PENNSYLVANIA HOUSE OF REPRESENTATIVES

TRANSPORTATION COMMITTEE HEARING

JULY 28, 2008

Point Park University

201 Wood Street

Lawrence Hall

Pittsburgh, Pennsylvania

Re: House Bill 555 and Senate Bill 1158

Reported by:

William E. Weber, RDR, CRR

COMMITTEE MEMBERS
Chairman Joseph Markosek
Chairman Richard Geist
Representative David Hickernell
Representative Mark Keller
Representative Eric Bugaile
Representative John Maher
Representative Timothy Solobay
Representative Dante Santoni
Representative Mark Longietti
Representative Jeffrey Pyle
Representative Dick Hess
Representative Paul Costa

Also Present: Stacia Ritter

WITNESSES
SENATOR BARRY STOUT
SHIRLEY YBARRA
GARY GROAT
VICTOR POTEAT

CHAIRMAN MARKOSEK: Can everybody hear me? No? Sorry about that. How is that? Okay. Thanks. Good afternoon everybody, I'm State Representative Joe Markosek, the Majority Chairman of the House Transportation Committee.

Welcome to the hearing here on P 3s, public private partnerships. We have two bills in our committee, Senate Bill 1158 and House Bill 555 that are currently in committee that deal with public private partnerships in Pennsylvania.

And I'm very happy to bring us all together here today for this hearing. We will forego the roll call. We have no votes today although the Secretary will acknowledge the folks who are here. But I just want to say that this is something that we need in Pennsylvania.

And I just, I think there is a great quote from a great Pennsylvanian that sums up why we are here. And I quote, "cold hard truth is that transportation infrastructure needs of this Commonwealth and this nation as a whole far surpass the public sector's ability to fund them. We have no choice but to spore other alternatives to bringing this, to bridging this funding gap. I believe public private partnerships represent a viable alternative."

That is a quotation from a great Pennsylvanian, Chairman Rick Geist in his recent press release relative to this hearing. I agree wholeheartedly with that.

At this point in time I will let Chairman Geist make some brief remarks then we will start with the hearing.

CHAIRMAN GEIST: Seven years ago we started the P 3s and have developed it to the point now where we have workable pieces of legislation. I applaud Joe for having the hearing out here today in Western Pennsylvania, certainly has its problems and many, many projects the P 3 would work. We came in today and Eric avoided the Parkway East and brought us through scenic Elizabeth so that we could take that short cut knowing that we would probably be parked in the Parkway. I always site the Parkway East is probably one of the premier projects in Pennsylvania as a candidate for P 3.

This is a great lineup of experts in the field today. I'm anxious to hear what they have to say much more so than what I will say. Joe, let's get started.

CHAIRMAN MARKOSEK: Okay, thank you, Rick.

Our first guest here I would like to introduce is, we are very, very honored to have Senator Barry Stout with us here who is one of the co-sponsors of Senate Bill 1158 that I mentioned. The highway is named, at least there is a highway named after him.

SENATOR STOUT: I don't get the toll.

CHAIRMAN MARKOSEK: Senator Stout, it is an honor to have you here today one of the great figures in the history of Pennsylvania transportation.

Barry, we are glad that you are here, certainly would like to hear your remarks.

SENATOR STOUT: Thank you Chairman Markosek, and Chairman Geist and members of the House Transportation Committee. Indeed, I appreciate your invitation to join you this afternoon as we discussed the support of P 3 legislation. As you stated earlier, earlier this summer the Senate passed the house Senate Bill 1158 which Senator Madington, the Majority Chairman and prime sponsor, second sponsor of that legislation that passed the Senate --

CHAIRMAN MARKOSEK: Barry, hold up. The mike isn't working properly.

SENATOR STOUT: Is it better. As I said earlier this summer the Senate passed 1158 with a significant majority because there is support for this private public partnership as a method to fund transportation the needs to the Commonwealth of Pennsylvania. As you know, a year ago we labored long and hard for the legislation that produced Act 44 as a new method of funding transportation needs in the Commonwealth.

Traditionally, as you know, we funded transportation through the liquid fuel method of taxes on gallons of gasoline and on the registration, other things. That day seems to be gone with now $4 plus gasoline practically impossible to get any type of increase in liquid fuels to meet the transportation needs of the Commonwealth.

One thing I like I call it the triple nickel and the 1158 bill gives a new tool box to help, the tool box to help fix the transportation needs of the Commonwealth. So, I support this private public partnership to give us some flexibility to meet the ongoing transportation needs in the Commonwealth, not just the roads and bridges but this could be used also for other methods of transportation, mass transit to the airports and other needs of the Commonwealth.

Again, I appreciate your invitation and look forward to working with you. As you know, we go back in session in September. We have a very short window of opportunity because we won't be there after October, there won't be any sine die session in November. So anything that is going to be done with these 3 Ps need to be done as soon as we get back in session after the summer break.

So, again, I applaud you for having called this committee meeting and give input from people who are really experts in this private public partnership. Again thank you for your hospitality and I look forward to working with you to meet transportation needs. I never saw a transportation tax vote I didn't like. Thank you.

CHAIRMAN MARKOSEK: Thank you, Barry. Our next speaker is Shirley Ybarra. Shirley is the senior transportation policy analyst for the Reason Foundation and I understand is the former Secretary of Transportation for the great Commonwealth of Virginia.

MS. YBARRA: Another Commonwealth.

CHAIRMAN MARKOSEK: Welcome.

MS. YBARRA: Thank you very much, Mr. Chairman, members of the committee. Actually chairmen, there are so many of them here today. I am with the Reason Foundation and the Reason Foundation has been in the transportation policy arena for over 35 years.

And I have joined them only this last year. I am the former Secretary of Transportation in the Commonwealth of Virginia. And prior to that I was the Deputy Secretary of Transportation in the Commonwealth of Virginia.

The, a bit of the background is when the Public Private Transportation Act passed in Virginia, I was one of the authors and the person who pushed it through. This was a Republican administration with a Democratic Legislature, this was not a partisan issue. This was something that we recognized that we needed to do something different.

I provided a rather long written testimony which I am not going to read. I am going to hit some high points in it though so that maybe you will want to go back and focus on it in a little more detail.

Virginia had passed a bill in 1988 that permitted the construction, it was a one-project bill that permitted the construction of the Dulles Greenway. It was purely private money and it was, the organization that was going to build this road had organized this themselves as a public utility, they were going to be regulated by our State Corporation Commission, you know as the Public Utilities Commission would regulate the rate of return, tolls, etc. This is 1988. This is in, you know, prehistoric times, if you will.

And so there are several things that were learned there. I will come back and hit on that. In 1989 California passed a bill called AB 680 it authorized four projects. I will call it a concession or franchise model.

Again, no state or federal money, and they would offer a franchise to the people constructing and building and operating the road.

A couple other states also were passing bills about the same time in the early 90s, Washington State tried one, they authorized five projects. And they got a lot of proposals in, the Legislature changed parties and they also changed the bill and that really chilled Washington State for any of the projects. One project in fact moved forward completely different than it had been contemplated.

In Arizona they had passed legislation in 1991. They took sort of one from column A and one from column B, one that looked like they did part of the bill that looked like California, and part of it looked like the utility model, the old Dulles Greenway model. None of their projects moved forward, it was an enormous, one project was proposed and there was a great deal of opposition to that. It was also seemed to be almost an unworkable situation with the legislation.

Minnesota enacted a bill also in 1993. And they have a project moving forward and it had a, the localities had veto power and in fact that project was vetoed by the locality.

So, in 1994 the Virginia Legislature passed a bill that looked just like that old utility model but it said you do any project you want, but it was the utility model the one regulated by the State Corporation Commission of the Public Utilities Commission. Governor Allen had just taken office and he sent it back -- said not anything that the DOT had generated and it flew in over the transom. And he said fix this. A lot of governors say that, fix this so we can enact it next year.

So we wanted to take a much more market-oriented approach, streamline the application process and we also decided we could, that we would put in that you could do both solicited and unsolicited proposals, could be any mode of transportation and could be not only for capital projects but operation and maintenance.

We wanted to give the private sector maximum flexibility while still maintaining the jurisdiction of the Department of Transportation in maintaining the right-of-way acquisition, the, and sort of put everything into a comprehensive agreement for whatever project it was going to be.

The Legislature remained, came in and supported the, passed unanimously in both houses that next session in 1995. And it has been, I think, a success. I would say instead of prehistoric, this one is certainly the stone age, it was very far out and far reaching, far out in front.

Since then about two dozen states have passed some sort of legislation for public private partnerships and the reality is there is a great deal of money sitting out here waiting to invest not only in the states that currently have the bills, but in the Commonwealth of Pennsylvania.

We have -- we learned, as you this committee has done a lot of homework in both Australia, New Zealand, Latin America, Europe, I believe often and in some places, frankly, a public private P 3s are sort of a first option and not a, not the only option.

I don't want to tell you this is a panacea. There are projects that will never, ever be a public private partnership. But for some of the large, complex projects that so many of the states are facing, these P 3s, public, P 3 bill is certainly a way and it is, as the Chairman said, the tool in the tool box, an arrow in the quiver to somehow advance these projects.

I have listed several starting on page five, many of the, again I will not read this, just sort of hit the highlights. I really would rather answer your questions than to read you testimony. This is I'm listing sort of the benefits of public private partnerships we have observed, I certainly have testified to in numerous states and worked on a variety of projects.

It is the access to capital. It is how you bring the capital to the table. Each one of these, I will tell you everyone of these, it was true in Virginia and it is true in everything I have seen every one of these projects is different, you cannot simply design a template and say this is what you are going to have to do to work in the Commonwealth of Pennsylvania. Every one of these projects is different.

They were different in Virginia. The first one that came in for us was a maintenance proposal to contract long-term maintenance for the interstate, we actually did it as an experiment. My engineers didn't want to do all of the interstate maintenance through one contractor who is overarching, over all of the maintenance of the interstate and so that he was the one doing all of the, that firm hired all the individual contractors.

Long-term maintenance contract, it was a fixed payment over five years with a potential for a five-year extension. Now, in our minds we thought our first one would be a capital project it was highly successful and saved money. Missouri is doing something similar and we will talk about that in a moment.

