



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

June 7, 2005

The Honorable Don Young  
Chairman  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington, DC 20515

*Don:*  
~~Dear Mr. Chairman:~~

The Administration supports enactment of a long-term highway, highway safety, and transit authorization bill that provides funding restraint and provides long-term funding predictability. Such legislation is long overdue. The previous comprehensive authorization bill expired more than 20 months ago, and failure to pass a bill has necessitated seven short-term extensions, with the current extension expiring on June 30. Enactment of authorizing legislation is critical to provide States and localities with predictable funding that enhances long-term transportation planning. In Statements of Administration Policy to the House on March 8 and to the Senate on April 26, the Administration stated its views on the legislation brought to the floor of each chamber for consideration.

Overall Funding

The President's Fiscal Year (FY) 2006 Budget for surface transportation would provide \$283.9 billion over six years, a historically high level of funding. It represents a \$73 billion (35 percent) increase over the amount provided in the Transportation Equity Act for the 21st Century (TEA-21), the six-year bill enacted in 1998.

The Senate version of the bill adds \$11 billion to the funding levels approved by the House, and purports to offset the additional spending with \$7.9 billion of new income to the Highway Trust Fund. Yet, the provisions do not include new revenues to the Federal Government that would offset this new funding; they merely shift revenues within the Federal budget. According to figures provided by the Joint Committee on Taxation, the \$7.9 billion consists of the following:

- \$4.8 billion from transferring responsibility from the Highway Trust Fund to the General Fund for the costs of making certain motor fuel use tax-exempt. This provision provides no new revenue to the Federal Government. In addition, because the Administration assumed this policy in proposing an overall spending level of \$283.9 billion over six years, the provision does not add resources to the Highway Trust Fund relative to the President's Budget.
- \$625 million from shifting proceeds of the existing gas guzzler tax from the General Fund to the Highway Trust Fund. This provision does not increase revenue to the Federal Government.

- \$1.9 billion from changing the tax treatment of kerosene used in aviation. The vast majority of this new income to the Highway Trust Fund results from diverting revenues currently deposited in the Airport and Airway Trust Fund, and does not represent new revenue to the Federal Government.
- \$541 million from a variety of additional excise tax changes.

The bulk of the new revenues assumed in the Senate bill do not come from the provisions listed above, but rather from language imposing a new legal standard for determining whether financial transactions that would normally reduce taxable income should be disallowed (the “economic substance” doctrine). This revenue offset has appeared in over a dozen Senate bills in recent years but has never been enacted – and for good reason. It would produce a standard that would be difficult for taxpayers, the Internal Revenue Service, and the courts to administer, would not provide more certainty in the law, and could apply inappropriately to legitimate business transactions.

To meet our deficit reduction goals, it is critical that Congress exercise spending discipline with regard to highways and transit. Under the final version of the surface transportation bill, total obligation limitations for surface transportation programs (combined with contract authority that is exempt from obligation limitations and general fund appropriations for public transportation) must not exceed \$283.9 billion over the period 2004 through 2009. Likewise, the net authorization level must not exceed \$283.9 billion over the six years.

If the Senate does not recede to the House position on overall funding levels, resulting in a final bill that exceeds these limits, the President’s senior advisors would recommend that he veto the bill.

#### Restrictions on Obligation of Funds; New Federal Borrowing Mechanisms

The Administration strongly opposes section 1126 of the House bill, which would prevent States from receiving most of their FY 2006 highway program funds until August 1, 2006, 10 months after the fiscal year starts, unless a subsequent law is enacted addressing guaranteed rates of return and minimum rates of growth in Federal-aid highway funding for States. This provision would prevent States from obligating Federal funds during the 2006 prime construction season and negate the stability and planning benefits of a long-term authorization bill. If the version of the legislation presented to the President were to include section 1126 as written, his senior advisors would recommend that he veto the bill.

The Administration strongly opposes section 5305 of the Senate bill, which would establish an entity that would issue new debt instruments to provide additional transportation spending. The creation of new Federal borrowing mechanisms negatively impacts the deficit, disguises the true costs to taxpayers, and is highly inefficient. Should the creation of a new Federal borrowing mechanism appear in final legislation presented to the President, his senior advisors would recommend that he veto the bill.

