UBS sums up the attraction. "The high barriers to entry and the monopoly-like characteristics of typical infrastructure assets mean their financial performance should not be as sensitive to the economic cycle as many other asset classes."

In other words, highways behave like a utility but without price regulations. Even this is often not sufficient to defend against future competition; many private firms push for non-compete clauses. These contractual provisions are intended to keep the private firm financially whole.

A non-compete clause often includes a specific list of parallel facilities that the State may not expand or otherwise improve. If the State chooses to make improvements to a listed facility, it must provide a payment to compensate the private firm for their estimated loss revenue.

These provisions are deeply problematic as they offer private firms a degree of guaranteed profitability that does not exist anywhere else in the marketplace.

Finally, in recent weeks, the Trump Administration has pushed for “asset recycling.” This is a new term of art for brownfield lease transactions. In a typical lease deal, a State or local government receives an upfront payment from a private firm. In return, that firm has the right to collect a stream of user fee revenues over the life of the agreement.

These deals are presented as a source of new revenue. In reality, they are an expensive loan that comes with contract terms often harmful to the public. For example, in 2008, the City of Chicago leased its parking meters for 75 years in exchange for an upfront payment of $1.15 billion or 20 percent of its 2008 budget.

As result, the city is substantially constrained in how it may manage its roadways, including making it more difficult to make improvements to public transportation service. If the city had simply issued municipal debt to generate these funds, residents would face lower parking fees, and the city would have the freedom to grow and change without the contractual.

This deal, like other asset leases, was a cash grab under the guise of innovation that the public must live with for many decades to come.

In conclusion, there are no shortcuts to rebuilding America's infrastructure. The Federal Government needs to provide direct funding to State and local project sponsors. Furthermore, these funds should be targeted to those communities facing the greatest need and the highest level of economic hardship.

Thank you again for the opportunity to address this committee.

[The prepared statement of Mr. DeGood follows:]

Senator Inhofe. Thank you, Mr. DeGood.

Secretary Layne, you are recognized.

STATEMENT OF AUBREY L. LAYNE, JR., SECRETARY OF TRANSPORTATION, COMMONWEALTH OF VIRGINIA

Mr. Layne. Thank you very much, Chairman Inhofe, Ranking Member Cardin and other members of the subcommittee. Thank you for the opportunity to testify today.

My name is Aubrey Layne. I am the Secretary of Transportation for the Commonwealth of Virginia. My testimony today will focus on my personal experience with public-private partnerships or P3s throughout my professional career.

These deals have been praised in some circles as the solution to all our transportation problems and condemned in others as a corporate giveaway. The truth is much more complex and ultimately dependent on the nature of the project and the degree to which the government officials understand how these deals work and how to protect taxpayers.

I have had a 30 year business career of running large operational companies. I have a degree in accounting and a Masters in Business Administration. I began my career as an auditor in the CPA for KPMG and finished as the president of a large real estate company.

As Secretary of Transportation, I oversee seven transportation agencies that employ more than 10,000 staff and have a combined annual budget of over $6 billion.

The toughest issues I face today involve funding projects, not engineering or environmental problems. That means I spend most of my time on resource allocation, financing, risk assessment and operations.

Fortunately, my past experience provides me with a foundation and knowledge for financing large scale construction deals.

Public-private partnerships are complex transactions that can have significant implications for the public. It is important that we all understand them. Before I get into that, I, first, want to be clear that financing, whether public or private, helps leverage resources but it is not a replacement for sustainable and stable public funding.

The priority for Congress should be addressing the long term solvency of the Federal Highway Trust Program, fund growth in the program and helping States our transportation needs regardless of mode.

In Virginia, we have relied on several guiding principles regarding public-private partnerships. Our fiduciary responsibility is to the taxpayers. We need to deliver the best results for them.

P3s are a helpful procurement tool where appropriate and when negotiated well. Government officials should consider all options, including public finance before making decisions. We must ensure competition throughout the process. We must be transparent and accountable to the public and elected officials.

I am an unabashed capitalist and a big believer in private industry. This belief is premised on true free market competition. Both parties entering a P3 must have a full understanding of the issues being negotiated. Unfortunately, that is not always the case.

Our Commonwealth has long been recognized as a leader in P3s. Since 2007, we have closed five concession deals that transfer risk to the private sector. Collectively, these deals are worth more than $9 billion, more than $2.5 billion coming from private equity and approximately, $1 billion in public funds and the remaining from privately-backed debt.

In addition, we are currently negotiating a P3 contract for $1 billion in improvements right here in the I-95/I-395 corridor.

As I stated before, P3s are complex business transactions that are unlike any transaction in which a State DOT is typically involved. First, P3s are typically long in nature, long contracts. Normal transportation contracts expire when construction is done after a limited number of years.