This thing, the concept by the way the Virginia experiment we had the option under the Public Private Act, actually Fluor took it up and actually all the contracts that way they saved millions and millions of dollars in their maintenance contract based on that model, performance-based contracting.

The ability to raise all kinds of money from whether it be tolls or a number of ways that can be done which is shadow tolls. You are shifting risk. For example, in construction, when the DOT has put out like the usual normal contract, you know, where is the risk on this? This way you get to shift it to the private sector and that they, when you sign a fixed price contract with them, if it is bad weather, if they have problems getting materials, that is their problem. And there are some enormous values on the risk. You can't shift everything to them. That will cost you a lot of money.

There is often a more businesslike approach that the private sector brings to the party. You know, let's be honest, I think the Legislature has done a great job in passing some very, some very good procurement rules and good ways to do business for a state.

But on the other hand, if you are in business, you probably don't want to buy pencils the same way you buy a road. Something tells me those two things will be a little bit different.

You also get a number of major innovations from the private operators through variable pricing we have seen in California. We get some terrific value engineering, you will hear about one of these projects today when Gary Groat speaks from the floor.

And one that I always like to bring up I found this interesting, Versailles, now it is a beautiful, beautiful area, there is a piece of their toll road that needed to connect right by Versailles and you know people that lived in Versailles didn't want this road there. They had an unsolicited proposal come in built a tunnel under Versailles. It is a toll tunnel. Guess what, they don't have all that, you know, something new, something very innovative.

Again, I want to stress the flexibility. There is a lot of reasons to use public private partnerships. And it could be we have seen in South Bay Expressway in San Diego where there is the partnership was formed, they met and exceeded environmental requirements for that road because that was the way to do it. And they found some very innovative ways.

We are seeing availability payments being done that is where the availability of what normally would be payments, if you wait as a state to collect the money altogether takes about 18 years or more if it ever gets there. This way the state can enter into a public private partnership agreement and provide a fixed amount of money. Also legislative appropriation I think the private sector has figured out that the Legislature usually will go along when they see these projects.

In the Port of Miami tunnels being built, underway with these availability payments. In the State of Missouri, they are doing what they call a safe and sound bridge program. They are doing partnering with the private sector on 802 bridges. And the private sector does not get any money for the first five years and then they commit availability payments for the next 25. While they repair and, and/or replace 802 bridges.

All of this is what I'm trying to say, there is no way to make these, these aren't cookie cutters, every one is different we find very creative ways to do it. The community is bringing tomorrow's infrastructure the things that have been on the drawing board for 15, 18 years. Bringing them to fruition today or sooner than we can. We just wait, then if we wait for the money.

That is the first construction project we did in Virginia. We calculated we brought that road to reality in 18 years, take all of it, that particular district, collect that amount of money for that particular project, maybe 18 years later they found $300 some million to do the project. Instead it was about 18 years sooner.

What are some of the lessons we learned? We knew -- I guess I'm very pleased to see that both of these pieces of legislation are not project specific. And they do not have to come back to the Legislature. No offense to any of you guys, I tell you nothing will chill the private sector faster than the political risk of maybe not ever seeing their project, once they spend millions and millions of dollars on a proposal that they may not ever see the light of day.

I'm also, it needs to be for all modes, I think you recognize that. Who knows the airport support, transit, rail, I mean anybody may want to avail themselves of this.

It needs to be a streamlined process something again that the private sector sees there is an ending to it. And that there will be an opportunity for that project actually to be approved.

I do like the, one piece of the, the House legislation where it goes to the state DOT.

In my opinion I think that it's important, and maybe I don't know enough about the commission, but there is a great deal of need to have at least initially a way to protect the proprietary information in these proposals.

If the Commission can do that, then I would say fine. I just don't know enough about that process. I would make sure that you all are thinking about the proprietary nature of these. They, it needs to be an open process. I will totally agree with that. But it also needs to have some protection from proprietary information that the companies will be submitting that the DOT will need, they need to have that information. But you just can't be out to everybody.

Again, we do need an open process. If you can protect, if there is a way to protect that information and you can be aware of that as you are finalizing this legislation.

So any way, in conclusion I am very pleased to see that you have recognized the business as usual just isn't going to cut it any more. We have got, we have got to find new ways to do it. There are lots of money sitting out there, lots and lots of money, billions. They are willing to invest in coming in as partners and to be, to be involved in these projects. Whether it is a capital project or service projects, operation projects. We can do this. As I said, it is not a panacea, but the Commonwealth of Pennsylvania needs to join with states that have this kind of legislation where the -- investment from the private sector. You want to open your doors and make sure the welcome mat is there.

So again, you can enjoy the, have them participate in funding your infrastructure. And with that the Reason Foundation and I am here happy to answer any questions at any time and certainly happy to answer questions now, Mr. Chairman.

CHAIRMAN MARKOSEK: Shirley, thank you very much. I appreciate it. I have one brief question just following along in your testimony when you mentioned Minnesota. And the project they had there was vetoed by a locality is permitted in the legislation. Is that something that is not permitted elsewhere, was that a rarity.

MS. YBARRA: It was a rarity. Not only that, Minnesota changed their law. That specific project is now built. They changed because they realized the public input, we recognize this in Virginia, all the localities that were involved in the area of the project were notified. We took comments from them. But they did not have veto power.

One thing that is different in Virginia when they wouldn't have the veto power unless the Legislature gave it to them. But in Minnesota, they did, in fact, change the law so that the state DOT could proceed with that project which is built.

CHAIRMAN MARKOSEK: So you would suggest we don't allow that?

MS. YBARRA: I would say I wouldn't allow it. They need to be involved, You need to have their input.

CHAIRMAN MARKOSEK: Okay. I think you are right. You just have the not-in-my-backyard factions.

MS. YBARRA: They have their design models here and public hearings whatever they can make those points. We are not skipping in any of these projects, not skipping any of the environmental processes. They have their opportunities to make their views known.

CHAIRMAN MARKOSEK: Thank you. Representative John Maher.

REPRESENTATIVE MAHER: Thank you, Mr. Chairman. The Dulles Greenway project is sort of the pioneering project in the nation. Is that still private?

MS. YBARRA: Yes, it never went public. Well, it has since been sold to another company. It is still, but it is still private.

REPRESENTATIVE MAHER: And would the Virginia projects for maintenance, operation and maintenance, is that essentially outsourcing the maintenance? Is there something more to it?

MS. YBARRA: It is more to it. It is a performance-based contract. And what we agreed with the proposal came in, and we were trying to move to performance-based contracting any way. What this proposal did was bundle all the maintenance said we will take over the maintenance of X number of miles of interstate from fence line to fence line. We will handle all of the contracting, whatever.

We will agree what standards ought to be. We have standards from '88 so in different things everything from pavement to guardrail to signage to lighting to picking up dead animals to mowing the grass. By performance standards, what I'm talking about is we agree that the grass can only be, there is a measurement, this high. We didn't say you have to mow the grass eight times this summer, we said the grass has to be this high 95 percent of the time or something like that.

We didn't care if you paved it or chopped it down, you know. What I'm saying is we didn't tell them how to do it. We simply said we want the grass, on the reflectivity on the sign, the same sort of thing. We want it a certain, was an outcome based agreement, not input in terms of, we didn't tell them to change the signs, how many times, didn't tell them to mow the grass or pick up dead animals. We told them what the results had to be. That was a five-year.

Then he went and contracted with a variety, many, many contractors, built up a whole new industry and brought in, quite honestly, more minority contractors in this particular contract than the prior percentages that VDOT had.

A lot of good things were happening. So many people could not have worked on the interstate just dealing with VDOT directly, worked on the interstate for him and he had the overall performance bond and insurance.

REPRESENTATIVE MAHER: And when this particular individual come forward, an unsolicited proposal, this project was done over five years, five years contained, what percentage of the road is state owned roads in Virginia would you speculate?

MS. YBARRA: This was on the interstate,

this was about, at the time, 35 percent of the interstate road. They have now, VDOT since then contracted, done similar projects, contracts on virtually all the interstate. VDOT is considering can they do it if they run all the roads in Virginia, primary, secondary, you know, cul-de-sacs for that matter, they are looking at going to more and more of these contracts.

What I mentioned to you was that Florida looked at that, what Virginia had done, instituted the performance-based contracting and virtually all of their major roads, a large proportion of them are now on the performance-based long-term contracts. They have some 33 contracts.

REPRESENTATIVE MAHER: Thank you.

CHAIRMAN MARKOSEK: Representative Mark Longietti.

REPRESENTATIVE LONGIETTI: Thank you, Mr. Chairman. Thank you for your testimony. A couple questions. From a what I read, it seems though that the public's appetite for public private partnerships is much larger when you are talking about a new piece of infrastructure improvement versus something that already exists. Do you have any comment on why you believe the public views it that way? Do you think it is misguided on their part to basically be more interested in the new pieces of infrastructure and not really be interested in public private partnerships to deal with what exists?

MS. YBARRA: I think, well, one, probably their appetite is there, then they will see a road being built, they will actually see the construction workers out there, so on. We are seeing though, the appetite, for example, Virginia is doing a very large project one you will hear about in terms of putting in HOT lanes, that is, if you will, retrofitting the existing Beltway, adding lanes to it, adding capacity to an existing road.

I also think that there has been sort of some misinformation out there. Perhaps based on the Chicago Skyway that has gotten out and about, I think that can make the public a little nervous.

REPRESENTATIVE LONGIETTI: From your perspective if that is the public perception at this point, it is not valid or seems to you that the same advantages you would have for public private partnerships for new pieces of infrastructure would also hold for existing?

MS. YBARRA: Yes, yes, I believe that. And we have seen, as I said the, Beltway being one, there was another project in Virginia, I happen to know more about what they are doing in Virginia right now even though I'm not there, they are looking at another project which again it is adding capacity, adding an HOV lane that will actually be a HOT lane, a tolled lane down the center for high occupancy vehicles. Single occupant vehicles can pay a toll, the HOVs would not. They are adding potentially that project is under consideration for 35 miles.

It is again almost like the -- project by project. I don't know that I would generalize, but we are sensitive to some of the press that perhaps a project or two has gotten.

