COMMONWEALTH of VIRGINIA

TESTIMONY

OF

The Honorable Aubrey L. Layne, Jr.

Secretary of Transportation

Commonwealth of Virginia

Regarding

New Routes for Funding and Financing Highways and Transit

Before

The United States Senate Finance Committee

On

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Introduction

Chairman Wyden, Ranking Member Hatch, Senator Warner and other members of the Senate Finance Committee, thank you for the opportunity to provide input on the importance of sustaining and increasing federal investments in surface transportation infrastructure. My name is Aubrey L. Layne, Jr., and I serve as the Secretary of Transportation for the Commonwealth of Virginia. My testimony today addresses the implication of the pending insolvency of the Highway Trust Fund and the lack of a fully-funded, long-term surface transportation bill on the Commonwealth of Virginia.

Over the last 18 months, there have been numerous witnesses before Congressional committees and reports from the Congressional Budget Office and the United States Department of Transportation that detail the dire state of the federal Highway Trust Fund. For those reasons, I will not discuss in detail the financial status of the Trust Fund, except to say that a significant infusion of revenue is necessary to avert negative balances in the near future.

Prior to being appointed by Governor McAuliffe as Virginia's Secretary of Transportation, I served former Governors Kaine and McDonnell as a member of the Commonwealth Transportation Board for five years. I also served on the Chesapeake Bay Bridge Tunnel Commission for five years, most recently as Chairman of the Board. In these positions I was involved in several major public-private partnership projects. I have had a successful professional 30-year business career serving, as President of a large retail company, and President and Principal Broker for one of the largest privately owned multifamily real estate companies in the Mid-Atlantic region where I was responsible for all operations and financing activities. I began my professional career as an auditor and certified public accountant for KPMG after graduating from the University of Richmond with a degree in accounting. I also hold a master's degree in business administration from Old Dominion University.

As Secretary of Transportation, I oversee the Commonwealth's seven transportation agencies – the Virginia Department of Transportation, the Department of Rail and Public Transportation, the Virginia Port Authority, the Department of Motor Vehicles, the Virginia Department of Aviation, the Virginia Commercial Spaceflight Authority and the Motor Vehicle Dealer Board. Collectively, these agencies employ more than 9,700 staff and have a combined annual budget in excess of $5.7 billion.

I am also the chairman of the Commonwealth Transportation Board. This Board administers, distributes, and allocates funds in the Commonwealth's Transportation Trust Fund, which provides funding for surface transportation capital improvements and maintenance activities.

Guiding Principles

Before I outline Virginia's transportation program and the importance of the federal-aid program to the Commonwealth, there are a few key points I would like to highlight.

- The federal government has and should continue to have a strong role in surface transportation. Transportation infrastructure is critical for the movement of commerce – both people and goods. Investments made today by transportation agencies will improve the ability of people to participate in the economy.
- While states like Virginia are stepping up and raising revenues, states can only do but so much. States, MPOs and transit agencies need a strong and reliable federal partner to help address pressing transportation needs like state of good repair and congestion mitigation.
- The solutions to resolve the federal surface transportation needs must be long-term and address all modes of surface transportation – highways, transit and rail. There needs to be discussion about growth in the program – patching the hole is only a short-term solution.

Virginia's 2013 Revenue Package

Virginia has struggled with solving its transportation funding situation for a number of years. There have been a number of proposals advanced in fits and starts that were intended to address the problem for the long-term but ultimately fell short. These include the Virginia Transportation Act of 2000, the 2002 regional sales tax referendums, House Bill 3202 in 2007 and other packages that were not enacted.

As you may know, last year a major revenue package that will provide long-term benefits was enacted. It was the first of its kind in 27 years. This package was passed by a Republican-led General Assembly and Republican Governor who worked across the aisle with Democrats. The final bill contains a number of provisions and represents a compromise by all sides. While no one was happy with all of the provisions in the bill in its final form, it passed both chambers of the legislature with close to a two-thirds majority.

