MINUTES
STATE TRANSPORTATION BOARD
STUDY SESSION
10:00 a.m., Wednesday, March 3, 2010
Arizona Department of Transportation (ADOT)
Human Resource Development Center (HRDC)
Grand Canyon Room
1130 N. 22nd Ave.
Phoenix, AZ 85009

BOARD ATTENDANCE

Bob Montoya, Victor Flores, Bobbie Lundstrom, and Steve Christy (telephonic), Felipe Zubia (late), Bill Feldmeier (absent)

PLEDGE

[The Pledge of Allegiance is recited, led by Victor Flores]

CALL TO THE AUDIENCE

Eric Anderson, Maricopa Association of Government (MAG) expressed his appreciation to the ADOT staff for their great work reconciling the ledgers for federal funds. He stated that it is very difficult with the lack of ongoing transportation authorization legislation and with Congress giving money and then taking it back. He added that it has been a long struggle, but the issues seem to be resolving themselves.

Chair Montoya announced a slight modification to the agenda: Item #2, and Item #4 will be reversed during this Study Session.

ITEM 1: Long Range Transportation Update – Jennifer Toth

Ms. Toth presented a video about the Long Range Transportation Plan. [A DVD providing program information was then viewed.] The DVD was the Department's Public Service Announcement, "What Moves You Arizona," for the Long Range Transportation Plan. It will be distributed to as many communities as possible to get people excited about participating in long-range transportation. She reported that one of the impressions that came out of bqAZ is that transportation is personal. People rely on transportation choices every day as an integral part of their lives. Transportation decisions affect how we get to and from work, how we get our kids to and from school, and how we shop, travel and play. Another quote heard during bqAZ was, "Planning for the future is the most valuable work that we do."

Another story that needs to be told is that we are not coming out just to do another planning study. Planning fatigue is evident and people need to understand that the Department is not redoing bqAZ, but taking another step in the long term planning process. bqAZ is the "big vision" used as the foundation to establish clear goals and objectives, linking the programming part of the Five-Year Transportation Program into the Long Range Transportation Plan.

Four different areas that were highlighted in the bqAZ:

- Multi-modal mobility. In terms of multi-modal mobility, the major goal is to develop a multi-modal system moving people and freight that offers choices and connects all of Arizona by linking the state nationally and globally. Choices, connects, and linking are extremely important when talking about mobility.
- Economic Vitality. She stressed the importance of building a seamless transportation system that efficiently moves people and goods while working towards an integrated system of roads, transit, passenger rail, non-motorized modes, aviation and freight options. These steps will ensure that Arizona's economic vitality remains strong.
- Sustainability in the environment. The third aspect of bqAZ, sustainability in the environment. Unique partnerships are being formed nationwide, such as the USDOT.5 - EPA partnership's creation of the Office of Livability within the Federal Highway Administration. This may change the way funding is received, perhaps creating more grant application opportunities. Continuation of current development patterns will cause a 48% increase in total miles driven between 2005 and 2030. To avoid an increase in current congestion, more than 400 lane miles of new roadway will need to be constructed every year in Arizona. Examination is needed to determine what that means from the standpoint of growth and development patterns. Linking the transportation aspect to land use, the environment, and economic development is something that will need to be examined.
- The first and foremost matter; safety and security. Reducing the risk of injury and property damage on or near transportation facilities is a very important component of what the Department does on a daily basis.

Differences exist between the Long Range Vision and the Long Range Transportation Plan, and clear objectives are needed to turn that vision into a plan. Priorities within that Vision need to be established, as well as methods to pay for them. Although bqAZ looked ahead to 2050, the Vision narrowed it to 2035, a more reasonable time frame in which to project revenues. She explained that while the vision is unrestrained, the Transportation Plan has to be fiscally constrained. The emphasis will be on corridors rather than on specific projects: main arterial systems rather than local intersections.

- The most important aspect of this process is performance-based planning and programming. It demonstrates how well the Department has achieved their Vision and examines how the investment choices based on the Long Range Transportation Plan have met the needs of the Plan. Avenues of input to this feedback are the Vision, trends, multi-modal needs, and public outreach to planning stakeholders as well as to the general public.
- Needs analysis and revenue projection are also extremely important. Keeping the system functioning and enhancing it are major questions that will be part of the policy setting discussion of the Long Range Transportation Plan.
- Financial Analysis. Financial analysis includes what is affordable under various assumptions, and what sources will be considered. Although an important part of that process is being financially constrained, scenario planning can be fruitful. By starting with baseline revenue and then adding additional funds, different possibilities can be explored. That is a very important discussion to have with the legislators and elected officials across the State: "Here's the vision that everybody has said and here's what we can do, but look what we might be able to do if we had something else."
- The Department is also looking at "state-of-the-practice"; what is happening at other DOTs, and how to tailor their systems to Arizona.

This entire process results in integrating outreach leadership with planning partners, such as the MPOs, Federal Highway and Administration, FTA, FAA, and FRA. We are not trying to go out and re-do everything," but are taking bqAZ to the next step. It can be equated to a personal budgeting process: All the different categories like food and housing are eqnivalent to the bqAZ and the Long-Range Vision; the percentage spent on each category is equivalent to the Long Range Transportation Plan; and finally, the dollar amount spent within each category is comparable to the programming part. This is how the overall planning and programming process will be linked by the Long-Range Transportation Plan, and it is very different than the project-specific process they have used in the past. We are moving towards a stricter edict planning document to drive those investment decisions as we move into the programming arena.

ITEM 2: Federal Rescission/Ledgers Update – John Fink

Mr. Fink remarked that he would summarize the Federal Aid Pilot Program and would begin by defining several terms:

- Apportionments are amounts distributed among the states according to federally mandated formulas or procedures commonly called "formula funds."
- Allocated funds are distributed when there are no federally mandated formulas, such as in discretionary programs, where the Federal Highway Administration distributes the funds administratively.
- Obligation Authority is an annual limitation on the total amount of apportioned funds that can be obligated to projects in a given year.

