Testimony of the Associated Pennsylvania Constructors
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Before

Senate Transportation Committee
Public Hearing on
"Act 84 of 2022 and Improving Pennsylvania's Major Bridges"

Southwestern Pennsylvania Commission
Two Chatham Center, Suite 500 112
Washington Place | Pittsburgh, PA 15219

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Chairman Langerholc, Chairman Flynn, and members of Senate Transportation Committee, thank you for the opportunity to testify and comment on Act 84 of 2022 and Improving Pennsylvania's Major Bridges.

The Associated Pennsylvania Constructors (APC) is a trade association that unites more than 400 members including prime and subcontractors, consulting engineers, material suppliers, manufacturers, and others with an interest in Pennsylvania's road and bridge construction industry. The association has been serving the industry for over 90 years and represents the majority of actively bidding contractors in the Commonwealth's $2 billion highway industry.

PennDOT's Capital Program Still Needs Legislative Action

Since passage of Act 89 of 2013, investment in Pennsylvania's highway program has resulted in increased construction activity across the Commonwealth. The attached Annual Letting Chart shows that the passage of Act 89 in 2013 caused lettings to increase dramatically from a $1.6 billion program to an average of $2.5 billion. *Note: a "letting" is defined as a construction project put out for public bid.*

However, due to increased Motor License funds budgeted to State Police operations, decreasing buying power, and greater fuel efficiencies of motor vehicles, a decline in annual lettings started to occur in 2018.

In 2020, the transportation letting program "crashed" to a $1.5 billion level which was the lowest level since 2006. While this crash was the result of the COVID-19 pandemic you can see that the downward trend of construction lettings was already underway before the pandemic year.

Since 2020, PennDOT's capital program has been struggling to recover just to get back to the Act 89 levels of 2013.

We appreciate the General Assembly's actions in 2021 that provided a one-time $279 million line item to stabilize PennDOT's letting program. Without that, PennDOT would have lacked the ability to have proper cash flow reserves to maintain its program.

In November of 2021, Congress enacted the Infrastructure Investment & Jobs Act (IIJA) which provided the largest federal increase in infrastructure funding since 1993. This five-year bill will allow PennDOT to boost its program back to an average $2.5 billion annual level—but again, that is the same level we maintained following Act 89 now almost 10 years ago.

Another area of concern is that increased federal IIJA funds need to have a respective state match to obtain them. PennDOT estimates that for Pennsylvania, this means that the General Assembly will need to come up with nearly $1 billion over the next five years.

The General Assembly took a step forward in coming up with these matching funds by accelerating the funding for the State Police out of the Motor License Fund. This money—nearly $175 million—will start this process of providing matching funds for the IIJA. But the job is not complete.

APC asked the General Assembly over the last two budget cycles to provide a portion of the COVID relief money and/or budget surplus funds to help stimulate PennDOT's highway program.

In light of recent large budgetary surpluses, unspent COVID relief monies, and a large balance in our state's Rainy-Day Fund, we believe this can sensibly be done by transferring all of the money allocated to the State Police within the Motor License Fund. This will now free up $500 million annually for PennDOT's highway program and to meet IIJA matching obligations and provide debt service to fund bridges.

Electric Vehicles Should Pay For Road Use

Finally, while additional state funds will be necessary to maintain IIJA federal funds, the General Assembly cannot ignore an ever-growing "leak" that is occurring in our highway funding program.

As more and more electric vehicles are sold to consumers and run on our roadways, fewer and fewer highway user fees will be paid into the system, which is the core of how PennDOT's capital program is funded.

Recent data shows that in 2019, 9,784 electric vehicles were registered in Pennsylvania. In July 2022, that number is now 31,022—a threefold increase. These 31,022 vehicles are paying no fuel taxes for their use of the state's highway system while still contributing to the wear and tear of the infrastructure asset. We would strongly encourage the General Assembly to take up legislation today requiring all vehicles regardless of fuel source to pay their fair share for using our state's infrastructure.

Public Private Partnership Procurement: Needlessly Risky and Costly

APC opposes the proposed of Public Private Partnerships as a means to deliver these projects for several reasons.

