

1 BEFORE THE NEW YORK STATE SENATE
2 STANDING COMMITTEE ON TRANSPORTATION

3 NEW YORK STATE SENATE PUBLIC HEARING

4 HOW NEW YORK STATE CAN UTILIZE
5 PUBLIC-PRIVATE PARTNERSHIPS IN ORDER TO
6 EXPEDITE AND BETTER FUND INFRASTRUCTURE PROJECTS
7 THROUGHOUT THE STATE

7 Van Buren Hearing Room A
8 2nd Floor
9 Legislative Office Building
10 Albany, NY

10 May 16, 2011
11 10:00 a.m.

11 PRESIDING:

12 Senator Charles J. Fuschillo, Jr.
13 Chair

14
15 SENATE MEMBERS PRESENT:

16 Senator Martin Malavé Dilan (RM)

17 Senator Ruben Diaz

18 Senator Martin Golden

19 Senator Owen H. Johnson

20 Senator Timothy M. Kennedy

21 Senator William J. Larkin, Jr.

22 Senator Carl Marcellino

23 Senator William Perkins

24 Senator Michael H. Ranzenhofer
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PRESENT, Continued:

Senator Malcolm A. Smith

Senator David J. Valesky

Senator Catharine Young

Senator Lee M. Zeldin

ASSEMBLY MEMBERS PRESENT:

Assemblyman David McDonough

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1 CHAIRMAN FUSCHILLO: My name is
2 Senator Charles Fuschillo, chairman of the Senate
3 Transportation Committee. And today, myself and the
4 members of the Transportation Committee in the
5 Senate will be conducting a public hearing on
6 public-private partnerships.

7 I want to thank my colleagues who have
8 attended the hearing.

9 And, making his grand entrance is the ranking
10 member, Senator Dilan.

11 Senator Dilan, thank you for being here.

12 And to my right, Senator Valesky,
13 Senator Carl Marcellino, Senator Johnson,
14 Senator Marty Golden, Senator Billy Larkin.

15 And to my left, Senator Lee Zeldin,
16 Senator Malcolm Smith, and Senator Diaz.

17 Thank you very much, gentlemen, for being
18 here today.

19 I just have a brief opening statement, and
20 then we'll get started with the hearing.

21 We're here today to examine how
22 New York State can use public-private partnerships,
23 also known as "P3," to help expedite and fund
24 transportation-improvement projects.

25 The state's transportation infrastructure is

1 a massive and vital economic artery which supports
2 more than 130 billion vehicle-traveled miles every
3 year. Our total highway and bridge system
4 encompasses more than 113,000 miles of highway, the
5 equivalent of driving from Albany to Los Angeles,
6 and back, 20 times.

7 We are also home to one of the largest mass
8 transit systems in the world, the MTA. However, our
9 infrastructure is facing a very real crisis that
10 requires immediate attention.

11 Consider that, New York State is ranked among
12 the bottom ten states in the nation, in both highway
13 and bridge conditions, according to the New York
14 State DOT.

15 Our state should be replacing or
16 rehabilitating more than 300 bridges, and
17 1,150 miles of highway lanes, each year. However,
18 in 2009, only 121 bridges, and 661 lane miles, were
19 replaced or rehabilitated.

20 Nearly half of the 17,400 state and local
21 highway bridges in New York State are either
22 deficient now or will become deficient within the
23 next ten years. The number of corrective actions
24 required to address critical structure components'
25 issues have more than tripled over the last

1 five years.

2 Current funding sources alone are not enough
3 to solve these problems. Project courses are
4 getting more and more expensive, while traditional
5 revenue sources are declining.

6 The DOT's two-year capital plan is currently
7 in its final year.

8 The MTA's five-year capital plan faces a
9 nearly \$10 billion funding gap.

10 We cannot allow the system to crumble, which
11 is why we must explore creative solutions, like P3s.

12 P3s have been utilized throughout the world.
13 Here in the United States, 29 here in the U.S., 29
14 other states, and Puerto Rico, have enacted laws
15 authorizing public-private partnerships for highway
16 and bridge projects.

17 Given the private sector's vested interest in
18 completing projects on time and under budget, P3s
19 have helped to expedite projects and contain costs.
20 P3s have been used successfully in New York State
21 before.

22 The Strategic Asset Management, "SAM," report
23 which was issued in 2009, noted that the JFK Airport
24 Terminal 4, the JFK Airport AirTrain, and the
25 rehabilitated Grand Central Terminal were all highly

1 successful projects financed by P3.

2 The same report encouraged New York State to
3 explore P3s as a way to fund other improvement
4 projects, and specifically identify several ideal P3
5 candidates.

6 We are fortunate today to be joined by a
7 number of experts, from government agencies to
8 private sector, non-profit organizations, and labor
9 organizations. These individuals will offer their
10 opinions on how New York State can most effectively
11 use P3s to perform these desperately needed
12 upgrades.

13 I want to thank all of you for taking the
14 time to be here, and we look forward to your
15 testimony.

16 I just want to state on the onset, that we
17 have a lot of individuals that we have asked to
18 testify, and they've all agreed. So, we're going to
19 ask you to try to limit your comments to, maybe, 10;
20 the most, 15 minutes.

21 Joan, you're looking at your watch already.

22 [Laughter.]

23 CHAIRMAN FUSCHILLO: And we'll be happy to
24 ask questions, or take any questions that you may
25 have of us.

1 TESTIMONY OF JOAN McDONALD

2 COMMISSIONER

3 NEW YORK STATE DEPARTMENT OF TRANSPORTATION

4 CHAIRMAN FUSCHILLO: And, the first to
5 testify is Joan McDonald, who is the commissioner
6 of the New York State Department of Transportation.

7 Ms. McDonald, thank you very much for being
8 here.

9 MS. McDONALD: Is this on?

10 Is it on now?

11 CHAIRMAN FUSCHILLO: It's on now.

12 MS. McDONALD: Thank you.

13 Chairman Fuschillo, Senator Dilan, members of
14 the Senate Transportation Committee, thank you for
15 inviting me to provide testimony today.

16 I am Joan McDonald, commissioner of the
17 New York State Department of Transportation.

18 The subject of public-private partnerships as
19 a tool to address financing for transportation
20 infrastructure projects is important, and I
21 appreciate the opportunity to provide New York State
22 DOT's perspective.

23 As this committee is well aware, and as
24 Chairman Fuschillo mentioned, the transportation
25 system in New York State is vast. It encompasses

1 more than 240,000 miles of highway and more than
2 17,400 bridges. These support approximately
3 133 billion vehicle miles of travel annually.

4 There are more than 130 public transportation
5 operators serving more than 8 million passengers
6 each day.

7 There is an extensive 3,500-mile rail network
8 over which more than 8.5 million passengers travel,
9 and 70 million tons of equipment, raw material,
10 manufactured goods, and produce are shipped each
11 year.

12 Our state has 464 public and private aviation
13 facilities, 4 port authorities, the Port of Buffalo,
14 and numerous private ports, which handle more than
15 100 million tons of freight each year.

16 Our infrastructure, like the infrastructure
17 in most of the northeast, is aging, and faces the
18 realities of harsh winters. The demands on our
19 transportation system, particularly as the economy
20 recovers, are increasing.

21 Consistent with the findings of two federal
22 commissions, and the American Association of State,
23 Highway, and Transportation officials, New York
24 State DOT has found that our infrastructure needs
25 are far greater than the resources available to fund

1 such needs.

2 To address current and expected needs would
3 require nearly a doubling of our current investment
4 in transportation infrastructure annually.

5 Despite these challenges, Governor Cuomo
6 remains strongly committed to ensuring that our
7 transportation infrastructure remains safe, and
8 supports the recovery of our state. The governor's
9 continuing support is evidenced by his support for
10 New York State DOT's fulfilling its commitment to
11 the current two-year capital program.

12 New York's current and future transportation
13 infrastructure needs traditionally have been
14 addressed through a partnership of federal, state,
15 and local government resources. The severe fiscal
16 constraints at all levels of government have had an
17 impact on the level of current investment, and
18 present significant challenges moving forward.

19 Federal aid has, historically, comprised
20 approximately 50 percent of the state's multi-year
21 capital program. At the federal level, the Highway
22 Trust Fund no longer remains solvent as a
23 user-supported fund, and has required more than
24 34 billion in general-fund transfers since federal
25 fiscal year 2008.

1 In addition, the most current -- the most
2 recent, excuse me, federal surface transportation
3 program, known as "SAFETEA LU," expired on
4 September 30, 2009.

5 The nation's surface transportation program
6 has been operating under seven extensions, with the
7 current extension expiring on September 30, 2011.

8 To date, Congress has not discovered a way to
9 sufficiently finance a long-term, multi-year
10 transportation bill.

11 The House Transportation and Infrastructure
12 Committee is developing a six-year surface
13 transportation authorization bill that would
14 significantly scale back funding levels, limiting
15 them to only the funding levels supported by the
16 trust fund receipts. This would provide states with
17 25 percent less than what currently is provided
18 under SAFETEA LU.

19 The Senate Environment and Public Works
20 Committee and Senate Banking Committee have also
21 indicated that they are working on a multi-year
22 reauthorization bill, but neither has released
23 details of their proposals.

24 The President's federal fiscal year 2012
25 budget for transportation provided the conceptual

1 framework for the still-to-be-released, 6-year,
2 \$556 billion surface transportation reauthorization
3 bill.

4 However, it should be noted, that adequate
5 revenues to support the proposed funding levels have
6 not been identified, and the proposal would require
7 an additional \$200 billion in new revenues to
8 implement, this at a time when we are realizing the
9 volatility of the federal gas tax.

10 It is fully expected that, absent any clear
11 ability, the federal level to support states and
12 maintaining existing transportation infrastructure,
13 Congress will move away from direct funding, and
14 will provide states with more flexibility to
15 leverage the use of limited resources through
16 innovative financing techniques.

17 As such, New York must position itself to
18 leverage innovative financing efforts that Congress
19 may avail, such as infrastructure banks and
20 public-private partnerships.

21 New York State DOT, and our partners at the
22 MTA and transit authorities throughout the state,
23 will need all of the tools that are available to be
24 able to leverage federal and state resources.

25 Design-build, and other forms of

1 public-private-partnerships, should be made
2 available to New York State DOT.

3 P3s, which signify a sharing of risks,
4 responsibilities, and funding between a government
5 entity and one or more private-sector partners,
6 encompass a range of relationships.

7 Traditionally, for a highway and bridge
8 projects, New York State DOT uses a design-bid-build
9 approach, where projects are designed, either by
10 New York State DOT or consultants, are put out for
11 bid and are constructed by private contractors. The
12 facilities are then operated and maintained by
13 New York State DOT.

14 Thus, in a sense, New York State DOT already
15 uses a form of public-private partnerships to
16 deliver its projects, but has retained most of the
17 responsibilities and most of the risks associated
18 with project delivery and operations.

19 P3s could range from the less-involved
20 design-build project-delivery techniques, to
21 arrangements where a private entity could design,
22 build, finance, operate, and maintain a facility
23 over an extended period of time.

24 We believe that P3s would be helpful tools
25 to have available as we balance the needs of the

1 transportation system. They would allow for most
2 more leveraging of private-sector expertise and
3 finance.

4 However, it must be noted that these tools
5 would not replace our traditional means of
6 delivering projects, as only certain types of
7 projects would be strong candidates, and
8 appropriate, for P3s.

9 Projects that would lend themselves to P3s
10 need to be able to attract private-sector interests
11 while providing a benefit to the public.

12 Approximately 90 percent of our capital
13 program is devoted to core infrastructure projects,
14 required to maintain the system and a state of good
15 repair.

16 Design-bid-build will continue to be used to
17 deliver the vast majority of our projects, but we
18 believe there is a place, and there are
19 opportunities, for P3s.

20 New York State DOT is particularly interested
21 in the ability to use the design-build
22 project-delivery method. It allows project design
23 and construction to occur under a single contract,
24 and is a tool that has been used widely over the
25 last decade. It is available to approximately

1 40 state departments of transportation around the
2 country.

3 This tool is recognized by the Federal
4 Highway Administration as one of 15 tools it will
5 promote with state DOTs, to accelerate project
6 delivery as part of Federal Highways' "Every Day
7 Counts" initiative. That tool also is used today by
8 the MTA and the Port Authority of New York and
9 New Jersey, and can be expanded to include other
10 forms of P3.

11 A particularly successful use of the
12 design-build-operate-maintain model is the
13 AirTrain/JFK project sponsored by the Port Authority
14 of New York and New Jersey.

15 The AirTrain provided transit access to JFK,
16 and the project broke new ground, both, for
17 innovative financing, as well as for the contracting
18 process. The agency won FAA approval to collect
19 Passenger Facility Charges for this on-airport
20 circulator, and dedicate that to the debt service
21 that was issued.

22 AirTrain/JFK stands out, not only as an
23 example of the flexibility of this approach, but it
24 allowed for coordinating AirTrain's construction
25 with other public works investment in the corridor.

1 New York State DOT and the Long Island
2 Railroad contracted with the same contractor that
3 the MTA used.

4 Bridges are another excellent example of our
5 state's, and the nation's, aging infrastructure.

6 New York led the nation in building more
7 freeways, more than 50 years ago, at the beginning
8 of the Eisenhower Interstate era, making our
9 infrastructure, particularly bridges built during
10 this period, among the first in the nation to age to
11 a point where replacement will become necessary.

12 We see an opportunity to use the design-build
13 technique to address the backlog of
14 bridge-improvement needs.

15 New York State DOT is exploring the
16 possibility of addressing our growing needs for
17 bridge improvements through an accelerated bridge
18 program.

19 Currently, 35 percent of our bridges, nearly
20 6,200 of the state's 17,400 bridges, are rated as
21 deficient. Safe, but not meeting design
22 expectations. Of those bridges, about half are
23 local bridges, 40 percent are state bridges, and
24 10 percent are the responsibility of other owners.

25 I should stress, before I go any further,

1 that the department continues to comply with all
2 federal and state requirements for bridge
3 inspections, and exceeds those requirements when a
4 bridge's condition indicates the need for more
5 frequent inspections.

6 New York State DOT defines a "deficient
7 bridge" as, one with a state deficient rating less
8 than 5. It does not mean that the bridge is unsafe.

9 The average age of a bridge in New York State
10 today is 46 years. The average service life for
11 many of the Interstate-era bridges was 50 years.
12 New York State DOT recognizes that the bridge
13 infrastructure needs are great, and will grow
14 rapidly in the near future without significant
15 investments.

16 Our objective is to reduce the number of
17 deficient bridges by accelerating investment. This
18 would improve bridge conditions across the state,
19 and decrease the overall cost of maintaining the
20 bridge system over time.

21 Addressing the wave of soon-to-be deficient
22 bridges, and bringing those bridges into an ongoing
23 asset management program, improves overall system
24 conditions, and reduces the life-cycle costs of the
25 bridges.

1 We have not determined how such a program
2 would be structured, but other states have
3 undertaken similar efforts to package groups of
4 bridges to accelerate delivery.

5 For example:

6 Missouri's "Safe and Sound Program" is
7 improving more than 800 bridges over a 5-year
8 period, using a combination of design-build, a
9 modified design-bid-build process, and its regular
10 letting program;

11 Pennsylvania's "Accelerated Bridge Program"
12 is rapidly addressing more than 1,000 bridges using
13 design-build.

14 As a first step, DOT, in cooperation with the
15 Empire State Development Corporation, will be
16 hosting a workshop next week, to gain insights and
17 ideas from those with experience in this type of
18 project-delivery selection and finance.

19 New York State DOT also sees the potential in
20 P3 techniques to address uniquely large and complex
21 projects, as well as an opportunity to deploy new
22 technology and innovation, in our transportation
23 network.

24 Examples of large infrastructure projects
25 include: The Tappan Zee Bridge replacement,

1 completion of the conversion of Route 17 to
2 Interstate 86, and the Kosciusko Bridge.

3 The department is also undertaking a study,
4 to look at managed-use-lane strategies in New York
5 City, joining 23 U.S. metropolitan areas that are
6 now operating or implementing managed lanes,
7 considering managed-lanes proposals, or studying
8 their feasibility.

9 Managed lane -- manage-use lanes apply modern
10 technology and real-time traffic information to
11 efficiently manage the movement of traffic. In its
12 more advanced forms, technologies can be used on
13 specific lanes to vary the cost of using the lane,
14 based on the time of day or the number of vehicles
15 in a lane. These are known as "high-occupancy
16 toll," or "HOT," lanes, and can be very effective in
17 allowing reliable travel options in a highly
18 congested area.

19 HOT lanes are in operation in a number of
20 locations throughout the country, including Seattle,
21 Salt Lake City, Denver, and Minneapolis.

22 These strategies could be used in conjunction
23 with high-occupancy vehicle lanes, where those
24 traveling with more passengers in the car could
25 avoid a toll; but, other drivers, valuing time,

1 could opt to pay a toll to use such lanes.

2 Technologies can be applied to vary the cost
3 of the toll, depending on the amount of traffic
4 using the lane.

5 Another possible opportunity could include
6 the state's efforts to bring high-speed rail to the
7 Empire Corridor, between New York City and Buffalo,
8 and other passenger rail to the Empire Corridor,
9 between New York City and Buffalo.

10 It may be possible to engage private-sector
11 railroads and investors, to advance the development
12 of rail improvements.

13 To conclude: P3s do offer possibilities to
14 expand investment options available to New York
15 State DOT, as it balances the many needs of its vast
16 transportation system, with limited resources.

17 All options to maximize and leverage
18 resources should be made available to us. This is
19 particularly true, as Congress, in reauthorizing
20 federal transportation legislation, is considering
21 expanding opportunities to use P3.

22 We should be in a position to take advantage
23 of all funding and financing opportunities. P3s
24 cannot substitute for the need for ongoing, stable,
25 predictable funding needed to maintain the core

1 transportation infrastructure. P3s are financing
2 tools, and can be valuable options to leverage
3 resources for certain types of projects.

4 Most of our needs will continue to be core
5 infrastructure rehabilitation projects that require
6 ongoing funding streams in a stable, dedicated
7 highway-and-bridge trust fund.

8 We welcome the opportunity, and the expansion
9 of the ability, to use P3 and design-build. But,
10 regardless of the tools available to us, New York
11 State DOT will continue to deliver the vast majority
12 of its projects using the traditional
13 design-bid-build approach.

14 Thank you for opportunity. And I'm happy to
15 answer any questions.

16 CHAIRMAN FUSCHILLO: Thank you, Commissioner.
17 And I appreciate your testimony.

18 And we've asked you to come first, because
19 the P3s would greatly affect your department, the
20 department of transportation. And as I outlined,
21 and you did as well, the task ahead is enormous.

22 And your comments are critically important of
23 support for P3s.

24 And, really, that's the goal; to provide the
25 infrastructure in your department, and others, just

1 options, to fund these projects where funding is
2 becoming quite scarce.

3 Do any members have any questions?

4 SENATOR MARCELLINO: Sure.

5 CHAIRMAN FUSCHILLO: Senator Marcellino.

6 SENATOR MARCELLINO: Thank you,
7 Mr. Chairman.

8 Commissioner, welcome. A pleasure to be here
9 to talk to you; to get a chance to talk to you.

10 Your process of design, bid, and build, that
11 you claim is going be the predominant process, going
12 forward, and you identified, I believe, four, either
13 projects, or areas, where P3s might be used.

14 Could you review that again, please?

15 MS. MCDONALD: Sure.

16 SENATOR MARCELLINO: I think it stays on.

17 MS. MCDONALD: Okay, it stays on.

18 Yes, the areas that I identified, and it is,
19 by no means, an inclusive list, I think the message
20 that I'm trying to convey, is that, the use of P3s
21 have to be done on a project-by-project basis.

22 The ones that I identified as examples,
23 potential examples, are the Tappan Zee Bridge, the
24 conversion of Route 17 to Interstate 86, and the
25 Kosciusko Bridge in New York City.

1 I have -- there have been -- the use of
2 public-private partnerships, over the last 20 years,
3 have been used to different degrees of success
4 around the country.

5 So, we have a lot of lessons learned. And
6 I'm sure that the folks who follow me will
7 illuminate some of those examples.

8 Some of the critical points to consider, in
9 determining whether a project is a good candidate
10 for public-private partnership, is: Looking at the
11 size of the project. Identifying what the funding
12 mechanism is, outside of the traditional realm of
13 funding.

14 Some of these successful public-private
15 partnerships have used a combination of, toll
16 revenue, and what are called "availability
17 payments."

18 And those availability payments can mean
19 anything, from an allocation of federal funding
20 dollars that come into the state, dedicated funds
21 from the state's general fund, or a new revenue
22 source.

23 So, each project has to be looked at, in
24 an -- on a project-specific basis.

25 SENATOR MARCELLINO: Right. We're all

1 familiar with the idea of cost overruns, when it
2 comes to construction projects.

3 Some years back, under a prior
4 administration, there were penalties, and rewards,
5 put in for, either, the project coming in
6 over budget, there was a penalty, or the project
7 coming in under budget, there was a reward, to the
8 contractor.

9 Do you foresee that as part of the situation
10 with P3s?

11 MS. McDONALD: I think it absolutely has to
12 be. And that's -- my discussion about the ability
13 to also use design-build project-delivery methods,
14 guaranteed maximum price, have to have components of
15 penalties for projects that go over; and, also,
16 incentives for projects that come in ahead of
17 schedule and under budget.

18 They absolutely have to be part of the
19 equation.

20 SENATOR MARCELLINO: The projects that are to
21 be selected, is size the predominant factor; in
22 other words, the amount of money that the project
23 will cost? Or is there regional significance, or
24 some other aspect?

25 MS. McDONALD: Not necessarily.

1 You know, one of the projects that I
2 personally worked on, when I was at New York City
3 Economic Development Corporation, is the
4 East 34th Street Heliport.

5 And I know someone from Macquarie is going to
6 be testifying a little later.

7 And that was an agreement between the city of
8 New York and Macquarie bank and the operator of the
9 Heliport.

10 And the way we structured that, I believe it
11 was about an \$8 million project, where it was
12 structured in such a way, that the revenues that
13 come off of the Heliport pay for the investments
14 that Macquarie was making. And when the revenues
15 reached a certain threshold, the city of New York
16 and Macquarie split the revenues after that.

17 So, the size is not important. It's, really,
18 getting some creative minds to the table, and being
19 able to look at what the different options are.

20 SENATOR MARCELLINO: This will be my last
21 question, Mr. Chair.

22 "The bid process."

23 I live on Long Island, as you may know.

24 My district is, Nassau; Suffolk, North Shore.
25 We have a project that has been ongoing; on Route

1 110, the northern part of it, which floods.

2 I'm sure you're familiar with it because
3 you're in the courts with it right now.

4 MS. McDONALD: Yes.

5 SENATOR MARCELLINO: This project has been
6 fraught with all kinds of difficulties because, in
7 my mind, of the process.

8 Are you making any changes in the process of,
9 putting out the bids; how the bids are awarded; the
10 time allowed for the people who bid, to make sure
11 that they have a bond, or are capable of putting up
12 a bond?

13 This particular project was delayed by the
14 Governor, during a budget dispute. And, the bond,
15 the person who was the primary bidder, couldn't hold
16 his bond, because he had to go out and get more
17 work. And, by doing so, lost his ability to fulfill
18 his bid.

19 And we're in the courts, now, for over a year
20 and a half, waiting for this project to go forward.

21 Is there any process that you see, any
22 changes in the process that you see, that would
23 prevent something like this from occurring to a
24 community, which is under, literally, water?

25 MS. McDONALD: Right.

1 You know, those are all issues that need to
2 be addressed. And I think that --

3 SENATOR MARCELLINO: well, I know they need
4 to be.

5 will they?

6 MS. McDONALD: well, I hope so.

7 Many of them are statutory provisions that we
8 need to follow. And they are -- some of the issues
9 that you raised, are the issues that are part of the
10 design-bid-build process.

11 We need to work with our partners in the
12 industry, to accelerate that process, and to have
13 some relief in that process.

14 And I am willing to make those changes, that
15 we can do administratively, absent any statutory
16 changes.

17 SENATOR MARCELLINO: well, I'm hoping that
18 you'll be working with Senator Fuschillo and this
19 committee --

20 MS. McDONALD: Absolutely.

21 SENATOR MARCELLINO: -- of which I'm not a
22 member. But, he's allowing me to be a guest here
23 today, and I appreciate that.

24 I don't want to overuse my welcome; but, I'm
25 hoping you'll work with us, so that, if you need any

1 legislative assistance, that you'll come to us early
2 in the process, so that we can do this, because I
3 really do believe the system has to be changed.

4 MS. McDONALD: It does.

5 SENATOR MARCELLINO: It isn't working well,
6 in my mind, and it needs to be.

7 If you're going to make these public-private
8 partnerships work -- and we all hope they do,
9 because I think that is the way to go -- we need
10 some changes in the process.

11 MS. McDONALD: You're absolutely correct.

12 And, unforeseen conditions that change when
13 bid awards get delayed. The price of fuel is
14 affecting contractors' prices.

15 And we need to be looking at ways to make
16 sure that we're responsive to those. And we will.

17 SENATOR MARCELLINO: Thank you.

18 Thank you, Mr. Chairman.

19 CHAIRMAN FUSCHILLO: Thank you,
20 Senator Marcellino.

21 We're also joined by Senator Kennedy and
22 Senator Young.

23 Thank you very much for being here.

24 Senator Golden?

25 SENATOR GOLDEN: Thank you, Mr. Chairman.

1 And I want thank you for putting this
2 forward, this meeting today, in investigating
3 alternative fundings for projects across the state,
4 whether they be public or private. We need to get
5 people back to work, and we need to get this state
6 rebuilt.

7 I know you're funded through, I guess, the
8 end of next year, on your capital program.

9 And, how many P3s are you presently working
10 on --

11 MS. McDONALD: Oh, we are not -- We're not
12 working on any, because we don't have the legal
13 authority to do so.

14 SENATOR GOLDEN: And the authority would have
15 to be granted by legislation?

16 MS. McDONALD: That's correct.

17 SENATOR GOLDEN: Okay.

18 And, going forward, into a new capital
19 program, which would be in a year and a half, the --
20 have you any ideas, as how we're going to fund that?
21 And, what role P3s can play in that, what
22 percentage?

23 CHAIRMAN FUSCHILLO: Take your time, because
24 we're really curious about how you're going to
25 answer this question.