This provides the opportunity to evaluate outcomes and if necessary, officials can make changes. This is not true with a 50-year P3 concession contract with a private partner. Changes can often result in compensation to the private party. Getting these deals wrong can be very costly.

These deals also can be some of the largest projects, as we have heard in previous testimony. The average P3 deal in Virginia is $1.8 billion compared with an average contract value of less than $3 million.

For these reasons, it is imperative that decision-makers understand the fiduciary responsibility of each party involved. The private sector is responsible to its shareholders and its investors. The public sector needs to make sure the public's interest is protected and advanced. The hard part is to see where these interests lie.

In 2015, Governor McAuliffe asked me to evaluate our P3 program. We were not getting the results we wanted. In fact, we had some pretty tough deals that were negotiated. I found out that these deals were not made with transparency and accountability so we decided to start from scratch.

What we found is the best way to protect the taxpayer is to make sure the private sector has to compete. We do not want to give anything away which means they need to beat our bottom line.

We lay out our major business terms, what we want to accomplish, and we develop the public option. We do not go it alone; we have a steering committee to help us evaluate this. Then and only then if it makes sense do we invite the public and the private sector to compete along with us. If the private sector can beat our public option, then we enter into a P3 process.

It is important to note that we never take the public option off the table. This has worked very well for us in Virginia with our I-66 deal that we just did, a $3.1 billion deal. We ended up doing it with no public subsidy and an additional $500 million paid as a concession payment to the State up front.

This is not free money. This is how the public toll funds will be used. This new process considers that user’s fees benefit taxpayers.

As you guys consider, as Congress considers potential infrastructure packages, I would strongly urge members to be careful not to create unintended consequences through new incentives for P3s.

Many of the concepts being considered would provide incentives only available if a project is privately financed. This can undercut the published negotiating position.

In closing, P3s have real promise to address certain transportation projects, but according to FHWA, there are only 42 surface transportation projects across the Country that involve private financing and 60 percent in five States: Virginia, Texas, Florida, California and Colorado. Thirty-five

States have never entered a single transaction involving private financing.

I would encourage Congress to ask two questions if we consider incentives. How will it help deliver the best deal for taxpayers and whether it will create distortions that will hurt the public negotiating position.

I have one last closing comment. I know you will hear a lot of people say there are a lot of barriers to P3s but I strongly disagree. These are the same people who said, when we reformed our program, that it would kill it. It turned out that just was not true.

Thank you very much for the opportunity to testify.

[The prepared statement of Mr. Layne follows:]

Senator Inhofe. Thank you very much, Secretary Layne.

Let us start with Director Gatz. You did not say much about the Driving Forward Program, the projects it would cover and why we developed this plan in our State of Oklahoma.

Mr. Gatz. Mr. Chairman, the Driving Forward Program really consists of two parts. There are three projects that represent major reinvestment in our existing toll network to make sure it stays in good operational condition.

One of those is a six lane project that is about 22 miles on the east end of the Turner Turnpike in Tulsa. The other in the Tulsa area that is an expansion project is the Gilcrease that I discussed in my testimony. In the Oklahoma City metropolitan area, in our efforts to try to continue to manage increasing traffic volumes and make sure we can continue to move people, goods and services, we are expanding the John Kilpatrick Turnpike on the southwest side of Oklahoma City and introducing a new reliever route between Interstate 40 and Interstate 44, the Turner Turnpike in eastern Oklahoma County.

Again, those expansion projects are really being predicated on developing congestion in the metropolitan areas and the increase in accidents we see occurring as a result of that. That is our effort to stay ahead of it, Mr. Chairman.

Senator Inhofe. Thank you.

Mr. Yarema, you heard the attacks on P3s. It has been my experience in conversations I have had with our new President that everything is on the table. It is going to take a lot of imagination, a lot of hard work, experience and gifted people and I would hesitate taking anything off the table. Is there anything you would like to say after the attack on P3s, your feelings about them?

Mr. Yarema. Thank you, Mr. Chairman.

I do not know that I would serious disagreement with what has been said. I agree with others and with you that P3s are not anymore a silver bullet to solve the big infrastructure challenges we have than conventional delivery is. We have problems with every delivery device.

They do not produce new funding. That should not be the purpose of P3s. They do is they are much more than financing devices; they are effective project delivery mechanisms in the right circumstances.

I believe there is too narrow an understanding of what that term applies to and the potential value they offer to both urban and rural areas. There are two main types of P3s: those that require revenue streams and those that do not.

Most commentators focus on the P3s that require revenue streams, like toll roads and manage lanes. These do raise the issues about rate setting and non-compete clauses and the limits on potential future activity by State DOT.

