BEFORE THE NEW YORK STATE SENATE
STANDING COMMITTEE ON TRANSPORTATION

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PUBLIC HEARING

HOW TO UTILIZE PUBLIC-PRIVATE PARTNERSHIPS (P3s)
TO REPAIR AND IMPROVE
NEW YORK STATE'S TRANSPORTATION SYSTEM

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Farmingdale State College
Lupton Hall, IRTT Room T-101
2350 Broadhollow Road
Farmingdale, New York 11735

September 27, 2011
10:00 a.m.

PRESIDING:

Senator Charles J. Fuschillo, Jr.
Chair

SENATE MEMBERS PRESENT:

Senator Martin J. Golden

Senator Owen H. Johnson

Senator William J. Larkin, Jr.

Senator Carl L. Marcellino

Senator Jack M. Martins

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SENATOR FUSCHILLO: Thank you very much for being here today, and those that are watching us live on the Internet throughout the entire country.

My name is Senator Charles Fuschillo, and I am Chairman of the Senate Transportation Committee.

And before I start my remarks, I want to introduce my colleagues.

To my far left is Senator Owen Johnson;

To my esteemed left is Senator Carl Marcellino;

To my right is Senator Billy Larkin;

And, to his right is Senator Jack Martins.

Today's hearing will focus on how New York State can use public-private partnerships, also known as "P3s," to help expedite and fund transportation improvement projects.

New York's massive transportation infrastructure, which supports more than 130 billion vehicles-travel miles every year is facing a serious crisis that requires immediate action.

Consider that, New York ranks among the bottom ten states in the nation for both highway and bridge conditions, according to the New York State

DOT.

Our state should be replacing or rehabilitating more than 300 bridges, and 1,150 miles of highway-lanes miles each year.

However, in 2009, only 121 bridges and 661 lane-miles were replaced or rehabilitated.

Nearly 6,200 of the state's 17,400 bridges are either structurally deficient or functionally obsolete.

The number of correction actions required to address critical structure-component issues has more than tripled over the last five years.

We can't solve these problem by relying only on current funding sources. Traditional revenue streams are declining, our project costs continue to grow. Both the DOT and MTA lack capital plans which are funded beyond this year.

Allowing the system to crumble would devastate our economy and our quality of life. Forcing already overburdened residents and businesses to pay even higher taxes and fees and tolls is certainly not the answer.

We're faced with a challenging problem: How do we pay for projects which we can't afford, but also can't afford to do without?

Challenging problems demand creative solutions, and that's exactly what P3s can do for New York State.

P3s have been utilized throughout the world.

Here in the U.S., 29 other states and Puerto Rico have enacted laws authorizing public-private partnerships for highway and bridge projects.

Given the private sector's vested interest in completing projects on time and under budget, P3s have helped expedite projects and contain costs.

They have been used successfully in New York State before.

The Strategic Asset Management (SAM) report, which was issued in 2009, noted that JFK Airport Terminal 4, the JFK Airport AirTrain, and the rehabilitated Grand Central Terminal were all highly successful projects funded by P3s.

The same report encouraged New York to explore P3s as a way to fund other improvement projects, and specifically identify several ideal P3s candidates.

P3 would help improve both our infrastructure and economy.

The U.S. Department of Transportation noted that 25,000 jobs are created for every $1 billion spent on transportation infrastructure projects.

For a state with over 744,000 residents who are unemployed, getting these projects off the ground is a critical step to helping people get back to work.

I have introduced legislation, co-sponsored with my colleagues here today, which would allow New York State to better utilize this important tool.

The Innovative Infrastructure Development Act would give the State DOT, MTA, New York State Bridge Authority, and New York State Thruway Authority the flexibility to enter into P3 agreements to finance and deliver transportation infrastructure projects.

During the course of today's hearing, we will hear from a number of experts, from government agencies to private sector, non-profit organizations, and labor organizations.

These organizations and individuals will offer their opinions on how New York State can most effectively use P3s to perform these desperately needed upgrades.

I want to thank everybody for coming, and my

colleagues here as well.

I also want to thank Farmingdale State for allowing us to hold the hearing here once again.

Our first speaker --

Do you have anything you want to add?

SENATOR MARCELLINO: No.

SENATOR FUSCHILLO: Do you have anything you want to add?

(Senator Johnson, Senator Larkin, and Senator Martins indicate to the negative.)

SENATOR LARKIN: Our first speaker is Stan Gee, Deputy Commissioner of New York State Department of Transportation.

Stan, thanks so much for being here.

STANLEY GEE: Good morning.

Good morning, Senators.

Thank you for this opportunity, and thank you for being here.

My name is Stanley Gee, the executive deputy commissioner for the New York State Department of Transportation.

The concept of public-private partnerships as a tool to accelerate projects through innovative financing for transportation infrastructure projects is important.

As you know, Commissioner McDonald provided testimony before this Committee last May.

And, I appreciate the opportunity to be here today, and discuss the possibilities that P3s provide to us, as well as update you of some of our efforts since this spring.

I'd like to take this opportunity to call out the professionalism, dedication, and the hard work of our staff at DOT, especially related to the recent storm-related recovery and restoration that we have been under -- has been underway. New York DOT's dedicated employees continue to keep our state's aging transportation system in operation.

Each and every day the Department performs critical, unscheduled maintenance of our state's highways and bridges, and immediately responds to emergencies, to protect the safety of the traveling public. In fact, because of our continuing collective actions, the infrastructure has been reliable, making it possible for New Yorkers to take our transportation system for granted.

These recent storm events have been no exception. Over the last month, tropical storms "Irene" and "Lee" damaged about a third of the state's total highway system, resulting in closure

of nearly 400 road segments and bridges.

As of September 26th, all but 7 bridges and 14 segments have been repaired and reopened. Those that remain closed suffered the most extensive damage and require significant reconstruction or replacement.

To address the damage caused by hurricane-related flooding, DOT deployed an average of 950 workers and 650 pieces of equipment over each day over the three-week period immediately following the storms.

New York State DOT fielded teams to complete approximately 4,600 damage assessments of pavements, bridges, streams, signals, and utilities. This included approximately 2,900 damage estimates on the state highway system and 1,700 damage assessments on the local system.

Maintenance crews cleared storm debris, initiated restoration work on approximately 5,700 miles of roadway, and repaired approximately 1,200 miles of roadway, in response to the two storm events.

And I would be remiss if I didn't acknowledge the response of the industry, both the contractors and labor who responded in force to this

unprecedented situation.

In short, this has been a truly remarkable response to such an unprecedented number of events, and I want to applaud the Governor and the Commissioner for their leadership during this difficult time.

If nothing else, the recent storm-related flooding events should bring to the forefront the critical nature of our transportation infrastructure, and the transportation -- and transportation's importance to the state's economy and quality of life for our citizens.

Too often we take our transportation infrastructure for granted; that is, at least, until it's no longer available to us.

More generally, it's clear, the needs of our infrastructure, like those of the nation, are far greater than resources available to address such needs.

Our state's transportation infrastructure, like most of the northeast, was built before and during the Eisenhower Interstate Era.

In addition to the infrastructure being old, it is heavily used, and subject to harsh weather conditions more so than southern and western states.

These facilities are critical to providing transportation service that supports the economy and provides mobility for our citizens and travelers. But, as these heavily used facilities continue to age, it is becoming a greater challenge to maintain them to ensure their continued use.

As one example: The average age of a bridge in New York State is 46 years, while the average life of a bridge is about 50 years.

Consistent with the findings of two congressionally mandated national transportation commissioners -- commissions, as well as the American Association of State Transportation Officials, New York DOT estimates that meeting current and projected demands would require nearly doubling of our current investments in transportation infrastructure annually from all levels of government.

Given the fiscal climate, both within the state and nationally, this is not likely to occur in the short term.

The use of public-private partnerships (P3s), including infrastructure banks and other prog- -- similar programs, should be explored, to leverage private funding as tools for accelerating

the projects or facilitating delivery of some projects.

Though innovative financing mechanisms cannot substitute for the critical need for ongoing, stable, predictable funding necessary to maintain the core transportation infrastructure, their use can serve as a complement to stable and predictable funding.

New York's current and future transportation infrastructure needs traditionally have been addressed through a partnership of federal, state, and local government resources.

As we discussed in May, the severe fiscal constraints at all levels of government have had an impact on the level of current investment, and presents significant challenges moving forward.

Federal aid has historically comprised about 50 percent of the State's multi-year capital programs.

At the federal level, the Highway Trust Fund no longer remains solvent as a user-supported fund, and has required more than $34 billion in general fund transfers since federal fiscal year 2008, just to maintain current funding levels.

In addition, the most recent federal surface

transportation program, known as "SAFETEA-LU," expired on September 30, 2009. The nation's surface transportation program has been operating under a series of extensions since then.

Most recently, this past September 16th, President Obama signed the eighth extension, authorizing current funding levels through March 31, 2012.

A critical issue that remains to date, Congress has not found a way to sufficiently finance a long-term, multi-year transportation bill.

While Congress and Administration support increased funding for transportation infrastructure, neither has identified the resources necessary for this to occur.

It is fully expected that, absent any clear ability at the federal level to increase support to states in maintaining their transportation infrastructure, Congress will move away from direct funding and will provide states more flexibility to leverage the use of limited resources through innovative financing techniques.

As such, New York should position itself to leverage innovative financing efforts that Congress may provide, and such infra- -- and -- such as,

infrastructure banks and public-private partnerships.

New York State DOT welcomes the opportunity to utilize innovative finance mechanisms, such as P3s, infrastructure banks, design-build, and other similar programs, to leverage the resources necessary to maintain infrastructure conditions. This is, however -- some confusion -- there is some confusion between privatization and public-private partnerships.

New York State DOT is not advocating for private companies to own and operate public facilities; or privatization. Rather, we support the use of P3s where it makes sense.

P3s involve the sharing of risk, responsibilities, and funding, between the governmental entity and one or more private-sector partners.

Traditionally, for highway and bridge projects, New York State DOT has used, what is referred to as, "design-bid-build" approach.

Under this approach, projects are designed by the State, put out for bid, and constructed by private contractors. The facilities are then operated and maintained by the State.

While this represents a form of public-private partnership, most of the responsibilities and risks associated with project delivery fall to the State.

New York State DOT believes that P3s would be helpful tools to have available as we balance the needs of the transportation system. This will allow more leveraging of private-sector expertise, risk, and finance.

However, these tools would not replace our traditional means of delivering projects, as only certain types of projects would be appropriate for P3s. Projects that would lend themselves to P3s need to be able to attract private-sector interest while providing a benefit to the public.

Approximately 90 percent of New York State DOT's capital program is devoted to core infrastructure projects required to maintain the system in a state of good repair. Design-bid-build will continue to be used to deliver the vast majority of our projects, but we believe there is a place, and there are opportunities, for P3s.

New York State DOT would be particularly interested in the ability to use design-build techniques to accelerate project delivery.

Design-build is a project delivery technique that allows project design and construction to occur under a single contract. It is a tool that has been widely used, and successfully, over the last decade, and is available to about 40 state departments of transportation.

Here in New York, the MTA and the Port Authority of New York and New Jersey can utilize design-build.

This technique is also promoted by the Federal Highway Administration as one of its 15 tools to accelerate project delivery under its program known as "Every Day Counts."

While New York State DOT does not have the statutory authority to undertake design-build, under the authority of Governor Cuomo's Executive Order 19, issued on September 1st, in response to the flooding caused by tropical storms "Irene" and "Lee," the Department has issued a request for proposals using a modified design-build procurement process for the emergency repair work along Route 42 in Greene County.

This project consists of replacing two bridges, reconstructing washed-out roadway segments, removing debris, undertaking all the

miscellaneous work items needed to restore the transportation access within this corridor.

This project provides an opportunity to utilize the design-build delivery method for a project that includes a series of diverse repairs within a defined geographic corridor.

The procurement process for this project will be based on New York State DOT's nationally known "Design-Build Manual." Full quality assurance and quality control will be undertaken throughout the project.

The Governor's Executive Order has expanded the array of tools available to respond to the needs of the State in making required emergency repairs.

To respond to this need for emergency infrastructure repairs, New York State DOT is using, not only design-build, but it is also relying on more traditional mechanisms, including engaging our State forces, using emergency stand-by contracts, supplementing existing contracts with orders on contract, employing a regional job-order contracts, and undertaking new quick-response contracts.

The design-build delivery technique is one additional tool available to meet needs where it makes sense.

Similarly, the ability to undertake P3s, where appropriate, would expand the Department's ability to respond to its ongoing infrastructure needs with the broadest possible array of tools.

Another potential use for P3 techniques would be to address the State's bridge needs.

Bridges are a prime example of our state's and the nation's aging infrastructure.

As I mentioned earlier, New York and the northeast lead the nation in building -- led the nation in building new freeways more than 50 years ago, at the dawn of the interstate Eisen- -- of the Eisenhower Interstate Era, making our infrastructure, particularly bridges built during this period, among the first in the nation to age to a point where replacement will become necessary.

New York State DOT sees an opportunity to use the design-build technique to address the backlog of bridge-improvement needs. DOT's exploring the possibility of addressing its growing need for bridge improvements through an Accelerated Bridge Program.

Currently, 35 percent of the state's bridges -- nearly 6,200 of the more than 17,400 bridges -- representing about 54 percent of

the deck area of bridges, requires repair.

While safe for travel, they need some form of work to extend their surface life -- service life.

Of those bridges, about half are local bridges, 40 percent are state bridges, and the remaining 10 percent are the responsibility of other owners, such as the Thruway Authority and the State Bridge Authority.

I want to make it very clear: The Department continues to comply with all federal and state requirements for bridge inspections, and exceeds those requirements when the bridge's condition indicates the need for more frequent inspections. A bridge in need of repair does not mean the bridge is unsafe.

The Department's objective under this program, would be to reduce the number of bridges requiring repairs or replacement by accelerating investment. This would improve bridge conditions across the state, and decrease the overall cost of maintaining the bridge system over time.

To further develop this initiative, New York State DOT held a workshop in May of this year, that brought together engineering consortia to discuss all aspects of an Accelerated Bridge

Program, including project selection, delivery, and finance.

New York State DOT gained valuable insight from this and further outreach, and has since considered options for developing such a program.

Enabling legislation for New York State DOT to utilize this innovative delivery method would be necessary.

As I conclude, I want to restate: That New York State DOT welcomes the opportunity to work with you on developing and implementing the use of public-private partnerships, and other similar innovative finance techniques, to accelerate project delivery.

While the use of P3s can serve as a complement to stable and predictable funding, it needs to be recognized that P3s are not applicable to most routine and recurring repair and rehabilitation activities. As such, the vast majority of projects delivered by the Department of Transportation will continue to use the traditional design-build-bid -- design-bid-build approach.

All options, however, to maximize and leverage resources should be considered.

New York State DOT appreciates that this

Committee, and its Chairman, is considering legislation that would expand our ability to take advantage of a broader array of these techniques.

This will become increasingly important as Congress, in reauthorizing federal transportation legislation, will be considering expanding opportunities to use P3s.

New York State should be in a position to take full advantage of all funding opportunities.

Thank you again for this opportunity, and for me to provide this testimony, and to speak to you today.

Thank you again.

SENATOR FUSCHILLO: Thank you very much, Stan.

We -- the panel has a few questions for you.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Senator Fuschillo.

I appreciate the invitation to come, and I appreciate the fact that you're holding this meeting.

I don't appreciate this chair. It's uncomfortable. And the table's too small.

[Laughter.]

SENATOR MARCELLINO: But other than that, we're working under ideal circumstances here.

Commissioner, we're here to figure out, or listen to, some recommendations, as to how the private-public partnerships can be used to help stimulate, if you will, the economy, as a state.

At least that's what I'm here for.

And, so far, what I've heard, is, same old, same old.

I mean, I'll lead from your second paragraph on page 3 of your statement, that -- which we were presented with.

"Traditionally, for highway and bridge projects, New York State DOT used, what is referred to as a 'bridge'" -- "as a 'design-bid-build' approach.

"Under this approach, projects are designed by the State, put out for bid, and constructed by private contractors. The facilities are then operated and maintained by the New York State DOT.

"While this represents a form of public-private partnerships, most of the responsibilities and risks associated with the project delivery fall to the State."

What is the incentive for a company to engage

in a public-private.partnership with the State of New York?

This process, which you outline, and which you've talked about at length, frankly, is the same thing we've been doing for a hundred years. I haven't heard anything new here.

I was looking for, and I was hoping we would hear, some kind of suggestions for the kinds of projects.

High-speed rail. You see you have Mr. Polimeni here, who wants to build a bridge under the Sound.

What is the incentive for a company to come in and engage in a partnership with the State? What do they get out of it? -- other than a fee, which they get paid the way we've been doing it, again, for the last hundred years.

What's new here?

STANLEY GEE: Well, several things.

Statutorily, our Department is prevented from doing the full complement of public-private partnerships.

I think you will hear from other speakers from the private sector what would be an incentive for them to --

SENATOR MARCELLINO: I'd like to hear from you.

Excuse me for interrupting. I don't mean to be rude, but time is limited here.

STANLEY GEE: Sure.

SENATOR MARCELLINO: I would like to hear from you, as the professional, as the New York State representative: What do you need from this Committee; from Senator Fuschillo's Committee? -- which I'm am not a member of.

And he's thanking himself right now for not letting me on.

But, what do you need from us in the Legislature, so that you can actively engage in public-private partnerships?

STANLEY GEE: Okay. As I indicated in the legislation, we are prevented from pursuing any type of public-private partnership, other than what I described as "design-bid-build," because of statutory requirements.

We do not have the ability -- if you provided us that -- those -- that ability, we would engage in discussions with the private sector.

We are being approached by a lot of partners, people that will testify in this room, about the

ability to work with us.

Generally speaking, where we assume -- the State assumes all the risk, all the knowns, and we contract out, the ability to attract them is to pro- -- maybe they will be able to deliver projects more timely as we transfer some of the risks to them.

We assume all the risks.

Example: We own all the right-of-way. We take all the right-of-way, take care of all the environmental process. That's risk that the State does because that's a governmental function. And, the rest of it is, the construction part is, assigned to the private contractors.

We can transfer some of that risk. Some of that risk you would want retained as a public entity. But, we don't have the ability right now, to engage in discussions, and talk to them, about how they would participate in such a partnership.

SENATOR MARCELLINO: You mention the fact that the federal government is showing more flexibility; offering you more flexibility in how you can do your business.

They're only doing that because they're broke. They don't have any money.

Well, last time I talked to Governor Cuomo, which wasn't all that long ago, we're broke too.

So, the State of New York has no money, the federal government has no money, hence we're looking at alternative means of financing these projects; these very important projects.

I would like to see high-speed rail between New York City and Albany. I would like to see it in the whole northeast. That would be, in my mind, a fantastic way.

Much like the highway system opened up Upstate New York, much like Cross-Continental Railroad opened up the country, I'd like to see high-speed rail do that, and shorten the time of travel, and the time of transport of goods, back and forth.

I don't hear that.

Again, I'll ask you again: What kind of legislation do you need from us, so that we can give it to you, so that you can do what we want, and that is the -- and what you say you want?

And I believe you.

What do you need from us, so that we can give you, so that you can engage in these public-private partnerships?

STANLEY GEE: Again, we need enabling legislation.

SENATOR FUSCHILLO: Which you have.

And we've introduced that in the Senate, and you're a co-sponsor of it, which will allow for P3s, which will allow for the opportunities for design, build, and maintain, everything you don't have the option for right now.

You want to ask me another question, Senator?

SENATOR MARCELLINO: No.

But the idea of -- what I'm hearing is, again, I was kind of hoping that we would get: The kind of examples that they want to engage in. The kind of projects that they would like to open up.

SENATOR FUSCHILLO: Yeah, and I think that's a fair question.

Stan --

SENATOR MARCELLINO: But I'm not hearing it.

SENATOR FUSCHILLO: -- Tappan Zee Bridge; myself, and Senator Skelos, the majority leader, we toured that with the county executive from Westchester, Astorini [sic], back in July of this past summer.

And, in my mind, that's a perfect candidate for a P3 -- for a public-private partnership --

which you don't have the option, right now, because, it's been estimated, anywhere from 6 billion to $16 billion, or, 9 billion to $16 billion, for the cost of that, with rail, or without rail.

Would you, in -- whether you can answer this or not, I don't know. I'm not asking to you speak on behalf of the Commissioner.

But, would that be ideal candidate for a possible P3?

STANLEY GEE: Well, I think it's a candidate that's talked about.

SENATOR FUSCHILLO: Right.

