



STATE OF NEW YORK DEPARTMENT OF TRANSPORTATION

**Testimony of
New York State Department of Transportation
Acting Commissioner Stanley Gee
Before the New York Senate Task Force on Government Efficiency
Wednesday, May 5, 2010**

Thank you Senator Klein and members of the Senate Task Force on Government Efficiency for this opportunity to address the issues raised in the Task Force Report. The efforts of the Task Force to find cost-savings in State agencies on behalf of New York taxpayers is commendable, especially in these fiscally challenging times when so many of us, including those of us at DOT, are trying to do more with less. As we work together to try to achieve savings for taxpayers, it is all the more important that we rely on factual and accurate information. Unfortunately, the Task Force's investigation and Report regarding the Department of Transportation contains many misleading and misguided statements on how our Department operates, which is contrary to this goal. Further, the Report fails to recognize the complexities involved with safely moving people and goods in a state with more than 113,000 miles of highway, some 17,400 bridges, a 4,600 mile rail network, 485 public and private aviation facilities, and more than 130 public transit operators.

Therefore, I am pleased to be able to set the record straight.

Safety First

Let me be perfectly clear - Safety is the Number One priority of the Department and we will not compromise. As I testified during the Budget Hearing last January, it is the mission of our Department to ensure that the traveling public, New Yorkers and those who visit our great State, have a safe, efficient, balanced and environmentally sound transportation system. We must be especially vigilant about the safety of our children who have to rely on adults to protect them from harm. The services provided by DOT are comprehensive and complex and our spending is first and foremost predicated on safety. It's a simple phrase SAFETY FIRST – but one that we must be ever vigilant is not undermined by competing priorities.

Many of the Task Force Report findings and recommendations bump up against a very important issue: "What price should we put on safety?" Senators, let me ask you a question. Have you ever had to attend the funeral of an employee who was killed, just doing their job? I have and that experience has had a lasting affect on me. In my short tenure with the Department I've done so twice. It is an experience my employees and I work every day to make sure I don't have the opportunity to experience again. And it's not just Department employees that we work to keep safe...it is every member of the traveling public. DOT has serious concerns that many of the topics portrayed in your Report as potential cost-savings could, in fact, compromise the safety of the millions of people living and traveling in the State of New York.

The goal of the Department's highway safety program is to save lives, prevent crashes, reduce the severity of crashes when they do occur, and to protect members of the public exposed to transportation operations. DOT is committed to a pro-active safety and health program to ensure minimal risk for its employees and for the employees of contractors and consultants.

New York State has long been a national leader in the implementation of ground-breaking legislation and programs to improve highway safety. These ongoing efforts have had a positive impact. Over the ten-year period from 1999-2008, the number of motor vehicle fatal crashes and the number of fatalities on New York State's roadways continued on a general downward trend-- both fatal crashes and the number of fatalities declined by more than 20 percent.

In 2008, there were 1,224 fatalities in motor vehicle crashes in New York State. Additionally, there were 12,900 serious injuries in 2008. These statistics show improvement, and the Department is proud of the actions we've taken to reduce fatalities and serious injuries – but there is still more to be done--and we are doing more--

We are making our work zones safer. Working with our public and industry partners to increase public awareness and education, enact stiffer penalties, enhance police enforcement, and apply engineering advances we have reduced work zone injuries and fatalities by 63% over the same ten-year period as the other crash statistics I mentioned previously (from 282 injuries/fatalities in 1999 to 104 in 2008).

Though the Department and the State of New York are struggling with fiscal challenges, safety is not the area to compromise. DOT remains firmly committed to ensuring that the safety of the traveling public, our workers and our contractors comes first – SAFETY FIRST.

But safety has its costs – and in certain circumstances and for certain employee titles (such as motor vehicle inspectors, bridge repair and highway maintenance supervisors), overtime spending to address safety issues is warranted. Use of contractors for engineering, inspections, and safety operations such as deer carcass removal and hazardous tree removal, are appropriate when deploying Department staff is a less effective means of ensuring these safety-related tasks are performed. The Department is always reviewing its standards and procedures, and at times does revise its specifications when research and testing indicate that such changes will provide a safer environment for the traveling public, workers and contractors.

We take our mission seriously, and it is reflected in our decisions and actions.