I think there is also concern that the public feels, I don't know it is always explained the way perhaps it should be for example a long-term lease, pick the New Jersey Turnpike, that if that were structured properly such as adding lanes there south of Trenton, long-term maintenance, and so on, I think there could be some real advantages to it bringing in a public private partnership for that.

REPRESENTATIVE LONGIETTI: Have you seen any states for public private partnerships that deal with mass transit issues whether it is the operation of a mass transit system or development or --

MS. YBARRA: Yes, we have seen Las Vegas, and I believe Utah, Las Vegas on the monorail. Utah, I think for the Olympics. Light rail. Not to get you, there are some others. We will see also on the transit, for example, what they call transit oriented development where you will see the development around a particular area, station, for example, the fund, either the transit, fund station one in DC for that was the New York Avenue on the Metro, they actually, you know, got basically got the money together from the developers for developing that, put it into the New York Avenue and Metro project there.

The only thing the Secretary later told me five years later said I should have asked for more money from them because this whole area just exploded to be very, very good, a very good project. And these people said I should have asked more money and shared in a greater proportion of it. But he didn't know. That is what happens when you start out, you don't know what you should have done.

REPRESENTATIVE LONGIETTI: The ones that you mentioned, are those strictly capital projects, or building improvement or construction of something versus public private operation on the operation and maintenance?

MS. YBARRA: I think those have only been capital. One of the problems that you have in doing transit operating public private is transit, the fare box usually only gives you can be anywhere from 20 to 30 percent of the operating. So that is why very often the transit-oriented developments may, they may use some of those moneys on the operating. I would have to check that for you, would be happy to do so.

REPRESENTATIVE LONGIETTI: The last question you talked a little bit about VDOT in your public private partnership on maintenance on the roads. These public private partnerships like that example, what are, what have you seen in terms of government's cost responsibility for monitoring and enforcing the agreements?

MS. YBARRA: We built that into the agreement. So that it was shared by the, in other words, shared in that we were, it was shared in part by the contractor, part by us. So it was built into the contract so it was not an expense that wasn't already, that wasn't accounted for.

REPRESENTATIVE LONGIETTI: So the contractor actually shared some of the cost.

MS. YBARRA: Yes, it was written into the contract that we both had, monitoring was shared. The best way I can put it.

REPRESENTATIVE LONGIETTI: Thank you, Mr. Chairman.

CHAIRMAN MARKOSEK: Thank you. Representative Jeff Pyle.

REPRESENTATIVE PYLE: Thank you, Mr. Chairman, Madam Secretary, good to see you again. You had mentioned a number of successful projects around the country but you also the Chicago Skyway a reluctance a lot of states from entering into the 3 P agreements because of the problems with the Skyway. Is there any way you can elaborate.

MS. YBARRA: It really isn't, it is the perception. Actually, probably the Skyway is successful, a concession model, a long-term lease. They didn't sell that thing, they lease it. And they have in the contract if anything they probably got more control. Immune, they have all of the things that the contractor has to do, the maintenance, the upgrading, they changed out the toll booths almost right away. I say that because people hold that one up and say it is all bad.

And I would say that certainly in my opinion and the opinion of Reason it is not all bad.

REPRESENTATIVE PYLE: I have a few more questions here, you mentioned a number of states amongst them feel free to correct me, Washington, California, Arizona, Missouri, Minnesota, you said up to two dozen other states have all passed enabling 3 P legislation. The one I'm most familiar with is what is going on in our sister Commonwealth, Virginia.

Are they proceeding with the Pocahontas?

MS. YBARRA: The Pocahontas has been completed for, I don't know, six years. Pocahontas is completed.

REPRESENTATIVE PYLE: Is that permanent, I know the Pocahontas was a capacity project.

MS. YBARRA: No, Pocahontas was a brand new road, this is the one south of Richmond, just south of Richmond, it connects 95 and 295. Completed a piece of the circumference. It is completed, it has been, it did change ownership. It was purchased from the, had originally been a 6320 corporation and purchased now Transurban and Transurban is the, purchased that -- long-term concession, long-term lease that road, VDOT still owns the road, still owns the right-of-ways, they are responsible for maintenance although the contractor did --

REPRESENTATIVE PYLE: I'm curious, what term of that concession is that, how many years?

MS. YBARRA: The new one is 99. It wasn't at the beginning.

REPRESENTATIVE PYLE: Okay. One more question. You had mentioned Florida which reminded me I need to call my sister. Thank you for that. They use 3 P almost exclusively for maintenance contracts?

MS. YBARRA: Yes, that is true.

REPRESENTATIVE PYLE: When a state municipality enters into one of the contracts, what is the typical length of term?

MS. YBARRA: I think theirs will run about eight years.

REPRESENTATIVE PYLE: Eight year contracts?

MS. YBARRA: It is either five and five or eight, it is own, I have not looked at the most recent. I wouldn't say exclusively. They do a lot of them. I think they have got a number of, like 30 of these contracts.

Now they use, it is a different procurement process. It is not just P 3, it is a different procurement process. They do have a very successful P 3 for capital projects in Florida. They are doing several. Texas also has one. California while one of the originators does not have a workable piece of legislation at the moment. Colorado has them.

REPRESENTATIVE PYLE: Thank you very much. Thank you, Mr. Chairman.

CHAIRMAN MARKOSEK: Okay, are you welcome. Representative Tim Solobay.

REPRESENTATIVE SOLOBAY: Thank you, Mr. Chairman. Also thank you Madam Secretary. I guess my question kind of follows up on what Jeff was saying as far as the length of these contracts or the length of the deals made with the particular companies. You obviously heard that we are looking at something of a lease type agreement which I guess kind of falls under the P 3 arrangement. 75 years seems like an awful long time.

Your history and your involvement over the years with these, is that something that we need to be skeptical of and concerned?

MS. YBARRA: I think it is a case by case, the reason I say that, I know there has been some very long-term leases that might be some of the Chicago issues also. Some of this, for background, some of this had to be done for the very long-term because of the U.S., because the IRS code. Different with whether or not the state wanted to get it off the books for 99 years, it is a tax code issue. You will need to get some financial people to tell you more about that. I just told you about what I know about it.

When we did some of our first ones, such as Pocahontas, I believe that was about 40 years. Typically we issue bonds from the Commonwealth for 25 years. But because the construction the way this, we lengthened that lease, the first arrangement that we made was out longer than what we would typically deal with bond issues. They needed slightly longer bonds, and so on. And then they had, the equity investor needs a little longer term.

So, there are reasons that the longer terms, the reason they end up getting to be 75 and 99 you need an IRS expert to tell you why that is, the way the asset is treated on the concessionaire's books. Should you be skeptical? I would have to evaluate each one independently.

You know, it may be that there is another way to do it. I think the tax code is going to have to be changed, shortened so much down to the length the bonds may be. You got equity investors in these.

REPRESENTATIVE SOLOBAY: Excuse me, like any other contract, if you get the conditions of the contract the way you like it, then the terms probably no negative, is there a negative side if you basically have the Commonwealth can get everything they want, the Legislature can create this would get everything they want, is there still a negative that can come out of this?

MS. YBARRA: There probably, theoretically I can think of something awful, but it seems to me if you get what you want in the contract you get the right people negotiating them. You have got the safeguards. You usually have the safeguards like what happens if the company goes bankrupt, what if, you can't roll up the road and take it away.

You probably will find someone else interested in coming in picking it up. So, I think as long as you have got that basic contract written up, I don't think I have, and I sure would want on that too.

CHAIRMAN MARKOSEK: Thank you, Shirley, thank you very much. We appreciate that. I'm sure we will be calling on you.

MS. YBARRA: Happy to answer any questions any time.

CHAIRMAN MARKOSEK: You and the other folks that will testify, you are the experts and we need your help so thank you very much. Next Gary Groat, Director of Project Development for Fluor Enterprises. Gary has a PowerPoint, we will take mini break here while our crack staff gets that running.

We have a little bit of a break here and one of our astute members pointed out to me that I forgot to do something today. I'm going to have him, Representative Dick Hess, lead us in the better than late Pledge of Allegiance to the flag.

(Pledge of Allegiance recited)

CHAIRMAN MARKOSEK: We obviously tried to do that at the beginning. I think the first time we forgot to do it. Better late than never. Mr. Groat, thank you for attending. You may proceed, sir.

MR. GROAT: Thank you, Mr. Chairman, I'm going to be describing some projects in Virginia that Shirley wrote the legislation to. We in the Commonwealth of Virginia have been the principal beneficiaries of that legislation. I develop public private partnerships for Fluor Enterprises. Fluor

Enterprises is one of the largest contractors in the United States and we specialize in public private partnerships and design, build projects for numerous DOTs around the country.

I would like to speak in support of the pending bills both House Bill 555 and Senate Bill 1158. Both encourage private financing for some of Pennsylvania's many transportation needs.

This program, either bill can help provide new roads, new transit facilities and new travel facilities and new travel choices for the traveling public without further burdening the state taxpayer. Other states that use such programs to help finance projects existing state DOTs and transit programs cannot afford.

I would like to highlight several projects in Virginia's P 3 program which is one of the most successful in the nation. The current transportation secretary, Pierce Homer has called tolling and public private partnerships as two of the most powerful tools to achieve mobility and economic growth in America. He said and I quote, the introduction of public private partnerships has been a major force in helping Virginia deliver more projects on budget in shorter time frames and with results that please the customers, those who drive on Virginia's roads, end quote.

The public benefits from such partnerships in -- the public benefits from such partnerships in two ways. First are the direct benefits of the project itself and second are the benefits resulting from a program that facilitates and encourages such projects. The three projects I am going describe were all developed by Fluor.

They are the Pocahontas Parkway in Richmond, Virginia, the Washington Capital Beltway HOT lanes and the I 95/395 HOT lanes both in Washington D.C. areas.

These projects have several things in common. First, they all started as unsolicited proposals and will create new capacity. Second, the two HOT lane proposals actually offer new technical solutions to something not on the radar screen of the Virginia Department of Transportation.

Third, they are primarily financed by private revenue. Some projects 100 percent.