Apportionments: Generally, apportionments are received on the first day of the federal fiscal year. These funds are apportioned by category. Some examples of apportioned funds are interstate maintenance, national highway system funds, bridge funds, surface transportation program and safety funds. These apportionments are good for the year they are distributed, plus three years. However, after that point, if they are not used the apportionments lapse. The process that the Federal Highway uses when obligations are released is that the first apportionments that were distributed are the first ones used. At the end of the year, any unused apportionments carry over to the next year and then are added to whatever was unused from the prior years to give a new balance of unobligated portions. Once an apportionment is made to the state, it can only be taken away if it lapses for four years, or by Congressional action.

Obligation Authority: Obligation authority is divided among the states based on their relative shares of apportionments. Arizona generally receives about 2% of national apportionments and therefore, 2% of national obligation authority. When a project is obligated, one dollar of obligation authority has to be matched with one dollar of apportionments. Unlike apportionments, obligation authority is not category-specific and is distributed as a lump sum. When looking at fund balances, apportionments will be divided among all categories; whereas the obligation authority will be seen as one figure.

Mr. Fink pointed out that unlike apportionments, obligation authority cannot be carried over from year to year. Any unused obligation authority on the books at the end of a year will be lost. One of the Department's primary goals in managing the Federal Highway Program is to ensure that Arizona never loses any obligation authority. There is an annual redistribution of obligation authority called "The August Redistribution," basically a process by which FHWA pools all the unused obligation authority and redistributes it nationwide. Usually in late August or early September, the Department will receive a request asking how much additional obligation authority it can use. The Department then submits an obligation plan and a request for funds; the request is typically for a large sum, of which 2% of the national distribution is generally received. The Department does not receive any additional apportionments as part of that distribution.

Allocated Funds: These funds are exempt from obligation authority or include their own limitations.

Chair Montoya was curious if Arizona had ever returned any of their obligation authority funds or received more than their typical 2%.

Mr. Fink responded that he was not aware of the Department ever giving any obligation authority funding back, nor receiving more than the 2%. What typically happens is that all states request huge amounts of additional obligation authority through the redistribution process, the requested amount greatly exceeding the amount available. The FWHA then redistributes the funds in the same proportion the states normally receive.

Mr. Flores was interested in knowing if there is a tracking mechanism to see if some states or regions receive more than others in the August redistribution.

Mr. Fink replied that states do everything they can to ensure they use their full obligation authority every year, and no state wants to be the position of allowing some of their federal funds to go back to Washington and be redistributed to other states. Therefore, there is no obligation authority that results from that process, and a non-politicized process is used for redistribution.

Mr. Flores countered that there would be no August redistribution then, as everyone uses their money.

Mr. Fink answered there are a number of federal programs that are discretionary programs or other ways that obligation authority ends up back in Washington. In recent years, close to $1B nationwide has been redistributed. Arizona used to get $6-7M a year in redistribution, but over the last several years, Arizona has been receiving $18-25M a year.

Rescissions: The amount of obligation authority that Arizona receives in a given year is generally less than the amount received in apportionments. Typically that ratio is about 90%: For every dollar of apportionments the state receives, 90 cents is obligation authority. The ratio may fluctuate between 85% and up to close to 100% year to year. Since apportionments can build over several years, and since the state does not have enough obligation authority to fully use the apportionments in a given year, the unobligated balance of apportionments tends to accumulate. At one point, Arizona had up to $500-600M in unobligated balance of apportionment funds. Recalling that there must be one dollar of obligation authority for every dollar of apportionment funds, this unobligated balance is actually funding the state's lapsed obligation authority. Even though the balance grows, it cannot be used; and Arizona does not expect to ever receive enough obligation authority to use those funds.

What occurs in Washington: Congress passes a bill that creates additional spending and somebody will say that cannot be done unless the spending is offset with funding reductions in other areas. Then Congress will look around for some money to remove from the books and make it look like we actually have a balanced budget. What often happens is that some of the unobligated balance of apportionments is used as a means of creating the appearance of a federal balanced budget. This is called a rescission.

When this happens, the state will get a notice from FHWA announcing that Congress has rescinded a certain amount of money from the federal aid highway program. Along with that, the state will be asked to declare which programs they want the federal government to take the money out of. The state will then have a short period of time to prepare documentation and return the request, itemizing which programs to cut. Typically, the state's request is honored.

When the state does not have discretion to choose which programs to cut, the practice has been to implement the rescission such that the only impact is on ADOT uses of federal funds. Essentially this process holds the other sub-recipients, such as COGS, harmless in these rescissions. However, there are times when FHWA has informed the state which programs have to be cut, and then it is difficult for ADOT to hold everyone harmless. The reality is that these are rescissions of unobligated balance of apportionments that did not represent funding that the state had sufficient obligation authority to spend. The rescissions do not represent a loss of real federal funding. Arizona's share of the rescission since 2005 has been approximately $392M, which amounts to about two-thirds of the state's previous unobligated balance of $500-600M.

There have been seven rescissions since 2005, and the first four were relatively small amounts. Out of the seven, five have allowed for discretionary decisions. However, in April 2008 and September 2009, the state was restricted to minimum and maximum amounts that could be taken from each program. He showed two examples of recent discretionary rescissions. February 2005, which was $22.6M, was taken entirely from interstate maintenance funds. July 2006, totaled $12.7M, was taken mostly ($12M) from interstate maintenance and $700K from bridge funds, which was actually old apportionment money that was about to lapse.

Chair Montoya questioned why both rescissions utilized the same category of funds.

Mr. Fink responded that interstate maintenance is a category in which we receive a large percentage of federal apportionments, so it is a category that tends to build up fairly large balances. Secondly, it is one the least flexible categories available.

Mr. Roehrich commented that 'interstate maintenance" is a misnomer, in that the state is not allowed to do maintenance, and the federal government is restrictive in its use.