NYSDOT Investments

March 31, 2010, marked the successful completion of DOT's 2005-10 capital plan. This \$18 billion program provided record levels of investment in highway, bridge, aviation, rail, transit, port, and bicycle and pedestrian facilities throughout the State. In addition to delivering the \$18 billion 2005–2010 Capital Program, the largest in the State's history, we have also successfully delivered more than \$1.1 billion in federal Economic Recovery funding. We have achieved these results despite significantly reduced staffing levels.

In addition, during SFY 2009-10, the Department reduced its overall expenditure of state funds by more than 13 percent. This represents an actual reduction of \$170 million in cash disbursements.

Examples of DOT actions to reduce expenses include, but are not limited to:

- Maximizing our use of federal aid so that our capital program is delivered at lower cost to state taxpayers
- Rigidly controlling operating expenses such as supplies, travel and equipment purchases, leading to a 25 percent reduction in travel spending for office-based staff since 2007.
- Implementing a strict hiring freeze that has reduced our staff level by 240 positions over the past year.

Response to Report Recommendations

Overtime Spending

The Task Force acknowledged DOT's 14 percent reduction in overtime spending between SFY 2008-09 and 2009-10. This decrease occurred across the board in all of our principal functions – maintenance, construction inspection, bus and truck inspection, and signal repair. More than 70 percent of DOT's overtime is used for Maintenance (mainly seasonal for winter snow and ice control when we staff two-12 hour shifts). Maintenance and Construction Inspection combined account for nearly 88 percent of the Department's overtime. Virtually all of the remaining overtime is for field functions, including bus inspection and bridge maintenance.

Our maintenance staffing is based on assuring safe roadways during winter snow season so we have enough staff to fully deploy our plows during snow storms. After the winter we lose our seasonal workers and the remaining staff performs our other highway maintenance activities including bridge and pavement repairs, tree cutting, culvert cleaning and guiderail repairs. As a result we have more workers when they are needed but don't employ them year round and incur additional salary and benefit costs. Because snow storms can last days, we found that the most cost effective way to deploy our state forces is to have two 12-hour shifts, this involves overtime to clear the roads.

The Task Force Report places particular significance on school bus inspections. DOT is committed to ensuring that all school buses and other for-hire passenger vehicles in New York State operate at the highest safety levels. Our Bus Inspectors perform more than 154,000 comprehensive bus safety inspections and re-inspections annually. To accomplish this, the Department uses more than 120 motor vehicle inspectors. A total of nearly 60,000 buses, vans, and ambulettes are subject to the Department's safety inspection review every six months and more than 400 safety related factors are reviewed during each inspection. To meet the legislative vehicle inspection requirements, given current staffing levels, authorized overtime is essential to ensure that vehicles are inspected on the optimum schedule to ensure the safety of our children traveling on school buses, and adults and children traveling in other vehicles requiring inspection. Failure to perform inspections on time would result in school districts unable to transport children to school.

Ensuring the safety of our infrastructure with minimal disruption to the public is another reason for overtime expenditures. Bridges are an prime example of our State's aging infrastructure. New York led the nation in building new freeways more than fifty years ago at the beginning of the Eisenhower interstate era. That leadership means our infrastructure, particularly bridges built during this period, is among the first in the nation to age to a point where major repair and replacement is becoming increasingly necessary. In the last 5 years New York State has experienced an increase in red flags of more than 200% on bridges. Many of these flags require immediate action to stabilize the condition, make temporary repairs and/or make a permanent repair. In high traffic volume locations, it is not only critical to make the bridge safe, but it needs to be done quickly to reduce the negative impacts of traffic.

To make these critical repairs quickly and minimize disruption to the public, staff will work early and late in addition to normal work hours and may also need to work on weekends.

A major factor in non-snow and ice overtime spending is the inability to fill positions. For example, the bus safety inspections staffing requirements in the New York City Region is 30 positions. However, between attrition, training requirements, and the inability to fill positions in a timely fashion, the region averages a bus inspection staff of 25 despite waivers granted to fill these critical positions. DOT remains cognizant of the need to reduce overtime, as demonstrated by our success in reducing the use of overtime department-wide. DOT will continue to look for ways to minimize overtime spending, but we will not compromise public safety.

