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GOVERNOR
OF THE COMMONWEALTH OF VIRGINIA

BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON HIGHWAYS, TRANSIT & PIPELINES

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Introductory Remarks by Governor Timothy M. Kaine

Good morning Mr. Chairman and members of the Subcommittee. It is an honor to testify before the Committee today on an issue of such great importance to the Commonwealth of Virginia.

Virginia is a logical choice to testify on contemporary public-private highway transactions. We have nearly two decades of experience in private financing for highways and are widely regarded as a national leader in this area. Many of our sister states seek the advice of Virginia on how to create their own programs of private partnerships.

As Governor, I am responsible for the third largest highway system in the U.S. and have oversight responsibility for the fastest growing port on the east coast, some of the fastest growing airports in the country, and some of the largest and fastest growing transit and rail programs in the country. I previously served as the mayor of the City of Richmond, with local responsibility for highways, a port, and transit and rail services.

These responsibilities require a constant stream of very difficult decisions, all very much in the public eye, and all subject to review by federal agencies, local governments, advocacy groups and the legislative branches of government.

If I can leave you with a single message today, it would be that no one size fits all. What works in Northern Virginia won't work in Southwest Virginia, much less Indiana or Illinois.

While my testimony today will focus on highway transactions, understand that some of our most exciting private partnerships exist in non-highway programs--a privately-financed port that opens next year in Portsmouth; private landowners stepping forward to pay 25% of the cost of the first Metrorail extension in the Dulles Airport Corridor; and private railroads meeting defined public benefit targets in exchange for capital cost sharing.

With this broader context as background, I would like to share some of our guiding policies and lessons, particularly as they relate to our innovative programs in highway finance.

First, true public-private partnerships are not free. Someone has to pay a toll or a special tax, share in the risk of a project, or dedicate private funds that might otherwise go to private sector profitability.

Second, the public sector has an obligation to ensure that a public-private partnership addresses a genuine public need. For example, we believe that public-private partnerships, primarily through tolling, could address up to twenty percent of our long-term highway needs. However, we cannot, and should not, ignore the remaining eighty percent of unmet needs.

Third, the benefits of a public-private partnership should accrue to the toll-payers or tax-payers or risk-takers, in proportion to their contributions. This requires a serious business model--not the customary method of making everyone a little bit happy, but real-life business decisions that are guided by hard arithmetic and an unwavering commitment to the public good.

Fourth, the decision to enter into a public-private partnership, as well as the implementation of that partnership, needs to be open to the public. Protection of bargaining rights and proprietary information can exist in a climate of transparency and accountability.

Finally, even within our highway programs, and public-private partnerships, there is room for innovation and multi-modal thinking.

- Our private partnership programs, along with our traditional highway programs, are beginning to ensure the integration of transportation and land use.
- The Pocahontas Parkway, our first highway concession (the third in the country) provides for access to the Richmond airport.
- Our HOT Lane projects on I-95, I-395, and I-495 in Northern Virginia will bring together and fund highway infrastructure, demand management programs, and bus rapid transit services. For those of you who have the pleasure of commuting in these corridors, this is one of our few opportunities for meaningful improvement in the foreseeable future.
- Our current solicitation for a public-private partnership on Rt. 460 in Southeastern Virginia will, hopefully, bring together and fund highway infrastructure, freight rail improvements, and intermodal

services to serve the Port of Virginia, the Atlantic Fleet in Norfolk, and the metropolitan areas of Richmond and Hampton Roads.

- Our Dulles Corridor program brings together and funds connections among Metrorail, Dulles International Airport, and the Dulles Toll Road, a significant element in the National Highway System. Several private partnerships, consistent with the above four principles, are embedded in our Dulles Corridor program.

Let me conclude my opening statement here by acknowledging Virginia's special role. Like all states, we are stewards of the federal highway and transit systems funded by the federal government. As home to the Atlantic fleet, the Pentagon, and a majority of the federal workforce in the Washington region, we have a special stewardship responsibility. We take that responsibility very seriously. Some of the very tools being discussed here today will help us meet that responsibility.

Thank you for your time. I will be happy to answer any questions you may have.

Detailed Statement of Governor Kaine

Funding Levels of Construction & Public-Private Programs

In the last 5 years, Virginia's publicly financed highway construction program has totaled $7.3 billion. Of that $7.3 billion, $3.0 billion, or 41% was federal funding while $4.3 billion was state funding, including bonds. In our proposed program for the upcoming six years, federal funding will be more than 75 percent. Our federal partners are critical to our traditional highway building program and our public-private partnerships as well.

As of May 1, 2006, Virginia has completed 3 highway construction projects under our public-private law. Another 4 are under agreement and 7 are under active negotiation or consideration. These projects, if all come to fruition, total more than $17 billion in transportation investments – the equivalent of what it would take to complete all the projects in our current highway construction program.

Of that $17 billion, about half has the potential to be private funding, repaid with tolls, special taxing districts, or other payment structures. It has only been in the last two years that Virginia has seen risk capital "brought to the table" by the private sector.

The First Virginia Concession – Pocahontas Parkway

We have announced and will execute by June 1 our first concession agreement with Transurban, an Australian company, for the Pocahontas Parkway which links Richmond International Airport with areas south of our state capitol. This 99-year agreement is worth more than $520 million to the Commonwealth.

The agreement is the first in the United States that includes revenue sharing between the public and private sectors and a "termination for convenience" clause in exchange for the right to operate and maintain a roadway. Toll rate caps have also been kept at a lower rate than other concessions. The Commonwealth will continue to assume some risk with environmental issues.