The other type of P3, known as an availability payment contract or performance contract, raises none of those issues. It does not involve toll revenues. In fact, it is the most common type of P3 in the U.S. and the global market today, but it is not widely appreciated.

If I could, I would take just a second to explain the performance P3. It offers a different value proposition than conventional delivery. With conventional delivery, a State DOT or a regional transit agency tells a contractor not just what to do but how to do it. It compensates for the resulting work on a progress basis and there is no warranty generally for the outcome.

With a performance P3, you compensate the contractor only for the infrastructure performance over its useful life. It is akin to a super warranty. The government generally makes no payments until the project is complete and then the payments over the life of the project are subject to adjustment downward to the extent the infrastructure under performs.

The tool ensures that companies that design and build a project are on the hook for the long term infrastructure performance, they are required to bid life cycle costs, and they reward the contractor for innovative solutions.

There is strong competition and rigorous bidding for these kinds of contracts. There are numerous examples in this

Country: the Ohio River bridges in Indiana, the Purple Line in Maryland, three major projects in Florida, and the Los Angeles World Airport is delivering $4 billion worth of these kinds of contracts today for its major project, just as examples.

I respectfully suggest that the outcomes that an availability payment or performance payment P3 can produce are just as valuable in a rural setting as they would be in an urban contracting environment.

Senator Inhofe. Thank you, Mr. Yarema. I appreciate that clarification.

Senator Carper.

Senator Carper. Thank you, Mr. Chairman.

Again, welcome and thank you for your testimony which I think, for the most part, is illuminating. Tomorrow we are going to hold another hearing in this room and the witness will be the Secretary of Transportation, Elaine Chao.

I met with her several weeks ago and had a good meeting. One of the questions I asked of her was what do you think the Administration would like to do to fund transportation projects? I am a believer that if things are worth having, they are worth paying for. I also believe that a basic underlying concept for building transportation projects is those who use them, people and businesses help pay for them. That is sort of where I come from, Danville and Roanoke, Virginia, Mr. Secretary.

The Secretary will be sitting tomorrow where you are. Just kind of lift yourself out of your chair and put yourselves up here with us and it is tomorrow. You are here to give her advice on how to fund transportation projects.

She seemed to think public-private partnerships made a lot of sense. I explained to her that I think in the last I do not know how many years but for a number of years, if you add them all up, there are maybe 40 or 50. There are big ones, some are really big. There are several you said but there is just not that many of them.

What advice would you give her? Start, if you could, with our friend from Oklahoma, Tim Gatz. Tim Gatz, keep it within a minute. What advice would you give her for funding?

Mr. Gatz. I think the most important thing is to understand there is going to have to be a lot of tools in our infrastructure toolbox. It is going to take a healthy combination of revenue and financing mechanisms.

I think with public-private partnerships, we have to explore innovation that will begin to allow some of the smaller projects but not the billion dollar projects to potentially take advantage of those opportunities.

I think, again, as stated many times here in the committee meeting today, it is going to take a lot of BBs to be able to make that happen.

Senator Carper. Not a lot of silver bullets but a lot of silver BBs.

Mr. Yarema, what advice would you give the Secretary for funding transportation?

Mr. Yarema. Number one is leave existing programs in place. Number two is, find $200 billion in new funding for infrastructure. Allocate $100 billion of that to surface transportation and then create the Infrastructure Incentive Initiative Program, I3, so you take that $100 billion and are able to leverage it into significantly more funding.

You are able to find the efficiencies that life cycle cost approach delivery gives you, the efficiencies that modernizing business practices gives you, and the efficiencies that technology gives you. Then you can get a five to seven times multiple in total infrastructure outcomes.

Senator Carper. Thanks so much.

Mr. DeGood.

Mr. DeGood. Thank you.

I think the number one piece of advice I would give is that we have a longstanding tradition of a user pays model of infrastructure finance for most infrastructure sectors. That has served us incredibly well.

I think unfortunately for a number of political reasons, we have drifted away from that and it has made the political lift for members so try to find offsets to continue to fill the Trust Fund increasingly difficult. As that number grows with each successive round and surface bill, it gets harder and harder.

I would think that we need to look at those sectors, whether ports, inland waterways, aviation and surface transportation where we have a user fee structure in place and try to raise those fees to match inflation over the years where we have not.

Senator Carper. Thank you.

Secretary Layne.

Secretary Layne. First of all, I would echo the current funding programs in place like Fast Lane, because P3s are a financing alternative, not a funding alternative.

In terms of P3s, I want to make it clear. I am a big believer in them. I just think you need to understand the two different types of risk and how they need to be negotiated. I believe that is a pretty steep learning curve in some of the States in terms of how to evaluate construction, operational and particularly financial risk.