Consultant Services for Capital Projects and Information Technology

DOT uses a balanced approach to allocating resources between state forces and consultants to design and inspect construction projects, as well as to perform bridge inspection services. Special expertise, work load leveling, availability of staff and equipment, and cost are some of the factors that go into the decision.

The comparison of costs between consultants and public workers has been a topic of study for many years. There are studies by public agencies, public employee unions and industry advocates that try to quantify this issue. In fact, this report by the Senate references studies on both sides of the discussion. (Cite 13, 14, 17 and 19). It is not clear that either method of delivery is unequivocally less expensive than the other. The most recent report (Cite 13) by NYU and Polytechnic Institute concludes that the use of consultants is less expensive than public workers; conversely the report by PEF (Cite 19) offers the opposite view. Having a mix of state workers and private consultants best meets our needs and those of the taxpayers.

Today, we do not have the resources to produce and deliver the capital construction program and to fulfill our other obligations without supplementing the state work force with consultants. Increasing the state work force to the level necessary to eliminate the use of engineering consultants would require doubling the engineering staff – that is, adding approximately 2,500 new employees to the Department and acquiring a significant amount of equipment and supplies to properly utilize these employees – not to mention the training required before they can be fully productive. Clearly, this is not feasible in the current budget climate, nor would it assure a reduction in the cost of delivering the services for which we are responsible. I firmly believe in the need to retain a strong state work force to assure that quality is maintained and that costs are contained by producing projects and managing the consultants that work on Department projects.

In the area of Information Technology, the Governor's budget provides DOT 15 additional permanent staff positions to reduce outside consultants. This in-sourcing of information technology functions has resulted in elimination of 19 IT contractors so far, worth an annual savings of approximately \$600,000.

Deer Carcass Removal/Tree Pruning

The presence of trees and/or large dead animals on roadways is dangerous and can seriously compromise the safety of the traveling public. Simply put – they must be removed to prevent accidents. Deer carcass and hazardous tree removal and/or pruning are necessary safety-related tasks that must be performed in real time, as soon as reports are received of their existence. Quickly clearing deer carcasses, downed trees and debris from the travel lanes and roadsides improves safety and facilitates the mobility of the traveling

public. DOT cuts or prunes dead or dangerous trees to prevent falling limbs from injuring motorists, motorcyclists, bicyclists, or hikers, to maintain roadside clear zones so errant vehicles have room to recover, and to remove sight obstructions to traffic signs.

The Department uses state forces for deer carcass removal and hazardous tree removal/pruning when it is most efficient. In areas where there are staffing constraints (such as in the Rochester area), the Department assigns its highly skilled, highly trained work force to more complex tasks, such as drainage repair, sign work or guiderail work, and uses contractors for deer removal and tree services, which is more conducive to contracting. The Department establishes contracts based on anticipated needs and exercises good contract management by making appropriate adjustments.

Contract Management - Unfunded & Expired Contracts

Failure to spend money does not constitute waste. The fact is that this funding was neither wasted nor lost to the State. The suggestion that DOT "wasted" \$147.5 million that was not spent in existing contracts reflects a lack of understanding of the State's transportation programming process. It is irresponsible for the Task Force to report publicly that DOT is wasting money without properly researching the facts.

Many of the contracts included in the Task Force report with a current contract value have never had any funds charged against them. There are many reasons why funds allocated to a contract may not be spent.

- Anticipated or forecast needs may not occur: The report specifically cites Hazardous Tree Removal and Tree Pruning Services. As previously mentioned, DOT cuts, prunes or removes dead or dangerous trees for safety and operational purposes, for example, clearing downed trees after an ice storm. The usage and needs are not constant and may vary year to year or region to region. Some years we have had significant tree damage from ice storms or early snowfall. Other years we have been more fortunate. Contracts include adequate quantities to cover possible emergency storm damage work in each of the zones. If we do not have severe weather causing tree damage, we do not need the full amount allocated. This is similar to what the Department would do to anticipate wintertime snow and ice needs. No one would dispute the need to ensure that adequate resources are available to protect the public from the affects of snow storms. Similarly, the Department estimates the needs to remove downed or dangerous trees. Unused funds are re-allocated within the Department to other contracts.
- Contract is delayed: Local contracts may be delayed for a variety of reasons. For example, a locality may not be able to identify the resources to provide the local share of a project's funding. A construction contract may be delayed for technical reasons or because resources needed to complete the project are not available. If a construction contract is delayed, payments may not be made.
- Localities have not billed the Department: Localities are often late in billing DOT for work completed. In some of the most unique circumstances, local municipalities have taken up to 10 years after the work has been completed to bill the Department.
- Purchases may occur under multiple contracts: As an example, some of the contracts listed in the report are Federal Transit Administration grants for accessible buses. The payments for these federally-funded vehicles are made through Purchase Orders from an OGS contract and not under the contracts shown. In areas such as appraisals and title searches, DOT has multiple contracts in place. This is necessary because some of the contractors have not been responsive when they are assigned work. In these instances, the assignment gets cancelled and the work given to another firm.