The bill modifies a number of statewide taxes. First, the bill eliminated the 17.5 cents per gallon tax on gas and diesel and replaced it with a sales tax, 3.5% on gas and 6% on diesel. This ultimately represented a cut in the gas tax. To ensure that a certain amount of revenues would be generated from the sales tax on fuel, a "legislative floor" for the wholesale price of gas and diesel was established for the basis of determining the sales tax on gas and diesel. This provision has turned out to by very important, as the current wholesale price of gas is approximately 60 cents less than “legislative floor” price.

The package also raised two existing sales taxes to support transportation. The statewide retail sales tax was raised by 0.3%, with 0.125% being dedicated transportation improvements and 0.175% to support the maintenance and operations of the highway network. In addition, it raises the motor vehicle sales tax by 1.15% over a period of three years. These two sources represent the bulk of the new statewide revenues generated by this package.

A portion of the existing retail sales tax is transferred from the General Fund to the dedicated transportation fund over a 4-year period. The amount to be transferred was to be up to 0.175% sales tax, however the 0.075% was contingent upon the Congress passing the Marketplace Fairness Act. At this time only 0.1% has been transferred.

The bill also establishes a structure by which if Congress enacts the Marketplace Fairness Act a majority of the sales taxes collected from online retailers would be dedicated to transportation purposes. Of the total 5.3% state sales tax, 3.05% would be used for transportation. This is significantly more than the existing retail sales tax. In the event that Congress does not enact this legislation, then the sales tax on gas will increase to 5.1% on January 1, 2015.

Lastly, the bill recognizes the importance and more complex needs of Virginia’s two largest metropolitan areas – Northern Virginia and Hampton Roads. It imposes additional taxes in these regions that will be controlled and allocated by regional authorities. In Northern Virginia the bill increases the retail sales tax by 0.7%, imposes a grantor tax of $0.15 per $100 of assessed value on real estate transfers, and imposes a 2% transient occupancy tax on hotel rooms. In Hampton Roads, the bill imposes a 0.7% retail sales tax and a 2.1% sales tax on gas. While not discussed as much, the new taxes in the regions will generate more revenue for transportation improvements than the statewide tax increases.

Virginia’s Transportation Program

Virginia has a multimodal Transportation Trust Fund and related accounts that help fund projects to improve all modes of transportation. In fiscal year 2015, these accounts will provide approximately $1.2 billion for projects in the Commonwealth. The 2015 Transportation Trust Fund revenues are planned to be used as follows:

- 69% is dedicated for highway construction and capital repair;
- 19.6% is dedicated for transit capital and operating support;
- 6.4% is dedicated for passenger rail capital and operating support, as well as freight rail improvements; and
- 4.9% is dedicated for port and aviation improvements.

In addition to state revenues, the Commonwealth of Virginia aggressively pursues other potential funding and financing options to help improve our transportation system. The following sources and tools have been used over the last four years:

- TIFIA loans;
- Private Activity Bonds;
- Private equity;
- Contributions from local governments;
- Contributions from developers;
- State bonds;
- GARVEE bonds;
- Toll revenues; and,
- Loans and lines of credit from the Virginia Transportation Infrastructure Bank.

The surface transportation funds, other revenues and financing tools are combined with the $1.1 billion in federal funds to develop the Commonwealth's Six-Year Improvement Program. This Program is updated every June and the current draft of the Fiscal Year 2015 to 2020 Program is $13.1 billion.