When you talk about concessions, that is truly the risk you are trying to pass on. If you think about equity, in any deal you do, that is the most significant and most costly part of the capital stream in terms of that.

Quite frankly, it has been attracted because of the low interest public debt programs that are out there. That is what has really enticed many of them to invest.

I would certainly encourage the Secretary, if we are going to continue that, to have some type of programs to help States gear up for the use of these tools. Certainly I believe outcome-based results are needed. In the Commonwealth of Virginia, we prioritize now, with our limited resources, through a process we call Smart Scale. It is based on outcomes, not so much inputs but outcomes. Are we reducing congestion using land use?

I have found in my professional career the better way to get more money is to use what you have more effectively and more efficiently. Certainly, I think a prioritization program along with that would be shortening the periods of environmental work and what is needed and helping these projects come to fruition.

That would be my advice to the Secretary.

Senator Carper. Thanks so much. We will see you tomorrow.

Senator Inhofe. Senator Fischer.

Senator Fischer. Thank you, Mr. Chairman.

Like many of my colleagues, I believe in the importance of funding our Nation's infrastructure. Reliable infrastructure represents a critical investment in advancing safety and also commerce.

The Highway Trust Fund has served to equitably distribute funds to all States, rural and urban, and is the lynchpin of our transportation system. As many of you are aware, we are looking at a shortfall of over $100 billion that we will face in the five years following the FAST Act. I happen to have a bill that will handle that, Mr. Chairman.

However, Mr. Gatz, can you elaborate on how important it is that we have certainty in the formula funding to your State's transportation systems? When it comes to maintaining our roads and bridges, is there really any substitute to that critical apportioned funding that we have?

Mr. Gatz. Senator, I would tell you in many cases, there is no substitute, there is no alternative, especially for a State like Oklahoma. We have to have funding to be able to maintain the system that we have.

Again, it is all predicated on inspection, understanding what our needs are, and then having a very carefully crafted investment strategy to meet those needs. That investment strategy is fiscally constrained based on what resources we believe we are going to have available.

Again, there will have to be continued investment at the federal level to be able to manage our infrastructure for the future.

Senator Fischer. I like that you used the term "investment" because that is what this is. It is not going to be a stimulus, it is not really job creation, but it is an investment in the future. When you look at the strategy for that investment, it really, I believe, needs to take place at the State and local levels so you can have those stakeholders come together and decide on the priorities that meet that strategy you are looking at for your State. Do you agree with that?

Mr. Gatz. I would agree. The States are typically held accountable by the folks that reside in those States. Again, we are responding. We have a responsibility to those constituents to be able to explain our investment strategy and make sure they understand how we are reinvesting in the network to make sure its operationally as good as it can be.

Senator Fischer. It is important to involve constituents and the people in our States in these decisions.

Mr. Gatz. Absolutely.

Senator Fischer. Mr. Yarema, you talked about evaluating infrastructure investments based on their performance. Can you elaborate on what performance-based standards would look like? Do you believe these could be applied to publicly-funded projects?

Mr. Yarema. I would be happy to. In an availability payment P3 or a performance P3, in a conventional project, the government basically comes up with standards and specifications that it applies prospectively where they serve as a proxy for outcomes they want to achieve. They mandate how a project is to be built, the manner in which it is to be built, and the means in which it is to be built.

In a performance-based P3, the contractor is held to contractual requirements of the infrastructure's long-term performance. They are only paid to the extent that performance is actually retrospectively secured.

By performance, we mean that the infrastructure is available, it is safe, it is meeting all of its maintenance criteria, and on many other standards set forth and it is potentially applicable to apply environmental standards.

Under NEPA and in federal permits, there is a need to have mitigation requirements, but whether those mitigation requirements actually achieve the desired environmental outcomes is speculative. If it is applied in a performance contract, it is contractually required.

That is the difference in a P3 environment as opposed to a conventional contracting environment.

Senator Fischer. Thank you.

Secretary Layne, the FAST Act requires States to develop freight plans in order to receive federal funding. My State, Nebraska, is in the process of developing a very comprehensive freight plan.

Can you talk about the importance of ensuring we have a thorough strategy to address the growing movement of freight across this Country?

Mr. Layne. Yes. Thank you very much for the opportunity to respond to that.

We, in Virginia, just received one of the largest FAST lane grants for our Atlantic Gateway project, a $1.4 billion project, between Richmond and the I-95 corridor up to northern Virginia.

It consists of $1.4 billion, $165 million in a federal grant, but supported by $565 million of private investment and $710 million coming from the State of Virginia to deliver these projects. A big part of that was freight.

We teamed with our partner, CSX, one of the most congested freightways in the Country. It is very important not only for freight but passenger traffic. We certainly support the Port of Virginia having double-stacked trains coming up through that corridor.