Virginia's History of Public-Private Highway Finance Transactions

In addition to traditional tolling, the current options for highway financing have been building since the late 1980s. The Highway Corporation Act of 1988 authorized the construction of the Dulles Greenway, a private road supervised by the State Corporation Commission (like a public utility).

The limitations of this Act led to Virginia's Public-Private Transportation Act of 1995 (PPTA). The PPTA, which underwent a significant revision in 2005, outlines the public policy goals of private financing. These goals are: more timely, more efficient, or less costly project delivery. In revising the law in 2005, we partnered with the private sector and used our 10 years of experience to improve our program.

During the 2006 General Assembly session, policy guidance for private concessions was incorporated into our state law. Two key components of this legislation were policy guidance on the use of any concession payment and tax liability. Concession payments must be used to provide a TRANSPORTATION benefit to the users of the facility. Our concession legislation, a bipartisan effort, dedicates any concession payment to a transportation purpose in the corridor and/or to benefit the payers of the tolls. Private entities are afforded the same property and local license tax exemptions as a public sector entity. These are important policy goals and business principles.

Virginia has always been one of the first states to take advantage of new federal authority and programs as it has been made available. These include State Infrastructure Bank (SIB) legislation, Transportation Infrastructure Finance and Innovation Act (TIFIA) authorizations, and Section 129 tolling agreements. In addition we have successfully applied for congestion pricing, value pricing, and pilot interstate tolling slots. Virginia also has an extensive network of high occupancy vehicle lanes and ITS-enabled facilities. In fact, the successful delivery of the Pentagon work force is highly dependent on the I-95 HOV lanes.

Observations about Public-Private Transactions

First – not every highway expansion project is a candidate for public private financing. One size does not fit all. Virginia has more than 70,000 miles of roadway. The majority of these are local roads which do not have sufficient volumes to support tolling. They are not candidates for private innovations other than design-build with public funds.

The fundamental premise of what public-private financing, including concession agreements, are based on is tolling a facility at a price that the market will bear. To toll and be successful, you must have traffic volume. Last year, the U.S. Chamber of Commerce released its report, “Future Highway and Public Transportation Financing.” The report noted that, optimistically, private investment in today’s public infrastructure could finance at most twenty percent of the capacity that is needed.

Second – our laws and structures can be in conflict about the opportunities they provide to the private marketplace and end up impairing investment. In Virginia, we have worked to identify those impairments and address them with sound public policy.

SAFETEA-LU, the current transportation reauthorization, continues to move us in the right direction but implementation can take time. Virginia’s first concession agreement contemplates a partial refinancing of the Pocahontas Parkway so that an expansion of the facility can be constructed. We worked last year with this Committee and others to clarify that TIFIA loans could be used for refinancing. Timely rulemaking or regulatory innovation will be required to meet the demands of this project and this partnership.

The National Environmental Policy Act or NEPA is an important public protection law. We need to work together and figure out how to keep the public engaged but reduce how long the process takes to complete. If, for example, congestion pricing is being implemented, economic forces must be considered. Our federal processes must balance these forces with the environmental and community protections that NEPA encompasses.

Third, funding for our core public infrastructure program must be stable and reliable. While private equity investors are willing to take financial risks, they are not as willing to step into an environment of uncertainty and long-term decline. I am concerned with the fiscal health of our federal highway trust fund as well as the sustainability of our highway construction program in Virginia with declining revenues.

In February, the Assistant Secretary for Budget and Programs testified to this Subcommittee on the fiscal health of the Highway Trust Fund. She reported the continuing downward trend in the cash balances in the Highway Trust Fund – expenditures are outstripping revenues. By the end of

SAFETEA-LU in 2009, the Trust Fund is expected to have a negative cash balance of $2.3 billion.

Virginia has its own highway trust fund whose structure hasn't changed or its funding sources in 20 years. Today, more than 50 percent of it must be used simply to maintain our current highway system. While private funding can help, it can't solve this fundamental public policy and fiscal issue. Our General Assembly continues in a special session to try to meet our long-term transportation funding problem.

The problem in part is from economic growth and vitality that our private partners want to leverage. In the last twenty years, 775,634 single-family housing permits have been issued in Virginia. Our transportation system faces the demands of a growing population – up by 24% in 20 years. The number of licensed drivers has grown 34%, registered vehicles 56% and vehicle miles of travel 71%.

Our transportation industry, including the Department of Transportation, is delivering more than 80% of our projects on time and on budget. The core issue is not performance or who delivers. The issue is funding, whether public or private.

Potential private investors are telling us that this uncertainly in traditional transportation funding is causing them to reconsider taking a risk in Virginia. They recognize, as each of us should, that we cannot turn our entire roadway system into a series of toll roads or special tax districts. The public sector must be a strong, fiscally sound business partner.

The last observation, Virginia has completed three major public-private projects in the last 3 years and has signed its first concession agreement and is negotiating two additional agreements. Each one has been unique and addressed different needs and issues.

The ink needs to dry so that perspective can be gained on these public-private transactions. If we all immediately turn to the private sector for financing, we run the risk of losing optimal pricing for our roads. We also run the risk of not negotiating the best business terms for the public good. Reasonable time is not an enemy of public-private partnerships, nor is learning from missteps along the way.

Virginia has leveraged private sector investments for almost 20 years in meeting our transportation challenges. While the private sector, in its purest form, looks at these investments for their return on investment, elected officials also have a responsibility to ensure that competition, transparency and accountability are a part of our actions.

As maintaining and operating our highways consumes larger shares of our funding, the private sector does provide part of the solution. For those projects that can be developed through a public-private partnership, investors want to be assured of a solid, sustainable public partner. That balance is what must be achieved.