In short, the reasons for having uncommitted funds in contracts are numerous, and need to be examined on a case by case basis. To suggest that the types of projects on the list included in your report represents waste, however, is not just misleading, it is inaccurate.

Contract Management - Additional Contract Costs

DOT, like most other heavy construction agencies, may require increases in contract amounts. They should not be branded as “overruns.” Those who are familiar with the construction industry understand that it is very common for conditions in the field to be different than estimated during the design phase. Imagine you are having your basement finished and you receive an estimate from your contractor based on the size of the space. After the contractor starts work, the basement is wet and the contractor needs to find and repair the water problem. The extra plumbing work required would increase the cost of your home improvement. The conditions DOT encounters are generally a bit more complicated but I’m sure you get the idea. It is normally less costly to deal with these situations through an order-on-contract during construction than to design for the most-expensive-case scenario, and we factor this reality into our budget. Just as the homeowner wouldn’t plan and budget for the worst case scenario of replacing all the plumbing but would probably leave room for some unforeseen expenses.

Construction contingencies are addressed within the overall context of the Department’s annual construction budget. As a result, there is no increased cost to the taxpayers. For example - because of the age of our infrastructure - when we begin work on repairing or rehabilitating a bridge, we may discover more severe deterioration than originally believed. In a situation such as this, we would approve an order-on-contract to address the newly discovered condition. This is much more cost effective than not addressing the problem and developing a new contract just for the new condition found. Nationally, most states include contingencies of between 10 to 15 percent of the project bids. Our cost of contingencies through order on contracts is approximately 7% of our annual construction budget, significantly less than the national trend.

Revisions to DOT Specifications

Part of the Department’s responsibility is to constantly review and improve upon the quality of its products and services. Therefore, DOT specifications are revised when appropriate and in consultation with the industry, contractors and suppliers. Revisions to specifications to protect our workers, contractors and the traveling public are consistent with our top priority - safety.

Temporary Concrete Barriers

DOT does all it can to ensure the safety of the public and of workers in construction zones, and we implement practices to minimize the potential for tragic accidents. Temporary concrete barriers are used to protect workers and motorists in construction zones by separating workers from high-speed traffic. In 1999, the Department performed full scale crash testing on a string of 10 segments of Temporary Concrete Barrier to ensure the barrier was functioning as a system, not isolated short segments. The temporary barrier system failed. The Department’s detailed evaluation of the test results revealed that the cause of the failure was a manufacturing flaw in some of the barrier segments.

Each segment of barrier is linked to adjacent segments by external connecting tubes located at each end. The external connecting tubes are welded to internal steel reinforcement. The welds that secure the

external connecting tube to this internal reinforcement provide strength to the connections between the segments of barrier. The welds are critical to the proper functioning of the temporary concrete barrier system as a whole. The Department's technical analysis revealed a quality control issue on some barrier segments, the welds were defective. It was the failure of these welds that resulted in the failure of the barrier system during testing.

To address this situation, the Department revised its specifications to require that temporary barrier segments be fabricated in accordance with an approved Quality Control/ Quality Assurance program to provide assurance of proper fabrication and to allow reliable tracking of individual segments.

The Department prohibited the use of any temporary barrier segments manufactured by the fabricator of the segments that had failed. Based upon the test results the Department also developed a plan to phase in the new specification. Any new barrier segments would have to be fabricated in compliance with the new specification. Current stock, which the Department estimated would reach the end of its serviceable life by the end of 2014, would be phased-out as of that date. Effective January 1, 2015, segments fabricated under an approved Quality Control/Quality Assurance plan would be the only temporary concrete barrier segments allowed on DOT projects. Under the Department's plan, new Temporary Concrete Barrier will provide the public a greater assurance of safety at little additional cost beyond the normal wear-and-tear replacement of these critical safety devices.