## Other Issues

While spending levels are a critical component of any authorization act, new Federal investments must go hand-in-hand with sound policies to maximize benefits for the American taxpayer. This legislation represents a crucial opportunity to address policy reforms in the areas of safety, State and local flexibility, congestion, finance, and environmental review. Our transportation systems are in need of significant improvement, and the problems we are confronting will not simply be solved through greater funding.

### **Safety:**

*Programs:* We believe the bill should focus on those provisions that could lead to significant reductions in the almost 43,000 annual highway fatalities, and these provisions should be the top priority for conference. We have proposed the creation of a new performance incentive grant to the States to promote higher safety belt usage. This proposal would reward States that either have a primary belt law or have achieved 90 percent or higher safety belt usage for two consecutive years. States that have enacted primary safety belt laws have significantly higher safety belt usage rates than States without such laws. If all 29 States without primary safety belt laws were to enact such laws or reach 90 percent usage, we estimate that over 1,200 lives would be saved and more than 17,000 serious injuries would be prevented each year. For this reason, we strongly support the Senate's adoption of the Administration's May 2003 proposal (as updated in February 2005) for primary safety belt use law incentives.

Another major element of our proposal is the establishment of a new core highway safety program that would both double funding for highway safety infrastructure over TEA-21 levels and expand funding flexibility so that resources can be more effectively targeted. We believe that States should develop comprehensive safety improvement plans based on data and be given the ability to address priorities established in these plans.

We applaud the Senate for granting partial spending flexibility across the various safety programs, encouraging States to think more strategically about highway safety through the development and implementation of comprehensive safety plans, and for providing authority for participation and cooperation in international activities to enhance highway safety. These are important steps. With respect to incentives, States should be permitted to spend these incentive grants, as the Senate proposes for safety belt use, for any safety purpose under the title.

Unfortunately, both the Senate and House versions of the bill would require that States expend significant resources on new safety programs or mandatory set-asides not based on any empirical study. This approach would diminish resources for programs that can actually save a greater number of lives. While there are deficiencies in the Senate version of the bill, its basic framework and provisions are preferable to the House version.

In addition, we object to the House version's reduction in the Administration's proposed funding level for the Section 403 highway safety research, development, and demonstration program, and the impracticable requirement that the Secretary establish per se impairment levels for narcotics use.

*Rulemakings:* Both the Senate and House versions of the bill contain mandatory rulemakings for the Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration that we oppose. These requirements predetermine timetables, and presuppose scientific and engineering outcomes that have yet to be proven practical or workable.

The Administration strongly supports ratification of FMCSA's hours of service (HOS) rule adopted on April 28, 2003, as well as the Administration's proposal to more accurately define "driver health." FMCSA's HOS rule reduces driver fatigue and improves highway safety. These proposals will end the continuing cycle of litigation threatening to disrupt the U.S. freight transportation system for years to come and will bring closure to this decade-old issue. The Administration also opposes any statutory categorical exemptions to the FMCSA HOS regulations not supported by scientific data. The Administration understands the need for flexibility and will continue to work with industry to ensure that existing or potential exemptions address true emergency needs and do not adversely affect highway safety or undermine effective regulatory enforcement.

*Hazardous Materials:* The Administration is pleased that both the Senate and House versions contain many of the hazardous materials proposals transmitted by the Administration. However, we are disappointed that the House did not include the Administration's proposal for the United States Postal Service to collect civil penalties and to recover costs and damages for violations of its hazardous materials regulations in order to address the problem of undeclared hazardous materials shipments in the mail.

The Administration urges the conferees to adopt the Senate provisions and reallocate responsibilities for sanitary food transportation among the Departments of Health and Human Services, Transportation, and Agriculture to ensure that each aspect of the food transportation safety mission is made the responsibility of the most qualified agency, as proposed by the Administration.

*Other:* We urge the conferees to focus on the proposals contained in the Department's letter of February 2005, related to inspection standards and decals for Mexican motor carriers operating beyond the border commercial zones, use of Canadian and Mexican data, and the definition of a corporate "officer." The Administration objects to section 7130 of the Senate bill as an attempt to restrict further implementation of the North American Free Trade Agreement. Additionally, subsection (b) impermissibly requires the Executive Branch to submit recommendations to Congress.

