

COMMONWEALTH OF PENNSYLVANIA

HOUSE OF REPRESENTATIVES

TRANSPORTATION COMMITTEE

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PUBLIC HEARING

IN RE: HOUSE BILL 2133

Road Bonding

* * * * *

BEFORE: JOSEPH MARKOSEK, Chairman
Jesse White, Marc J. Gergely, William C.
Kortz II, Timothy Mahoney, Deberah Kula,
Thomas C. Petrone, John Maher, Joseph A.
Petrarca, Nick Kotik, Chris Sainato, Paul
Costa, Mark Longietti, R. Ted Harhai
and Jake Wheatley, Members

HEARING: Friday, September 26, 2008
Commencing at 1:23 p.m.

LOCATION: Greene County Fairgrounds, 4-H Building
107 Fairgrounds Road
Waynesburg, PA 15370

PRESENTERS: Rep. Mark Longietti, Louis D'Amico,
R. Keith Hite, Paul Lyskava, John
Kendralla, Bill Groves, Bob Keller

Reporter: Resa A. Hall

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I N D E X

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19
20
21
22
23
24
25

OPENING REMARKS

By Chairman Markosek 3 - 4

TESTIMONY

By Representative Longietti 4 - 18

By Mr. D'Amico 18 - 36

By Mr. Hite 36 - 55

By Mr. Lyskava 55 - 70

By Mr. Kendralla 71 - 76

By Mr. Groves 77 - 78

By Mr. Keller 79 - 81

CERTIFICATE 82

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
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14
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CHAIRMAN MARKOSEK:

Okay. The meeting of the Pennsylvania House Transportation Committee will come to order. The first order of business will be to have our host, Representative Bill DeWeese, lead us in the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE RECITED

CHAIRMAN MARKOSEK:

Okay. Thank you very much. We're all glad to be here to talk about House Bill 2133 which deals with local growth, bonding amounts. And I have to tell you that this Committee, we have a very good attendance here which sometimes we don't even get this attendance in Harrisburg. But I can tell you that I think the attendance is better today because our friend Bill DeWeese asked us to be here. He told us how important this particular issue was to your District and we're all very happy to come and show Bill that we're serious about this piece of legislation. And we know that folks in your District, as well as other Districts throughout Pennsylvania that have this situation, how important this legislation is.

1 The very first thing I'd like to do, is
2 we're short on mikes so I'll just go through the
3 members who have graciously showed up today. I see
4 Representative Jesse White from Washington County.
5 Representative Marc Gergely from Allegheny County.
6 Representative Bill Kortz from Allegheny County.
7 Representative Tim Mahoney from Fayette County.
8 Representative Deb Kula from Fayette County.
9 Representative Tom Petrone from Allegheny County.
10 Representative Joe Petrarca from Westmoreland County.
11 Representative Nick Kotik from Allegheny County.
12 Representative Chris Sainato from Lawrence County, and
13 I wanted to say New Castle County but he lives in New
14 Castle, Lawrence County. Representative Paul Costa
15 from Allegheny County, and of course, the sponsor of
16 the bill and who's also a member of the Transportation
17 Committee, Representative Mark Longietti from Mercer
18 County.

19 We're all very glad to be here on behalf
20 of this legislation and the first order of business
21 will be to recognize Representative Longietti for some
22 brief remarks on how this bill came about.

23 REPRESENTATIVE LONGIETTI:

24 Thank you, Mr. Chairman, and thank you
25 Majority Leader DeWeese, members of the Transportation

1 Committee. Certainly it's my pleasure to be here in
2 Greene County this afternoon with all of you. And
3 before I get into my prepared remarks I just really
4 want to thank Bill DeWeese. He really helped us put
5 this legislation together. I think it's important
6 legislation, along with the Pennsylvania State
7 Association of Township Supervisors. And I certainly -
8 -- I really appreciate them hosting this hearing this
9 afternoon.

10 My name is Mark Longietti. I serve as
11 State Representative in the Seventh District which
12 comprises approximately one half of Mercer County
13 including the Shenango Valley. And I'm pleased to
14 testify on behalf of House Bill 2133, which is
15 legislation that I have used to update the law
16 concerning the posting of road bonds on certain local
17 roads in Pennsylvania. I believe that this legislation
18 is both timely and critical to our local
19 municipalities. I don't have to tell this Committee
20 that here in Pennsylvania and across our nation we are
21 facing a crossroads regarding our infrastructure. Just
22 as our state government faces the challenge in
23 concerning our state maintained highways our local
24 governments face the same challenge concerning the
25 local roadways which they bear the burden to maintain.

1 We know the local government officials
2 have told our state officials for some time now that
3 the share of liquid fuels revenue dedicated to local
4 municipalities inadequate compared to what it used to
5 be on a percentage basis to properly maintain the
6 roads they're responsible to maintain. This situation
7 is exacerbated by the fact that the more recent spikes
8 in gasoline costs have left a smaller pot of liquid
9 fuel revenues for both state and local governments as
10 people drive less and operate more fuel-efficient
11 vehicles, because they simply can't afford the
12 alternative.

13 Although the liquid fuel issue is a
14 matter for another day, it does illustrate the
15 tremendous pressure that local governments face and
16 the critical need for the legislation that I've
17 introduced. Most people agree that the road users and
18 those that cause the wear and tear on highways are the
19 ones that should bear the cost of repairing and
20 maintaining our roadways. And although the liquid fuel
21 tax is a fair way to distribute the cost to the user,
22 it does not appropriately validate the risk of road
23 damage in case of over weight limit vehicles which can
24 cause significant damages to our local roads.

25 We can agree that local residents should

1 not bear the burden of fixing roads that are damaged
2 by over weight limit vehicles. Instead the companies
3 and individuals who operate those vehicles should be
4 the ones to bear that cost as a price of doing
5 business. Let's examine the problem. The Vehicle Code
6 in Pennsylvania permits municipalities to impose a ten
7 ton weight limit on local roads following a proper
8 hearing and traffic study calling for the same.
9 However local municipalities many not restrict or
10 prohibit usage by over weight limit vehicles that have
11 a need to travel those risks. They may only establish
12 a process by which the operators of these vehicles
13 apply for and receive an over weight limit permit.

14 In regard to this process and permitting
15 the vehicle code allows municipalities to require the
16 posting of a bond by the person or company using the
17 roadway and to provide security in case the road is
18 damaged by the over weight limit vehicle and needs
19 repaired. The maximum amount of the bond that may be
20 required is established in regulations that are
21 promulgated by the Pennsylvania Department of
22 Transportation. And herein lies the problem. The
23 maximum road bond amount was set in 1978, 1978. That's
24 30 years ago and hasn't been changed since then. In
25 most cases the maximum road bond amount is \$6,000 per

1 lane mile under the current regulations. It is beyond
2 time for PennDOT to revise these regulations.

3 According to the Pennsylvania Asphalt
4 Pavement Association the cost of materials alone can
5 pave one lane one mile 12 feet wide, 1 and 1/2 inch
6 thick is \$49,104. That's a far cry from the \$6,000 per
7 lane mile. One other the cost of the roadway
8 construction has been accelerating rabidly over the
9 past years, especially as fuel and oil prices have
10 risen dramatically.

11 According to the American Road and Transportation
12 Builders Association the cost of highway and street
13 construction materials were up 18.9 percent in June,
14 2008 as compared to the year previous in June, 2007.
15 Further, in the five years between 2003 and 2008, the
16 price of highway and street materials rose 70 percent.
17 Local municipalities simply cannot bear these costs
18 when it comes to over weight limit vehicles damaging
19 their roadways.

20 Our local municipalities are in a very
21 unsecure position. The maximum bond amounts that they
22 are able to require would cover only a small fracture
23 of the cost to repair roads damaged by the over weight
24 limit vehicles.

25 Now, there are many individuals in

1 companies that are good stewards of the roadways that
2 they utilize. They are quick to contact municipalities
3 when they damage the roads and they often provide a
4 very fair and workable solution. But the law is always
5 in place to protect the innocent against the abuser.
6 In my District, in Delaware Township, Mercer County,
7 we have seen a good deal of traffic from a particular
8 oil and gas drilling company using over weight limit
9 vehicles. We know that this type of drilling activity
10 is very much on the rise in Pennsylvania, particularly
11 in this part of Pennsylvania. Unfortunately the
12 company that we're dealing with is the type of company
13 where adequate bond amounts are necessary.

14 In the view of the Delaware Township
15 supervisors the company has caused substantial damage
16 to roadways which must be repaired again and again.
17 Instead of taking responsibility for that damage the
18 company denies its culpability and has arrogantly
19 invited with the township to call its bonds. Their
20 reputation for this type of conduct has been repeated
21 in several municipalities in western Pennsylvania. Yet
22 the Township is in the unenviable position of knowing
23 that the bond amounts are woefully inadequate and
24 their burden of proving in court that the company
25 caused the damage would be expensive and challenging

1 especially given the deep pockets of this company. It
2 is really not even worthwhile for them to call the
3 bonds, given a little amount that would be realized,
4 and the company knows that and takes advantage of this
5 fact.

6 Hence my legislation. The legislation
7 that I introduced would require PennDOT to revise
8 bonding amounts by January 1, 2009 and every three
9 years thereafter. This is a reasonable approach, given
10 that the amounts have not been adjusted in 30 years
11 and that road construction costs can increase
12 significantly in just three years as we have seen in
13 the current times.

14 In addition, my legislation would require
15 PennDOT to establish a rebuttable presumption in favor
16 of the local municipality and against the over weight
17 limit permittee for damage sustained to a posted road
18 used by the permittee. Logic tells us that it is the
19 over weight limit vehicle that caused the damage to
20 roadways sustained during their period of usage. Local
21 municipalities that should receive the benefit of that
22 presumption and the well-heeled companies who take
23 advantage of the posted roads should have the burden
24 proved otherwise.

25 In conclusion, this is a matter that

1 affects all of our local municipalities. Our local
2 taxpayers are all ready burdened enough. It's time to
3 update the law so that our municipalities have
4 adequate security when it comes to local roads. And so
5 that our citizens are not forced to pay to fix roads
6 damaged by companies operating over weight limit
7 vehicles.

8 So Mr. Chairman, I thank you. Mr.
9 DeWeese, I thank you and members for an opportunity to
10 testify on this legislation.