Construction Signs

In 2005 DOT had three types of material in use for temporary construction signs (the large fluorescent orange signs with black lettering). Concerns were raised about the difference in visibility and legibility between signs that used the different material types. In August of that year the Department conducted both daytime and nighttime evaluation of the visibility and legibility of construction signs comprised of those three material types. The evaluation concluded that the use of ASTM (American Society of Testing Materials) Type IX sign material provided the optimum visibility and legibility of construction signs in both daytime and nighttime situations. The implementation of Type IX signs was phased in over three years in consideration of the costs to the taxpayers and impacts to the construction industry. Typical temporary construction signs have a service life of three (3) years, not 12 years as referenced in the Task Force report. These temporary signs experience significant wear and tear from the elements and the construction environment and require frequent replacement. As with concrete barriers, given the phase-in period, there was no additional cost to the taxpayers as a result of this change. The improved visibility of construction signs is just one small way to better protect construction workers and travelers, and better inform motorists in construction work zones.

Night Work

The decision to create nighttime work zones is based on the impacts to the community (traffic congestion, air pollution, negative public feedback to delay, and disruption of business activities), motorist and worker safety, and constructability. Construction work on freeways normally involves lane closures and is often limited to nighttime construction in order to avoid traffic congestion. Research (found in NCHRP Report 627 the Task Force cited) indicates that nighttime construction does reduce traffic queues and congestion as well as certain crash types.

The night construction issue in the Senate Task Force report does not address user costs and safety benefits of night work which was the primary driving force in the adoption of night construction. The Department recognized that night construction would be more expensive and that there could be quality

issues associated with work at night. However, night construction was and still is intended to reduce the impacts of construction on traffic flow. In some cases, night construction can allow the contractor access to a greater portion of the highway for longer periods of time which can expedite work and actually reduce construction costs. DOT currently has nighttime construction projects on the Cross Bronx Expressway and Alexander Hamilton Bridge; Route 9A in lower Manhattan and the Long Island Expressway. I do not believe that either DOT or the Task Force would suggest that these construction projects be done during the day when traffic congestion could increase threefold.

As you may also be aware, State legislation passed in 1995 requires that the Department consider nighttime construction in the Long Island and New York City regions. This requirement is applicable to every major limited access highway, expressway and parkway capital construction project. I remind the Task Force that if the congestion impacts of daytime construction have ceased to be a concern of the legislature that you can take the actions available to you and rescind the law that requires DOT to consider nighttime construction.

At DOT, decisions on whether to use nighttime construction are made on a project-by-project basis considering a number of engineering, cost and environmental factors such as worker safety, highway user safety, traffic congestion, worker productivity, quality of work, user delay costs, construction costs, nighttime construction noise and lighting issues adjacent to residential areas, contractors' difficulties staffing night projects and problems delivering materials at night. These decisions are carefully considered and not automatic.

Conclusion

The Department of Transportation has a long and proud history of excellence in delivering transportation services to the State. We have put in place sound policies and strategies that continue to guide our infrastructure investments and assure the safety and welfare of the traveling public. In cooperation with our partners and stakeholders, we will continue to wisely invest whatever level of funding is given to us to support our State's transportation infrastructure.

As I mentioned earlier, during fiscal year 2009-10, DOT reduced its overall expenditure of state funds by more than \$170 million (13%). I believe there are few State agencies that achieved actual spending reductions of that magnitude over the past year while delivering a significant capital program and at the same time also delivering another \$1.1 billion in federal economic recovery funding for transportation. As referenced in the Task Force report, DOT has also significantly reduced spending on overtime and we will continue to monitor our staffing assignments to achieve the highest productivity possible. We will continue to look for new approaches to spending public funds as efficiently and effectively as possible; however, these techniques must always preserve the public trust in the safety of our State's infrastructure. The Department of Transportation stands ready and willing to work with the Legislature and Governor Paterson as we provide our citizens with a safe and efficient transportation system.

Thank you.