1 [Laughter.]

2 MS. McDONALD: AS I said in my testimony, and
3 as I think, both, our New York congressional
4 delegation, and the congressional -- the totality of
5 Congress, is understanding that the needs for
6 infrastructure investment are greater than the
7 traditional funding sources, that have been
8 outlined, will pay for.

9 So, part of that negotiation, which is a
10 negotiation on the federal level between the
11 President and the Congress, and on the state level
12 between the Governor and the legislature, is:

13 What are the various revenue sources that go
14 into a dedicated fund, here in New York State?

15 And, on the federal level, is it just the gas
16 tax, or is it expanded?

17 And, then, what are the other
18 project-delivery methods to help meet those program
19 needs?

20 It's -- we're never, I don't believe, going
21 to have sufficient revenues to, on a year-to-year
22 basis, meet all the needs that we have. And we're
23 going to have to make tough choices.

24 SENATOR GOLDEN: Commissioner, you're good,
25 Commissioner.

1 You're very good, Commissioner.

2 [Laughter.]

3 MS. MCDONALD: Thank you.

4 SENATOR GOLDEN: The Bayonne Bridge, what
5 role are you playing in that? And, what's the time
6 frame on that?

7 MS. MCDONALD: The Bayonne Bridge is owned by
8 the Port Authority of New York and New Jersey.

9 I actually had a preliminary conversation
10 with Chris Ward, when I saw him last week. And
11 we're going to sit down and look at what role
12 New York State DOT plays in that.

13 SENATOR GOLDEN: And the Outerbridge?

14 MS. MCDONALD: Outerbridge, I have not been
15 as familiar with it. I know that's also owned by
16 the Port Authority.

17 SENATOR GOLDEN: And, P3s; how could P3 play
18 a role in the Kosciusko Bridge? And it can't be a
19 steady stream, they've got a toll lab.

20 How do you work out a P3 on a bridge in such
21 deterioration, as that bridge, that needs immediate
22 rebuilding?

23 MS. MCDONALD: Well, that's -- that's, I
24 think, what we would explore as part of a
25 conversation, with the legislature, with the

1 financial community, to see what the different
2 revenue streams would be to pay for -- to help pay
3 for it.

4 It would, you know -- and it's a little bit
5 of a "chicken and egg" discussion, because it's,
6 "Okay..."; and the discussions with financial
7 community, it's, "Okay, what infusion of dollars can
8 be put in at the front end?"

9 And, then: what's the -- and what's the cost
10 of those dollars? who can issue debt more cheaply?

11 And, then: what is the revenue stream to pay
12 for it? whether it be availability payments,
13 whether it be different revenue streams.

14 Those are things that we're looking at right.

15 SENATOR GOLDEN: Last question

16 Mr. Chairman.

17 The -- I know you're looking for a more
18 steady stream of funding going into your projects.

19 P3, obviously, is not the best choice for
20 you, but do work.

21 Again, if you could, what role do you think
22 P3s will play into your new budget?

23 MS. MCDONALD: You know, I think, as I said,
24 traditionally, while the interstate was being
25 built -- 50, 60, 70s, into the last -- right now,

1 into this century -- traditionally, the federal gas
2 tax, and states, the funding stream has been
3 sufficient.

4 But, now, that revenue stream is no longer
5 sufficient, so we need to have every available tool
6 in our toolbox to pay for projects. And that
7 includes, design-build, guaranteed maximum price.
8 It includes the ability to structure P3s, however
9 they're structured.

10 And there are different models throughout the
11 country, that have been used, so we can get, as many
12 of you said, people back to work, and as we can make
13 those investments in our infrastructure.

14 We believe alternate project-delivery methods
15 will account for, somewhere between, 10 to
16 20 percent of our total project needs.

17 SENATOR GOLDEN: Because you would be -- just
18 to back up.

19 Because you would have access, obviously, to
20 funding, even, probably at a lower interest rate, if
21 the money were direct. But P3s, obviously, are
22 going to play a significant --

23 MS. McDONALD: Exactly. Exactly.

24 SENATOR GOLDEN: -- because you don't have
25 the availability for that.

1 Thank you very much.

2 MS. MCDONALD: Thanks.

3 CHAIRMAN FUSCHILLO: Thank you very much,
4 Senator Golden.

5 Senator Diaz?

6 SENATOR DIAZ: Thank you, Mr. President.
7 And, good morning.

8 MS. MCDONALD: Good morning.

9 SENATOR DIAZ: I just have one question.
10 It's regarding a project in the Bronx.

11 For many years, we've have had a story, after
12 story, after story, a group here, and a group there.

13 Can you tell me what the status of the
14 project on the Sheridan Expressway in the Bronx?

15 MS. MCDONALD: Yes.

16 There, the Sheridan-Bruckner Expressway has a
17 very interesting history, and will have some -- has
18 some issues, going forward.

19 You know, it's a major feeder. And to the
20 Hunts Point's -- Hunts Point market, it is a
21 very-much-used route within our interstate system.
22 It needs significant repairs.

23 I believe that it is an interstate system
24 that is required to continue, that traffic, and to
25 make the city of New York viable.

1 Right now, the city of New York is
2 undertaking a study, to look at what the land use
3 around the Bruckner-Sheridan should be. And we are
4 participating in that study.

5 It's not an easy answer, because it's a
6 highly residential area, the Hunts Point area.
7 There are significant infrastructure facilities
8 there, in addition to the Bruckner-Sheridan, and
9 they all have to be looked at cohesively.

10 But, right now, we are continuing to make the
11 investments, to make sure the infrastructure is
12 safe.

13 SENATOR DIAZ: I believe that so many studies
14 have been made; have -- has been done.

15 And now they have \$7 million from the federal
16 government, and I go: why is it that, after so many
17 studies?

18 And I know that you're having the city of
19 New York get the \$7 million to do another study,
20 when so many studies have been done.

21 And I think more than seven studies already
22 have been done on this issue.

23 So, we're spending another 7 million to do
24 another study, to do, what, exactly?

25 MS. McDONALD: The city of New York wants to

1 very closely look at, whether the land-use patterns
2 should be changed, and what those land-use patterns
3 would do to both the residential community, the
4 business community, and the highway infrastructure
5 that we have there.

6 We, as you know, have undertaken
7 environmental reviews. It is, very much, a
8 hot-button issue because of the demanding -- the
9 competing demands for parkland, for a community that
10 does not have significant parklands. But, also, the
11 Bruckner-Sheridan is a significant artery and feeder
12 to the interstate system.

13 SENATOR DIAZ: So, you are not washing your
14 hands out of the project?

15 MS. MCDONALD: No, not at all.

16 SENATOR DIAZ: You're still a full partner on
17 this? You're still fully involved?

18 MS. MCDONALD: Oh, absolutely. I'm still
19 fully involved.

20 SENATOR DIAZ: Is the community groups and
21 elected officials being consulted?

22 MS. MCDONALD: I do not believe -- I'm not
23 exactly sure where the city is, in kicking off its
24 study. But I will --

25 SENATOR DIAZ: I thought you just said that

1 you are fully involved on it?

2 MS. McDONALD: Well, our department is fully
3 involved.

4 SENATOR DIAZ: But I'm asking you, as the
5 commissioner --

6 MS. McDONALD: I have --

7 SENATOR DIAZ: -- have the community groups
8 and the elected officials have been consulted --

9 MS. McDONALD: -- not by me --not by me
10 personally. But I will double-check with Phil Lang,
11 my Region 11 director.

12 And I'm happy to meet with the community
13 groups.

14 SENATOR DIAZ: Thank you.

15 CHAIRMAN FUSCHILLO: Senator Dilan?

16 SENATOR DILAN: Yes, good morning,
17 Commissioner.

18 MS. McDONALD: Good morning, Senator.

19 SENATOR DILAN: I believe Senator Golden may
20 have asked this question, in reference to the
21 Kosciusko Bridge, but I feel I would be remiss if I
22 don't follow up.

23 I know I have been here in the senate for
24 nine years, and we've been talking about some form
25 of reconstruction of this bridge for at least --

1 prior to those nine years.

2 I just want to know, you know:

3 what incentives would there be for a private
4 entity to get involved with the Kosciusko Bridge,
5 without the state giving away the asset, and a final
6 result of not increasing any costs to the consumers
7 that go over that bridge daily?

8 And, in terms of the legislation, how do we
9 prime-start this, and just move forward?

10 So, if you could be a little more specific,
11 with reference to this project.

12 MS. MCDONALD: You know, one of the things
13 that has to be looked at, and which is why I
14 mentioned that, when you make a decision -- when
15 government -- executive branch, legislative
16 branch -- make a decision to undertake a
17 public-private partnership, it must be done on a
18 case-by-case basis.

19 You know, right now, we have a very
20 preliminary estimate of what the Kosciusko Bridge
21 would take to rehabilitate and replace it. And
22 given the fiscal constraints of our capital program,
23 we would have to break that project up into,
24 somewhere between, four and seven projects to get it
25 completed.

1 Now, when you break a big-dollar project into
2 smaller projects, they take more time. And time is
3 money.

4 So, one of the things that we would have to
5 do, a cost comparison, is: Okay, if you do that,
6 what would be the additional cost of doing that? --
7 number one.

8 Number two: If you did it, and you couldn't
9 do it just as a public-private partnership, you
10 would have to do it as a design-build, or at a
11 guaranteed maximum price.

12 One of the incentives for the private sector
13 is, if it's structured in a way that it is an
14 availability payment, they get a steady stream of
15 revenue over, whether it's a 99-year concession
16 agreement; whatever the term of the agreement is.

17 So, there are various incentives and
18 disincentives that would have to be looked at, from
19 a public-policy standpoint, to make a decision if
20 this is the right way to go.

21 SENATOR DILAN: So, at this point, it really
22 behooves us to move at a quicker pace to get some of
23 these projects undergoing because, as time goes by,
24 you have increased costs of material and labor.

25 So, how do we get this going?

1 MS. MCDONALD: Well, I think that's what
2 we're doing here today.

3 And in the construction -- in the
4 construction business, particularly, the
5 heavy civil/public works, speed is always of the
6 essence, which is why, in addition to the financing
7 methods that I spoke about today, that the project
8 delivery and design-build is critically important,
9 because that moves some of the risk from the public
10 sector to the contractors. But, contractors, by
11 their nature, take on risk, and they would get the
12 projects done more quickly, particularly with the
13 right incentives/disincentives.

14 SENATOR DILAN: Thank you.

15 CHAIRMAN FUSCHILLO: Thank you very much,
16 Senator Dilan.

17 Senator Young?

18 SENATOR YOUNG: Thank you, Mr. Chairman.
19 Good morning, Commissioner.

20 MS. MCDONALD: Good morning, Senator.

21 SENATOR YOUNG: Thank you for coming today.

22 First of all, I want to commend you for your
23 openness to exploring public-private partnerships.
24 I think we do need solutions to the current
25 situation. And as you said, we'll never have enough

1 money unless we start to do things differently.

2 I just want to draw to your attention again,
3 I sent you a letter recently, about the condition of
4 Interstate 86 in Cattaraugus County. And we're very
5 glad that there is a portion of the road that's
6 being reconstructed this year.

7 But, I have to tell you, that I get calls
8 every single day from people who travel on that
9 stretch of highway, that is along the reservation.
10 And people are getting damage to their cars.
11 There's chunks of concrete flying up. People are
12 getting flat tires. And, it's really very
13 dangerous.

14 So, I was hoping, at some point, you could
15 come out and visit us, and maybe take a drive and,
16 you know, to see, firsthand, what we're dealing
17 with, because people are very, very concerned in my
18 district.

19 And, actually, people are concerned as they
20 travel across the Southern Tier for tourism
21 opportunities and other travel experiences this
22 year.

23 MS. McDONALD: Yes, I am happy to do that.

24 I haven't been out to Buffalo yet, and the
25 Southern Tier, but I will put that on my list, and

1 be out there quickly.

2 SENATOR YOUNG: That would be great. Thank
3 you so much.

4 MS. MCDONALD: Thank you.

5 SENATOR YOUNG: The other thing that I wanted
6 to mention, briefly -- and I'll give you a call on
7 it too -- but, you may know that, a lot of our small
8 rural towns have parades every single year, on state
9 roads, because the state roads goes through the
10 towns. And there seems to be a new requirement put
11 in place by DOT, that requires them to purchase \$5
12 million insurance policies; umbrella policies. And
13 I think a lot of the smaller towns are unable to do
14 it.

15 So, I have, for example, one coming up,
16 Memorial Day Parade, where they want to honor our
17 veterans. And I would love to discuss it with you
18 more, because it seems like a little bit of an
19 excessive requirement by DOT. And it's, really, I
20 think, could cause some issues this year.

21 So, I'm hoping that we can discuss it, and
22 come up with some kind of resolution on it.

23 MS. MCDONALD: Yes, we will absolutely take a
24 look at that, because, you know, I think, as you're
25 well aware, you know, Governor Cuomo has made

1 mandate relief, along with all of you in the
2 legislature, a top priority. So, we don't want to
3 add a burdensome mandate at the same time as we're
4 working on eliminating others.

5 So, we're happy to take a look at that.

6 SENATOR YOUNG: Thank you, Commissioner. I
7 really appreciate it.

8 CHAIRMAN FUSCHILLO: Commissioner, thank you.
9 Thank you, Senator Young.

10 Senator Smith?

11 SENATOR SMITH: Thank you very much,
12 Mr. Chairman.

13 Good morning to my colleagues.

14 Good morning to those of you in the audience
15 who are going through a very important hearing on
16 the future of financing our infrastructure.

17 Commissioner, it's good to see you.

18 Commissioner Gee, also good to see you.

19 Commissioner, when you were in Connecticut,
20 were there any P3 projects that you were involved
21 with or had any experience in?

22 MS. MCDONALD: Not on the direct
23 transportation level. I was not the commissioner of
24 transportation. I was the commissioner of economic
25 and community development.

1 But, one of the things that we did --
2 housing, was also in my portfolio -- was work with
3 the cities and towns, and did a public-private
4 partnership in sustainable communities.

5 And one that quickly comes to mind was in the
6 city of New Haven, where the state invested funding
7 in brownfields remediation and streetscape
8 improvements.

9 A public entity -- a private entity/a
10 business that wanted to expand, made an investment,
11 and the city of New Haven and Yale University made
12 an investment, to add 130 jobs to a base of
13 100 jobs, and provide low- and mixed-income housing.

14 So, you know, public-private partnerships can
15 be done in a number of different ways. I think they
16 are particularly relevant, when you look at
17 development around train stations, when you can use
18 a TIFIA-model tax-increment finance.

19 That, was done.

20 We did another one, again, in New Haven,
21 360 State Street, which was a LEED-certified
22 building. And it was an -- and the major investor
23 was the -- was Ontario, Canada, their teacher's
24 pension fund. And pension funds are now getting
25 into the business of making infrastructure

1 investments, and participating in that.

2 So, there are many different models,
3 depending on the individual project.

4 SENATOR SMITH: All right.

5 In the project that you -- that you were
6 involved with, what would you consider the
7 number one challenge, from the perspective of the
8 legislative branch being involved with the process?

9 MS. McDONALD: The ones that I was involved
10 in, because it was a combination of private
11 business, was getting -- was getting public
12 acceptance from legislators, that those types of
13 investments should be made to the private sector.

14 But, when they result in job creation, when
15 they result in mixed-use housing, when they result
16 in investments in the infrastructure, I firmly
17 believe that that's the way to go.

18 And it just takes people a little bit of
19 getting a comfort level.

20 SENATOR SMITH: Uh-huh. Uh-huh.

21 And, in your opinion, was the legislative
22 branch an inhibitor to the acceleration of the
23 process? Did it add an unnecessary level of
24 bureaucracy to --

25 MS. McDONALD: Oh, no, not at all. They were

1 very much in support of it.

2 SENATOR SMITH: Uh-huh.

3 So, the financing of the project, was this
4 done through a P3, or through an infrastructure
5 bank?

6 MS. MCDONALD: It was done through -- it
7 wasn't done through an infrastructure bank. It was
8 done through a P3, that entailed, what we called in
9 Connecticut, you know, "an assistance agreement,"
10 which was an agreement between the department of
11 economic and community development, the private
12 parties, the city of New Haven.

13 So, it was an assistance agreement that went
14 through the process.

15 SENATOR SMITH: Okay.

16 Okay, just to shift a little bit: The
17 current reauthorization that's being negotiated now
18 in Washington, are we involved in any way with that
19 reauthorization? Have we provided them with some
20 recommendations, as we look forward to becoming part
21 of this initiative?

22 MS. MCDONALD: Yes, we have.

23 In March, I testified in Cortland, New York,
24 when Congressman Mica had his -- March, or early
25 April, when Congressman Mica had his Listening Tour,

1 to gain input from localities around the country as
2 to what was important.

3 I personally have been down in D.C., three or
4 four times. My staff has been down there; DOT
5 staff. We have met with our congressional
6 delegation, Congressman Mica's staff,
7 Senator Boxer's staff, to share information on
8 streamlining the process.

9 SENATOR SMITH: And what is -- I mean,
10 obviously, you can't summarize all of your
11 testimony, but what is the two leading areas of your
12 testimony towards how they can better streamline the
13 reauthorization?

14 MS. McDONALD: The way we can better
15 streamline the reauthorization, is consolidating all
16 of the environmental reviews under one review.

17 Right now, within USDOT, the federal highway
18 has its process for environmental review, Federal
19 Transit Administration has its process for review,
20 and Federal Railway Administration and FAA have
21 their individual processes.

22 So, one process for environmental review is
23 significant.

24 And some of the other areas that we're
25 looking at are, combining the various discretionary

1 programs that USDOT administers into -- there are
2 55, down into 6 or 7, so that we can then generate
3 more funding.

4 SENATOR SMITH: The difference between P3 and
5 infrastructure bank, could you help me understand
6 which would be better for transportation? Or, one
7 better for commercial economic development?

8 MS. MCDONALD: You know, I think -- I think
9 they are both necessary.

10 SENATOR SMITH: Uh-huh.

11 MS. MCDONALD: And I think we would be happy
12 to have both of them.

13 SENATOR SMITH: Uh-huh.

14 Just a few couple others, Mr. Chairman.

15 In your testimony, just to summarize, page 2,
16 you talked about traditional highway projects.

17 MS. MCDONALD: Uh-huh.

18 SENATOR SMITH: And that these are operated
19 by the DOT.

20 Plus, "Already uses a form of public-private
21 partnership to deliver projects, but retains most of
22 the responsibility and risks associated with the
23 project delivery and operation."

24 So, by that statement, are you saying that,
25 assuming DOT is authorized to do P3s, one of the

1 better benefits of it would be, that you wouldn't
2 have to maintain the risk of the project thereafter,
3 and worry about operation delivery, being that the
4 private sector might do it better?

5 MS. MCDONALD: No. It's really a sharing of
6 the risk.

7 SENATOR SMITH: Uh-huh.

8 MS. MCDONALD: Right now, in the traditional
9 design-bid-build, basically, what happens is, a
10 project gets to 100 percent design, and then we go
11 out to bid with that project. We award it to the
12 low bidder.

13 As Senator Marcellino pointed out, things
14 happen, where projects don't get awarded, and then
15 unforeseen conditions come up, the price of fuel
16 changes.

17 And we don't have the latitude to do things
18 any differently.

19 And by having P3, by having design-build, we
20 would shift some of that risk that falls directly on
21 our shoulders, to the contractors.

22 Only in those specific projects, where we
23 enter into an agreement with a private-sector
24 entity, to do design, build, operate, and maintain,
25 would the responsibility for operating and

1 maintaining go from State DOT to another entity.

2 We would still maintain all of our
3 responsibility for operating and maintaining the
4 infrastructure in this state.

5 SENATOR SMITH: And, obviously, you are
6 expecting the question about high-speed rail from
7 me.

8 MS. MCDONALD: Of course.

9 SENATOR SMITH: So, I will -- I don't want to
10 disappoint you.

11 Could you, just briefly, if you have already
12 thought about it:

13 When will the high-speed rail, the financing
14 thereof, understanding the costs -- understanding
15 the potential cost of it, whether or not it would be
16 better financed through a P3 or an infrastructure
17 bank?

18 And, then, is it better operated with a
19 separate entity?

20 And, obviously, that's with the understanding
21 of the Sage Commission and government efficiency and
22 consolidation; but, a separate entity, or a
23 sub-entity to the DOT?

24 MS. MCDONALD: Well, as you know, because you
25 were there last week, last Monday, New York was the

1 beneficiary of over 350 million in federal dollars
2 from the reallocated Florida money. And we were
3 the -- the state, we got the highest amount of
4 funding in that \$2 billion that was reallocated.

5 You know, I think in the area of rail,
6 whether it's inner city or commuter, different
7 models have to be looked at.

8 I mean, Amtrak was traditionally set up to
9 not have any subsidies involved. And that has not
10 been the case.

11 So, I think we're looking at different models
12 to see what would work.

13 I don't think that there is a model yet in
14 this country, where there is an operation of rail --
15 commuter, high-speed, inner city -- that hasn't come
16 without a subsidy of some sort. But I think the
17 goal is to minimize the subsidy, to the extent
18 possible, on the operation.

19 SENATOR SMITH: All right, thank you,
20 Mr. Chairman.

21 Thank you very much, Commissioner.

22 Thank you.

23 CHAIRMAN FUSCHILLO: Thank you, Senator.

24 And let me just follow up on a comment that
25 you had made, and Senator Dilan, about the process.

1 One of the things I believe that's critically
2 important, as we move forward, is to make New York
3 State attractive; if we're going to do P3s,
4 design-build, or infrastructure bank.

5 And that's what I took out of a panel that I
6 recently sat on, with the New York City Building
7 Congress, that Dick Anderson heads up. And
8 Sam Baron was there, and Mary Peters, as well as
9 others.

10 And the individuals in the audience, their
11 comments, and even during the roundtable, and after,
12 stated, "It has to be attractive."

13 And we're not going to invest if there's
14 any -- and to follow up with what you had said, any
15 impediments for us to invest and do business here.

16 And one of the things, that I think is
17 critical, Senator Smith, as we move forward, is
18 that, we don't provide any impediment to do business
19 here, as far as the legislature, and make sure the
20 process goes as smoothly as possible.

21 And Senator Dilan had talked about an
22 expedited process.

23 I'm hopeful the senate will pass legislation
24 before we conclude the session this year, and give
25 you what's necessary, whether it's, P3s,

1 design-build, and however you phrase design-build,
2 and the infrastructure bank, just to give you
3 options.

4 MS. MCDONALD: Uh-huh.

5 CHAIRMAN FUSCHILLO: Because, as we laid out,
6 and you laid out in your testimony, the challenges
7 are enormous. And these economic conditions are
8 dictating that you have these options through P3s,
9 and other available sources, to make sure that our
10 infrastructure is maintained in a safe and reliable
11 manner.

12 So, I want to thank you.

13 And I also want to introduce, and thank,
14 Stan Gee for being here, to your right.

15 I appreciate, Stan, your hard work as well.
16 Commissioner, thank you very much.

17 MS. MCDONALD: Thank you so much, Senator.

18 TESTIMONY OF PETER GRANNIS

19 FIRST DEPUTY COMPTROLLER

20 OFFICE OF THE NEW YORK STATE COMPTROLLER

21 CHAIRMAN FUSCHILLO: Our next speaker is our
22 former colleague, Assemblyman Pete Grannis, who is
23 the first deputy comptroller of the comptroller's
24 office.

25 Good morning, Pete. And, thank you very much

1 for being here.

2 MR. GRANNIS: Thanks, Senator.

3 CHAIRMAN FUSCHILLO: Michael?

4 Thank you.

5 [Pause in proceeding.]

6 CHAIRMAN FUSCHILLO: Pete, this is not your
7 testimony, is it, this book?

8 MR. GRANNIS: No, it is not.

9 It's a report --

10 [Laughter.]

11 CHAIRMAN FUSCHILLO: Okay. Remember, you
12 used to sit up here.

13 MR. GRANNIS: I do remember, Senator.

14 And I'm very mindful of the time pressures,
15 and boring recitations from people that say they're
16 going to be contemporaneous in their speech, and
17 then make it longer than they --

18 CHAIRMAN FUSCHILLO: well, that took up
19 another minute of your ten minutes.

20 [Laughter.]

21 CHAIRMAN FUSCHILLO: I want to thank you for
22 being here on behalf of our state comptroller,
23 Tom DiNapoli. Your input is critically important to
24 this hearing.

25 So, thank you very much.

1 MR. GRANNIS: Thank you very much, Senator.
2 And I'm pleased to be here, obviously, on behalf of
3 the comptroller.

4 And, obviously, you are well aware, we have
5 extraordinarily difficult financial problems in the
6 state, a massive backlog of unmet infrastructure and
7 capital needs, and limited funds to pay for them.

8 I just want to make sure you know, I'm joined
9 by Tom Letito, who's the deputy comptroller; and,
10 Steve Elliot, who actually was the principal author
11 of the report that you have before you.

12 In large measure, New York's growing gulf
13 between available funding and infrastructure and
14 capital needs is the result of the state's heavy use
15 of debt for non-capital purposes, as well as to
16 finance its capital program.

17 As of March 31, 2011, New York is projected
18 to have more than \$9 billion in outstanding debt --
19 state-funded debt -- that was issued for non-capital
20 purposes. The cost of that to the taxpayers, in
21 this year's budget, is over a billion dollars in
22 interest payments.

23 Even though the Debt Reform Act of 2000
24 restricted the use of state-supported debt for
25 capital purposes, over \$7 1/2 billion has

1 been issued for non-capital needs since the law's
2 enactment.

3 As the state's debt has grown, so too have
4 New York's capital needs. You're well aware of
5 those.

6 We projected, over the next 20 years, for
7 just three areas of transportation, which you're
8 focusing on today, waste water -- municipal waste
9 water, and clean water, the capital needs are,
10 roughly, \$250 billion. A daunting figure in any
11 circumstance.

12 Given the state's limited capacity for
13 meeting its capital needs, it's not surprising that
14 the Governor and you are considering public-private
15 partnerships, where government allows the private
16 sector to weigh in with their resources and business
17 acumen, to address our many, many capital needs.

18 The concern we have is, in the haste to move
19 forward, there may be a tendency for government
20 decision-makers to view P3s as a magic bullet. And
21 they're certainly not that.