**State and Local Flexibility:** The President and I believe that it is imperative that State and local transportation decisionmakers be given as much discretion and flexibility as possible to devise solutions to State and local transportation concerns. The Administration's proposal eliminates most discretionary programs and funnels approximately 93 percent of total Federal-aid highway program funding to States through

formula programs similar to those contained in TEA-21. Conversely, the House version of H.R. 3 directs only 84 percent of Federal-aid highway program funds to States by formula -- resulting in fewer core dollars.

The proliferation of project earmarks, set-asides, and new programs, predominantly in the House version, diminishes the ability of States to make the most appropriate transportation improvements. Moreover, the impact of an earmark on a State's total program often greatly exceeds the dollar amount of the earmark by requiring a diversion of core program funds in order to fully fund the designated project. We also oppose the Senate requirement of a 2 percent set-aside of a State's Surface Transportation Program apportionment to mitigate the effects of highway storm water runoff.

**Congestion, Financing, and Freight:** The Administration is very disappointed that both the Senate and House measures impose more restrictions on pricing congested highways than is permitted under current law. We believe it is imperative that States be permitted to reduce congestion on their highway systems, including interstate highways, by using high-technology tolling methods to implement congestion pricing. Pricing congested network capacity in order to increase throughput and prevent service disruption is a common and necessary market practice in other sectors like telecommunications, electricity, railroads, and pipelines. Here in the United States, and in other parts of the world, the concept has been successfully tested on a number of highways with broad public support.

Pricing also offers States important new means to finance their systems and attract private capital. In an era of increasing congestion, volatile gas prices, and aging infrastructure, offering drivers new options to directly purchase faster and more predictable highway service is proving to be an increasingly attractive means for States to respond to these challenges. Instead, the House and Senate measures would erect new barriers to State efforts to attract private sector investment in the Nation's highway system at exactly the wrong time.

The Administration appreciates the Senate action to amend the Internal Revenue Code to permit the issuance by State and local governments of "private activity bonds" for highways and surface freight transfer facilities. If coupled with liberalized pricing rules the Administration has proposed, this amendment has the potential to stimulate significant private sector investment and innovation in surface transportation infrastructure. However, the Administration believes that an overall limitation of \$15 billion is a far more efficient means of providing authority than the year-by-year approach proposed by the Senate. The Administration also does not support the requirement that Federal assistance be received in connection with projects financed with these types of private activity bonds. This requirement would be inconsistent with the treatment of all other private activity bonds under the Internal Revenue Code.

The Administration appreciates that both bills give States the flexibility to allow drivers of otherwise ineligible vehicles to use High Occupancy Vehicle (HOV) lanes by

paying tolls – so-called “HOT Lanes.” This flexibility can improve the utilization rates of HOV lanes and raise additional revenues to improve the facility for all drivers. However, the Administration believes some performance standards need to be in place to ensure that the lanes do not become congested.

The Administration appreciates the lower project threshold under the Transportation Infrastructure Finance and Innovation Act loan program contained in both bills, but believes that the list of eligible projects should include freight needs, as the Senate bill provides, and that the existing 10-year time limit for borrowers to capitalize principal and interest payments should remain.

We are pleased to see a strong focus from both the House and Senate on freight and goods movement. Both the Senate and House propose to increase investments in the “last mile” connectors between the National Highway System (NHS) and major freight transfer facilities like ports. The Administration is concerned, however, that the language in the Senate version allowing for the funding of railroad crossings will divert funds away from NHS road connectors and undermine the benefits of dedicated investments that will help facilitate the flow of both freight and passengers. Finally, we favor the Senate provision that requires designation of a freight coordinator in each State to foster more effective freight transportation solutions.

**Park Roads:** The Administration objects to the House reductions in the Administration’s proposal for park road funding by 36 percent, or \$675 million, over six years. These funds are an essential part of the President’s commitment to provide \$4.9 billion over five years to reduce the maintenance backlog in national parks.

**Environment:** The Administration believes that this reauthorization legislation presents an important opportunity to improve project delivery while protecting our environment. Despite bipartisan support for actions to expedite environmental review of transportation projects, the bills fail to make needed changes and contain multiple provisions that would reverse course, by imposing new requirements on the transportation planning and environmental process.

With respect to project review under the National Environmental Policy Act (NEPA), the Administration is pleased that the House version establishes a time limitation on environmental lawsuits. This limitation is necessary to reduce the litigation uncertainty that hinders project development. We advocate, however, a clarifying provision, similar to what the Department proposed in February, to account for the increasingly popular tiered or multiple stage environmental reviews.