The Program outlines the planned investments of a six-year period. It includes all capital projects receiving funds. Examples include the following:

- $12.7M project to restore and rehabilitate 11 miles of pavement on I-81 in Shenandoah County;
- $31.6M freight rail improvement along the Crescent Corridor to add a double track between Nokesville and Calverton in cooperation with Norfolk-Southern;
- $2B public-private partnership to add capacity to the Midtown Tunnel, extend the MLK expressway and rehabilitate the Downtown Tunnel in Hampton Roads;

- $25M for the first year of WMATA's momentum program to improve the ability of the system to move more people through its core;
- $1.2M replacement of the Route 601 bridge over Little Walker Creek in Bland County; and,
- $95.8M project to extend passenger rail service to the City of Roanoke from the City of Lynchburg, connecting it with the Washington, DC and the entire Northeast Corridor.

Importance of the Federal Program

Even with all of the efforts and options undertaken by the Commonwealth, our program would not be what it is without our strongest partner – the federal government. Of the $2.1 billion in revenues available in fiscal year 2015 for transportation capital improvements, more than half comes from the federal government.

As you know, the federal Highway Trust Fund is facing an impending insolvency. Recent reports indicated that the Highway Account may face negative balances as soon as August and the Transit Account shortly thereafter. I want to be clear; if nothing is done to address this situation, the consequences will be dire.

In Virginia we expect the consequences of not shoring up the Trust Fund for fiscal year 2015 alone to be the following:

- 149 bridge replacements will not happen;
- 44 smaller transit systems, mostly in rural Virginia, will not have the funds to continue running;
- Over 350 other projects will ground to a halt; and
- 175 transit vehicles will not be replaced.

This outcome will impact more than 43,000 jobs across Virginia and the country. And these effects would grow over time.

In addition to these direct impacts, many states including Virginia have taken advantage of the tools provided by Congress to help advance large-scale projects through bonding backed by federal revenues. These bonds known as GARVEE are sold by a state and are to be paid back through future federal apportionments. If those apportionments are not provided then states are faced with the tough choice of canceling other projects to re-direct state revenues to pay debt service or defaulting on the bonds. States entered into these arrangements based on an understanding that future federal funds would be available.

Congress must act to shore up the federal Trust Fund. The solutions should address all modes of surface transportation, increase revenues and be long-term. The options on how this can be accomplished have been discussed at length so I will not outline them here.

The Commonwealth of Virginia will support pragmatic solutions to address this problem. The specific option of how to best address the problem should be selected by members of this Committee and other members of Congress.

I would like to note that the Trust Fund is not the only pending issue we face with regards to federal support for surface transportation. There are several key programs that are not currently included in the Trust Fund and must go through the annual appropriations process instead.

- The TIGER grant program has helped several key projects in the Commonwealth. It supported a TIFIA loan to advance the $1 billion I-95 Express Lanes project, provided $12 million to extend the life by 50 years of two structurally deficient bridges on I-64 in rural Alleghany County, and provided funds to build the first bus-rapid transit system in Virginia.

- Virginia partners with Amtrak to provide intercity passenger rail service to 23 communities across the Commonwealth. The lack of a federal partner for capital improvements hinders the ability of Virginia to expand service and meet the needs of our communities, many of which are losing air service and need connections to other parts of the Country.

- The New Starts grant program helps communities expand transit and leverages federal resources. The Dulles Rail project – arguably the most important project in Virginia and one of the largest construction projects in the country at more than $5 billion – would not be under construction without this program. Nor would my home region of Hampton Roads have its first rapid transit line – the Tide. The New Starts program provided $75 million to bring this project to fruition.

Unfortunately these programs are at risk each year and states do not know whether they will be funded in a given year. The certainty that is often discussed for the highway and transit formulas is just as important for these programs, though I find these programs are often left out of the discussion. Dedicated funding for these programs would help provide much needed certainty.

I understand there has been and continues to be a debate regarding the role of the federal government in transportation investments. As you consider these questions, I ask that the members of this Committee remember that transportation is not an end unto itself. We make investments to accomplish outcomes. A focus on whether an investment is on a particular road system or mode is not appropriate. People and goods move on all modes of transportation – not a particular road system or mode.