Having a freight program is actually helping not only freight, but other modes of transportation, taking people off the highway by allowing passenger trains. The freight improvements also helped our passenger movements.

Senator Fischer. That intermodal connection is very, very important. I am glad to hear you are doing that.

Mr. Layne. Yes, it is extremely important.

Senator Fischer. Thank you.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Fischer.

Senator Duckworth.

Senator Duckworth. I thank the Ranking Member and I thank the gentleman from Rhode Island for his generosity. I want to thank our witnesses for participating in this very important conversation.

Mr. DeGood, the details of the President's $1 trillion infrastructure investments are still unavailable to anyone outside of the Administration. However, his budget blueprint reduces transportation funding in very troubling ways.

What little we know about the President's plan suggests that there is actually no trillion-dollar investment. Rather, he will rely on financing gimmicks that have limited applicability in most of the Country.

I tend to agree with your view that financing mechanisms are mostly limited to urban and mega project applications. Your testimony suggests that the real constraint facing State and local government is lack of actual dollars, not a lack of access to financing markets. Would this be a correct assessment of your testimony?

Mr. DeGood. Absolutely and I think one of the more disappointing aspects that so much of the conversation from this

Administration has been around the possibility of tax credits for equity investors which, I think is both a huge addition to the budget deficit if it were enacted and also, does not really deliver the benefits communities need. We need to get dollars into the hands of project sponsors.

I think one of the things unappreciated about this tax credit program is that, for the most part, it is not something investors are looking for. In my conversations with folks in Wall Street firms, they have repeatedly said to me people bring us money because they want it put into projects and want it earning a return. What we do not need is 82 cents back on the dollar.

I think if Congress were to move forward with this sort of tax credit scheme, we would see it have almost no net effect on overall construction and it would deliver almost no benefits to the vast majority of communities out there.

We need to bring federal dollars to the table. I think there is a certain virtuous cycle from that which is when State and local officials know the Federal Government is acting as a partner, they are more likely to take on that political risk to go out and raise their own dollars.

Senator Duckworth. Otherwise there is an interesting history with public-private partnerships. The CREATE Program in Chicago, which is a partnership between the Federal Government, the State of Illinois, the city and the freight rail industry with their hard dollars, is an extremely effective and balanced effort to address Chicago's freight rail challenges.

In fact, the Nation's freight rail challenge is a long jam there in Chicago, but it is not a traditional P3 mechanism. It does not shift risk from one entity to another. However, Chicago's parking meter and Skyway deals highlight how difficult it can be to evaluate public assets to ensure taxpayers get a good deal.

All of these examples are in the context of a challenge of large urban infrastructure. I am interested in learning more about opportunities for rural communities. What financing opportunities are best suited for rural communities where access to private investment is limited, Mr. DeGood?

Mr. DeGood. I think one of the potential benefits for rural communities in this conversation about public-private partnerships is that any urban mega project that is sort of taken care of as a result of a P3 can free up dollars that the State has, general tax dollars that the State has to do smaller projects that just do not fit with that kind of procurement and financing model.

I think it is important for us to be sensitive to the fact that rural communities and small towns just do not have the same tax base. They also do not have the same ability to generate user fees because there is less travel demand on the roadways.

No matter what plan we come up with, we have to make sure to set aside an appropriate amount of money for rural communities and recognize their unique needs.

Senator Duckworth. Thank you.

Secretary Layne, as you noted, most public assets are owned by State and local jurisdictions. I am concerned about the ability of States and local governments to assess and implement complex financing opportunities and also protect local taxpayers at the same time.

As your testimony suggests, VDOT's I-66 expansion project could have gone down a very long path due to an original analysis that was flawed. Relying on that original analysis would likely have led to a very bad deal for Virginia taxpayers.

Secretary Layne, how can States and municipalities avoid similar circumstances? How can we better prepare to assess complex financial deals that ensure taxpayers get the best deal? What can the Federal Government do to help in this effort?

Mr. Layne. Senator, I do agree with that assessment. When we came into office, the analysis that was put forth by the department suggested that we were going to need $1 billion in public subsidy. It was not going to support any multimodal solutions in the area or additional improvements.

What we did, which I think is the key going forward, was to develop the public option. If you are going to negotiate with a third party, you need to understand what it is going to cost you before you begin negotiating.

We did our public option. We said it would only take $600 million in public subsidy and substantial monies, over $800 million for multimodal improvements. As it turned out, true competition, that is the other key besides having a public option on the table, is what resulted in the great deal for taxpayers.

Unless you have true price discovery, which is through competition, you cannot determine what actually has a bidder to make an offer. It could be other factors other than the deal, competition, a competitor being in control of the whole market, maybe a lower cost to capital that we do in the United States. These are big multinational companies.