STANLEY GEE: Again, our ability to have those discussions is limited, because --

SENATOR FUSCHILLO: You don't have the option right now.

STANLEY GEE: -- we don't have -- we don't really have the option. We're talking hypotheticals.

But, generally speaking, you know, as you mentioned, the State is tight in resources, and so is federal government.

The private sector, you know, has resources they want to invest.

SENATOR FUSCHILLO: Right.

STANLEY GEE: How -- you know, an opportunity for them to speak to us about making some of those investments is something we want to listen to, and where appropriate, we want to use those resources. Leverage what -- those, to what we have, to expand our programs through just the needs of the State.

SENATOR FUSCHILLO: Right. And we've made it clear in our first hearing, and this is our second hearing -- and I appreciate you being here -- that, P3s aren't the ultimate answer for this infrastructure crisis that we're facing here in New York State. But, at least it gives you an option, and the -- through authority, and other authorities, that are responsible for our roads and bridges throughout New York State.

Bundling of small bridges is -- repairs and rebuilding of them has been very successful in other states that have the option for P3s as well.

And that's our goal here: To get a law, that gives the Department of Transportation, and other departments throughout the state, this option of availability, in what Senator Marcellino had described, the lack of funding from states, and the federal government as well.

SENATOR MARCELLINO: Again, let me make

myself clear: What's the incentive for the private sector? What do they get out of it?

SENATOR FUSCHILLO: Well, I mean --

SENATOR MARCELLINO: Besides -- I understand --

SENATOR FUSCHILLO: -- we -- you know, that wouldn't come up --

SENATOR MARCELLINO: -- the union gets the work, and all that sort of stuff.

SENATOR FUSCHILLO: -- yeah, all right.

SENATOR MARCELLINO: But, what is their incentive to come and get involved?

SENATOR FUSCHILLO: And I think the next speakers that will come up will properly answer that, rather than myself.

SENATOR MARCELLINO: All right. I'll wait.

SENATOR FUSCHILLO: Senator Martins.

SENATOR MARCELLINO: Not long.

SENATOR MARTINS: Thank you.

Commissioner, thank you very much for being here. I appreciate it.

I think what I'm hearing is, that we one "Chuck Fuschillo bill" away from actually authorizing our State to begin engaging in these kinds of transactions and partnerships that will

allow us to deal with issues, like the Tappan Zee Bridge, like our infrastructure improvements, other bridges, and, perhaps, a -- I guess, a bridge under water is a tunnel.

Right?

STANLEY GEE: As long as it doesn't leak in.

[Laughter.]

SENATOR MARTINS: Exactly.

You know, as I envision this, right now, it's a question of, whether or not to allocate risk to taxpayers, as far as funding these improvements; or, allowing for private investment, and then repaying that investment to private investors, as opposed to asking the taxpayers to bear the risk, and bear the cost of these improvements.

And that there are items, like bridges, like highway improvements, or new highway construction, that will allow us to do that, but, again, take the burden off taxpayers, and allow us to partner with private investors who have, the capacity, and the will, to place their money, essentially, for a public good.

And, again, their incentive is going to be, that there's going to be a return, and a stable return, on their investment.

STANLEY GEE: Right.

SENATOR MARTINS: We don't have that ability now, since we don't have a statutory authority to engage in those types of investments, but, we're working on that.

STANLEY GEE: Right.

SENATOR MARTINS: And if we do that simple -- take that simple step, which has already been introduced, that will open up the opportunities that we speak of.

STANLEY GEE: Right.

SENATOR MARTINS: Okay.

We have a need, which you detailed.

We have a trained and capable workforce, which I think everyone agrees, not only a skilled workforce, but also private investment and money that's available. We just need to allow that trigger, which is the statute.

Correct?

STANLEY GEE: Yes.

SENATOR MARTINS: Thank you, Senator.

SENATOR JOHNSON: I would like to ask a question.

SENATOR FUSCHILLO: Senator Johnson.

SENATOR JOHNSON: Yes, I'm

Senator Owen Johnson.

And, there's a road, goes from Babylon, over to Robert Moses State Park. And, the bridge going across there has been on your watch list, the DOT watch list, because of corrosion; the salt water corrosion, and so on. And, that has to be replaced.

Now, would that be a vehicle for a public-private partnership? And, how would the private people be compensated?

Now, formerly, there was a toll on that road, some years ago.

With a new bridge, with a toll, is that some kind of a method that you could recompense the investor? They could get a piece of toll money on that road, to pay for their investment?

STANLEY GEE: As I mentioned in my statement, we're looking at an Accelerated Bridge Program, that we would bundle numbers of projects/bridges.

Perhaps that one. I'm not familiar with that, in detail, but, we would bundle a number of bridge replacements.

And what we're looking at, is more towards bundling, and using the leverage of the private sector's ability to schedule and to work quicker.

We would still fund those with traditional

funding. But, we would be -- that's one example of a P3, that we don't have the authority to do now, to negotiate a price that we assure a public benefit, without a toll. But, we would pay it back with traditional funds, but we would get a number of bridges done quicker. Okay?

And we've documented, many of these bridges, if we can do them now while we're getting good prices from our partners in the construction industry, rather than spreading it out over the next 10 to 20 years, we'd pay, we'd get it done now, address our backlog.

So, there is some public benefits, without a toll, on some of the programs I just mentioned, that we utilize it, one of the techniques that would be authorized under our P3 legislation; not the full panoply of private-sector financing and maintenance that some states, and some authorities, are trying out.

SENATOR JOHNSON: So, you think your Department has $300 million somewhere in a sock, that they can pull out, and then rebuild that bridge?

[Laughter.]

STANLEY GEE: I didn't know it was a

$300 million bridge, but, we're looking at a sizable program under an Accelerated Bridge Program, yes, sir.

SENATOR JOHNSON: Well, is there a schedule for these accelerated bridges?

STANLEY GEE: Yes.

SENATOR JOHNSON: Is there something -- they say this is on their watch list.

Do they have a date where they'd like to rebuild this bridge --

STANLEY GEE: I'm not --

SENATOR JOHNSON: (inaudible).

STANLEY GEE: -- familiar with this particular bridge, but our idea of an Accelerated Bridge Program is, bridges that don't have environmental problems; or, essentially, are ready to be -- just for lack of funding -- at this time, ready to be replaced, that we can address in a package, that make it attractive for a design-build consortium to bid on it, and give us the best price now.

And there's interest among the industry to do that.

SENATOR JOHNSON: Well, I agree on design-build. That's a great procedure. You've

done a lot of rebuilding that way. And the bridge coming from Long Island to go over the Hudson River, a design-build, a couple years ago. It was a good project. Worked out fine.

But, being that the government from every level is broke, and, China doesn't even want to send us anymore money, that, where are we going to get the money from to rebuild these bridges?

Do you think there's a schedule that you would actually, with the current revenues, do all this stuff in a few years?

STANLEY GEE: Well, I think there's some opportunities here to make investments now, while we have good prices, that we would pay back over the longer term.

SENATOR JOHNSON: Well, I'm curious how -- where the money comes from, though.

The design-build is great. They contract, he; designs it, he builds it.

But, where is the money coming from?

STANLEY GEE: Well, it would be coming from our traditional funding sources, like dedicated highway-and-bridge fund, and from the federal government.

SENATOR JOHNSON: Well, I understand that.

It's surprising that that much money is available, yet these bridges haven't been replaced over the years. We know that they're defective.

Okay, that's all.

Thank you.

SENATOR FUSCHILLO: Senator Larkin.

SENATOR LARKIN: Thank you very much.

Commissioner, last week Monday, this week Tuesday, we got to be careful (inaudible) in your schedule.

You know, last week we were honored by the deputy commissioner-to-be in Orange County, and talking to the economic growth of the county, and where it was going.

A couple of things that raise a question to me, living in the Hudson Valley, and understanding what our position actually is in the transportation in the northeast.

We've been talking about the Tappan Zee Bridge for -- you know, it will be DOT, it will be the Thruway Authority. And, you know, we go back and forth.

And I think there's a misconcept, if you looking really at this public-private partnership.

I was at a reunion over the weekend, and I

talked to some people who were still working, like I am, after retirement. And they're talking about Indiana, and Governor Daniels's action on it.

It brings to me the thought, that, are we exercising -- when I say "we," from the Governor's Office, on down, you know, you can't do anything until all the procedures are done.

But, is there any way, going in the second floor, that they're saying: Hey, let's get this moving while we're processing the legislature [sic], so that we would be in a position, because the Tappan Zee, the Australians --

There's some people here that I know were at our meetings.

You were.

-- when the Australian group originally started, I think it was, what, 8 bill- --

Right behind you.

-- $8 billion? Now it's up to 16.

Is there any way we can start doing something, that you see?

We're the legislators. We can prepare the legislation. But I think we need to have a good sit-down with, really, all the partners, whether it's the feds or whatnot.

The business community that I see, is saying: Give us a project. We can raise the money.

Because, you're always going to have environmentalists who are going to say: Oh, no, you know, we can't do this, or we can't do that. Or, not in my back yard.

I think we have to attack some of these issues right now.

We can talk about, down the road, having money, but if we don't clear ourself as to what we really want to do, and provide you with the authority, because, somebody wants to take over the Tappan Zee Bridge.

How much were they going to take in tolls?

You know, that was the summary of -- Indiana, was the big thing, which Governor Daniels, rightly so, took charge of it.

But I think that there's something that -- dollars are always going to be the issue. But I think that, every day we delay, is going to be costly to the taxpayers of the state.

STANLEY GEE: Let me respond to it, this way: We have been working, and the Governor's Office has been working, closely with our delegation -- congressional delegation.

I -- we appreciate your support, too, to make the case down in Washington, on the need -- our need for transportation infrastructure.

The long-term needs, they've been unable to pass any type of legislation to ensure some dedicated stream for transportation.

I think, as you know, that that requires -- you know, transportation projects don't happen overnight. We'd like them to move quicker, but, it takes planning and design, and we need long-term stable funding.

That's what the federal government has always been able to provide, at least, a backbone for funding our projects.

We don't have that right now. They just can't come to an agreement.

And we would -- we're strongly pushing that. And we have a short -- we bought some time with the six-month extension, at the current levels.

I think we need something like that over the long term.

The recent storms has really highlighted the fragility of our transportation system. The Governor is well aware of that.

And as we work with you, to put our next

multi-year transportation program -- hopefully, a five-year program -- together, we would like to talk to you about the options and the investments levels we need to build, not only create jobs as part of transportation, but to sustain our economy in the years to go.

And I think Governor's focused on that, and he'll be engaged in that conversation also.

SENATOR LARKIN: Well, I think it would be a savings to us, overall, in the end, because, when people -- everybody's now talking: create jobs, create jobs.

But if you fix the bridge, when the bridge is finished, those employees don't belong to the State. They go back to their contract, and I think we're forgetting that.

You know, putting five people to dig us -- dig a hole in the ground today, and the hole in the ground is finished tomorrow, they don't have a job.

I think that -- when we bring in the private partnership, I think the management tools that the DOT has will enable us to move forward on our own reconstruction. Because, if you look -- you were kind enough --

But, Diane, I thank you for accepting our

photographs last week.

-- but, we have lot of small municipalities, especially Upstate, that bridges are out. They're not even under the consideration because they don't fall in it.

FEMA says: You know, it's -- you got a problem, drive 15 miles around, to get back into your village.

I think we have to -- you know, we really have to -- you know, we've been talking about this for, how many years?

I mean, before he was even the chairman, he used to complain about it. But, now --

SENATOR FUSCHILLO: I thought you were going to say, before I was born.

SENATOR LARKIN: -- oh, well. I can remember that too.

[Laughter.]

SENATOR FUSCHILLO: I know you can.

SENATOR LARKIN: But, we really need to move on it. I mean, I think that -- you know, people start to say, you: When are you going to shut up about it and do something?

And I think it's reached that stage, that, you know, we look to you, and blame you, but what we

really should be doing is, looking at the mirror, and say: When are we going to do that which is essential for to you move forward?

I thank you for your help.

Especially, personally, and I thank you, Diane, for coming down the second trip, through the Hudson Valley, with what we lost. I know the people appreciate it, what both of you have done.

STANLEY GEE: Thank you.

And I'll just repeat again: I -- we want to work with you.

We're putting our next multi-year program together. We need to work together, to ensure that we have the investment levels, and the tools, to implement that program.

We're all -- you know, we're all interested in the sound, efficient transportation system to serve our state.

And, I can say it again: I know we have the support of this Committee, so, I look forward to working with you.

SENATOR FUSCHILLO: And we agree, Stan.

Senator Golden.

SENATOR GOLDEN: Thank you, Mr. Chairman.

I want to thank you, of course, and your

staff, for putting this together.

This is a responsible and a good meeting for the state, and a good direction for this state. A lot of people looking to go to work. A lot of work for those people in this state.

Financing is, obviously, an issue. And it's got to be practical and it's got to be responsible.

Obviously, traditional funding is much easier for you to access than trying to make a return on P3. You can get money at almost zero, for projects. Of course, you have that money available to do that borrowing on those bonds.

But, if you could identify some project, the P3, what percentage of the total budget, would be, or could possibly be, P3 work.

And, if could you identify that by giving a list to the Chairman, so that the Chairman could have list, going forward, that -- of projects that have potential of being P3 projects.

STANLEY GEE: We can develop such a list. We would have to work with our partner agencies to come up with such a list. But --

SENATOR GOLDEN: If you could do that, I'd appreciate it.

Thank you very much, Commissioner.

SENATOR FUSCHILLO: All right, thanks.

What we can provide Senator Golden with is the Strategic Asset Management -- the "SAM" -- report, that was done a few years back, and had outlined some specific projects.

What our legislation does, Commissioner, as you know, is, it's not project-specific. It gives you broad authority to utilize this way beyond any specific projects. But, I'll be happy to provide that --

SENATOR GOLDEN: I think what I'm trying to --

SENATOR FUSCHILLO: - to the members of the Committee.

SENATOR GOLDEN: -- Mr. Chairman, what I'm trying to get to, is that, the -- what the actual dollars that he could actually use, if identifying projects, going forward.

We know we have a list. We know that he has the capability of putting that list together.

We'd like to know what the potential is, so that you have some access to actual dollars that can be put to work right away in a P3.

And, of course, the people out here that are going to be our partners in P3, understand that

these projects will be available, and that they can start to put a think-tank together, to put money and funding towards these projects, and we can get these up and running.

As many of my colleagues are anxious about putting -- and getting these projects underway, I think that would be the first responsible approach, is, looking, identifying, see where we can get some of these projects off the ground, and identifying a percentage of your budget.

We have a percentage of your budget, and MTA, and whole host of -- or, the other agency -- that were going to be a bridge and tunnel, correct, is going to be the other agency that gets the funding from this legislation --

SENATOR FUSCHILLO: Yes.

SENATOR GOLDEN: -- so we can identify what type of funding we can use, what type of funding -- traditional funding's going to have to be used on it.

That's what we would like to identify, if you could.

STANLEY GEE: Okay.

We'll work with the Committee.

SENATOR FUSCHILLO: Thank you, Commissioner.

Any further questions?

Thank you very much for your testimony.

STANLEY GEE: Thank you, again.

SENATOR FUSCHILLO: Appreciate you taking the time to be here.

Our next speaker is Marc Herbst, who's the executive director of the Long Island Contractors' Association.

And after Mr. Herbst, is Tom Osborne.

A former colleague of ours in the Legislature, appreciate you taking the time to be here, and your testimony today.

MARC HERBST: Thank you.

Good morning.

My name, as you know, is Marc Herbst. I am the executive director of the Long Island Contractors' Association.

LICA is grateful to have the opportunity to testify today.

As you know, LICA is an advocate for public works; and what is the taxpayer's biggest investment, our state's infrastructure.

We also represent the interests of Long Island's premiere heavy-construction general contractors, subcontractors, and other industry

supporters.

We're focused primarily on building our transportation system, such as the highways, bridges, and also the sewers and other public works.

LICA's member companies play a direct role in the economic development of, Nassau, and Suffolk County, and its 2.8 million people.

Chairman Fuschillo, members of the Committee: We compliment you for seeking views on how to utilize public-private partnerships to repair and improve New York State's transportation system.

Allow me to begin by suggesting: We recognize that some partnerships now exist, and the building upon the strengths of both the public and private sectors can most effectively protect the taxpayer and their wallets.

A common view is to look at P3s as a financial scheme to support the construction or repair of a major facility.

LICA suggests that this Committee sharpen that view to properly include the overall administration, management, and care of the public infrastructure investment. In doing so, the State can effectively achieve your goal to repair and improve our state's transportation system.

We can reflect upon the emergency conditions in New York State created by "Hurricane Irene," that the Commissioner just spoke of, and the collaborative response of the State and industry as an example of the existing private-public partnership in the infrastructure sector.

As "Hurricane Irene" barreled up the Atlantic coastline towards New York, LICA mobilized our private firm's manpower and equipment for immediate dispatch.

Before, during, and even continuing today, we collaborated with the Offices of Emergency Management for New York State, Nassau and Suffolk Counties, as well as the many local municipal agencies.

Our highly trained workforce, and heavy equipment, such as cranes, pay-loaders, trailers, and tub grinders, were instantly dispatched to aid in the emergency response. This response effort certainly is a private-public partnership.

In addressing the industry's leaders immediately following "Hurricane Irene's" aftermath, New York State Commissioner Joan McDonald conveyed Governor Andrew Cuomo's appreciation and thanks for the outstanding response our industry has already

provided in response to the need for emergency assistance.

The Commissioner praised the industry's response today, observing, and I quote:

"We have painted a positive picture of what our industry is capable of doing in response to an emergency situation, and what can be performed unrestrained in normal situations."

End quote.

We believe formalized P3s offer the unrestrained environment the Commissioner correctly suggests.

New York State is presently under siege by another type of storm that is battering the foundation of, not only our roads, bridges, and structures, but our overall economy.

Our mindset to combat these battering forces should be the same as when we were compelled to face the damaging felled trees, downed electrical wires, and flooded homes and businesses.

An effective public-private partnership must be employed.

This disastrous "perfect storm" involved the collision of an aging and deteriorating infrastructure badly in need of safety upgrades,

with staggering government budget deficits, and the incapability of the public to shoulder any crushing tax burdens.

It's been three years now, three consecutive construction seasons, since our industry has been saddled with unprecedented unemployment levels hovering near 30 percent.

For three years, we have painfully watched idle government officials place more and more emergency red-flag markers on structures in need of repair.

With empathy, we observed that our government partners can barely even post the emergency markers because of their own finance woes. Diminishing tax receipts, employee health-care costs, ballooning public-pension contributions, are often cited as the cause.

Here on Long Island, both county executives have proposed 2012 budgets that, combined, include the elimination of over 1,400 positions.

Practically all the towns and villages are enacting similar cutbacks, whether through attrition or layoffs.

We know that you, as our State Representatives, are faced with the same challenges

at the state level.

In times of financial adversity lies the perfect opportunity for public and private partnerships to most effectively protect the taxpayer and their wallets.

Drastic times call for drastic measures.

We are compelled to make a choice: Either stand unprotected and risk the storm's deadly destruction, or, strategically employ an emergency management strategy to protect our assets and livelihood.

LICA suggests we fight for our survival by implementing a public-private partnership that maximizes each sector's strengths.

While leadership must come from the State, we boldly recommend significant changes to traditional transportation infrastructure
private industry/government roles at various municipal levels of government.

LICA provocatively calls for dramatically changing the customary function of the local government highway department.

P3s are the platform by which local municipal governments can achieve substantial and effective efficiencies and cost savings.

Senators, we are cognizant of the precarious position you and your fellow elected officials find yourselves.

Public funds are more scarce than ever, and the State DOT's current five-year capital program is only funded for the first two years of its planning period. That means the State's capital funding for road and highway infrastructure dries up in only six months' time with no new funds in sight.

The viable innovative response can be implemented in short order are P3s, engaging the private workforce with local municipal entities to accomplish State priorities.

With P3s, the State has no ready mechanism to maintain -- without P3s, the State has no ready mechanism to maintain safety and a transportation system in good repair. P3s are the innovative response to the lack of the public funding.

The Downstate economy is thirsting for economic development, to generate jobs, and to move the region from its recessionary climate into an environment of sustained economic growth. There are a number of projects which are well advanced in the planning-and-approval process which require enhancement of state infrastructure. Those projects

are ripe for P3 financial plans in which private developers and local governments are contributing financial assets to project development.

The Heartland proposal in Brentwood will require the expansion improvement of the Sagtikos Parkway and other area roadways.