22 There is experience across the country, and
23 around the world, with P3s, where there have been
24 problems. And, obviously, the focus on those
25 problems is the subject of the report that we

1 presented to you.

2 while P3 agreements have the potential to be
3 attractive alternative means of constructing and
4 maintaining facilities, and providing services,
5 there are many important questions that need to be
6 answered, and risks associated with public-private
7 financing structures, that must be taken into
8 consideration before New York turns to P3
9 arrangements to fill the gap in its infrastructure
10 needs.

11 while the private-sector entities may
12 shoulder a share of the costs and risks associated
13 with the project of service, the introduction of
14 private profit motive into the public's cost
15 equation requires the state to proceed with caution,
16 and foresight, when considering P3s.

17 In January, the comptroller issued a report
18 on this issue -- which I provided you a copy of --
19 which examined, both, the opportunities presented
20 with public-private partnerships, and the
21 underlining financial risks associated with forming
22 those partnerships.

23 The report focused on the importance of
24 creating an effective framework and structure to
25 review P3s -- potential 3 -- P3 projects, to help

1 policymakers avoid some of the mistakes that we have
2 identified, here in this country, and elsewhere in
3 the world.

4 There are four primary financial risks
5 associated with the P3 model.

6 First, there's been the failure to identify
7 the full value of public property. P3 agreements
8 may underestimate the value of public assets.

9 It's a very complicated issue, the value of
10 public assets, and making a determination whether a
11 P3 arrangement is the appropriate way to go forward,
12 and what the financial arrangements are to be
13 associated with that.

14 They have been -- particularly, since many of
15 the functions that the P3 will be undertaking, are,
16 historically, done by not-for-profit basis, or
17 government which there hasn't been a profit motive.

18 Obviously, the value of the public asset has
19 to be a key component of any decision-making
20 process.

21 Unfavorable pricing mechanisms are another
22 risk, a very serious risk, that -- where there are
23 contractually guaranteed commitments, an increase on
24 user fees.

25 And one of the examples we have in the report

1 is, the Illinois Tollway, which locks in fee
2 increases, toll increases.

3 Had those increases been locked in to the
4 Thruway Authority, when we built the thruway, our
5 fee increases would have been many multiples of
6 what's available to the drivers of -- what's going
7 to be facing the drivers of Illinois.

8 So, obviously, building in, and having a full
9 realization of what the pricing mechanisms are, and
10 what that means for the consumers, that they're
11 going to be using the resources, as projects are put
12 under the auspices of the P3 arrangements.

13 There are, also, unrealistic expectations,
14 and poorly drafted agreements, that have led to
15 problems in the past.

16 Obviously, there is a very critical need to
17 outline the private-partner's obligations, very
18 clearly, and adequately, with full appreciation of
19 what they mean to the taxpayers of New York.

20 And, finally, there's a concern about budget
21 gimmicks.

22 Obviously, in some instances in the past, P3
23 arrangements have been used to generate past cash --
24 up-front cash, which has been used to close budget
25 gaps, on the short-term basis, rather than a full

1 appreciation of the lifetime -- or, many, many
2 decade commitments some of these projects may
3 entail.

4 So, the important -- the comptroller's report
5 recommended four essential principles that New York
6 must adopt before entering into P3 partnerships, to
7 mitigate the inherent financial risks.

8 It has to be:

9 An identification and use of best practices
10 for the valuation of the public assets, to ensure
11 that the public receives the full fair value of the
12 use of its property.

13 Reasonable pricing. We have to keep the
14 private-sector profits within reason.

15 I know there's a built-in incentive, because
16 you're going to get the private sector involved.
17 They're going to need to make a profit.

18 But, those profits have to be clearly
19 understood, and locked in, because, by contractual
20 arrangements, at least in some instances, these
21 increases are automatic. They're beyond the reach
22 of the legislature or the Governor. And, obviously,
23 you can have very, very major impacts on the
24 consumers that rely on these projects, as they go
25 forward.

1 They have to be realistic agreements, and
2 publicly vetted agreements, as they are developed.
3 And that's almost a given today.

4 And there has to be responsible budgeting;
5 because, obviously, when you get done with this
6 exercise, there has to be a comprehensive reform of
7 the state's debt-and-capital financing practices,
8 which the comptroller has called for in the report
9 that he issued last year. And it's the subject of a
10 bill that we submitted as a comptroller's program
11 bill to you for this year's session.

12 So, again, before authorizing P3s, the
13 Governor and the legislature, at the comptroller's
14 suggestion, must strongly recommend the adoption of
15 policies, and a framework, for P3s; rather than a
16 review of projects on an ad hoc basis.

17 There has to be a plan, going forward, on how
18 these are going to be factored into the state's
19 budget.

20 And, the decision-making process is,
21 obviously, very, very essential.

22 So, we actually call on you to adopt a
23 comprehensive plan for the integration of
24 public-private partnerships into New York's budget,
25 capital financing, infrastructure-planning

1 procedures.

2 Obviously, that will go a long way towards
3 solving some of the problems we've identified in the
4 report that we submitted.

5 Again, P3s are attractive alternatives.
6 They provide resources that are not available today
7 for meeting the state's needs.

8 There's nothing magic about P3s. They're
9 not a silver bullet. They won't necessarily solve
10 all problems.

11 And to, clearly, well-thought-out -- a
12 well-thought-out, comprehensive approach to looking
13 at P3s, generically, before you move ahead into
14 the individual project design, build; however they
15 choose to go ahead, it will be critical, for making
16 sure they work to the public's advantage in
17 New York.

18 With that, Senator, thank you very much.

19 CHAIRMAN FUSCHILLO: Okay, thank you very
20 much.

21 And your testimony is very important.

22 And I agree with you; I think it's our job to
23 set the framework for P3s, rather than be
24 project-specific.

25 So, I appreciate your comments on the risks

1 that are involved with this.

2 But, that's our goal; to set an overall
3 framework, rather than drive specific projects.
4 And, hopefully, we'll attain that goal as we move in
5 the legislative process.

6 Senator Marcellino, you have some questions?

7 SENATOR MARCELLINO: Yes. Thank you,
8 Senator.

9 Pete, welcome. Good to see you in a slightly
10 different role; but, good to see you again.

11 MR. GRANNIS: Thank you.

12 SENATOR MARCELLINO: On the basis of the
13 testimony, and what I've quickly gleaned from
14 reading the -- you know, just the blurb, I'm ready
15 to rename the comptroller's office, Cassandra's
16 office.

17 What are the good parts? What does the
18 comptroller see as the potential?

19 I mean, you've listed -- and that's good; I'm
20 glad you did -- pointing out what the risks are, and
21 what you recommend that the legislature should look
22 at.

23 But, what do you foresee; what does the
24 comptroller's office foresee, as the positives to
25 public-private partnerships?

1 MR. GRANNIS: well, I think some of those
2 were described by the transportation commissioner.

3 Some of them have been --

4 SENATOR MARCELLINO: well, I want to know
5 what you see.

6 MR. GRANNIS: -- referenced by the Governor.

7 Obviously, there's a benefit toward tapping
8 the availability of resources, that we don't have in
9 New York State, for doing things that are critically
10 important for the state's future.

11 And, so, if the public -- if the private
12 entities are interested, and willing to participate
13 with government on a partnership basis, clearly,
14 there's a positive aspect of that, that provides,
15 again, an opportunity to do things that we, in our
16 best days, are not going of be able to do in the --
17 at least for decades ahead.

18 So, bringing in public -- the private-sector
19 business, entrepreneurship, using the profit motive,
20 using their incentives and their business acumen, to
21 do projects that are important to us, under guidance
22 that we provide, I think is a very positive step.
23 And the comptroller, you know, understands that.

24 And, really, in the testimony today, Senator,
25 and the report, it wasn't meant to play the role of

1 Cassandra. It was really to set out the concerns
2 that have been identified in public-private
3 partnerships. And even with some of the
4 investment/infrastructure bank issues that have been
5 talked about in the past.

6 But, in no way, is meant to throw cold water
7 on the availability of public-private partnerships,
8 should that be the direction that you and the
9 Governor choose to go in.

10 SENATOR MARCELLINO: If you had your
11 druthers, and could point your finger at a
12 particular piece of advice, or role, or piece of
13 legislation, that might move the process forward in
14 a more direct, or better way, what would it be?

15 MR. GRANNIS: Again, it's -- I would -- I
16 guess, from the comptroller's perspective, would be,
17 not to focus on a project-by-project approach; which
18 is, I know there are great big projects that are
19 moving ahead quickly, and that are on the drawing
20 board today. But, to try to use the next few weeks,
21 to fashion a framework for how that process is
22 actually going to work, and the risks associated
23 with hasty decisions.

24 And I would just point you to the
25 infrastructure bank-financed project of the

1 Fast Ferry in Rochester, which turned out to be less
2 than valuable to the taxpayers. In fact, we ended
3 up owning the Fast Ferry, by default, after pumping
4 a lot of money into the project. That was an
5 infrastructure bank-type project, with federal
6 money.

7 Again, I think, in hindsight -- hindsight is
8 always very helpful here -- it was not a
9 well-conceived and well-thought-out project.

10 So, the framework of how you decide to move
11 ahead, I think, is going to be more important, at
12 least from the comptroller's perspective, than the
13 actual process on a project-by-project review.

14 SENATOR MARCELLINO: So, if I could, and my
15 last point would be: If you were -- I don't want to
16 put words in the comptroller's mouth, but, Tom would
17 never let me do it anyway.

18 But, your recommendation to this committee,
19 and to the legislature, would be: Take your time,
20 and do it right? Make sure that you have got -- you
21 have covered all of your bases?

22 MR. GRANNIS: I think, whatever time it
23 takes, Senator. I know you have the capacity to
24 move quickly. It's, just, to make sure that it's
25 right.

1 SENATOR MARCELLINO: Got you. Thank you.

2 CHAIRMAN FUSCHILLO: Thank you.

3 Senator Zeldin?

4 SENATOR ZELDIN: Thank you, Mr. Chairman.

5 I actually had some questions, that I'll get
6 to in a second.

7 But, Senator Marcellino's question, just, I
8 guess I have to follow up on.

9 I mean, he's asking if the comptroller's
10 office has any ideas with regards to how to utilize
11 public-private partnerships, to save the state
12 money, and close these deficit needs, as we go
13 forward.

14 I'm not sure if -- if it was the way
15 Senator Marcellino asked; but, are -- does the
16 comptroller's office have any specific ideas on how
17 to use public-private partnerships to save money?

18 Because, it sounded like the answer might
19 have been no.

20 MR. GRANNIS: Again, Senator, I guess it's --
21 it wasn't meant to be a -- sort of a hard no. But,
22 our role, historically, has been to -- to provide
23 guidance, and not necessarily to lead on these types
24 of issues.

25 Obviously, we understand, and are engaged, as

1 we showed with the report, that we understand these
2 issues, that we have studied them carefully.

3 Steve actually spent a great deal of time
4 putting together this report. But, I'm not sure
5 that we have recommendations on, specifically, how
6 to go forward.

7 We have, obviously, have laid out the
8 framework for the areas that need to be addressed,
9 and are prepared to work with the legislature, to
10 see whether or not, what you're working on, and what
11 we are worried about, coincide.

12 SENATOR ZELDIN: And I certainly appreciate
13 the concern, and thought, that's been put into this,
14 and in the presentation that you provided us,
15 actually, dated back to January.

16 I think that the state, in many ways, needs
17 that leadership. And if there are any good ideas --
18 I mean, you reference, that, you know, for example,
19 Commissioner McDonald has some good ideas with
20 regards to the -- with regards to DOT, during her
21 presentation.

22 You are privy to so much information on
23 specific projects, all throughout New York State.
24 And if you do see good opportunities, I think it is
25 important to get behind them. I think the state

1 needs that leadership.

2 MR. GRANNIS: I will just comment, Senator,
3 very briefly: From my prior role, one of active
4 areas of, what comes close to a public-private
5 partnership, is the work of private entities, to pay
6 for waste-water and public drinking-water facilities
7 in communities. Those are fairly small.

8 Obviously, they're not of the magnitude of
9 anything that I think Commissioner McDonald talked
10 about, but those smaller partnerships have been in
11 existence for, in some cases, decades. They do have
12 their problems, when the partners -- when the entity
13 decides to raise the water rates or the
14 sewage-treatment rates in a community where there is
15 no public input on what those rates are.

16 So, that's where the sensitivity is, on how
17 these are put together.

18 SENATOR ZELDIN: Okay. So, that was --
19 Senator Marcellino's questions kind of distracted
20 me, in a good way, to ask you about that.

21 Now, I actually sent a letter to the
22 comptroller's office this morning, as you were
23 coming here, and I was coming downstairs.

24 And it primarily relates to the MTA.

25 And we had a hearing, Senator Marcellino,

1 through the Investigations and Government Operations
2 Committee at SUNY Old Westbury. And what --
3 Mr. Bleiwas from your office, came and did a great
4 presentation.

5 And I, in many ways, commend the
6 comptroller's office on the audits that have taken
7 place over at the MTA. And you've been able to
8 identify a number of efficiencies, to save money, to
9 cut costs.

10 The purpose of the letter was to, I guess,
11 generally ask, with regards to doing a -- to broaden
12 the scope of the audit.

13 You've done several audits to -- to do, you
14 know, just a, thorough, top-down forensic audit. I
15 know it comes with costs, and it uses -- utilizes
16 resources of the comptroller's office.

17 But, that's the main objective of the letter,
18 and to talk about different ways that, maybe, the
19 MTA can save money.

20 But, I'm just -- I'm curious: Have any of
21 the audits that you have conducted, have any of them
22 addressed public-private partnership opportunities?

23 MR. GRANNIS: I'm -- I'm not aware of any,
24 Senator.

25 I -- you know, the -- our audits, as you

1 described, and as Ken testified last week, are --
2 have been fairly targeted.

3 We are doing an agency-wide forensic audit.
4 It's a huge undertaking. And, actually, we've
5 gotten chided, in some cases, by the chair of the
6 transit authority, for having auditors on site as
7 often as they are.

8 We understand there's an interference with
9 normal work responsibilities, but we believe that
10 that engagement is important.

11 So -- but, we are -- I'm not aware of any
12 public-private partnership.

13 But -- because, I will just point out, it's
14 interesting, when you look at the history of the MTA
15 and the Long Island Railroad, the Long Island
16 Railroad used to be privately owned, until that
17 private entity was no longer able to function in a
18 way that served the public, and became part of the
19 MTA system.

20 SENATOR ZELDIN: And, now, there are some
21 that are rating it as the least-efficient railroad
22 in the country.

23 MR. GRANNIS: which is coming out of
24 bankruptcy.

25 SENATOR ZELDIN: The -- now, I guess, it kind

1 of goes back to my earlier question, piggybacking on
2 what Senator Marcellino asked; but, has the
3 comptroller's office been able to identify any
4 specific opportunities for public-private
5 partnerships within the MTA?

6 My first question was more generally, but --

7 MR. GRANNIS: I'm not aware of any, Senator.

8 SENATOR ZELDIN: Okay.

9 Now, I do know that one of the audits that
10 the -- that you have conducted of the MTA, related
11 to the real estate portfolio. And I know that we
12 have a couple of representatives from the MTA that
13 will follow up on that.

14 And, that was a good audit.

15 And, like I said, you have done some good
16 work with regards to these audits.

17 I'm just curious; you know, with the
18 consolidated balance sheets of the MTA, they're
19 valuing their capital assets at over \$50 billion
20 right now.

21 Do you know how that \$50 billion is valuated?

22 Because, one of the things that -- I believe
23 it might have been in your testimony, with regards
24 to the how to evaluate assets, I think it was one of
25 the four concerns -- actually, maybe your first

1 concern, with regards to the P3s.

2 Can you relate that first concern to the way
3 the assets of the MTA are being evaluated?

4 MR. GRANNIS: The best I can do, Senator, is,
5 obviously, the MTA has its own, very extensive real
6 estate department that makes valuations, based on
7 fair market value of what they view the asset to be
8 worth.

9 There are, also, outside auditors that come
10 in and audit. Not us. But, you know, independent
11 auditors, that certify their accounting practices.

12 Again, it's -- I'm not -- you know, other
13 than standard real-estate-valuation practices, I'm
14 not aware of anything that is unique about their
15 determination of the size of their capital assets.

16 SENATOR ZELDIN: Okay. And I guess what I'll
17 do is, I'll ask the MTA's representatives when they
18 come.

19 But, I just ask, if you wouldn't mind taking
20 a look at the letter that our office sent to the
21 comptroller this morning?

22 MR. GRANNIS: Right, Senator.

23 SENATOR ZELDIN: It's, I think, really
24 important for us.

25 The senate, actually, on March 15th, when we

1 did our one-house budget resolution, called for a,
2 thorough, top-down forensic audit within 60 days of
3 the budget being adopted.

4 Unfortunately, it didn't make its way into
5 the final budget agreement.

6 And I do understand that it would take
7 additional resources of the comptroller's office.
8 And I would look forward to the opportunity to
9 advocate, on behalf of the comptroller's office,
10 within the legislature, to make sure that did you
11 have those resources to do it; because, when you --
12 when the comptroller's office, Comptroller DiNapoli,
13 has been doing audits, he has been able to save
14 money, I'm sure, way beyond the costs of doing the
15 audits.

16 So, I think it's just very important for, not
17 only those who live in the 12-county MTA region, but
18 all across New York State, for you to be able to
19 broaden that scope. And I would be happy to
20 advocate on your behalf.

21 MR. GRANNIS: Thank you, Senator.

22 We'll get back you to on your letter as
23 quickly as we can.

24 CHAIRMAN FUSCHILLO: Thank you very much,
25 Pete. Appreciate it.

1 Do you have some questions?

2 Senator Smith. I'm sorry.

3 SENATOR SMITH: I don't have that much.

4 Thank you, Mr. Chairman.

5 Commissioner, good to see you.

6 MR. GRANNIS: Hi, Senator.

7 SENATOR SMITH: Your colleagues as well.

8 Do you take the position, that an overall
9 plan for P3 projects are better than specifically
10 examining each one?

11 MR. GRANNIS: It's the comptroller's position
12 that a plan ought to be in place, that looks at this
13 comprehensively, and generically, about how we
14 proceed in determining P3 projects, and those that
15 make the sense to have a private partner involved,
16 and the protections that might be necessary when --
17 in those kinds of arrangements.

18 So, we do suggest, strongly, Senator, that a
19 comprehensive plan ought to be in place before,
20 ad hoc, one-by -- one-off projects are brought
21 before you for consideration.

22 SENATOR SMITH: And the reason that I -- I'm
23 a little intrigued by the consistent concern about
24 the valuation of a public asset.

25 Understanding the process of valuation of any

1 asset, whether it's a company being resold, or
2 whatever, what is your -- I mean, how do we better
3 do that?

4 I mean, in some instances, if you're talking
5 about an asset that's based on the value of its
6 revenues and tolls, how do you value that; versus,
7 you know, a project that doesn't have tolls, or
8 revenue of that nature, based on fees?

9 I'm just --

10 MR. GRANNIS: Senator, it goes right to the
11 heart of what Senator Zeldin was asking about, which
12 is, there's a very -- there's a fundamental
13 difference in valuating a public -- a private asset,
14 versus a public asset.

15 SENATOR SMITH: Uh-huh?

16 MR. GRANNIS: So, you could take a building
17 that the MTA has, and they're in an office building,
18 and figure out what the value of that is; because,
19 that's -- how do you value, let's say, a park?

20 SENATOR SMITH: Uh-huh?

21 MR. GRANNIS: And how do you put a value on,
22 you know, something that has, traditionally, been
23 open and available to the public, for the public's
24 use, that might have a value that is dramatically
25 different than what might be viewed as a best use of

1 that particular property, if it were turned into a
2 train station, or some other -- or a, you know, a
3 branch or an exit for a thruway?

4 So, its an -- it's a very difficult process.
5 It's a process that I think can be done. It has
6 been done in the past. But, it's not as easy as
7 valuating the assets, for instance, of the MTA.

8 SENATOR SMITH: Uh-huh.

9 Okay. And, just finally: Do we do this, or
10 not?

11 MR. GRANNIS: I think it is almost inevitable
12 that we have to do it, Senator.

13 SENATOR SMITH: Okay.

14 MR. GRANNIS: I think that this has to get
15 done. And it's, just, our caution is, that -- and
16 hope is, that it's done right for, not just our
17 tenures -- you know, yours as a senator, and mine at
18 the comptroller's office, but for the generations
19 that these projects often will be in place, after
20 they're built, and they're being run by private
21 entities in partnership with government.

22 SENATOR SMITH: Thank you, Commissioner.

23 Thank you, Mr. Chairman.

24 CHAIRMAN FUSCHILLO: Thank you, Senator.

25 Any further questions?

1 Mr. Grannis, thank you very much.

2 It's nice to see you, Pete.

3 MR. GRANNIS: Thank you.

4 CHAIRMAN FUSCHILLO: Thank you.

5 Hilary Ring and Jeff Rosen?

6 METROPOLITAN TRANSPORTATION AUTHORITY

7 TESTIMONY OF

8 HILARY RING

9 DIRECTOR OF GOVERNMENT AFFAIRS

10 JEFF ROSEN

11 DIRECTOR OF REAL ESTATE

12 CHAIRMAN FUSCHILLO: State your names and
13 titles and affiliation for the record, please.

14 MR. RING: Good morning, Senators.

15 My name is Hilary Ring, and I'm the director
16 of government affairs for the MTA.

17 I'm joined by Jeff Rosen, MTA's director of
18 real estate.

19 First, I'd like to thank you for holding this
20 hearing on public-private partnerships, or "PPPs."

21 As you know, the last three years, the MTA's
22 2010-14 capital program remained unfunded. And I
23 appreciate this opportunity to explore the role that
24 PPPs can play in meeting our infrastructure needs.

25 Innovative financing, and working with the

1 private sector, have been the hallmark of the MTA's
2 capital financing plans for the past 30 years.
3 We've found many ways to creatively harness the
4 expertise and resources of profit-making firms in
5 order to lower our costs, facilitate financing, and
6 approve our infrastructure.

7 To cite some important examples, as you
8 mentioned in your opening statement,
9 Senator Fuschillo:

10 We enlisted private firms to help us create a
11 world-class retail center over at Grand Central
12 Terminal, which enabled us to generate significant
13 new revenues, now in excess of \$25 million a year.
14 Without these revenues, we would not have been able
15 to afford to redevelop the Terminal as the great
16 public space it is today.

17 As we speak, a private developer is building
18 a new rail yard for the Long Island Railroad, and
19 improving a subway station for the New York City
20 Transit, in partial payment for the development
21 rights associated with our Atlantic Yards property;

22 And, the No. 7 Line is being extended, with
23 financing made possible by the creation and
24 marketing of development rights associated with our
25 West Side Yards properties;

1 We generate some \$120 million each year of
2 advertising revenue, through PPPs, with advertising
3 companies. Building on this base, we are
4 incentivizing these partners to introduce a variety
5 of digital advertising platforms that will allow us
6 to, both, increase that revenue, and to better
7 communicate with our customers.

8 PPP is our method of choice for enhancing
9 telecom service for our passengers.

10 We've already contracted with telecom
11 companies that are investing their own capital to
12 bring wi-Fi and improved cellular service to
13 underground subway stations and the Grand Central
14 Terminal train shed.

15 And, we are currently negotiating with
16 others, to install and provide wi-Fi service on our
17 commuter trains.

18 While not precisely a PPP, MTA has also
19 partnered with the private sector to more
20 efficiently deliver capital projects.

21 We employ design-build contracts in
22 appropriate cases, harnessing the collaborative
23 benefits of the contractor's design/builder team to
24 get projects finished faster and on budget.

25 These sorts of PPPs are successful because

1 they present relatively stand-alone, commercially
2 viable profit-making opportunities, while also
3 providing a benefit to the MTA and its customers.

4 These partnerships present clearly defined
5 obligations for the private sector, and require
6 private investors to absorb risks that they can
7 control, and are well understood by them because
8 they're part of their core business.

9 These projects traditionally generate their
10 own dedicated revenue streams, and can, and will be,
11 operated independently, rather than as integral
12 parts of the larger transit system.

13 However, the typical work of our capital
14 program is part and parcel of the existing system,
15 not the type of stand-alone projects amenable to
16 such public-private partnership models.

17 We are repairing old equipment, fixing up
18 100-year-old stations, or extending subway or rail
19 lines to add new capacity to a very crowded system,
20 all of which present untold, unknown risks.

21 And the risk inherent in such work is
22 magnified when one overlays the challenges of
23 operating year-round, 24/7, in the New York subway
24 and transit commuter-railroad environment.

25 In these situations, the risk is high for the

1 private sector, increasing the rate of return they
2 would want on their invested capital; and,
3 therefore, the overall costs to the public sector.

4 Moving forward, we've identified those
5 elements of our capital program that fit the PPP
6 model.

7 We envision employing public-private
8 partnerships to provide for the fitting out,
9 maintenance, and operation of the Fulton Street
10 Transit Center, we're building in Lower Manhattan at
11 the new East Side Access Concourse, we're building
12 near Grand Central Terminal, as those facilities
13 will lend themselves to stand-alone operations.

14 And, we will continue to pursue
15 opportunities, generate money for our capital plan,
16 through the development of our real estate, as by
17 enabling a private developer to erect a new tower on
18 land we intend to make available, by vacating our
19 office buildings at 341-347 Madison Avenue.

20 In sum: Innovation clearly has its place in
21 the MTA capital program, and we look forward to more
22 discussions of PPPs, and other innovative
23 partnership techniques.

24 But, we must recognize that, while we intend
25 include such arrows in our quiver as we seek to fund

1 the out-years of our approved capital program, they
2 will not present the full solution.

3 Public-private partnerships should be viewed
4 as measures to supplement, not substitute, the
5 funding of our capital program.

6 Thank you again for the opportunity to
7 testify. And Jeff and I are happy to answer any
8 questions that you may have.

9 CHAIRMAN FUSCHILLO: Hilary, I'm going to
10 take away that last statement you made, and just ask
11 you a -- first of all, thank you for being here.

12 And, Jeff, thanks for being here as well.

13 You know, the MTA is facing a \$10 billion
14 gap, but -- as we know.

15 For the remainder of the capital program, do
16 you see P3s playing a part to fund part of that gap?

17 MR. RING: I think we see P3s as playing a
18 part in some isolated projects.

19 I think that the overall place where you need
20 the investment, in terms of, finishing the mega
21 projects, fixing up existing stations, fixing signal
22 systems, sort of the bread-and-butter of the capital
23 program, we don't think is that amenable to P3s
24 because of the inherent risks involved.