11 CHAIRMAN MARKOSEK:

12 Okay. Thank you Representative Longietti.
13 The Chair also would like to recognize Representative
14 John Maher, who has arrived from Alleghany County. And
15 also I was remiss in not recognizing perhaps one of
16 the most important members of our transportation
17 community, Stacy Ritter (phonetic) who is are
18 Executive Director of the Committee who does yeoman's
19 work for the Committee. So Representative Longietti,
20 thank you. I don't see any questions so you may join
21 as up here and ---. Oh, I'm sorry, Representative
22 Kortz has a question.

23 REPRESENTATIVE KORTZ:

24 Thank you, Mr. Chairman. Thank you
25 Representative for your testimony. The question I

1 have, if you had multiple contractors, say there's two
2 or three, and they each post a bond and this is put
3 into play how would you prove it was one contractor's
4 overweight vehicle versus another or is that something
5 that would be worked out through litigation and burden
6 of proof. How would that work in that scenario?

7 REPRESENTATIVE LONGIETTI:

8 We seen that kind of scenario. It's not
9 unusual in the law. If somebody's injured for example
10 and there could be what they call multiple torts
11 feasons, multiple parties that may have been
12 responsible, in that situation I think that it's the
13 companies that are better able to join another party
14 if they believe that they're not responsible and fight
15 it out between that. But I think it's the municipality
16 that we need to protect and so they have the
17 opportunity to go after either or both of those
18 companies and then the companies can determine who's
19 at risk, what they call a contribution by the other
20 party.

21 REPRESENTATIVE KORTZ:

22 Thank you.

23 CHAIRMAN MARKOSEK:

24 Thank you. Representative John Maher?

25 REPRESENTATIVE MAHER:

1 Thank you, Mr. Chairman. And I appreciate
2 the illumination of the issue and it was very
3 informative to me. And I certainly am in support of
4 adjusting bonding amounts. I think that we have many
5 things in statutes where the numbers depict some
6 period ago, and it becomes cast in concrete and that's
7 not often wise. I have concern on this rebuttable
8 presumption, though. But as our colleague, just
9 observed, even if you were to say a rebuttable
10 presumption in favor of the Township and against
11 companies, how do we even know if it was somebody
12 whose actually posted a bond. And maybe the damages
13 coincide an entity that didn't even bother, an
14 operator that didn't bother the post a bond. And so
15 those --- you mentioned earlier about injury of the
16 innocence. Isn't this a possibility that this
17 rebuttable presumption serves to punish those who are
18 actually playing by the rules, and relieves the burden
19 from the road operator who never did.

20 REPRESENTATIVE LONGIETTI:

21 All right. I appreciate the question. I
22 think the problem is, what we're talking about is
23 shifting the burden of proof. And right now the burden
24 of proof is on the Township or the local municipality.
25 And what happens is, you know, it becomes apparent, at

1 least circumstantially, that the over weight limit
2 permittee has damaged the road. If they take the
3 position and say well try to prove it, you know,
4 unless they have a video camera on the road 24/7, I'm
5 not sure that there's a way to satisfy that burden of
6 proof.

7 And so I guess my view, what I was trying
8 to do with this legislation was shift that burden of
9 proof to the company. Because logic tells me the
10 chances are that that damage was caused by that over
11 weight limit vehicle. And put the burden on the
12 company to prove that it wasn't caused by them. And
13 then can do that, they can have testimony. They can
14 bring their officers and explain exactly, you know,
15 what they did and they can have an expert witness to
16 talk about what, you know, given that condition of the
17 roadway what would or wouldn't happen. But our
18 municipalities just aren't in a financial position and
19 to have that burden of proof. And when logic tells us
20 chances are those roads were damaged in that fashion.
21 And I think it's just more equitable in my view to
22 shift out that burden and let the company prove
23 otherwise.

24 REPRESENTATIVE MAHER:

25 Currently are there any categories of

1 over weight limit, or is this simply a pass/fail test,
2 either you're over or you're not.

3 REPRESENTATIVE LONGIETTI:

4 My understanding is that, you know, you
5 post a road for a ten ton weight limit. And so if your
6 vehicle is over that ten ton weight limit then you
7 have to apply to the township for a permit.

8 REPRESENTATIVE MAHER:

9 Perhaps would it make sense to study
10 whether or not there should be categories? Because
11 there's a 20 ton vehicle is perhaps less likely to
12 inflict the enduring damage that a 30-ton vehicle
13 would, or a 40-ton vehicle. And maybe there should be
14 different standards for what the bonding is or what
15 the --- maybe essentially you have a mini toll for the
16 operators that you sort of pay as you go, recognizing
17 some of the damages and for now it may not be the
18 person who's just drove down the road and not the one
19 who's entirely bearing the burden of the damage.

20 REPRESENTATIVE LONGIETTI:

21 Certainly it's food for thought. You know
22 my role in this legislation was to try to make it as
23 simple as possible. As we all know, in the legislation
24 sometimes more complex something is the more difficult
25 it is to get it passed. And so it was to take ---

1 after consultation with the township supervisors
2 participate it was to take existing graduations and
3 say where are they falling short and, you know, what
4 can we need to do to update them. It is food for
5 thought.

6 CHAIRMAN MARKOSEK:

7 Okay. Representative Joe Petrarca from
8 Westmoreland County.

9 REPRESENTATIVE PETRARCA:

10 Thank you Chairman. I have a quick
11 question. You were at a meeting the other day and you
12 were there with drillers who wanted to come to
13 Pennsylvania, and some that were already in
14 Pennsylvania and want to do more work here. They want
15 to create jobs and grow the economy. And when they
16 were asked how we could help them. As an officials in
17 Pennsylvania they had a list of things they would like
18 us to do. One of which was do not support legislation
19 dealing with presumptions on local roadways. Do you
20 have an answer to that in the sense that do you think
21 this will hurt business and keep business out of
22 Pennsylvania or away from our rural communities?

23 REPRESENTATIVE LONGIETTI:

24 And the presentation that we went to it
25 was very unlikely. It was on Marcellus shale. One of

1 the things that they talked about during the
2 presentation was the impacts of the work that they're
3 doing. For example, we all know that when you drill a
4 site it's 24/7 and there's a lot of traffic on the
5 roads. And one thing that they mentioned in their
6 presentation is that they more or less acknowledge
7 that their activity is going to cause damage to the
8 local roads. So you know, I think once again that
9 calls to mind --- I understand that they're willing to
10 take position actively, that they would not like to
11 see a rebuttable presumption. But I think they're also
12 admitting that that damage is going to occur. And I
13 don't think that it will, you know, we also have to be
14 cognizant of not, you know, discouraging business in
15 our communities. But I think ultimately, I don't think
16 that it will. We're talking about updating the
17 roadways. And that's where today's world --- and I
18 think what they said, they've acknowledged this as
19 road damages when it occurs so I think a rebuttal
20 presumption is it's not going to be a shock to them.

21 REPRESENTATIVE PETRARCA:

22 I agree with you. I support the
23 legislation.

24 REPRESENTATIVE LONGIETTI:

25 Thank you.

1 CHAIRMAN MARKOSEK:

2 Okay, Mark, thank you very much. We
3 appreciate that. Before I bring on the next person I
4 want to make an announcement that there is a signup
5 sheet in the back. I think right back by the kitchen
6 here for anybody here in the audience who wants to
7 make brief public comments at the end of this meeting.
8 If you sign up we'll give everybody two minutes to say
9 there piece here relative to this issue.

10 Our next formal presenter is Mr. Louis
11 D'Amico, Executive Director of the Independent Oil and
12 Gas Association of Pennsylvania. Mr. D'Amico, welcome.
13 You may begin when ready, sir.

14 MR. D'AMICO:

15 Good afternoon Chairman Markosek and
16 distinguished Committee members. I am Lou D'Amico,
17 Executive Director of the Independent Oil and Gas
18 Association of Pennsylvania. Thank you for the
19 opportunity to testify today on House Bill 2133. I am
20 also representing the Pennsylvania Oil and Gas
21 Association today with my comments. The oil and
22 natural gas industry is very familiar with road
23 bonding in Pennsylvania. Pennsylvania is the third
24 most actively drilled state in the United States after
25 Texas and Colorado.

1 The very nature of the equipment used in
2 our industry in drilling, completion and production
3 operations requires heavy hauling in rural areas. We
4 are quite aware that rural roads in Pennsylvania were
5 never designed to withstand heavy truck traffic on a
6 regular basis. We are also fully aware that it is
7 necessary for our industry to repair whatever damage
8 we do in the course of our operations to state and
9 local roads.

10 If the Marcellus Shale exploration in
11 Pennsylvania is as successful and lucrative as we all
12 hope, the impacts on the Commonwealth's rural highway
13 system will be even greater. Marcellus drilling will
14 require larger rigs with more truckloads to get the
15 rigs to the site. There will also be more equipment
16 entering locations for frac jobs and water hauling.
17 The sites are larger, which may require more loads of
18 stone be delivered to build roads and stabilize
19 locations. Roads will be damaged. These roads will
20 also be repaired by the industry.

21 The companies drilling these Marcellus
22 Shale wells are not small fly-by-night organizations,
23 but rather some of the largest and best capitalized
24 companies in the nation. To believe that any of these
25 companies would risk the huge investment in leasing,

1 drilling, completion and pipelining by shirking their
2 responsibilities to repair road damage is
3 unimaginable. We still have the potential issue of
4 smaller companies doing conventional wells who
5 occasionally have problems. This legislation is
6 directly attributable to the bad actions of one such
7 company in Rep. Longietti's district.

8 As representatives of the people of
9 Pennsylvania, I'm sure you feel an obligation to have
10 protections in place for every possible occurrence. It
11 should, however, be noted that our industry has had an
12 excellent track record of cooperation with state and
13 local governments on road damage repair.

14 I do have some concerns and comments
15 about this particular legislation. My first comments
16 are directed towards the bond amounts. I certainly
17 agree that very little road repair can be accomplished
18 if a forfeited bond is the only recourse a
19 municipality or government agency has to assure
20 compliance. However, the impact of bond forfeiture
21 goes well beyond the value of the bond. Forfeiture
22 would result in a company being unable to do any
23 further work requiring access to posted roads in that
24 township or municipality. If the forfeiture is against
25 PennDOT, no further activity could be undertaken

1 across the state on posted roads. This is clearly the
2 big hammer that government has to insure compliance.