The Ronkonkoma Hub plan will advance with direct rail access to Long Island MacArthur Airport.

The eventual redevelopment of the Nassau Veterans Memorial Coliseum property will be enhanced with upgrades to the Meadowbrook and Southern State Parkways, and Hempstead Turnpike.

The Cerro Wire property in Syosset will only be redeveloped if the community is protected by a supporting transportation network that avoids infringement on the neighboring residential communities.

It is clear, that in order to succeed, each of these projects will need a strategic private-public partnership.

We urge the State to concentrate on capital projects that are most conducive to P3 financial plans, such as these.

Typically, local government transportation agencies handle routine highway maintenance, such as

pothole repairs, drainage cleaning, road-sign replacement, snow and ice removal, and leaf collection.

Private contractors are selected through a competitive-bid process for new construction or major rehabilitation projects. These arrangements call for municipal employees and adequate equipment inventories to be available full-time for necessary response regardless of the actual need. Private employees are available for specific contracts at limited time periods. The structure contributes to public payrolls in a particular -- and, in particular, to burgeoning public pension costs. This model also contributes to the increased unemployment benefits disbursed to private-sector workers at the completion of government contracts.

Given that many public works departments are currently dramatically understaffed and additional layoffs are imminent, and the private infrastructure industry is already suffering unforgiving unemployment levels, now is the time to recognize the strength of both the public and the private sectors in this industry, and act to create a framework that is cost-effective and efficient for the taxpayer.

P3s will measurably reduce local payroll and pension costs and State unemployment expenses.

Government should concentrate its efforts in its areas of strength; that is, on administration, compliance, and enforcement of public works contract.

The State of New York needs to undertake a leadership role in establishing standardized procedures and best practices at all municipal levels to ensure that they meet their fiduciary obligation to the taxpayers.

LICA's long advocated this position.

Our experience tells us that many municipalities have been unable to provide desired levels of oversight due to competing demands for their employee manpower.

If municipalities were to focus their role on oversight, it would minimize the potential for unscrupulous activities. This monitoring could include enhanced inspections of quality and quantity of materials at asphalt plants, and other source points, and at construction sites; as well as, fiscal oversight, such as comparison of employee records, certified payrolls, and daily field-inspection reports.

The New York State Department of Transportation and the Office of the State Comptroller should develop a uniform procedure for all government agencies.

Standardized best practices are an essential building block for the streamlined role of local governments in P3s.

While government ramps up its compliance and enforcement roles, the private sector can absorb the traditional maintenance function, such as potholes, repairs, and snow removal. These functions should be subject to a competitive-bid process similar to new construction and rehabilitation projects.

By transferring these maintenance responsibilities, the public can benefit from the extensively trained workforce, and the cost-effective and task-completion attitude the private sector demands.

When private-sector equipment is centralized, it can be deployed more efficiently than maintaining duplicative and decentralized equipment, parts, inventories, and maintenance yards.

Taxpayers will continue to receive essential services, but they will be relieved of the full-time maintenance employee salaries, benefits, and pension

costs, as well as the maintenance and capital expenses associated with heavy equipment.

Most importantly, the currently displaced public employee will be afforded the opportunity to continue utilizing their skills and expertise in the expanded private-sector market, and secure private-sector and union benefits.

A collaborative division of labor between municipal compliance and enforcement and private-sector maintenance will stabilize employment for the workers now suffering unemployment in the private sector, and probable layoffs in the public sector.

Chairman Fuschillo, many of the experts you engage on a regular basis, including some of them testifying today, will steer the conversation towards specific projects, such as financing a new Tappan Zee Bridge, which we've already heard about, or the Cross-Island Sound Tunnel, which I know a speaker will discuss in detail.

These are important topics, and LICA wholeheartedly endorses these proposals, but we respectfully ask you to recognize the greatest impact on the taxpayer.

You were one of our State's most vociferous

champions to relieve the crushing local property-tax burden, and we commend you.

Please note, that the largest market share for infrastructure investment is in the towns and villages, the counties next, followed by the state. Each of those levels of municipal engagement and infrastructure contribute to the tax burden felt in each and every home and business.

We believe P3s can help alleviate that burden on the local level.

Chairman Fuschillo, we ask that you extend your passion and vision for local property-tax relief to integrate public-private partnerships as an essential tool in your fiscal-management tool kit, and consider the proposal we offer here today.

Thank you for the privilege of allowing me to testify before your Committee today.

If you have any questions, I'd be happy to respond.

SENATOR FUSCHILLO: Thank you very much, Marc.

Senator Martins.

SENATOR MARTINS: No questions.

Thank you.

SENATOR FUSCHILLO: Marc, I have to say,

that --

SENATOR MARCELLINO: Well --

SENATOR FUSCHILLO: Go ahead. I'm sorry, Senator.

SENATOR MARCELLINO: No, that's okay.

SENATOR FUSCHILLO: I have to say, that, I concur with everything you testified here today.

And, you know, your 30 percent unemployment is adding to the more than 100,000 people that are unemployed on Long Island, along with -- and the projects that you specifically mentioned in here:

The Heartland proposal in Brentwood;

The improvements necessary for the Sagtikos Parkway;

The Ronkonkoma Hub plan;

The Coliseum, which has been long debated, way too long, over and over;

These are projects that must get off the ground, and the dialogue on whether or not they should start, should end.

SENATOR MARCELLINO: I'm waiting for an answer.

SENATOR FUSCHILLO: One of the issues that we're trying to highlight here, with the Committee, is, that we understand this is not the answer to all

the solutions for the infrastructure crisis that we face here on Long Island, and throughout New York State. But, that, as you say, the DOT, and other authorities, including local governments, should just have the option.

And, the speakers coming up next, after you, will testify, the success of this, and the financing available of this.

But as I stated in my opening statement, every billion dollars spent puts 25,000 people to work.

And that's our goal here: To get this economy going in New York State, keep it on the right track.

We had very successful session, as you know, where we did cut spending in New York State, but had an on-time budget, and instituted the property-tax cap, which will take effect next year.

But, in order to keep this going on the right track, we have to understand, the Legislature, which we do, and the members here, that: As go our economy, as go our infrastructure.

And if we're going to have a robust economy, going into the future, we need to rebuild, repair, and maintain our infrastructure to a better degree

than it's been done in the past, with a reliable funding, or option of P3, or an infrastructure bank, or the availability of design, build, and maintain.

Because, as you know, Marc, and you and I have had many discussions, the State doesn't have the dollars necessary to really fund an adequate plan, nor does the federal government. And if they just keep doing extenders, that puts us in unpredictable position, because we -- we require, for our budgetary process, and maintain what the DOT needs for their roads, a stable fiscal -- a stable federal funding plan, which just isn't there right now.

So, I appreciate you taking the opportunity.

You've helped me in the past.

And this is -- your testimony here helps us out tremendously in getting this going.

Senator Larkin.

SENATOR LARKIN: Thanks.

Good to see you again, Marc.

MARC HERBST: You too, Senator.

SENATOR LARKIN: But, you know, we're here on Long Island, and we can see you have, what, 2 million people here?

You have a lot of infrastructure that's

needed for the development that you discussed here today.

But, I'm calling upon you to reach out to the other areas of the state that you deal with on a regular basis, and, just say: Let us get together, and make sure that the Governor, and his staff, understand the complicated problems you have, the complications that are in the DOT, because we don't give them the tools that they need to do the job.

But, I think people have to understand, when we talk public-private partnership, that we're talking about many aspects: roads, bridges.

We just saw the tolls go up on the bridges between New York and New Jersey. Major problems to those bridges are not going to be filled by a nickel and a dime.

MARC HERBST: Uh-huh.

SENATOR LARKIN: We need investors.

And I think that you can help us do that, Marc. You work with these people all over, from Buffalo to, Montauk Point, and the Southern Tier, and that. And maybe you can all get together, and say, as a group: We want to make this happen.

Because, it's not going to happen on Long Island at the expense of the rest of the state.

And as the Chairman has said, every place he's been going: We are partners. We are partners.

So, please help us.

MARC HERBST: Well, Senator, just to let you know, that, we do meet constantly. And the Commissioner has done a marvelous job, where she hosts a weekly teleconference call or personal meeting, where we talk and advocate these issues.

My major complaint with the Commissioner and her staff is, that the center of the universe is not the Hudson Valley.

SENATOR LARKIN: Now, wait a minute.

SENATOR MARTINS: Hold on, hold on, hold on.

SENATOR LARKIN: I mean, you be -- be careful.

SENATOR FUSCHILLO: Senator --

SENATOR LARKIN: West Point was -- has the best college in America.

SENATOR FUSCHILLO: Senator, relax.

SENATOR LARKIN: We've got education starting.

But, I do understand what you're saying, but, you must admit, and I'm not saying it because some of her staff are here, but, she has opened up to us more than has been expected of others.

MARC HERBST: I have -- applaud this --

SENATOR LARKIN: I just think --

MARC HERBST: -- this is a wonderful commissioner. And, people are questioning why I've been such a supporter, and so advocately in favor of what she's doing. She's really done a marvelous job.

And you should be proud of her --

SENATOR LARKIN: I am --

MARC HERBST: -- by that confirmation.

SENATOR LARKIN: -- even though she came from the Bronx.

SENATOR FUSCHILLO: Well, we are one state, and we do love New York State. Let's emphasize that.

But, you did testify on her behalf at the hearing for her nomination, and I appreciated that opportunity.

And you were there as well.

So, thank you very much, Marc.

MARC HERBST: Thank you.

SENATOR FUSCHILLO: Thank you.

Tom Osborne, managing director, United Bank of Switzerland.

Morning Tom.

THOMAS OSBORNE: Morning.

SENATOR FUSCHILLO: Just for the record, please state, your name, title.

THOMAS OSBORNE: Sure.

Good morning, Senator Fuschillo, distinguished members of the Committee.

My name is Tom Osborne. I'm the managing director at UBS Investment Bank in New York. I head our infrastructure advisory practice for the Americas.

I've had the opportunity to testify before, so I'm going to keep it brief today in recognition of the limited time that you have.

Grateful for the opportunity to testify about the innovation in the Innovative Infrastructure Development Act, or "IIDA."

Having reviewed the bill, we applaud the State for introducing comprehensive legislation that not only improves the outlook for the state's infrastructure, but also, in my view, provides a solid capital-formation framework for all stakeholders.

The future of our state's infrastructure clearly rests on the State's ability to mobilize capital, and to structure P3s in the most effective

manner. This is going to result in jobs creation, and the efficiencies and innovation that have been talked about earlier today.

So, over the past decade, we at UBS have been closely following developments in the infrastructure legislation across the U.S. We've worked with a number of government entities in structuring their P3 programs. We've had the opportunity to identify the key aims that, in our view, all P3 legislation should seek to attain.

I've identified those in my earlier testimony. I'm not going to go into great detail there, but just to quickly summarize:

It's really about clarity of process;

It's about creating a centralized P3 database;

It's about having a broad scope of assets.

And I know that this is focused primarily on transportation. In our view, the broader the better.

And then, perhaps most importantly, it's about having individual project decisions being independent from the political approval process.

I can't emphasize that enough, because uncertainty in the execution, combined with the

negative experiences of past P3s in the U.S., have caused a number of private-sector investors to turn away from P3 processes, where they see a, quote/unquote, "last look" by the legislative body, where there's lack of clarity about how they're going to get approval to move forward with the PPP project.

So, too often, variables that are unrelated to the process cause a P3 to fail. And that's a risk that we've seen investors actually refuse to take in the current market environment.

I'm not going in detail about the U.S. precedents that are identified in my pre-filed direct testimony, but I would like to comment briefly on the New York legislation; provide some specific feedback there.

We see it as a solid framework for executing P3s in the state. It takes into account many of the industry's best practices. And I think it's reasonably well structured, in the view of the market participants that we've spoken to.

We've taken the opportunity to go out to some of the investors with whom we have regular dealings and get their thoughts on it.

I think the flexibility of the statute -- or,

the bill, it will provide the State's transportation agencies, I think, positive effects on the private-sector participants. I think it will also result in jobs creation.

In our view, there are a couple of things that might be tweaked.

Firstly, one concern is the scope of the legislation, as I've mentioned; while the breadth of transport infrastructure, as defined in the bill, is adequate to cover all the potential transport P3s.

I do see merit in having a more robust P3 pipeline. And that could be created by having a scope broader than just transportation.

A second concern would be the structure of the cost analysis.

We strongly agree, that doing the type of analysis that's proposed in the legislation, what would we call, "value-for-money analysis," is required to make the sound economic decisions that would underpin a robust P3 process.

We have learned from our prior P3 experience in the U.S. that there are variables that will influence the market's perception of asset value.

Assumptions around growth projections, the cost of capital, process assumptions; these are all

things that can result in differing value-for-money analyses.

So, what we would say is, to mitigate this, we'd recommend the legislation require third-party independent value-for-money analysis and assessment of any P3.

Those reports would ensure that the State receives the proper value for the assets, should they determine to move forward with the public-private partnership.

Lastly -- I guess third thing would be, we'd recommend more clarity around how the different State agencies would interact with the IIDB board.

That is, as currently proposed, it's not exactly clear to me, how project becomes a P3, or what form of oversight would be put in place over the process.

So, I think it's crucial that the authorities be presented a unified process that will allow for a coordinated approval mechanism.

The last thing I would say is, that the structure of the board, as is, is one of political appointees.

We think there's a real need to ensure that the board itself does not become overly politicized.

And, I think there's an important need for continuity, to ensure that the institutional knowledge developed by the board is not lost with each election cycle.

So, one quick fix for that might be, to put in place staggered board terms in the political appointees that you would put in place for the board.

So, those are some comments on the legislation as we see it.

In closing: We very much support the efforts of Senator Fuschillo, and his staff, in drafting what I think is very, very important legislation.

If properly structured, I think the legislation will allow the State to mobilize capital and drive infra-development forward.

I think it will provide citizens with safer and more reliable assets, and it will definitely contribute to jobs creation.

So, thank you for the opportunity to offer my thoughts.

Be happy to answer any questions you may have.

SENATOR FUSCHILLO: Tom, I appreciate you being here again.

And, you, and your office, have been a tremendous help to my staff in drafting this legislation, which we looked upon as a boilerplate, with certain room for improvement.

I agree with you, and one of the things we strive very hard, is to take us out -- take this out of the political process.

You had said, "last look."

It's critically important, because, we don't want every project to become a political football game. And, it would never get off the ground.

THOMAS OSBORNE: Agreed.

SENATOR FUSCHILLO: And we witnessed that far too long, in every level of government that we've been involved with, throughout our own respective regions.

One of the issues that my colleagues have brought up -- and I don't know if you were here in the beginning when they talked about it -- and maybe you could talk a little bit about it on your end, on the investment banking side, and, why somebody would invest in a P3, and what, you know, they look upon for rate of return, how the rate of returns are

structured -- which I know they vary, whether it's tolls or just an investment banking, or an infrastructure bank, or, a design, build, and maintain.

But, maybe you can touch upon your experiences with that as well.

THOMAS OSBORNE: Sure.

So, in our experience, private-sector investors are looking for clarity of process, as I talked about.

They're also looking for an equitable balance of the risk transfer. They want concession to be put in place that allows them to get a fair return, of, and on, their capital.

It's pretty simple.

And, they want to do that in a manner that balances the risks that they're going to take against the risks that they're willing to take on.

So, they're going to look at any potential project from the spectrum of, the cost of capital, from the value-for-money analysis that we've talked about.

You know, I think it's important that the value-for-money analysis not just incorporate cost of capital, but also importantly, whole-life project

costs.

The way the legislation is currently structured, the board can only approve a P3 if the net present value of that P3 is less than that under a standard procurement.

And I think it's vitally important that that value-for-money analysis reflect what investors are going to look at, and that is, whole-life project costs; the need to incorporate the risk transfer that I've talked about, that is away from the State, and towards the private-sector investor.

When I talked about the return, of, and on, capital, you know, the return requirements will vary, depending on the risk characteristics of the project.

You can expect that investors will be very, very closely scrutinizing the project risks, as I've said.

What we're seeing today for investors in transportation projects will vary, whether it's a brownfield project, a rehabilitation, or a greenfield project.

Return requirements are going to be necessarily higher for greenfield because of the higher risk associated with that.

But, you're talking, call it, "mid-teens returns," typically, for projects of this type. It could be lower, if it's a brownfield rehabilitation.

The form of return generally comes from user fees. It could also importantly come in the form of a -- an availability payment from the State or from the municipality, that would act as a shadow toll, if you will, in the absence of direct user fees.

SENATOR FUSCHILLO: Thank you, Tom.

Senator Marcellino.

SENATOR MARCELLINO: Yeah, you're beginning to talk about what I was interested in trying to get before.

An investor wants to come in and put money down on a project, expects a return --

THOMAS OSBORNE: Uh-huh.

SENATOR MARCELLINO: -- on that project. I understand it will vary, project to project. They can't all be the same.

Who guarantees the rate of return?

THOMAS OSBORNE: So, the nature of the equity returns in most P3s, is that they are not guaranteed.

And one of the -- the nice things about this, from the State's perspective, is, you have a risk

transfer. And the equity capital that supports a concession, or a public-private partnership, is in a first-loss position.

So, the investor is taking on the risk, assuming that they will get a fair return, of, and on, that capital, based on their view of their ability to operate the concession for a profit over time.

There is no guarantee of the return.

SENATOR MARCELLINO: I understand there's no guarantee. I learned that lesson in the stock market recently.

[Laughter.]

THOMAS OSBORNE: You and me both, unfortunately.

SENATOR MARCELLINO: Ah, yeah.

But, ultimately, someone is going to be paying the investor.

Ultimately, the investor, assuming the project works -- assuming it goes through, the bridge is built, the highway is done, the tunnel is created -- just not in Syosset --

[Laughter.]

SENATOR MARCELLINO: -- but --

SENATOR FUSCHILLO: It's not going to be

created in Syosset. It's going to be created under Syosset.

SENATOR MARCELLINO: Under. I know.

-- but, the question is: Who pays?

THOMAS OSBORNE: So, ultimately -- I'm an advocate of user-pay facilities. It just makes sense to me, that if you're going to develop a project, those that use it should pay for it.

There may be circumstances, however, where a public policy demands that there not be an explicit toll put in place.

And, in those instances, you can put in place an availability payment that would compensate the concessionaire for --

SENATOR MARCELLINO: What is an "availability payment"?

THOMAS OSBORNE: An "availability payment" is a payment that would come -- it's a subsidy, essentially.

SENATOR MARCELLINO: Okay.

THOMAS OSBORNE: It would come from the State, or government body, to compensate the concessionaire for taking on the risk of building the project, or rehabilitating the project, and operating it over the life of the concession.

SENATOR MARCELLINO: All right, what I'm trying to figure out is, where the taxpayer comes into this thing.

THOMAS OSBORNE: The taxpayer would come in in the form of the availability payment --

SENATOR MARCELLINO: That's my --

THOMAS OSBORNE: -- uhm --

SENATOR MARCELLINO: -- okay, so you're just not --

THOMAS OSBORNE: -- and --

SENATOR MARCELLINO: -- and what you're saying is, then, ultimately, the user fee is going to be paid by, whoever crosses the bridge and pays the tolls; whoever goes through the tunnel -- whatever.

If it's an availability payment, that is going to come out of the taxpayers, one form or another.

THOMAS OSBORNE: Yes.

SENATOR MARCELLINO: So what we're saying is, there's no free lunch here?

THOMAS OSBORNE: There is no free lunch.

But I think the good thing about the legislation, as it's currently structured, is that there is a robust cost-benefit analysis that is

provided for.

It says: If the net present value of the project under standard, traditional procurement is less than the net present value under a P3, then you go with standard procurement.

So, the taxpayer would pay for it in that instance.

What I'm saying, though, is, you need to make sure, in that analysis of the net present value, the value-for-money analysis that you do must incorporate whole-life project costs.

It needs to talk about project delivery, and not just cost of capital; because, if you're only looking at what the equity investor is going to get back in the form of his return -- and, by the way again, it's not a guaranteed return -- you're going to miss the value of the risk transfer that takes place when the State sheds that risk and pushes it into the private sector.

SENATOR MARCELLINO: How does a project fail?

THOMAS OSBORNE: Well, projects can fail for any number of reasons.

I mean, if it's greenfield projects, there's always construction risks -- there's development risk and construction risk, getting it completed.

You know, we've seen some projects fail, one of the most recent examples would be, the South Bay Expressway in Southern California. And it failed because the traffic projections were more aggressive than were realized, over time, partly because, a major real estate development that was going to go in near the road that was being built, didn't get built when the economy turned down.