25 CHAIRMAN FUSCHILLO: Right.

1 I know Senator Zeldin has some questions.

2 Senator Zeldin?

3 SENATOR ZELDIN: The first is: Do you have
4 any specific opportunities that you've identified
5 for P3 opportunities, going forward?

6 MR. RING: Well, I mentioned a couple in our
7 testimony.

8 One would be, the Fulton Street Transit
9 Center.

10 Here, we're building a -- essentially, a new
11 massive station, downtown, that is going to connect
12 a lot of different subway stations, and provide
13 retail opportunity.

14 And, we are looking, to figure out how to
15 bring some private-sector expertise into that
16 situation, and actually manage it as a stand-alone
17 private-sector type of environment, to benefit the
18 customers and the region.

19 SENATOR ZELDIN: How much do you think the
20 MTA can save, as far as that \$10 billion figure that
21 everyone is talking about with regards to the
22 capital deficit? How much can you anticipate
23 potentially saving, to cut that deficit, as far as
24 P3 opportunities?

25 MR. RING: I think that the amount of savings

1 from a P3 opportunity would be minimal.

2 I think that the places where we would look
3 to use P3s would allow us to do things better; to
4 do things, maybe, quicker.

5 But, I think that, in general, the \$10
6 billion was for doing things which the PP3 [sic]
7 type of framework, I don't think would have a great
8 deal of savings.

9 SENATOR ZELDIN: The -- when we had the
10 hearing, as a reference with the last speaker from
11 the comptroller's office, we did the hearings, you
12 know, on the Westbury, a week or two ago. And
13 Chairman Walder was there, and he testified as to a
14 number of ideas that he had, that could reduce the
15 \$10 billion deficit.

16 And, you know, now we're here, talking about
17 another topic: public-private partnerships.

18 And I'm glad that we are.

19 And, you know, I think, we, as a legislature,
20 have a responsibility to the taxpayers, to account
21 for all of the money that they are, forced, and
22 asked, to pay, to subsidize an entity, like the MTA.

23 So, at this point, after the last few months
24 since I've been in office, for me to go back to a
25 taxpayer, let's say, in the 3rd Senate District,

1 or Suffolk County on Long Island, and, at this
2 point, I guess:

3 Maybe reference all of the ideas that
4 Chairman Walder testified to during that hearing, to
5 think about the opportunities that may be available
6 with public-private partnerships;

7 Thinking back to a prior transportation
8 committee meeting, I think in February, where
9 Chairman Walder was present, talking with reference
10 to the \$475 million in new MTA efficiencies that are
11 factored into the multi-year budget, and you're
12 trying to fast-track;

13 And, to look at, over \$400 million in
14 overtime costs, over \$50 billion in capital assets,
15 the outside litigation costs, the cash flow that you
16 sit on, including the unrestricted investments;

17 The fact that there are 66,000 employees, and
18 over 10,000 of those are managers and supervisors;

19 The contracts which are coming up in 2012,
20 that Chairman Walder referenced in the prior
21 hearing;

22 The forensic audits that have been conducted
23 by the comptroller's office, to identify additional
24 ways to save money, as well as the potential for
25 what would happen if there were additional -- an

1 additional broader-scope audit that it would take
2 place;

3 I think it's impossible, at this point, for
4 any senator or assemblyman to look at their
5 constituents, especially for those that live in the
6 3rd Senate District -- I mean, I'm sure, within the
7 12-county MTA region, and for myself, living in
8 3rd Senate District, that these numbers that we
9 hear of, \$10 billion, is substantially higher than
10 what it really should be, if we do everything that
11 is in our power to save money.

12 And I think it's a shared responsibility, or
13 a responsibility of the MTA, to figure out how to
14 close that \$10 billion deficit. And I'm pretty
15 confident that the MTA knows how to bring that
16 number much lower than 10 billion.

17 And I think it's the responsibility here, of
18 the legislature, to hold the MTA accountable, and to
19 ask these questions.

20 So, I just -- I ask to you take into thought
21 the -- all of the different topics that I just
22 brought up, and maybe figure out how to alter what
23 you're saying to the public, going forward.

24 And I don't buy the argument that, if, for
25 example, you lost the revenue stream of the MTA

1 payroll tax, that there would have to be drastic
2 cuts in services and increases in fares.

3 I think it's a knee-jerk reaction, quite
4 honestly, to scare our constituents into not wanting
5 the MTA tax to be repealed, especially those that
6 use the services.

7 Regarding the \$50 billion in capital assets,
8 one of the questions I asked to the first deputy
9 comptroller was, how it's evaluated.

10 Because, one of the risks that he identified
11 in public-private partnerships, they say, "Full and
12 fair value, to identify and use the best practices
13 for the valuation of public assets, to ensure that
14 the public receives the full fair value for the use
15 of its property."

16 Can you -- maybe Mr. Rosen, can you explain
17 exactly how these assets are valued?

18 MR. ROSEN: Well, I think they're --

19 Can you hear me?

20 SENATOR ZELDIN: Yep.

21 MR. ROSEN: Okay, thanks.

22 I think they are two separate questions.

23 As the CFO explained, when we met on
24 Long Island a few weeks ago, the valuation that --
25 provided in the financial statement, is a matter of

1 accounting convention, which is based on historical
2 costs and depreciation.

3 And it encompasses a wide range of assets,
4 not just the sorts of assets that we were discussing
5 the other day. The sorts of assets that are under
6 the control of my department, like office buildings.
7 But -- you know, bridges and tunnels, and railroad
8 stations.

9 SENATOR ZELDIN: Actually, I'll tell you what
10 I could do. Let me ask the question a little bit
11 better.

12 The "New York Times" story, for example, that
13 talked about selling the headquarters and two
14 buildings, it referenced that the MTA's looking at
15 26 other properties.

16 Can you, maybe, explain the valuation of
17 those 26 properties?

18 MR. ROSEN: Well, again, that was with
19 reference to our office portfolio. And that
20 portfolio consists of a few properties that we own.
21 Some that we have underground leases, but the
22 majority of which are under small-space leases.

23 And the way they get valued is, as anyone
24 does it in the marketplace, you go out and you
25 obtain property, or you try to dispose of it, under

1 competitive circumstances.

2 I think, you know, the thing that needs to be
3 noted about public-private partnerships, or any kind
4 of transaction between the public and private
5 sector, is that, it's incumbent upon us to create
6 conditions of competition that allow us to determine
7 what the value of these assets is in the
8 marketplace, and not just in our own imagination.

9 SENATOR ZELDIN: So, I guess, as it relates
10 to the office space, the valuation that is put on
11 these properties, is an estimate of what you'd get
12 for these properties if you sold it in the
13 marketplace?

14 MR. ROSEN: Well, again, in the financial
15 statements of the MTA, the properties of all kinds
16 are valued, based on historical cost; which really
17 doesn't go to the essence of what you're trying to
18 determine --

19 SENATOR ZELDIN: So, it doesn't then?

20 MR. ROSEN: I'm sorry?

21 SENATOR ZELDIN: I'm sorry.

22 Then, it's the opposite of what I was just
23 asking then?

24 MR. ROSEN: Well, what I'm saying is, that
25 when we have an opportunity to go out into the

1 marketplace, and to try to do better, to make use of
2 our assets, to leverage them effectively, we needed
3 that time, to go out and test the market.

4 When it comes to selling a property, we do
5 what the legislature has wisely required us to do,
6 which is, to obtain contemporaneous appraisals,
7 which are based on market value, not historic costs.

8 And we do that in the normal course, as any
9 private owner would, by engaging independent
10 appraisers.

11 SENATOR ZELDIN: And the valuation is based
12 on historical costs?

13 MR. ROSEN: No. Based on -- in that
14 instance, based on market cost.

15 SENATOR ZELDIN: So, that "\$50 billion"
16 number, for example, in capital assets, on the --

17 MR. ROSEN: It has nothing to do with market
18 value.

19 It wouldn't be practicable for us to go out
20 and obtain, you know, valuations of all of our
21 property, all the time, updated six months. It
22 costs us thousand of dollars to obtain an appraisal
23 of any one property.

24 As Mr. Grannis noted, the vast majority of
25 our assets don't have a market value, for the

1 precise reason, that they're not the kinds of assets
2 that are commonly traded in the marketplace.

3 SENATOR ZELDIN: Yeah, I guess I would just
4 like to learn more about those assets. And I see
5 this staggering figure of, over \$50 billion, for the
6 capital assets.

7 And I just want to know exactly what makes
8 that up; how it's valued. And I think that
9 there's a lot more that we can learn about it.

10 I appreciate, Hilary, you brought to my
11 office, a list of what makes up those \$50 billion in
12 capital assets.

13 I think that there's additional information
14 that I would like; you know, for some of the office
15 space, for example.

16 You know: what's the addresses of these
17 properties? what's the history? what were they
18 purchased at?

19 And I know that might be a little
20 uncomfortable, to start -- you know, to have someone
21 in the legislature starting to get into the weeds,
22 to that extent. But, I would appreciate it, if you
23 could, maybe, go into a little bit more detail on a
24 future printout.

25 Uhm, I was asked to --

1 Mr. Chairman, if you don't mind me asking one
2 other question?

3 CHAIRMAN FUSCHILLO: No, that's fine.

4 SENATOR ZELDIN: -- the -- who pays for
5 the -- and this kind of completely changing the
6 subject; but, you know, I had some constituents that
7 wanted me to ask.

8 The -- now, in the city, I believe there was
9 issue couple years ago, where the students have --
10 they have free rides on the subway system.

11 Who pays for that? Is that the MTA, or is
12 that the state?

13 MR. RING: It's a combination of MTA, state,
14 and city.

15 SENATOR ZELDIN: Okay. And it's a
16 combination, I guess you're saying, between the MTA
17 and state?

18 MR. RING: And the city.

19 MR. ROSEN: And the city.

20 SENATOR ZELDIN: And the city? Okay.

21 Has there ever been any discussion about
22 rides for those students that use the other
23 transportation assets of the MTA; like, for example,
24 the Long Island Railroad?

25 MR. RING: Not that I'm aware of.

1 I believe that New York City school children,
2 commuting on Long Island Railroad, get some small
3 discount that the city also pays for. But, I'm not
4 familiar with any other discussions. It hasn't come
5 up, really.

6 SENATOR ZELDIN: Okay.

7 And, with risk of asking a question I know
8 the answer to: what's the approximate contribution
9 between -- like, how much does the MTA contribute
10 towards those rides, versus the city and the state?

11 I just -- is there like a rough breakdown you
12 might be able to approximate?

13 MR. RING: I don't recall it off the top of
14 my head. It was an issue about a year ago, when I
15 would have known the answer.

16 But, I can get back to you with the breakdown
17 of that.

18 SENATOR ZELDIN: Okay. I just wanted to be
19 able to answer it for them, so...

20 MR. RING: Sure.

21 SENATOR ZELDIN: Thank you.

22 CHAIRMAN FUSCHILLO: Senator Perkins?

23 SENATOR PERKINS: Thank you, Mr. Chairman.

24 And I want to commend you for this timely
25 hearing, and very informative. I believe it would

1 be very useful for us, as we move forward.

2 Good to see you, Mr. Ring, and Mr. Rosen.

3 I have two, I guess, concerns.

4 Have you had the chance to hear from
5 Pete Grannis, in terms of some of the concerns that
6 the comptroller's office has raised with regard to
7 P3s?

8 MR. RING: Well, he just testified, Senator.
9 Yeah.

10 SENATOR PERKINS: Yes.

11 So, do you have any reaction to some of what
12 he shared?

13 And it was somewhat of a critical analysis.
14 Not a killer analysis; but, nevertheless, some
15 serious warning signs about going down this road,
16 and the potential problems that might occur.

17 And, what is your experience, in light of
18 some of what he had to say?

19 MR. RING: I didn't think that
20 Deputy Comptroller Grannis was being critical, as
21 much as realistic, in terms of, making sure that --

22 SENATOR PERKINS: First, the words.

23 [Laughter.]

24 MR. RING: -- making sure that, when the
25 government makes arrangements like this, that are

1 long-term arrangements, that everyone has to keep
2 his eyes open.

3 That, the government -- the private sector,
4 essentially, is taking a risk, and is going to want
5 to be compensated for that risk. And, in doing so,
6 they're looking for surety.

7 And the government is, essentially,
8 guaranteeing that surety. And whether that surety
9 is in terms of, future revenue increases -- for
10 example, like Mr. Grannis pointed out, with poles
11 going up regularly -- you know, the government knew
12 that going in.

13 And, you know, people shouldn't be surprised
14 that, continuing, that's one of the effects.

15 But I think that, that in situations where
16 that the risks could be quantified, and the risks
17 could be understood and controlled for, and people
18 are comfortable with the operational aspects of it,
19 then I think that P3s makes sense.

20 I don't -- I think that it was just -- I
21 thought -- I didn't take it in a negative.

22 SENATOR PERKINS: Okay.

23 The government is taking risks as well.

24 MR. RING: Uh-huh.

25 SENATOR PERKINS: The public is taking the

1 greater risk, I would say, since it -- these are,
2 essentially, public assets that are being, more or
3 less, turned over.

4 I think he was sort of alerting us to that
5 aspect of it.

6 Have you had any experiences that, more or
7 less, support some of the concerns that he raised?

8 MR. ROSEN: You want me to give it a shot?

9 MR. RING: Yeah, go ahead.

10 MR. ROSEN: Look, I think, in structuring any
11 P3, the single most --

12 SENATOR PERKINS: I can't hear you.

13 MR. ROSEN: I'm sorry.

14 Can you hear me now?

15 SENATOR PERKINS: Yes.

16 MR. ROSEN: I think, in structuring any PPP,
17 the single most important thing is, to try to align
18 the interests and motivations of the parties.

19 If, at the end of the day, the private
20 concessionaire is simply awaiting payment, and
21 doesn't have a stake in the quality of the service,
22 you haven't really achieved the full benefits of a
23 PPP, as it's, you know, often described.

24 We have instances, for example, where, you
25 know, escalators, and other elements of

1 transportation, have been provided on the edges of
2 our stations, through zoning incentives, and
3 otherwise.

4 And, at a time when the payoff to the
5 developer, if you will, is early on, and there isn't
6 as strong a motivation as you'd like for them to
7 maintain the elevator well, in the end, and then
8 we're the ones who, and our customers are the ones
9 who, suffer, when it becomes an enforcement action.

10 So, again, as I say, ideally, these things
11 are set up so that the concessionaire/the developer
12 is motivated throughout the process to do the right
13 thing.

14 SENATOR PERKINS: So, in that regard, what do
15 we -- what have we put in place, or what do we put
16 in place, to catch that as soon as possible, and
17 maybe, even avoid that from happening at all?

18 Based on the experiences that you have had,
19 where you have seen this kind of situation; what
20 lessons do we learn, to avoid that?

21 MR. ROSEN: well, I think you -- as Hilary
22 was saying, you have to be careful that you do it in
23 the right cases; do it for the right projects.

24 You know, in instances where, for example,
25 there is ongoing revenue for the private

1 concessionaire, which is only in some kinds of
2 PPPs, the motivation is, that the -- is that the
3 concessionaire and its lender knows they're not
4 going to get the money if they don't provide a good
5 service.

6 In other cases, that -- the sorts of things
7 that we've done, you know, if you're creating a
8 development with retail-revenue potential, it's in
9 the interest of the private developer to remain a
10 strong revenue-producing environment.

11 And, again, what you're trying to do is,
12 harness their expertise and their self-interests, to
13 get you where you're trying to go.

14 SENATOR PERKINS: Two other quick questions.

15 The one, I guess I'm also concerned about,
16 like, I guess, the P3s, in terms of MWBEs, and
17 their ability, or willingness, to comply with that
18 value, that policy, that we have so much regard for.

19 And I guess, related to that, is the second
20 question, in terms of, just, transparency and
21 accountability; assuring the public that their
22 assets, which you are managing, and which they are
23 developing on our behalf -- on the public's behalf,
24 are actually -- you know, it's actually taking
25 place.

1 And how do we -- how does the public get
2 informed about, not just when there's a successful
3 ribbon-cutting, but maybe when there are these
4 concerns that -- where they fall short, so that they
5 don't always feel, sometimes, that they're in the
6 dark?

7 MR. ROSEN: Uh-huh.

8 Well, first, with respect to MWBE, I think
9 the answer is, that the method of delivery ought to
10 be neutral.

11 In other words: Contractually, should be
12 able to provide for those requirements to be met,
13 regardless of whether it's a PPP or more
14 conventional delivery method.

15 But, obviously, you know, that needs to be
16 provided for in the contracts, and in the
17 legislation.

18 With respect to transparency, you know, I
19 think, as things stand now, we examine the quality
20 of the designs we received from private designers,
21 we examine the quality of the service we get -- of
22 the work that we get from contractors.

23 There's no reason, inherently, why you can't,
24 you know, provide the same sorts of safeguards, the
25 same sort of reporting, for the long-run.

1 SENATOR PERKINS: All right, thank you.

2 CHAIRMAN FUSCHILLO: Thank you, Senator.

3 Senator Golden?

4 SENATOR GOLDEN: Thank you, Mr. Chairman.

5 The -- I guess, the discussion here for the
6 P3s is very simple.

7 P3s, it's about putting projects back
8 online, and completing those projects, getting
9 through your capital program the next two years.

10 Putting people back to work is probably the
11 biggest issue that we need here in the state of
12 New York. About 750,000 people still in the
13 unemployment lines. That's besides the people that
14 gave up looking.

15 I think it's important that we look to the
16 private-public partnerships, not just here in the
17 MTA, but on our roads.

18 And, have we invested, and have the ability
19 to invest, in places like, Atlantic Yards, the World
20 Trade Center, Moynihan Station, Jacob Javitz Center,
21 Second Avenue Line, we would have the ability to put
22 a tremendous amount of people back to work, and get
23 this economy working here in the state of New York,
24 and be the state that leads this recovery instead of
25 the state that will tail this recovery.

1 P3s, I find to be intriguing. And there
2 are, obviously, concerns, but, I do believe they
3 work, and I believe it is a good mix, working with
4 the right partners.

5 P3s, you know, going forward; what part of
6 the P3s do you think will play in the -- and we're
7 presuming it's the \$10 billion. We're presuming
8 that the other 4 billion is going to be made up by
9 the federal government.

10 Let's say, it's 3 billion now -- it's
11 \$10 billion now, as we have to do it.

12 What percentage do you think the P3s will
13 play in that? Or could play in that?

14 MR. RING: I think that, when you look at the
15 types of projects that are in that 10 billion, I
16 think that the ability for PPP to be a large part of
17 that \$10 billion, I think is difficult, when you are
18 thinking of a private operator coming in and
19 designing, building, and operating a portion of the
20 system. And I think that's, generally, the
21 construct.

22 I don't think that -- you know, I think that,
23 we use -- we're using P -- you know, a P3, like a
24 design-build, for a huge new bus depot that we're
25 building.

1 You know, we're doing things like that, to
2 reduce the costs. And those will have a major
3 benefit.

4 We've already reduced the costs of the
5 capital program by \$2 billion, by doing things like
6 that.

7 Better design and better approval process, so
8 that things don't get started before they are
9 thoroughly thought out and costed.

10 But, I don't think that, aside from the types
11 of things that we talked about, like the Fulton
12 Street Transit Center, or the East Side access
13 terminal, which are very large projects, but they're
14 not -- you know, they're not billions and billions
15 of dollars' worth of the capital-program gap, but
16 they would have a potential to, potentially, save us
17 some money.

18 And, more importantly, I think, is to provide
19 customer benefit, which is currently lacking.

20 And I think that's one of the places where
21 P3s can really help. I mean, Grand Central
22 Terminal looks like Grand Central Terminal because
23 it's being managed by, you know, a private company.
24 And it's held to a different type of standard, in
25 the way that that property is maintained, and

1 different types of, you know, tenants are attracted
2 to it.

3 And all that generates revenue for us.

4 So, I think that's the way we're looking at
5 it.

6 SENATOR GOLDEN: So, the P3 is being a
7 quiver -- one arrow in that quiver.

8 What revenue streams, if any, do you see for
9 the P3s, or for the balance that would be due on
10 the capital program, going forward? Do you see any?

11 MR. RING: What revenue streams. would we see
12 supporting -- excuse me?

13 SENATOR GOLDEN: Setting -- correct.

14 MR. RING: Uhm, I think, lease revenues.

15 I think, that, general operating revenues.

16 I think, that, you know, some asset sales.

17 Like we mentioned, the redevelopment of
18 Madison Avenue Property.

19 You know, we're looking to see whether there
20 have been instances, where property that's owned by
21 New York City and -- where the underlying leases,
22 owned by New York City, and the uses of the MTAs,
23 where we've been able to develop those kind of
24 properties to benefit both the city and the MTA.

25 Time Warner Center, for example, and the

1 Upper West Side, there, in Central Park, was built
2 on property that was jointly owned by the MTA and
3 New York City. And both the MTA and New York City
4 got benefit from it.

5 And we are currently involved in the process
6 of looking at the rest of our properties of a
7 similar nature, and see whether there's benefits,
8 like, you know, properties throughout the city.

9 SENATOR GOLDEN: Do you see a possible vision
10 of a -- the State Municipal Bond Bank Agency as an
11 additional backing of private-public partnership
12 projects? And -- actually, do you foresee existing
13 operations?

14 MR. RING: I think a bond bank, or an
15 infrastructure bank, clearly, could be a source,
16 that, you know, allows us to, you know, recycle the
17 money, and to, you know, have assets to use.

18 But, the end of the day, one will still need
19 to come up with revenue to capitalize it.

20 SENATOR GOLDEN: And another area of concern,
21 that could probably work, is the banking
22 institution, along the model of Immigrant Bank,
23 which, seated with the MTA and other
24 transportation-worker resources, could invest in
25 these projects and public-private partnerships of

1 MTA-related projects.

2 Is that a vision that could also happen here
3 as well?

4 MR. RING: We'd be very interested in
5 learning about that.

6 SENATOR GOLDEN: And expanded, of course,
7 design-build opportunities, to attract more private
8 interests, obviously, is another area of major
9 concern; correct?

10 MR. RING: Yeah, we've had a lot of success
11 with design-build.

12 I know DOT is looking to get that authority.
13 But, we already have that, and we've have been using
14 it.

15 And, again, it's -- it works really well,
16 where, you hire a contractor who is experienced, and
17 this is what he does and this is his core business.
18 And, he can bring his private-sector expertise, and
19 leverage that, for lower costs and faster projects.

20 We just did that with the Atlantic Viaduct,
21 which is elevated structure where the 7 Line runs
22 on -- or, the Long Island Railroad runs on, in
23 Queens.

24 And this was a design-build. The contractor,
25 this was his core business. He was able to do it

1 relatively cheaply and very quickly for us.

2 So, it's -- we've had a lot of success using
3 design-build.

4 SENATOR GOLDEN: Thank you, Hilary.

5 I have to excuse myself. I have to greet the
6 deputy mayor.

7 The R train was late this morning.

8 Can you do anything about that?

9 MR. RING: Uhm, I'm sorry, Senator, no.

10 SENATOR GOLDEN: Thank you. Have a good day.

11 CHAIRMAN FUSCHILLO: Thank you.

12 And we're also joined by Senator Ranzenhofer.
13 And, also, another ranking member of the assembly,
14 Assemblyman Dave McDonough.

15 Mr. Ring, Mr. Rosen, thank you very much for
16 your testimony.

17 TESTIMONY OF NORMAN MacMILLAN

18 DELEGATE MINISTER

19 MINISTÈRE DES TRANSPORTS DU QUÉBEC

20 CHAIRMAN FUSCHILLO: Norman MacMillan,
21 delegate minister of Québec Ministry of
22 Transportation.

23 I'd say good morning; but now I'll say, good
24 afternoon.

25 And thank you for taking the time to be here.

1 MR. MacMILLAN: It's my pleasure.

2 Mr. Chairman, members of the Senate
3 Transportation Committee, my name is Norm MacMillan.
4 I'm kind of a junior minister of transport, a
5 colleague of Sam Hamad, that sends his greetings to
6 you, Senator.

7 It's my pleasure to represent the Québec
8 government before this committee, and I thank the
9 chairman for his invitation.

10 My presence is a continuity with the mission
11 carried out, here in Albany, on March 15th by my
12 colleague, the minister of transport, Sam Hamad, to
13 discuss issues of common interests of
14 transportation.

15 Accompanying with me today is:

16 My chief of staff, Danny Abah (ph.).

17 Madam Sandra Sultana, director of
18 public-private partnership office; Martin Breaux
19 (ph.), head of the rail transportation division;
20 both, representative of my department.

21 And, Jean-Phillippe Arseneau is
22 representative of the Québec General Delegation,
23 New York, since they're present here in the States
24 since 1940.

25 It is, thus, as a long-standing partner,

1 neighbor, and friend that I have come here, on
2 behalf of the Québec government, to present our
3 experience of the Ministère des Transport du Québec
4 with public-private partnership, known at "P3s."

5 The MTQ has been involved in P3s for a
6 little over ten years now.

7 We adopted the act respecting transport
8 infrastructure partnership, in December 2000, which
9 gave us the legal power to resort to this project
10 performance mode.

11 Why this interest in P3s?

12 In the conventional build mode, the minister
13 awards and managed many contracts to carry out
14 projects, contracts, and design, for design,
15 construction, and maintenance, winter maintenance,
16 drainage maintenance, lightening, as well as
17 operating, and rehabilitation, contracts over
18 projects' entire life cycle.

19 The minister defines the precise means he
20 wants to be implemented, plans, and specification,
21 to carry out the projects, and specify these means
22 of each stage.

23 In P3s, all these activities -- design,
24 construction, operation, maintenance,
25 rehabilitation, and even financing -- are combined

1 in the same contract, which is awarded to just one
2 supplier, the private partner, for a longer term to
3 then-conventional contracts: 20, 30, or 40 years, or
4 more.

5 The partnership's agreement specifies the
6 results the government wants to achieve. The means
7 for achieving these results are the
8 private-partner's responsibility.

9 The objective of building a project in P3s
10 is to obtain the best social and economic benefits
11 in exchange for the cost incurred by the project;
12 particularly, thanks to vigorous competition among a
13 combination of companies made of builders,
14 operators, financiers, engineers, and various
15 national and international suppliers.