Fourth, favorably they have been favorably received by the public.

The Pocahontas Parkway is the first example of an off-the-shelf kind of project. Shirley made reference to it several times. It was open to traffic in 2002 and has been studied by Virginia DOT since 1980. It is basically eight and a half, 8.8 mile link between Interstate 95 and 295 and includes a major high level crossing of the James River I think a clearance of like 160 feet. But it was quickly shelved by DOT because they had no funds to construct it.

Then along came Shirley in 1995 and the Virginia Public Private Transportation Act became law. Fluor submitted the very first capital unsolicited proposal under the new act to design, finance and construct the Pocahontas Parkway as a toll road project.

Just as a side comment, in my previous life before Fluor I was part of the firm that submitted the very first unsolicited proposal which was the maintenance project for the interstate highways.

What Fluor did for the Pocahontas Parkway was create an IRS 6320 non-profit corporation and issued tax exempt bonds for this $324 million project. The 6320 was responsible for repaying the bonds. This approach transferred bond risk from the state to private entity. That included moral risk, there was actually no liability to the state at all.

Constructing the project under a

design-build contract was a guaranteed price and penalties for delays, Fluor at the ribbon cutting returned $10 million of unused funds to VDOT. So, it was a fixed-price contract guaranteed schedule but we still returned $10 million at the ribbon cutting.

In 2007, after the road had been operating for five years, Virginia refinanced the Pocahontas Parkway project in a $611 million concession deal that was a 99 year lease. So that was mentioned earlier. The evolution of the project starting out as a $324 million privately-financed project to subsequently refinance at $611 million illustrates the flexibility of such programs and a substantial revenue gain for Virginia.

One could call the Pocahontas Parkway the gift that keeps on giving. If you want more detailed information on this, this is one of the projects highlighted on Federal Highway Administration's web site under public private partnerships as an example of how a project can evolve and it is one of the more successful ones around.

The next two examples I will talk about are not off-the-shelf, in other words, VDOT hadn't visualized these projects, had not started design on them, and they are the direct result of an innovative technical solution brought forth by Fluor.

The first one is the Capital Beltway. In 2002 Fluor submitted an unsolicited Capital Beltway proposal that suggested a new solution for one of Virginia's most congested roads, the use of high occupancy toll lanes or HOT lanes to help finance it. Here the private sector provided not only new money but also provided a new idea to solve an old problem, congestion. The project will add four new HOT lanes, two in each direction along 14 miles of Interstate 495 the circles Washington D.C. It will be a guaranteed cost of 1.4 billion in construction. The road widening will create a multi-modal facility that encourages greater bus transit use and car pooling by offering reliable travel times as a result of this congestion price tolling.

In other words, the price of the toll will fluctuate with congestion. More congestion the higher the price. That is the mechanism used to be able to assure reliable consistent travel times 24/7.

In December of 2007 just last year Virginia and Fluor-Transurban reached a final financial agreement with, to the design, finance and construct a project, in fact, last week on July 22nd, we had the ground breaking for this project, so construction is actually underway.

And the project must be open before the spring of 2013. The reason I say must, is because under our PPP contract we must pay liquidated damages of $240,000 a day for every day the project is late being open to the public.

This consent advises us to get that project going as soon as possible.

The next project is the HOT lane project which is a reversible set of HOT lines on I-95/395 currently which are under development in negotiations with Virginia. The project will add a third lane to the existing 28 mile reversible HOV lanes that extend from the Pentagon down to Prince William County and another extends it another 28 miles further south creating a 56 mile reversible HOT lane system.

For people who don't know Virginia geography, that is essentially halfway to Richmond from Washington D.C. It will start at the Pentagon extends to Spotsylvania County and is designed as a multi-modal facility. In fact, as part of the deal we proposed that $390 million of the excess revenue, and there will be excess revenue on this particular project be used to fund buses, new bus routes, pay bus drivers and encourage greater mass transit use of the facility. So the gentleman that was asking about transit, transit also if you find transit to include rubber tires, this is the case where this project is actually financing extended transit use including multi-modal connection of existing Virginia rail express stations.

The traffic will be managed by use of congested price tools just like the Beltway project. The drivers will be able to choose to pay a toll or to ride for free if they form a car pool. What that means if you are HOV 3 or greater, you get to ride for free. If you just have one or two people in your car, you get to pay the toll. So it is a classic white hat black hat.

You guys with black hats who choose to travel by themselves in the car pay the toll. And their money is transferred over to subsidize car poolers and greater transit use.

If you want more detail on this, we have a rather extensive web site www.virginiahotlanes.com.

The direct public benefits of the two HOT lanes I just described are, first all motorists will benefit from reduced congestion even if they don't use

HOT lanes because HOT lane are proven to divert 10 to 15 percent of the general purpose traffic into the HOT lanes. That means the level of service in the free or general purpose lanes actually goes up a level when the hot lanes are in operation.

What it does is the average consumer or road user who has no choice today will now have several choices to make. And those choices will include paying tolls.

Public transportation users will also enjoy improved local and express service, for example, on the Beltway in Washington, all the local Metro bus and Fairfax County bus service, none of them use the Beltway. The congestion is to great that they can't have reliable schedules and people will not pay to ride a bus and sit in traffic with other cars. So by creating the HOT lanes we essentially are creating virtual bus ways that the buses can use so that in fact we have been funding studies to help the bus companies determine what is the best route so that they can take advantage of HOT lanes when completed. And they have already expressed interest in doing that.

The community will also benefit from improved mobility that can be sustained into the future by use of congestion-priced tolling. One of the things that makes HOT lanes unique in the country it is the only form of road transportation where you can virtually guarantee you will never run out of capacity. Because supply and demand in the toll-congestive pricing assures you that by adjusting the price you will make sure that whoever is willing to pay that price or car pool will be able to travel the posted speed limit 24/7, something you can't do on any other type of road in this country.

The public policy benefits are great in that more than a dozen states that Shirley mentioned have started similar programs and it encourages not just money, but encourages new ideas, faster construction and delivery.

Specifically, the public private partnership programs will help mobilize the private sector to find new innovative solutions to a variety of transportation challenges in partnership with the state such as the result of the Fluor suggestions, the result of the two HOT lane suggestions Fluor made Northern Virginia which is the most congested part of Virginia will have 70 miles of new HOT lane, 70 miles new HOT lane in the network center lane miles that didn't exist a few years ago.

And this idea of HOT lanes has generated regional interest, both in the State of Maryland and the District of Colombia are now looking at extending the system region wide so that the entire region can benefit from HOT lanes.

The second major advantage is new money. Properly managed such programs will encourage the private sector to find innovative ways to privately finance new projects and leverage dwindling federal and state resources. The three examples I have given you today represent three billion dollars in new highway and transit improvements paid for primarily by private tools and corporate investment adding little or no additional burden on the taxpayer.

Thirdly, faster delivery using design build for project delivery reduces project cost and eliminates cost overruns, and change orders and speeds up delivery and increases sensitivity to the built and natural environment.

Finally, building public support. Federal law restricts what a DOT, this is not just Pennsylvania, every DOT, their ability to promote new road development during the study phase, called NEPA. You are not allowed to show preference over a builder versus no build during that phase. And all too often excellent highway projects are killed by highly organized opposition groups and quite often represent a very small minority. The private sector is not limited by such laws and can become a forceful advocate for projects and help counter such opposition. The Washington Beltway is a classic example and the metric I like to use when we submitted our unsolicited proposal it was right in the middle of VDOT holding three massive public hearings on how to widen the Beltway.

And when they counted up the written responses from citizens, only eight percent of the people favored any version of widening the Beltway. Eight percent. 92 percent of them voted in favor of some kind of vague rail solution. Two years later Virginia went back to the same public with public hearings and they offered two alternatives, 10 lane alternative and 12 lane that looked suspiciously like HOT lanes concept. 65 percent of the written comments favored some version of widening the Beltway. Just two years later went from eight percent to 65 percent. That wasn't just by accident.

Fluor actually went out in the interim two years and explained the concept to the citizens, and the citizens realized that they could get this enormous benefit at a very small cost both financially and environmentally and they responded in a very positive way. The creative use of P 3 programs is a new tool to fight the growing congestion problem and can provide major benefits.

Not all 3 P deals, however, make sense. What makes it a P 3 deal? For example, the most important thing is providing significant user benefits at the lowest cost. This sort of reflects on maybe one of the earlier comments that was addressed to Shirley. The citizens get confused when they see bank transactions, for example, Chicago Skyway was a bank transaction.

It was a long-term lease and the citizens didn't see the direct benefit between that and being users. Where on the Beltway, for example, in Virginia, we offered several plan of finance on that. One was the 6320 tax exempt approach and then we offered the concession approach. The concession approach was only offered after Virginia said I like your idea and I would like to take the scope and I would like to enhance make it even more attractive which, you know, when fiddle with the scope the price goes up. So the original concept was about $700 million.

By the time we finished working with Virginia on it, it was $1.4 billion in construction, and that still is certainly less than original plans which were approaching $4 billion. And as a result we said we will bring in some other finance plans that will help purchase more scope. So as a result we actually signed in partnership with Transurban a 75-year lease for the Beltway and all the press coverage it has gotten even today, we are talking about news reports five, six times a day in both the written media and television media, hardly ever is the concession issue brought up.

People are focusing on the benefits, because the benefits are direct and we can see, that goes with having new capacity, they are asking like where can I get on the lanes, how soon will they be finished, what will I pay and so on. So the method of finance is irrelevant when you focus on benefits at the lowest possible cost.

Also, you can't do P 3 in isolation. It has to be a benefit to the entire transportation system. Some people have accused P 3 of cherry picking you come in and see an attractive project and figure out way to finance it. That doesn't do the state system any good if you cherry pick.

So, all of our projects have been complimenting the state transportation system and as a result have been favorably considered. We have increased accountability under the P 3 deal to make it attractive. The risk has to be shared.

The projects I have talked about, the Pocahontas the Beltway and I-93, each one of those has represented a new level of risk that the private sector is taking. Virginia, as their negotiators have learned, the process every time the risk is ratcheted up on our side and down on their side. To the point where the Pocahontas Parkway development risk there was really us carrying millions of dollars of design and so on under the negotiation period. Where the Beltway contract just signed involves $350 million corporate investment, the family jewels if you will, a whole new level of risk. And risk spread over a 75-year period.