So, the traffic ended up being far less. It was a user-pay system. And, as a result, they didn't have sufficient revenues to cover the cost of having built the road, and then getting a fair return on their capital.

It went into restructuring. And, there was a TIFIA loan behind that, which was a federal program that provides for low-cost subordinated capital.

In this case, the subordinated capital had a springing lien. So, it was promoted, and became pari passu with all the other debt on the project.

And, ultimately what happened, was, the private sector took a loss on that first-loss equity position. The equity was completely wiped out.

And, typical with any bankruptcy, or -- I shouldn't say "any" -- but, many bankruptcies, the debt got cents on the dollar, in terms of recovery,

for the value of the project.

So, there is a very clear mechanism in place for when projects go bad, as to how those get resolved.

Before you even get to, you know, that kind of process, there are opportunities for remediation, if you will, of defaults, in giving a concession contract. And, importantly, you have lenders' step-in rights that typically would precede all of the process that I just talked about.

So, there are multiple steps along the way in any well-constructed concession agreement, that will allow the project to get back on track, and be a successful one.

SENATOR MARCELLINO: How do the environmental laws -- I'm assuming you're somewhat familiar with our environmental laws, and the environmental impact statements that have to be gone through; the timeframe that it takes, anywhere, from a year to two years, in this state --

THOMAS OSBORNE: Uh-huh.

SENATOR MARCELLINO: -- to go through an environmental review.

How would that impact your projects? Or, would you ask, how that modified?

THOMAS OSBORNE: I mean, we would always appreciate streamlining of the environmental review processes where it makes sense to do so.

However, we recognize the importance of having that environmental review, and it gets dovetailed into the project-delivery schedule.

So, we're not looking to circumvent in any way, through P3, an environmental review process that's already in place.

That said, broadly speaking, one of our recommendations for P3s around the country, at the federal level, and at the local level, is streamlining the approvals' process will see faster project delivery.

SENATOR MARCELLINO: In New York State, we -- we're a union state.

Sitting behind you are some of the members and representatives of the unions.

They're well paid.

How does that impact these projects?

THOMAS OSBORNE: Well, one of more gratifying things we've seen in the last two years is the support of the unions for public-private partnership frameworks.

I think there is a recognition, that, by

moving forward under a P3 framework, projects that would fail to get built have the opportunity to get built, and to address the high unemployment that currently exists in the construction-worker base.

So, we're in favor of their support. We're happy to have it.

Obviously, there has to be a wage negotiation in every project. And that, again, gets factored into the analysis done by the concessionnaire, the private-sector investor, as he reviews the opportunity to invest in a project.

So...

SENATOR MARCELLINO: Who would be doing that negotiation?

THOMAS OSBORNE: Well, the -- typically the way it works is, the concessionnaire will factor in what they believe the cost to construct any given project is, which includes time and materials. And they would have a negotiation around what they think the labor costs would be as part of that.

SENATOR MARCELLINO: Thank you.

I appreciate what your -- your testimony.

Thank you very much.

THOMAS OSBORNE: Thank you.

SENATOR FUSCHILLO: Senator Larkin.

SENATOR LARKIN: Tom, good to see you again.

THOMAS OSBORNE: Likewise.

SENATOR LARKIN: Thank you very much.

Just for planning purposes, and eye-opening, let's take a project like the Tappan Zee Bridge. We've discussed this before.

And the guy behind you is smiling, because he was working on it too.

Let's take a scenario, of: Here's the bridge. We're talking about rail transportation on top or bottom, and then road transportation. And we're taking about the maintenance of it after.

THOMAS OSBORNE: Uh-huh?

SENATOR LARKIN: How do you see something as complex as that?

That, at one time, it was 6 billion. Now, as the Chairman said, it's closer to $16 billion.

How would you see that being developed; the union support that you've talked about, the fight today to -- for project labor agreements, and then the collecting of tolls, and the business of raising tolls, as within the cost of operation and maintenance?

THOMAS OSBORNE: Well, Senator Larkin, I haven't studied the Tappan Zee Bridge situation

closely enough to offer you the kind of intelligent feedback that I would like to.

SENATOR LARKIN: Well, let's call it, "any bridge."

THOMAS OSBORNE: That's -- you know, one of the problems that we've had in infrastructure, generally, is the legacy of underinvesting, which has only made costs go up over time. And, also, undercharging, relative to the true cost of service.

So, when you talk about raising tolls, one of the benefits of a public-private partnership is, in the concession agreement, you have the opportunity to, number one, specify operating standards that, today, may be done only on an ad hoc basis. But, when they're in a concession, you can hold their feet to the fire, to make sure that the bridge is maintained in the way that it's meant to be, and it's operated for the benefit of users over time.

The other thing that a concession agreement provides the opportunity for is clarity around toll increases over time. And nobody likes to talk about toll increases, but --

SENATOR LARKIN: Agreed.

THOMAS OSBORNE: -- I think the fact of the matter is, that we have a legacy of undercharging

relative to the true cost of service, and it has to be addressed.

For too long, the public has enjoyed subsidies. And, that's a plain fact.

None of us want to pay higher tolls, but the bottom line is, in order to have the kind of infrastructure that we require to keep our economy running, we're going to have to pay more.

SENATOR LARKIN: Thank you.

SENATOR FUSCHILLO: Senator Martins.

SENATOR MARTINS: Thank you, Mr. Osborne.

THOMAS OSBORNE: Thank you.

SENATOR MARTINS: You mentioned earlier, as far as P3 scopes, "the broader the better."

And I take, by that, that you're suggesting that, outside of the cookie-cutter transportation model, tolls on highways or on bridges, that there are other best practices out there?

THOMAS OSBORNE: Yes.

SENATOR LARKIN: Can you describe those?

THOMAS OSBORNE: Sure.

You know, I think there is a benefit to walking before you run. And so, I think, with the State of New York not having had design-build in the past, having, now, this legislation that's focused

on transportation is a good place to start.

SENATOR MARTINS: Sure.

THOMAS OSBORNE: When I say "broad scope," that would be the ideal situation, in terms of having additional asset classes to look at.

You know, you look at the Commonwealth of Puerto Rico, it's a great example of legislation that's comprehensive. It provides for a very clear approval framework, and includes a broad range of assets; everything, from airports, to ports, to schools, water service, in addition to various forms of transportation.

So, I think the SAM Commission Report that Senator Fuschillo spoke about earlier, actually, is an excellent place to start for the State of New York, to identify the kinds of assets that investors might view as feasible for public-private partnerships.

SENATOR MARTINS: Thank you, Mr. Chairman.

SENATOR FUSCHILLO: Thank you.

Senator Golden.

SENATOR GOLDEN: Briefly, Tom, listening to your testimony, the availability payment, obviously, in this environment would be a higher interest or a higher rate of return to the -- for the taxpayer

than the user payment.

Am I correct?

THOMAS OSBORNE: I don't look at the analysis that way.

Actually, I would say, that there first has to be public-policy decision for any given project, as to whether a user fee, a toll, makes sense in that situation, or whether an availability payment would be preferable.

In situations where user fees may fall short in attracting the kind of capital needed for a project to get built, it may make sense to put an availability payment in, that provides for a contractual stream of revenue, in order to get the project built.

SENATOR GOLDEN: So you could use both, you're saying?

THOMAS OSBORNE: Well, no. Typically, it's one or the other.

SENATOR GOLDEN: Or the other?

THOMAS OSBORNE: But, typically, the availability payment comes in when, for public-policy reasons, you don't want a toll; or when tolls themselves are not projected to be adequate to cover the cost of capital and the

project-investment requirements.

SENATOR GOLDEN: Now, is this approach that the State of New York has taken, similar to that of the federal approach with the infrastructure bank?

THOMAS OSBORNE: Uhm, you -- the infrastructure bank is a project of great interest to me personally.

It is -- there are some similarities.

The national infrastructure bank, actually, is probably best thought of, in its current proposals, as, maybe TIFIA, in an expanded sense, where you're going to be providing, subordinated capital, subordinated loans, and, loan guarantees, that will enhance project economics, and allow projects to move forward.

There's been debate about the form of the national infrastructure bank. There are four different proposals that are out there.

The White House, week before last, put out the "AJA," which is its own form of proposal, the American Jobs Act, for a national infrastructure bank.

I think it would be terrific.

The State of New York, as well as other 49 states, and Commonwealth of Puerto Rico, could

benefit from implementation of that.

The approach that you're taking in New York is more specific, and I think it's appropriately so.

You need to have a framework here that is enabling projects to move forward at the local level. But, having a national infrastructure bank would be a good adjunct, if you will, to provide capital, to allow projects to move forward.

SENATOR GOLDEN: Last question: How do you participate in that infrastructure, or do you, in that bank?

THOMAS OSBORNE: How does UBS participate?

SENATOR GOLDEN: Yes.

THOMAS OSBORNE: We have long been advocates of developing a national infrastructure bank, because we believe that it will promote the kinds of public-private partnership projects that we're talking about.

So, we've had the opportunity to work with various members of the Administration, we've worked with various members of Congress, in putting forward a proposal, the most advanced of which is a bipartisan proposal, the Kerry-Hutchinson Bill, that we had the opportunity to work with staff, and provide some input on.

So, we're longtime advocates of it.

SENATOR GOLDEN: We're looking forward to working with you here in the State of New York.

THOMAS OSBORNE: Thank you.

SENATOR GOLDEN: Thank you.

SENATOR FUSCHILLO: Tom, briefly go into infrastructure bank. I think it's important for the members to understand that, the investment, and how the states can utilize those dollars as well.

THOMAS OSBORNE: Sorry, the question, sir?

SENATOR FUSCHILLO: I have -- well, let me rephrase it.

Do you have a -- other states have infrastructure banks, that you've worked with, where, pension funds, or other investors, have made funds, and how other states utilize those dollars.

THOMAS OSBORNE: Yeah, it's a really interesting question.

And I think there's been a lot of advocacy recently for state infrastructure banks.

You know, my one critique of state infrastructure banks, to date, has been, that they really have been too small and too limited in their ability to provide meaningful support for projects.

So, probably, a good example of one would be,

the California State Infrastructure Bank. They have had a broader scope, and they've been able to support a larger number of projects than most others.

But, I've been somewhat cautious in my view on state infrastructure banks because I felt that they haven't had the kind of muscle behind them that they need to make a meaningful impact.

SENATOR FUSCHILLO: And New York State's a perfect example.

Many years ago, they had and agreement with three of these agencies and authorities. And then, a few years ago, it was rated.

THOMAS OSBORNE: Yeah.

SENATOR FUSCHILLO: But, it was -- certainly, it wasn't enough of an investment. And I think we're a perfect example of what you're talking about.

THOMAS OSBORNE: Yep.

SENATOR FUSCHILLO: Look, I appreciate your help.

THOMAS OSBORNE: Thank you.

SENATOR FUSCHILLO: You've been a tremendous help to my staff --

SENATOR LARKIN: Can I just get one more

question?

SENATOR FUSCHILLO: Sure.

Senator Larkin has one --

SENATOR LARKIN: Tom, you talked about the capital that would be required in some of these infrastructure banks.

What are we talking about, in capital?

THOMAS OSBORNE: Well, the national infrastructure bank --

UNIDENTIFIED SPEAKER: (inaudible) the Tappan Zee Bridge.

SENATOR LARKIN: Be quiet.

UNIDENTIFIED SPEAKER: It's (inaudible) bridge.

THOMAS OSBORNE: The national infrastructure bank proposals vary in size.

The Kerry-Hutchinson Bill would call for a $10 billion infusion, which seems like a low number when you think about the level of investment required. But, actually, it's much larger than that.

The way the $10 billion would work, under federal-budget scoring rules, it's thought that there would be, roughly, 10-to-1 impact.

So, it's, essentially, a loan subsidy amount.

It's a loan-loss reserve, the 10 billion.

If you have 10 to 1, then you've got 100 billion of loans that could actually be put out there. And the loans themselves would comprise only a small portion of any project's actual value.

So, if you had, you know, call it, 20 percent, or 25 percent, of the project, no more than that, as national infra-bank funding, then you would have four or five times the total project value being supported by that investment.

So, you could have, you know, four or five hundred billion dollars of impact if you had just the ten billion up-front investment.

So, the leveraging effects are quite substantial there. You just have to structure it the right way in order to take advantage of that.

SENATOR LARKIN: Thank you very much, Tom.

SENATOR FUSCHILLO: And I will say, Tom, that, once we started proposing, and discussing, this legislation, myself and Senator Golden, and Senator Skelos, our leader, have met with individuals that wanted to invest in an infrastructure bank here --

THOMAS OSBORNE: Good.

SENATOR FUSCHILLO: -- in New York State, at

great lengths, I would say, and significant dollars.

Did you want to add anything Senator Martins?

SENATOR MARTINS: No.

SENATOR FUSCHILLO: Okay.

THOMAS OSBORNE: The one thing -- sorry -- you did mention the pension-fund investments.

SENATOR FUSCHILLO: Uh-huh.

THOMAS OSBORNE: And, it's a great thing to envision pension-fund investment in local infrastructure.

The one bit of caution that I would note there, is that pension funds have a fiduciary responsibility, and they have to look at all of the investment opportunities that are out there.

And what you can have is pressure on them, implicit, or otherwise, to invest in state infrastructure, if it's not in the best interest of the pensioners that they're looking to support.

So, I'm a little bit cautious about keeping funds within the state. There needs to be, I think, freedom for the chief investment officer of the pension fund to operate in accordance with the fiduciary responsibility they bear.

SENATOR FUSCHILLO: Tom, thank you very much.

THOMAS OSBORNE: Thank you.

SENATOR FUSCHILLO: Appreciate your testimony.

Roger Clayman, executive director of Long Island Federation of Labor.

Roger, good morning.

ROGER CLAYMAN: Good morning.

Good morning, Senators.

I want to thank you for this opportunity to speak before the Committee, and for your interest in exploring new ways to rebuild our transportation infrastructure. Nothing could be more significant for our region's recovery than the process you've undertaken.

In recent years, our labor movement has emphasized our infrastructure needs on Long Island, and pointed out, they're really fundamental to our quality of life.

Major investments are needed to attract new business, retain young men and women on Long Island, and add to our available housing, as well as, move the next generation efficiently to their jobs.

What people are talking about on Long Island is, creating vibrant downtowns. That means refurbishing older communities, and considering some major new developments close to major transportation

hubs.

It is clearly the focus of the Regional Economic Development Council, and countless other forums, but none of these best ideas will move forward without a better use of our capital resources.

Transportation infrastructure has emerged as one of the top considerations for community redevelopment on Long Island. Projects like, the third track from Bellrose to Hicksville, the second track to Ronkonkoma, parking at railroad stations, intersection and bridge upgrades, and improvement to our parkways, are essential for practically all the projects that are being discussed and considered here on Long Island.

In the interest of time, I won't go into the problems that you know, as well as I do, about our capital funds, and fact that they really are not delivering for the kind of projects that are needed to us.

We think they need to be funded in a different way, but the fact remains that they are not.

We support the goals of S5445: rebuilding our transportation infrastructure and creating jobs.

Our concern is to ensure, that when the public agencies enter into public-private partnerships, they impact our workforce positively. The jobs created must be good jobs, and the careers of our State workforce must not be jeopardized.

The bill should state that all projects authorized as P3s are public works projects, and must have prevailing rate, apprenticeship, and other labor standards.

It should be specified in the language of the bill that project labor agreements should be incorporated into the delivery methods.

The public-sector workforce should not lose jobs in the design and maintenance aspects of the projects that are undertaken.

In addition, the selection and financing of P3 projects should be transparent and well understood by the public.

Nassau County's intention to privatize Long Island Bus is a striking example of the dangers inherent in public-private partnerships.

The selection of the private operator was handled secretly, with no information provided to the public or the County Legislature.

The County's projected investment in the

privatized bus system is completely unrealistic when compared to similar bus service in neighboring counties. It is very troubling that the terms of the contract beyond the first year have not been made public.

Without such disclosure, fare hikes and service cuts seem to be inevitable. Moreover, it is clear that salaries, benefits, and job security will be slashed in the race to the bottom on employee costs.

This misguided privatization will surely inflict substantial damage on Long Island's economy.

The issues and principles outlined here are the same ones we are fighting for every day within local projects on Long Island and projects funded by IDAs. We believe that community consensus and support will become key factors in the success of any of the projects.

We urge you to consider that the workforce is an important component of our community, and amend the bill to protect good jobs and good wages.

We would just urge you to look at that example of Nassau County as -- as a pitfall.

And, I know it's not what you're considering. I know you would do it better.

But, that's an example of a P3 gone wrong.

SENATOR FUSCHILLO: Roger, thank you very much.

Senator Marcellino.

SENATOR MARCELLINO: No, that's okay.

Thank you.

SENATOR FUSCHILLO: Questions or comments?

I appreciate you taking the time.

Your testimony is very important.

Please send our regards to John Durso.

ROGER CLAYMAN: Will do.

SENATOR FUSCHILLO: Thank you, Roger.

William Duffy, Jr., president of Local 138.

WILLIAM DUFFY, JR.: Thank you.

I would like to thank the Committee, and the Chairman, for this opportunity to speak to you today.

Mr. Chairman, I sit here wearing two hats.

I am the president of Local 138 of the International Union of Operating Engineers, and the chairman of the Public Works Alliance of Long Island.

There was once a time when the construction trades and the companies that employed its members would sit on the opposite sides of the table. They

viewed themselves as labor and management, with a great divide between them. They met -- they might meet to discuss projects and budgets, but both were wary of each other's agendas and their motives.

That era is long gone.

The construction trades and the companies that seek to build Long Island now work closely together. There is recognition that we have far more in common than ever before. There is appreciation that we are facing an economic crisis of enormous proportions that threaten the very viability of our industry.

If I can employ that totally misleading cliche, this is a "perfect storm."

We are facing failed federal stimulus strategies, a financially desperate state government, and sustained recession has become historic in size and duration.

There is nothing "perfect" about it.

In retrospect, Washington was cynical in creating a program that failed the nation's construction industry. It has become obvious that the American Recovery and Reinvestment Act was political theater. Infrastructure was used as a backdrop to sell the plan. We were misled into

believing that it would be similar to the successful programs of our nation's past.

It was not, and was never meant to be.

So, where does that leave us?

If we are to build our way out of a recession, it's going to take a public-private partnership to fund the projects that put men and women back to work. It will take public-private partnerships to give us the means to build our future.

But, these funding mechanisms are under attack.

Some, like Senator Durban from Illinois, are suggesting that the taxpayer is poorly treated in these scenarios.

Trust me, Senator, I have 30 percent unemployed in my industry, and they would be happy to pay the taxes if they only had a job.

Let's bust the fiction surrounding the Triple Ps.

Critics say they create windfall profits for the private sector.

The truth is, revenue sharing between public and private sectors is based on gross revenue or maximum return to shareholders. And that formula is

usually built into P3 agreements.

In addition, that agreement often creates a profit-sharing structure with government so that a percentage of the revenues go back into the public coffers.

Critics say the cost of money for the project is higher.

The truth is, competition forces the private sector to deliver projects as cheaply as possible. The private entity assumes the risk of cost overruns during construction and operation, not the taxpayer. The private sector is better positioned to leverage third-party investment to reduce the cost. They are compelled to comb the financial marketplace to find the lowest-cost capital to get a P3 funded, so that men and women in unions, like mine, could go back to work.

Critics say that P3 ultimately leads to competitive -- to complete privatization of public infrastructure.

The truth is, the public sector defines project requirements, and the private sector gets paid only for the services that meet those standards. There is no mission creep here -- simply, a performance-based contract to get the job

done and put people back to work.

What an irony that, AECOM, an American-based management company, has won a $23 million public-private partnership award to help the Russians rebuild one of the most important highways between Moscow and St. Petersburg.

As a reflection of how other nations, intent on building their future, are using the power of the P3 to get started.

This crisis in our economy has given us reason to reexamine how we build the infrastructure that powers our nation and our state.

This hearing needs to become the agent of change that puts P3s to work on the behalf of New York.

Thank you for the opportunity to speak to you today.

SENATOR FUSCHILLO: Thank you very much.

And I want to really express my appreciation for your friendship. And I go way back with your family, for many, many years -- my father as well -- and know, firsthand, the plight you're facing right now on the unemployment, in your union, and your industry. It's just staggering, here on Long Island, and throughout this area.

But, you stated something in your testimony: "To get the job done, and put people back to work."

And that's the goal of what P3s are all about.

We realize, myself, as a member, Chairman of this Committee, and my colleagues here, that in order to get our economy back together, there goes the infrastructure as well.

