PROFESSIONAL ENGINEERS
IN CALIFORNIA GOVERNMENT

February 23, 2009

Mr. Stuart Drown, Executive Director
Little Hoover Commission
925 L Street, Ste 805
Sacramento, CA 95814

Dear Mr. Drown:

Thank you for inviting me, as a representative of **Professional Engineers in California Government**, to participate in the Little Hoover Commission's Public Hearing on Infrastructure Policy and Finance. Professional Engineers in California Government (PECG) represents the 13,000 engineers and related professionals employed by the State of California. About 70 percent of those professionals work for the California Department of Transportation, or Caltrans, planning, designing, administering contracts, inspecting, and operating state highways, freeways, and other transportation systems.

PECG and its members are committed to increasing transportation revenues, the cost-effective use of those resources, and safe state highways and bridges. We are also believe strongly that project delivery methods should not waste money or threaten public safety.

Transportation Funding

PECG supports additional funding for transportation infrastructure, regardless of source. Our membership is proud to have supported the many efforts to bring additional transportation resources to our state, including contributing significantly to campaigns to approve the High Speed Rail bonds in 2008, the transportation and other infrastructure bonds in 2006, Proposition 42 and countless self-help county transportation sales tax measures over the years. PECG has no specific position on toll roads, though in general we believe that revenue generated by transportation facilities should fund construction of additional transportation projects.

As for future revenues, PECG believes it is time for an appropriate increase in the gas tax with indexing for inflation. The last permanent increase in the gas tax went into effect in 1994. Since then, inflation has eroded the value of per gallon tax revenues by over 30 percent. It is impossible to maintain our current highway infrastructure, much less make improvements, without sufficient, stable ongoing gas tax revenues.

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Cost-Effective Use of Transportation Dollars

State engineers save taxpayers hundreds of millions of dollars each year. In May 2008, the Department of Finance revealed that Caltrans spends $121,000 annually for a state employed engineer (including salary, benefits, overhead and equipment) and $217,000 a year for a private engineering consultant to perform the same work. In state budget hearings, Department of Finance Director Mike Genest confirmed that "it costs more to contract out." Limiting outsourcing allows specialty work to be performed by the private sector when it is necessary and appropriate. It also frees up resources for additional transportation projects.

PECG strongly believes that construction contracts for transportation projects should be competitively bid, with contracts awarded to the lowest responsible bidder, not subjectively selected. The Legislative Analyst's Office reported on December 11, 2008 that with competitive bidding, Caltrans is now awarding construction contracts at an average of 20 percent less than the estimated costs of the projects. This favorable bidding environment allows the state to build more projects, create thousands of additional jobs, and give taxpayers the biggest bang for their buck. Competitive bidding also limits corruption, patronage and other unethical contracting practices.

Public Safety is Paramount

PECG believes that the safety of our state highways and bridges is paramount and that public agency oversight and involvement is the key to ensuring safe facilities. That is why construction inspection should be performed by public servants accountable to the public, not private contractors motivated by profit. On transportation projects, construction inspectors represent the public and are on the job to ensure that construction standards are met, that projects meet safety requirements and that the materials used will stand the test of time. When the construction inspection function is outsourced to a private company, there is no longer a representative of the public on site and no way to ensure that the public gets what it pays for. This has led to problems that threaten public safety (Boston's Big Dig), increase costs (defective work requires extensive repairs) and delay projects (when there are questions about the safety of privately inspected projects, the project invariably stops while public inspectors determine the safety of a facility).

The importance of public inspection is best captured by David M. Walker, the former Comptroller General of the United States, who said in 2007: "There's something civil servants have that the private sector doesn't, and that is the duty of loyalty to the greater good – the duty of loyalty to the collective best interest of all rather than the interest of a few. Companies have duties of loyalty to their shareholders, not to the country."