Chair Montoya inquired how the Department takes advantage of the restricted uses.

Mr. Roehrich replied that as the Department applies more obligation authority to other funds, more of the discretionary rescission monies can be used.

Mr. Fink added that funds like STP are very flexible and anything that we could have used interstate maintenance funds on, we can use STP funds. Funds such as the National Highway Funds can also be used on the interstates. The Interstate Maintenance Fund is not very flexible; and the Department tends to build large balances of apportionments in that category, since the Department receives the greatest proportion of federal apportionments therein.

Chair Montoya asked for an example of a project for which the Department may have used funds like STP.

Mr. Roehrich noted that the Department has rehabilitated pavement failures on the interstate system using this category. These have to be large-scale projects, not small projects like minor drainage improvement projects or box culvert extensions.

Chair Montoya was curious if the money could be used for new capacity. Mr. Fink responded that the money cannot be used for new capacity, and Mr. Roehrich concurred.

Mr. Roehrich continued that what the funds can be used for is a fairly narrow range of activities. The Department's strategy has always been to look first at the funds that contain the most money, and then the funds that are the least restrictive, such as bonus equity and surface transportation.

Mr. Fink added that the apportionments are distributed by formula, not by need. The Department tends to receive more in interstate maintenance apportionments than in other categories and funds, even though the needs may be greater in other areas.

Ms. Lundstrom commented that she does not understand the logic behind the formulas. Mr. Fink commented that he cannot explain the logic behind the formulas; they are specified in law. FHWA is simply implementing what it was instructed to do by Congress.

Mr. Christy expressed curiosity about how the rescissions were communicated to entities like PAG.

Mr. Fink answered that in the case of discretionary rescissions that were removed from categories that only impacted ADOT, there is no communication because it does not have any impact on any entities except ADOT. On the proportional rescissions, ADOT communicated after the fact as generally there is a very short period of time to make the decisions. We have to balance all this with the whole concept of making sure that the state as a whole does not lose any obligation authority. The Department has to carefully analyze proportional rescissions to ensure that funds end up in the right categories and nobody's projects are impacted.

Mr. Christy reiterated the reality of the situation is probably due to the restraints just discussed.

Mr. Fink emphasized that the Department has to balance the ledger for the entire state and cannot look at individual categories/funds when doing this. This rescission was particularly difficult because it coincided with the end of the federal fiscal year, and they had to ensure everything matched. First and foremost they had to ensure the state did not lose any obligation authority.

Mr. Christy questioned if ADOT noticed any, "hackles being raised", from any jurisdictions when they found out after the fact they had funds rescinded.

Mr. Fink replied that there was some discussion regarding this towards the beginning of the year.

Mr. McGee added that part of the instruction received from Congress required the Department to essentially wipe out the remaining unobligated apportionment balances that were in funds that the MPOs and COGs used to fund local projects. At the end of September, the Department started communicating with the MPOs and COGs about what was occurring with the rescissions. We thought we were doing an okay job, we thought everybody kind of understood what was going on, but we weren't sure that everyone really understood what had happened. A lot of people in rural areas do not deal with federal funding much, so it was even more confusing to them. In an attempt to clarify issues that had come up over the course of several months, Mr. McGee sent out a letter to all the entities, thinking that they understood more than they did. However, all it did was confuse the matter significantly. The Department started receiving letters and phone calls, and so the Department had several joint meetings with the COGs and MPOs to try to explain it more fully. Through this whole period of time, the Department has found a way to fund every local project that has come to the Department for approval. Mr. Fink and his staff have done an "excellent job" making sure these projects go forward.

Mr. Christy asked for confirmation that the MPOs are not going to be negatively impacted to any great degree by the rescissions.

Mr. McGee replied that was the case with regard to the actions taken to close out FY2009 and the rescission of apportionments the state had received through FY2009. The Department did whatever it took to keep those projects going. There is one serious ongoing issue that this rescission created that will be discussed later in this meeting.

Mr. Fink then explained the next slide, which depicted in chart form the impact of the rescissions during Federal FY2009.

Looking forward to federal FY2010, the Department started the year with a zero balance in apportionments in every category. The SAFETEA-LU continuations that Congress passed allowed the 2009 rescissions to carry over into 2010. If these are allowed to stand and Congress does not fix this problem, we will not have sufficient apportionments this federal fiscal year to fully utilize all the obligation authority that the State would be expected to receive. This could amount to a loss of anywhere from $180-$200M of federal funding for Arizona this federal fiscal year. Those losses could have significant ramifications. Funding estimates for developing the Five-Year Program are based on expectations of the amount of obligation authority, not the amount of apportionments. The Department had assumed the obligation authority level would be $600-700M. If the Department loses $200M of that, programs will have to be adjusted accordingly. Also, the sub-recipients around the State would see a loss of obligation authority, thus impacting projects.

Mr. Flores said he did not understand the relationship between the obligation authority and the rescissions.

Mr. Fink returned to a chart showing $735M in apportionments and a corresponding amount of obligation authority, slightly than 90% of $735M. These initial notices are received at the same time, and then there are subsequent notices from FHWA informing the Department of amounts they have to "turn back." He added that ADOT does not program "to the level of apportionments," but rather to the level of obligation authority.

Mr. McGee responded that for federal aid purposes, Arizona only assumes the estimated amount of obligation, whereas some states program up to the level of apportionments. When rescissions occur, these states then have to remove parts of their programs.

Mr. Zubia was curious if the 90 cents on the dollar was based on apportionment? Mr. Fink answered that it is based on apportionments.

Mr. McGee explained that when Congress passes a long-term obligation, they specify how much apportionments will go the states every year. What the Department does then is take the apportionments in the bill and assume roughly 90% of obligation authority each year, and that is what is programmed. When authorization runs out, the Department will generally assume that for the first year or two, Congress will not get a new authorization done, so we will be getting the same amount of money as we got in the last year of the last authorization. Typically that amount starts to increase by two or three percent per year.