And, if we don't explore, or give, the Department of Transportation, and other authorities and agencies, the availability of P3s, it's not going to happen.

You know, we've cut significant amounts in our State budget last year, in order to do away with the potential $10 billion budget gap.

Facing a potential $15 billion budget gap, which is now estimated, because of the work that the Legislature has done, down to about, two, two and a half billion dollars.

But, it's still billions and billions of dollars, and, the revenues through our state are still declining.

A tremendous instability down in Washington, with the federal government.

To know that we just got another extension,

just to March 31st, really don't help us out tremendously.

So, your testimony is important. It's important that, we, the members, hear it.

And I'm sure my colleagues have some comments.

Senator Martins.

SENATOR MARTINS: Billy, great to you see you.

WILLIAM DUFFY, JR.: Thanks, Senator.

SENATOR MARTINS: You know, I appreciated your comments, because they were direct, and to the point.

We have a problem.

Obviously, we can all agree that there's need for infrastructure improvements. Our bridges are collapsing, our roadways are deteriorating, and we need to put people back to work.

We can tiptoe around the edges, and argue about how it's going to happen.

This is just one more tool that allows us to get it done.

Now, I use the example, from time to time, you know: You have a Phillips-head screw driver and you have a flat-head screwdriver. You can get that

nut in with a flat-head screwdriver, but you're better off using that Phillips-head screwdriver.

This is "that" tool.

It's more appropriate, and it will save us money, put people back to work, and allow us to ultimately achieve the infrastructure improvements that we're talking about here.

You know that I am acutely aware of the impacts to the construction industry here on Long Island. And, certainly, anything that allows us to get our guys back to work, is important, and it's important that we get it done.

So, thank you very much.

I appreciate your testimony.

WILLIAM DUFFY, JR.: Thank you, Senator.

We appreciate your efforts on our behalf as well.

SENATOR FUSCHILLO: Senator.

SENATOR LARKIN: Mr. Duffy, I really appreciate what you said.

This is the same message I'm getting from the union leaders in the Hudson Valley: Cut out all the BS, find a way to get the investment out there for the money, and we'll do the projects.

And, I appreciate the kind words you had

herein.

WILLIAM DUFFY, JR.: Thank you.

SENATOR FUSCHILLO: Senator Golden.

SENATOR GOLDEN: Real brief, Mr. Chairman.

I, too, want to thank you for being here.

If this discussion had taken place -- has been taking place, but had it been acted on earlier, this country might be in a different place today than it is.

I want to, again, thank the Chairman here, our, Senator Fuschillo, Senator Skelos, for leading the discussion, and getting us to where we have to be in order to put the people, the working men and women, of this great state back to work, and, to rebuild the infrastructure that is ailing.

So, we're looking forward to working with you.

And, to get that opportunity, I don't know where your pension funds, but, we'd like to sit down and talk with you as well, as, investing in this infrastructure bank as we go forward.

WILLIAM DUFFY, JR.: Well, I can guarantee you that we'll definitely be at the table with you.

SENATOR GOLDEN: Thank you.

SENATOR FUSCHILLO: Billy, what's your

unemployment rate now?

WILLIAM DUFFY, JR.: We're currently around 30 percent. But, the true reflect --

SENATOR FUSCHILLO: Just in your local.

WILLIAM DUFFY, JR.: Just in our local.

But the true reflection is, contribution, and manhours worked, are down, probably, 45 to 50 percent.

We have eligibility periods for medical coverage, that we just went through one. And about, roughly, 16 percent of our membership lost their coverage, because of lack of work.

SENATOR FUSCHILLO: Because of lack of work.

What type of work are you doing right now?

WILLIAM DUFFY, JR.: We're not doing a lot.

SENATOR FUSCHILLO: Right.

WILLIAM DUFFY, JR.: I mean, we're doing a couple private building projects --

SENATOR FUSCHILLO: Nothing major.

WILLIAM DUFFY, JR.: -- and some roadwork.

It's just started.

You know, unfortunately, major projects that we thought would be, halfway, three-quarters of the way done --

SENATOR FUSCHILLO: Right?

WILLIAM DUFFY, JR.: -- are just getting into the ground. Some of them haven't even started.

SENATOR FUSCHILLO: Right.

WILLIAM DUFFY, JR.: So, we're really -- we're struggling. And, we're looking for, anything and everything, we can do.

SENATOR FUSCHILLO: And that's why we're here; to give the State the option, and get people back to work, as you stated, and get the job done.

So, thank you very much for your testimony.

We really appreciate it.

WILLIAM DUFFY, JR.: Thank you very much, Chairman.

I appreciate the opportunity.

SENATOR FUSCHILLO: Thanks.

Michael Polimeni.

It's still, good morning, Michael.

MICHAEL POLIMENI: Good morning to you, Senator. How are you?

Good morning, Mr. Chairman.

My name is Michael Polimeni, and I'm the chief operating officer of Polimeni International. I'm also a member of the Association for a Better Long Island.

If I may take us back for a moment:

October 14, 1963, just about a week before his life ended in Dallas, President Kennedy told Maryland -- told a Maryland gathering, that it was a pleasure to join them in the opening of a new portion of the newest interstate highway.

He said, and I quote:

"This great interstate highway represents a cooperative effort between the United States Government and the people of various states, through which this long ribbon will pass."

He went on to tell his audience:

"It symbolizes, first of all, the partnership between the federal government and the states, which is essential to the progress of all of our people.

"And, secondly, it symbolizes the effort we made to achieve the most modern interstate system in the world.

"And, third, it symbolizes the effort, which we are giving, and must give, to organize an effective communication system here in the United States of America."

Of these public works projects, JFK would observe:

"No industry has a greater impact upon the nation, and no industry has a greater opportunity to

affect our economic progress.

"This administration proposed to" -- "proposed a new, comprehensive national transportation policy, and our goal is the development of the most effective, economic, and safe transportation system for all of our people."

President Kennedy closed by stating:

"Because people, several years ago, made the plan, and took the initiative, this highway is now being dedicated.

"I hope, in the year 1963, we will again take stock of the needs of our country over the next decade, and we will begin, today, this year, this decade, this" -- "the things which will make this country a better place to live in for the rest of the century."

And, so, Senator Fuschillo, living in the era, here we are. Living in the era when "can do" has replaced the vision and the energy that John Kennedy expressed during his last days on earth.

The infrastructure he dedicated is still doing its job, but probably -- but it is most probably being ignored, poorly maintained, indifferently funded, and woefully inadequate to the

task.

The harsh realities are, that public infrastructure, such as highways and roads, don't have a large political constituency.

People use it but don't want to pay taxes at the pump for it.

An MTA tax for mass transit brought about the end of some political careers.

And, yet, without a viable infrastructure, this country, our state, and our region will come to a screeching halt.

Some would argue we already have, we just haven't acknowledged it yet.

Polimeni International has proposed the outrageous. We have suggested that, not only can we strengthen our infrastructure in profound and strategic manner, but we can do so with private investment.

We are proposing to build a tunnel beneath -- and that was Senator Marcellino, "beneath" - the Long Island towns, which will, we hope, bring commerce, investment, taxes, jobs, and tax revenues into a region that is in danger of stagnating.

The technology is there. The financing, as we just heard, is there. The engineering is there,

and has certainly been used around the world. The benefits are obvious.

There could not be a better time than right now.

What is not there, is a regulatory structure that would allow the public-private partnership to proceed on a project as important, and with such regional significance, as this one.

Let's revisit what Polimeni International is proposing.

Entitled "The Cross-Sound Link," plans call for the creation of a $10 billion tunnel that goes underground, at the existing northern terminus of the Seaford-Oyster Bay Expressway on Long Island, and reappears 16 miles later in Rye, New York, significantly reducing vehicular air emissions and energy consumption in the region, and greatly prolonging the life span of the Whitestone and Throgs Neck Bridges, and other existing arterials, adding strategic debt to the emergency-response options on Long Island and Westchester, and creating thousands of jobs at a time of historic economic pain.

The tunnel has enabled an estimated -- will enable an estimated 20 -- 800 -- excuse me, an

estimated 80,000 vehicles per day to bypass congestion on roads in Westchester and Bronx and Queens.

In addition, high-speed rapid bus transit will directly link Long Island Railroad to Metro North stations, adding additional access to the mass transportation options available in the region.

And, we would look for the government to decide whether a rail component to this facility would be favored.

We have been assured by our design team and engineers that a rail component is indeed a viable option.

We are challenging the region to consider a very big idea, and one whose time we believe has arrived.

We are proposing that twenty-first-century technology be employed to create solutions to environmental and transportation issues that are guaranteed to grow if left unaddressed.

Polimeni International has already invested over a million dollars to document whether the tunnel beneath the Sound should be -- excuse me -- right -- should be considered as a strategic

response to many strategic problems.

A public-private partnership is the only mechanism by which, this, or any other strategic project, is going to be -- is going to achieve John Kennedy's vision.

Tax-free bonds would be employed, and investors around the world would have the option to purchase them, as they do for any significant infrastructure project. The bonds would be paid off by the drivers, who will pay for the convenience and the driving experience the facility will offer.

The price would rise and fall depending on congestion-pricing strategies employed in concert with transportation officials throughout the region.

Oftentimes, the words of a visionary are not enough to create the environment for positive and sustained change. Sometimes one crisis -- sometimes one needs a crisis to create the momentum to provide us with, the will, and the resources, to get the job done.

The Great Depression built our twentieth-century infrastructure.

The Soviets launched our missions to the moon.

A viable public-private partnership will

allow us to escalate -- to escape the clutches of an aging and obsolete infrastructure that is now wrapped around a destructive recession.

I would argue, that JFK's vision can still be accomplished by the work of those on this Committee, and those who preside in Albany.

I would like to thank you all for the opportunity to speak today.

And, I would be happy to answer any of your questions.

SENATOR FUSCHILLO: Well, thank you very much.

Senator Golden.

SENATOR GOLDEN: I don't know where the -- this tunnel is -- is in the Long Island future, but, I would suggest, that if you are going to do a tunnel, that the rail freight is obviously included.

We have George Washington Bridge that brings in 90 percent of our freight.

You need to have other accesses for freight getting in and out of Long Island. And, I would strongly suggest that that be considered -- not considered, but as a definite for that project going forward.

But, thank you, Michael.

SENATOR FUSCHILLO: Senator Martins.

SENATOR MARTINS: Thank you.

Mr. Polimeni, how viable is this project?

MICHAEL POLIMENI: Extremely viable.

SENATOR MARTINS: So, as a project moving forward, from a design phase to a construction phase, this is something that could happen short-term?

MICHAEL POLIMENI: Define "short-term," Senator.

SENATOR MARTINS: You tell me, Mr. Polimeni.

MICHAEL POLIMENI: It would take about a year and a half to institute a regional traffic study, which we have requested already.

We're doing this, effectively, to be able to prove to those people who would come against the project, that, in fact, this is going be a positive.

This is going to be a regional pressure-release valve, as opposed to an originator or creator of trips.

In order to do that, we have asked for a position or -- of security, in connecting the two nodal points that are necessary for this facility; namely, the terminus of 135 and the interchange of I-287 and I-95.

After that year-and-a-half study, and we get the findings, we could, theoretically, be ready to go in about, three years, four years. In and around there.

SENATOR MARTINS: And the goal here is, not only to facilitate transportation, on and off Long Island, you mentioned, 70,000 cars.

That's 70,000 less cars on any of our bridges, off of Long Island, being taken, actually, a short-cut for many people, across the Sound; as opposed to going through New York City?

MICHAEL POLIMENI: Very astute.

Typically, it's something I have to pass -- point out to people: It is an unquantifiable positive.

That, you know, throughout the years of bringing this project to people, we've been very strict in what we present, and the fact that it be mathematically sound, and, certainly not unquantifiable.

The positive that you speak of, at this stage of the game, is unquantifiable; taking the volumes off of Long Island Rail -- off of the LIE, and all the other arterials involved, and putting it through the tunnel, is difficult, at this point, with our

regional traffic study, to assign a number to.

But, certainly, we believe that that number is going to be exceptional.

And, you know, I often pose to my audience, the question: How you would like to be on the LIE on Monday morning at 8:00, and not have any 18-wheelers?

SENATOR MARTINS: Well, we've all spoken about, and had the opportunity to speak about, east-side access, which is, a tunnel to Grand Central Terminal, which will, in essence, save 15 to 20 minutes on most commutes, in the morning for people who are going to the City, or, coming home from the City.

We're saving half an hour in the day. And we spent billions of dollars building, or committed to, infrastructure improvements, and billions of dollars to make that improvement.

This would provide, not only the facility, but also the time-savings in people's lives, as well as impacts to our infrastructure that may go well beyond that.

And, so, I'm intrigued.

Certainly, if there is a time frame, and it looks like you're well advanced on that, as far as

the design, that three- or four-year time frame certainly seems short-term.

Thank you, Mr. Polimeni.

MICHAEL POLIMENI: Thank you, Senator Martins.

SENATOR MARCELLINO: As one who met with your father years ago, and others -- I believe you were there, too, in my office -- talking about this project, originally, when you started the concept, and you started talking about it, there was no rail link.

And I think, at the time, I mentioned that that was something that was missing, and it -- and needs to be part of the concept.

If you look at all of the infrastructure changes that would have to be made, in order to make that possible, just the connection of the railroad; just bringing the railroad component into the project, not only on the Long Island end, but on the Rye, New York, end, so that there would be a place for the trains to go, and once they get out of the tunnel.

You're talking about a massive quantity of money -- huge amounts of money -- because I think it would easily double, possibly triple, the cost of

your tunnel.

Talking about the environmental impact statement required, there is no way that gets done in a year or two.

There's no way.

I'm somewhat familiar with those laws. And that review procedure would require huge amounts of time, to look at the impact of moving that railroad, and shifting those changes, and redirecting roads, and all of the rest that goes into it, that comes.

Yes, should this project be looked at? Absolutely.

Should it be considered, and studied, and worked up? Absolutely.

Should you think, possibly, about a change of entry point?

And, I only say that because of where I live, which is right next to the 135 entry point, which is a significant point in my life -- because my wife will kill me. But, it suffers the same negatives as the Rye-to-New York bridge, that my predecessor, Ralph Marino faced, when they proposed that bridge.

It's too close to the most congested area of the Island. It needs to move further east, where there is more opening, where you want more access,

where you want to create access to the east-end farming community.

Some of my east-end colleagues might not appreciate this, but that's where it's necessary.

That's where the Rye Bridge should have been placed.

We have, already, the congestion of, the Throgs Neck, the George Washington, the Midtown Tunnel. You've got all of these access and crossing routes that are existing now.

But, if we want to open up access to east -- to the east end of Long Island, and the produce produced by the farmers out there, I think that's where your project needs to be looked, and needs to be moved, and needs to be thought of.

I do think that it's worthy, and I do think it has a lot of possibilities and a lot of potential.

But, I think you're in the very beginnings of the planning stage here. I don't think you're at the point where you can say, you can get started in a year or two.

I really don't think that's possible.

But, I'm willing -- I'm willing to work -- and I'm willing to talk to you, I'm willing to talk

with you.

MICHAEL POLIMENI: If I may --

SENATOR MARCELLINO: The rail's gotta be part of it.

MICHAEL POLIMENI: If I may qualify, the year-and-a-half timeline was specifically in relation to the regional traffic study that we would perform in order to see whether or not the project is viable.

After that one-and-half-year study was taken, then we would go towards the SEQRA, on to all the necessary environmental impact statements. And then toward, we'd seek the, "ROD," or the record of discovery.

So, that was the four-year window that I was referring to.

And by saying, I was ready -- we'd be ready to go, I was referring to the fact that, not that we would be going into the ground, but we would be at the ROD.

To touch on what you said about the rail, you were integral, Senator Marcellino, in us instituting the component -- the rail component. It has, in fact, been instituted into the project.

In terms of the amount of money you think

that it will add onto the project, I would like to slightly tweak it, because, if you remember correctly, when we did the presentation, we did the utilidor, the central bore? It's a three-bore system?

In fact, what we did, was, we inside -- we enlarged the central bore, from a 35-foot diameter to a 55-foot diameter, to match the outer bores.

And in that central bore, we, effectively, made it a double-deck.

Underneath that bore, will be the rail.

Above that bore, above the center of the bore, will be the utilities, and the logistics of the actual train and rail, and the system itself.

In terms of linking to Metro North and LIRR, we have, at every one of our presentations, made it very, very clear, that we, as a design-build team, never intended to have, the train, or the rail, in the project.

What we have been tauting, is that, the project will be rail-accessible. We will design and build the project now, in the spirit of sustainability, to accept a rail, at the time that a rail can actually be brought to the facility.

So, in essence, we'll go, from a

35-foot-diameter-bore facility, to a 55-foot-central-diameter-bore facility, which will, inevitably, be able to accept rail at the time that rail is indeed at the facility.

So, we, actually, aren't looking to put the rail in ourselves.

Clearly, Long Island Railroad and Metro North would have to be involved in that, if, not only for the simp- -- single reason that they're two different trains themselves. They can't ride on each other's rails.

SENATOR FUSCHILLO: Michael, a few questions.

The -- you would be the example of what a public-private partnership would be.

What would you look for from the State of New York?

MICHAEL POLIMENI: Put very simply, proprietary position.

Due to the fact that -- I would probably be -- consider us more of a hybrid, due to the fact that we are an alternate route. We are not a mandatory route.

So, for instance, we would not be akin to a Tappan Zee Bridge 3P, because that roadway exists, and it is, in fact, a mandatory crossing.

We are an alternative route. And if that -- quite frankly, if the facility doesn't want to be utilized, they can continue on their way.

We would look for, and we are looking for, and seeking right now, legislation, or an agreement, in the form, of which we will have proprietary position between the two nodal points.

And, to speak to what Senator Marcellino said earlier, on terms of incentive, we want -- very much, want to see this project, not only through to its completion, but then, own and operate in perpetuity.

That is how these projects will work; by allowing it, so that is a product of which you can have ownership of, and you can manage, and it can, in fact, be its own company.

So, right now, as I said, there are a handful of corporations, worldwide, that are capable of doing this.

And, you know, it's been about four years that we've -- or maybe five years, that we've been on this path.

SENATOR FUSCHILLO: Right.

MICHAEL POLIMENI: And to go into the next step, it's not only costly, but it is also quite

time-consuming. And, the focus of our corporation would have to focus on it.

So, we would need to know that, in fact, if the project is viable, and a positive, that we would be the ones that would be able to institute it.

SENATOR FUSCHILLO: How long would a project like this take?

MICHAEL POLIMENI: I have been told by the engineers --

SENATOR FUSCHILLO: When I say, "does it take," starting to dig.

MICHAEL POLIMENI: Starting to dig.

So, starting to dig, to the first car through, 10 to 11 years.

SENATOR FUSCHILLO: Uh-huh.

MICHAEL POLIMENI: I've been told, about eight years for the bores. It's three TBMs, or a total of --

SENATOR FUSCHILLO: There's no bedrock; right?

MICHAEL POLIMENI: Oh, there is. There is, actually.

On the Rye side, there is, what is called "schist," or it's -- or, bedrock. It's actually the bedrock that the Island of Manhattan is built on.

SENATOR FUSCHILLO: Right?

MICHAEL POLIMENI: Which is what they're currently boring through.

SENATOR FUSCHILLO: (inaudible) on the Rye side?

MICHAEL POLIMENI: Correct.

They're currently boring through that right now on the Second Avenue extension.

On the Long Island side, you have glacial sedimentary redeposits, primarily, Raritan clay, a very viscous, soft material.

SENATOR FUSCHILLO: Right.

MICHAEL POLIMENI: So, in actuality, it's easier to bore through a harder material than it is to bore through softer material.

So, quite frankly, the project will ramp up once we get closer to --

SENATOR FUSCHILLO: We've had a lesson on that with the study of the visit of the east-side access; the difference between the bedrock and the soft material as well, and the time and the cost, really, going through soft, how, what you have to do to it.

MICHAEL POLIMENI: Uh-huh.

Yes.

SENATOR FUSCHILLO: Bold, creative, innovative, is really how I'll describe this project.

MICHAEL POLIMENI: Thank you, sir.

SENATOR FUSCHILLO: And, you know, we have the Holland Tunnel, the Lincoln Tunnel.

And I think it's long overdue to have the "Marcellino Tunnel."

[Laughter.]

MICHAEL POLIMENI: I couldn't agree with you more, Senator.

SENATOR LARKIN: Not next to Marcellino's house.

[Laughter.]

SENATOR LARKIN: I have a question.