So each of, each, that is why Shirley said there is no template, each negotiation represents a new level of risk on both sides and the equation tends to be putting more of the risk on the private side.

Delivering better customer service. We found very responsive, we have seen great response from the citizens of Virginia when out talking about the various projects. They are responding very favorably. Because believe it or not, transportation and politics are closely interrelated. The citizens when they start seeing lots of money moving around like $1.4 billion for the HOT lanes, they want to be assured that the money is really going to, stays in that corridor.

And when we demonstrate under P 3 that the contracts are business contracts and they provide a buffer between the elected officials and the citizens, that they recognize that well, when you write that contract, that doesn't mean the Legislature can come in and change the allocation of money and send it somewhere else. It gives the citizens a lot more confidence that in fact what they were agreeing to up front will stay consistent for next 75 years.

Retaining flexibility. To remind you, our unsolicited proposal for the Beltway went back to 2002. We only signed the agreement in December of last year. That was five years of negotiations, of fiddling with scope, and so on, finding the best solution. So both the public and private sector need a lot of flexibility to make sure a deal doesn't go south in such a long period of negotiation.

Finally, we think the P 3 is a good deal to make sure we can help the government become more efficient and reduce the need for public funds.

I would like to close with two quotes, one in my written testimony and one that isn't. At the ribbon cutting ceremony, the ground breaking last week the Secretary of Transportation of Virginia, Pierce Homer made the following comment about this project. He talked about how his department had pulled together this $4 billion solution. And the private sector came in with something basically a $1 billion solution.

And he said basically as a result of the public private partnership, we have been able to garner three-quarters of the transportation benefit of the original project concept for one-third of the cost. That is a pretty good cost effectiveness kind of ratio.

Finally, I quote Mary Peters, the Secretary of Transportation for the United States who said the daily frustration of drivers on our roadways is ample evidence that our current transportation model is broken and that bold thinking and leadership are needed. We're never going to solve congestion with higher federal gas taxes or additional earmarks. Instead, we need fresh approaches like new technology, congestive pricing and greater private sector investment to get America moving again.

Thank you, Mr. Chairman, and if there are any questions I would be more than happy to attempt to answer.

CHAIRMAN MARKOSEK: Okay. Mr. Groat, thank you very much. I just have a brief question and maybe for the benefit of the members as well as myself. I think I know the answer. You mentioned you talk a lot about solicited and unsolicited projects. Can you give us your definition of each and perhaps the pluses and minuses, the pros and cons?

MR. GROAT: Solicited under the Virginia act, I believe are similar in the bills being considered here. Basically, allows the private sector to come in and almost carte blanche. If they see a transportation problem they can solve, they come in with an unsolicited proposal on how to solve the problem. The state then can decide whether it is in their best interest to consider the proposal or can just be returned as quickly. Virginia has received many unsolicited proposals turn right around and send it right back before the press even knew they existed. One of the advantages going straight to the DOT. Because of confidentiality is kept.

Solicited proposals are ones where you have the DOT develop scope and then put out for competition. To date Virginia has yet to have a successful solicited proposal after. I think it is a paradigm shift. You know, after over 100 years of state, federal funds essentially have transportation being a virtual monopoly, it is hard to have a paradigm shift. And the downside of the unsolicited proposals are it makes the DOT think outside the box. Because you come in with maybe a different idea or different way of doing something, you have to sort start from scratch and measure it by standards you are not used to doing, i.e., makes the DOT staff's life a little more difficult.

The positive side it might come in and solve the problem as Secretary Homer said where essentially they did it for one-third the cost if he had taken in-house estimates he essentially would not be able to widen the Beltway because they were approaching $4 billion in their estimates and there was not a nickel in the bank to pay for it. There are the pros and cons.

Do you make staff's life more difficult or do you open up the door and look for innovative solutions. My standard answer to that question is unsolicited if you think of all the best ideas that exist are represented in your DOT staff, you don't need unsolicited proposals. Most people think that if you engage the private sectors some good ideas might come in one way or the other.

With respect to solicited there have been successful solicited in other states like Colorado, the E470 project, so they do happen. But usually to do a solicited P 3, you have to have a well thought out plan as to how it fits in be ready for it and make sure your scope isn't too restrictive.

You want more performance-based kinds of guidance like Shirley mentioned, more performance-based scope. For example, VDOT put out a solicited P 3 that says we have many congested interstates in the Northern Virginia area, we will be happy to have you respond to any one of the interstates if you can solve the congestion problem by, and list the current, give us a solution that will maintain traffic flow at close to speed limit 24/7 they will finance at least 80 percent of the project, if they do something like that, they probably would get some very interesting proposals back.

But if you took the original concept for the Beltway, for example, approaching $4 billion and said, you know, put it out to private sector, will you finance this, the answer would be no.

CHAIRMAN MARKOSEK: That is interesting. The other thing I would like you to comment on Representative Geist and his staff put together a very good seminar six months ago about a P 3, I believe you were there if I recall.

One of the interesting things I gleaned from that seminar was that once you, a state like Pennsylvania would get involved with P 3s, perhaps pass legislation, that is all fine and good, but if the internal staff at the Department of Transportation in this case, PennDOT doesn't have the experience, the know-how, just people currently working somewhere else hey we need people now to staff this particular department, it is brand new, that could be a problem. And you know, in order for P 3s to work, I think you know from what I heard at that seminar was you need a, for lack of a better word, I don't want to say competent I think all PennDOT staff is competent, but experienced staff that is experienced with dealing with P 3s so you kind of work around as you pointed out the departments have their sort of way of doing things for many, many years. That mindset that you have to somehow circumvent.

So, what would your comments be on that, how would PennDOT, for example, go about putting that kind of staff together?

MR. GROAT: It is really an educational process. At least a two-step process. What Virginia did when they were presented with this back in 1995, they brought in under contract, under contracts financials, legal, engineering and any advisors they needed so when they were receiving unsolicited proposals, they immediately would mobilize people who are knowledgeable in each one of the areas to advise them. Then you get back reports telling the pros, cons, the ups and downs what your negotiation position should be or send the thing back, it doesn't make sense. That is the first step.

The next step would be in, Virginia is in this position right now where they created an entire division relatively small, I'm talking five or 10 people innovative contracting division where people who over the last ten years have been involved in these projects who are now smart enough, not smart in the sense weren't educated, but they learned what consultants have been telling them for the last ten years so they don't need to pay for that advice a second time. So they can, in fact, jump start most of these projects and answer many questions themselves.

They still need financial advisors, the financial area changes every minute. So they now reach the second plateau where they have in-house expertise and that can be done in any DOT. To some extent the federal government is sort of force the DOTs to think one way, come up with the standards, the only way to design roads this is how you finance it. Traditionally, you turn the engineers loose and they design a road to the nth degree and make sure it is sewer safe and so on and then they turn it over to the chief financial officer. Well, that is the old way of doing things, you need somebody who understands the financial end and, the think that is a two-step process Virginia follows, could be emulated elsewhere.

CHAIRMAN MARKOSEK: So just in summary, you would suggest if we get legislation passed that initially any way, that we would reach out to some of the private folks out there that we could hire to consult us?

MR. GROAT: A whole industry is developing in this on the legal and financial side. I am sure you have a half dozen names in each category from Virginia as to who to contact. Once your legislation is successful, they will come and find you.

CHAIRMAN MARKOSEK: Fair enough. Representative John Maher.

REPRESENTATIVE MAHER: Thank you. On the Pocahontas transaction -- on the Pocahontas transaction you initially had a 6320 to do the tax exempt financing. And then your remarks indicated it was refinanced and some sort of concession deal for $611 million. What does that 611 measure, is that cash on the table is that a stream of payments?

MR. GROAT: 611 included paying off the original taxes and bonds. It included, let's see. Tax exempt bonds. It also included when we originally proposed the Pocahontas and the 6320, we had given VDOT the choice if you want to include the, include maintenance and this was part of the learning curve, very early, very first project, the DOT reaction was we could do maintenance, we don't need your help. Thanks very much. Two years later they realized it was a poor choice. So part of the 610, $611 million was paying VDOT for the maintenance costs for the previous five years that it operated as a 6320. They paid them for five years of the wrong mistake, wrong decision and then they picked up maintenance from that point on. So it included mostly paying off bonds.

If you look at it this way, a real simple equation they got a $326 million road for free. Then five years later somebody came in and offered them a concession approach, refinance at $611 million even though the public sector is not supposed to have profit, they got about a $200 million profit to the state they were able to use for other purposes. And that is why the concession went on for 99 years, because it not appear to be a very busy road, and also the new concessionaire made a commitment to add a 40 or $50 million extension into the international airport at Richmond as the extension of the facility. They got new capacity in addition to the investment.

REPRESENTATIVE MAHER: Are you aware of any of these transactions to divert existing infrastructure without an expansion of capacity or features or that sort of thing that have been accomplished, been met with a public embrace?

MR. GROAT: Transactions being concessions as opposed to 6320 not being a transaction, I always say transaction --

REPRESENTATIVE MAHER: Not new structures not new capacity. Here is the existing road, we will turn it over to someone not for maintenance, but --

MR. GROAT: If your question is do we know of a long-term lease that involved new construction?

REPRESENTATIVE MAHER: Involved existing infrastructure.

MR. GROAT: No new construction, that was well received? Not like when you are adding capacity. The closest I think Shirley mentioned the Chicago Skyway got some bad press. Internally in Chicago it was an extremely good deal for them. The City of Chicago is a municipality. It doesn't maintain interstates, all interstates are maintained by the State of Illinois. The Skyway was an economic development for the city to connect the Indiana toll road and the Illinois State Legislature didn't want to pay for it, so they paid for it. So for them it was a very good deal. Because they got out of the interstate business.

All 150 of their employees were guaranteed either jobs with the city or the concessionaire so the employees had a choice of where to go. They got out of interstate maintenance business. So it was a good deal for Chicago.