Efficient, Safe Project Delivery

Before discussing alternative procedures, it is important to consider Caltrans recent project delivery record with the traditional design-bid-build process in which publicly-employed engineers design and inspect transportation facilities and a competitively bid contract is awarded to a private firm to construct it. With this process, using outsourcing only when it makes sense, Caltrans delivered 100 percent of the 294 projects scheduled for bid during the 2007-2008 fiscal year, roughly $3.3 billion in projects. Over the past three years, Caltrans has delivered 753 of 754 projects on or ahead of schedule. It is also worth noting that Caltrans recent high profile success stories – the rebuilding in just 26 days of a key MacArthur maze freeway connector (2007), the demolition and replacement of a portion of the Bay Bridge over the 2007 Labor Day weekend, and the rebuilding last summer of I-5 in Sacramento in only 50 days – were all designed and inspected by state engineers.

Design-bid-build ensures the state gets the best possible cost on project design (by using state engineers) and construction (via competitive bidding).

Which brings us to other procurement methods -- whether privately or publicly funded -- that have been far less effective than the traditional design-bid-build process in controlling costs, protecting safety and ensuring timely delivery.

Design-Build

Design-build does not generate a single dollar to address our transportation problems. In fact, in California billions of federal, state, and local transportation tax dollars have been wasted on ineffective design-build projects, ranging from the disastrous Red Line subway in Los Angeles to several more recent design-build highway projects. In all cases where design-build or a similar approach was utilized, the projects cost more than twice as much as the work was worth (compared to design-bid-build); project delivery was not accelerated; and in some cases, defects in construction were discovered and corrected later at considerable expense.

Design build is simply a deceptive term developed to outsource public services at a much higher cost. Design-build costs more than design-bid-build for several reasons. In design-build, contractors are typically not selected through competitive bidding; their lump sum price proposal is inflated to absorb risks because they don't know what they'll be building; and subsequent change orders drive the price up even further because unforeseen circumstances arise when a construction contract is awarded before design is complete.

In recent years, four design-build highway projects have wasted $2.2 billion in transportation funds without expediting project completion. Orange County's SR-22 design-build project is the most recent failure. Scheduled to be completed in 2006, work related closures were a weekly

occurrence in 2007 and continued in 2008. After the SR-22 became a design-build project, the cost increased from $271 million to over $600 million with contractor claims pending for tens of millions of dollars in additional costs.

Public-Private Partnerships (PPP)

Public-private partnerships are typically toll road projects which divert tolls from public purposes to foreign, multi-national companies and Wall Street investment houses. PPPs take huge profits out of our transportation system while inflicting runaway tolls on motorists through contracts that forbid improvements to parallel public roads or require public agencies to pay public funds to private leaseholders in order to make improvements to any competing public roads.

Using design-build under a public-private partnership only makes the problem worse because, due to private funding, the involvement by the public agency in the process is typically even less. Only later, when taxpayer bailouts and costly repairs are undertaken, and it is discovered that the toll structure is not adequate to support a project that costs twice what had been anticipated, do the taxpayer and the public interest pay the price.

California has already experienced two high profile public-private partnership bailouts:

- In 2002, the Orange County Transportation Agency had to buy the SR 91 public-private partnership tollway because of a non-compete clause that prohibited improvements on the non-toll lanes. Taxpayers were forced to "assume the turnpike's debt of $135 million and pay the company $72.5 million in cash," for a project that should have cost $57 million.

- In 2003, the SR 125 (San Diego's public-private partnership toll road) was supposed to cost $360 million and be completed in 2006. Instead, costs ballooned to $843 million and the toll road did not open until November 2007. The project received a public bailout before it even opened. Legislation in 2006 extended the tolls for an additional ten years to pay for cost overruns, requiring the public to pay the private owners "hundreds of millions of dollars in additional tolls," according to the Department of Finance.

Many experts are now comparing the risks and dangers associated with public-private partnerships with those experienced in the mortgage derivative market. On November 4, 2008, James E. Oberstar, Chair of the House Transportation and Infrastructure Committee, and Peter DeFazio, Chair of the Subcommittee on Highways and Transit, in a letter to U.S. Secretary of Transportation Mary Peters warned "the financial crisis and the tightening of credit markets have raised serious questions over the governance structures and financial viability of firms involved in a number of PPPs. The dependence of these firms on debt and asset inflation rather than

income or cash flow to finance acquisitions and pay dividends to shareholders has raised questions concerning the sustainability of the model." Despite proponents' claims that PPPs transfer risk from the public to the private sector, the fact remains that in California and around the world when a PPP leaseholder or a PPP project runs into financial trouble it is always the public agency or the public toll payer that must come up with more money to bail out the private partner.