While we appreciate the optional nature of the Senate’s new NEPA process contained in section 1511, we believe that it should be clarified that States may continue to implement programmatic approaches commenced under section 1309 of TEA-21, including the ability to provide financial assistance to resource agencies. Should the conferees accept the House proposal contained in section 6002, the Administration prefers that the process be optional for project sponsors and the Department. The

Administration supports a provision clarifying that studies developed as part of the metropolitan and State planning processes should be the basis for NEPA analysis.

With respect to provisions mandating the use of the lead-agency-determined “purpose and need,” the Council on Environmental Quality has already issued guidance to Federal agencies. At most, we would encourage conferees to clarify that, when carrying out its NEPA responsibilities, a cooperating agency should give “substantial deference” to the decision of the lead agency with respect to determination of the purpose and need and the project alternatives for a transportation project.

The Administration supports the Senate provision that allows delegation of categorical exclusion authority to States in a manner similar to the Administration’s proposal, and urges the conferees to adopt it. The Administration also supports the creation of a project delivery pilot program contained in section 1513 of the Senate bill.

The law related to public parks and recreations lands, wildlife and waterfowl refuges, and historic sites -- commonly referred to as “Section 4(f)” standards -- is in dire need of reform in several respects. A clarification of the Section 4(f) definition of “prudent” is needed to alleviate the uncertainty caused by different interpretations by Federal Courts of Appeals. The Senate provision falls well short of necessary reforms for Section 4(f). In addition, neither the House nor the Senate adequately addresses the current redundancy between Section 4(f) and Section 106 of the National Historic Preservation Act (NHPA) (the “Section 106 process”) as the Administration proposes.

Both the House and Senate versions exempt the Interstate Highway System itself from being treated as historic under Section 4(f), recognizing that the Interstate Highway System requires constant improvements that should not be subject to negotiation under either Section 106 or Section 4(f). The issue involving Section 106 of NHPA has recently been resolved with a suitable administrative solution, and the Section 106 process no longer needs to be addressed statutorily. Statutory modifications to Section 4(f), as provided in the House and Senate bills, however, are still needed.

The Administration supports the Senate provisions that align the transportation and air quality update cycles and planning horizons in a manner consistent with the Administration’s proposal. We believe that a regional emissions analysis should be completed for informational purposes for the last year of the transportation plan.

The Administration objects to the 12-month “grace period” provided by section 1824 of the House version, and instead supports lengthening the transportation and air quality update cycles to 5 years. In addition, we object to provisions in the House bill that require State air agencies to concur with the metropolitan planning organizations’ horizons for conformity determinations. This requirement needlessly alters current authorities under the Clean Air Act. The Administration objects to section 1615(b)(3) of the Senate version, which gives the Environmental Protection Agency jurisdiction over travel modeling. This provision would alter current and appropriate responsibilities for travel modeling.

The Administration believes that Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding should only be used for projects that provide emissions reductions that contribute to the maintenance or attainment of National Ambient Air Quality Standards under the Clean Air Act. The Administration opposes provisions in both the House and the Senate versions that would broaden the use of CMAQ funding beyond these purposes. The Administration also believes that any project funded under the CMAQ program should be eligible for emission reduction credit under the transportation conformity process.

The Administration is disappointed that neither bill supports the Transportation, Energy, and Environment Program that we proposed, which is an important part of the President's Climate Change Research Initiative.

**Planning:** We request that the conferees drop the detailed planning requirements in sections 1501-1504 of the Senate bill, which could greatly set back efforts to improve the timeliness of project development.

**Public Transportation Programs:** The Administration commends the inclusion of provisions in both the House and Senate versions that will significantly enhance every community's ability to coordinate transportation services for older adults, persons with disabilities, and low-income individuals provided by various human service and public transportation agencies. Similarly, the Administration supports the provisions in both bills that will permit the expansion of public transportation in rural areas throughout the Nation.

The Administration appreciates the Senate's inclusion of key changes in the New Starts program that the Administration proposed. It is particularly important that all investments made through the New Starts program be subject to evaluation and rating under the New Starts criteria, including those projects seeking less than \$25 million in New Starts funds.