SENATOR FUSCHILLO: And, Senator Larkin has the final question.

SENATOR LARKIN: You know, I sat back here, and you talked about President Kennedy: 1963.

I've heard about this bridge almost for the same time.

I heard, when the late Senator Mar- -- ack, Marcellino -- the late-Senator Marino was here, we talked about a bridge.

Now we're talking about a tunnel.

You know the one thing that we haven't -- I haven't seen yet, and it goes back to the Tappan Zee? We haven't seen a concentrated effort to get the people to understand what this operation could mean, for both, Long Island, and that part of the Bronx --

SENATOR FUSCHILLO: That's your area.

When you come out, in Rye.

SENATOR LARKIN: That's right.

Be careful.

-- but, you know, we hear this talk about this here. And I really -- I'm serious about it.

I just think that, somehow or other, you've got to put Long Island and the Bronx, or up there in Rye, or whatever you're going to do it -- not next to Marcellino's, of course -- but, sometime, you got to get a group of people, some leaders, in both of it.

You're from the production side of it. We're from the government.

But, here's all these people that are willing to build it.

Over here, is all the people that are going to have to put up with what is negative about it. You know, the "NIMBYs."

And I don't see anybody trying to reduce that NIMBY anymore today than I did 35 years ago.

So, you know, you can talk about: We're going to do this in a year. We're going to do this.

This isn't putting a man on the moon. That was really short. But, we're talking here, about something that all sides haven't come together.

You say, rail has to be a part of it.

30 years ago, it was just a bridge.

Now we find rail.

But, we haven't brought together the concept of, this is really needed.

And, when are we going to get the support from Long Island, the Bronx, feds, and State, to do this project?

Because, I don't know that I would even be thinking of investing, unless I knew, right up-front, from day one, that everybody here in this room supports it.

And I don't think that -- you know, I believe in it.

MICHAEL POLIMENI: Thank you.

SENATOR LARKIN: I think it's something that is 40 years late, but better late than never.

And I think that somebody ought to start

putting feet on the ground, and, you know, stop talking, and start deciding: This is what we will do.

Your environmental impact statement; 30 years ago, you could have got by with six months. Now, you're going to take a year and a half to two years to get that done.

I support the idea, but I think you got some homework to do.

MICHAEL POLIMENI: Thank you, Senator. Yes.

Actually, we've changed NIMBY to "NUMBY," which would be, "not under my backyard," in this case.

Thank you.

SENATOR LARKIN: Thank you.

MICHAEL POLIMENI: Thank you.

SENATOR FUSCHILLO: Thank you very much.

MICHAEL POLIMENI: Thank you.

Thank you, Senators.

SENATOR MARCELLINO: Say "hello" to your dad.

MICHAEL POLIMENI: I will.

Thank you, Senators.

SENATOR FUSCHILLO: Phil Russell, director of P3 project delivery, for H.W. Lochner.

Good afternoon, Phil.

PHIL RUSSELL: Good afternoon, Chairman, members of the Committee.

Again, I'm Phil Russell, director of P3 and Alternative Delivery, for H.W. Lochner, an engineering firm headquartered in Chicago.

Previously, I retired as the assistant executive director at TxDOT, with responsibilities of developing and building their P3 and design-build program.

And what I've done today, Committee members, is, changed pace a little bit.

This is a presentation I gave to some agency personnel not long ago, and I've modified it to be a bit more apropos for today's discussion.

Before I get into it, let me kind of set the table, and talk a little bit about where the practice and where the industry is going.

I have to tell you, I've been very impressed, sitting here, listening to some of the comments, and the questions, back-and-forth.

Senator Martins, you used the analogy of a flat-head screwdriver; trying to find a Phillips screwdriver to drive the screw.

And I will tell you, in some jurisdictions that I go to, they have neither a flat-head nor a

Phillips. They simply have a hammer. And that's what they use to drive the screws.

So, from what I've heard today, I think you guys are well beyond where many other jurisdictions are.

You know, in Texas, again, whether I'm in Virginia or Washington or Texas or Florida, Texas, everybody has the same challenges. And I think what you see are some common threads that always permeate the process to develop a P3 program.

You know, Texas, in the '90s and 2000, is very similar to where you guys are as a traditional design-bid-build, pay-as-you-go, state.

And we embarked on a very aggressive program. We experimented. We had small design-build, big design-build; little, big, P3s.

And I know some of the questions have been project-specific this morning on: How could we develop, this project, or that project?

I would simply say, that, the sky's the limit. You know, one size does not fit all. You have to look at the individual projects.

We had billion-dollar design-build projects that worked very well. We had P3 projects.

There's one in Austin, that's under

construction, that should be completed next year, as a $1.3 billion project. And it required no State or federal dollars to build it or operate it. And, in fact, the State of Texas will also get a revenue share out over 50 years.

So, we got a project developed that would have taken decades to build with traditional funding patterns. And on top of that, we'll a future funding source out over the next 50 years.

On other end of the spectrum, there are two large projects that are now underway in the Dallas-Fort Worth area -- the I-635, and the North Tarrant Express -- that are very similar to the sorts of projects that I see, probably here in New York, but other places as well. It's heavy reconstruction of the existing freeway, 8 or 10 or 12 lanes.

And, so, the 3P project is to come in, reconstruct those existing lanes, but they desperately need some additional capacity.

And, so, the challenge is, is pushing in some additional managed toll lanes in the median.

And so, obviously, where you have managed toll lanes and non-tolled access right next it, financially, there was no way that we could get a

deal like the project that we had in Austin.

So, the Department did have to spice up. We put on the order of about $500 million on each one of those projects, to attract that private equity.

And as Tom Osborne commented earlier, the use of the TIFIA loan program -- the federal TIFIA loan program -- was incredibly important to both of those projects.

So, you know, some of the criticism was: Well, you spent 500 million, or $600 million, of traditional gas-tax dollars.

But, the reality is, one of those was a $2 billion, the other was a $2 1/2 billion, project, neither of which would be under construction right now but for the ability to blend those State dollars with those federal -- or, those private-sector dollars.

So, again, just a little background to give you some bookmarks on what the realm of possibilities are.

As I mentioned earlier, there's some common threads, regardless of the venue or jurisdiction you're in, that seem to come up always as you begin to think about launching a P3.

(PowerPoint slide show begins.)

PHIL RUSSELL: We -- there's been a fair amount of discussion about political commitment and public acceptance. Again, I'll talk a little bit more about it, but...

"Education": Education to the public, the traveling public, the political leadership.

It's extremely important to make sure people understand, why you're contemplating a P3, what the needs are, the value of infrastructure, and the challenges -- the financial challenges that are before us.

"Interest Groups."

Again, I think you guys are doing a terrific job of making sure that everybody is part of that process.

Venues are always different. It may be contractors, it may be engineers, it may be local unions, it could be environmental groups. But, I think that it's incumbent on the folks to make sure that everybody has a chance to be a part of that solution, rather than on the outside throwing rocks at you.

"Span of Control/Risk Transfer."

We'll talk about it a bit more, but, risk transfer, really, is the heart of a P3 -- of a

successful 3P.

Ascertaining, what government does best, what the private sector does best, and then separating those, and, taking a hands-off viewpoint. Not getting into weeds, and micromanaging how the private sector would deliver that project.

The "Development Process."

Again, I think there's been some good discussions on the clarity of the process.

The "Commercial Terms" and the "Ability to Finance," I think are incredibly important.

Chris, could we go ahead and go to the next slide.

(New slide presented.)

PHIL RUSSELL: "Building the Right Integrated Team."

I've seen that in several jurisdictions. It's a bit of a challenge.

We had some good discussion this morning about post-World War II, the interstate program.

Frankly, you know, the engineers at the DOTs have done a tremendous job. I'm biased; I was one of those DOT engineers. They've done a terrific job.

But, what I'm seeing on developing

design-build and P3s, you have to augment that team. You still need that core, that cadre of engineers. But, a P3 is a very, very complex transaction, both, technically and financially and legally.

And so, in Texas, and, again, I see it in Virginia and Washington, and most other jurisdictions, we always try to bring in the best of the best. We try to bring in:

A great legal firm that has been involved in these sorts of transactions;

A great financial team;

And, an engineering team that understands, traditionally, we always used to have a cookbook, and we would tell the developer exactly, step by step, how to build the project.

And, now, in a P3, we have to go to more performance-based. Tell them what the end goal is, but, again, kind of get out of their hair and let them develop the project.

So, the legal and financial will be critical elements. I assure you, the private sector will have the best-and-brightest on their team.

The State should also have that same component.

(New slide presented.)

PHIL RUSSELL: "Government Policy and Public Opinion."

Again, talked about education.

I think we've done a wonderful job building infrastructure in this country, particularly over the last 60 or 70 years.

Communications probably haven't been our forte, again, on the value of infrastructure, and how people pay for that infrastructure.

Always look at this as a two-prong approach to education/communication, internally and externally.

I was very pleased to hear Commissioner Gee, this morning, talk about their support for P3.

I assure you, that is no small measure. Engineers typically are fairly conservative. They don't like to change.

SENATOR FUSCHILLO: Let me just interrupt you for a second.

PHIL RUSSELL: Yes, Chairman.

SENATOR FUSCHILLO: You talked about Commissioner Gee.

Your prior life, why don't you explain to the panel what you did before you went to work for

H.W. Lochner.

PHIL RUSSELL: And I mentioned that, Mr. Chairman.

Again, I was the assistant executive director at TxDOT, with responsibility over developing their Innovative Development Project process.

And, specifically, one of the issues that I found early on is, again, we had wonderful engineers, but they were very set (inaudible) on how they wanted to develop it --

SENATOR FUSCHILLO: (inaudible.)

PHIL RUSSELL: -- State of Texas.

SENATOR FUSCHILLO: Right.

PHIL RUSSELL: And, so, I think that internal communication is extremely important, to make sure, from the top, from the commissioner, on down, that the rank-and-file employees, understand that this is the future. This is how we need to deliver projects, maybe not all the project, but significant mega-projects.

And, so, we can't forget about that internal communication.

"External Communication."

The criticisms that I've seen, again, I think the panel has done a great job at talking about some

of those.

If it's a toll project, then it's -- there should be discussions on, toll rate, and toll escalations.

I looked in the Dallas projects. I had a pretty good sense for what the toll rate should be; that, I didn't want to come from, you know, the State Highway building, and tell people what it had to be.

We worked closely for -- or, through the Metropolitan Planning Organization, who were composed of representatives of the various cities and counties. And we tried to have an iterative process of suggesting: Okay, you guys have been waiting very patiently to reconstruct this I-635 project, say, for the last say 25 years. We have a method to do it, but let's talk about, toll rate, and toll escalation.

And, so, if the toll rate is this, and the escalation is this, this is the sort of facility we think we can build.

If you can't support that toll rate, and it needs to be flatter, with a smaller toll escalation, then this is the project we can build.

So, we tried to get them involved in the

project. They're no different than any of the rest of us.

If you ask us, do we want to pay taxes? No.

Do we want any -- to pay a toll? No.

But the alternative is, that you don't get the infrastructure you need to build.

So, that iterative process I found very, very important to establishing that communications in Dallas -- Dallas and Fort Worth.

Other things, again, constant criticisms you'll hear, is the: If you privatize it, or you have a long-term lease, they won't build it by state and federal standards.

That P3 document is wonderfully flexible. You can mandate anything you want in it.

Now, again, you're trying to attract the industry, and you're trying to make sure they come to New York, but, State and federal standards are -- you can clearly articulate those in a contract.

"Hand-Back Standards."

I would always get the criticism of: Well, Phil, if we do this wonderful thing, what protects us in year 30 or year 40, from the facility being poorly maintained, and then the State gets it back in a deplorable condition, and we have to spend

countless dollars to upgrade it?

Well, we had hand-back standards, and in most jurisdictions do, which begin kicking in several years before the end of that lease. And, it requires that they spend the available dollars to make sure that that infrastructure is up to speed, and -- at those hand-back standards.

"Term of Lease," we'll talk a bit more about it.

In Texas, we found the sweet spot to be about 50 years.

I know you guys are looking at, maybe, 35 years here. Indiana, and Chicago, looked at, 75, and 99 years. But, I'll discuss that a bit more.

But, 50 years is about right.

"Risk Management."

It's the thing that I think we do absolutely the worst job of explaining to the constituency.

On the traditional DOT role, we have huge amounts of risk that we maintain on our ledger, and we really don't understand that.

The private sector is a machine. They know how to price risk.

Now, early on, when we started the program in Texas, you know, I was kind of drinking the

Kool-Aid. I had heard, everybody said: Phil, let me handle the risk. We'll handle it.

And, so, I said, "Sure, here it is."

And I pushed as much risk as I could to the private sector.

The private sector can price it, but at what price?

And, so, as we became a bit more sophisticated, and got a bit more education and experience, we started pulling back some of those risk elements.

And one that I -- comes to mind very readily is, environmental risk.

Frankly, the government just does a better job of managing that process, maybe even the permitting. But, certainly, the environmental process.

And the private sector does a better job on, say, you know, putting together the schedule, maintaining the schedule, maintaining their workforce.

So, again, it's all about that proper balance of risk allocation.

(New slide presented.)

PHIL RUSSELL: And, again, I'm not going to

go through these, but this just gives you a flavor for some of the risk elements that are out there, both, on a traditional and a P3.

And we could discuss, or argue, whether the owner or contractor has this on the traditional or P3, but, my point here is, just giving you a flavor of the number of factors that are there in every traditional project, and will be there in the P3.

And they have to be thought about, and they have to be contractually handled, so that we clearly know who is bearing that risk.

I think there's one more slide like this.

Chris, go ahead.

(New slide presented.)

PHIL RUSSELL: Again, same general slide.

Go ahead and go to the next one.

(New slide presented.)

PHIL RUSSELL: "Selecting Projects."

There's been a great deal of discussion this morning, and I think there should be, about selecting projects.

There have been projects in the past, certain DOTs, where, for whatever reason, they pushed a project, and it just didn't make sense, for whatever reason.

I always try to run through a "filter," and I try to look at the projects that somebody, whether it's a local constituency said: Here are the, top five, or top ten, projects.

I try to start running through those filters, and checking those boxes, to prove to myself that they are ready for a P3 development.

You know, "Public Support": If you don't have a project, where the public has been clamoring for that project, for, you know, generations, practically, it's probably not a good project to try to foister or push on them.

"Political Champions."

I cannot -- uhm, I cannot emphasize enough, the importance that you folks, as well as the Governor, as well as the local constituency, the local elected officials, will have on supporting that project.

It's something new. There will be a lot of challenges. You have to maintain that political support.

I assure you, the environ- -- the private sector will look at that political support before they move into that region.

"Environmental Clearance."

We talked a little bit about that.

We talked about the SR-125 in Southern California. That was a project, frankly, that kind of languished early on, because they didn't have environmental clearance.

We have had projects that didn't have environmental clearance, but we always tried to get that clearance approved, that wrecker decision, or, we want it within grasp, because that is a huge risk factor that the private sector, if they look at a project that is nowhere near getting that environmental risk, they are not predisposed to invest countless millions of dollars and resources in that domain until that project has arrived.

So, environmental clearance is extremely important.

"Financial Viability."

Again, I gave you the bookmarks at the -- of some of the projects in Texas, whether you need some subsidy or some help from the locals, or not.

And the last two elements, Tom Osborne did a good job talking about, "Value for Money," and "Public Sector Comparator."

Those are kind of industry words of art, but I don't get too hung up on those. Everybody's

definition is slightly different.

The main concept here is: Value for Money.

You have to run that analysis early on, to ascertain: Is it more appropriate to develop that project as a traditional project, or is it more appropriate to develop it as a P3? Which offers the better value to the State?

And, then, "Public Sector Comparator": If you make that decision to develop it as a P3, you want, on your side, an independent comparator.

Somebody to look at that, and say: These are the ranges of values that we think we're going to receive from these proposals.

And if those projects fall outside that range, then it should give you pause, and make you think about whether we move forward with this proposal, or not.

You have to benchmark whether those proposals that you're receiving is what you expected.

And, again, "Implementing a Program."

Every jurisdiction is different.

There are some areas that they have a single project. That's it. It's a landmark project. Everybody, it's, all for one and one for all.

And if that's the situation, terrific.

If you're in a state, like I think New York is, and many others, that you have several projects that are in the hopper, then you want to create real deal flow. You want to show that you have the environment, you have the clarity of documents, you have the political support.

That's what will attract the industry partners.

Whether it's a Tappan Zee, whether it's the Goethals Bridge, or whatever the infrastructure project is, that's how you create that momentum and that buzz in the community so that the industry comes here, rather than Texas or Florida or Virginia or Washington, because it is a very competitive environment.

Just a couple of quick comments, and I think they've been touched on.

I get the opportunity to have been involved, and reviewed, different P3 legislation across the country.

And, I'm very impressed with this one.

I think, you guys, and Chairman, my congratulations. I think it is a great bill. I think you guys have done a good job at it.

Couple of things that I would want to throw

out:

The "35 years" I talked about? Again, I realize there's 35 years, and there are some abilities to extend it beyond 35 years with a majority vote of the board.

If that's what works in New York, then, fine.

I would suggest, again, to take a hard look at that.

When we ran the numbers, we found that, at 30 or 35 years, we couldn't generate enough capital to build the projects we needed.

The flip-side is, if we went beyond 50, to 75 or 100, what we found was, it was the point of diminishing return.

We could get some additional dollars, but at what cost?

And the cost was, an additional, 25 or 50 years of the concession length.

So, we chose 50 years, which kind of -- in -- at least, in our opinion, kind of maximized the revenue-generating capability with the lease.

Clearly, Mitch Daniels in Indiana, and Mayor Daley in Chicago, had different views. They spread theirs out to, 75, or 99.

But, I would suggest looking at that closely.

And, the "Role of the Board" as well.

Again, I think Tom did a terrific job.

Clearly, there has to be some sort of signoff on a project of this magnitude. And what is appropriate for every gener- -- or, every venue, is different. And that may be the solution here in New York.

I know, the Governor, Lieutenant Governor, I forget who all appoints those positions.

I agree completely with Tom; I would stagger those terms. That gives, the aura, the impression, of stability.

But, regardless of how you guys ultimately determine what's appropriate, I cannot emphasize, again, the need to get -- to depoliticize, if that's possible, as much as possible.

Whenever these concessionaires, whether it's here in the States, in Spain, Germany, France, England, when they're looking at those domains where they're going to do business, the politics give them great anxiety.

And, so, we all know it's always in the system. But, to the extent that you can diminish that in the role of this board, clearly articulate what the role of the board is, hopefully, more --

their involvement will be more at the beginning, less at the end, after the proposals have been reviewed.

But, overall --

I think that's the last slide.

Overall, again, I think you guys are on the right track.

I'm very pleased, and very impressed, with the track you're on.

Any questions?

SENATOR FUSCHILLO: Phil, let me, first, thank you for coming up from Texas. I appreciate you being here.

You and I have met before.

And, your PowerPoint was very powerful.

You know, that is, when we drafted the legislation --

And, again, it is a draft. It is introduced in my House, in the Senate.

-- the goal was, to make New York attractive for P3s; attractive for individuals to want to come here and invest in a P3.

And, certainly, to take the politics out of it, because, we've talked -- I've talked, with many people that testified today, and those who couldn't

make it, in some states where it's not attractive, it's a disincentive, whether to invest in an infrastructure bank, or even participate in a P3.

And that's the ultimate goal, obviously, to make it attractive for investments here in New York.

So, I do appreciate your comments.

And, also, the comments on possible amendments. I think that's critically important.

You've seen them on both sides: On the governmental end, through all the years in Texas, when you worked there in transportation, and even now, in the private sector.

And I think that you've explained to me, there is life after government, which is always nice for us to hear.

PHIL RUSSELL: There's life after government.

SENATOR FUSCHILLO: But, that is the goal, obviously.

And, you know, to get back, we know it's not the answer.

The only answer to solving the infrastructure crisis we face here in the state, but it is an option that should be made available.

And our first speaker, I don't know if you were here for Stan -- oh, you were here for Stan --

he was kind of imploring us to give him that option, because, you know, some questions asked by Senator Marcellino, he didn't even have the availability to start even talking to individuals about bringing them in for public-private partnerships.

PHIL RUSSELL: Yeah.

SENATOR FUSCHILLO: Which, in this day and age, the size of our state, is really wrong. And, hopefully, we'll enact this legislation into law, and give them the option to do it, and, to take out the politics. Because --

PHIL RUSSELL: Absolutely.

SENATOR FUSCHILLO: -- we don't want any obstructions in an innovative proposal like this.