In a Monday, January 26, 2009 opinion piece in the Sacramento Bee, State Treasurer Bill Lockyer made a succinct case against public-private partnerships "*the private sector isn't going to give us money for free. It will provide the capital only if it receives a profitable return – generally 15 percent to 25 percent. The state typically pays 5 percent or less on municipal bonds, so you have to wonder how the public benefits from private equity infrastructure*." Two days later in a Wall Street Journal piece "Toll Roads are Paved with Bad Intentions," Thomas Frank wrote "*it doesn't take an MBA to figure out that we didn't build our Interstate highways in order to create opportunities for venture capitalists. The purpose was public service.*" Private toll roads, he added "*will effectively close those roads to the part of the population that can't afford the revolutionary tolls that private ownership will surely bring.*"

If policymakers deem that tollroads are a part of the solution to our transportation revenue needs, California would be far better served by pursuing public-public partnerships similar to those proposed last year in AB 3021 (Nava). Under that model it is possible to prohibit no-bid design-build contracts and require public oversight and inspection to ensure road safety and cost controls. Public agencies can also utilize tax exempt financing which is as much as 35 percent lower than private borrowing rates and thus greatly reduce project costs and tolls. Public toll revenues can then be reinvested in our transportation system to pay for additional projects and create more jobs.

PECG will continue to support efforts to generate additional transportation revenue and work to ensure, no matter the project delivery method used, taxpayers get their money's worth for their transportation dollars -- the most projects, at the lowest cost, delivered safely and on time.

Thank you for the invitation to provide this written testimony and participate in your February 26 hearing.

Sincerely,

Ted Toppin
Professional Engineers in California Government

ANOTHER PUBLIC-PRIVATE PARTNERSHIP DISASTER

California: California: San Diego State Route 125 Toll Road

The San Diego State Route 125 Toll Road is a 3P disaster from right here in California. Because they are so profitable, it is not a surprise that multi-national companies and Wall Street investment houses want to bring more such 3Ps to the "lucrative" California market.

What the experts say:

In 2003, the San Diego State Route 125 public-private partnership toll road was supposed to cost $360 million and be completed in 2006.[1] The *San Diego Union Tribune* reports that costs ballooned to $843 million and the toll road did not open until November 2007.[2] Legislation in 2006 extended the tolls for an additional ten years to pay for cost overruns, requiring the public to pay the private owners "hundreds of millions of dollars in additional tolls," according to the California Department of Finance. The Department of Finance opposed the legislation because "it is premature to extend the lease period… simply to ensure the franchise a larger return on their investment."[3]

The Public Interest Alternative

- Require competitive bidding.
- Require public oversight, design and inspection to ensure public safety and cost controls.
- Utilize tax exempt public financing which is as much as 35 percent lower than private borrowing.
- Tolls should be reinvested in our transportation and other public infrastructure.
- Prohibit non-compete clauses and cash payments that prevent improvements to competing public roads, increasing congestion.

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[1] Washington Group International Press Release, "Washington Group-led Joint Venture Wins $270 Million Design-Build Contract for San Diego Toll Road," May 28, 2003.

[2] *San Diego Union Tribune*, "First Pay Highway Opens in County," November 20, 2007.

[3] California Senate Rules Committee Analysis, August 31, 2006.

ANOTHER PUBLIC-PRIVATE PARTNERSHIP DISASTER

California: Riverside Freeway State Route 91 Express Lanes

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What the experts say:

***The Orange County Register* reports that in 2002, the Orange County Transportation Authority had to buy the Riverside Freeway State Route 91 public-private partnership toll way because of a non-compete clause that prohibited improvements on the non-toll lanes. California taxpayers were forced to "assume the turnpike's debt of $135 million and pay the company $72.5 million in cash," in large part because design-build increased the cost from $57 million to $130 million.[1] According to *The Orange County Register*, as a 3P, SR 91 had "the nation's highest per mile toll."[2]**

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[1] *The Orange County Register,* "OCTA Acts to Relieve 91 Congestion," November 26, 2002.

[2] *The Orange County Register,* "New Toll Fees Based on Traffic." October 24, 1995.