The two things we can do to help the States negotiate these deals is have a public option and have true competition. I believe the Federal Government, in helping that, could help us educate the States in how we go forward.

Let me push back on one thing. Every P3 does have a revenue stream. Availability payments do not have a specific one connected to a project but it still has to be a revenue stream. How else are you going to pay back the third parties?

There is some value for money or the options given up if that money is used for something else already. In the State of Virginia, that would be considered debt because if we do not pay for a project within our construction period, it is considered debt.

I do think availability payments do help in some areas in that but they are dedicating a revenue stream that could go somewhere else. There are some lost opportunities in those investments.

Those are the things I would say, the public option and having true competition in these deals.

Senator Duckworth. Thank you.

Senator Inhofe. Thank you, Senator Duckworth.

Senator Ernst.

Senator Ernst. Thank you, Mr. Chairman.

Republicans and Democrats are often at odds over a number of things, but when it comes to infrastructure, we generally have bipartisan agreement. That gives me hope. I think coming up this year, really the Federal Government does have a very important role to play in this issue.

Along with ensuring our national defense, which I think is very important, I believe building and maintaining our Nation's infrastructure should also be a top priority for our Federal Government.

Director Gatz, you have served at the Oklahoma Turnpike

Authority for nearly 30 years. Thank you very much for your service.

In your testimony, you stated "Until recently, no public-private partnership opportunities really made sense for Oklahoma." Oklahoma has almost 1 million more people than the State of Iowa. Its largest metro area in Oklahoma, Oklahoma City, has more than twice the population of our capital city of Des Moines.

If to this point, a public-private partnership has not worked for Oklahoma, under what circumstance do you see a public-private partnership working for the State of Iowa?

Mr. Gatz. Thank you for the question, Senator.

I think as much as we have engaged in discussions with a lot of different governmental partners, whether that be the City of Tulsa, the Oklahoma Department of Transportation, Tulsa County and others, on the Gilcrease Project, we are trying to find ways to leverage resources in a project of some size but certainly not a mega project, to be able to create an opportunity for a private party to come in and help with only the construction of that project.

Again, we think we can create a very competitive environment that would facilitate that investment. It is a bit unique. Again, we have some question marks we are going to have to resolve, but we simply, much I would say that Iowa has, have never had the right project to be able to try to accomplish this.

Quite frankly, we have been talking about the Gilcrease expansion now for about nine years with these partners. We are only now to a point where we feel we have an opportunity to move forward with it.

Senator Ernst. Every circumstance is very, very different and making sure it is not one size fits all, I think is really important.

I thought it was interesting that Mayor Garcetti mentioned Los Angeles and their county of 10 million people. My county back home, Montgomery County, is 10,000 people, very different circumstances.

Director Gatz, you also mentioned in your testimony that tolling should be recognized as a long-term and sustainable transportation revenue mechanism. My concerns with tolling are a couple different points.

One is how many roads are we going to toll and at what point do we start inhibiting movement of travelers? This is very true in those rural areas. Oklahoma has the same minimal rural areas where the tax base is really pretty low and every penny, of course, in those families' budgets count.

Second, wouldn't we be forcing people to go off onto those secondary roads that maybe have not been built for heavy traffic?

Mr. Gatz. Most importantly, I think you have to have a very careful vetting process in place to make a decision about tolling. It cannot be arbitrary. Again, where you have critical transportation needs that are developing that are simply otherwise going to go unmet without a resource commitment, certainly with a lack of traditional transportation investment revenue streams, we think that tolling is a viable option.

In Oklahoma, that is how we have used tolling, where we have had critical needs that we see all the indicators developing, whether that is accidents, congestion, access issues. We have been able to invest and use toll roads to meet those needs and have been pretty successful in doing that.

Again, that cannot be arbitrary. You have to have the right set of circumstances and very careful consideration and vetting.

Senator Ernst. I appreciate that. Again, the one size for all does not fit all kind of approach and thorough vetting. Thank you very much.

Thank you to all our witnesses.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Ernst.

Senator Whitehouse.

Senator Whitehouse. Thank you, Mr. Chairman.

I am actually optimistic and hopeful that we are going to be able to get something done on infrastructure. You have been a great chairman on infrastructure projects before. We have worked in terrific bipartisan fashion. We do not always agree on everything but I think this is a great place to get things done.

First all, thank you for that, Mr. Chairman.

Secretary Layne, although it is not one size fits all, although you have to be able to adapt P3s to different projects, are there certain red flags that we should look out for that should ordinarily be a warning sign for people trying to protect the taxpayer in P3 deals? If there are those red flags, which ones would you highlight for us?