The Administration also supports making both fixed guideway and non-fixed guideway transportation solutions eligible for New Starts funding. Unfortunately, both the Senate and House versions discourage local decisionmaking -- the House version by creating a \$25 million exemption and requiring that the majority of each project be fixed guideway, and the Senate version by restricting eligibility of non-fixed guideway projects to those costing less than \$75 million of New Starts funds. The Administration encourages the conferees to include meaningful ridership incentives in reauthorization of the Federal transit programs.

**Intercity Passenger Facilities Program:** The Administration supports the Senate's inclusion of an intermodal passenger facilities program that will increase the connectivity of intercity bus services to important passenger hubs.

**Department of Homeland Security MOU:** We object to the provision of the Senate version that dictates adoption of a Memorandum of Understanding (MOU)



between the Departments of Homeland Security and Transportation governing "public transportation security" matters, including establishment of "national security standards for public transportation agencies." MOUs are properly an Executive Branch matter that should not be dictated in statute.

**Fuel Surcharge and Excise Tax Evasion:** The Administration strongly opposes section 4139 of the House bill that would require motor carriers to impose a fuel surcharge on shippers. In addition, the Administration supports adequate funding from the Highway Trust Fund to support efforts to curb evasion of highway user taxes, and has proposed \$202 million for this purpose.

**Intelligent Transportation Systems:** While we support the emphasis on deployment of intelligent transportation systems in section 1205 of the House bill, we believe the provision would be strengthened by clearly linking project selection to system improvements. The Administration applauds provisions in both bills that provide more emphasis on transportation system management and operations activities as a means of improving mobility and combating congestion. The Administration favors the Senate's emphasis on deployment of Statewide Incident Reporting Systems. These systems are critical to providing effective system-conditions information to travelers through mechanisms such as 511 traveler-information telephone services.

**Emergency Relief:** We recommend that the annual authorization for the Emergency Relief (ER) program increase from \$100 million per year to \$250 million. Further, the Administration recently submitted draft legislation that would deduct up to \$300 million from core program funds before apportionment for ER-eligible projects that exceed available ER resources in the prior fiscal year. This provision will help prevent a backlog without exceeding authorized amounts for the Federal-aid highway program.

**Accountability and Oversight:** The Administration commends the House and Senate for provisions relating to improved "Stewardship and Oversight" of Federal funds, similar to what is contained in the Administration's proposal. These provisions contribute to improved program accountability.

**Innovation and Research:** The Administration supports adequate funding for surface transportation research consistent with our reauthorization proposal. The Administration is pleased that the House version includes a new "Highways for LIFE" (Long Lasting, Innovative and Fast Construction of Efficient and Safe Highway Infrastructure) program, which will foster construction innovation through the use of new technologies and more efficient ways of building highways. We strongly advocate its inclusion in the final bill.

We oppose research provisions in both the House and Senate versions that unduly restrict flexibility for research managers to administer a national research program responsive to the needs of transportation stakeholders. We urge the conferees to provide for a full and open competition for University Transportation Centers. The Administration

opposes the Senate's significantly reduced authorization level of \$25 million per year for the Bureau of Transportation Statistics (BTS), which would result in the cancellation of several key statistical programs. In addition, the Administration opposes the Senate's limitation on the use of BTS funds, which would undermine intermodal data programs.

The Administration is disappointed that neither the Senate nor the House version includes a hydrogen infrastructure safety research and development program, as proposed by the Administration.

**Next-Generation High-Speed Rail and Magnetic Levitation Technology**

**Deployment:** The Administration opposes section 1819 of the Senate bill and sections 1103(d) and 9001 of the House bill, because available resources are better spent on the Nation's existing public transportation system.

**Railroad Rehabilitation and Improvement Financing Loan Program (RRIF):**

The Administration is highly concerned that the Senate bill expands the RRIF program, given that there is not a clear public policy need to subsidize private railroads. The bill also severely restricts the Secretary's ability to manage the program in a way that protects the interests of taxpayers, such as by requiring loan applicants to seek private financing before seeking less costly government loans.

**Additional Concerns:** The Administration has a number of other concerns, which we intend to address in the near future.

On behalf of the Administration, let me express our willingness to provide assistance during the Conference Committee's deliberations. This legislation is critically important, and I look forward to working with you to craft legislation that can be successfully enacted.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of these views for the consideration of the Committee.

Sincerely yours,



Norman Y. Mineta