16 The opportunity to proceed as a P3, or in the
17 conventional mode, to build the major projects is
18 determined by the means of business case, which
19 compares the costs between building, in P3s, and
20 the conventional mode.

21 The P3s' approach is not an absolute. It
22 is not our government's intent to apply its system.
23 It's, semantically, wall-to-wall.

24 It also applies where there are benefits for
25 the taxpayer. Otherwise, another build mode is

1 used.

2 Performance of projects in P3 remains an
3 interesting approach in relation with the advantages
4 that can be derived from it.

5 One of the most important advantages, is that
6 this mode allows transfer of a considerable portion
7 of the risk to private partner. The risks it is
8 most able to manage efficiently, such as, those
9 related to design, construction, maintenance, and
10 operation of a road infrastructure, are assigned to
11 the private partner.

12 The MTQ can, thus, focus on its essential
13 mission; namely, to ensure transportation safety,
14 mobility of passengers and freight, and the
15 development and the update of the designs,
16 construction, and maintenance standards.

17 The MTQ thus seeks to obtain the best
18 value-for-money for the project, and reduce the
19 government's financial contribution.

20 The other advantage of P3s are, actuation or
21 expediting project construction, introduction of a
22 life-cycle concept, and promotion of innovation.

23 I was telling you that the MTQ committed to
24 PPPs about ten years ago. Based on a pre-visibility
25 study, the MTQ identified three projects that seemed

1 to be suitable:

2 Two carry-out P3s;

3 Two new infrastructures: Autoroutes 25 and 30
4 in Montreal metropolitan region;

5 And, the construction of new, modern service
6 areas.

7 The MTQ produced the business cases for these
8 projects, to evaluate the expectancy of building
9 them as P3s.

10 The objective of business case is to perform
11 a detailed financial analysis of the projects, by
12 comparing the costs according to, performance in
13 traditional mode, and performance in 3Ps -- P3s'
14 mode.

15 The financial analysis takes into account our
16 costs, including the risks, and the maintenance of
17 operating costs. Based on this analysis, the most
18 appropriate mode is chosen.

19 Based on the business case, Autoroute 25, and
20 30, and the service areas' project, were selected to
21 be built as P3s. The projects were defined, and the
22 procurement process was implemented.

23 A three-stage project -- process -- request
24 for the expression of interests, a request for
25 qualification, and request for proposal -- was

1 adopted for these projects.

2 35-years' partnership agreements were signed;
3 in September 2007 for Autoroute 25, and September
4 2008 for Autoroute 30.

5 A 30-year agreement was signed in
6 September 2008 for service areas.

7 Autoroute 25 is the first project implemented
8 as a P3. This is an electronic-toll autoroute, 7.2
9 kilometers long, including a 1.2 kilometer -- kilometer
10 bridge.

11 The cost of the project is 220 million, at
12 the 2007 net present value.

13 The infrastructure will be open to traffic at
14 the end of this week, on May the 20th. The
15 autoroute is being delivered four months in advance
16 in relation to an initial schedule, and within
17 budget.

18 Autoroute 30 is also a toll autoroute
19 project. 42Ks of new autoroute lanes are being
20 built and maintained by the private partner.

21 An additional 35K is built in traditional
22 mode. It will also be maintained by the private
23 partner.

24 The cost of the project is 1.5 billion, at
25 2008 net present value.

1 It is projected that the autoroute will be
2 commissioned in December of 2012.

3 In this case, as well, the project conforms
4 to the initial schedule and budget.

5 For the service area, the cost of the project
6 was 44.5 million, in 2008 net present value, for the
7 seventh site stipulated in the agreement.

8 Five sites are currently in service, and two
9 will be in service this fall.

10 The private partner complied with its
11 deadlines for this project as well.

12 The MTQ is currently analyzing the
13 feasibility of Phase 2 of the service areas'
14 projects, with 11 new sites under consideration.

15 Apart from the projects in the transportation
16 field, the Québec government also implemented
17 projects performed in P3s, in hospitals, museum,
18 concert hall, justice, detention centers, and the
19 education fields.

20 We've learned some lessons from the P3s
21 projects.

22 Each project must be analyzed on its own, on
23 a case-by-case basis. It is not possible to
24 generalize about the build mode for it to be
25 implemented. It is appropriate to produce business

1 case that considers all the factors that must be
2 analyzed.

3 It's also important to apply a rigorous
4 approach regarding the procurement process. This
5 ensures fairness, transparency, integrated in the
6 process.

7 Excuse my English. I'm losing it a little
8 bit right there.

9 A process auditor hired by the government,
10 assured the government authorities, and to invite
11 candidates, that the selection process was rigorous.

12 State support is extremely important. And so
13 is management leadership in the organization, both
14 in the public-partner and in the private-partner's
15 team.

16 Optimizing risk allocation makes it possible
17 to maximize efficiency.

18 Finally, p3s propose a new business
19 relationship that involves two partners: a public
20 partner and a private partner.

21 This business model is very different from
22 traditional projects, in which the MTQ manages the
23 project and its construction and maintenance.

24 In P3s: The private partner manages the
25 project. The public partner manages the partnership

1 agreement, and ensures that the requirements of the
2 agreement are met.

3 An independent engineer is also hired, to
4 ensure compliance of design and construction with
5 the partnership-agreement requirements.

6 In conclusion: We are very satisfied with
7 the results of our first experiments with P3s.

8 I would like to conclude, by wishing you a
9 productive discussion on this subject.

10 We are, of course, available to answer your
11 questions, provide with you some additional
12 information, if you consider it.

13 I have two experts with me here this morning.

14 Thank you very much for your attention.

15 CHAIRMAN FUSCHILLO: No, I appreciate you
16 taking the time to be here.

17 When I met with the minister earlier this
18 year, I was extremely impressed with some of the
19 projects, that you just mentioned.

20 And I'm glad to see that, later this week,
21 that one of those projects will be completed, and
22 the public will take fuller advantage of it.

23 I just wanted to ask you -- and please send
24 him my best.

25 I just want to ask you a question about the

1 procedure, and how it's -- your government has laid
2 out.

3 Is there a board that approves the P3s?

4 MS. SULTANA: There is a framework that is
5 set up for government, to authorize projects; so, we
6 honor, on a case-by-case. So, there's a framework
7 that looks at all of the business cases.

8 We evaluate each project on a business-case
9 basis.

10 Government does take government on, with the
11 board. Infrastructure of Québec, which is our P3
12 body, that takes -- that looks into infrastructure,
13 into all modes of infrastructure implementation.

14 Their board needs to authorize a project.
15 And then it's taken to the council of ministers, to
16 authorize the project, on individual basis.

17 CHAIRMAN FUSCHILLO: Who comprises that
18 board?

19 MS. SULTANA: Both public and -- public
20 representatives from government and private sector
21 representatives.

22 The council of ministers is, of course, only
23 public.

24 So, it's a government decision.

25 CHAIRMAN FUSCHILLO: Right.

1 Have you estimated, during this decade-long
2 period of time, how much your government has saved
3 by engaging in P3s?

4 MS. SULTANA: For both of the projects,
5 Autoroute 25 and Autoroute 30, we did do base --
6 value from many reports --

7 CHAIRMAN FUSCHILLO: Right.

8 MS. SULTANA: -- which does a comparison
9 between, if the project were done in the
10 conventional mode, if it was done as a P3 approach.

11 On Autoroute 25, we evaluated a \$200 million,
12 uhm --

13 CHAIRMAN FUSCHILLO: Savings?

14 MS. SULTANA: -- savings.

15 On Autoroute 30, which is \$1.5 billion
16 project, we evaluated it to be a 700 million
17 savings.

18 CHAIRMAN FUSCHILLO: will the other project,
19 as well as the success you've had with this one,
20 opened this week, will it come under budget and/or
21 ahead of time?

22 MS. SULTANA: Yes, it will.

23 CHAIRMAN FUSCHILLO: Yes, it will.

24 MS. SULTANA: Four months early.

25 CHAIRMAN FUSCHILLO: Incentives; are there

1 incentives built into an agreement like that?

2 MS. SULTANA: Obviously, the route sharing is
3 part of the incentive.

4 There are incentives, yes.

5 And there's incentives that are built in
6 between the partners, in the private partner.
7 There's the, builders, the designers. And, they,
8 within themselves --

9 CHAIRMAN FUSCHILLO: Create incentives?

10 MS. SULTANA: -- create those incentives.

11 So, yes, there is an incentive to the builder
12 to deliver early.

13 CHAIRMAN FUSCHILLO: And based on my
14 conversations with the minister, and your testimony
15 today, it appears, you're not giving up any of the
16 assets?

17 MR. ARSENEAU: No.

18 CHAIRMAN FUSCHILLO: Right?

19 MR. ARSENEAU: It's just government owned --

20 CHAIRMAN FUSCHILLO: Government owned.

21 MR. ARSENEAU: -- up to a certain --
22 30 years, or --

23 CHAIRMAN FUSCHILLO: For 30-year agreements,
24 or lower.

25 MS. SULTANA: Actually, the property is

1 always the government's. So, it's managing the
2 infrastructure that is delegated to the private
3 sector.

4 CHAIRMAN FUSCHILLO: Right.

5 Thank you.

6 I really appreciate you taking the time to be
7 here.

8 Senator Smith?

9 SENATOR SMITH: Good morning.

10 MR. MacMILLAN: Good morning, Senator.

11 SENATOR SMITH: My regards to the minister.

12 Good to see each and every one of you, again.

13 I just want to ask one question.

14 How do you propose -- what is the best means
15 by which to finance high-speed rail coming through
16 here, to Québec, and then, back down to New York?

17 CHAIRMAN FUSCHILLO: Just press it once.

18 Try it now.

19 MR. MacMILLAN: Sorry.

20 Does that work?

21 SENATOR SMITH: Yeah.

22 MR. MacMILLAN: Okay.

23 Thank you, Senator, for your question.

24 I might probably speak about, as you are
25 aware, the Quebec-Windsor pre-feasibility study.

1 That study has been -- the report has been
2 tabled to both Québec government and the Ontario
3 government, as well as the federal government.

4 In that study, obviously, it's been under
5 consideration by all governments so I will not be
6 able to get into the specifics.

7 But one of the things that has been looked
8 at, is whether or not there would be a role for the
9 private sector if governments were to decide to move
10 ahead with that type of project.

11 So, that is part of the pre-feasibility, just
12 laying out some options that wouldn't need to be
13 looked at further down the line on that project.

14 With regard to high-speed rails with the
15 U.S., I mean, obviously, we're not there yet.

16 As you know, right now, I think it was on
17 May 9th, that the -- Secretary LaHood announced
18 some -- for the funding, for, I think it was close
19 to \$1 billion in the northeast for different
20 projects.

21 I mean, our attention right now is focusing
22 on the issue of improving the Adirondack, that runs
23 from New York to Montreal. And especially with a
24 focus on the issue of preclearance; U.S.
25 preclearance and prescreening, as well as

1 Canadian Customs customs screening.

2 So, that is really what we're focusing right
3 now.

4 It takes about an hour thirty minutes, right
5 now, to cross the border. And we believe that, if
6 we were able, collectively working with NYSDOT, with
7 Amtraks, and other partners, we were to improve that
8 time by doing preclearance in Montreal, that would
9 significantly improve the time.

10 So, that's, essentially, where we are at this
11 point.

12 SENATOR SMITH: Thank you.

13 Thank you, Mr. Chairman.

14 CHAIRMAN FUSCHILLO: I wanted to just follow
15 up a question with you.

16 Thank you.

17 Have you estimated, over this decade period
18 of time, what the savings has been with respect to
19 debt, if you were to bonded out these projects?

20 MS. SULTANA: When we're looking at --

21 CHAIRMAN FUSCHILLO: Of debt would you have
22 incurred.

23 MS. SULTANA: Yeah.

24 Obviously, financing a public-private
25 partnership, the finance cost is greater for the

1 private sector than for the public sector.

2 CHAIRMAN FUSCHILLO: Right.

3 MS. SULTANA: We evaluated a 2 percent,
4 about, difference between the two.

5 We haven't evaluated it specifically,
6 because, when we do do our -- I've forgotten the
7 term again -- value-for-money analysis, we do it on
8 a basis of all of the costs that are incurred.

9 So, we do look at risk. We do look at
10 risk-sharing -- sharing risks for revenue, for
11 example.

12 CHAIRMAN FUSCHILLO: Right.

13 MS. SULTANA: We do look at the finance
14 aspect.

15 But, we take it as a lump sum, and we look at
16 all of the efficiencies that can be brought on by a
17 public-private partnership.

18 CHAIRMAN FUSCHILLO: What led you, back in
19 2002, to start engaging in P3s?

20 MR. ARSENEAU: That's a good question.

21 It's -- we've been -- since 2003. And it was
22 in our plan, to look at the privatization, or P3s,
23 or partnership, with that.

24 It was a decision, in 2000, I don't,
25 really -- who started it, I don't remember at all.

1 Maybe Ms. Sandra can answer that.

2 MS. SULTANA: We looked at what was being
3 done internationally.

4 The U.K. is very --

5 MR. ARSENEAU: The U.K., yeah.

6 CHAIRMAN FUSCHILLO: Very progressive.

7 MS. SULTANA: -- within P3s.

8 Our western province, British Columbia, was
9 also -- had started off implementing a few projects.

10 So, we're looking at what international and
11 national experiences was bringing forth. And
12 through that, we identified a few projects that
13 sounded like they may have a good potential.

14 We put those forward. We did the
15 business-case analysis. The opportunities did come
16 out, in terms of savings. And, we implemented the
17 project.

18 But, we went through the procurement process,
19 and signed on the projects in, 2007, 2008.

20 CHAIRMAN FUSCHILLO: Do you have the
21 availability of an infrastructure bank as well?

22 MS. SULTANA: Pardon me?

23 CHAIRMAN FUSCHILLO: Do you have availability
24 of an infrastructure bank?

25 MS. SULTANA: Availability of an

1 infrastructure...?

2 CHAIRMAN FUSCHILLO: ...infrastructure bank.

3 Does Québec have an infrastructure bank?

4 No?

5 MS. SULTANA: Oh, in our projects?

6 On the 25, it is Macquarie Capital

7 Investments.

8 In the A-30, it's 14 banks that are

9 investing.

10 CHAIRMAN FUSCHILLO: Okay. Okay.

11 Artie, any questions?

12 SENATOR DILAN: Yeah.

13 CHAIRMAN FUSCHILLO: Senator Dilan?

14 SENATOR DILAN: I'm concerned to know what
15 exactly were the incentives for the private partner,
16 since they're assuming risks here, over the course
17 of the ten years.

18 And, also, if you can give me what has been
19 the reaction of your community or the public to this
20 type of project, over the ten years.

21 MS. SULTANA: I'll go with the reaction; the
22 public reaction. And, there are two answers to
23 that, because they are -- their infrastructures that
24 are being built in a metropolitan area.

25 We all know that metropolitan areas have

1 become -- and this is a new infrastructure -- it's
2 becoming more and more difficult to implement new
3 infrastructure.

4 So, there was a lot of resistance from
5 environmental groups, and such.

6 There was resistance for -- in terms of --
7 I'm blanking here, on -- urban sprawl. Urban-sprawl
8 considerations, and such.

9 So, there was resistance to the project
10 itself.

11 We went through all of the environmental
12 authorization process. And we did promote the
13 project, and defend the project, and justify the
14 project, on the needs, in terms. And,
15 environmentally also.

16 And the second one was on the P3 process.

17 SENATOR DILAN: With the public, that was the
18 initial reaction.

19 MS. SULTANA: That was the initial --

20 SENATOR DILAN: What is the reaction, now
21 that you're coming to a conclusion on the project?
22 Is there --

23 MS. SULTANA: Currently, there's very good
24 acceptance. Very, very good acceptance.

25 The private partner -- this is a tolled

1 infrastructure. The private partner started selling
2 their transponders three months ahead of time. And
3 there's been a very good response to that.

4 CHAIRMAN FUSCHILLO: Senator Smith, you have
5 a follow-up?

6 SENATOR SMITH: Yeah, I'm sorry,
7 Mr. Chairman. Just one other question.

8 Have you had any foreign companies involved
9 which are P3s? And, if so, what did you put in
10 place to assure their performance was what they
11 agreed to? And how that was dollar-exchange
12 transaction worked out?

13 MS. SULTANA: Yes, we do have foreign
14 companies, international companies, that are
15 being -- that are being -- that are implicated in
16 the project.

17 All our partnership agreements precisely
18 specify, what are the requirements that the private
19 partner must meet.

20 So, whether it's national or international
21 firms that are being represented, they all have a
22 specific -- all of the requirements are very well
23 detailed in the partnership agreement.

24 All of the requirements, all of the risks,
25 transfers, are specifically integrated in the

1 partnership agreement.

2 SENATOR SMITH: Is there any -- I'm sorry,
3 Mr. Chairman. Just one last question.

4 Is there a -- a difference, if you will, in
5 the formula for risk, or return, as it relates to a
6 foreign company versus a domestic one?

7 MS. SULTANA: No, there isn't.

8 SENATOR SMITH: Or the same?

9 Okay.

10 CHAIRMAN FUSCHILLO: Thank you very much.

11 One of the reasons why I asked to you come
12 testify, is my previous meeting with the minister
13 and your staff. And I thought it was critically
14 important that the members of the transportation
15 committee hear your successes.

16 And this is exactly, obviously, what we want
17 to achieve here in New York State as well, and give
18 the department of transportation, and other
19 transportation agencies, the options, in an economy
20 where there are very few, with dollars out there.

21 So, I appreciate you coming to New York. I
22 appreciate the time you've taken, and your testimony
23 as well.

24 So, thank you very much.

25 MR. MACMILLAN: Thank you very much.

1 MS. SULTANA: Thank you.

2 MR. ARSENEAU: Thank you.

3 CHAIRMAN FUSCHILLO: We have a long list of
4 speakers. And out of respect for your time, and the
5 legislative schedule that we have coming up shortly,
6 with conferences in session, I'm going to ask, if
7 you have lengthy testimony, to submit it to us, and
8 give us a brief of your comments.

9 TESTIMONY OF JONATHAN TURNBULL

10 MANAGING DIRECTOR

11 LAZARD FRERES & CO., LLC

12 CHAIRMAN FUSCHILLO: Our next speaker is
13 Jonathan Turnbull.

14 Good afternoon.

15 MR. TURNBULL: Good afternoon.

16 So, you want me to shorten it up?

17 CHAIRMAN FUSCHILLO: Well, if you can do it
18 within under ten minutes, we'd appreciate it,
19 Mr. Turnbull. Thank you.

20 MR. TURNBULL: I'll move it along quickly.

21 Thank you. Good afternoon.

22 My name is Jonathan Turnbull. I'm a managing
23 director at Lazard Freres, a 162-year-old global
24 financial independent advisory and asset management
25 company, based out of New York, and listed on the

1 New York Stock Exchange.

2 The firm has advised governments for many
3 decades, on topics, ranging from privatizations to
4 restructurings.

5 As a firm, we are an advisory firm only. We
6 are not investors in projects. We do not provide
7 financing for projects. We are purely
8 advice-givers.

9 I appreciate the opportunity to testify at
10 this hearing regarding the use of public-private
11 partnerships, or "P3s," in New York State.

12 My comments are based on years of advisory
13 experience from assignments all over the world.

14 I believe my comments will echo many
15 statements made by my peers; mainly, that P3s are
16 commonplace in most of the developed countries of
17 the world? And that New York State should learn
18 from these foreign and selected domestic
19 experiences, to develop a P3 program that can
20 accelerate its infrastructure investment, and help
21 drive economic growth for the benefit of New York
22 State and its residents.

23 I would also like to take a few minutes to
24 talk about a few other P3 initiatives, that may not
25 be front and center to this discussion, but we view

1 to be very important in executing a successful P3
2 program for the state.

3 Items such as, the development of a statewide
4 master plan for its P3 program, as well as the
5 development of a financing strategy to support
6 possible P3s. Within that, we would include a state
7 infrastructure bank.

8 We believe both of these initiatives will be
9 important for the state as it thinks through using
10 P3s effectively.

11 On the history of P3s, I'm sure many of you
12 are familiar now, with the statistics on P3 usage
13 around the world.

14 One of the biggest users of P3s, the United
15 Kingdom, had closed over 700 projects since 1992,
16 with a total value in excess of \$120 billion.

17 To put that statistic in the context of
18 New York State, the GDP of the U.K. is approximately
19 twice that of New York State.

20 That would imply an equivalent P3 spending of
21 over \$60 billion in New York State if it had been
22 executing in a similar manner over the last
23 20 years.

24 Such capital spending over the last 20 years,
25 grossed up to current dollars, would make a

1 substantial dent in a future 20-year infrastructure
2 funding gap of \$80 billion outlined in the 2009
3 report from the office of the state comptroller.

4 P3 projects around the world have ranged
5 from, building and rebuilding highways, waste
6 management, recycling programs for municipalities,
7 new high-speed rail lines, electric transmission
8 lines for offshore wind, new hospitals, and new
9 schools.

10 The list of projects is endless.

11 P3s are now commonplace in most developed
12 countries around the world, including France,
13 Germany, Spain, Italy, Australia. And as we just
14 heard, Canada, which has been executing P3s since
15 the early 1990s.

16 The use of P3s is also spreading into merging
17 economies, such as India, Brazil, and China.

18 The United States is new to the P3 world, but
19 may have the greatest potential to attract capital
20 to help pursue P3s over the next 20 years.

21 Infrastructure investment in the U.S. is
22 underweighted relative to its global peers. And
23 focus and interest exists amongst the largest global
24 infrastructure investors to put more capital to work
25 in the United States.

1 Harnessing that pent-up demand, and getting
2 the most from it, is going to be an important
3 element to any P3 execution strategy for New York
4 State.

5 The terms and conditions of P3s have varied
6 and evolved over the past two decades.

7 P3s have matured. P3 programs around the
8 world have learned from prior mistakes, and have
9 also adopted -- adapted to various financial market
10 conditions.

11 There is no "one size fits all" mentality in
12 the global P3 market, as structures are now tailored
13 to the specific project that is being pursued.

14 P3 advisory specialists can figure out the
15 best structure available for different projects in
16 the state.

17 Such recommendation would be based off the
18 state's objectives, the underlying asset
19 characteristics, and perhaps, equally, if not more
20 importantly, current market conditions.

21 I believe New York State needs to increase
22 its utilization of P3s to advance its
23 infrastructure capital spending and maintenance
24 program.

25 It needs to consider P3s in two contexts:

1 One, to help the new projects get executed.

2 And, two, consider P3s on established and
3 older assets, to help raise funds, to then put to
4 work in new economic building projects.

5 The sooner many of these new projects can be
6 completed, the quicker the state can drive economic,
7 or top-line growth, and help reduce its heavy
8 deficits.

9 One of the key lessons learned over the years
10 with P3s, is that they provide more than just
11 capital to fund infrastructure projects.

12 Other benefits include, as we've heard from
13 the representatives from Québec, providing
14 attractive value-for-money, and alternatives to the
15 typical public procurement process.

16 Given the speed to market, and cost benefits
17 to the private sector, the cost to the state, on
18 certain projects, may be cheaper with a P3 than the
19 typical procurement process.

20 Many government-sponsored reports around the
21 world have confirmed this value advantage, just like
22 the P3s.

23 We just heard our friends from Québec
24 highlight two examples of over 200 and 700 million
25 dollars of value savings to this province, relative

1 to the typical process.

2 Leveraging credit-sector expertise to the
3 benefit of the state is another thing, be it use of
4 latest technology, or other cost-cutting methods.

5 Transferring significant execution and
6 operating lists go away from the state to the
7 private sector. Obviously, another important
8 element.

9 But one perfect example of that would be, the
10 "Big Dig" in Boston, and the costs associated, the
11 added costs, almost 100 percent above the original
12 budget estimates absorbed by the state, which they
13 continue to pay for today with over a billion
14 dollars, per annum, of financing costs.

15 Accelerating speed to market is also an
16 incredibly important element.

17 In Florida, with I-595, they were able to
18 bring that to the marketplace 15 years ahead of a
19 typical process, driving economic growth, and
20 lowering costs to the state.

21 But one of the most important elements, or
22 components, to a successful program, based off of
23 our experiences around the world, is the development
24 of a central plan, and a team to execute on your
25 program.

1 Many other countries or regional governments
2 have turned to advisors and internal groups to help
3 oversee and coordinate their entire P3 program.

4 The creation of a master plan and an
5 oversight group will help the state prioritize its
6 P3 projects, based off a project's economic growth
7 and development implications, the state's aggregate
8 goals and objectives, and a complete stakeholders'
9 analysis.

10 These groups will not only help prioritize
11 the various projects that need to be considered for
12 a P3, but they will also manage the entire P3
13 procurement process, and help orchestrate the
14 required P3 funding, to maximize the value
15 realization by the state.

16 An organized P3 program will help manage the
17 process, and will help generate greater interests
18 and support from the global investment community.

19 Such a process will bring appropriately
20 structured transactions to the marketplace; manage
21 the timing of projects, based off of market interest
22 and appetite; ensure that projects are financeable
23 in the current market environment; and build a
24 successful track record of negotiations and
25 execution certainty.

1 This will result in greater and best, or
2 belief, in any new project reaching financial close;
3 and, therefore, create a preference to work with
4 New York State over other less-organized states when
5 completion risks are -- might be higher.

6 A master plan needs to consider all possible
7 projects across a spectrum of categories.

8 I know we are here today talking about
9 transportation, but we need to consider, in the
10 context of transportation, energy, social
11 communications; all aspects of infrastructure for
12 the state.

13 One last thing that I would recommend the
14 state consider alongside its master P3 plan, is the
15 development of a targeted financing strategy that
16 includes the creation of a state infrastructure bank
17 to help drive P3 execution over the next 20 years.

18 Financing of P3s has become more important
19 to execution success for any individual P3 than the
20 underlying transaction's structure and terms.

21 The global capital market's correction in '08
22 has forced U.S. infrastructure projects to rely on
23 new capital sources and/or multiple government
24 agencies for the capital needed to ensure launch and
25 completion.

1 The state needs to develop a multi-prong
2 strategy to help deliver the needed capital for its
3 P3 projects.

4 Possible financing alternatives the state
5 should consider include traditional revenue bonds,
6 and the like. However, the state needs to also
7 consider new sources of capital, such as the IPO
8 market and/or the creation of a robust state
9 infrastructure bank.