Mr. Fink added that Arizona is known as a sliding scale state, which means the state match ratio needed on federal projects is less than that for other states. Arizona has one of the lowest match ratios of all states. Title 23 stipulates that states that have a high proportion of federal land are calculated to lower the match ratio; a typical match rate is 20% federal to 80% local, whereas Arizona's is 94% federal to 6% local.

Mr. McGee explained that federal lands can never be developed and provide a tax base, so this is a compensatory measure to help such states better utilize federal funds.

Mr. Fink then presented a slide detailing the history of highway program obligations under SAFETEA-LU. There is a huge effort underway by all the states and various stakeholders to get Congress to fix the rescission problem. He commented that the bill which was passed the previous evening to continue the highway program did not fix the problem.

Mr. Fink introduced his next topic: federal ledgers. The ledgers are an apportionment and obligation authority tracking tool that the MPOs and COGs use to track their federal funds. They are produced as a set of declining balance reports, like a checkbook. The information on the ledgers includes carrying forward balances from prior years, the OA rate for the new year, the new year apportionments and corresponding obligation authority, the activity that occurred during the year and then the ending balance of apportionments and obligation authority plus explanatory notes. New this year is that the ledgers will now be produced by Financial Management Services staff. Director Halikowski has made sure that there is adequate staffing to work on the ledgers this year, so that the COGs and MPOs would have up-to-date information. Ledgers for the first quarter of FY2010 are already complete, and meetings have begun with the COGs and MPOs to discuss the ledgers.

Once ADOT staff has reviewed the ledgers with all the MPOs and COGs, they will produce a final set of ledgers for FY2009 that will be the "official starting point" that everyone agrees to.

Mr. Flores was curious if the ledgers would then be maintained by the COGs and MPOs. Mr. Fink responded that in the past, the ledgers were maintained in the Planning Division.

Mr. Christy questioned if ample input would be available for the COGs and MPOs. Mr. Fink assured the Board that discussions would be ongoing with the COGs and MPOs and that the document they now have is a draft document open to revision. Mr. Christy wondered if this might be the source of "feathers being ruffled" that he alluded to earlier.

Mr. Fink explained that the Department had not been able to produce the ledgers on a timely basis in the past, but the commitment is now in place to do so. Mr. Zubia commented that the information in the ledgers seems straight-forward and he wondered if there would be any advantage for the COGs or MPOs to produce the ledgers or would there be problems other than timeliness with them taking it over. Mr. Fink replied that would be an option, but ADOT has to balance the books for the entire state, so it would not be a very efficient process.

ITEM 3: P3 Program Update – Detailed Presentation – Gail Lewis

Mr. McGee introduced the agenda item update. Since the passage of House Bill 2396, the Department has been working very hard with a small but dedicated staff to build an underlying foundation for what they hope will be the best Public Private Partnership program in this country. The foundation includes guidelines, policies and procedures, and professional services. Now that it is done, they are prepared to entertain proposals for P3 projects. Most of the people we have talked to about this are actually a little bit marveled that we are where we are in this program. Ms. Lewis will talk about the foundation and where we will be going from here.

Ms. Lewis began by introducing Deb Sydenham from the Department of Commerce, who is working with them on the P3s. Ms. Lewis then mentioned that her presentation is one that she has been giving to outside entities, who may not realize the gravity of the funding situation. The presentation of the existing situation sets up the need for alternate funding sources for projects.

Ms. Lewis said the federal situation is no better than the state; gas tax, the primary funding source for the Federal Highway Fund, is declining here and also on the federal level. In fact, for the last two years, the Federal Highway Fund has been declining for the first time ever, and they have had to use general funds to populate the highway funds. Due to that, transportation funds have become mixed up with the large controversial issues in Washington such as health care. ADOT is starting to hit the wall with its existing limitations in terms of funding options for the future.

P3 is a possible way to leverage our existing and declining funding sources and be able to move forward with projects that we might not otherwise have the capacity to do. In addition, P3 allows the option of transferring risk to a private partner away from the agency. P3s are dangerous in the public sense because they have gotten a bad rap in some parts of the country due to poor implementation. The public generally does not like the idea of selling transit systems, which are perceived as public assets, to the private sector. There is also the perception that P3s have inadequate public debate and deals are not being done out in the light of day.

The Randolph Sheppard Act allows the visually impaired to have preference in providing food vending operations in government facilities. It is feared that the Department can get around public procurement laws and privatize what would otherwise be public facilities, leaving out the visually impaired vendors.

She noted some uncertainties in the current investment climate:

- questionable availability of funds
- what type of return do individuals get from funds invested in public/private partnerships
- should it be the state's responsibility or private partners' responsibility to help guarantee a certain level of investment

There is also the fear that the State will get caught up in extended negotiations with private partner that will come to nothing. Finally, there is a general opposition to tolls, especially on part of the trucking industry, and especially in the West where we do not have a history of toll roads. Drivers think that toll booths will back up traffic for miles; they do not want to pay and they do not want the inconvenience of a toll booth.

The Department has tried to approach P3 Programming in Arizona from a programmatic point of view. They want to address the concerns people have, set up policies and procedures to try to alleviate some of the those concerns, and show them it will be a different kind of program than they have seen in other states. The Department has developed its program based on national best practices; they have identified the common elements that create a successful program and used those as the basis for help in operating the program:

- They are using a very transparent process for evaluation and implementation of P3; everything is going to be done with as much public scrutiny as possible.
- They are only going to do projects that can be integrated into the Long Term Transportation Plan.
- They will use P3 projects to leverage state resources for maximum effect, not necessarily looking for a "freebie" from the private sector.
- The projects will be financially viable over the long term and use practices that will enhance safety and mobility.
- Since the projects will enhance the overall mobility of the population, they will enhance the capacity of the statewide system.