Now the Indiana toll road was a little different, because that is a main mission of the state of the DOT and Turnpike to maintain that road. That deal probably could have been better received if actually a few months after the deal was concluded Governor Daniel of Indiana was testifying in Washington and one of the congressmen asked him what would you have done differently if you had it all to do over again and he said I would have backed off a couple years and spent more time convincing the public as to why this is the best way to go. I think he was saying should have more education when you are essentially doing a long-term session on the existing assets needs more education and hand holding if you will to those people why it is a good deal.

REPRESENTATIVE MAHER: Is Fluor pursuing any maintenance outsourcing contracts at this point or is Fluor not in that particular --

MR. GROAT: Fluor we are a construction company so our interest is adding capacity and solving transportation congestion problems. We will offer almost anything as part of the deal if the client wants it. For example, when we offered the Beltway under the solicited proposals originally as a 6320. Because the scope grew and we needed to find more money to fund the additional desires of Virginia, that is when we offered a long-term concession as an alternative financial plan.

We also offered operations and maintenance as an option. Particularly when you are dealing with the states, maybe the first or second project they have done we offer most services as options like a Chinese menu, you choose what you want, for example, the Pocahontas Parkway offered maintenance they chose not to do it. And so we do whatever is necessary to make the deal work. But our primary interest is building transit and road projects to serve the public.

REPRESENTATIVE MAHER: In terms of the HOT lane approach, what range do you imagine you will see as the toll per mile applicable for a passenger vehicle, I recognize part of the whole concept is it is a variable toll, is that going to vary by hour or --

MR. GROAT: Every six minutes, potentially every six minutes. It will be the first dynamic price HOT lanes in the country. The ones in California are, basically it is a schedule. It has to exceed, it has to miss miles per hour 18 consecutive days over a six-month period before they change the schedule. This is dynamic, every six minutes.

In fact, I called down in Virginia when I spoke to Senate Transportation Committee a few months ago because I made the comment the contract we signed for the Beltway has no limit on tolls. The people in Richmond said they got a lot of calls from Harrisburg asking what are you guys doing, signing contracts with no tolls on it. What they explained to the people who called them and what I would explain is the reason it has no set limit on it because the only way to assure you have mobility is to allow supply and demand to work.

Now the immediate reaction is well, gee, there must be tremendous upsides to that. Well, there are tremendous downsides too. The upside is protection. The agreement we have signed in Virginia says that if the return on investment exceeds 8.1 percent, that is when we start to share the toll with the State of Virginia even though we have an exclusive 75-year concession agreement. Once that revenue exceeds 8.1 percent, it is shared. So that is the upside benefit to Virginia.

Also if we artificially capped it, who knows 20 years from now what congestion is going to be like. If price of gasoline goes up the rate it has been going, ridership might go down and we might be hurting on the downside of that. That is something we will live up to.

REPRESENTATIVE MAHER: Have you by chance done any brain storming about opportunities for HOT lane expansion of capacity in Pennsylvania?

MR. GROAT: Oh, yes, you have got a lot of opportunities here but since unsolicited proposals are our specialty, that is the currency, I would say any congested interstate or limited access road in the state that has level service E&F for six to 12 hours a day, that is an ideal candidate.

REPRESENTATIVE MAHER: Thank you.

CHAIRMAN MARKOSEK: Thank you, John. Representative Longietti.

REPRESENTATIVE LONGIETTI: Thank you Mr. Chairman, and thank you for your testimony. Just to kind of pick up where he left off, as I was, as you were testifying I was curious how this congestion tolling actually works. So you are saying in one instance they are going to a dynamic model the toll could change as quickly as every six minutes. I understand supply and demand concept, but how, how does the public handle that in the sense supply and demand is great when I have information so I got up in the morning and I thought my toll was going to be $3 and I'm driving to work and now it is $6. I can't just pick somebody up, I can't just park my car, how does that work?

MR. GROAT: Well, there are several questions when asked to, first there will be extensive electronic informational signs going out so miles in advance people will know what the prevailing tolls are going to be. Once you enter the system, if the price goes up while you are in the system, perhaps 95 is 66 miles long, you pay the price you enter at. It is the people behind you that will pay the higher price or decide not to get in so you can move at the posted speed limit. Did I answer the question or?

I know what some other mentions, we have a unique thing in Washington that doesn't exist in most other places in the country called slugging. Those are people who offer their bodies to make up a car pool. They get in, they form up at a park and ride lot and they offer their body to make a car pool so they can get into the HOV lanes with strangers. And go down to Washington to get to their job and do the reverse. So that particular phenomenon could happen elsewhere in the country because once people realize that there is a value to picking up a stranger to make a car pool, all of a sudden there is remarkable kind of proposal so what we call the slugs in Washington and Northern Virginia are going to increase value and use because of that.

REPRESENTATIVE LONGIETTI: Once you get on that particular HOT lane is when you determine only one of you in the car so now you will be subject to the congestion tolling, is that how it works?

MR. GROAT: Yes, once you are on is the price you paper mile until you get off. I didn't mention, but both of the systems HOT lanes are all electronic. If you don't have a transponder, you are not welcome. There will be no cash. That is why we keep the right of way so narrow and have reduced the impact on terms of displacement.

REPRESENTATIVE LONGIETTI: How do they determine how many people are in the car?

MR. GROAT: That is the $64 million question. We have signed an agreement with Loughborough University in England. They have for the last seven years been experimenting on an English interstate highway with a system of, I'm trying to think of the correct term. It is the device used to open up stores at the Safeway, what is the technical term? Infrared.

They will wash the entire ramp with infrared. And the infrared in a narrow band can tell the difference between human skin and dog skin and blowup dummies. The English example has proven to be 95 percent accurate which is incredibly accurate, because for example, the HOT lanes out in Orange County, California which are monitored by State Police and so on that are paid for by the concessionaire, they are lucky if they get 75 percent collection rate.

They don't want the numbers to get out. There are a lot of cheaters out there. Another interstate, Interstate 15 in San Diego, they don't even know what the violation rate is, they don't have very tight enforcement. That is another thing that makes HOT lanes very popular wherever they are used. I have seen this from the residents I talk to in Virginia, they hate it when people cheat. Most are law-abiding citizens when they see somebody else in an HOV lane much less a HOT lane, they are obviously not a car pool and they shouldn't be there, they get upset. When I made the presentation in Virginia and I would tell them that under a business model when the HOT lanes are run by a business entity like us, and we have got a signed contract, an FBI agent who waves his badge will have just as much right to use HOT lanes as anybody else as long as they pay the toll. Today they wave the badge and they move right on. As well as a lot of Congressmen I might mention.

So under a business arrangement the citizens are very responsive, they realize there won't be any cheaters there, legal and illegal cheaters.

REPRESENTATIVE LONGIETTI: Before the dynamic tolling, they set the rates for certain amount of days so just like, just as if you with are traveling during rush hour or hours, this is the toll that is going to apply?

MR. GROAT: What is the alternative to dynamic tolling?

REPRESENTATIVE LONGIETTI: Before dynamic tolling.

MR. GROAT: Yes, the SR 91 HOT lanes in Orange County, Riverside County, California, what they do is they have sort of stepped schedule, concession published on web site you can see if I leave between nine o'clock and 9:30 I will pay so many cents per mile. If I leave between 8 and 8:30, and this is one of the miracles the supply and demand. What it does it is the only mechanism that really encouraged the public to change their travel plans.

HOV lanes have not encouraged people to

change, just encouraged the car pool where the price mechanism means people actually make decisions. If I don't have to be to work until nine o'clock on Friday, I can save myself $2. For example, on the Orange County HOT lanes, they are paying up to a dollar and a half per mile in the peak operation Friday afternoon when everybody wants to go home in a hurry. And the users are saying don't lower the rate because then traffic congestion will come back.

REPRESENTATIVE LONGIETTI: The other thing I wanted to understand you mentioned one project, was a design bill for a guaranteed price when they cut the ribbon $10 million was turned back to DOT. Explain that to me. I'm not sure I understand.

MR. GROAT: The delivery vehicle for every public private partnership is always designed and built that way you get the efficiencies of not having the design bid, build, separation. But that particular $10 million returned was the negotiated agreement between Virginia DOT and Fluor.

We had some unknowns when we went into that. It was off-the-shelf design that was already about 30 percent, we looked at it, we had to take responsibility environmental permits, dynamics of travel analysis but because of the 160 clear span bridge, there was some subsurface questions, geotechnical questions that couldn't be answered. And they called for extensive borings that weren't available. And it almost killed the deal. Because it was a high risk for us and Virginia wanted us to accept the risk and almost at the 11th hour one of our guys said why don't we put a reserve of money there and for every dollar we save, you get 50 cents we get 50 cents. And if the unknown conditions are so bad then the whole reserve will go to that. If it is higher than the reserve, we pay the difference.

Well, the reality is I think it was $30 million set aside, $10 million was the Virginia share of that shared risk. That is a classic example how you share a risk on an unknown.

REPRESENTATIVE LONGIETTI: The other example you mentioned, there was $390 million ended up going to buses, transit. That was unclear based on what you said what was in writing seemed like in writing that was part of the deal. Where did that money come from.

MR. GROAT: That project the third project I talked about, the one still under development which means we are developing it engineering wise, the environmental process is being gone through, and we are negotiating simultaneously with VDOT, so none of the answers are firm answers. But as far as part of the original proposal which was one of the reasons why we won is because that road is straight road goes from downtown Washington to the bedroom suburbs out in Virginia. The revenue was so robust on that that we knew we would pay for all the construction. The only question is what to do with excess revenue.

And so we stuck our neck out and essentially said to VDOT since it is their money, any excess revenue that belongs to the state we stuck our neck out and said this project needs to be multi-modal solution. Because it goes all the way from counties like Arlington County which are transit first highway second all the way down to Spotsylvania County which as far as transit, their point of view is just a van with five people in it, that is transit.

So we said with eight jurisdictions, we needed to offer a solution that everybody could live with. So we said making it multi-modal is an important component. So we suggested, recommended as part of our proposal which was sticking our neck out to say we think $400 million of your money at VDOT you would normally use for roads should go to pay for bus drivers and so on. Well, that idea when the selection committee evaluated the proposals, I think three-quarters of the members of the advisory panel recommended to the commissioner which we select said I like the transit component of this project and that tipped us over the edge. And that is why it is there.