10 A state infrastructure bank could be an
11 attractive alternative for New York State, to help
12 ensure execution success of planned P3s.

13 A state infra bank will allow the state to
14 control its own capital sources, and not rely upon
15 programs or grants from Washington, to get deals
16 done quickly and effectively.

17 Federal programs, such as TIFIA, have become
18 a key source of debt capital to new transportation
19 infrastructure projects.

20 New York State should not have to rely on
21 TIFIA to get P3 projects moving forward. A state
22 infrastructure bank can work with TIFIA, and similar
23 initiatives, but can also replace TIFIA debt on
24 projects if needed.

25 A properly structured state infrastructure

1 bank will help prioritize projects, garner focus and
2 attention from global investors, and generate a
3 return to the state beyond the economic growth of
4 the completed projects.

5 P3s are used successfully around the world,
6 and it's important that New York State embrace this
7 mature and developed technology to advance its own
8 infrastructure agenda.

9 Investment in its infrastructure is critical
10 to long-term economic growth. The key to maximizing
11 the success of any P3 program is not just hidden in
12 the details of each possible P3, but more
13 importantly, in the development and -- of an overall
14 plan of action that prioritizes transactions, and
15 helps source-needed financing.

16 Thank you.

17 CHAIRMAN FUSCHILLO: Mr. Turnbull, thank you
18 very much for being here. And, obviously, your
19 patience.

20 You know, one of the key factors -- and the
21 components you laid out are essential to a
22 successful program, if we're going to do it here in
23 New York State -- what I've also seen in other
24 states, and other areas around the world, less
25 involvement by the government makes it more

1 attractive.

2 Have you seen any -- I mean, what has been
3 your experience of other states, where the
4 legislature's been involved, or they haven't been
5 involved, in the decision-making process?

6 MR. TURNBULL: Well, I mean, essentially, the
7 government and legislative process has to actually
8 facilitate the initial steps to make something
9 happen.

10 CHAIRMAN FUSCHILLO: Right.

11 And, then, after that?

12 MR. TURNBULL: After that, the best success
13 stories you can point towards are P3 programs that
14 are managed by individual organizations.

15 Best examples would be: An infrastructure
16 Québec, or a Partnerships BC, or other types of
17 entities, whose sole mandate is to actually move
18 forward with different P3s.

19 CHAIRMAN FUSCHILLO: All right. Have you
20 seen, in many states, where, once a board is
21 created, the legislature's not involved with that
22 board in the decision-making process?

23 My concern, going forward, is the political
24 football games, and the parochialness, and the
25 nimbyism. And, then, you'll have nothing done.

1 MR. TURNBULL: Correct. I mean, it has to be
2 one of the biggest concerns you have, as it relates
3 to actually getting things done. But, also,
4 prioritizing within your capital spending.

5 At the end of the day, P3s are a form of
6 capital spending.

7 CHAIRMAN FUSCHILLO: Right.

8 MR. TURNBULL: It is a form of financing, but
9 it's capital that's being deployed by the state.

10 If it's overrun by different agendas,
11 separate agendas, and other items, you know,
12 fundamentally, there's going to be value leakage,
13 just as a theoretical point of view.

14 CHAIRMAN FUSCHILLO: Your testimony lays out
15 something that I believed, and I know my colleagues
16 do: we're not reinventing the wheel here?

17 MR. TURNBULL: No.

18 CHAIRMAN FUSCHILLO: I mean, the success rate
19 in so many parts of this world has been tremendous.
20 And it's just an option we need to make available,
21 to keep our infrastructure improving and rebuilding
22 here in New York State.

23 It's critically important.

24 So, I thank you.

25 I don't know if any of my colleagues have any

1 comments?

2 SENATOR SMITH: Yes.

3 CHAIRMAN FUSCHILLO: Senator Smith?

4 SENATOR SMITH: Yes, thank you very much,
5 Mr. Chairman.

6 Mr. Turnbull, thank you for your testimony.

7 You talked about executing a master plan for
8 P3. Then I believe, there was some part of your
9 testimony that talked about specific projects, in
10 terms of how you assess the value of using P3 on
11 them.

12 So, I'm just a little -- I'm trying to get
13 clear about the master plan, related to, versus the
14 individual assessment of each.

15 MR. TURNBULL: No, it's a great question.

16 Every single P3, or possible P3, needs to be
17 considered on an individual basis.

18 It needs to be assessed on an individual
19 basis because, based off of the characteristics of
20 the underlying assets; the market environment, what
21 buyers and sellers are willing to do at that point
22 in time; all those factors need to be considered, to
23 develop a singular strategy for an individual P3.

24 SENATOR SMITH: Uh-huh.

25 MR. TURNBULL: But the state itself needs

1 strategy up above that.

2 We've heard today, five or six different
3 potential transportation-related P3s, be it the
4 Tappan Zee Bridge, many other bridges within
5 New York State, other potential projects which may
6 come up, each of them needs to be assessed on an
7 individual basis. Develop a strategy on what makes
8 sense for it.

9 But, then, you can't say: I'm just going to
10 go out and do everything.

11 SENATOR SMITH: Right.

12 MR. TURNBULL: Because the reality is, the
13 human capital of the state can attach to get things
14 done, as well as the capital that can be attached to
15 get things done, is difficult to assess.

16 And, so, what you then need to do is, go
17 above all those individual projects.

18 Take each of them on an individual basis.
19 And, then, above that, develop a strategy that says:
20 I'm going to do this one first.

21 Why? Because it drives the greatest economic
22 benefit for the state of New York.

23 And, then: I'm going to do this one second.

24 Why? Because it drives tremendous economic
25 value for the state of New York. But, also, because

1 that's a structure that, today, is heavily desired
2 by the marketplace.

3 There is a tremendous amount of interest to
4 put capital to work in the United States, in
5 infrastructure. But, it has to be in the right
6 deal.

7 SENATOR SMITH: All right.

8 MR. TURNBULL: There are certain states who
9 have failed around different P3s.

10 Why? Because they brought a structure which
11 was not appropriate, at that point in time, for the
12 marketplace.

13 And, then, when they launched the deal, there
14 was nobody there to step up and say, I'll do it.

15 So, it has to be all those factors.

16 So, look at it on an individual basis; but,
17 then, bring it all up top, and try to think about
18 how to assess it on an aggregate basis.

19 SENATOR SMITH: All right.

20 The comptroller -- Deputy Comptroller Grannis
21 offered some, concerns, if you will. Some I think
22 are warranted, some are not.

23 But, the question of valuation of the asset,
24 private versus public; do have you any thoughts on
25 that?

1 MR. TURNBULL: Well, it is hard to
2 differentiate the value between an asset in a
3 public-market context versus a private-market
4 context; because, on the public-market context, a
5 road -- for example, an un-tolled road is worth a
6 lot because it drives economic value by moving goods
7 and services and people, and those types of things,
8 from here to there.

9 It's hard to assess that value on an
10 individual-road basis.

11 I do think, though, that when you frame a
12 concession, a certain-term concession -- 30-,
13 40-year concession -- where you layout,
14 specifically, the guidelines of what that individual
15 investor is going to keep, and what they have to pay
16 for.

17 That's a value that can be well defined.

18 And that's not selling an asset.

19 What we've always talked about is, that the
20 state would continue to loan the underlying assets,
21 the most often used, as the longer-term concession.

22 SENATOR SMITH: Uh-huh.

23 MR. TURNBULL: And those types of parameters,
24 you know, can be well defined, and well valued.

25 It's hard to go outside of that when you talk

1 about aggregate economic, and do a relative
2 comparison.

3 SENATOR SMITH: Uh-huh.

4 MR. TURNBULL: I think there are many
5 scenarios, where you can point to states that have
6 executed P3s, and crystalized value above and beyond
7 the value that people thought was in the underlying
8 concession. Not the asset, but the concession.

9 SENATOR SMITH: Uh-huh.

10 MR. TURNBULL: There are scenarios, where you
11 can point to deals that were done a few years ago in
12 the height of the market.

13 Indiana, for example, with a value received
14 by the state, has now funded, ten years, their
15 transportation budget.

16 The value of their -- to bring that asset to
17 market today, would be much less than what they
18 realized at that point in time.

19 But, again, it's not the asset that was sold.
20 It was a concession, and a contract.

21 SENATOR SMITH: All right, just one last
22 question.

23 On the infrastructure bank; California's
24 infrastructure bank, I guess, is primarily
25 capitalized through public money, and backed by the

1 full faith and credit of the California Treasury.

2 Do you have any thoughts on an infrastructure
3 bank that could be capitalized through public- or
4 private-pension money? And, have you heard of such
5 a formula?

6 MR. TURNBULL: We actually have, at Lazard, a
7 very detailed view -- opinion, as to how an
8 infrastructure bank could be set up for the state of
9 New York.

10 First, and foremost, it would not be with
11 full faith and credit of the state. That it can set
12 up as a separate entity altogether.

13 It has to be properly capitalized in the
14 investments that it makes.

15 In providing loans, it would need to be
16 properly structured against, new projects, and old
17 projects, that generate revenues.

18 But we do think that there are examples out
19 there, globally, as well as state infrastructure
20 banks in the United States, that do not have full
21 faith and credit of the underlying government
22 institution.

23 So, there are examples out there, outside of
24 the one that you provided, that I think would be
25 more appropriate, perhaps, from this state's

1 standpoint, as far as finding a new funding source
2 that doesn't come on to full faith and credit.

3 SENATOR SMITH: Thank you.

4 Thank you, Mr. Chairman.

5 CHAIRMAN FUSCHILLO: Thank you, Mr. Turnbull.
6 Appreciate your testimony.

7 Ed Lucas?

8 TESTIMONY OF EDWARD LUCAS

9 EXECUTIVE BOARD MEMBER

10 NEW YORK STATE PUBLIC EMPLOYEES FEDERATION

11 CHAIRMAN FUSCHILLO: Good afternoon.

12 MR. LUCAS: Good afternoon.

13 CHAIRMAN FUSCHILLO: Thank you very much for
14 taking the time, and your patience, to be here.

15 MR. LUCAS: Oh, that's okay.

16 I'm quite happy to be here.

17 Since I've been working for the department of
18 transportation since 1978 --

19 CHAIRMAN FUSCHILLO: Thanks, Ed.

20 MR. LUCAS: -- I've spoken to several of you
21 individuals before.

22 Very nice to meet you, sir, Mr. Chairman, and
23 other Senators.

24 CHAIRMAN FUSCHILLO: We have your testimony.
25 If you can summarize it, we would be grateful, if

1 you can.

2 MR. LUCAS: It's a little difficult to
3 summarize. I will attempt to do the solvent points.

4 CHAIRMAN FUSCHILLO: Thank you.

5 MR. LUCAS: Basically, I must say, that I am
6 a representative for DOT statewide labor/management.

7 I do work for the New York State Public
8 Employees Federation, represented by. And we have
9 56,000 workers, with 4,500 of them in DOT.

10 It's tempting to believe that public-private
11 partnerships produce massive new funds for
12 infrastructure construction. But, this is a false
13 promise.

14 There is no such thing as free money. In the
15 end, someone has to pay.

16 And when there are private investors or
17 corporations, it also means the need for monetary
18 return on their investment.

19 You can use nice words to describe it, but
20 the fact remains: The source of revenue for
21 transportation projects will always be, either taxes
22 or tolls.

23 The buzz word being "partnership"; warm,
24 fuzzy feelings. It seems like it's a win-win.

25 The reality is very different.

1 History shows us, time after time,
2 public-private toll-road projects mean higher costs
3 to all the taxpaying public, especially those who
4 rely on the roads for their livelihood.

5 There's basically three important dangers.

6 "The potential to default."

7 Senator Smith was just referencing, what,
8 full and backing?

9 Well, in essence, we would be -- "we,"
10 New York State, would be held in the bad when they
11 default.

12 "Noncompetitive clauses."

13 There are horrendous examples about, you
14 cannot improve any other infrastructure adjacent to
15 the one, because would you have to pay fees to them.

16 Basically, these investors want a monopoly.

17 And, in this, DOT, we always are referring,
18 currently, to our corridors, and moving of
19 economics. And I'm going completely off the script,
20 just from what I know.

21 And the reality is, non-competitive clauses
22 will not perform well for us at all.

23 The aspect of a non-competitive clause is
24 saying: Okay, you have one infrastructure that's
25 being done by a P3. You can't even maintain the

1 adjacent one without paying that financial entity, a
2 penalty.

3 There are common parts of P3s, and of great
4 concern, if you want to realize all risks.

5 There's a lot of information in my report in
6 regards to a global study of thousands of P3s
7 around the world. And we're talking about a value
8 of a half a trillion dollars, not billion. And, you
9 know, some of the failures that have gone on.

10 The author of the publication of "A Global
11 Auction of Public Assets" says: "There's now a
12 significant evidence base to show that most PPP
13 projects have little or no democratic control or
14 transparency, are costly, provide poor value, lack
15 innovation and flexibility, reduce employment" --

16 which, is something that hasn't been
17 discussed here today.

18 -- "and erode public-service values."

19 Like I say, there's references to failures.

20 But, basically, the main failure that's
21 highlighted, is that, 75 percent of them have been
22 based upon the original projections not being met.
23 And, subsequently, people ended up going into
24 default.

25 As an example: There was one down in

1 South Carolina that, basically, had half the traffic
2 that was projected. It went into default.

3 And, then, the entity that was created did
4 not have the revenue to reimburse South Carolina DOT
5 for the anticipated maintenance or repairs.

6 Accumulated deficits of the Connector were
7 163 million. And they're being added to, about
8 14 percent a year; according to Peter Samuel, who is
9 involved with "TOLLROADSnews."

10 He's a great proponent to tolls roads; but,
11 yet, he's telling you this.

12 California made reference to the
13 South Bay Expressway in San Diego. It went bankrupt
14 in 2010. Would not support the debt.

15 And I think California ended up picking a \$73
16 million loss on the restructuring of the loans
17 alone.

18 Just the restructuring of the loans was \$73
19 million; that, we would be held responsible.

20 Now, here's the point: In both of these
21 cases, it appears, the only parties that benefited
22 were the financial advisor and investment firms that
23 were paid at the front end of those deals.

24 Think about that. It makes a lot of sense,
25 doesn't it?

1 They set it all up. They propose it. They
2 make it look all very nice. They collect their
3 fees.

4 And, when they default, go bankrupt, fail to
5 maintain all these different aspects; or, increase
6 tolls exponentially.

7 And the reason being, that most of these
8 cases of failure was due to widely optimistic
9 predictions for the use of toll roads.

10 But, as far as the taxpayer is concerned --
11 which, you know, we all represent. I'm a
12 public servant; I represent taxpayers.

13 I consider getting my money's worth to myself
14 every day, because I am a taxpayer.

15 -- debt restructuring isn't the answer to the
16 pain of a toll road.

17 The Dulles Greenway, a 14-mile, 350 million,
18 defaulted on its loan in '96.

19 2005, an Australian firm bought the Greenway,
20 and raised the average toll, from \$2 to, roughly,
21 3.50. A 75 percent hike.

22 well, who does that hurt? It hurts everyone.
23 It hurts the state's economic circles,
24 taxpayers, representatives. It hurts everyone.

25 There's a horrendous example about the

1 Chicago parking meters, where they sold, for
2 1.15 billion, the rights for parking in Chicago.
3 And it's projected that the investors will receive
4 11.6 billion, in parking fees, over the 75-year
5 life.

6 who bought the parking franchise? By a
7 partnership made up of the investment bank
8 Morgan Stanley.

9 "Business Week" called it, "A windfall for
10 Investors, and a Loss for Chicago."

11 I'd like you esteemed gentlemen to consider
12 whether or not you want to have a loss for New York.

13 Think about these level of risks that we're
14 speaking of.

15 "The deal illustrates how wall street banks,
16 recipients of more than \$300 billion in bailouts" --
17 "bailouts," excuse me -- "bailouts in the worse
18 financial meltdown since the Great Depression, are
19 profiting, by selling bonds, and leasing public and
20 private properties," according to "Business Week."

21 I really don't call that a free-market
22 solution.

23 There's more and more examples, as I say.
24 But "free market" says, you know, it's because of
25 the non-competitive clauses and the monopolies that

1 are generated by these things, it is no longer a
2 free market.

3 Summarize. Summarizing is difficult when you
4 have the whole thing memorized.

5 [Laughter.]

6 MR. LUCAS: One second.

7 Oh, and you know, more reference is made to
8 being able to work on your existing roads; roads
9 that are assets, that are in line next to them.

10 You know, being -- end up with a roadblock to
11 working on your own highway system because of an
12 agreement that you entered into for, maybe, up to a
13 century? That's not a realistic approach.

14 The private operator is there to make a
15 profit, usually by charging higher tolls.

16 The sole goal of a PPP is profit, not public
17 service, what I do, every day.

18 I suppose it's pretty clear, that the P3s
19 will result in the greater use of private
20 engineering consultants for design and construction.

21 Obviously, all of you that have been involved
22 in transportation issues over a long period of time,
23 realize that, numerous study, engineering; that DOT
24 engineering forces can do the work, from 50 percent
25 to 75 percent more cost-effectively than consultants

1 can.

2 We calculate, of course, that DOT would save
3 between 55 million and 83 million per year by
4 reducing its use on consultants.

5 And I just got to summarize: As I said
6 before, it's tempting to believe that public-private
7 partnership would produce massive new funds for
8 infrastructure construction -- infrastructure
9 construction.

10 But this is a false promise. There's no such
11 thing as free money.

12 Everybody in the room should hear that:
13 "There's no such thing as free money."

14 The underlying source of revenue is the same;
15 either tolls or taxes.

16 Public financing, public design, will produce
17 better results at a lower cost.

18 And I'd like to add a personal opinion to
19 this matter.

20 The generations that came before me -- my
21 grandfather, and the people before them -- they
22 invested in the interstate system, when times were
23 better.

24 And they said, "For the good of the state,
25 and the good of the nation," they made these

1 investments.

2 They made them, thinking that we were going
3 to be good stewards for them. Forever.

4 They didn't make them for us to sell them to
5 a private entity.

6 I thank you very much for your time.

7 I'd be perfectly willing to entertain any
8 questions you may have.

9 CHAIRMAN FUSCHILLO: I appreciate your
10 testimony.

11 And, you lay out a course of caution, and
12 potential risks. And I think the comptroller's
13 office stated that as well.

14 Senator Smith?

15 SENATOR SMITH: Just -- yes, thank you,
16 Mr. Chairman.

17 And, again, thank you for the testimony on
18 the public-benefit side, and being cautious.

19 I just want to go to something -- go back to
20 your testimony. You cited -- and this is a question
21 just about, P3s, and conditions of whether it
22 works or not.

23 You cited one example, on the
24 Southern Connector, which I guess, the asset didn't
25 perform. There was a bankruptcy. They couldn't

1 handle the debt.

2 MR. LUCAS: Right.

3 SENATOR SMITH: Then you talked about
4 Chicago, where Morgan Stanley made a sound
5 investment, and it looked like they were going to
6 raise \$10 billion over 10 years.

7 So, I guess my question is: Is the absence
8 of, one working, and not working, just basic
9 economic market conditions, or is it because of P3?

10 MR. LUCAS: Well, they're not the same type
11 of example.

12 Now, I've been working in labor/management
13 process at DOT for many years. And we've been
14 involved in valuation, like the first type of
15 things, like design-build, which we are also
16 against. And -- because of costs, and
17 public-private partnerships.

18 The idea with the Chicago one is pretty
19 simple.

20 They sold the right for parking in an area
21 where people are always going to park, for 75 years.
22 And they got the money up-front.

23 So, it was kind of like what the comptroller
24 was saying: Be cautious of, getting some money now,
25 and paying for it forever.

1 And the people that are going to be paying in
2 Chicago, to the tune of ten times what they receive,
3 is the increases in the revenue for the parking.

4 So, every time a person goes into Chicago,
5 and parks, Morgan Stanley and their investors are
6 profiting exponentially, in my opinion.

7 Now, the other example is, where the -- that
8 I made reference to, was where they predicted, in
9 the optimistic viewpoint, that they were going to
10 get 16 -- or, 3,300 cars a day. And they're only
11 getting 1,600 cars a day, or whatever it is --
12 1,000. Excuse me.

13 And, so, those people went bankrupt.

14 And the state of South Carolina, the DOT,
15 tried to go after them on their clauses, you know,
16 that were in the contract. And, basically, they
17 didn't have the money.

18 So, they -- there wasn't sufficient funds, so
19 all of the risks ended up being absorbed by the
20 state, you know.

21 So, the examples are many. And if you'll
22 read further into my testimony, you'll see a few
23 more different types of examples.

24 But, to sell an asset, when the sole reason
25 is to generate profit, there's very few instances

1 where the risk won't fall back on us.

2 Because, I heard a lot of you senators, this
3 morning, asking questions about, whether we would
4 retain the asset.

5 You know, just like examples from the
6 Ministry of Québec, they turned around and they
7 said: well, we've had this for ten years, but we've
8 only been using it for a few -- as far as I can
9 tell.

10 I'm not quite sure how it took them so long
11 to get started; but, they established a toll road.

12 So, I would assume that, probably, it wasn't
13 a toll before. But people are so -- there's so much
14 congestion.

15 But I would be a little bit more concerned,
16 to look into the bottom line of that thing; is
17 whether or not the local roads are able to be
18 improved, to create competition? Or you would -- do
19 you have to play clauses back in; non-competitive
20 clauses.

21 Very scary aspect. Risks involved.

22 So, it's not as simple as it seems. It will
23 always be, taxes or tolls.

24 SENATOR SMITH: Uh-huh.

25 MR. LUCAS: So, it's the aspect that we're

1 trying to drive: It's not free money.

2 If we're not -- if we're not planning for in
3 the capital budget of DOT, or the budget for MTA,
4 you're paying for it by increasing tolls.

5 You know, you're paying for it over a long
6 period of time, as opposed to, by (untelligible) --
7 Does that answer your question?

8 SENATOR SMITH: Yes. Yes, it does.

9 Thank you.

10 MR. LUCAS: Anything else?

11 CHAIRMAN FUSCHILLO: Okay, thank you very
12 much.

13 MR. LUCAS: Okay. Thank you.

14 CHAIRMAN FUSCHILLO: Sam Barend?

15 TESTIMONY OF SAMARA BAREND

16 VICE PRESIDENT OF STRATEGIC DEVELOPMENT

17 DIRECTOR OF PUBLIC-PRIVATE PARTNERSHIPS

18 AECOM

19 CHAIRMAN FUSCHILLO: Good afternoon.

20 MS. BAREND: Hi. How are you doing?

21 Thank you very much for having me.

22 Chairman Fuschillo, Senator Dilan,

23 Senator Smith, thank you for staying.

24 It's a real pleasure to be here. And I very
25 much appreciate that you all are generating a

1 dialogue on public-private partnerships, here.

2 It is, you know, much overdue in the state.

3 I am Sam Barend, and I am the director of
4 public-private partnerships for AECOM, which is a
5 global construction, architectural, engineering,
6 company.

7 And we have done, you know, projects all over
8 the world for private-public partnerships. 19 of
9 the top 25 projects in North America for
10 transportation.

11 And, then, you know, we've also done
12 projects -- this is a transportation/public-private
13 partnership hearing, but we have also done schools,
14 we've done courthouses. We have done a wide range
15 of public-private partnerships.

16 Most significantly, the first social
17 infrastructure project ever, you know, created --
18 finished in this country, that's reached financial
19 close, which is the Long Beach Courthouse.

20 And today, I come before you with a dual PPP
21 prospective, as having served as executive director
22 of the State Asset Maximization Commission; and,
23 also, you know, now being in the private sector.

24 And that commission, as you all know, you
25 know, is charged with trying to find a path forward

1 for how New York State could undertake
2 public-private partnerships. And, you know, given
3 all of the diverse stakeholder concerns that we
4 have, what would be the best approach, you know,
5 given labor issues, given everything.

6 And, so, what we recognized, is that, you
7 know, as folks have talked about here, that
8 30 states, along with numerous nations, are saving
9 billions of taxpayer dollars, but -- and are
10 undertaking more projects, in less time, with
11 greater accountability, by using public-private
12 partnerships to deliver critical infrastructure.

13 But, unfortunately, despite our best efforts,
14 you know, New York State just isn't one of them.

15 And what the problem is, has been that, you
16 know, time after time --

17 And a few of you who are left here, may have
18 the balance to prove it.

19 Maybe Senator Smith does, because I know you
20 have been trying to push this issue for a while.

21 And, hopefully, Senator Fuschillo will not
22 have these battle wounds, in this go-around.

23 -- but, for nearly two decades, we've tried
24 to pass legislation; P3 legislation. There have
25 been a number of misconceptions that have been put

1 forward. And, each time, it's consistently failed.

2 In each instance, you know, broad legislation
3 was introduced, that, you know, labor said: It
4 didn't address their concerns. It offered, you
5 know, an unclear process for project oversight.
6 Provided little rationale for, when, and why, such
7 projects should or should not be advanced.

8 And labor unions generally viewed these
9 projects, as we've heard, as a means to bring the
10 state cost savings at their expense.

11 You know, to reduce the use of in-house
12 engineers, and to scale back their hard-and-fought
13 wage protections.

14 And, worse, legislators have viewed PPP
15 legislation as giving blanket authority to create --
16 to DOT, to create windfalls for the private sector.

17 You know, some of these concerns have
18 legitimacy, and others are just simply unfounded.

19 And what we have seen through the years, as
20 P3 projects have matured in this country, that, you
21 know, there are best practices that have been
22 developed. And that, you know, for every concern
23 that is being putted forward, there is, you know, an
24 argument to back it up.

25 You know, every state has gone through

1 growing pains. And, I guess, the benefit that we
2 have here in New York, coming to the game late, is
3 that we can learn from all of the, you know, trials
4 and tribulations.

5 In 2008, you know, it was becoming very
6 clear, the state had to do more with less.

7 You know, the SAM Commission was created to
8 curtail these widespread misperceptions, and to
9 create a path forward on PPP, by approaching P3s in
10 this collaborative nature; bringing labor to the
11 table, bringing the private sector.

12 And what we found through that process was
13 that -- you know, that the real message that
14 resonated, was not talking about using
15 public-private partnerships to close a budget gap,
16 not talking about monetizing assets, but really
17 talking about performance-based infrastructure
18 delivery, using public-private partnerships to get
19 things done faster, to stretch our taxpayer dollars.