Ms. Lewis then reviewed the parameters in the state legislation:

- Any upgraded or enhanced transportation facility is eligible – cannot sell an existing asset.
- Can finance enhancements or new facilities
- Can do a wide variety of P3s
- Allows for agency to solicit projects
- Allows agency to take unsolicited projects from private sector, which may come to the agency with some ideas
- Ability to negotiate an agreement
- Other government agencies including municipalities besides ADOT may enter into P3 agreements
- Anyone using a toll facility may apply for a refund of fuel taxes and motor carrier fees while riding on toll facility (done on request of trucking industry)
- No fund reinforcement allowed on public/private facilities
- Can use any number of revenue sources as repayment to a private partner, such as toll booth fees

The Department has learned from other states that have already performed these types of project. They will have a program coordinator, legal advisor, technical advisor, and internal ADOT staff. Wilbur Smith Associates has been hired as a consultant to help with the following:

- build the primary objectives
- establish basic principles
- suggest information to include in RFPs
- develop guidelines and rules
- determine what types of projects would be good candidates
- figure out how to be structured internally
- suggest kinds of internal resources they will need
- advise how to incorporate P3s into existing plan
- develop an initial website to inform public about how it will look

At this time, they are in the process of hiring a long term program manager and the rest of the advisory team, and should have the full team on board by the end of April.

[Mr. Christy excused himself from the study session at 11:30 a.m.]

Chair Montoya asked Ms. Lewis to elaborate on Wilbur Smith Associates: their successes, background, and what, if anything, they have done with P3s.

Ms. Lewis explained that Wilbur Smith Associates is a well-known transportation planning consulting firm; they have done numerous projects both nationally and internationally. The agency has used them before for many planning engagements. In this particular case, they were hired through an RFP process, on a limited time engagement strictly for planning purposes. The contract is now complete. From now on, staff will be working with a program management firm to assist in the program itself and manage actual project processes. As a particular project comes to fruition, the Program Manager will manage the team of consultants and help be the leader in terms of getting ADOT through the procurement and negotiations process.

Chair Montoya then asked specifically what P3 programs Wilbur Smith Associates has worked on.

Ms. Lewis said that Wilbur Smith has worked with many states including Nevada, California, Georgia, Tennessee and Virginia to help them develop the underlying documents, principles, rules, and websites to get a P3 program started. They have also engaged in long-term project work in Texas, Virginia, Tennessee and Georgia. They have done a lot of planning work and also project work. Ms. Lewis offered to provide a list of specific projects they have worked on.

Chair Montoya wanted to confirm that Ms. Lewis was saying that Wilbur Smith has had success in doing P3 projects, not only in the planning phase.

Ms. Lewis confirmed that is correct. She continued to say that their experience in P3s was a primary evaluation criteria used in their selection.

Mr. McGee commented that the primary person whom the agency dealt with at Wilbur Smith actually dealt with the Department before on specific privatization proposals. He is a former Arizonan who lived here most of his life. He worked on some issues in the early 1990's and was very familiar with Arizona's history in this regard.

Chair Montoya was curious if there would be a legal advisor other than the AG's office to deal specifically with this process. Ms. Lewis answered there would be and that the Attorney General's office understands that these types of complex issues require a level of expertise that is uncommon in the AG's office.

Mr. Flores asked if the same process would apply to the engineering technical advisor and the financial team. He was curious who pays for the attorney and the engiueer. Ms. Lewis responded that there is a subprogram account approved by the Board from the State Highway Fund set aside to help with initial startup costs. If the project is solicited, the responsibility for paying for the evaluation is the Department's. Unsolicited projects, on the other hand, will be accompanied by the proposer's check intended to cover the Department's cost to evaluate the proposal.

Mr. Flores expressed interest in finding out what the tenure of the team's contract is, and if it is all internal with regards to how the RFPs are evaluated. Ms. Lewis answered that nothing has been worded yet. All solicitations are sent out. There is no on-call list to all the firms who were involved with projects nationwide. They will also receive the legal RFP, as they may be working with a law firm and may wish to pass the RFP along, or it may be helpful just for them to see what the whole project entails. There is a bid date, and there is an evaluation committee, which always includes at least one person from outside the agency. The committee for the Project Manager consisted of Mr. McGee, Ms. Sydenham, Ms. Lewis, Mr. Anderson from MAG, and Jennifer Toth. For the Financial Services Advisor, the evaluation committee will consist of Ms. Sydenham, Ms. Lewis, Mr. Fink and Mr. McGuire. Obviously the outside entity would not be in a position to benefit from the project. When consensus is achieved, and if the leading proposers are very close in terms of points, they are prepared to go forward with an interview process. The term of the contract tenure will be for five years, with an option to renew every year up to five years, when they would re-apply.

Mr. Flores then asked if the five-year term with an annual renewal feature was typical. Mr. McGee responded in the affirmative, and continued that all state contracts are under a five-year term, with the option to renew for up to four years if both parties agree.

Ms. Lewis mentioned the Department is very interested in exploring P3s, not only for new projects or enhanced capacity, but also for rest areas, maintenance and transit. She believes that the State is looking very closely at ADOT, with an eye to using P3s in other areas such as schools.

Ms. Lewis then displayed a chart showing the structure of the P3 team and all of the stakeholders. There will be an internal DOT steering committee that will consist of many of the people here. Outside professionals would be the teams that are on board throughout the procurement process. Outside stakeholders include drivers, neighbors, the trucking association and independent truckers, the contracting committee and the materials providers. Public meetings and the website can be two means of communicating the program with all of the outside stakeholders. The director will appoint an external advisory committee that will consist of COGs and MPOs and other stakeholders. Of course, the Board will not only review the entire program from time to time, but also will be asked to place projects on the STP, and will have the ultimate responsibility for awarding the contracts.

It is the Department's intention to keep the Office of P3 Initiative very small and rely more on outside advisors. The role of the Office will be to manage the consulting team. The Project Manager will report into this office to coordinate and lead the communication strategy, to coordinate and lead discussions with the Board and outside stakeholders, and to serve as points of contact. The Advisory Committee appointed by the Director will be the advisors on processes and specific projects, be the links out to the community, and try to address any pitfalls and problems early on.