Ultimately, because that was started the recommendation and was part of the selection process, VDOT sort of pinned in on that now so they are actually spending that money on transit. Rather presumptuous on our part but it got legs of its own.

REPRESENTATIVE LONGIETTI: Thank you, Mr. Chairman.

CHAIRMAN MARKOSEK: Okay, thank you, very interesting. Before I recognize Representative Pyle I want to challenge the committee since Washington has already used the word slugs, we can't use that here in Pennsylvania. So the committee has to come up with a new word here in, apropos to the bodies.

REPRESENTATIVE PYLE: How about Steeler fans?

CHAIRMAN MARKOSEK: Representative Pyle.

REPRESENTATIVE PYLE: Thank you, Mr.

Chairman, I actually have had most of my questions answered from the interrogation from the gentleman from Lawrence.

MR. GROAT: Surely I have to mention that slug is something they named themselves, that is not an official designation. So you understand the entire vocabulary, there are slugs and there are scrappers. Slugs are the bodies who volunteer. Scrappers are the drivers that scrap up the slugs, piggy backers.

REPRESENTATIVE PYLE: For those of us who have mass transit systems that consist of five people in the van Spotsylvania sounds a lot like home. Thank you, Mr. Chairman.

CHAIRMAN MARKOSEK: Staff in preparing amendments they call those. Any other questions? Mr. Groat, as usual, very good testimony, very interesting. Thank you. Same thing to you. Stay tuned, we will be calling you.

MR. GROAT: Thank you very much.

CHAIRMAN MARKOSEK: Victor Poteat. Welcome, senior vice president of PBS&J. Also has a PowerPoint. The members should look in their packets there is a very nice well-done pamphlet booklet here, PBS&J highlights. Very well done. Victor, thank you. You may proceed when you are ready.

MR. POTEAT: Thank you very much. If you can hear me okay from where you are at.

CHAIRMAN MARKOSEK: Put it a little closer, the mike.

MR. POTEAT: Is that better?

CHAIRMAN MARKOSEK: I think so.

MR. POTEAT: I'm usually not hard to hear at all. Thanks for the opportunity. I have somewhat of a clean up position here with the speakers today. And the role I have I was asked to compare and contrast the two bills, the House version and Senate version.

And it may not seem as elaborate discussion as what you heard from Gary regarding projects, but about the two bills and their consensus that must be developed, there won't be any other -- I will try to make my points and help you understand where there are some distinctions.

What I will try to talk about are what I call key legislation elements. And what I found in looking at these bills over the last several years in different places is if I take the bill and just go through it section by section, it gets very hard to comprehend and follow the points.

I found that if I group points in the bill into four basic groups, projects, elements that deal with projects, elements that deal with processes, and elements that deal with approvals, and then the elements that deal with finance and revenues.

I found it is a lot easier to work my way through those. So I will try to do that here. And then just two or three slides to summarize what are really the key differences between the two bills.

Now, a lot of words on each of the slides, I will not hit every one of these. I do want to touch on a few of these. Luckily, you asked questions about a number of these. And I can say with confidence that the vast majority of questions you have asked today of Gary and Shirley are covered in both bills, both pieces of legislation. So you are on very sound footing there.

If you look at what I call the project areas, asked the question about solicited and unsolicited. Some bills I see have a limited number of projects, Oregon had five for example.

Geographic restrictions. What I have done in the little parenthesis next to these statements I highlighted a Y or an N, yes or no. Yes meaning that desirable element of legislation, N meaning no, it is not a desirable element of legislation.

So what I have done is I very quickly just made this as simple as possible. Both bills allow solicited and unsolicited proposals. As I said, you do want to have this element within your legislation. There is no limit to the number of projects we can address. Both bills, I see that, I think people in the business community seem to have that.

No geographic restrictions are noted. There are no restrictions on the modems of transportation. Again, mentioned I think by Shirley in her comments. You want to be able to use this beyond just a highway project.

Conversion of existing or partially constructed projects. Both bills say you can convert only if substantial new capacity is added. This gives you the ability to take an existing interstate, freeway, whatever the project may be. If you add capacity, then it actually is a good thing. If you are not adding capacity, you don't want that project just to be monetized project, if you will.

There is no delivery method limitation, as Gary has already said, design build becomes the predominant delivery method of new capacity.

Beyond delivery, there is operation and maintenance, there are various forms as you can take with that as well as the financing.

Are there restrictions as to what entities can enter into public private partnerships. No restrictions in either one, however, the House Bill does have the Pennsylvania DOT serve as the public entity that is responsible for, responsible public entity all the projects would go through DOT the way it is laid out today in that bill.

If you look at the processes, the very first one is one that already is mentioned, confidentiality. This is an important factor when you go into this. There are proprietary information plus procedures, steps, and methods used by different entities. You want to be able to protect that.

Under the House Bill this is protected until there is a comprehensive agreement reached, in other words, a final agreement is reached. Then once that agreement has been reached, the deal is done, then those things can be made public.

And the Senate Bill is protected until there is transportation development agreement, essentially the same clause a different name, different nomenclature.

Is there a specific review process outlined? Yes there is. Both bills have a review process, I will say this the House Bill has a much more detailed version of the process, both solicited and unsolicited. I think that something serves well as you look forward beyond just the bill passage to having rules and regulations developed. Those will be required to actually provide the ground rules, if you will, for actually developing the entire proposal project and delivery.

Evaluation criteria are specified, there are general criteria, these I would imagine would be expanded upon once you get into the rules and regulations because groundwork there for both bills.

Having time for preparation submission and evaluation, both bills include time lines, both in my opinion appear adequate for a public private partnership approach.

Can the agency, responsible agency charge a fee for reviewing proposal. This is with respect to unsolicited proposal being able to charge a fee for addressing, reviewing to see if it is consistent with what makes up a good P 3 project.

In all states I have seen legislation have this included.

Other procurement rules specific for public private partnership methods, yes. Gets away from just an entirely low bid environment and looking for qualifications-based, looking for the best deal on a project-by-project basis.

Does the responsible public agency have the authority to hire its own technical, legal and financial advisors? This question came up just a moment ago and both bills allow that to happen, along with other recommend you seriously consider that. Some of the struggles in some locations I have seen in bringing the project to fruition and actually coming to an agreement on the project fall into this area of not having appropriate advisors serving the existing staff.

Learning as you go is okay. But when you are talking about billion dollar projects, it makes learning very slow and going even slower. So you want to have the right kind of advisors there as you start the process.

Is the responsible public agency permitted to make payments to unsuccessful bidders for work products? That is addressed in the House Bill but not specifically in the Senate version. This is something that we will be looking at for a solicited proposal primarily. Many states, some people refer to this as a stipend for non-winners. Many states do this. And it is up to each state to determine what level, what the value should be.

Going to the area of approvals. Someone asked the question earlier, is the partnership agreement subject to local jurisdiction veto. That is not included in either bill, House or Senate version. As I said, you can see here no, this is not what we would consider a good element to having legislation.

Yes, you want local review, both bills include local review and comment periods throughout the process.

Is legislative approval required when an individual project or proposal is received? We don't think, we do not believe this is good, we being the industry if you will, a good proposal to have in, makes the proposal process, makes confidentiality even harder to maintain. Neither bill has that requirement within it.

Does the public sector have the authority to grant long-term leases, franchises for construction, operation and maintenance of toll facilities? Yes, you do want to have that in. Both bills cover this quite well. No problem with having it there.

The last one on approvals are interim and final agreements defined. It is recommended that you have an interim agreement developed within the bill. The House version does. And the reason is, this allows the process to go through to a certain stage of a preferred bidder, contracting or firm selected on an interrupt basis which allows confidentiality to be maintained as you go through specific areas of negotiation.

And we feel that is a good thing to have in there. So the House version has an interim agreement, also has the final comprehensive agreement. The Senate version today has no interim but does have final that can be entered.

Then the last area, large areas to look at, finance and revenues.

The bill would allow a combination of private funds with local, state and federal. Both versions House and Senate allow that to happen. This is important in today's market because there are very few projects we in industry know of that will from the beginning date will pay for themselves. There is always a ramp-up period referred to the traffic and revenue numbers to grow to be adequate to pay debt service operations and maintenance.

So, often times there is the ability to combine funds and just anecdotal kind of expression North Carolina just passed a bill in the Legislature that would allow them to what we call GAP fund projects in that state. The state never had toll roads in its history. Now has a bill which allows them to fund $25 million per year going to $90 million per year in GAP funding so the state revenues going side-by-side with public revenue bonds and private money. So that is just an example.

Is rate setting authority over user fee specified and how a change is initiated and required. This is not something you want in legislation something developed for each project that comes in that you negotiate because what you find is that depending upon what the state is looking for, this cash paid to the state or to the responsible public entity, that determines the deal. That determines what level the toll raising will be and how long the agreement will be.

Another piece, the does the public sector have the authority to issue toll revenue bonds? Of course, you want that authority there over the long-term for the good of the state.

Does the public sector have authority to form non-profits and issue debt? Both bill have that included. You may notice in the Senate Bill there is something called regional mobility authority that can be established as needed to do that also. So yes.

Are there restrictions that prohibit revenues from PPP projects from being diverted into the state general fund? Obviously, you want money that is developed in the transportation arena to stay in transportation. Excess revenue payments to the state, those kind of things will go into a separate account and both of the bills have different names but they essentially have the same kind of value there.

Are tolls required to be removed after payment of debt? No, you don't want to add that in legislation. Neither bill has it in the legislation and both look like they are properly developed that, that situation.

The last one is what is referred to as value for money. Is there value for money analysis required before proceeding with the project. This is really something that both bills include, something to help protect the state to make sure that the project is coming forward, an analysis has been looked at, you know the deal is being negotiated is a good deal for the state.

I think this is something everyone is looking at, as a matter of fact, if you look at Canada, what we found there in that country a separate group, separate agency of the government does all value for money analysis to make sure that it is good. You can do this within your state jurisdiction just as well.