3 The oil and gas industry as well as other
4 industries are finding it increasingly difficult to
5 procure bonds in the marketplace. Increasing bond size
6 may indeed exacerbate that problem. There are perhaps
7 other solutions that need be explored to assure the
8 local governments that damage will be repaired in a
9 timely fashion.

10 The more serious and onerous problem that
11 our industry has with this bill is the rebuttable
12 presumption language. The assumption here is that in
13 some way a oil and gas developer is more likely to be
14 unreasonable in recognizing the extent of damage that
15 has been inflicted on a road than a township
16 supervisor or government employee. Why should the
17 burden of proof be any different on the user of the
18 road than on the government? The experience of my
19 members and of me personally is far different.
20 Although most township supervisors are realistic, fair
21 and honest, there is always someone who is not.
22 Producers have told me of many instances where a
23 township or municipal official wishes to repair minor
24 damage on one section of roadway by repaving miles of
25 township road. We have also heard numerous complaints

1 about officials who want immediate repaving of a
2 damaged road in the middle of on-going drilling
3 operation, rather than accepting temporary repair and
4 stabilization with final repair at the completion of
5 our operations in an area. We are also expected to
6 repair anything damaged on posted roads while no one
7 in government makes any effort to keep other
8 operations from running under our bonds. The question
9 that I heard asked here a little earlier. The state
10 police will rarely enforce this as a result of
11 manpower and most rural governments have no police
12 force to address the problem. The company is then
13 stuck with paying for damage done by other parties. If
14 a company bulks at making unreasonable repairs, the
15 government already has the advantage without adding
16 rebuttable presumption language. Does anyone on this
17 Committee honestly believe that if forced into court,
18 a local Court of Common Pleas, or the Commonwealth
19 Court, will rule for the company unless there is
20 overwhelming evidence in the company's favor?

21 I believe there can be and should be
22 review and improvement to Pennsylvania's road bonding
23 and repair program. I believe that my industry as well
24 as any other industry that utilizes our roads would be
25 willing to sit down with government to develop

1 reasonable improvements. However, any effort to assume
2 that an arm of the government is automatically right
3 until proven wrong is a direct challenge to all the
4 principles upon which this country was founded.

5 We need to address all the issues
6 relating to road bonding, including the cost and
7 methodology of posting roads so that poorer townships
8 will not suffer from lack of funding to pay for
9 engineering studies in support of weight limits.

10 I'm going to interject something here
11 very quickly. It's not in my formal presentation, but
12 several months ago I had the opportunity to come down
13 here and meet with some township supervisors here in
14 Green County, and discussed this very issue, that many
15 of these townships don't have the money it takes to
16 hire an engineer to come in and make these studies. We
17 need to come up with a solution to that.

18 We need to address enforcement of a
19 company's bond to protect from damage caused by others
20 running under that company's bond. Finally, we need
21 some reasonable repair and replacement standards so
22 that all parties understand their responsibilities
23 under the road bonding program.

24 This concludes my testimony. And I'd like
25 to spend the remainder of my time addressing your

1 questions and concerns. Thank you.

2 CHAIRMAN MARKOSEK:

3 Thank you, Mr. D'Amico. Representative
4 Tom Petrone from Allegheny County.

5 REPRESENTATIVE PETRONE:

6 Thank you. How do you do, Mr. D'Amico?
7 Question, when you were drilling in extremely remote
8 areas where there are no roads, how do you get the
9 equipment to that site?

10 MR. D'AMICO:

11 Where there are no roads?

12 REPRESENTATIVE PETRONE:

13 Yes.

14 MR. D'AMICO:

15 We actually construct roads back in,
16 temporary.

17 REPRESENTATIVE PETRONE:

18 Are you familiar with how the mag lev is
19 proposed to be built when they were supposed to be
20 doing here in the Pittsburgh area. Are you familiar
21 how they transport their equipment to remote sites.

22 MR. D'AMICO:

23 No, I'm not.

24 REPRESENTATIVE PETRONE:

25 They use a dirigible. And it has enormous

1 weight limits and it's very inexpensive and very
2 reliable. I just wanted to give you the thought of
3 doing something like that, transporting equipment from
4 a rail site to a remote area.

5 MR. D'AMICO:

6 No, I never heard of it.

7 REPRESENTATIVE PETRONE:

8 Okay. You should look up. It works.

9 CHAIRMAN MARKOSEK:

10 Tom owns a dirigible company. I'm just
11 kidding. Thank you.

12 Representative Maher?

13 REPRESENTATIVE MAHER:

14 Thank you. When an over weight limit is
15 permit is granted, is there something visible that's
16 attached to the vehicles so that at a glance local law
17 enforcement can determine if that vehicle actually has
18 a permit?

19 MR. D'AMICO:

20 To my knowledge and again my familiarity
21 is more with bonding of state highways. And yes you do
22 carry a --- any load that's coming to your location
23 running under your bond is required to have a form of
24 identifies them as being under it.

25 REPRESENTATIVE MAHER:

1 But you're saying a form something that's
2 actually posted on the vehicle?

3 MR. D'AMICO:

4 Yeah, it's actually in it.

5 REPRESENTATIVE MAHER:

6 In or on?

7 MR. D'AMICO:

8 In, yeah.

9 REPRESENTATIVE MAHER:

10 So at a glance a local official or a
11 police enforcement could not determine at a glance of
12 a vehicle passing by whether or not it's actually
13 under the bond.

14 MR. D'AMICO:

15 Well, actually not under the current law.

16 REPRESENTATIVE MAHER:

17 Well maybe that's part of what we should
18 be considering to ensure that all of those who are
19 actually running overweight, actually have a permit so
20 that those are playing by the rules aren't paying for
21 the damages inflicted by others.

22 MR. D'AMICO:

23 Exactly. However that's not going to do
24 much good for anybody unless somebody's actually out
25 there enforcing it.

1 REPRESENTATIVE MAHER:

2 Well, I understand, but if there's no way
3 to tell at a glance --- people have an tendency to
4 behave better when they realize other people can be
5 noticing and pedestrians, people passing by in the
6 other direction. People wise up about these things.

7 Is there a rule for arbitration to sort
8 out claims between a municipality and an operator? Is
9 that where you ever be a panel and I'm sure you're
10 familiar with arbitration generally?

11 MR. D'AMICO:

12 Yeah, again in general I'm not big
13 believer in arbitration, but I think in this situation
14 that might be something that ---.

15 REPRESENTATIVE MAHER:

16 If these things are happening routinely
17 enough, there's got to be some sort of common sense
18 fellows that sit down and sort this out.

19 MR. D'AMICO:

20 And there are in my mind some solutions.
21 And I think it's --- we need to be sitting down and
22 spoke briefly with Mr. Hite at the previous meeting
23 and this is an area we need to address here. There a
24 couple of things that I've been thinking about that
25 might work. One of these things we're looking at is if

1 a township in Greene County has somebody that's a
2 problem child, like what Representative Longiotti
3 experienced, that same individual, that same company
4 should not be able to get a permit in a township in
5 Lycoming County.

6 REPRESENTATIVE MAHER:

7 The bad behavior travels with ---.

8 MR. D'AMICO:

9 Correct.

10 REPRESENTATIVE PETRONE:

11 And I do want to clarify when you were
12 testifying, I think you said forfeiture should result
13 in a company being unable to do any further work. So
14 under existing law ---.

15 MR. D'AMICO:

16 But that's only in that ---.

17 REPRESENTATIVE MAHER:

18 But it's a death penalty for that
19 particular municipality. Once you got the bond pulled?

20 MR. D'AMICO:

21 Yeah, no township supervisors is going to
22 issue a permit after that.

23 REPRESENTATIVE MAHER:

24 And finally is my common sense accurate
25 when I was assuming that different sorts of equipment

1 perhaps cause different frequency of damage? In terms
2 of looking at categories rather than treating them all
3 the same.

4 MR. D'AMICO:

5 I can say probably not. I think for roads
6 built to withstand ten tons, if you're about eleven
7 tons, it's --- if you have a enough 11-ton load going
8 across it, it may have the same impact as 30 ton.

9 REPRESENTATIVE MAHER:

10 So that makes it a 11-ton load if there's
11 a hundred loads that go by and I'm the hundredth one,
12 some damage to the road is that because of that
13 hundredth one or is it because of all hundred?

14 MR. D'AMICO:

15 Well I think a lot of it's cumulative.
16 And I think maybe perhaps the conclusion of this and
17 if there are some township supervisors I notice who
18 are here who can answer that question better than I
19 can.

20 REPRESENTATIVE MAHER:

21 Thank you.

22 CHAIRMAN MARKOSEK:

23 Representative Tim Mahoney from Fayette
24 County.

25 REPRESENTATIVE MAHONEY:

1 Mr. D'Amico, I see you work in other
2 states like Texas, New York, Michigan, and West
3 Virginia. How are they handling this problem?

4 CHAIRMAN MARKOSEK:

5 Can you speak up, Tim, please? I don't
6 think people could hear you.

7 REPRESENTATIVE MAHONEY:

8 I see you work in other states like
9 Texas, New York, Michigan, and West Virginia. How is
10 the local government handling their own problems with
11 the --- because I understand it's more Marcellus is
12 going to be a boom, hopefully, in this state. And I
13 know it's already a boom in West Virginia and in
14 Texas. So how are they handling the local roads?

15 MR. D'AMICO:

16 Well, for one thing I think you see a lot
17 different road structure in some of those areas than
18 you do in Pennsylvania. In Pennsylvania we actually do
19 try to pave far many more miles of roads than in some
20 of those states. Even in Texas your on the paved roads
21 these they're substantial roads and they were designed
22 for heavy equipment. If you get off of on the dirt
23 roads, you know, it's certainly a lot cheaper and less
24 costly to maintain them. In Michigan, there are times
25 of the year you absolutely cannot operate in Michigan.

1 That's because when the frost comes in Michigan, the
2 whole bottom falls out.

3 REPRESENTATIVE MAHONEY:

4 Well, West Virginia means up close to us
5 here. How do they handle it?

6 MR. D'AMICO:

7 That I'm not sure of. I mean I've had
8 very little experience in West Virginia.

9 REPRESENTATIVE MAHONEY:

10 Thank you.

11 CHAIRMAN MARKOSEK:

12 Okay. Representative Bill Kortz?

13 REPRESENTATIVE KORTZ:

14 Thank you, Mr. Chairman. Mr. D'Amico,
15 thank you for your testimony. It's very enlighten. A
16 couple questions. Obviously your companies must travel
17 through multiple townships and multiple municipalities
18 so that necessitates you to go to each one of these
19 and get a permit for each one. Would it make sense to
20 do it maybe county wide? Would that be one of the
21 improvements to this bill, is to have something county
22 wide so that you don't have to run around and get all
23 of these things and have multiple permits in the
24 vehicle and/or attached to the vehicle?