Regarding solicited and unsolicited projects, unsolicited bids do not necessarily mean an undiscussed project. At no point in the process until a contract is signed would the Department be committed to go forward with a project that comes through the unsolicited process. Just because a proposer has brought an unsolicited bid, does not mean that it will be accepted.

Three reasons P3s go bad:

- Public opposition
- Political opposition
- Long-term financing that is not going to be successful

The website is http://www.azdot.gov/Highways/Projects/Public_Private_Partnerships/index.asp
They have the ability to send out blast emails. Once all committee and team members are identified, their names and contact information will be accessible from the website. P3s are not the answer. They have to make sense for an investor, not just for a public agency. The number of projects that go forward is about 10-15%. They are very close to being ready to go ahead with the projects, but

they are not sure how many projects they might be doing. They have already spoken to CYMPO and ASU, and will be speaking to COGs and MPOs soon.

Mr. Fink emphasized that they want the process to be very transparent to everybody. As they looked at putting together best practices, they found that lack of transparency is a major cause of failure for P3s in other states. As an example of transparency, anyone can sign up as a stakeholder on the website and be informed of changes therein. Also on the website, any person with input can submit it on an electronic form, which is accessible only to him and Ms. Lewis. Secondly, a common question is, "How long is it going to take to do these things?" It depends on the complexity of the project, but generally about 18-36 months can be added onto that projected time frame. He does not want people to believe that they are going to be pumping out projects once a month and he does not want the agency to rush into this. There is one chance to do it right, and many chances to do it wrong.
Thirdly, many of these projects have failed around the country for the following reasons:

- Lack of transparency
- Projects taking on a life of their own, a bad idea being pushed by a large entity. The Department has built in many opportunities in the unsolicited proposal evaluation process to say "No, we don't think this is the right project and the right time." Also, having the proposers pay all the hourly costs involved will make them think their project through more carefully.
- The entities that the projects are going through (such as ADOT) make the mistake of becoming a cheerleader for a bad project instead of being an enabler to a good project. Once you become emotionally attached to a project, you run the risk of pushing through a bad idea at the wrong time.

Mr. McGee believes it is better to do this project right than do it fast, and that has been their philosophy all along. Mr. Zubia commented that the P3 program couldn't come at a better time and couldn't be headed by a better individual and team. He is curious when the Board will be able to review the policies and procedures.

Mr. McGee remarked that everything that has been developed in this program is on the website. However, not all of Wilbur Smith's information is on the website at this point, but it could be made available. What is available now is the result of that information.

Ms. Lewis added that comments of a confidential nature were also not on the website.

Mr. Zubia requested that a list of policies and procedures be provided to the Board. Furthermore, he commented that Chair Montoya has tried to ensure that one member of the Board is privy to what is going on so that if there is ever a question, the Board can go to that person. He suggested it would be helpful to have a point person.

Mr. McGee noted that he and Chair Montoya discussed that point and Chair Montoya will ask a Board member to serve on the advisory committee.

[A lunch break was taken from 12:20 p.m. to 1:05 p.m.]

ITEM 4: Federal Projects Priority List – Floyd Roehrich

Mr. Roehrich explained that he would be discussing page two and three of the project listings in their packets. Those projects will be going through the programming process and eventually to the Board for approval. The new projects come from the subprogram, as well as from final reconciliation of the expected federal funds for this year. They meet the requirements for categories of safety funds, subprogram funds, bridge funds, and any subcategory of funds. There was a qualifier: these are based on the total amount if the rescission is put back in so that the apportionment is used up to the full obligation authority that is expected. If that is not fixed, and the apportionments are less, then the list will have to be revisited. The listing is statewide, although the MAG region has more adjustments to it so they are not being moved forward at this time. The rest of the projects will be delivered this fiscal year if all clearances are met. The projects include pavement preservation, new constructions capacity, and a new interchange.

Ms. Lundstrom inquired about completion of two specific projects in the Yuma area, relative to a conversation she had with an individual after a previous meeting.

Mr. Roehrich responded that one of the items mentioned in that conversation is not on the state system; it is a local road, although it used to be a state facility. The other road was part of the turnback agreement that the locals signed as part of acceleration of the ASH. The locals were to take over the roads "as is" and in consideration of that, ADOT would take funding from that and put it into the ASH. The locals agreed to that; he added that the Department told the locals we will work to try to find through the district minor subprogram the opportunity to put together a ¾-inch surfacing project but are not going to pursue a multi-million dollar construction project. He feared that if the Board agreed to pursue a larger project that other cities would follow suit.

Mr. McGee explained that they are proceeding both with the stimulus project list and this project list under the assumption that both the stimulus bill and the rescission issue will be fixed. He said he "is 99.99% sure" about the rescission issue; he confessed he is not so sure about the stimulus bill. When staff went through the year-end closing, they had to obligate funds to every available purpose. The tools that they have traditionally had at their disposal are gone. The only way they can assure that ADOT does not end up having to turn back any obligation authority this year is to have enough federal aid projects and programs and enough variety of them that over the course of the remaining six months there are enough projects to utilize all the state's available obligation authority. As they reviewed the programs that were federal-aid eligible, it looked like "we had to do every single project that was in FY2010, including a fairly large right-of-way purchase in Maricopa County" to use all the federal aid anticipated.

What they are trying to do is accelerate some projects into the front end of the year so that all federal aid is utilized. If the Board approves all these projects, ADOT would still be able to do many of projects both on the stimulus list and this list by doing what we call 'Advance Construction'. It is all part of a strategy to ensure that no federal funds are lost. They plan on bringing this list or something close to it to the Board for approval as a PPAC item at the next meeting.