So finally, some moneys, and I have to say that this is our color choices here responsible public entity to the House version and the Senate version. Supposed to be a joke. The House, the responsible public entity in the House version designates the state Department of Transportation as the responsible public entity.

The Senate version designates the state Transportation Commission as the proprietary public entity. The definition of those is very close to the same, we see the difference.

Solicited proposals of the House version only the responsible public entity may issue an RFP, affected public entity can issue RFP jointly with the responsible public entity. In the Senate version, however, the proprietary public entity may issue an RFP. But if the project is subject to Transportation Commission review and approval, there must be a joint RFP. So if it is a project that its funding in some means through the Transportation Commission, a proprietary entity must work with the Transportation Commission.

As I said interim agreements, the House provides for interim agreements to be entered into to allow the private entity to begin specific activities. The Senate version does not include that.

The final agreement in the House referred to as a comprehensive agreement and sets forth specific provisions. The Senate it is just a name change for all practical purposes called Transportation Development Agreement sets forth specific provisions.

Rules and regulations are both referred to, referred to in both the House and Senate version under time frames given the responsible public entity or the state DOT is charged with developing those in the House version and the Transportation Commission is charged with developing those in the Senate version.

Leasing of the Pennsylvania Turnpike. In the House is not addressed. So we agree through the language we will see it is not addressed. It would be allowed. In the Senate version it specifically precludes a long-term lease of the Pennsylvania Turnpike.

We have seen this handled different ways in different states. For example, some allows parts of what is on the State Turnpike system but not the main line to be leased.

Revenue from public private partnership projects. I mentioned this briefly a moment ago. The House version establishes a public private transportation partnership fund. You can see the specifics there. Funds are non-lapsing, allocated by the Transportation Commission and require two-thirds majority vote in General Assembly to be moved from that fund into something else.

The Senate version establishes the Pennsylvania Transportation Development Fund which is administered by the Transportation Commission, by a majority vote. Funds can only be moved from that fund through the direction of the Transportation Commission, not the General Assembly.

So I covered a lot of words and a lot of language there. But it is probably quicker than reading all eight pages of both bills. I'm happy to try to respond to your comments and questions.

CHAIRMAN MARKOSEK: Thank you very much, Victor, again very interesting. Chairman Geist, questions?

CHAIRMAN GEIST: One of the things that we wrestled with over the years is you want to be able to encourage unsolicited proposals but at the same time you want to set the bar at a level that you don't get flooded with unsolicited proposals, many that don't have a chance of making it. We have gone back and forth on this. And what is your best experience both foreign and domestic on these kind of projects?

MR. POTEAT: Well, I think in the industry you find a blend of opinions between solicited and unsolicited.

As Gary said a moment ago, many private firms see an unsolicited approach as advantageous. I can also tell you many private firms would prefer solicited agreements because they know that there is already a force in motion that wants to pursue a particular project.

So, I think what we have seen is everything like I have to correct Shirley in early years of the

Virginia Public Private Partnership Act, there were all unsolicited and they are all going to use it to tell Virginia how to spend their money as opposed to bringing money to the table. I think in more recent time in history there is private money as Gary talked about coming to the table.

I think you have to find in some manner where the project is. Is it a project in the five-year plan, ten-year plan, in other words, to be considered as part of some legislation I have seen, a project that is unsolicited has to be somewhere in the agency or state's five or ten-year plan. That is one way to manage expectations.

Obviously, charging a fee to review and consider proposals is something that frankly is easy for me to say a $50,000 fee to review a billion dollar project that will not bother too many private corporations who want to submit a project. So I think you have to quantify, qualify somehow the projects being somewhere in your minds what you want to see. I think that is the best mechanism.

CHAIRMAN MARKOSEK: Thank you. Any other questions by the members? Representative Mark Longietti.

REPRESENTATIVE LONGIETTI: I just want to make sure I understand. Under both of these bills the way they are set up, in the House version, Pennsylvania Department of Transportation and in the Senate version the State Transportation Commission, we really have delegated if we adopt these bills their ability to enter into these agreements. Do I have it wrong?

MR. POTEAT: You are delegating the authority to go forward with the agreements, and make solicitations and receive unsolicited proposals to those groups. Obviously, you will pick one in the end. They serve as the conduit to the state or from the state for public private partnership projects.

REPRESENTATIVE LONGIETTI: For example, in the House Bill PennDOT would decide, for example, well, we are going to go ahead and build a new stretch of highway and we are going to enter into a public private partnership for this private entity to go ahead and do that.

We will lease a certain asset and enter into a public private partnership to do that. Is that what it accomplishes?

MR. POTEAT: Yes, they would have that if I recall correctly, forgive me if I don't have it exactly right, for them to go forward with a project that another entity, they have to have an agreement to do that. They would be the mechanism, they would be the conduit to go forward and solicit proposals.

REPRESENTATIVE LONGIETTI: In the case defines affected public entity if it was a PennDOT facility, already owned by PennDOT, they could decide to lease that for example and enter into a public private partnership?

MR. POTEAT: Yes, subject to the definitions within the bill, the rules and regulations they can go forward and recommend the project become a P 3.

REPRESENTATIVE LONGIETTI: How does the confidentiality part work, talked about proprietary information, we are talking about a government entity like PennDOT or the State Transportation Commission, assuming if they go down this road drafting agreements and eventually entering into agreements, when does all that become public?

MR. POTEAT: Well, the full agreements and the details of the agreement become public when, once the agreement is signed. Once they reach the agreement.

REPRESENTATIVE LONGIETTI: Go ahead.

MR. POTEAT: The reason for that is the

negotiations can break down. Maybe another firm, number two if you will, that responded and they have a plan, so it wouldn't be fair to first firm if everything is done in public and the second firm comes in once it breaks down.

REPRESENTATIVE LONGIETTI: So all the time leading up to a signed agreement could potentially be a confidential documents not being released to the public or information not being provided to the public or the Legislature I guess for that matter.

MR. POTEAT: Right.

REPRESENTATIVE LONGIETTI: Do you know how that fits in, maybe beyond your scope, how does that fit in with the right to know law, at least Pennsylvania and other states similar there are documents available to the public upon request.

MR. POTEAT: Yes, I don't recall exactly. I think there is an exclusion in the draft legislation that covers that, that is, allows the process to be held confidential until such time, I'm pretty sure that is in the House version.

REPRESENTATIVE LONGIETTI: Possibly an amendment to right to know law to make sure these discussions and documents are not publicly available until there is a signed agreement?

MR. POTEAT: Right.

REPRESENTATIVE LONGIETTI: Thank you, Mr. Chairman.

CHAIRMAN MARKOSEK: Thank you, Representative John Maher.

REPRESENTATIVE MAHER: Do either of these bills provide for projects that would be limited to operations and maintenance of existing roadways?

MR. POTEAT: Either of these bills allows any and all of those elements to be part of the process to P 3 as been said before, maintenance, operations can be pulled out separately from the construction and development part of it. The key really, both bills allow flexibility and how they are applied on a project-by-project basis. That is good allows you if you want to do maintenance on a particular project or operations on a particular, you can do that.

REPRESENTATIVE MAHER: When you were going through the summary, and I realize it is truly just a summary, but the fifth category you talked about, conversion of existing or partially constructed projects. And your analysis of each bill was that only if a substantial new capacity is added. How does that coincide with the prospect of operation of maintenance sort of agreement by itself?

MR. POTEAT: Probably, that is a great question as a matter of fact. The challenge there is are you, what is the project really entailing, is it entailing an exchange of revenue or is it providing service?

REPRESENTATIVE MAHER: For instance, if someone said, you know, I think we can do a better job of maintaining I-70 we will extend to Washington that is currently being done, we can do it cheaper, here is our unsolicited proposal to undertake the maintenance of that road for the next five years or ten years pursuant to these performance standards. Would that sort of proposal be able to proceed under either one of these bills?

MR. POTEAT: I'm not saying they would, I think what we have to work through is how we specifically address non-monetization if you follow the term --

REPRESENTATIVE MAHER: I understand.

MR. POTEAT: As opposed to providing service.

REPRESENTATIVE MAHER: Right, as opposed to financing, for instance in that case by picking I-70 there are no tolls in place. So it is truly outsourcing of maintenance.

MR. POTEAT: Right. Really the challenge here goes back to discussions I had several years ago, look at Texas. Texas their original legislation of their, when they did their major 2002-2003 transportation bill allowed for conversion of a non-tolled road to a toll highway. Just putting tolls, providing tolls. What we are trying to avoid is that. Now that is quite different from a service contract providing maintenance for operating a facility. What you are saying is not to keep you from being able to do a service contract, but is to not put it on the table adding tolls without providing proof of capacity to the facility.

Probably oversimplify the terminology there to some degree.

REPRESENTATIVE MAHER: I'm certainly at this stage like minded with that objective. I guess we probably need to study the language a bit as we go forward.

One other question, in terms of the operation or maintenance sorts of agreements in either of these bills, does it speak to being able to track based upon performance goals as opposed to the delineation of exactly what task must be undertaken as opposed to what result is acquired?

MR. POTEAT: Neither bill defines performance goals, of course. Each project will have to be looked at individually, the goals you want, performance levels you desire and want to achieve you find with each of the projects. Neither one, neither bill, not being neither one specify performance on maintenance operations, those are things defined in original agreements.

REPRESENTATIVE MAHER: Thank you.

CHAIRMAN MARKOSEK: Okay. Thank you. Any other questions by the members? Seeing none, very well, Victor, Gary and Shirley, I mean just wonderful today. Great questions by the members. I also would be remiss in thanking the folks from Point Park College who besides providing these wonderful facilities and staff here today do turn out some pretty good graduates. We happen to have one here.

I won't tell you who it is. Nevertheless, tomorrow morning we have a 9 o'clock meeting here, the hearing starts here in this room at 9 a.m. That will be on the bridge program here in Pennsylvania, the new bridge program recently enacted by the Legislature.

So we certainly would invite anyone here that wants to attend that to come as well. Seeing no other business, meeting is adjourned. Thank you.

(Meeting adjourned at 3:24 p.m.)

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I hereby certify that the foregoing is a correct transcript from the record of proceedings in the above entitled matter.

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William E. Weber, RDR, CRR
Court Reporter