Public Private Partnerships are misrepresented as low-cost new funding for highway projects that create innovative solutions and add substantial work for local engineering and construction firms. However, upfront costs, the high cost of private financing and owner oversight costs can drive the cost of P3 delivery much higher than municipal bond financed Design Build project delivery.

P3s are typically riskier for government owners than for the private developers involved, as the government may be required to step in to assume costs and liabilities if costs exceed estimates. The fact that a cost benefit analysis has yet to be completed on the proposed Bridge P3 has the industry skeptical of the financial viability of P3 procurement.

P3 projects are typically secured by a guaranteed availability payment to the developer. It is our understanding this model is still contemplated by the Department, even without a financing element. Availability payments are paid for by the government agency securing the contract with the private concessionaire over a predetermined timeframe, usually 30 to 50 years.

Inclusive in this availability payment are costs not typically incurred by the government agency with their more traditional delivery methods. These costs include concessionaire return on investments in the 10 to 15% range, carried interest charges by the equity partners of the concessionaire team which can be in the 8 to 12% range, legal fees associated with the bond holders for the financing portion of the project, higher profit margins by the contracting teams which are typically 50 to 100% higher than a traditionally bid project, more double markups on multiple tiers of contractors used on these type of projects, higher interest rates than General Obligation bonds and higher insurance rates than typical PennDOT contractors incur due to the risker nature of the delivery method.

APC is concerned that if these projects go forward without proper cost analysis, the Motor License Fund will be unnecessarily burdened. On many P3 projects, costs are underestimated resulting in the highway funding system having to pay for cost overruns guaranteed to the concessionaire.

Finally, Commonwealth Court, in a unanimous decision, declared the Major Bridge P3 Project null and void. This would raise serious questions about the legality of continuing with the current contract.

APC Proposal – Return Funds to Motor License Fund to Pay Debt Service on Bonds for Major Bridges

To fund these bridges, PennDOT can access lower cost financing through the municipal bond market. The debt service can be provided if the General Assembly would authorize bond financing. $2.0 billion in General Obligation bonds would require about $150-$175 million per year for debt service. The bond issuance could be phased in over a period of years.

While, in the FY 2023 budget, the General Assembly reduced the amount of MLF funds being shifted to the State Police, the Motor License Fund is still providing $500 million per year to a General Fund that has a surplus and COVID relief monies at its disposal.

This proposal would have the support of the public. Our research shows that 64% of Pennsylvanians oppose diverting transportation funds for non-transportation uses.

We want to be clear; State Police operations need to be funded. This proposal simply frees up Motor License Fund revenue for bridge repair and other projects while funding law enforcement from surplus General Funds.

Conclusion

We believe that Public Private Partnerships are misrepresented as low-cost innovative infrastructure solutions that add substantial work for local engineering and construction firms. However, upfront costs, the high cost of private financing and additional necessary owner oversight often drive P3 project delivery costs much higher than municipal bond financed Design Build project delivery.

By accelerating a phase down of Motor License Fund monies currently going to the General Fund for the State Police, PennDOT could bond finance needed repairs to major bridges and procure engineering and construction by conventional procurement and Best Value methods.