ITEM 5: Rest Areas – Issues and Restorations – Floyd Roehrich

Mr. McGee explained that Mr. Roehrich will discuss several specific rest areas and address possibly the opportunity to use stimulus funds to advance the reconstruction in some rest areas and full reconstruction in others. Mr. McGee said that he will speak in a more general way, particularly in regard to the Governor Brewer's letter which was sent to Board members and Secretary LaHood regarding rest areas.

Mr. Roehrich mentioned that three years ago staff started looking at the design and conventional programming for two specific rest areas. If additional funds become available through "Jobs for America, "Jobs for Main Street," or ARRA II that allow the Department to provide discretionary funds, the Board will be asked to take those two projects, let staff finish the design and then use the discretionary funds to move them forward.

One of the rest areas is "Mohawk" on I-8, about 55 miles east of Yuma. It is a very old rest area that requires a lot of maintenance; in addition, the facility needs repair on the waste water system and components of the electrical system. Plans are being developed to include leveling the rest area down to the ground, then rebuilding it to the cost of about $12M. It would be a brand-new building, new pavement and parking, and new water distribution center; there is a well that would need to be upgraded, and a distribution center and waste system that need replacing, as well as ramps and access off the freeway. It does give two facilities, one eastbound and one westbound, plus a caretaker residence, due to its location. In addition, there would be traveler's information with kiosks, as it is the first inbound rest area to the State. Construction would take about a year, then there is a one-year establishment period; so for about two-year time frame, this facility would process not out of the operating budget but come under the discretion program.

The other rest area is on I-40, a brand new location with nothing there at the moment, called Needle Mountain Rest Area. The closest rest area is the Haviland, about milepost 22. Needle Mountain Rest Area is near milepost 3 right off the border as you come in. The rest area is very close to the existing port of entry, so they could be tied together with a slip-around. The cost is about $10-12M and very similar in cost breakdown as far as the rest area itself, caretaker residence and type of improvements; but it does have the connecting ramp between the rest area and the port of entry, less than a mile away. It has water distribution systems and all the electrical systems for the facility. Construction of this facility would involve closing the Haviland Rest Area permanently, so this is a replacement, not an addition. There would also be a one-year establishment period.

Both projects were designed at 95%; they were placed on hold at Board request when re-evaluating the need for the rest area rehabilitation program. If additional funds were to become available these two could be part the entire rest area program. These could start this year, and then there would be no upgrading costs for a few years. Mr. Roehrich emphasized that the projects would only be undertaken if there were additional funds received from the federal government. If recovery funds became available, these projects would not supplant any of the existing projects that are in the program.

[unable to hear person speaking]

Director Halikowski answered that the problem is "the color of the money." This is federal money, and we have begged Congress to give us the flexibility to use federal maintenance dollars for operation of rest areas. Their answer has been "no." Congress feels that rest areas are a state problem, not a federal problem. Nor do they want to privatize. To open up Canoa would take state money, and it take gas or VLT money to do that.

Mr. Flores followed up with saying there are questions about the strategy of closing up some that are already operational while building new ones.

Director Halikowski explained that they opened two new ones that they built using federal funds and those federal moneys allow for running them via the contractor for a year, so there is no cost to ADOT. The first year operating cost has been built into the contract. Essentially ADOT is off the hook the first year. Two years ahead, gasoline tax and VLT revenues will improve the ADOT budget. Once the emergency maintenance issues are taken care of, and the Department feels comfortable with the amount of money for snowplowing, erosion and flooding, rest areas are next on the list to open because of the safety concerns.

Mr. Roehrich said because of the political sentiment for rest areas, as the Department continues to monitor the budget and starts to see growth, the Department and the Board will see a lot of pressure to open rest areas. The challenge is to prioritize it so that all these programs get some level of funding to keep them running. He commented that he was surprised by all the negative press and public reaction to rest area closure.

Director Halikowski believed that ADOT will be in some aspect of the rest area business forever. Hopefully in two years, most rest areas will again be open.

Mr. McGee commented on new rest areas. When the new ones are built, they will be more efficient than the old ones, so ongoing operating costs will hopefully be significantly less. Staff has spent a long time looking at the list of rest areas, and some of them have outlived their usefulness as commercial development has moved closer and closer. Even so, Arizona still has a lot of open spaces; and commercial facilities are not viable where some of the rest areas are now located. Whether we like it or not the Department will be spending money on rest area facilities for quite some time. If ADOT is going to be forced to do that, they ought to take the opportunities as they come along to refurbish, rebuild, and make them more efficient.

Chair Montoya mentioned that maintenance is built into the first year, but he wondered what the Department's estimate of the maintenance would be on those two facilities after that. Mr. Hendrix answered that the current maintenance cost of the rest areas is about $250-300,000 per year, but was not sure of how improved efficiency would impact that. Mr. Roehrich commented that routine maintenance is probably where there would be monetary savings. At these locations, the systems would probably see a savings of about 10-20%.

Ms. Lundstrom asked if they had considered using solar-power. Director Halikowski replied that some of the rest areas are 40 years old; they were designed as part of the interstate system but maybe not with the attention on the septic and water systems that would be given today. Mr. Roehrich added that for these two areas they will use hard-wired electricity; one of them is close to the port of entry and the other facility already has electricity. As part of a comprehensive review of all facilities in the future, that thought would be considered.

Chair Montoya brought up the Governor's letter; he said he wants the Board to make a proactive positive reinforcement. He said that something needs to be done with the rest areas; realizing that not every rest area is a candidate for privatization, but if the six highest traffic rest areas were identified, they would generate a lot of revenue that might maintain the rest of the rest areas in the system. More importantly, he wondered if it is only the visually impaired who can operate those facilities. He commented, "If I had that restriction on me, I would take some of the sharpest legal minds and look for the loophole," have a joint venture with the blind or similar group, sign a master agreement with them, and then get the truck stops involved and make them some kind of stockholders.