25 MR. D'AMICO:

1 Yeah, I think that would make a lot of
2 sense. And I think one of the things that I've been
3 thinking is to have one or two inspectors, for want of
4 a better word, who can actually review any damage that
5 is done and rule more fairly than having a mishmash of
6 individuals looking at it.

7 REPRESENTATIVE KORTZ:

8 Okay. I don't know if that's something
9 you'd want to propose, but to me it makes a lot of
10 sense. So that way you could post it on the truck and
11 a law enforcement official could immediately see.

12 MR. D'AMICO:

13 Yeah, that's, you know, this is something
14 --- these are some of the things that I think we do
15 need to be considering. I'd even take it further and
16 say that this probably should be a PennDOT-
17 administered program and should be a state-wide
18 program so that, again, if you have somebody who is
19 fooling with the situation like the one company in
20 Representatives Longiotti's District, they can't get
21 away with this.

22 REPRESENTATIVE KORTZ:

23 Okay. A couple more questions real quick,
24 Mr. Chairman. Mr. D'Amico, I don't know if you have
25 these numbers but over the past year, the last two

1 years or five years, how many roads have you repaired?
2 Do you know the number of road miles that your
3 companies have taken on?

4 MR. D'AMICO:

5 I don't know what the numbers are.

6 REPRESENTATIVE KORTZ:

7 Okay. I guess a follow-up to that would
8 be who would be responsible for this information maybe
9 over the past two years, the number of claim to a
10 municipality and townships have brought to your
11 companies, and then what was the end result of that?
12 Was it 50 percent agreement that 50 percent of them or
13 25 percent or ten percent?

14 MR. D'AMICO:

15 Well, at the end of the day, for the most
16 part the numbers were like 90 percent.

17 REPRESENTATIVE KORTZ:

18 Ninety (90) percent of the claims you
19 agreed on?

20 MR. D'AMICO:

21 Well, we may not agree on it but we fix
22 the roads. Sometimes it's a lot easier to fix the
23 roads then it is to fight it or blame someone else.
24 But there's always one character out there who does
25 what --- and I know the instance of Representative

1 Longietti's talking about.

2 REPRESENTATIVE KORTZ:

3 And I don't know this particular incident
4 but I believe it was a year ago the northwest part of
5 the state had a bridge fall down. It was really easy
6 to identify who was at fault because the truck fell
7 with the bridge. So in any case it was real easy but I
8 think where Representative Longietti going with this
9 is, when you have these people running at night and
10 various times, and the road's damaged, the
11 municipalities and townships don't have the
12 wherewithal to go out and fight this thing in courts
13 so they just give up.

14 MR. D'AMICO:

15 Right.

16 REPRESENTATIVE KORTZ:

17 So it's just a comment but I appreciate
18 you coming today. Thank you for your testimony. Thank
19 you, Mr. Chairman.

20 CHAIRMAN MARKOSEK:

21 Okay. Thank you. Representative Petrone?

22 REPRESENTATIVE PETRONE:

23 Mr. D'Amico, I was curious, how many
24 companies does your association represent?

25 MR. D'AMICO:

1 It runs around about three hundred
2 companies right now.

3 REPRESENTATIVE PETRONE:

4 Three hundred?

5 MR. D'AMICO:

6 Yes.

7 REPRESENTATIVE PETRONE:

8 Of those three hundred?

9 MR. D'AMICO:

10 If you add the membership of the
11 Pennsylvania Oil and Gas Association, it's closer to
12 450.

13 REPRESENTATIVE PETRONE:

14 Really, is it that many. Thank you very
15 much. I was just curious.

16 CHAIRMAN MARKOSEK:

17 Okay. Mr. D'Amico, thank you very much.

18 MR. D'AMICO:

19 Thank you.

20 CHAIRMAN MARKOSEK:

21 I appreciate your testimony and next we
22 have for our local government panel Mr. Keith Hite who
23 is the Executive Director of Pennsylvania State
24 Association of Township Supervisors, who most of you
25 know. As well as Mr. Shirl Barnhart, Assistant

1 Secretary of Treasurer of PSATS. Gentleman, welcome. I
2 think most of the folks, at least in the audience know
3 who you are. And some of our members I think pretty
4 much know you as well. So you may move forward when
5 you're ready.

6 MR. HITE:

7 Thank you Mr. Chairman and members of the
8 House Transportation Committee and other distinguished
9 guests. Thank you very much for the opportunity.
10 Before proceeding, I'd like to recognize Majority
11 Leader DeWeese for his efforts in helping to bring
12 this hearing to Greene County, because indeed it is a
13 very serious problem here. And Representative DeWeese
14 has always had an understanding ear for local
15 governments and helping them cope with problems. And
16 I'd also like to recognize Representative Longietti
17 for bringing this issue to the forefront. And last but
18 not least, the township officials who are in the room,
19 who, by their mere presence are expressing the
20 severity of this problem.

21 As the Chairman pointed out my name is R.
22 Keith Hite, and I am the executive director for the
23 Pennsylvania State Association of Township
24 Supervisors. With me today is Shirl Barnhart,
25 Assistant Secretary-Treasurer for the Association and

1 a township supervisor in Morgan Township here in
2 Greene County.

3 Townships as you perhaps know, comprise
4 95 percent of the Commonwealth's land area. There are
5 more Pennsylvanians who live in townships today than
6 in any other type of local government, including the
7 cities of Pittsburgh and Philadelphia. These townships
8 are very diverse, ranging from rural communities with
9 fewer than 200 residents to more populated communities
10 in the southeast with populations approaching 70,000
11 residents. Townships across the state, like all local
12 governments, are facing escalating price increases for
13 road materials, and yet the bonding amount for
14 overweight vehicles has remained unchanged, as Mr.
15 Longietti pointed out, since 1978.

16 House Bill 2133 would revise the current
17 procedures in which the Department of Transportation
18 publishes its bonding schedules relating to weight
19 limits on state and local roads. It would require the
20 Department to publish a revised schedule of bonding
21 amounts based on increased or decreased maintenance
22 costs by January 1st of 2009, and at least every three
23 years thereafter. This legislation would essentially
24 be at no cost to the Department but in turn would
25 create a significant benefit for local governments and

1 their residents.

2 And you need to keep in mind, we're not
3 talking about a township government, necessarily. If a
4 road is damaged, destroyed, or a bridge collapses, the
5 township government means that every resident in that
6 community will have to pay for its replacement. The
7 Department currently sets the bonding amounts that a
8 municipality may enforce for overweight traffic on its
9 roads. Currently, under Title 67 of the Pennsylvania
10 Code, chapter 189, the Department is only obligated to
11 publish a revised schedule of these bonding amounts,
12 quote from time to time, unquote, based on increased
13 or decreased maintenance costs. This standard provides
14 little guidance and no impetus for the Department to
15 revise its bonding amounts relative to the costs that
16 are associated with repairing damage sustained to
17 local roads. As was noted earlier, the current bonding
18 amounts are \$6,000 per mile for dirt and gravel roads
19 and \$12,500 per mile for paved or oil and chip roads.
20 Local governments are partners with the Commonwealth
21 in constructing and maintaining a safe and efficient
22 surface transportation system for all Pennsylvania
23 motorists, and as such, local governments'
24 transportation concerns need to be considered as part
25 of that partnership. From rural dirt and gravel roads

1 to local multi-lane highways in urban and suburban
2 areas, local roads serve a key role in our
3 transportation system that is critical to the economic
4 vitality of our communities and this Commonwealth as a
5 whole.

6 Motorists must travel on local feeder
7 roads to reach our state routes and interstates.
8 Pennsylvania residents do not care who maintains the
9 road. They don't care who plows the road, as long as
10 it is adequately maintained.

11 Up-to-date bonding figures based upon
12 sound maintenance cost data are necessary to allow
13 municipalities to fulfill their responsibility to
14 provide dependable and passable roads and highways,
15 without requiring their citizens to subsidize repairs
16 for damage caused by overweight vehicles.

17 Township officials, as recently as this
18 past May, approved resolutions at the PSATS annual
19 meeting asking that the bonding amounts be increased
20 to \$50,000 per mile for unstable dirt and gravel roads
21 and \$100,000 per mile for paved or oil and chip roads.

22 Keep in mind that road materials that
23 supervisors and all local officials use to maintain
24 their roads have actually increased above the rate of
25 inflation over the last 30 years. According to the

1 U.S. Bureau of Labor's CPI calculator, the CPI has
2 seen an increase of 168 percent since 1990. In the
3 last year along, PennDOT estimates that the cost of
4 petroleum based products has increased about 29
5 percent.

6 Here in Greene County the price of
7 blacktop has increased by 333 percent and stone has
8 increased by 317 percent since 1990. The price of fuel
9 alone has soared 29 percent in the last year alone.
10 The provision in HB 2133 that would require these
11 bonding amounts to be increased every three years
12 would greatly assist townships and all other local
13 governments across the state.

14 You know better than me, inflation
15 continues to eat away at the power of the
16 transportation dollar. Over the last three years,
17 highway and bridge construction costs have increased
18 by double digits, largely due to the fluctuating cost
19 of petroleum.

20 There are other contributing materials
21 that local government and PennDOT need to maintain the
22 roads. The cost of salt has recently increased from
23 \$40 per ton last year to as much as \$130 per ton
24 today. Across the state, townships have seen cost
25 increases for paving projects ranging from 20 to 60

1 percent since 2006. In fact, the cost to pave a mile
2 of road can range as high as \$90,000 to nearly
3 \$120,000. By adjusting the Department's figures at
4 least every three years, communities can better plan
5 and better budget for and deal with these maintenance
6 costs.

7 While we have seen a slight increase in
8 liquids fuels funds over the last several years, we
9 have heard that there will be a significant decrease
10 for the 2009 distribution. It is estimated to be
11 somewhere between eight and twelve million dollars
12 under the local distribution for 2008.

13 Municipalities must deal with this
14 shortfall by either increasing property taxes to make
15 up the difference or defer maintenance by paving less
16 miles of road and delaying other needed construction
17 projects, which, as you well know, only serves to
18 further increase the costs of maintenance.