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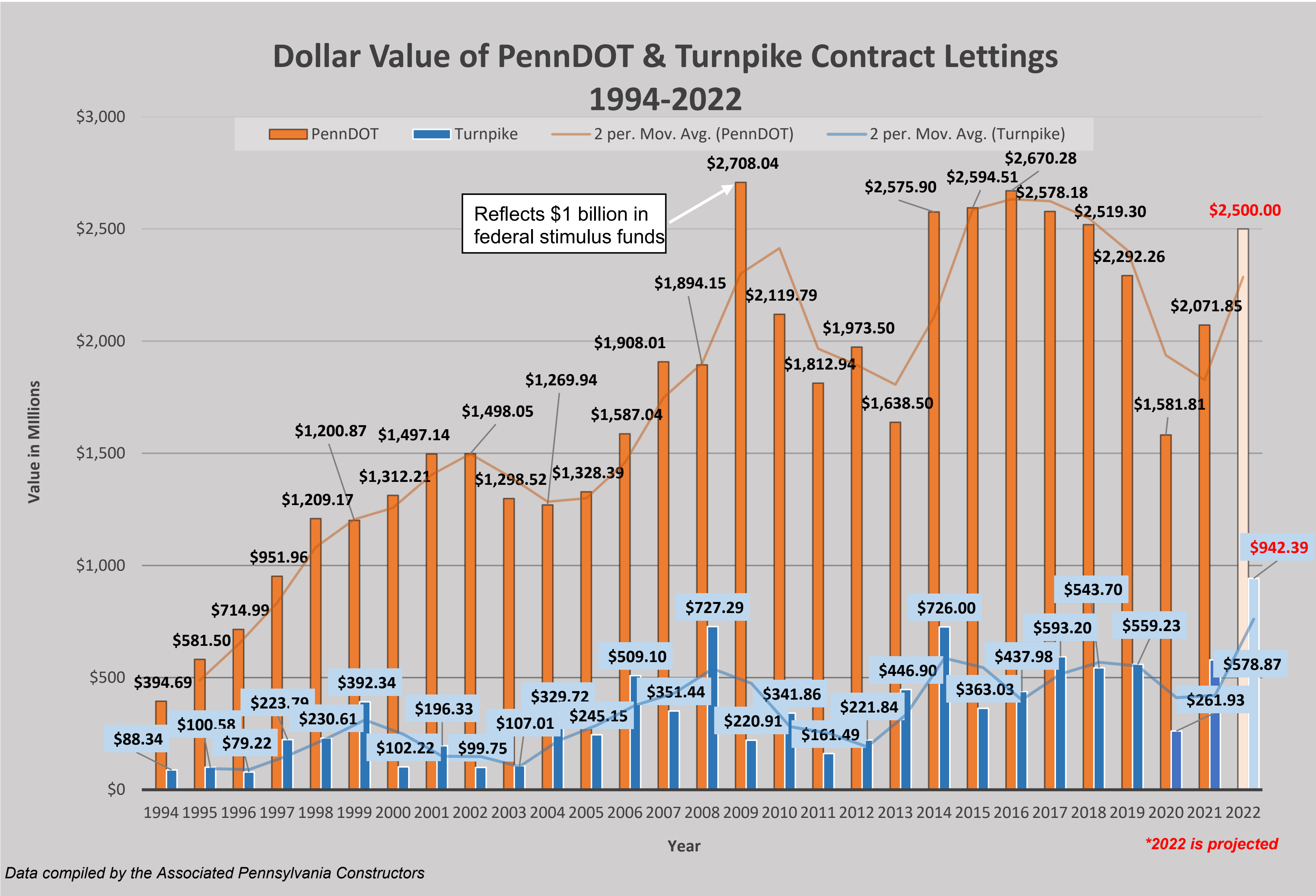

Dollar Value of PennDOT & Turnpike Contract Lettings 1994-2022
PennDOT
Turnpike
2 per. Mov. Avg. (PennDOT)
2 per. Mov. Avg. (Turnpike)
Value in Millions
$3,000
$2,500
$2,000
$1,500
$1,000
$500
$0
Reflects $1 billion in federal stimulus funds
$394.69
$581.50
$714.99
$951.96
$1,209.17
$1,200.87
$1,312.21
$1,497.14
$1,498.05
$1,298.52
$1,269.94
$1,328.39
$1,587.04
$1,908.01
$1,894.15
$2,708.04
$2,119.79
$1,812.94
$1,973.50
$1,638.50
$2,575.90
$2,594.51
$2,670.28
$2,578.18
$2,519.30
$2,292.26
$1,581.81
$2,071.85
$2,500.00
$88.34
$100.58
$79.22
$223.79
$230.61
$392.34
$102.22
$196.33
$99.75
$107.01
$329.72
$245.15
$509.10
$351.44
$727.29
$220.91
$341.86
$161.49
$221.84
$446.90
$726.00
$363.03
$437.98
$593.20
$543.70
$559.23
$261.93
$578.87
$942.39
1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022
Year
*2022 is projected
Data compiled by the Associated Pennsylvania Constructors