Mr. Layne. First, let me say that you never can institutionalize risk. Every deal is different. For instance, here in the Commonwealth, the risk for extending new lanes on Interstate 66 in an existing right-of-way is a lot different than sticking a tube underneath the Elizabeth River for a new tunnel.

To answer your question, it really gets down to what risks are in each particular project. They primarily fall into three areas: construction risk, operations risk, or financing. That is really where we get into the concessions and most people think of P3s where we are transferring all those risk to the third parties.

The only way I know to be able to mitigate that is to, first of all, understand what the project is you want built and what it would cost the entity that owns the project, in our case, the State so that you, one, understand those risks and when you start talking about negotiating those risk away, what they may be a value to in terms of the deal.

Senator Whitehouse. There is no easy red flag. You just have to go in with your heads up and knowing that there are smart people on the other side who are interested in getting money out of taxpayers?

Mr. Layne. That is correct. That is not because they are not good citizens. That is their fiduciary responsibility. As a trustee at a real estate corporation, fiduciary responsibility meant a great deal to who I was representing. That is what we need to understand. They are good citizens but they are fiduciaries.

One red flag that I have found, this is my first time in the public arena, is when you have government, particularly a governor as we do, a one term governor, standing up and saying this is the most important project and I am going to deliver this project before I leave office, that under cuts the public’s ability to negotiate the terms of the deal.

That would be a red flag and my hat is off to Governor McAuliffe for allowing us to walk away from a bad deal. That is why it is important to keep the public option on the table. Not walk away from the project but walk away from a bad deal.

As I said, I was, in the private sector, an unabashed capitalist and believe in private industry but you do understand where the fiduciary relationships are. That is what they are going to do.

Senator Whitehouse. Let me turn to another topic that I think also relates to Virginia. Your State is a coastal State, rather like Rhode Island. We are seeing very extraordinary infrastructure needs emerging along our coast as we are seeing very extraordinary sea level rise projections coming from our local scientists, national scientists, NOAA, coastal resources folks and so forth.

You are seeing this down at Norfolk Naval Station which is getting all sorts of trouble. You are seeing this down at Hampton Roads. Are you doing anything in particular or should we do anything in particular looking at infrastructure to address that specific problem of new risks to coastal infrastructure whether it is wastewater, roads, coastal defenses, or military bases? The sea does not like any of that very much. It takes it all over. Are you focusing in any particular way on that threat?

Mr. Layne. You are correct. It is a significant threat because it is not just sea level rise; the ground in those coastal areas is also sinking because of taking out groundwater and they are compressing it.

The answer is yes, but not enough. Particularly on our new projects, that is one part of the big scoring, the resiliency or the environmental impact as we develop new projects. However, we have also had to devote resources to what we call our state of good repair because we do have significant assets subject to that, raising the roads or whatever we have to do in those areas. It is far short of the needs.

I have seen that localities have been doing much more and we assist them. The City of Norfolk got a $100 million grant from the Federal Government. They have been doing a lot and we have been assisting them.

We do not have in our budget the ability to take care of all of the resiliency and the sea level rise impacts on the State of Virginia.

Senator Whitehouse. Thank you very much.

Thank you for the extra 30 seconds, Mr. Chairman.

Senator Inhofe. Thank you, Senator Whitehouse.

Senator Cardin.

Senator Cardin. Thank you, Mr. Chairman.

I really thank all the witnesses. I have found this presentation to be very helpful.

I want to drill down a bit more on the recommendation that came in on the I3, that we change the way we configure the federal partnership in infrastructure to a reward, place an incentive for leveraging with either more local government support and/or private sector, which was one leg of it.

The other two legs, I will get to in a moment, deal with technology and dealing with maintenance. I think both of those are very important issues we should talk about at the national level.

Let me talk about leveraging particularly private sector because I thought, Mr. DeGood, you raised a very important point about accountability and so forth and private sector participation.

Secretary Layne, I was listening to your testimony pretty carefully. I was trying to figure out where you come down on this. It sounds like you want to be left alone. Where you want to do public-private partnerships, let the States do it but do not put any incentives or restrictions at the national level. Let the States figure it out. Am I reading you correctly?

Mr. Layne.   Yes, sir. I do believe the current tools we have in place, TIFIA and the government programs, there could be things to enhance that. In terms of tax credits or giving some type of bonus for incentivizing the project be done as a public-private partnership, that puts the factors in the deal that the other side, the private sector, is going to know they are there too and they will figure out a way to make sure they use them and how they can benefit from that.

I am not saying that is wrong but I am pointing out you may not get the dollar for dollar increase the Federal Government would be spending, particularly in tax credits and certainly with the incentives in that.

Yes, we have seen no problem attracting private investment in the Commonwealth of Virginia for those projects that lend themselves to P3s.