20 And what we found, is that we had, you know,
21 the support of 20 organizations. And labor,
22 actually, was very willing to listen, and to work
23 with us.

24 And, you know, our willingness to work with
25 them proved to be very beneficial.

1 And through this commission report, you know,
2 there were 27 specific projects, that I think will
3 form a roadmap for the future legislation that is
4 put forward, and that is passed.

5 And, you know, these projects represent
6 30 billion in investment.

7 But the main recommendation that the
8 commission put forward, that I think is significant,
9 to talk about here today, and that we should really
10 think about it, it was mentioned before by the --
11 you know, the folks from Québec government, is the
12 creation of an entity through which to advance
13 public-private partnership projects.

14 And what we have seen in this country is a --
15 really, a piecemeal approach to addressing
16 public-private partnerships.

17 And, you know, agencies, say, DOT will put
18 forward, one project here, and one project there.
19 And, you know, some of the concerns that path has
20 put forward are founded, but a lot of them are
21 founded because public-private partnerships were not
22 advanced in a systematic way, and in a vehicle that
23 had oversight, that could screen, prioritize, and
24 assess projects, for value, for money.

25 If you had those controls in place, what you

1 have seen in Canada, and the U.K., you can garner a
2 whole lot of benefit for your state, for your area.

3 And, you know, globally, the governments that
4 have proven most successfully, on an ongoing basis,
5 they've created these entities.

6 And, you know, a whole -- another reason
7 that -- for creating these entities, is that, you
8 know, it's true; these public-private partnership
9 projects are very complex. These are not easy
10 projects to undertake. And they shouldn't be
11 undertaken for -- you know, for most projects.

12 But, for -- as, you know, the commissioner of
13 transportation mentioned, for about 10 to 12 percent
14 of the projects, they do make sense, for -- you
15 know, for, tricky, sticky projects. For projects
16 that, you know, need to be accelerated.

17 And we have almost 6,000 deficient bridges.
18 And a public-private partner, we don't really have
19 another option but public-private partnerships.

20 So, it's imperative that, whatever authority
21 that we create to oversee, it have the adequate
22 resources. If we're going to do this, we have to do
23 it right.

24 So, whatever entity is created, must have the
25 resources to hire and retain legal advisors,

1 financial advisors, technical advisors. And, also,
2 some sort of nimble full-time staff.

3 Otherwise, we might as well just not do this.

4 You know, as I was mentioning, you know, the
5 public-private partnerships, there is a -- universal
6 projects that makes sense, and it has been discussed
7 today.

8 General rule of thumb, is that: Projects
9 over \$200 million, in terms of construction costs,
10 do make suitable projects for P3s.

11 In Canada, they have a process, where, in
12 British Columbia, every project that is more than --
13 that is 200 million or more, has to be looked at,
14 for whether or not it's suitable to go forward as a
15 public-private partnership.

16 And, you know, we have mentioned, Tappan Zee.

17 You know, I really think that Tappan Zee
18 could be a perfect project for a public-private
19 partnership. But, it would make sense to start with
20 some other smaller projects.

21 And, you know, you just heard from -- you
22 know, from Ed Lucas, and I'm sure you'll hear from
23 others, who are going to talk about some of the
24 concerns of public-private partnerships.

25 And there are concerns. And they will talk

1 about some of the myths out there, about, you know,
2 why it may not make sense to do public-private
3 partnerships.

4 But, I do want you to be aware, if you hear
5 that the cost of private capital does not justify
6 undertaking a public-private partnership, because
7 that notion is simply untrue.

8 To start, there are federal financing
9 programs to support public-private partnerships,
10 such as, TIFIA, and private activity bonds, which
11 have resulted in very comparable costs of debt, with
12 typical tax-exempt financing.

13 In addition, experience has proven that the
14 benefits of transferring project delivery and
15 long-term maintenance costs to the private sector
16 can result in significant cost savings.

17 In a traditional design-bid-build approach,
18 as you all know, the public sector maintains all of
19 risks. So, they take on the schedule risks, they
20 take on the delivery risks; they take on everything.

21 So, basically, there's no incentive in a
22 design-bid-build to deliver the project on time, let
23 alone, consider the long-term performance of the
24 asset.

25 And, for instance: Had the state employed a

1 public-private partnership on the I-287 project, it
2 would have saved at least 67 million in cost
3 overruns. And, the project would have been
4 delivered much sooner.

5 A public-private partnership also allows a
6 state to harness tremendous innovations in design.
7 And, the private sector is incentivized to look at
8 the project for the long term, over 35 years.

9 And a recent example of this approach, is
10 Port of Miami Tunnel, which was a, 35-year,
11 long-term contract, to design, build, finance, and
12 operate, maintain, three miles of tunnel.

13 The final bid of the winning consortium
14 proved to be \$500 million less than the preliminary
15 cost estimate, prepared by the state's technical
16 advisor, for undertaking the project through the
17 traditional means.

18 Now, in closing, I just wanted to touch on a
19 few of the issues that were spoken about on -- the
20 previous speaker. He had mentioned a couple of
21 projects that had failed.

22 He mentioned the Southern Connector. And he
23 also mentioned -- I think he mentioned the
24 Dulles Tollway.

25 A couple of the projects that he had

1 mentioned, you know, are what's called "the 63/20
2 structures."

3 And, you know, there are a lot of different
4 definitions for "public-private partnerships."

5 And just I think it's really important, as
6 you're moving forward, and you're listening to
7 people and you're hearing concerns, you understand
8 the different definitions.

9 There are certain structures or projects that
10 people define as "a public-private partnership,"
11 which really aren't; where there's really no skin in
12 the game for the private sector to stay in the
13 project all the way through.

14 In some public-private partnerships, people
15 will say, well, what -- you know: This project has
16 gone bad. It's terrible. You know, and, this toll
17 road, they -- you know, the traffic revenues weren't
18 projected right.

19 well, the benefit, in a real public-private
20 partnership agreement, if it's structured well, is
21 that, it's all about the contract, and all of the
22 risks are really shifted; that the right risks are
23 shifted to the private sector, so they have skin in
24 the game for the long term.

25 So, if something goes wrong, it's really the

1 private sector that's on the hook. So, the public
2 sector gets the asset back.

3 So, I think a lot of those things have to be
4 taken into account.

5 With regard into the Chicago parking meter,
6 there is a lot of validity into what was said
7 previously. That was a very poorly structured deal,
8 in terms of, the public sector did not understand
9 what its priorities were up-front.

10 So, it's really critical, when we're looking
11 at legislation, and when we're creating, whether it
12 be a public-private partnership entity, or a
13 process, the public sector goals are understood
14 up-front.

15 And what -- all they knew, is that they
16 wanted to get the most money out of that asset. And
17 they didn't realize that they were actually
18 sacrificing their long-term, you know, values, and
19 their ability to develop in the city, because of the
20 way that it was structured.

21 So, just, with that said, with closing: I
22 really have a lot of confidence that, with
23 Senator Fuschillo's leadership, and with the rest of
24 the committee, that history won't repeat itself.

25 You all will get P3 legislation passed.

1 So, thank you very much.

2 CHAIRMAN FUSCHILLO: Thank you, Sam.

3 Senator Smith, that's a lot of pressure on
4 me, wouldn't you say?

5 SENATOR SMITH: That's a lot of pressure on
6 you, yes.

7 CHAIRMAN FUSCHILLO: Sam, and I appreciate
8 it.

9 And, you and I had the pleasure of meeting,
10 where we sat on the same panel with the New York
11 City Building Congress, recently.

12 And you have been a great source for my
13 office.

14 And, I think we do have an advantage; that we
15 will learn from other states with mistakes -- with
16 their mistakes, and not repeat the same.

17 You know, one of the things, and you've
18 mentioned it to me, and you stated in your
19 testimony, of caution, really, is to give blanket
20 authority to the DOT.

21 We're looking at setting up a framework,
22 rather than just give blanket authority. But,
23 nobody's testified to be project-specific.

24 That's something that you feel strongly about
25 as well, don't you?

1 MS. BAREND: I do. I mean, I think it would
2 be -- the best thing would be, if we could give
3 broad P3 legislation, that created a process,
4 through some sort of P3 entity.

5 CHAIRMAN FUSCHILLO: Right.

6 MS. BAREND: And if you don't have to specify
7 the projects, that's fine. But, given some of the
8 political realities of the past, I think it might be
9 more acceptable to the assembly, to --

10 CHAIRMAN FUSCHILLO: And I understand that.
11 And you and I have discussed this. And I'm sure my
12 colleagues would feel the same way: The political
13 realities are my greatest concern, going forward,
14 too, because you really don't want to have a project
15 tied into politics or nimbyism.

16 And I stated that before. I don't know if
17 you were here.

18 You know, one of the things, when we sat on
19 the panel, that was very important, is to make
20 New York attractive for individuals to invest with
21 their dollars. Whether it's an infrastructure
22 bank -- and you and I have talked about that -- or a
23 P3, or a design-build, we want to make an incentive
24 to come here and invest.

25 And you -- and the commissioner even

1 testified too -- I don't know if you've heard her --
2 something that you stated also; that it's, really,
3 for 10 or 15 percent of the overall scope of
4 projects, unless you bundle them.

5 And we talked about that with the short-span
6 bridges as well.

7 The key is, to make it attractive.

8 And, as we go forward, and how we achieve
9 that goal, is really going to be the negotiations,
10 and with the second floor, and also the assembly as
11 well. But, I feel confident that we'll get there.
12 And I think economic times are driving that as well.

13 MS. BAREND: One key thing, I just want to
14 mention, in terms of private-sector interests, is,
15 in California, they really made a mistake, in terms
16 of the structuring of their legislation.

17 There's some -- a number of points, in terms
18 of sign-off, when you have to get approval.

19 So, that, the point at which, whether it's
20 the DO -- the agency, or some sort of infrastructure
21 entity, signs off on the project, is really
22 important.

23 CHAIRMAN FUSCHILLO: Right.

24 Okay.

25 MS. BAREND: So...

1 CHAIRMAN FUSCHILLO: Thank you, Sam.

2 MS. BAREND: Thank you very much.

3 CHAIRMAN FUSCHILLO: I appreciate you taking
4 the time, and testifying. Thanks.

5 MS. BAREND: Thanks.

6 CHAIRMAN FUSCHILLO: Tom Osborne?

7 TESTIMONY OF TOM OSBORNE

8 MANAGING DIRECTOR

9 UNITED BANK OF SWITZERLAND

10 CHAIRMAN FUSCHILLO: Good afternoon, Tom.

11 MR. OSBORNE: Thanks, Senator.

12 CHAIRMAN FUSCHILLO: Thanks for being here.

13 And, this is no direct directive to you, but
14 we do have seven speakers left, and I think we have
15 until 2:00 to get everybody in.

16 MR. OSBORNE: Okay?

17 CHAIRMAN FUSCHILLO: So, I'll emphasize my
18 comments, by saying: First of all, thanks to
19 everybody for their patience. The hearing has
20 gotten a lot longer. It's a very important topic.

21 There's very few of us left here. I'm
22 sticking it out, with Senator Dilan, and we're not
23 leaving.

24 SENATOR DILAN: No, we're staying.

25 CHAIRMAN FUSCHILLO: Good. Thank you.

1 Just your name and affiliation for the
2 record.

3 MR. OSBORNE: Sure.

4 My name is Tom Osborne. I'm a managing
5 director with UBS Investment Bank in New York. I
6 head our America's infrastructure advisory practice.

7 Grateful for the opportunity, Senators, to
8 testify today.

9 By way of background, I have 24 years of
10 experience as an infrastructure investment banker,
11 serving the utilities and infrastructure industries.

12 Five years ago, UBS established a
13 New York-based infrastructure advisory practice,
14 which I co-headed before becoming sole head of that
15 group in 2008.

16 Globally, I'm part of an infrastructure
17 advisory team that has advised on over
18 100 successful P3 transactions, to date.

19 There are two important messages that I would
20 like to convey today, quickly.

21 The first is, that there is a huge amount of
22 private-sector capital looking for a home in public
23 infrastructure; but, really, a dearth of U.S. P3
24 opportunities, to put it to work.

25 The same could be said of private-sector

1 development, construction, and operating expertise.

2 Now, given the current fiscal strain at every
3 level of government in the state of New York; given
4 the legacy of underinvestment in transportation and
5 other infrastructure, and undercharging, relative to
6 the true cost of service; given the need for,
7 greater, and more efficient, infrastructure
8 investment; and given the fact that the federal
9 government can no longer be relied upon to bridge
10 the growing infrastructure funding gap; it's vital
11 that the New York State legislature pass, and the
12 Governor sign, legislation, enabling true
13 public-private partnerships as an alternative to
14 traditional public procurement.

15 CHAIRMAN FUSCHILLO: Tom, let me interrupt
16 you for a minute. And, you and I have met
17 previously. And, we do have your testimony here.

18 What makes one state more attractive than
19 another, in your -- I'm just -- I'm not asking you
20 for your broad, worldwide experience; but, let's
21 stay here in the United States.

22 What makes one state more attractive than
23 another?

24 MR. OSBORNE: I think there's -- if I had to
25 sum it up in one word, I would say "clarity."

1 Clarity around the opportunities.

2 I mean, one of my key messages is: It's
3 really important to craft legislation that creates a
4 viable P3 framework, and that will properly balance
5 the interests of the state and the private sector.

6 The legislature has to give consideration to
7 a number of issues around that.

8 So, rational, objective, detailed
9 cost-benefit analysis, that properly considers the
10 transfer of risks, from the state to the private
11 sector.

12 I would say, in terms of clarity, having a
13 straightforward and transparent approval process, so
14 that private-sector proponents will be encouraged to
15 spend considerable time and resources that are
16 needed to put forward thoughtful and well-crafted
17 proposals.

18 CHAIRMAN FUSCHILLO: Do you find most states,
19 when they engage in P3s, have a separate
20 infrastructure board to -- for the approval process?

21 MR. OSBORNE: There are some --

22 CHAIRMAN FUSCHILLO: whatever they call it.
23 But, you know, essentially --

24 MR. OSBORNE: There are some that do.

25 And I would say, the most advanced -- it's

1 not a state; but, the most-advanced territory in the
2 U.S., in terms of putting forward an approval's
3 process, the type that you're alluding to, is
4 probably the commonwealth of Puerto Rico, where
5 there is in place, a PRP3 authority, that was
6 established through legislation.

7 There is, beneath that, partnership
8 committees, that are project-specific, and address
9 issues relating to assets that might be put forward
10 as public-private partnerships.

11 CHAIRMAN FUSCHILLO: Do you find the
12 financial resources, that you mentioned when you
13 first opened up -- did you use the word "abundance"?

14 MR. OSBORNE: Did I use...?

15 CHAIRMAN FUSCHILLO: ...the word "abundance"?

16 MR. OSBORNE: "Abundance"?

17 CHAIRMAN FUSCHILLO: "Abundance of dollars"?

18 MR. OSBORNE: I said, there is a lot.

19 CHAIRMAN FUSCHILLO: Go ahead.

20 Do you find most states go into, P3s?
21 design-builds? infrastructure banks?

22 Where is it most attractive for the
23 investment dollars?

24 MR. OSBORNE: So, the investment dollars are
25 looking for the kind of clarity that I alluded to

1 before. And there's over 150 billion of equity
2 capital in the private sector, that has been raised,
3 focused on infrastructure.

4 The concern that we have, is that, even as,
5 we'll call it, \$75 billion of that, is still
6 uninvested, a lot of that is being attracted
7 offshore, because there just have not been the
8 opportunities here in the U.S. to put that P3 money
9 to work.

10 So, in addition to that private-sector equity
11 capital, there is a substantial amount of
12 private-sector capital that would be interested in
13 buying the bonds that would accompany any
14 public-private partnership transaction. So...

15 CHAIRMAN FUSCHILLO: Uh-huh. That's
16 interesting.

17 Thank you, Tom.

18 MR. OSBORNE: Uhm --

19 CHAIRMAN FUSCHILLO: We have your testimony.
20 If you want to summarize, that's fine.

21 MR. OSBORNE: Sure.

22 The other things that I would say, is: It is
23 important, in addition to the clarity that I was
24 alluding to, to demonstrate flexibility, and
25 adjusting the level of private-sector control,

1 across each project. And that's going to be crucial
2 for structuring financeable deals.

3 And, lastly, I would say: It's crucial to
4 use the P3 proceeds carefully; preferably, to fund
5 capital requirements, and not to plug operating
6 deficits.

7 There were a number of comments that were
8 made. And Sam Barend, I think, did a good job of
9 addressing those. I would like to take a shot at it
10 as well.

11 You know, there were three points that were
12 made by Mr. Lucas, around the dangers,
13 quote/unquote, of P3s: The risk of default,
14 non-competitive clauses, and projections not being
15 met.

16 As for the risk of default, I would argue
17 that the risk is lower when operating standards are
18 codified, as they are in a public-private
19 partnership transaction, where you have super
20 monitoring, where you have lender step-in rights,
21 and all of that is incorporated into the contracts,
22 into the lease agreements, that are put in place.

23 As for non-compete clauses, sometimes they
24 need to be put in place, but not always. You can't
25 generalize.

1 If any concessionaire is ever given a
2 monopoly, then there needs be the appropriate
3 regulatory monitoring. And, potentially, even price
4 controls put in place to compensate for that.

5 All of these contracts are tradeoffs between
6 control, risk, and value. And you have to balance
7 those three.

8 As for the projections not being met, he
9 cited a couple of examples.

10 And I think, perhaps a better example for you
11 to consider, is the South Bay Expressway in
12 California. That, I think is a terrific example of
13 shifting risks away from the public sector, and into
14 the private sector.

15 That's a P3 project in Southern California.
16 It capitalized in 2003. Had a combination of 340
17 million of senior debt, in the form of project
18 loans, 10 banks, 140 million of sub-debt through the
19 government's TIFIA program, and 130 million of
20 private-sector equity.

21 In March 2010, because of the economic crisis
22 that resulted in lower-than-expected traffic and
23 revenues, that road was forced to file for
24 bankruptcy.

25 The private-sector equity was wiped out

1 entirely. 130 million, gone; thus, taking the first
2 loss on the project.

3 But, the taxpayer-funded TIFIA debt was
4 elevated to the same priority as the senior debt
5 because of the springing-lien feature built into
6 that. And as part of the restructuring, the overall
7 quantum of debt was reduced, from 530 million before
8 bankruptcy, to 288 million.

9 And the TIFIA creditors given a pro rata
10 equity stake on the board of directors, and a vote
11 on the board of directors.

12 Now, had that been financed through
13 traditional state and federal grants, and municipal
14 debt, the taxpayers and the municipal bondholders
15 would not have been cushioned from any of the losses
16 in the bankruptcy, as they were by virtue of having
17 130 million of private-sector equity in there.

18 So, with that, I thank you very much for the
19 opportunity.

20 I would be happy to answer any other
21 questions that you may have.

22 CHAIRMAN FUSCHILLO: Okay? We're good.

23 Tom, thank you very much.

24 MR. OSBORNE: Thank you.

25 CHAIRMAN FUSCHILLO: I appreciate your

1 testimony.

2 TESTIMONY OF D.J. GRIBBIN

3 MANAGING DIRECTOR

4 MACQUARIE CAPITAL ADVISORS

5 CHAIRMAN FUSCHILLO: D.J. Gribbin?

6 Hi, D.J. How you are?

7 MR. GRIBBIN: Mr. Chairman.

8 CHAIRMAN FUSCHILLO: Thank you very much for
9 being here.

10 MR. GRIBBIN: Thank you for having me.

11 CHAIRMAN FUSCHILLO: We do have your
12 testimony as well.

13 MR. GRIBBIN: My goal is to be your shortest
14 witness of the day.

15 CHAIRMAN FUSCHILLO: Let me ask you a
16 question.

17 In your testimony, you talked about --
18 we're joined, again, with Senator Golden.

19 -- about the two basic types of P3s: The
20 user pays, and a fixed payment.

21 What is -- is there a norm? Or are those the
22 options that are available, that --

23 MR. GRIBBIN: Those are the options.

24 CHAIRMAN FUSCHILLO: -- that attract an
25 investor?

1 MR. GRIBBIN: Yeah, I mean, you have a range,
2 obviously. If you can have the government make a --
3 well, you could have user pays, which is the toll
4 road or the parking that was talked about.

5 CHAIRMAN FUSCHILLO: Right?

6 MR. GRIBBIN: You could have availability
7 payments, which are usually done for social
8 infrastructures. Schools, that type of thing, where
9 you're not charging kids.

10 CHAIRMAN FUSCHILLO: Do you see a scenario,
11 like in New York State, where you have many
12 short-span bridges that need to be repaired or
13 rebuilt, where they could be bundled? And would an
14 investor -- without tolls, that would have to be a
15 fixed pay -- would find something like that
16 attractive?

17 MR. GRIBBIN: Well, Missouri did that.

18 CHAIRMAN FUSCHILLO: Missouri did that?

19 MR. GRIBBIN: Yeah, absolutely.

20 And the way they structured it, it didn't
21 really have private sector. It wasn't a P3 per se.
22 They did it as more of a design-build approach.

23 But you could --

24 CHAIRMAN FUSCHILLO: Right.

25 Was it a design, build, and maintain?

1 MR. GRIBBIN: Yes, it was a design, build,
2 and O&M; but there was no finance component to it.

3 But what you could do is, you could look at
4 your bridge program over the next 20 years.

5 So, you're going to spend X dollars a year on
6 that program. Figure out what it would cost; how
7 much scope you would get accomplished for that
8 annual payment.

9 And, then, go to the private sector and say:
10 okay, now what can you guys do?

11 And this goes back to what the Canadians --

12 CHAIRMAN FUSCHILLO: That would be their
13 value analysis that they would have to do?

14 MR. GRIBBIN: Correct.

15 CHAIRMAN FUSCHILLO: Right?

16 MR. GRIBBIN: Correct, public-sector compare.

17 But, I mean, in terms of making New York
18 attractive, I would recommend a number of things.

19 One: Reassure your colleagues, this is not
20 new. Americans have had P3s since 1989.

21 Bill Reinhardt, with "Public Works Finance,"
22 which is kind of the magazine of record for the P3
23 community, has an article that's about to be
24 published, that points out, that, since 1989, there
25 have been 96 transportation P3s, for \$54 billion

1 in this country.

2 So, I would say, yes, as Tom mentioned.

3 Puerto Rico is probably doing this the best.

4 We actually were hired to advise the
5 government of Puerto Rico, to set up their P3
6 program.

7 I'm a former chief counsel for the highways,
8 and general counsel at USDOT. Have been working at
9 P3s for about 14 years.

10 If you're going to do just transportation, I
11 would not recommend, that you don't need a whole
12 separate entity to prove those programs.

13 But, if you broaden out beyond
14 transportation, it's extremely helpful to have a
15 Partnerships BC/Infrastructure Québec type of
16 entity.

17 And I would say, take this whole debate.

18 What the opponents of this will say, is --
19 they'll point to an asset, and say: It doesn't make
20 sense, in terms of that asset.

21 P3s are not asset-specific. It's a
22 procurement approach.

23 All it is, is: How can the government
24 procure infrastructure, faster, more
25 cost-effectively, and at significantly lower risk,

1 than it does traditionally?

2 So, if you have the opportunity,
3 legislatively -- and I have not been intimately
4 following the politics of New York -- I would embed
5 this concept in your procurement approach.

6 Do a rigorous public-sector analysis, or a
7 value-for-money analysis, which essentially says:
8 Here's why we think that this project makes sense to
9 do as a P3 in this global reform that we're doing in
10 government procurement.

11 And, then, if it makes sense, change that.

12 But, I would also -- it's not infrequent for
13 legislatures to just dump on the executive branch.

14 "You now have legal authority to do this.
15 Go."

16 As a former member of the executive branch,
17 that's not particularly helpful.

18 So, it's helpful to set up a system.

19 So, give them, not only a legal authority,
20 but then give them the practical means they need to
21 execute on that legal authority.

22 And, again, you've seen this in
23 Partnerships BC, you've seen this in U.K. You see
24 this in Australia. And, most recently, you see it
25 in the United States, in Puerto Rico.

1 CHAIRMAN FUSCHILLO: what was the period of
2 time, where you stated, \$54 billion in P3s?

3 MR. GRIBBIN: I'm sorry?

4 CHAIRMAN FUSCHILLO: what was the period of
5 time, where you stated there were \$54 billion, of 96
6 projects?

7 MR. GRIBBIN: So, the first P3 in the U.S.
8 was 1989.

9 CHAIRMAN FUSCHILLO: Okay.

10 MR. GRIBBIN: And since 1989, to today, there
11 has been \$54 billion worth of projects done in the
12 U.S., as P3s.

13 CHAIRMAN FUSCHILLO: But not in New York?

14 MR. GRIBBIN: Not in New York. You don't
15 have legal authority, unfortunately, in New York to
16 do that.

17 CHAIRMAN FUSCHILLO: Right. And, hopefully,
18 we'll get there.

19 Any questions, Senator Golden?

20 SENATOR GOLDEN: I have a quick question.

21 The states that did you the P3s, what were
22 the outcomes?

23 MR. GRIBBIN: The outcomes ranged pretty
24 widely. And it kind of depends on who's vantage
25 point you're looking from. Right?

1 So, the outcome for the drivers, usually they
2 get the facility they've been using before, in
3 better condition than it's been in the past.

4 The outcome for the state, is that, they get
5 infrastructure constructed at a cost significantly
6 lower than it would cost them to do it. And, that
7 they ultimately own it.

8 And, more importantly, as was mentioned
9 before, any potential cost overruns, future
10 maintenance obligations; all that gets passed away
11 from the state.

12 The private-sector investment outcome has
13 been a little more mixed. Has been talked about.

14 Some of these have been very, very
15 successful, from an investor's standpoint. Some
16 less so.

17 But, remember, in each one of those, that
18 financial loss that the private sector took, outside
19 of the P3 context, would have been borne by the
20 public, by the taxpayers.

21 SENATOR GOLDEN: And how many states are you
22 still currently working in?

23 MR. GRIBBIN: Right now, there are, about,
24 27, 28 states, that have P3 authority. There are
25 about eight of those that have really aggressively

1 utilized them.