19 Please keep in mind that many of the
20 roads that are damaged by overweight vehicles suffer
21 from severe structural damage that may require
22 significant rebuilding of the sub-base as well as the
23 damaged road surface. Rebuilding is more expensive
24 than simply paving the road surface. Last year, Morgan
25 Township, Greene County rehabilitated a mile of road

1 due to damage caused by oil and gas well drilling. The
2 township road crew undertook the project, which cost
3 the township \$82,000 in materials alone, far more than
4 the \$12,500 bond.

5 House Bill 2133 also would require
6 PennDOT include a rebuttable presumption in favor of a
7 municipality against an over-posted-weight permittee
8 for damage to posted roads. Quite often, the ability
9 of a township to collect on the security offered by a
10 bond rests on the township's ability to provide
11 adequate proof relating to a trucking or hauling
12 company's damaging activity on the road. This is often
13 a long, difficult, and expensive process for a local
14 government. House Bill 2133 would provide additional
15 support to the township's claim in collecting on the
16 bond by placing the presumption in the township's
17 favor, thus reducing the cost of collecting on the
18 bond.

19 The Commonwealth's local roads and
20 bridges are in deteriorating condition and the costs
21 necessary to repair continue to increase. In the
22 recent Supreme Court case of Borough of Youngwood v.
23 the Pennsylvania Prevailing Wage Appeals Board, the
24 Court held that milling and resurfacing do indeed fall
25 under the Prevailing Wage Act. This decision will

1 increase the costs associated with repairing damage
2 done to township roads by overweight vehicles.

3 By establishing specific guidelines
4 whereby the Department must review its bonding amounts
5 and establishing the presumption in favor of the
6 municipality, local governments will be in a better
7 position to more effectively address such issues in
8 the future. For townships alone, this is an issue that
9 is very important for their 50,350 miles of roads,
10 many of which have seen increased heavy truck volume
11 in the recent years.

12 This trend has increased due to natural
13 gas operations in the Marcellus shale formation areas
14 and we expect this increase to continue. While the
15 utilization of this massive energy source may be
16 extremely beneficial to the Commonwealth and its
17 residents, the increased heavy truck traffic will levy
18 a devastating toll on Pennsylvania's local roads.

19 In Herrick Township, Bradford County, the
20 residents awoke one Monday morning to the roar of more
21 than 300 trucks ascending the township's dirt and
22 gravel roads to a new well. Some of this is done by a
23 process called fracking. Fracking uses a tremendous
24 amount of water. In fact, it's estimated for a
25 standard well, it requires two million gallons of

1 water to frack. Imagine how many truckloads of water
2 in a tanker that holds 8,000 gallons it's going to
3 take to provide that two million gallons of water
4 necessary to frack a single well and the damage that
5 this will cause, far more than the \$6,000 per mile
6 bond.

7 It is important to note that the
8 authority to post and bond a road is not a revenue
9 source for local governments but rather a means to
10 offset the costs directly associated with road damage
11 caused by overweight vehicles, to keep roads open,
12 passable and, above all else, safe for the motoring
13 public.

14 It equitably passes the costs of repair
15 onto those that benefit by using the road while
16 simultaneously inflicting damage upon it.

17 In closing, we thank Chairman Markosek
18 for holding today's hearing on this important issue.
19 We believe that appropriate bonding amounts are a
20 necessary part of making sure that we are adequately
21 funding our transportation infrastructure and that
22 those who are damaging our roads pay to repair that
23 damage.

24 Thank you for this opportunity to testify
25 before you today. I will now attempt to answer any

1 questions that you may have.

2 CHAIRMAN MARKOSEK:

3 Okay, thank you very much. Representative
4 Maher has a question.

5 REPRESENTATIVE MAHER:

6 Thank you. You observed that from time to
7 time, the Department is already permitted to adjust
8 the amount of the bond, the Department of
9 Transportation. And the Department of Transportation
10 given the business that their in to certainly
11 appreciate the increases in the cost to build and
12 maintain roads and repair roads. Do you have any
13 insight as to why the administration has not addressed
14 the bond amount?

15 MR. HITE:

16 We do not, sir. Quite frankly, it just
17 doesn't make sense to us. We have appealed to the
18 Department, all local companies united appealed to the
19 Department and we asked them to address this issue and
20 raise the bond limits. For our association policy is
21 set by our members. And for at least the last eight to
22 ten years our members have asked for this to be
23 addressed and be increased. And when we go to the
24 Department to seeking that increase, we haven't been
25 successful.

1 REPRESENTATIVE MAHER:

2 Well, perhaps I could suggest to Mr.
3 Chairman that you consider formally inquiring of the
4 Department as to what their view is about what would
5 be enough time lapsed since 1978 before the time to
6 time requirement is met. It seems to be that a great
7 deal of a concern here can be addressed without any
8 new statute. This is perhaps a good example where
9 strong legislative representation is essential that
10 even when the executive branch may have the authority
11 to do something and often forgets about the rural
12 corners of our state.

13 Another question for you, and it's a bit
14 rhetorical, I'm curious have any of your townships
15 expressed any interest in selling or leasing their
16 roads?

17 MR. HITE:

18 That happened to them two years ago the
19 Department of Transportation created a turn back the
20 roads program.

21 REPRESENTATIVE MAHER:

22 Yeah, I understand that.

23 MR. HITE:

24 We would love to have legislation that
25 would take it the other direction.

1 REPRESENTATIVE MAHER:

2 So your township would want to sell the
3 roads?

4 MR. HITE:

5 I don't know of that, but perhaps to the
6 Commonwealth.

7 REPRESENTATIVE MAHER:

8 I just think it's interesting that idea
9 is catching on.

10 MR. HITE:

11 Thanks.

12 CHAIRMAN MARKOSEK:

13 Okay, thank you Representative Maher,
14 good advice. We're going to continue to pursue this
15 legislation but simultaneously, I think people have
16 some talks with various parties and stakeholders
17 involved.

18 Representative Nick Kotik, from Allegheny
19 County.

20 REPRESENTATIVE KOTIK:

21 Thank you, Chairman. I was just curious
22 on the example you cited relative to Morgan Township.
23 Were they able to recoup any additional monies as a
24 result of the fact that the bond was only for \$12,500?

25 MR. HITE:

1 Yes, that's in my township. The company
2 came to us to work out a deal. We realized that the
3 road needed some repair initially before we started,
4 but we worked out a deal. They paid us \$25,000. And we
5 did work on the road.

6 REPRESENTATIVE KOTIK:

7 Okay. And as a follow-up question. When
8 you have a company coming in does the township as a
9 matter of course, get their township engineers would
10 be able to assessment of the road? You know a project
11 can be an going process for a long period of time, say
12 a year or so. Can the township send their engineer get
13 a look at that particular road and say this road's
14 going to be used quite heavily for the next year. I
15 think we need to take a look at that and inspect that,
16 so that they know what the condition of the road is
17 prior to all the activity going on?

18 MR. HITE:

19 Before we're allowed to even post a
20 weight limit on the road it has to have an engineering
21 study done on it. So those roads are already pre-
22 engineers before the supervisor to go out and actually
23 look for any damages already done to the road and
24 subsequently whoever's going to use the road too, to
25 document the actual condition of the road, and then we

1 go from there.

2 REPRESENTATIVE KOTIK:

3 One of the issues facing our members
4 today with regard to the Marcellus shale, our
5 communities are receiving no notification whatsoever
6 before those trucks roll in. The example that I've
7 reached in Harried Township --- there the trucks were,
8 and they weren't expecting it. The roads were not
9 adequately bonded; there was no notification
10 whatsoever.

11 MR. HITE:

12 That's something that also should be
13 addressed.

14 REPRESENTATIVE KOTIK:

15 Absolutely. Last week up in Chapman
16 Township in Clinton County --- you may have read about
17 it there was a gas well fire, and they estimate that
18 \$12 million worth of gas was burned, and the Township
19 supervisors received no notification --- very rural
20 area. No notification of the fire, were not able to
21 deploy fire and emergency services. One of the
22 supervisors found out about it at a local restaurant
23 the following morning.

24 MR. HITE:

25 Thank you very much.

1 CHAIRMAN MARKOSEK:

2 Okay. Representative Kortz and then
3 Representative Longietti.

4 REPRESENTATIVE KORTZ:

5 Thank you, Mr. Chairman, and thank you,
6 Mr. Hite, for your testimony. Coming back to the
7 presumption here and I'm going to touch base on it
8 because that's slightly disturbing. And I understand
9 this is going to switch that, this legislation. Our
10 concern and I think Mr. D'Amico raised a valid point.
11 There could be abuse of that. There could be a road
12 driver at three o'clock in the morning that doesn't
13 --- they're following the law and the other driver is
14 not. How do you respond to that? What can we do in
15 the language to make it fairer so that there's a
16 balance here that you are not really going to put the
17 burden on somebody --- how do we respond to that?

18 MR. HITE:

19 When we talk about the damage to these
20 roads, it isn't occurring on one trip. It's occurring
21 over a long period of time. And obviously I know these
22 trucks are using them. Now, some of the larger trucks
23 are exempt, like local deliveries. So there's a reason
24 to document usage. It's just fair.

25 One of the things that Mr. D'Amico talked

1 about was the 90 percent of the companies he
2 represents are there, they want to be good neighbors.
3 They want to rebuild the roads. And I don't think the
4 supervisors have any issues with them.

5 The problem is if a driller says, yes, I
6 destroyed the road and there's nothing I'm going to
7 do. Pull my bond. Well, there's no recourse whatsoever
8 for the township. And, yes, perhaps you'll find those
9 local governments out there, maybe they have a dirt
10 road and an oil and gas well driller comes in and now
11 they want it paved. There's got to be some
12 reasonableness. We also have to understand that these
13 roads are public roads. It just doesn't belong to a
14 board of three individuals. We're just the stewards on
15 behalf of the community. I hope I answered your
16 question.