PHIL RUSSELL: And, Chairman, I agree.

I think that was what Commissioner Gee was probably trying to articulate.

You'll have discussions, but, until you have P3 legislation, the game really hasn't started yet.

SENATOR FUSCHILLO: Right.

PHIL RUSSELL: So, if this legislation can pass, and move forward, then I think that will help the DOT start having some earnest discussions.

So, I think that's a critical first step.

SENATOR FUSCHILLO: Any further questions, Senators?

SENATOR MARCELLINO: Thank you very much.

SENATOR FUSCHILLO: Senator Marcellino.

SENATOR MARCELLINO: Mr. Russell, the, uhm -- excuse me -- what kind of projects are typically best suited for P3?

PHIL RUSSELL: I think, Senator, it kind of depends. Again, one size doesn't fit all.

In the south, where we have lots of growth, we tend to see more of new location. And, those work very well.

But, as Tom again pointed out, there are some risks. It's -- you're having to generate revenue. You're hoping that you build it, and it will generate sufficient revenue. And, that hasn't always been the case.

But, we see a lot of those projects.

You know, Indiana was a bit different. They privatized an existing asset.

In Texas, I could find no support or no interest at all in that. So, we didn't -- we didn't really move forward on the privatization of the existing assets.

Senator, what I think you're going to see,

more and more, is the project of the I-635 that I talked about, in Dallas, where you have an existing asset that desperately needs to be reconstructed, but it also has capacity issues.

And, so, I think, people looking to privatize -- not to privatize -- but, to have a concession on the existing roadway, to the extent that it's reconstructed, and then, also, have those folks build some high-occupancy toll -- or "HOV" -- lanes in the middle.

You're going to see more and more and more of those popping up, California, to the East Coast.

SENATOR MARCELLINO: What did you find you used the most: User fees, or, as Mr. Osborne talked about, the value-for-money analysis?

PHIL RUSSELL: Ours all were, to my knowledge -- I'm trying to think through, make sure there's no exception.

All of others were user fees.

But, everybody has a different situation.

In Canada, rarely are there toll roads.

Other than 407, around Toronto, they use, nearly, always, availability payments, out over the 30 years of the term. And, so, they'll -- they guarantee that cash flow. And, it's not a toll

road.

So, effectively, the government is paying that toll.

So, it can work either way.

We use more of a traditional toll-road pattern.

SENATOR MARCELLINO: Texas a right-to-work kind of state?

PHIL RUSSELL: Yes, sir.

SENATOR MARCELLINO: So, unions, and union negotiations?

PHIL RUSSELL: Well, Senator, what I would say is, that wasn't a challenge that we dealt with in Texas, but, there were other challenges.

And, so, here in New York, that will be an issue. And, again, it's one of those interest groups, that you have to make sure, that, as you sit down and discuss those labor issues, those wage issues, with the union, that, again, they're in the tent and they understand what's going on.

And, so, whether New York would have that as a challenge, and Arizona might not, true; but, everybody's going have a list of challenges.

And, labor, the labor challenges, are something that most concessionaires work with very

well. They understand that process.

SENATOR MARCELLINO: And, last question: The -- Mr. Osborne talked about the fair return being somewhere around in the mid-teens, recognizing that it will vary from project to project.

Your experience in Texas?

PHIL RUSSELL: And I missed the first part of that.

Was that, the rate of return?

SENATOR MARCELLINO: Rate of return.

PHIL RUSSELL: Yes, sir, I think so.

You know, my concern, as a former DOT official, always was, the private sector is only going to come in here -- surprise, surprise -- to make money.

People always seem to be somewhat surprised by that.

So, I realized there was a profit motive.

But the flip-side of that is, I could not support some super-profit that, you know, I would be criticized for.

So, that is exactly right: Every -- a greenfield is a bit different from a brownfield.

The one thing that I tried to put on there, and it was a double-edged sword -- or, not

a double-edged sword -- it was two-prong approach, is, I tried to put that revenue share in wherever possible, because that helped inoculate me and the State against criticism of super-profits, because, when they hit a certain level, whether it's measured in rate of return or in revenue, then a revenue share with the State would kick in.

So, I wanted them incentivized to push to that level, but, at some point, I wanted the State of Texas to get a piece of that revenue share.

So, that seemed to help a little bit.

Now, every project is different, and sometimes there's going to be insufficient revenue to support that.

But, generally, I was seeing somewhere in the 10 to 15 percent range for a rate of return, would be their expectation.

SENATOR MARCELLINO: Thank you.

SENATOR FUSCHILLO: Comments?

Phil, thank you very much.

PHIL RUSSELL: Thank you, Chairman.

SENATOR FUSCHILLO: Phil, let me ask you a question.

PHIL RUSSELL: Yes, sir?

SENATOR FUSCHILLO: The HOV lanes we talked

about, an option --

PHIL RUSSELL: Yes, sir.

SENATOR FUSCHILLO: -- if an individual wanted to use them, they pay a toll, probably through their E-ZPass, or whatever form other states may have.

Are you seeing that -- a growth of that in the work you're doing throughout the country?

PHIL RUSSELL: To the conversion of HOV to HOT lanes?

SENATOR FUSCHILLO: Yes.

PHIL RUSSELL: Yes, I am.

HOV lanes are -- have been deployed all over the country. They work very well.

There is some criticism. You know, typically people that are caught in traffic don't understand why, you know, the guy's whizzing by, next to him.

And, so, there was always a tendency to try to figure out a way to fill up some of those lanes --

SENATOR FUSCHILLO: Right.

PHIL RUSSELL: -- by changing it to, HO, plus two, plus three, plus whatever.

So, I think the notion of having managed toll lanes makes sense. It fills up some of that

capacity in between.

But, inevitably, and I think the challenge that you guys would have here, is, everybody will want an exclusion.

You know: I'm in a hybrid vehicle. I shouldn't have to pay a toll;

Or, I am -- you know, I'm a motorcycle rider. I shouldn't to pay;

Or, a mass transit.

And, all of those things may be appropriate.

The only caution I would suggest, Committee members, is: You start on the P3 program because you have a financial hole that you're trying to fill.

So, every time those exclusions are offered to a group or a class of people, you're simply digging the hole deeper.

And I say that, not as, they shouldn't have it. They probably should have that ability.

I'm simply suggesting, that, somebody, and that somebody's probably going to be the State, will have to dig into their pockets and chip in more and more dollars to make those systems work.

Senator?

SENATOR LARKIN: I lived in D.C. for

three years, from '63 to '66, when we were starting.

PHIL RUSSELL: Yes, sir.

SENATOR LARKIN: But, after I left, there was still talk about, they oversized the project, and made the hole bigger.

Is that correct?

PHIL RUSSELL: Oversized, which project? Just, in general?

SENATOR LARKIN: The HOVs.

PHIL RUSSELL: Oh, in -- you know, Senator, I don't know if that's true.

I will say, as a -- the viewpoint, as a DOT, and as a private sector, is a bit different.

Frankly, when I was in the DOT, I worked in the Dallas district for many years.

The 635 Project we talked about, we built additional lanes; not because we needed them right now, but because we thought we would probably need them in the future.

So, we always tried to build more infrastructure, more assets, because we knew the problems with, you know, construction delays, if you had to get in there and add lanes.

In the private sector, you try to form-fit that to exactly the need: the need of today --

UNIDENTIFIED SPEAKER: (inaudible).

MARTY GLENNON: -- and -- but, have the flexibility to add additional, you know, capacity, or whatever, is required in the future.

But, you try not to come out with "one size fits all." You try to, very much, form-fit this to what the conditions are today, and then grow it as need be, each year; each subsequent year.

So, it's a little bit of a different mindset.

SENATOR FUSCHILLO: Have most of your P3 contracts have incentives built in, for timelines and costs?

PHIL RUSSELL: Chairman, they're all a little different.

I could argue, and I did argue in my previous life, that: Listen, all the incentives that are needed are in that P3, because, on the P3 side, they may have some of their own company's equity at risk.

They have bankers -- like Mr. Osborne, or others behind them -- and they are monitoring that very closely.

So, there's already tension within that team: Go, go, go, we've got to get this thing open today.

Beyond that, I -- typically, depending on the nature, if it's a design-build, I absolutely threw

incentive in, to make sure that they opened the project earlier.

On a P3, you can do some of that, but there are lots of ingrained incentives in the program.

SENATOR FUSCHILLO: Thank you, Phil.

PHIL RUSSELL: Appreciate it.

SENATOR FUSCHILLO: Appreciate your testimony.

John Buttarazzi.

Thank you very much for being here.

We have your testimony, but I'm going to ask you to summarize it, for the essence of time. We only have the room for a period of time, so, we want to make sure I get everybody in.

JOHN BUTTARAZZI: Sure. Certainly.

SENATOR FUSCHILLO: But, just for the record, your name, your title, and your affiliation.

JOHN BUTTARAZZI: Sure.

My name is John Buttarazzi. I'm here today on behalf of Skanska.

Mr. Chairman, and members of the Committee, as I mentioned, my name is John Buttarazzi.

Skanska is a leading international project development and construction company, developing offices, homes, and infrastructure projects, such as

schools and roads.

We create sustainable solutions, and aim to be a leader in quality, green construction, work safety, and business ethics.

Here in New York, you may have seen the Skanska signs projects, such as the FDR Drive, CitiField, Brooklyn Bridge Park, and the World Trade Center.

Furthermore, Skanska is a leader in public-private partnerships.

In partnership with governments around the world, Skanska has financed and developed roads, hospitals, schools, hydropower, water-treatment facilities, and power plants.

For 6 1/2 years, during Governor Pataki's Administration, I served as senior vice president at the Empire State Development Corporation. There, under the Governor's leadership, and that of ESD chairman and New York-New Jersey Port Authority vice chairman, Charles Gargano, I coordinated State P3 efforts.

I would like to mention, I had the honor, and pleasure, of working with Senator Bill Larkin on a number of projects in Orange County.

P3 has become the conventional way to provide

new financing capacity in many countries.

The private sector is financing, building, and operating most of the major new highways in countries as diverse as, Canada, Britain, France, Spain, Italy, Greece, Poland, China, India, Indonesia, South Africa, Australia, Argentina, Brazil, Chile, and Jamaica.

Public-private partnerships are not a new concept to transportation infrastructure development.

From the earliest of colonial times to the present, the U.S. private sector has had an active and leading role in building, what we now consider, public-transportation facilities.

The earliest major roads in the eighteenth century were private toll roads. That boom in turnpike construction resulted in the incorporation of more than 100 private turnpike companies, 67 of which were in New York.

Public-private partnership between the federal government and the private railroads drove the expansion westward in the late nineteenth century.

After World War II, however, road and transit responsibilities in the United States became more

and more concentrated in the hands of government.

Passenger rail, transit systems, and virtually all highway construction and maintenance moved into the hands of state and local governments. Yet, public funds have not kept pace with the demand to maintain and improve the nation's extensive surface transportation network.

Beginning with the federal reauthorization bills of 1991, which made it easier to blend federal aid with private financing, and authorize more flexible operating arrangements, Congress opened the door for the private sector to once again participate in transportation.

Presidents George W. Bush and William Clinton issued executive orders to promote private-sector involvement. However, private-sector participation was tepid, at best, because the states had statutes on their own books that were aligned with traditional funding and procurement mechanisms.

Most of the early legislation regarding public-private partnerships in the '80s and '90s authorized single projects, and provide for a limited number of pilot projects. That legislative landscape began to change in 1994, when Virginia enacted the Public-Private Transportation Act. That

Act streamlined the process for private participation.

Importantly, it did not limit itself to highways, but is applicable to all modes of transportation. Moreover, it allowed for unsolicited proposals.

Now, as in business, the private sector could recommend an approach to the public sector and engage in arm's-length negotiations.

Building on the success of the PPTA, Virginia enacted, in 2002, the Public-Private Education Facilities and Infrastructure Act, which opened up P3 to all forms of infrastructure and public-sector buildings at the state, county, and city levels.

Today, half the states have laws facilitating P3, New York being a notable exception.

Gentlemen, the open road is no longer. Built in the '50s, the interstate ribbons that lace throughout this country are currently in a tragic state of disrepair. They are beyond capacity, and in poor condition, and, in some cases, such as the 2007 I-35 West bridge collapse in Minnesota, tragically dangerous.

Quite literally, the state of America's transportation infrastructure is crumbling. The

need for new and upgraded transportation infrastructure in the U.S. is at a key juncture; however, the funding and procurement process is unable to meet those requirements.

As we know, New York is not immune from the deterioration contagion.

A 2008 infrastructure report card compiled by the American Society of Civil Engineers made the following findings:

42 percent of New York's bridges are structurally deficient or obsolete;

46 percent of New York's major roads are in poor or mediocre condition; and

45 percent of the major urban highways are congested.

Also, in 2008, New York DOT completed a Needs Study, that examined what it would take to bring the state's transportation infrastructure to a state of good repair.

That study documented $175 billion in infrastructure needs, and that did not include the MTA, the Thruway Authority, or the Bridge Authority.

In the words of our first speaker, then-Acting Transportation Commissioner Gee, let me give you a sobering example.

That study showed that, based on the average life of a bridge, nearly 1,500 additional bridges will likely be deficient by 2013, increasing to 3,000 in the next 3 to 7 years.

Maintaining and slightly improving the condition of our state's bridges alone, over 20 years, is estimated to cost nearly $31 billion. Through traditional means, the State can fund less than half of that need.

In 2009, Governor Paterson's Commission on State Asset Maximization noted, that:

"New York lacks the necessary resources to even maintain its current infrastructure."

And stated, that: "If the State seeks to be competitive in the twenty-first century, and, at a minimum, ensure the public safety of its citizens, it ought to add more tools to its toolkit, including P3s."

Public-private partnerships combine the capital and expertise of the private sector with the management and oversight of the government, to provide public services.

Public-private partnership strategies must balance the interests of society, State, taxpayers, industry, and the market for ultimate success.

P3 is an alternative. It is not the only option, but it is a concept that is rooted in the tradition of matching public and private strengths to accomplish goals or tackle big problems.

There is a misconception that, somehow, governments are giving away public assets.

This is furthest from the truth.

Through a performance-based contract, P3 projects remain in near total control of the government to confine or fire a developer if it fails to perform.

Private developers have every incentive, as we heard from Mr. Russell, to build and operate the asset with maximum care, to make the partnership with government as profitable for all sides, including the public, as possible.

Another miscon- -- misperception, is that public-private partnerships cost union jobs.

Yet, without private financing, many public projects, and the jobs they create, would not even exist.

As an aside, I'd like to mention that Skanska is among the largest employers of construction union trades in New York State.

As for the benefits, it's access to large new

sources of capital. We've heard that.

They are attractive to many different types of investors.

By the way, I'd like to mention that the New York State Pension Fund invested in overseas public-private partnerships.

Reallocation of risk, from taxpayers to investors. P3s distribute duties and risks to the parties best able to handle them.

For example: The State is best equipped to handle right-of-way acquisition and environmental permitting, so, those tasks and risks are typically assigned to the State.

The private sector generally takes on the risks of construction, traffic, and revenue shortfalls.

Public-private partnerships allow necessary new capacity to be delivered much faster than is possible under the current pay-as-you-go funding system.

Public-private partnerships offer a methodology for financing and building needed capacity now, when we need it, instead of decades from now, or possibly never.

Moreover, they free up resources to deliver

to other projects that will have to wait for funding to become available.

That's important. There are projects that don't lend themselves to P3 funding. However, you can stretch those scarce capital dollars, where they can be leveraged with private financing in one project, freeing up public resources for those that are not P3-eligible.

SENATOR MARCELLINO: Give us an example of (inaudible).

JOHN BUTTARAZZI: A potential example is, I believe Senator Johnson, earlier today, mentioned a bridge project that needs to be fixed.

And, I don't know where that is, in terms of the capital budget, where, you know, down towards the bottom. But, these projects move up, as the higher priority projects get spent -- get built, and funded.

Well, if you can apply private dollars to those that have -- that are P3-eligible, all of a sudden, you're pushing private -- pardon me, public dollars down to those projects that might not fit within a P3 framework.

A point that's often missed with P3 projects, we think of them in terms of transportation, or

other types of projects, and, we think of actually delivering the project. But, P3 projects are economic development. It's essential to economic growth.

When planned, funded, and maintained well, infrastructure plays a vital role in supporting a high standard of living and facilitating commerce and trade.

There's a well-documented link between high-caliber infrastructure and economic expansion, but, governments have their backs up against the fiscal wall and may not be equipped to make the necessary investments.

P3 projects tend to be large undertakings that bring capital into the market while creating long-term employment.

Mr. Chairman, you mentioned the link between transportation investment and jobs.

It's right on.

SENATOR FUSCHILLO: Yeah, I would ask you to jump ahead a little bit.

JOHN BUTTARAZZI: Okay.

SENATOR FUSCHILLO: Give me your thoughts on, if you --

JOHN BUTTARAZZI: On the bill itself.

SENATOR FUSCHILLO: -- the bill itself.

JOHN BUTTARAZZI: Sure.

Yeah, I'm right there, right now.

We support the bill. We think it will catalyze construction activity in the state.

You know, if I could use Mr. Osborne's word, you know, in terms of some tweaks, we certainly would recommend that eligible projects not be simply limited to transportation, but all modes of infrastructure, including water plants, education facility, health buildings, among others.

Also, the applicability of the law, not simply to -- and I understand why -- but, not simply to the agencies or authorities mentioned in the bill, but, apply to all levels of government, at the county and municipal levels as well.

The other thing, in terms of the board, that's very critical, and central to the success of the legislation.

There was a recent study by the "PFM" group -- that's, Public Financial Management -- that looked at that issue, and how important it is.

Currently, in the United States, only Puerto Rico actually has an authority, that's constituted as the Public-Private Partnership

Authority.

SENATOR FUSCHILLO: Right.

JOHN BUTTARAZZI: And I would recommend the Committee take a hard look at that.

It's been fairly successful. It's relatively new. But, in a short period of time, it's accomplished quite a bit.

Let's see, other points --

SENATOR FUSCHILLO: When you say, "it's accomplished quite a bit," be a little more specific (inaudible).

JOHN BUTTARAZZI: Sure.

They have -- I believe they've already closed -- Prague, the authority came into being, maybe, three years ago? Two and a half years ago?

SENATOR FUSCHILLO: Okay?

JOHN BUTTARAZZI: They've already closed on a couple of road projects.

They have six finalists for the San Juan Airport, currently, they're now considering.

SENATOR FUSCHILLO: Uh-huh?

JOHN BUTTARAZZI: These are major projects.

And, they've opened it up. They're going to look at housing. They're looking at schools.

They're looking at hospitals.

But, what -- it's -- it came out of the Economic Development Agency authority there, and that's where the expertise is concentrated.

The beauty of it is, it really does provide, similar to your board, some one-stop shopping --

SENATOR FUSCHILLO: Right.

JOHN BUTTARAZZI: -- as well as -- we've heard from Mr. Osborne, we heard from Mr. Russell -- there are investors out there, but they want to see deal flow.

And they -- you know, one-off projects are difficult. They're difficult for the most unquantifiable thing out there: political risk.

SENATOR FUSCHILLO: Uh-huh.

JOHN BUTTARAZZI: And, you know, if -- you know, there, in Puerto Rico, the governor's a champion of these projects. And cap foreign -- foreign and domestic capital's going to Puerto Rico.

SENATOR FUSCHILLO: Right.

JOHN BUTTARAZZI: The -- just a couple of other points.

Oh, last point, on the legislation I would encourage you to think about, is, to allow for both solicited and unsolicited proposals.

We have seen this work.

Virginia has that on the books. Their Skanska proposed a conceptual P3 to replace aging tunnels in the Tidewater region.

Virginia subsequently decided to compete the project, which is fine; Skanska won that competition.

Skanska and the Commonwealth, in negotiated agreement, were, in return for a long-term concession, Skanska and its partners are funding the $1.2 billion construction costs, as well as the 1.3 billion in operation and maintenance.

That is a $2 1/2 billion investment in the state of Virginia, we are now making.

You know, in closing --

SENATOR FUSCHILLO: And how does that --

JOHN BUTTARAZZI: Sure.

SENATOR FUSCHILLO: -- contract read for you then, as far as what guarantees a rate of return for you? Is it toll-based?

JOHN BUTTARAZZI: It is toll-based.

SENATOR FUSCHILLO: Are you going to design, build, and maintain it?

JOHN BUTTARAZZI: We are.

SENATOR FUSCHILLO: Wow.

JOHN BUTTARAZZI: There are no -- there are no guarantees, though.