Director Halikowski commented that he knows it is the Chair's passion and if he could go out and do a contract tomorrow, he would. Two things holding the Department back in his vision are this:

- The feds do not allow privatization of a rest area under the current matrix of the law; if it is done, "you will lose highway funding or they will just stop approving your projects."
- The other thing is, according to the Randolph-Sheppard Act, if a food concession is put there (even if it were privatized), it must be operated by industries for the blind. There is no reason that ADOT couldn't have a master agreement with them, but the first hurdle to overcome is the privatization law.

Mr. McGee expanded on the subject and said that every time "we come up with an idea...it's just like another door slams in our face." The current federal law says rest areas on the interstate "absolutely cannot be privatized." He said staff also considered a scenario where a private entity would acquire the land right behind the rest area, build a commercial facility, and tear the old one down. ADOT staff was told it cannot be done, because they wouldn't be allowed access to the private facility off the right-of-way of the existing rest area. Mr. McGee stated, "It has been absolutely maddening, and I share your frustration." When the idea of "Adopt a Rest Area" came up, they thought that would be great, and signs could be posted identifying the adoptive entity. The federal government told them that commercial names cannot be used on these signs, so there is no incentive for someone to do that. "We have been beating the weeds, and we will continue to beat the weeds." The opposition is formidable, though. He recounted Director Halikowski's comment that there are some is very potent opposition against ever doing anything with rest areas other than what we do right now, which is essentially a parking lot, a bathroom and maybe a vending machine.

Mr. McGee continued that Governor Brewer's directives were:

- Identify any federal funding options that might help. The federal government provides money mainly for capital but not for operations, and the Department is trying to get Congress to change that.
- Continue to explore the Adopt a Rest Area program. So far, efforts have been unsuccessful with truckers, but they will continue exploring municipalities, other civic organizations.
- Investigate the use of inmate labor to reduce maintenance costs.

Director Halikowski reported that he met with Director Ryan from the Department of Corrections, and learned that part of the problem is that the prisons are restricted to a 20-mile radius around the prison where they can go. Many rest areas are not within that distance. The other problem is that the rest areas are open 24/7. "Having a dirty rest area is almost as bad, if not worse, than having one that is closed." The Corrections Department cannot provide service 24/7. Service can be provided during the day, but then again, that is dependent on lockdowns and other issues at the prison. At this point, the Department plans to use inmate labor along the I-10 to pick up litter, but using them for rest areas turned out to be a blind alley. Then there is the issue that the public is leery of using rest areas when inmates are present.

Director Halikowski commented that the labor the Corrections Department wants to provide is a small cost of keeping the rest areas operating, and does not take into account repairs and other upkeep. He informed the Board that they use inmate labor whenever possible: they answer phones at the MVD; they pick up litter, and perform landscaping functions.

Mr. Zubia commented that he now understands the complexity of the situation, but from a long-term perspective, perhaps there are some good resources in ASHTO and the Transportation Research Board.

Mr. McGee answered that this is not just an Arizona issue; this is becoming a national issue. He and Ms. Lewis have been participating in a small group with other states in the same situation. Arizona hopes through that through that group and the use of outside professional resources, that ways can be found to initiate change. He then quoted Woodrow Wilson, "If you want to make enemies, change something." Mr. McGee said that has been very true in their experience.

Director Halikowski expressed hope that they could convince Congress to give them flexibility with interstate maintenance funds.

Mr. McGee reported that there are several rest areas where municipalities are already contributing: Superior and Springerville, where they are close to, or within the boundaries of the municipalities.

Mr. Flores wondered if the rest area in Superior is on state property, and Chair Montoya answered that it is on county land. Mr. Halikowski noted that we built it and turned it back to them.

Mr. Flores was curious if the Department could use that vehicle to entice somebody with $10M worth of infrastructure to put a Wendy's behind it. He wondered if it would be possible to build a rest area adjacent to a person's property that would put in a private facility.

Mr. Roehrich reiterated that if the federal government thinks the Department is trying to get around the law by doing this, then they will not allow access to it. Giving $10M to a city to build a rest area and "we will let you put business around it" is totally different. The Superior, and to some degree the Springerville sites, are in the city on public lands, and there is access off the highway. It is not access through them to something else; that is what the federal government steps in and says that you are enhancing your private industry with the use of these rest areas."

Mr. McGee returned to his previous discussion regarding the Governor's letter. He continued that the Governor had also asked ADOT to do the following:

- Prioritize rest areas so that as funding becomes available, the Department can start opening them. Staff is looking at comparisons between the number of visits to each rest area, vehicle traffic, and operating costs.
- Continue to pursue private truck stops that are willing to meet about this issue.
- Pursue the OASIS program. They have talked to two separate entities to see if they were interested with no positive response. He feels the reason is that these entities are getting business anyway, so why should they tie themselves up into an agreement with the state, not knowing the downside.
- Advocating for alternatives with the federal government. To that end, Governor Brewer's letter went to Secretary LaHood asking for relief from some of the archaic laws that prohibit privatization:

- Director Halikowski sent a letter to Administrator Mendez in November stating the same thing.
- Any time a Director meets with a Congressional delegation, they emphasize the issue.
- They are working with AASHTO and the other states.
- The bottom line is that the FHWA clearly believes it does not have the power to grant these exemptions until Congress acts.

In summary, Mr. McGee noted that rest areas are a real dilemma. Rest area expenses are a combination of maintenance expense and ongoing capital; at this time we have money for capital, but not for operations, as they are paid for with state funds. ADOT is currently $100M short of where they were two years ago with state funds for operational purposes. It becomes a matter of prioritizing needs, and it is a tough issue. He then read a few responses they have received, but there is not a lot of good news or positive responses.

Chair Montoya commented that the closing of the rest areas got a big reaction so change will make enemies.

In closing, Mr. McGee commented that having these sessions is extremely helpful to his staff and hopefully they help the Board meetings go more smoothly.

[Meeting adjourned at 2:10 p.m.]

Bob Montoya, Chairman
State Transportation Board

John S. Halikowski, Director
Arizona Department of Transportation