17 REPRESENTATIVE KORTZ:

18 Thank you.

19 CHAIRMAN MARKOSEK:

20 Representative Longietti.

21 REPRESENTATIVE LONGIETTI:

22 As of right now \$12,500 per mile. Mr.
23 D'Amico stated that one thing that they do worry about
24 is having their bond pulled. And he said they could
25 not obtain another bond. Just like an insurance

1 company, you have so many loss runs, you can't get
2 insurance. Well, at \$12,500, with the estimate fixing
3 a mile of road at \$82,000 just for the material costs,
4 he could put a cash bond. And we'd have to accept it.
5 I mean just because he can't get an insurance policy
6 to cover his bond or present rate he can pay \$12,500
7 per mile and he could destroy three miles of my road
8 and it'd still be nowhere near what it costs me to fix
9 it. So it would be real simple to say just pull the
10 bond.

11 MR. BARNHART:

12 I don't know if my boss would agree with
13 me on this comment, but if you take the township or
14 the local officials I don't think they want to pull or
15 call the bond. All they want to do is have that road
16 in the same condition it was before the damage
17 occurred.

18 MR. HITE:

19 If we pull the bond, that means first
20 we'd have to get our lawyer involved. We'd have to get
21 our legal department involved. Then we have to
22 actually fix the road. We're in charge of --- we're
23 responsible now. We either do it ourselves or hire a
24 contractor. If the company that's using the road acts
25 in good faith, they maintain the road. They do it for

1 us. So no, we just consider it an insurance policy.
2 But the present rates right now is like I said, they
3 can just have us pull the bond and just float a cash
4 bond, and they really have nothing to lose.

5 CHAIRMAN MARKOSEK:

6 Representative Longietti?

7 REPRESENTATIVE LONGIETTI:

8 Thank you very much for your testimony
9 and also for your help and support on this
10 legislation. I'm not real familiar with the Youngwood
11 decision that you mentioned, but following up on what
12 you discussed, if say, for example, a company fixes
13 road versus the township now has to fix the road, does
14 prevailing wage apply when the company fixes the road?

15 MR. HITE:

16 I don't think so. We would have to get
17 clarification, but to the best of my knowledge I do
18 not believe so.

19 REPRESENTATIVE LONGIETTI:

20 And I know at least, you know, in some of
21 my townships I've heard too, that the burden when the
22 township fixes the road they have to prepare the
23 documents and go through that process as well, and
24 that can be burdensome. There were a couple ideas
25 mentioned around the table, possible changes in the

1 law and the nature of bonding on a county-wide system
2 or a statewide system, the idea of arbitration as a
3 remedy. Does anybody have any thoughts today about
4 these ideas?

5 MR. HITE:

6 Well, I think in this instance,
7 Representative Longietti, it's going to impede the
8 response time. It would take it to the town or the
9 borough or the township and that's going to mean
10 delays. Regarding the Commonwealth, I don't want to
11 criticize our friends at PennDOT, but I just want to
12 say it's been since 1978 that this has been changed.
13 And I also believe that it would be very difficult to
14 show --- I'm sure it would be very difficult to do a
15 universal or umbrella bond across a county, given the
16 different boroughs, the different weight limits and so
17 forth and so on. I would be more concerned about the
18 response time.

19 REPRESENTATIVE LONGIETTI:

20 Last, item, if you want to react to it,
21 fine. Since 1978 if I could correctly we're talking
22 six administrations when we count governors and acting
23 governors, none of which have acted on this measure.
24 And I guess my concern is, yes, we should always talk
25 to the Department and invite them to revise these. But

1 even if they did revise them and actually respond this
2 time around, without this legislation normally will
3 see them revise them again, given their past history?

4 MR. HITE:

5 You stated it very well.

6 REPRESENTATIVE LONGIETTI:

7 Thank you, Mr. Chairman.

8 CHAIRMAN MARKOSEK:

9 Okay. Gentleman, thank you very much. We
10 appreciate your testimony. We have one last
11 presenter, Mr. Paul Lyskava, who is the Executive
12 Director of the Pennsylvania Forest Products
13 Association. Mr. Lyskava, thank you, welcome.

14 MR. LYSKAVA:

15 Thank you.

16 CHAIRMAN MARKOSEK:

17 Do you want to pull the mike as close as
18 you can there, and when you're ready you may proceed,
19 sir.

20 MR. LYSKAVA:

21 Chairman Markosek and members of the
22 Committee, good afternoon. My name is Paul Lyskava and
23 I'm Executive Director of the Pennsylvania Forest
24 Products Association. PFPA is a trade association
25 which is located in Harrisburg, Pennsylvania and we

1 represent the various sectors of the state's timber,
2 lumber, wood products and paper industry. I'd like to
3 clarify. We're primarily a manufacturing-based
4 organization, while some of my members may have timber
5 harvesters and loggers in their employment. I have a
6 number of logging companies which are also part of our
7 membership, but we certainly don't represent the vast
8 majority of the timber harvesters in the state.
9 However, having said that, those harvesters are vital
10 link in our industry.

11 Pennsylvania is the nation's leading
12 producer of hardwood lumber. In normal economic times,
13 Pennsylvania's forest products industry includes some
14 2,400 companies, which employ more than 80,000
15 Pennsylvanians and account for about one of every nine
16 of the state's manufacturing employees. Unfortunately
17 for many of us in our industry, these are not normal
18 economic times. And I'll get into that a little bit
19 later.

20 Thank you for the opportunity to comment
21 on the provisions of House Bill 2133. I'll say first
22 off that PFPA does not oppose a reasonable revision of
23 the bond schedule for posted roads. As speakers said
24 earlier in the day, it's been since 1978 since the
25 bond schedule has been revised and it is hard to argue

1 that a reasonable increase in the bond amounts would
2 be inappropriate.

3 Furthermore, we support giving this
4 responsibility to the Department, as provided in the
5 bill. PFPA does, however, oppose the other major
6 provision of House Bill 2133, which is the rebuttable
7 presumption in favor of the municipality. I guess I
8 cannot overestimate or overstate our concern with this
9 provision. Such a provision will put significantly
10 unfair and costly burdens on loggers and sawmills,
11 farmers, and other small, family-owned businesses.
12 Under this provision of the bill, in order to properly
13 protect its interests, the user of the road would need
14 to establish the evidence and proof regarding issues
15 such as joint use, impacts of normal use, non-
16 performance of normal maintenance by the municipality,
17 and impacts from snow or ice removal by
18 municipalities.

19 The vast majority of logging companies in
20 this state employ less than five employees. Two-thirds
21 of the sawmills in the state employ less than 20
22 employees. These establishments just do not have the
23 human or financial resources at their disposal to
24 defend themselves against the presumption that they
25 are the primary cause of damage to every posted road

1 that they run.

2 Furthermore, the rebuttable presumption
3 provision in House Bill 2133 opens the opportunity for
4 inadvertent or premeditated abuse by local
5 governments. For example, a township could try and
6 double-dip joint users of a road, billing each for
7 full cost of excess maintenance, knowing that a
8 smaller company might not have the resources to prove
9 otherwise. Now, I'm going to stop right here because I
10 don't want to insult the members of the Committee or
11 the folks in the audience. The fact of the matter is
12 that the townships and municipalities in the state do
13 an excellent job the vast majority of the time. There
14 are some bad apples on the township side of this, just
15 as there are bad apples within our industry, which I
16 cannot defend. In my industry, just as the
17 representative from the oil and gas industry stated,
18 we want to pay for the damage that we do to roads.
19 However, over past history have been problems between
20 our industry and local townships --- and that's
21 something that we've had to deal with --- for a
22 variety of reasons. Either a) the township's been
23 burned in the past by either a member of our industry
24 or other people who run the roads --- and quite
25 frankly, there are just some townships where their

1 officials don't believe that sustainable forestry
2 should take place in this state, let alone in the
3 their township, and they do everything at their
4 disposable in road posting and bonding to try to
5 prevent it. Getting back to my comments.

6 There has been a long history of
7 conflicts, as I've stated, among municipalities and
8 timber harvesters, with much of it centered on the
9 implementation of road posting and bonding. Luckily,
10 our association and the Pennsylvania State Association
11 of Township Supervisors have had a pretty good
12 relationship and ha of conflict. In addition to
13 working on legislation, we have jointly partnered with
14 the Pennsylvania Department of Agriculture's Hardwoods
15 Development Council, the Department of Conservation
16 and Natural Resources, Penn State, and other groups to
17 address road posting and bonding and other forestry
18 issues in outreach and educational materials developed
19 specifically for local government officials. I brought
20 one or two copies of this, and if I was smart, I would
21 have brought enough for everybody, but I can provide
22 those to the Committee at a later date.

23 A few years ago, the Joint Conservation
24 Committee's Forestry Task Force examined the impact
25 that inconsistencies in the local implementation of

1 road posting and bonding were having on the forest
2 product companies and other small manufacturers.

3 As a result of this review, the task
4 force recommended a number of amendments to Title 75
5 to better standardize road posting and bonding actions
6 and enforcement by municipalities. Many of these
7 recommendations were enacted as part of Act 33 of
8 2001, which was supported by PFPA and other groups,
9 and with the consent of PSATS.

10 Among its provisions, Act 33 clarified
11 the requirements for engineering and traffic studies
12 and the need for a reasonable alternative route for
13 posted roads and bridges. It also imposed upon local
14 authorities, the burden and responsibility to properly
15 adhere to the requirements of Title 75, Chapter 49 and
16 related department regulations, and established
17 penalties for municipalities who failed to comply.

18 Act 33 has worked pretty well. Our office
19 still regularly receives a few inquires, one or two a
20 month, from industry or suppliers of our members,
21 regarding questions on the proper or improper
22 implementation of road posting and bonding rules by a
23 municipality. Often, these issues can be addressed by
24 educating the township officials on the provisions and
25 the regulations. Whether we sometimes do that

1 ourselves; sometimes we've asked local PennDOT
2 officials to kind of back up what we were saying in
3 our contacts with the townships.

4 Unfortunately, there are still instances
5 where township officials seemingly know they are
6 acting contrary to state law and regulation. They seem
7 to risk penalty because of the likelihood that an
8 individual logger or a small company will either not
9 know the law or not make the effort to gain relief in
10 court.

11 House Bill 2133, with its rebuttable
12 presumption provision, would essentially reverse much
13 of the intent of Act 33 and the protections it
14 provides to small haulers. It would dramatically tilt
15 the balance of power in favor of the municipality.

16 In conclusion, I want to recognize and
17 comment on the Marcellus shale, which has the
18 potential to pump tens of millions of dollars of
19 investment into Pennsylvania's rural communities.
20 Certainly the Commonwealth has the responsibility to
21 ensure that the development of this natural gas
22 resource is done in such a way which also ensures the
23 protection of our natural resources. It is also
24 understandable that both the state and local
25 governments would seek access to a share of the

1 millions of dollars being invested in the state to
2 help offset the additional utilization of local
3 services and infrastructure.