SENATOR FUSCHILLO: Right.

JOHN BUTTARAZZI: That, if the project fails, for economic reasons, financial reasons --

SENATOR FUSCHILLO: You bear the risk?

JOHN BUTTARAZZI: -- we bear the risk, and our equity vanishes.

SENATOR FUSCHILLO: Right.

JOHN BUTTARAZZI: You know, it's a very informed decision.

The other thing that's important, again --

SENATOR FUSCHILLO: What's the term of a contract like that?

JOHN BUTTARAZZI: I believe it's -- I have to -- I believe it's 50 years.

SENATOR FUSCHILLO: Okay.

JOHN BUTTARAZZI: I have to get that back to you.

But, going back to the board, and the importance of creating this deal flow, and certainty, and minimizing political risk, these proposals are not cheap. They can cost millions of dollars for the private party to put together.

When we heard about the tunnel under -- you

know, that sounds like they've already spent a million dollars.

SENATOR FUSCHILLO: Right.

JOHN BUTTARAZZI: If you're asked -- if we, as a company, are asked to bid on a project, or propose on a project, under a P3 structure, we're looking at projects, not just in New York, and around -- in -- around the United States, we're looking at them around the world. And, we only have so much capital to deploy.

So -- and, it's not just the capital to deploy, and going into the ground, erecting steel or pouring concrete, it's putting the proposal together. And, they can cost millions of dollars.

SENATOR FUSCHILLO: Millions of dollars. Okay.

JOHN BUTTARAZZI: And, you want some certainty there.

I'll just close with this: That, I do believe the potential in New York State is tremendous. It really is.

Private capital is flowing to those states that have created the right conditions for an investment.

Foreign money is pouring into Texas,

California, Georgia, Indiana, North Carolina, and Virginia, to invest in highways and bridges.

Without the proper legal framework, other states will continue to reap these benefits at the expense of New York's economy and business climate.

Funding for transportation projects goes to those states that have created the right conditions, where the law facilitates public-private partnerships, and where private investment and participation is embraced.

Why shouldn't New York also benefit?

The State's at a cross-roads.

It can choose to open its doors to this innovative approach, or not.

New York law needs to be changed to encourage the aggressive pursuit of private-sector participation, not only transportation services, but in all forms of infrastructure.

Again, Mr. Chairman, thank you for inviting Skanska to participate in your deliberations.

And, I'd be happy to answer any questions you might have.

SENATOR FUSCHILLO: I appreciate your testimony, John. You've offered us some insight, and your experience as well.

Senator Larkin.

SENATOR LARKIN: Well, I've worked with John on a lot of projects.

And, I noticed today, he hasn't changed: he tells you like it is.

JOHN BUTTARAZZI: Right. Although, I'm wearing glasses now.

We didn't back then.

SENATOR FUSCHILLO: John, we all are.

Thank you.

SENATOR LARKIN: A little thinner on the top too.

UNIDENTIFIED SPEAKER: John, have you --

(Hearing interrupted by technical difficulties.)

(The hearing resumes, already in progress.)

KEVIN THIBAULT: ...to where we actually have availability payments, and it is not user-financed. And, so, I'll talk about that very quickly, here.

I also had the privilege of serving as the executive director of Florida's Turnpike as well.

Very quickly, in Florida, we ran into a situation back in the mid-1990s, where our legislature was looking at: How can we improve on

time performance? Keeping it within time, within budget?

So even in the mid-'90s, they gave us the ability to start doing design-build in a more broader approach. And, so, for a long time now, we've had the ability to do design-build.

And that has actually helped us with the on-time performance.

So, the public, and our elected officials, got to see projects completed when they said that they were going to get completed -- sometimes they were even earlier -- and on time -- and within budget.

So, that was the biggest thing we could get with design-build.

SENATOR FUSCHILLO: It was design-build only, not (inaudible) maintained?

KEVIN THIBAULT: Only design-build.

We also were given the ability, later on, to do, what we call, "asset maintenance," where we can turn over the maintenance of our State facilities, either by, roadway, or even all the state roads and the county, to a private company, and they maintain them for a period of time.

SENATOR FUSCHILLO: For a fee?

KEVIN THIBAULT: For a fee.

SENATOR FUSCHILLO: For a fee based on tolls, or strictly a fee?

KEVIN THIBAULT: There's a fee.

So, what would it cost us to maintain that, we would then say: What can do you, as a private sector?

Remember the comparative-type thing.

SENATOR FUSCHILLO: Right.

KEVIN THIBAULT: It's usually a seven-year term. So, what happens is, they get to recoup some of their capital costs over, then, that term.

SENATOR FUSCHILLO: Percentage wise, what do you think, during that term, if anything, the department -- the State of Florida had saved?

KEVIN THIBAULT: Oh, I'll have to get back you to.

But, we've saved millions of dollars in our maintenance budget, just because of (inaudible) to the private sector.

We give them the same expectations we would give our own, in fixing the guardrail and fixing the pavement, and so on. But, they're able to leverage that, and do more, in that time frame.

SENATOR FUSCHILLO: And how would you rate

the level of service?

KEVIN THIBAULT: Excellent.

SENATOR FUSCHILLO: Excellent?

KEVIN THIBAULT: Excellent.

They've done tremendous work.

All our rest areas, most of them are all privatized with the asset-maintenance contractors.

SENATOR FUSCHILLO: Right.

KEVIN THIBAULT: And they are very well maintained.

SENATOR FUSCHILLO: When you were with the Thruway Authority, and -- DOT you had said?

KEVIN THIBAULT: The DOT, and the Turnpike, sure.

SENATOR FUSCHILLO: -- Turnpike, did you engage in P3s? Was it available to you at that time?

KEVIN THIBAULT: Ah, yes.

No, I just left the department a couple months ago.

SENATOR FUSCHILLO: Okay.

KEVIN THIBAULT: So we've had -- no, I've had the ability to do that.

And let me explain just explain --

SENATOR FUSCHILLO: Sure.

KEVIN THIBAULT: -- how we want there.

The first major one we had was the winding of Interstate 75, down in Fort Myers-Naples area.

Have you ever been down there?

SENATOR FUSCHILLO: Yes.

KEVIN THIBAULT: Heavily congested. We needed to widen the facility.

The price tag was over $400 million.

And for that geographic area, it was tough for them to accumulate that at one project using the traditional method of, like Stan mentioned, design-bid-build.

So, we went forward, and did -- we programmed it in our work program, spread it out over six years, and broke it up into a bunch of these little segments, like we always do.

But then we realized, the motoring public who live in Fort Myers and Naples, or commute there, or visit there, were going to see constant construction for over a decade; because, you know, this project gets done, and then the next one starts.

And then they'll start wondering: When are you going to get done with this project?

SENATOR FUSCHILLO: Right.

KEVIN THIBAULT: So, we went forward with a

design-build finance. And we clearly said to the concessionaire, or the proposer: You can design and build these 30 miles, widen the Interstate. And you'll get paid back exactly the same year as I had it in my six-year program.

So, we didn't have to change anything. It was funded the same traditional way like we usually fund it.

Obviously, our -- the bid came in with that cost of finance in there, and we capped it.

We told them: All we are had was this $430 million, so your bid has to come in with that.

But, because of their ways that they could figure out how to get there, we were able to get that done.

And so, in reality, what happened, members, is, we obviously shortened it, from where we originally envisioned, over ten years or so.

So, now, with the regular design-build, it came in a year under the design-build schedule.

SENATOR FUSCHILLO: Wow.

KEVIN THIBAULT: Just because everything's compressed, and he's mobilizing. And, so, as he's finishing this bridge work --

SENATOR FUSCHILLO: Yeah.

KEVIN THIBAULT: -- he's moving that bridge crew up further north, or south, wherever it is.

And, so, there was a tremendous benefit there.

SENATOR FUSCHILLO: Well, that's an incentive to them as well.

KEVIN THIBAULT: It is an incentive.

SENATOR FUSCHILLO: Right.

KEVIN THIBAULT: The second one, which is another incentive -- and I it think goes back to, Senator, what you were talking about -- we had two public-private partnerships, major ones, that we had coming out about the same time. Both of them are over a billion dollars in costs.

One was the widening of I-595 in Fort Lauderdale, and the other one was the Port of Miami Tunnel.

And, so, I want to talk about the tunnel for a second.

The tunnel, today, to get to the Port of Miami, you have to go through downtown streets of Miami. You have get to off the Interstate and weave your way through.

Now, for those in the crews, it's an inconvenience. But, obviously, in the trucking, and

moving cargo, was a real inconvenience.

So, the local governments had an incentive to get that local traffic off the downtown streets, and put it back on the Interstate so it's a direct connection.

That's what the tunnel comes in to do.

So, the State and the local governments got together, to figure out how we're going to fund this. We have to come up with some revenue stream.

We came up with this availability payment, with milestones.

And what basically is, is it's structured is, they will -- the concessionaire who won the contract gets certain payment when they complete a certain milestone. And the rest of it is spread out over a 35-year term.

And, the ones who got that contract were the ones who met those milestones. They can live with their milestone, and, had the lowest annual payment that I was willing to pay. We had to stay within parameters again.

And so, now, we get that construction underway, and thousands of people are working on the project.

And, in 2014, when it opens, we're going to

take traffic off downtown Miami now, and put it through the tunnel.

SENATOR FUSCHILLO: Where are you on the timeline of the schedule?

KEVIN THIBAULT: It is on schedule.

Both projects, actually, are run this way.

We just had an update last week, on the 595 project.

Both of them are well underway, on schedule.

The risk is borne by the private sector.

You're talking about rate of return, and so on? It's exactly it. There's no guarantee of that.

SENATOR FUSCHILLO: Is that a toll?

KEVIN THIBAULT: No.

SENATOR FUSCHILLO: There going to be a toll?

KEVIN THIBAULT: No.

SENATOR FUSCHILLO: No?

KEVIN THIBAULT: Now, the local governments who chip in, have the option on the port side, since the port is owned by the county.

If they want to toll people who are coming out of the portal, that is their decision.

SENATOR FUSCHILLO: That's their option.

KEVIN THIBAULT: But, that's to cover their costs that they put into it.

But, the State is just coming out, using traditional sources, but spreading it out over time, to be able to get it there.

SENATOR FUSCHILLO: Is it a "maintained" as well?

KEVIN THIBAULT: Yes. It's design, build operate, and maintain.

SENATOR FUSCHILLO: For 35 years?

KEVIN THIBAULT: For 35 years.

SENATOR FUSCHILLO: And what's the span of the tunnel?

KEVIN THIBAULT: It's a little bit over a mile long. It's a bore tunnel under the channel, where the cruise ships turn around; the turning basin.

If you've been down to the Port of Miami, you probably have been there.

SENATOR FUSCHILLO: I have.

KEVIN THIBAULT: And, so, it goes, from Dodge Island to Watson Island, and it just connects I-395 to the port.

And then the last thing, I think, Senator, you were talking about high-speed rail.

Florida, as you know, was in the midst of doing high-speed rail.

The contracts that we were providing, or preparing, was a full-blown "design, build, operate, maintain, and finance" contract, where, obviously, we had some federal money. We had some State money that was the match.

And, then, the "operation and maintenance" portions was coming out of the fare box. 100 percent, that was clear.

That, we were telling the private sector, is, that is their risk. We weren't going to put any money into that.

So, that's their finance part.

Obviously, they'll finance, too, some of the construction, because it's -- it's spread out a little bit, but most of it was -- their risk was in the operations and maintenance.

And, so, we've used those contracts.

So, we've been able to use these different forms in various -- and then, now, the next one we're looking at are user-financed facilities.

So, with that, I know your time is short.

So, I will answer any questions.

SENATOR FUSCHILLO: No, no.

Look, first of all, I appreciate you being here.

Have you had a chance to look at the legislation itself?

KEVIN THIBAULT: I agree with exactly what the other testimony has been made, about the term: look at the term a little bit.

In Florida, we're given up to 50 years.

Beyond 50 years, the Secretary of Transportation can make that decision based upon documentation.

SENATOR FUSCHILLO: Who makes the decision up to those 50 years? Is it --

KEVIN THIBAULT: This is within the Department. There the no independent board.

SENATOR FUSCHILLO: Okay.

KEVIN THIBAULT: Now, our annual work program is, obviously, appropriated by the Legislature --

SENATOR FUSCHILLO: Right.

KEVIN THIBAULT: -- in the budgeting process, so they see how the project's going to be delivered.

Obviously, the elected officials will know if it's going be a P3, like the tunnel, and all that.

SENATOR FUSCHILLO: Well, that's what I want to ask you: With respect to projects, are they all project-specific in a budget? In your budget?

KEVIN THIBAULT: Our --

SENATOR FUSCHILLO: Or does the Department of Transportation have the authority to engage in projects on an ongoing basis?

KEVIN THIBAULT: We have the ability to engage into projects on an ongoing basis.

SENATOR FUSCHILLO: Okay.

KEVIN THIBAULT: We do not -- the only time we have to get permission -- or, approval, I should say, is if I'm leasing an existing asset.

SENATOR FUSCHILLO: Do you sell any assets?

KEVIN THIBAULT: No. We tried.

The Alligator Alley, was one of those that we looked at doing. And, we just didn't -- we hit it at the wrong time. It was in 2007, when the market --

SENATOR FUSCHILLO: Been on it many times.

KEVIN THIBAULT: Yes.

SENATOR FUSCHILLO: Yeah, okay.

Any questions?

Kevin, I really appreciate your testimony --

KEVIN THIBAULT: Sure.

SENATOR FUSCHILLO: -- and the opportunity to be here.

You also suggest the threshold of 50 years, rather than, 30 years, 35 years?

KEVIN THIBAULT: Yes.

I mean, it gives you some more flexibility, because some of these major projects -- you were talking about the Tappan Zee -- but, any of these that are in the billions, you need that time frame for them to, you know, recoup their investment in there.

SENATOR FUSCHILLO: Right.

Okay, thank you very much.

KEVIN THIBAULT: Thank you.

SENATOR FUSCHILLO: Appreciate it.

Marty Glennon.

MARTY GLENNON: Good afternoon, Senators.

SENATOR FUSCHILLO: Marty, good afternoon.

MARTY GLENNON: I know you've heard a lot of testimony today, so I'm going to be brief.

My name is Marty Glennon. I'm a partner at a law firm, Archer, Byington, Glennon & Levine. We represent a majority of building trades, here on Long Island, and throughout New York State.

Essentially, I have spoken to many in elected office. And, as a representative of the building trades and independent unions, we had spoken about how to stimulate the economy.

And the problem that we see is, where

40 percent of this nation's wealth is concentrated in the top 1 percent, it's tough to stimulate.

So, what do we have to do? We have to move that money down to the working middle class, higher-paying jobs.

The building trades on Long Island -- the eight biggest building trades on Long Island, have a combined pension of $4 billion.

We looked at that.

If we were to take 5 percent of that, that's $200 million.

I use that as an arbitrary number, because it was nice and round at the time.

The proposal is, that, the building trades and their pensions partner up with government to create a P3 infrastructure bank. A regional infrastructure bank.

So, out of the box, you would have a Long Island regional infrastructure bank, with initial funding of $400 million, to address the infrastructure needs on Long Island.

This could be paralleled to the Governor's economic development councils throughout New York State.

You have ten economic development councils

partner with the building trades in each one of those regions, create regional infrastructure banks.

One: It decentralizes the control, in terms of the money, and the politics. Everybody's not going to Albany, and D.C. anymore. You're dealing with local banks, for local projects, for local people.

The key component to this is three things.

One: Dealing with the infrastructure needs, you have to look at the tax burden on the consumer.

Right?

I have spoken, and you have read all of the studies.

The controller's put out -- issued several reports on P3s, and the cautions that have to go with it, but also the need to deal with our failing infrastructure here in New York State.

SENATOR FUSCHILLO: Marty, who would decide the projects?

And why I ask you that question: I could see, you know, you got eight unions. Just say, they invest $400 million into it, as a supplement, or added to, for what the State and federal government would put into it, or even bond out.

Would it still come under the board, as

proposed in the legislation, or an economic regional council?

Because I could see some --

MARTY GLENNON: I think it would be the bank. The board or the bank.

SENATOR FUSCHILLO: The infrastructure bank itself.

MARTY GLENNON: Exactly.

And the reason that this is the perfect partnership is, who better to partner with government, to address the need for taxes -- to keep a hold on taxes, the need to address infrastructure, and also to create high-paying jobs.

The building trades are a perfect match, because they share the same concerns in getting the infrastructure needs in their region addressed on a periodic basis, but most expeditiously.

So, what we would envision is, a bank, that would then fund regional projects.

Take Long Island, for example. I'll use the Coliseum, as an example.

There was a $400 million price tag for a new coliseum.

If Long Island had its own infrastructure bank, 10 percent of that could have been set

aside -- $40 million for a $400 million project -- that would have alleviated a lot of this.

And what do we get in return? The jobs that are created are union jobs. High-paying jobs.

This isn't the underground economy that we have currently going on, where all we keep on doing is, undermining the workforce. People that are unemployed can't afford the tax structure that they currently have.

So, we keep the people on Long Island. We stop the brain-drain on Long Island, and keep the people here, to work on these jobs.

And I noticed the Senator is back.

I have clients up in Orange County that are currently doing the same thing, looking into this, because the funding is available.

Currently, all their money is invested in Wall Street, where, essentially, a board of trustees, both management and union, look at it on a periodic basis, and do a reallocation.

Here, it's a one-shot infusion, 5 percent.

And how do you fund it? Primarily, it would be user-fee projects.

Suffolk County, for example; only 20 percent of Suffolk County has sewer districts.

You create the sewer districts, you attach a user fee to it.

How does this affect transportation? Because, on the transportation end of it, it's not as much a high rate of return on these transportation projects.

However, if you bundle the projects with user-fee projects, it makes it more attractive to investors to do these projects.

So, I don't want to go too long here, but, essentially, you have the perfect partnership that can go into perpetuity. And every money -- any return on investment that comes back, goes back into the bank, to invest more in local infrastructure.

And like I said, if you parallel this, on the regional levels throughout New York State, on the ten economic development corps, you would have a partner at each area.

So, now -- and we're talking about a State infrastructure bank, and a federal infrastructure bank. Or, if you partnered it up with a regional bank, where regional people are going to decide which projects are their priorities, and fund it with local working men and women, it's a win-win-win for everybody.

SENATOR MARCELLINO: Mr. Glennon, I got the -- it's only, strictly an opinion, but I got the impression, in discussing with some of the gentlemen before who were discussing the financing of these projects, that, when you talk about union jobs, the term that Mr. Osborne used was, "negotiations."

Has there been any kind of a study or any kind of a look at the impact that PP3s [sic] have had on union wages, construction wages, and those --

MARTY GLENNON: It depends on where they're done.

You raised an interesting question before.

In the state of Texas, it's a right-to-work state, so, you're not going to have those type of parallels.

But it's, the devil's going to be in the details in the legislation.

And I know the AFL-CIO had its issues with the present legislation in its present form because there weren't enough protections for a labor workforce.

And the key component on these regional banks, is that it's a public entity. So, they're public projects. You can do PLAs. You have apprenticeship language.

There is incentives in there to do this with union labor, which is higher-paying jobs.

Those studies show, that, the more people, and the more income they have, it's more disposable income.

That's what's really going to stimulate this economy.

SENATOR MARCELLINO: Thank you.

SENATOR FUSCHILLO: Billy.

SENATOR LARKIN: I would like to see a little more of them, this --

SENATOR FUSCHILLO: Well, we have your statement here, also, Marty, and I appreciate it.

Billy, it is right there as well.

SENATOR LARKIN: Yeah, I heard from some people in Orange County that you would probably be here today.

MARTY GLENNON: Yeah, I'm working with the electricians and the laborers, and everybody else up there as well.

SENATOR FUSCHILLO: Well, I appreciate it.

You and I have met before.

And appreciate you staying, and being the last speaker, but, it's very important to hear your testimony.

An interesting concept.

MARTY GLENNON: And, actually, I didn't chase anyone out. I brought them back.

SENATOR FUSCHILLO: Yeah, you brought them back.

MARTY GLENNON: Thank you.

SENATOR FUSCHILLO: This concludes our hearing.

I want to thank all of that you participated.

I want to thank my staff for the work that they've done, you know, the Senate Operations.

And, also, Farmingdale State.

Thank you very much for being here.

SENATOR MARCELLINO: What about me?

SENATOR FUSCHILLO: And Senator Marcellino.

(Whereupon, at approximately 1:18 p.m., the public hearing, held before the New York State Senate Standing Committee on Transportation, concluded.)

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