Senator Cardin. Mr. DeGood, let me ask you a question. Is there anything in the current federal authorization and implementation of our transportation programs that causes you heartburn as it relates to private partnerships?

Mr. DeGood. I do not think there is anything in the current federal program that gives me heartburn with respect to P3s. I think the biggest shortcoming is that we do not have aggressive enough performance metrics when it comes to holding States and metropolitan regions accountable for how they expend the vast majority of money which the Federal Government hands out through formulas.

I agree with the Secretary's point that you have to look at this from the perspective of performance and that should inform your project selection decisions. I would also say I think we need to push substantially more money down to metropolitan regions. I think too much of the decision-making authority currently rests with State DOTs.

I think it is a natural outcome of being a State DOT employee that when what you look at every day is a State highway network, you tend to think the solution to the State's mobility challenges is going to rest with expansion of the State highway network, even if there are other lower cost or more environmentally sustainable approaches or things that just provide more transportation options for local families.

I think more money to locals and more performance accountability at the State level is important.

Senator Cardin. That is helpful. In my opening statement, I strongly supported the flexibility for local governments. I am proud of the role that Senator Cochran and I played in preserving the transportation alternative programs with the help of this committee so that we do have that flexibility under the current system. We are going to fight to maintain that.

Let me go to the other two issues, technology and maintenance, which I strongly support. I think we have neglected maintenance. Everyone likes to cut ribbons and do not like to preserve roads and bridges.

How do we, at the national level, provide the right incentives for advancing technology and dealing with life cycle maintenance?

Mr. Yarema. I would be happy to take a crack at that.

Again, we start with the proposal that base programs be kept in place and new money be handled differently. Handling it by way of incentives is a new way of establishing a federal, State, local and private partnership.

One of those incentives should be preserving assets to the end of their life and doing effective maintenance. Let us draw a line in the sand and say we are not going to build anything new, we are not going to reconstruct anything unless we make that commitment.

One of the ways of making sure that will take place is through an availability payment P3. The contract will obligate the contractor to achieve life cycle costs and useful life length by contract. That is a way of achieving it with certainty.

The truth about the federal-State relationship in transportation, at least, is that the States and localities own the assets. The federal role is to fund, to provide TIFIA financing, and to regulate. Hopefully, what we can do is add an incentive, a stronger incentive, as a federal role as it evolves.

Senator Cardin. Does anyone else want to comment on that?

Mr. Layne. If I may, yes. In Virginia, more than half of our transportation dollars, federal and State, go to maintaining the roads. In fact, we just added a new law that requires 45 percent of our construction monies goes into what we call state of good repair. Those assets that you cannot pave anymore or just paved, you have to rebuild them but you are not adding capacity.

Senator Cardin. Is there something we can do at the national level to encourage States to meet their commitments on life cycles?

Mr. Layne. You can probably tell I am not an engineer. I am not enlightened or encumbered by that degree. I look at things from a logistical standpoint or from a pragmatic business perspective.

Certainly rating performance of your current assets, which we do in the Commonwealth, I believe, should be part of the federal program. Are we maintaining assets to a standard, particularly interstate systems and what have you and that they make sure, like we do, that we are maintaining those.

Senator, I would suggest that there be some performance output-based results in the monies the Federal Government passes on to the States.

Senator Cardin. That is a good suggestion.

I would make this final comment, Mr. Chairman. In the days when we used to have congressionally-designated funding, better known as earmarks, I have never known a legislator to request money for maintenance but we do request for new roads and new projects because we like to see new projects.

It is a tough political sell when you are dealing with maintenance, but it is our responsibility to make sure that is built into the accountability and into the way we develop our partnership.

I look forward to your input as we develop the next infrastructure authorization bill to see how we can be more effective in preserving our transportation infrastructure in this Country and, by the way, also to deal with technology. I think that is an emerging area that is not always given the priority that it needs.

Thank you all for your testimony.

Senator Inhofe. Thank you, Senator Cardin.

I thank all the witnesses.

We started in the opening session talking about the successes we have had over the last couple years. It has been rewarding because people think things get bogged down in political rhetoric and nothing gets done. That is not the case with this committee. We actually do things.

I am optimistic. I have heard it from the Administration that we are going to get aggressive and do the things we should have done before.

I do look wistfully back at the old days when our biggest problem was too much surplus in the Trust Fund but those days will never come back.

I appreciate very much the expertise expressed by the witnesses today.

I am going to adjourn, but this happens to be the 30th year of the partnership program, one in which I was involved 30 years ago this year. We are going to be holding the celebration in this office building in about an hour. I would hope all of you who were kind enough to show up will leave as quickly as you got here. I appreciate that very much.

We are adjourned.

[Whereupon, at 4:50 p.m., the subcommittee was adjourned.]