4 That given, I would strong urge the
5 members of the General Assembly to recognize that much
6 of the future legislation and regulation addressing
7 issues related the Marcellus shale, whether it be
8 issues before this Committee, or issues before other
9 Committees, such as the Environmental Resources and
10 Energy Committee, will have impacts beyond the gas
11 industry. They'll impact loggers; they'll impact
12 sawmills, farmers and other small, family-owned
13 businesses located in your community. We're not all
14 from Texas and we don't all have deep pockets.

15 And truly, I believe that House Bill 2133
16 is an instance which proves this point. The state's
17 hardwoods industry is experiencing tough times. The
18 housing market, the current banking and financial
19 crisis, the loss of furniture manufacturing to Asia,
20 and even a shift in consumer taste have put our
21 hardwood industry in the worst economic downturn that
22 its seen in more than two decades.

23 Sawmills are in their third straight year
24 of declining production and demand for their product,
25 and lower prices for hardwood lumber. At the same

1 time, energy, transportation and insurance have driven
2 up the operational costs for the material that those
3 sawmills can sell.

4 Each day, literally, each day, I've seen
5 more owners of logging companies and small sawmills go
6 out of business, and with that comes the loss of good
7 paying manufacturing jobs in the state. Enactment of
8 House Bill 2133 in its current form would result in
9 the loss of more logging and sawmill jobs in the
10 state.

11 It would have other impacts as well.
12 Forest landowners will see declining value for their
13 timber. A further restrained log and lumber markets
14 will impact the costs and competitiveness of the
15 state's cabinet, millwork and paper producers, who are
16 also a substantial source of jobs in the state. And
17 the scarcity of loggers will make it more difficult
18 for the state to develop cellulosic ethanol and other
19 biomass energy opportunities which are needed for our
20 energy independence.

21 Mr. Chairman, I've come some five hours
22 from Harrisburg to come here and speak in opposition
23 to this bill, but I'll look forward to working with
24 the Committee and PSATS and the other impacted
25 entities and we can work together to frame out

1 something which is more acceptable.

2 I again thank you and thank the members
3 of the Committee and certainly would try to answer any
4 questions you may have.

5 CHAIRMAN MARKOSEK:

6 Mr. Lyskava, thank you for traveling here
7 and visiting with us today on behalf of this bill. We
8 need to hear from all sides of course, and you've been
9 very helpful.

10 The chair would like to recognize
11 Representative Jack Wheatley whose District is
12 downtown Pittsburgh, Pennsylvania. And he is here in
13 Greene County today.

14 Representative John Maher has a question.

15 REPRESENTATIVE MAHER:

16 Thank you. I share your concern about the
17 rebuttable presumption and it's a nice phrase, but it
18 basically says someone's guilty unless they can prove
19 themselves innocent. Are you aware of any other
20 circumstance in Pennsylvania where people are assumed
21 to be guilty until it can prove itself innocent?

22 MR. LYSKAVA:

23 I would have to look into that, but if I
24 may just offer a comment. You know, there already are
25 instances with our members ---.

1 REPRESENTATIVE MAHER:

2 Well, maybe somebody may have an example.
3 Maybe we'll hear it in public comment.

4 MR. LYSKAVA:

5 Yes, but with our members, particularly
6 with joint use of a road, there's always negotiations
7 and conferences sometimes, but I think if you look at
8 the typical logging job, which a company may go in and
9 they may post a bond for maybe a period of a couple
10 months --- a couple weeks to a couple months,
11 depending on the size. They may not be there every
12 day due to weather and demand by sawmills at that
13 period, but after a number of weeks or a number of
14 months, they go back to the township, you know, with
15 whom they have the bond, and the township tells them,
16 okay, you owe this amount. If they think that's fair,
17 okay. But with the rebuttable assumption, it's going
18 to be very difficult, you know, particularly when
19 you're talking about small logging companies that may
20 have a number of jobs, tens if not fifty, a hundred
21 miles away from where their home base is, and they
22 have only a couple of employees, to really keep track
23 of what's going on, and they wouldn't be able to
24 gather the evidence to defend themselves when a
25 township comes and says well, you're going to fix my

1 road, since you did all the damage, and here's your
2 bill for the whole sum.

3 REPRESENTATIVE MAHER:

4 I understand the Townships dilemma.

5 MR. LYSKAVA:

6 Yes.

7 REPRESENTATIVE MAHER:

8 That unless somebody sitting by the side
9 of the road 24 hours a day taking pictures it's pretty
10 tough to ascertain specific damages to specific
11 operators. But the testimony today, I'm getting the
12 impression that it's not often that a single could by
13 a single vehicle is the cause of substantial damage.
14 It can happen, but it sounds like most of this is
15 where you --- an operator will have a recurring need
16 for overweight vehicles that wear and tear over time
17 on the road that's really doing it, trip after trip.

18 Perhaps we'd be looking at two types of
19 overweight, and it's another standardization question,
20 but not by tonnage, but maybe there's one that's for
21 an occasional use, and then whereas, if you've got a
22 mining operator, the logging operator, and they know
23 they're going to be sending three hundred trucks up
24 and down my road for a month or for a year, that
25 that's a different circumstances that someone who's

1 hauling something through for a delivery once, and
2 that maybe there ought to be a different arrangement
3 for that recurring use.

4 MR. LYSKAVA:

5 Oh, certainly my members are having the
6 recurring uses. I gave the example of being at a job
7 for, say a couple of months. They may not be operating
8 every day, and when they're normally in there, they
9 may be running two or three loads per day of, you
10 know, out of that. We're talking small companies, the
11 small operations, a three or four man crew.

12 REPRESENTATIVE MAHER:

13 And it's pretty much the same route,
14 going point to point. Perhaps we should be considering
15 if there's a way that we could adopt some version of
16 the E-Z pass or technology where you can just post a
17 pylon, and every time they go past it, click, click,
18 click, and each trip costs X dollars. It's an idea.

19 CHAIRMAN MARKOSEK:

20 Representative Mark Longietti.

21 REPRESENTATIVE LONGIETTI:

22 I want to thank you for your testimony,
23 and I certainly appreciate your concerns and I think
24 the Committee has noted them. I guess as a general
25 comment, while I necessarily don't have an example

1 right off the top of my head, but the concept of the
2 rebuttable presumption is certainly not my novel
3 concept that I came up with. It's something that is
4 well established in the law, and has been applied for
5 certain circumstances. And I guess at least perhaps as
6 a corollary to that there are --- for example certain
7 types of events that can happen where somebody is
8 injured, where we say that type of event doesn't
9 happen absent negligence, so it presumes, so to speak
10 that there was negligent activity that caused that,
11 with the opportunity to have the party prove
12 otherwise. I won't bore you with the Latin term for
13 that but I think it is a concept that is used from
14 time to time in the law. And I understand your
15 concerns.

16 MR. LYSKAVA:

17 Representative, I'm not stating that
18 loggers or other entities should get off Scott free
19 from their responsibilities for repairing roads, just
20 because of their small entities. But just compared to
21 the representative from the oil and gas industry who
22 categorized himself and his numbers as highly well-
23 capitalized, there are a lot of other users who are
24 running their businesses that are not well capitalized
25 and not necessarily able to remain in business having

1 to pull lots of record keeping and legal costs in
2 order to defend themselves, if you will, just to do
3 their normal daily operations.

4 REPRESENTATIVE LONGIETTI:

5 And I certainly appreciate that. I think
6 one thing that at least gives me some level of comfort
7 is local government in my view, and you're always
8 going to have, I guess, the outliers. But it tends to
9 be responsive. And so when we have a situation for
10 example, where citizens in a municipality are selling
11 their forested areas. Some of it may be working for
12 companies that do sawmill activity. My sense of it is
13 that local government will be responsive to that and
14 not overreach and therefore put a logging company out
15 of business, because they're going to hear it from
16 their citizens if they do that. Having said that, I do
17 understand your concerns and appreciate them.

18 MR. LYSKAVA:

19 Thank you, sir.

20 CHAIRMAN MARKOSEK:

21 Representative Nick Kotik.

22 REPRESENTATIVE KOTIK:

23 Thank you, Mr. Chairman. Just a comment
24 based on all the testimony that I've heard today. I
25 think Representative Longietti has done service to

1 local government by bringing this issues to the
2 forefront. If we didn't have this legislation we
3 wouldn't even be talking about this, we wouldn't be in
4 this hearing. So as someone who has started in the
5 local government, knows the problems, how difficult it
6 is, especially in communities that are poor and don't
7 have a lot of resources, don't have a lot of taxing
8 abilities.

9 You know, we've got to start having
10 someone speak up for local government, and the fact
11 that PennDOT has sat on this issue for 30 years
12 doesn't speak well for PennDOT and I'm glad that Mark
13 introduced this bill as a starting point for
14 legislation that is a starting point for doing
15 something positive, because the local communities need
16 that assistance.

17 CHAIRMAN MARKOSEK:

18 Okay. Mr. Lyskava, thank you very much.
19 Appreciate it.

20 MR. LYSKAVA:

21 Okay.

22 CHAIRMAN MARKOSEK:

23 I appreciate it. We do have one other
24 formal present presenter, I'm sorry, Mr. John
25 Kendralla. I'm not sorry that you're testifying. I'm

1 sorry I missed you. All right, go ahead.

2 MR. KENDRALLA:

3 The last one.

4 CHAIRMAN MARKOSEK:

5 You were added, but not to my knowledge
6 and I apologize for that. That's what I was
7 apologizing for. Do you want to introduce your
8 colleague here, please?

9 MR. KENDRALLA:

10 Good afternoon. My name is John Kendralla
11 and the Board of Greene County Commissioners has asked
12 me to come before you today representing the interests
13 of the county and to thank you, Mr. Chairman and your
14 colleagues on the House Transportation Committee for
15 joining us on the annual meeting day of our townships
16 and for accepting our testimony on this very important
17 matter.

18 I currently serve on the Green County
19 planning commission, and have retired from the
20 Pennsylvania Department of Transportation, most
21 recently serving as Greene County maintenance manager
22 in District 12. I'd like to introduce Bill Groves, a
23 current Cumberland Township supervisor and my
24 predecessor at PennDOT.