2 And Macquarie has been active in all of
3 those. We've done every P3 in the U.S. in the last
4 four years, with the exception of one that's closed.
5 And that was Presidio Parkway in California.

6 SENATOR GOLDEN: And how many losses did you
7 have --

8 MR. GRIBBIN: I'm sorry?

9 SENATOR GOLDEN: How many losses did you
10 have?

11 MR. GRIBBIN: I mean -- well, we were the
12 equity investor in South Bay Expressway, that Tom
13 talked about earlier. So, that project did not turn
14 out as well as the investors had hoped.

15 There was a global financial crisis. It was
16 based on real estate. There were a number of
17 factors that were built in there.

18 But, at the end of the day, California got an
19 \$800 million facility, that drivers are using as we
20 speak.

21 SENATOR GOLDEN: Now, you're talking about
22 pursuing public partnerships here -- public-private
23 partnerships, with going into private entities.

24 You're talking about doing public properties
25 here.

1 Do you also get involved with doing, like,
2 Atlantic Yards, or -- which is private money, and
3 we're going in with public and private dollars to
4 get the loan organizations -- those for-profit
5 organizations' dollars that keep their projects
6 going?

7 MR. GRIBBIN: Yeah, I'm sorry, Senator. I'm
8 having a hard time hearing you.

9 What was the question?

10 SENATOR GOLDEN: The projects that are going
11 on right now -- we have some projects going on at
12 Atlantic Yards, we have some project going on at the
13 world Trade Center. We have some projects that have
14 not yet gotten underway, over at the Jacob Javitz
15 Center -- these are projects that just stalled out.

16 Would you go into a public partnership with
17 those entities?

18 MR. GRIBBIN: Most of what we do is, we
19 invest just in infrastructure, not commercial real
20 estate.

21 And, so, our investors are, pension funds,
22 including trade-union pension funds, and others.
23 They're looking for a long-dated stable return.

24 So, we're looking for, you know, roads,
25 trains, ports; things that are infrastructure-like

1 in their character.

2 The things like, commercial real estate,
3 stadium development, that type of thing, Macquarie
4 wouldn't typically invest in something like that.

5 SENATOR GOLDEN: They found those streams of
6 revenues to be able to pay, right, for the -- for
7 this private-public partnership?

8 MR. GRIBBIN: Yes.

9 SENATOR GOLDEN: Did the states, that you
10 were already in, have they re-upped, and done
11 another series of public-private partnerships as
12 well?

13 MR. GRIBBIN: Yes, with a bit of a mixed
14 record.

15 Texas jumped out early, about four years ago,
16 with very aggressive P3 legislation.

17 The Governor championed it. Really, sort of
18 sped a number of projects through. Got a backlash.
19 And, then, that legislative authority was stripped
20 away.

21 But, if you think of, Virginia, has been
22 doing projects since before 1995.

23 Florida has done a number of them.

24 Texas has done a number of them.

25 California has done some -- a few. And,

1 then, public employees expressed concerns, so they
2 backed away a little bit.

3 And, then, Puerto Rico has just gotten
4 started. So...

5 SENATOR GOLDEN: Thank you very much.

6 MR. GRIBBIN: You're very welcome.

7 CHAIRMAN FUSCHILLO: Senator Dilan?

8 SENATOR DILAN: Yes.

9 In your testimony on the project execution,
10 you mentioned that, with the exception of Puerto
11 Rico and Virginia, that most states utilizing P3
12 have passed legislation.

13 How did Puerto Rico and Virginia do this
14 without legislation?

15 MR. GRIBBIN: Oh, they have legislation.

16 What Puerto Rico did, and Virginia did, that
17 was unique.

18 Virginia, just this year, set up an office
19 inside of VIDOT, that focused just on P3s.

20 So, in the past, they had staffers that were
21 spread across a dozen projects, also trying to do
22 this very complicated and sophisticated procurement.

23 They did them, but it took years and years
24 and years.

25 So, the suggestion is: Go ahead. And,

1 again, give the executive branch the legal
2 authority, and the tools, they need to execute these
3 projects.

4 SENATOR DILAN: Okay. Thank you.

5 CHAIRMAN FUSCHILLO: Mr. Gribbin, thank you
6 very much. And I appreciate your patience, as well
7 as the other expected speakers.

8 Dr. Joshua Schank?

9 TESTIMONY OF DR. JOSHUA SCHANK

10 PRESIDENT AND CEO

11 ENO TRANSPORTATION FUND

12 CHAIRMAN FUSCHILLO: How are you, Doctor?

13 DR. SCHANK: Hi.

14 CHAIRMAN FUSCHILLO: As you know, we have
15 copies of your testimony.

16 DR. SCHANK: Yeah, I'll summarize real quick.

17 CHAIRMAN FUSCHILLO: I appreciate your
18 patience, as well as the remaining speakers, as
19 well.

20 DR. SCHANK: Sure.

21 well, thanks for having me here.

22 Just so you know, I'm the president and CEO
23 of the Eno Transportation Foundation. It's a
24 90-year-old transportation organization, founded by
25 a traffic pioneer, William P. Eno.

1 And, what we do is, we are a neutral voice on
2 key transportation policy issues. So, I have no
3 horse in this race. We're just a, pure, analytical
4 organization. And I think that you will hear kind
5 of a balanced perspective, or you've seen a kind of
6 a balanced perspective in the testimony.

7 There are, really, three basic points of the
8 testimony, one of which has already been said
9 several times, which is, that P3s are not a
10 substitute for funding. So, don't think of them
11 that way.

12 Number two is: That they can provide
13 substantial benefits to the public, if they are done
14 correctly.

15 And, three is: That the success or failure
16 really hinges on the contract.

17 CHAIRMAN FUSCHILLO: Let me ask you a
18 question.

19 DR. SCHANK: Go ahead.

20 CHAIRMAN FUSCHILLO: Sorry to interrupt you.
21 What makes New York attractive for P3s?

22 I mean, I understand the framework. And we
23 have heard testimony since 10 a.m. this morning,
24 about how we frame this.

25 But, what makes New York attractive?

1 DR. SCHANK: I would say that the question is
2 not so much, what makes New York attractive, as it
3 is, how can New York maximize the benefits from
4 being attractive?

5 So, you don't want to be attractive just
6 because you would like to attract private
7 investment. You want to attract private investment
8 because you think it's a better way of delivering
9 public benefits. Right?

10 CHAIRMAN FUSCHILLO: True.

11 DR. SCHANK: So, it's not so much, attracting
12 public -- private-investor and private-investment
13 sake. It's setting up a structure for P3s that
14 ensures a good return to the public out there, for
15 the taxpayer.

16 CHAIRMAN FUSCHILLO: Right. It's a good
17 return for the public.

18 And also on the private side, for investor as
19 well.

20 DR. SCHANK: Well, yeah, the private sector
21 is not going to invest unless they see a good
22 return.

23 But, what you don't want to do is, set up a
24 situation, where the private sector comes in and
25 takes advantage, because you have made it very

1 attractive for them, but you haven't necessarily put
2 in place the right regulations.

3 CHAIRMAN FUSCHILLO: And we agree with that.

4 DR. SCHANK: Yeah.

5 So -- and the bottom line is, is that, the
6 key factor in that, is getting employees, who are
7 going to be negotiating these contracts, the skills
8 to do it.

9 I mean, if you look at the number one reason
10 why the contracts are poorly negotiated, it's
11 because the private sector comes in with a lot of
12 advantages in negotiating those contracts.

13 The public sector has less experience, and
14 they're scared to walk away because they don't want
15 to not deliver the project. And, it puts them in a
16 very difficult situation.

17 If you want to do something, it's getting the
18 public sector to the skills necessary to negotiate
19 these agreements effectively.

20 CHAIRMAN FUSCHILLO: We agree.

21 No, I have no questions.

22 I have looked at your testimony. And I --
23 you know, it's critically important; that, this has
24 been going on too long here in New York State, the
25 discussion of this, for many years, if not decades.

1 And we need to make sure that the framework
2 is workable, number one.

3 But, also, that there are options for
4 alternative funding because -- I'll take the
5 Tappan Zee Bridge, for an example.

6 It's been estimated, up to \$16 million. We
7 just don't have the money for that, and that needs
8 to be done.

9 DR. SCHANK: Right. And the Tappan Zee is a
10 great example. There's a place where you already
11 have tolls in place.

12 CHAIRMAN FUSCHILLO: Right.

13 DR. SCHANK: So, it's not like you're
14 introducing tolls out of the blue.

15 And if you're able to get a private-sector
16 party that will take on the financial risk, as well
17 as the political risk, frankly, of raising those
18 tolls, then that could be an opportunity to make an
19 investment were you might not otherwise be able to
20 make one.

21 That's very different than taking an existing
22 asset, and leasing it out for a price.

23 CHAIRMAN FUSCHILLO: Right.

24 DR. SCHANK: Those are two different things.

25 CHAIRMAN FUSCHILLO: There is a fixed revenue

1 stream there as well.

2 DR. SCHANK: There's a fixed revenue stream.
3 And, it's in desperate need of renovation. So,
4 you're going to get something that you had to
5 deliver anyway, but you don't have the funds to do.

6 And that's the place where you would want to
7 make it attractive for the private sector.

8 CHAIRMAN FUSCHILLO: Thank you very much.

9 Senator?

10 SENATOR DILAN: No.

11 CHAIRMAN FUSCHILLO: No?

12 SENATOR DILAN: No. Thank you.

13 CHAIRMAN FUSCHILLO: Okay, thank you very
14 much.

15 I appreciate the testimony that you submitted
16 to us.

17 Marc Herbst?

18 TESTIMONY OF MARC HERBST

19 EXECUTIVE DIRECTOR

20 LONG ISLAND CONTRACTORS' ASSOCIATION

21 CHAIRMAN FUSCHILLO: Hi, Marc.

22 MR. HERBST: Good afternoon.

23 CHAIRMAN FUSCHILLO: welcome.

24 As I've stated to the previous speakers,
25 thank you for your patience.

1 MR. HERBST: Thank you, Senator.

2 Senators, good afternoon. Thank you for
3 allowing us to testify.

4 My name is Marc Herbst. I'm the executive
5 director of the Long Island Contractors'
6 Association.

7 I know you have your testimony, and you want
8 to get through this quick.

9 D.J. Gribbin said he would be the shortest
10 speaker. I love a challenge.

11 So, I will simply say, thank you.

12 Senator, we have talked, at great length,
13 over the PPPs. And we are encouraging you to move
14 forward with this process. And, we thank you for
15 this hearing.

16 As you know, New York State is no longer
17 capable of building or sustaining the current
18 infrastructure. We used to lead this nation as the
19 economic engine. We're no longer there.

20 The money that's necessary to keep this state
21 going is not available. And you are faced with the
22 difficult choice of having to raise taxes, gas fees,
23 tolls, whatever, in order to sustain the
24 infrastructure that needs to take place.

25 That's a very difficult situation to be in,

1 politically, to make those decisions, because you
2 will be retired. So, the only opportunity is, to
3 look at all alternatives.

4 PPPs are something that we have advocated
5 for, as well as design-build, and the infrastructure
6 bank that the previous speaker spoke of.

7 The commissioner did an excellent job of
8 outlining the whole process that DOT could do.

9 And, Sam Barend has been someone we've worked
10 with throughout the years.

11 Her testimony, I will simply affirm, and
12 conclude, saying, that we support those views.

13 To build this economy, we have to put men and
14 women to work.

15 And, that's what we're willing to do to help
16 you.

17 CHAIRMAN FUSCHILLO: And I appreciate it.
18 You have been outspoken on this for a long time.
19 And I've had the pleasure of participating in your
20 roundtable discussion, with Jay Walder, and
21 Commissioner McDonald, when she was first approved
22 by the senate.

23 One of the key factors -- and you state here
24 in your testimony, and I'll be parochial in this
25 sense -- that, you remind us that, in Long Island

1 alone, the heavy-construction industry contributes
2 nearly \$4 billion to the local economy. And that's
3 a significant part here.

4 And one of the consensus among all of my
5 colleagues that are here now, remaining, and those
6 that were here before, is that, this is getting
7 New York State, literally, back on the right track.

8 And the unemployment in the construction
9 industry is staggering. The numbers hit by the
10 trades as well.

11 And you and I have talked about that.

12 You know, Marc, one of my focuses has been,
13 and I have repeatedly said this, is that, we need to
14 provide all options for transportation needs here,
15 because the state, its economic condition, just
16 doesn't, simply, have the money.

17 And I appreciate the support that you have
18 given me on this because, if we don't do this, we're
19 going to go down the same path we are going to keep
20 going down.

21 And the previous speaker talked about, we
22 brought up the Tappan Zee Bridge. I think, this
23 year, it's going to cost \$130 million alone, just to
24 maintain it. And it's about time we properly
25 maintain it, but build a new one as well.

1 MR. HERBST: Well, I hope that process with
2 the Tappan Zee moves forward.

3 I served as the executive project manager
4 many years ago. And I think that the need was
5 known, and recognized, at that time, but the
6 decision process has not moved forward.

7 And this will be an extra tool, if you have
8 the ability to fund it, because I think that's the
9 biggest deterrent in advancing what's desperately
10 needed.

11 CHAIRMAN FUSCHILLO: I think that's key.

12 And we've also heard from many speakers as
13 well, about proceeding with caution too, to not make
14 the same mistakes that other states have done as
15 well.

16 But, the strategic asset management plan that
17 Sam Barend had talked about, when she was the
18 executive director under the Paterson
19 Administration, really lays out the issues, the
20 problems, we face. Obviously, specific bridges.

21 But, as I have stated to you before, that
22 there are short-span bridges in need of repair as
23 well. And I would like to see them not put on the
24 back burner. In certain areas of the state, they
25 are critically important.

1 And we've seen projects on Long Island,
2 Moose Creek and other bridges, that have taken
3 forever to be completed.

4 Our infrastructure is sick, and it needs a
5 doctor soon. And I think P3s are, not necessarily
6 the end be-all of the answer, but it's going to
7 provide the options that we need here in New York
8 State.

9 MR. HERBST: Certainly. It's an extra tool
10 in the toolbox to do what has to be done for this
11 state.

12 And, you know, coupling all the bridges, the
13 short-span bridges, I think is an excellent concept,
14 because most of the bridges that are in deficient
15 conditions are the smaller ones. And they're
16 neglected.

17 They're looking at the big ones; the
18 Tappan Zee.

19 CHAIRMAN FUSCHILLO: Right.

20 MR. HERBST: But there's others. And there's
21 more serious issues in the local communities that
22 need to be addressed.

23 CHAIRMAN FUSCHILLO: Any questions?

24 SENATOR DILAN: No.

25 CHAIRMAN FUSCHILLO: Marc, thank you very

1 much.

2 MR. ROSEN: Thank you, Senators.

3 And I appreciate your time.

4 Jay Simpson.

5 TESTIMONY OF JAY SIMSON, CAE

6 PRESIDENT

7 ACEC NY

8 CHAIRMAN FUSCHILLO: Jay, thank you for your
9 patience.

10 MR. SIMSON: Thank you.

11 Mr. Chairman, Senators, thank you for the
12 opportunity to be here.

13 You've got my testimony.

14 I did want to highlight just a couple of
15 things.

16 You mentioned that our infrastructure system
17 is sick. And I equate it to the circulatory system,
18 or the skeletal system, of a 90-year-old, and we're
19 competing against 20-year-olds in the economic
20 world.

21 And, other states are investing, and other
22 countries are investing. And if we don't do that,
23 all of the jobs, and all of the opportunities, are
24 going to go somewhere else.

25 It goes beyond business. It also goes to our

1 quality of life.

2 P3s will allow us to reinvigorate our
3 system with less investment; the investments and the
4 opportunities that we don't have right now in the
5 state.

6 With company profits and cash flows on the
7 line, on projects, they come online more quickly,
8 which means, we can use these assets more sooner --
9 or, sooner.

10 One of the things that was mentioned is, the
11 investment, and how things are done.

12 If somebody's got a 35-year project, and
13 they're going to be responsible for it, they're not
14 going to put a thin layer of pavement the first time
15 they build this project.

16 They've got an interest in making sure that
17 they don't have to send investment crews out every
18 three weeks; or, even every three years. They want
19 to make sure that this thing is built to the highest
20 standards so that they can maintain their asset at
21 the least cost.

22 So, people are going to get better
23 investments.

24 People in traffic will gladly pay a little
25 bit of extra money not to wait in traffic.

1 There's a -- one of the California roads cut
2 down the commute by 40 minutes, each way.

3 If you're driving to work every day on that
4 road, you now have the equivalent of 50 eight-hour
5 days left every year, to spend with your family, or
6 do things. And think of the productivity, that that
7 affects companies.

8 One of the main reasons that public-private
9 partnerships work so well is because you're using
10 the ingenuity and the creativity of the private
11 sector.

12 The private sector is more efficient.

13 And I point to, from when I took economics
14 years ago, but it still works today: 100 years ago,
15 it cost a penny to mail a letter in the U.S. It
16 cost over a dollar to make a phone call.

17 Today, the cost, 1/20th of the amount to make
18 a phone call, run by the private sector. It costs
19 44 times to mail it -- to mail; a stamp.

20 We are behind the curve.

21 Other states --

22 CHAIRMAN FUSCHILLO: And they're still --
23 and, Jay, they're still losing \$2 billion a year.

24 MR. SIMSON: Even further making my point:
25 we're behind the curve.

1 You heard the number; 20-some-odd states that
2 are doing it. And there are a number of states
3 looking at being able to put on public-private
4 partnerships.

5 And, there are projects waiting for funds,
6 that we need to do.

7 And there are companies, as you heard the
8 experts from two key companies mention, that they
9 have got money on the sidelines right now, waiting
10 to come in.

11 We need to be able to bring those tools
12 online.

13 One last thing that was -- I wanted to
14 reference a comment made by Senator Young, when she
15 was here. It seems like yesterday, but --

16 [Laughter.]

17 MR. SIMSON: -- the damage -- and the people
18 were having flat tires, and massive damage to cars.

19 The amount of money that people are spending
20 on the inadequate infrastructure that we've got is
21 staggering.

22 And it's money that comes out of our pockets
23 every day, and we need to look at that.

24 The other thing is, a lot of people have
25 spoken about transportation. But, I think we need

1 to look at, you know, the water and energy and waste
2 water as well, because those are other project
3 opportunities that are being done throughout the
4 world.

5 CHAIRMAN FUSCHILLO: I agree with you, Jay.
6 And you can see, on roads, wherever we travel
7 throughout the state, potholes, repairs, minor
8 repairs, surface repairs.

9 We need to rebuild. And that's the bottom
10 line.

11 I really appreciate your patience, and the
12 time that you took spend here.

13 It does seem like yesterday when
14 Senator Young had asked that question.

15 Any questions?

16 SENATOR DILAN: No.

17 Thank you very much.

18 CHAIRMAN FUSCHILLO: Thank you very much,
19 Marc.

20 We have your testimony, and I appreciate it.

21 MR. SIMSON: Yes.

22 CHAIRMAN FUSCHILLO: Tom Minnick.
23
24
25

1 TESTIMONY OF TOM MINNICK

2 DIRECTOR OF GOVERNMENT AFFAIRS

3 BUSINESS COUNCIL OF NEW YORK STATE

4 CHAIRMAN FUSCHILLO: Hi, Tom.

5 Good afternoon.

6 MR. MINNICK: Thank you very much,
7 Senator Fuschillo, Senator Dilan, and
8 Senator Golden, for the opportunity of testifying
9 today.

10 My name is Tom Minnick. I'm the director of
11 government affairs at the Business Council of
12 New York State.

13 I'm testifying on behalf of
14 Heather Briccetti, our acting president and CEO at
15 the Business Council.

16 Council represents over 2,500 businesses in
17 New York State, and our companies employ more than a
18 million employees; and, New Yorkers.

19 Our members are very interested in the
20 opportunities presented by public-private
21 partnerships, or "P3s."

22 The nation, and New York State, face daunting
23 infrastructure needs; from educational facilities,
24 to water and wastewater facilities, public safety
25 centers, information technology infrastructure, to

1 IT services and transportation needs.

2 P3s offer a means for New York State to
3 address these needs in a way that helps further
4 community economic objectives.

5 Infrastructure needs much more than just
6 roads and bridges, and P3s should be thought of in
7 the broadest sense of infrastructure.

8 CHAIRMAN FUSCHILLO: Tom, let me interrupt
9 you for a second.

10 Economically, the state not having this, has
11 the Council ever done any estimates on the impact
12 that we have, economically, to the state?

13 MR. MINNICK: Not specifically, no.

14 CHAIRMAN FUSCHILLO: Yeah, I would be
15 curious.

16 Do they -- your support is very important;
17 because, as you heard from Marc Herbst, from
18 Long Island Contractors' Association, the economic
19 impact, just to the Long Island region, is -- from
20 the contractors, is nearly \$4 billion.

21 And us getting people back to work is
22 critically important here in the state.

23 And I'm sure, obviously, Business Council
24 supports that.

25 MR. MacMILLAN: Well, we do.

1 And I guess a number we normally use is, we
2 need to employ, or get back to work, half a million
3 people in New York State --

4 CHAIRMAN FUSCHILLO: Right.

5 MR. MacMILLAN: -- to get back to pre- -- to
6 get back to the employment levels prior to 2007.

7 CHAIRMAN FUSCHILLO: Yeah, because just
8 there's too many people unemployed in this state.

9 The -- has the Business Council done an
10 economic analysis of what this would mean, as far as
11 reducing debt to New York State as well?

12 MR. MacMILLAN: No, we haven't.

13 CHAIRMAN FUSCHILLO: I would be curious to
14 see if they could provide that. That would help us
15 out tremendously with the debt payments, you know,
16 that we pay on an annual basis as well.

17 We have your testimony. And I apologize for
18 cutting you off, but we're only here for a few more
19 minutes, and we still have another speaker.

20 If you want to just summarize, that would be
21 great.

22 MR. MacMILLAN: Why, sure.

23 CHAIRMAN FUSCHILLO: Thank you.

24 MR. MacMILLAN: Of course, much P3 research
25 has already been done.

1 You know, we look back at the June 1, 2009,
2 report from the New York State Commission of the
3 State Asset Maximization.

4 That commission supported the advancing of
5 public-private partnerships. And I know you're, you
6 know, familiar with the results of that study.

7 As far as the Business Council is concerned,
8 you know, we can't continue to rely on Washington to
9 get our fair share of funding back to New York. And
10 P3s would help to supplement these important
11 infrastructure needs.

12 The growing use of P3s for transportation
13 and other projects in the United States, and across
14 the globe, demonstrates a sensible alternative to
15 traditional funding and procurement.

16 Carefully crafted P3s would help avoid
17 additional taxes, reduce the state's reliance on
18 borrowing, green the environment, adopt to a
19 changing global economy, and create jobs.

20 Thank you very much for this opportunity to
21 testify.

22 CHAIRMAN FUSCHILLO: Tom, thank you very
23 much, and I appreciate your testimony.

24 Thank you.

25 Jeff --

1 Let me see if I can get this right, Jeff,
2 before you come down here.

3 -- Frediani?

4 MR. FREDIANI: Close enough.

5 CHAIRMAN FUSCHILLO: Really?

6 TESTIMONY OF JEFF FREDIANI

7 LEGISLATIVE ANALYST

8 AAA NEW YORK STATE

9 CHAIRMAN FUSCHILLO: Jeff, we've saved -- I
10 don't want to say that there's still speakers here.
11 I can't say, "We saved the best for last"; but, we
12 saved the one, critically important, for last as
13 well.

14 And, I appreciate your patience.

15 Can you pronounce your name for the record.

16 MR. FREDIANI: I'm Jeffrey Frediani. I'm the
17 legislative analyst with AAA New York State.

18 CHAIRMAN FUSCHILLO: "Frediani."

19 I didn't do such a good job on that.

20 MR. FREDIANI: That's all right. I'm used it
21 to by now.

22 CHAIRMAN FUSCHILLO: I'm going to ask you to
23 summarize your testimony. We would really
24 appreciate that.

25 MR. FREDIANI: Sure.

1 Just a quick couple of points.

2 I'm here to say, that: AAA believes that
3 public-private partnerships have a role to play when
4 addressing the transportation challenges that face
5 New York State.

6 Just a couple of things we want to make sure,
7 that we believe, are included in any potential deal,
8 is that:

9 We want to make sure that the public-private
10 partner really adds value;

11 That, they also provide a better customer
12 service, in return for potential higher tolls that
13 drivers will be required to pay;

14 And, that they balance the interests of all
15 stakeholders.

16 There are, pretty much, two basic principles
17 that will guide us when we lend support to
18 particular P3s.

19 One is: That, public-private partnerships
20 must be structured to ensure that fees paid by
21 motorists are not diverted to non-transportation
22 issues.

23 And, secondly: That, transportation revenues
24 collected from motorists, fairly represent the cost
25 of using the system.

1 And, then, like I said, real quick, let me
2 conclude, just by saying, that there are two
3 line-in-the-sand issues for us, with respect to
4 P3s.

5 One is: That, if the motivation for a P3 is
6 to generate up-front cash that can be used to solve
7 statewide budget problems, or finance other
8 expenditures not related to transportation, we would
9 oppose that deal.

10 And, two: P3s must be open to a forthright
11 and deliberate process that allows time for public
12 input and debate.

13 And, hopefully, we feel that we are,
14 hopefully, past the initial hype of the first
15 generation of P3s that cause, and that we can go
16 forward, and engage in an open and considerate
17 debate.

18 And, we look forward to being a productive
19 voice in those discussions.

20 CHAIRMAN FUSCHILLO: And I hope so as well,
21 with that last point that you made.

22 And I appreciate the advocacy of AAA. It's
23 been very important to this committee as well.

24 And, I thank you for your testimony.

25 We have it. We'll put it in the record.

1 And as I've stated to the previous speakers,
2 I thank you for your patience, and understanding.

3 The hearing did go a lot longer.

4 And I want to thank my colleagues, the
5 ranking member of the transportation committee,
6 Senator Marty Dilan, on my right; and on my left,
7 Senator Golden; and, to the capital board member,
8 for staying with us today.

9 This hearing is very important to us in the
10 future of transportation needs, here in New York
11 State.

12 And I want to thank all of those who have
13 testified. And, I wish everybody a good day.

14 Thank you very much.

15 That concludes the hearing.

16 * * * * *

17 (Whereupon, at 3:53 p.m., the Senate
18 Transportation Committee hearing was concluded.)

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