The focus should be on how an investment using federal funds achieves the desired outcomes. From my perspective the desired outcomes of transportation investments should be to support economic growth by more efficiently moving people and goods, and improving the ability of people to participate in the economy. At the end of the day, transportation is the backbone of our economy and investments should be considered through that aperture.

Demonstrating Public Benefit

Money alone is not the answer. There are many needs and the needs will always exceed resources. To be prudent stewards of the taxpayer funds, transportation agencies have a responsibility to ensure they can demonstrate benefit and results to the public from their investments.

The last federal reauthorization proposal, Moving Ahead for Progress in the 21st Century, started the transition towards a performance-based system. It requires states to establish targets for future performance in several areas and track performance made towards those targets.

We applaud these efforts and will take further steps in Virginia. This past legislative session, at the direction of Governor McAuliffe, I worked with the Speaker of the Virginia House of Delegates, William Howell, and other members of the House and Senate to develop legislation that will implement significant reforms for the programming of transportation funds.

The proposal signed by Governor McAuliffe requires the Commonwealth Transportation Board to develop a statewide prioritization process for capacity expansion projects. The process will establish criteria for congestion mitigation, economic development, accessibility, safety and environmental quality that will be used to rate projects. The Board will use this process to select projects for funding in our Six-Year Improvement Program.

We believe a commitment to transparency and performance is paramount. Our statewide prioritization process when up and running will help citizens of the

Commonwealth understand the benefits they will receive from transportation investments.

Financing Tools and Public Private Partnerships

As a former businessman, I understand the importance and benefits of having financing and other project delivery tools at your disposal. In Virginia we have used a wide range of financing tools and partnered with the private sector to delivery large scale transportation projects.

Federal tools like TIFIA and private activity bonds are helpful to bring large, complex projects to completion. Since 2005, Virginia has received the benefit of more than $1.4 billion in TIFIA. In 2011 an Office of Transportation Public-Private Partnerships was established to allow the Commonwealth to better partner with the private sector on projects. For this reason, I support proposals like Senator Warner's BRIDGE Act. These additional tools would help us advance projects moving forward.

However, I want to address a misconception that I have heard expressed by some. Financing and public-private partnerships are not silver bullets and cannot address many of the pressing transportation needs faced today. In fact without sustainable funding, states cannot take advantage of financing tools and would be unable to partner with the private sector.

The major benefit of public-private partnerships is the transfer of risk from the public to private partners and the private sector must be rewarded for taking on that risk. While this is possible for large-scale projects like the 495 Express Lanes in Northern Virginia, it will not work to reconstruct aging pavements on Interstate highways.

It is also important to remember that there are two "P"s before partnership in P3s – public and private. Without public sector funding the risk is too high to attract private investment. An often cited example of a successful P3 deal is the already mentioned 495 Express Lanes. However, in the initial deal only $348M of the $1.9 billion price tag did not involve some form of public support. The funding for deal is as follows:

- $495 million in federal highway trust fund and state funds;
- $589 million in TIFIA loans, publicly subsidized loans with favorable terms;
- $589 million in private activity bonds, publicly subsidized bonds through tax breaks provided to bond holders; and,
- $348 million in private equity.

Without public funding this project could not have been advanced. At the same time without the federal financial tools this project would not have been constructed

Conclusion

In closing, the problems that are faced are significant and the consequences too great to ignore. Many states like Virginia are doing their part to address this problem but we need a strong, reliable partner in the federal government.

The solutions to this problem have been identified. At this point it is a matter of Congress' willingness to take the necessary steps to implement them. Failure to do so will hinder the economic growth of this country.

The Commonwealth of Virginia and its partners – metropolitan planning organizations, transit agencies and local governments – stand ready to partner with the federal government and deliver a transportation system that will promote economic competitiveness.

I hope that over the coming months Congress will do its part and solve this problem in a cooperative, bi-partisan fashion.

Thank you again for the opportunity to address this Committee on an issue of vital importance to our nation's economy.