25 The Board of County Commissioners is in

1 total support of House Bill 2133, relating to the
2 bonding of municipal roads and bridges. Our rural
3 county is 576 square miles with 26 municipalities that
4 care for a transportation system of nearly 850 miles
5 of local roadway. This is a tremendous responsibility
6 for an economy of coal, gas, and agriculture in its
7 supply chain. Our very rural municipalities have
8 always faced the challenges of roads not built with
9 significant substructure and in most cases no
10 substructure at all. Rather most of our local roads
11 are unstabilized and their maintenance is exacerbated
12 by the clay soils of the corner of southwestern
13 Pennsylvania which were from the slides, otherwise
14 known as slips.

15 Our local transportation system is high
16 maintenance. Local government restrictions for access
17 to their roads is primarily based on the posted weight
18 limits as required by current law to be in accordance
19 with PennDOT regulations. But the weights of loaded
20 vehicles are a stark contrast to the posted limits of
21 our roads, and therefore the damage that can be done,
22 particularly during the inclement weather conditions,
23 renders the necessity of revising the schedule of
24 bonding amounts as critical for our municipalities,
25 absolutely critical.

1 In light of escalating costs for road and
2 bridge construction and maintenance and because damage
3 to the subsurface structures of the roads are often
4 involved, the current maximum limits of bond
5 protection are simply and grossly inadequate. Remember
6 to that our rural roads are typically narrow and
7 peppered with sharp curves and steep grades. Add
8 thousands of heavy haulers to this transportation
9 system and our roads are effectively less and less
10 safe for our residents.

11 To even consider significant safety
12 upgrades is well beyond our ability when it is such a
13 struggle to simply maintain the existing roadway
14 conditions. Our people deserve safe roads. Research
15 from the Pennsylvania State Association of Township
16 Supervisors indicates that the bond amounts approved
17 by PennDOT have not been addressed or increased since
18 1978. \$6,000 per mile for the bonding of dirt and
19 gravel road will in most cases fail to provide an
20 adequate cushion to meet the material costs for
21 repairs. \$12,500 per mile for paved or oil and chipped
22 roads will not begin to allow for adequate structural
23 repairs.

24 Our municipalities are financially
25 strapped to be able to resurface any road with

1 bituminous surface in today's economy. The day is
2 coming upon us when oil and chip will be out of their
3 reach. The failure to pass House Bill 2133 leaves road
4 supervisors in the untenable position of relying upon
5 such small bond amounts, effectively municipal
6 protection. To ensure the integrity of our county
7 roads while facing the continuous escalation of
8 material cost and unbelievably rapid growth of
9 thousands upon thousands of heavy loads using our
10 roads.

11 Greene County is an industrial economy.
12 We are the heart of coal and coal bed methane in this
13 Commonwealth. Quickly we are becoming a hub of
14 exploration and development of the Marcellus shales.
15 The heavy trucks carrying the drilling equipment as
16 well as the materials, water and waste water for the
17 development fracturing and maintaining of the sites
18 are having a serious impact on our roads, and will
19 lead to a great financial impact on our municipalities
20 and the Commonwealth.

21 The current bond limits obviously do not
22 provide an adequate bond maximum to recover damages.
23 If the operator does not cooperate to make a suitable
24 arrangement with the municipal bodies to contribute to
25 the repair, the property owners may be faced with tax

1 increases they cannot afford. Increases in local taxes
2 will not be borne owned by those benefiting from
3 leases or royalties. They will be born by everyone.
4 Because the Supreme Court tied the hands of taxing
5 bodies in 2002 by declaring that gas and oil are not
6 assessable, local governments are further hindered in
7 regaining revenue from operators who do not agree to
8 contribute beyond the bond maximum.

9 The Greene County commissioners recently
10 experienced a total collapse of a posted county bridge
11 located on a township road as a result of an
12 overweight truck serving a drilling site. We need to
13 replace that bridge and the cost is nearly \$1 million,
14 to say nothing of the cost associated with the long
15 detour in effect until that replacement project is
16 completed.

17 Therefore I can confirm we very much
18 appreciate the support within the bill requiring
19 regulations to reflect a rebuttal presumption in favor
20 of the municipalities for damages sustained to roads
21 posted with weight limits.

22 Thank you for your interest and attention
23 to this critical facing the municipal bodies within
24 the Commonwealth. The passage of House Bill 2133 will
25 provide necessary relief to our local officials as

1 they strive to meet the needs of their community.

2 CHAIRMAN MARKOSEK:

3 Okay. Thank you. Mr. Groves, do you have
4 anything to add?

5 MR. GROVES:

6 No, I was just here to answer any
7 questions.

8 CHAIRMAN MARKOSEK:

9 Okay. Representative Longietti.

10 REPRESENTATIVE LONGIETTI:

11 I just wanted to thank you for your
12 testimony, and your support of the legislation. I
13 agree with you it's critically important. And I just
14 really would like to make a comment. You don't
15 necessarily have to react to it. When you look at the
16 bill number, you see 2133, and that means there were
17 2,032 pieces of legislation that were entered before
18 it. And I can't remember what it's up to now, but I'm
19 I'm thinking it's in the four thousands, at least in
20 the three thousands.

21 So you can see a lot of legislation gets
22 introduced. And even though legislation is a good
23 idea, it doesn't necessarily move forward. It really
24 talks muscle to move or go forward, to have a hearing
25 about this. And I guess what I'm here to say is that

1 this involvement and your representative,
2 Representative DeWeese, who got involved very early
3 on, provides this legislative muscle that gets us to
4 the place where we're at today and should hopefully
5 the passage of the bill and refinement if necessary.
6 So I just wanted to make a comment.

7 CHAIRMAN MARKOSEK:

8 Okay, thank you. Mr. Groves?

9 MR. GROVES:

10 I'd like to say that I appreciate this
11 bill. It's been needed for a long time. But all of
12 this is very rural. If everybody looks through it. We
13 have two primary drillers in our township and we video
14 the road and they video the road. And we've reached an
15 agreement that basically two and a half short wells
16 are one well. And we figured out the traffic based
17 upon that. And before the second bond we agree upfront
18 your responsible 62 percent and we're responsible for
19 39. This is going to do when it's all finished.

20 We haven't had a problem. I just wanted
21 to Mr. D'Amico, is the two companies that you
22 represent in our township, we've been doing very good
23 with it. But we've been tolerable. At one time we had
24 it fixed through their use of it but we all had FEMA
25 prices on all of our equipment and our workers. So we,

1 you know, established what the rates are so that we
2 don't ever charge it.

3 Here's where our FEMA rates are. Here's
4 what the material was, so either you fix or we'll fix
5 it. And if we fix it you got to pay us. We got a
6 check like that. So no, you have to tolerate some of
7 this but you have to work it to make it work. And it's
8 very workable.

9 I don't like going county wide. So you
10 know, we have to represent the people properly and we
11 have to fair in dealing with these people. We are
12 doing but the money's not right. It's got to be
13 better.

14 CHAIRMAN MARKOSEK:

15 Okay. Gentleman, thank you very much. I
16 appreciate this.

17 MR. GROVES:

18 Thank you.

19 CHAIRMAN MARKOSEK:

20 Thank you. Okay. We promised that we'd
21 let the public have two minutes. I want to give Bill
22 DeWeese the last word, but if anybody else wants to
23 speak. I don't think there was anybody on the sign up
24 sheet.

25 MR. KELLER:

1 I signed.

2 CHAIRMAN MARKOSEK:

3 Sir, you may --- come forward. Did
4 anybody else? State your name, please into the
5 microphone. Good afternoon.

6 MR. KELLER:

7 Thanks sir. My name is Bob Keller. I'm a
8 supervisor in Morris Township here in Oakley.
9 Presently we're in the process of having Marcellus
10 shale wells drill in our township. Just to contemplate
11 the wells --- the present well that's being drilled
12 started in January. It's still existing, the well,
13 preparations, and pipelines and so on.

14 One of the big problems we have is road
15 damage. But the time of the years that the roads are
16 damaged the worst we have no recourse. We have no way
17 of stopping the drilling. From about February until
18 the 1st of April, the damage is horrendous. Near
19 destruction. We've had our mail lady stuck in township
20 roads trying to deliver the mail. Local residents that
21 we had to go pull out.

22 We contact these companies and there's a
23 chain of command. So from the time we place a
24 complaint it might be two or three weeks before we're
25 even able to do anything with the damage unless we

1 take it upon ourselves. And once the damage is
2 completed we document material and time and sometimes
3 we're reimbursed. Sometimes we aren't. Most of the
4 companies don't want to do anything whatsoever until
5 the wells complete. And I mean whatsoever.

6 They might bring in a drag, smooth the
7 road. As soon as it rains the damage is back. We have
8 extremely wet summers so we dealt with damage
9 throughout the entire summer. One of the things that I
10 think that we need to do is increase the bonds, of
11 course. But we really need to take a look at possibly
12 --- we would have an extended period of time like ten
13 months if it's going to be through the all seasons,
14 the company should be made to put into their budget
15 for that particular well site, the repairs to that
16 roadway prior to the actual drilling or the actual
17 extraction of gas or the actual completion. And even
18 in incidents Marcellus shale we know that there's
19 bound to be less wells because of the horizontal
20 drilling. They can do about a mile under ground so
21 that's a lot less wells. So the profit I would assume
22 would be much more significant from a single well.

23 So why we couldn't it be something that
24 says if you're going to be in there ten months you
25 have to repair that road to withstand that ten months

1 of pounding prior to starting. That would make all of
2 our lives a whole lot easier and that would be put the
3 burden on the driller as opposed to the Township.
4 Thank you.

5 CHAIRMAN MARKOSEK:

6 Mr. Keller, thank you. That's why we're
7 here to hear suggestions. Those are good suggestions.
8 Thank you.

9 MR. KELLER:

10 Yes, sir.

11 CHAIRMAN MARKOSEK:

12 Anybody else from the public? Nobody
13 else signed the sheet, Jonathan? I'm going to give
14 the last word to our host, Representative DeWeese.

15 MR. DEWEESE:

16 I'd just like to thank the Chairman and
17 the Committee members for being here on behalf of our
18 Township officials and our citizens. Thank you.

19 CHAIRMAN MARKOSEK:

20 Okay. Thank you. I want to thank the
21 members for attending. Meeting adjourned.

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24 HEARING CONCLUDED AT 3:00 P.M.

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