



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

June 22, 2004

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

JIM:
~~Dear Mr. Chairman:~~

As conferees meet to reauthorize surface transportation programs, I write to you as Chairman of the conference on H.R. 3550 to offer the Administration's views on major issues raised by this extremely important, time-sensitive legislation. I applaud Members for their bipartisan efforts to enact a reauthorization bill.

In Statements of Administration Policy (SAPs) to the Senate on February 11 and to the House on March 30, the Administration stated its views on the legislation brought to the floor of each chamber for consideration. In particular, these SAPs addressed the Administration's views on funding, Amtrak, and a provision that would withhold funding from States in fiscal year 2006. The veto recommendations of the President's senior advisors on these issues still stand.

The Administration firmly believes that Congress should take advantage of this crucial opportunity to address badly needed policy reforms in the areas of safety, State and local flexibility, finance, congestion management, and environmental review. In addition, the positive legacies of the Intermodal Surface Transportation Efficiency Act (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21) that the Administration has sought to continue appear to be in jeopardy. I pledge the Administration's assistance throughout the conference process to achieve legislation the President can sign, and am optimistic that we can produce legislation that addresses many of the serious transportation problems that affect the lives of millions of Americans.

Safety:

Programs: We believe the bill should focus on those provisions that could lead to significant reductions in highway fatalities, and these provisions should be the top priority for conference. It is unacceptable that 43,000 fatalities occur annually on our highways. In response, we have proposed the establishment of a new core highway safety program that would double funding for highway safety infrastructure improvements over TEA-21 levels, as well as other new and creative proposals to improve highway safety.

Every State faces different highway safety challenges, and the Administration's safety grant proposal provides States with unprecedented flexibility to spend funds on areas of their own specific needs. As required in the Administration's proposal, States should develop comprehensive safety improvement plans. Over time, State funding decisions should reflect the priorities established in these plans.

Another major element of the Administration's safety agenda is the creation of new performance incentives, including the promotion of higher safety belt usage. States that have enacted primary safety belt laws have significantly higher safety belt usage rates – on average 11 percent higher. Higher safety belt usage rates result in lower numbers of fatalities. If all 29 States currently without primary safety belt usage laws were to enact such laws, we estimate that about 1,300 lives would be saved each year. We propose providing incentive funds to achieve this goal. SAFETEA would require States that have not passed primary safety belt laws or achieved a performance level of 90 percent or higher to spend 10 percent of their core highway safety improvement program funds on programs that encourage more widespread safety belt use.

We applaud the Senate for granting partial spending flexibility across the various safety programs, for emphasizing safety belt use, for encouraging States to think more strategically about highway safety through the development of comprehensive safety plans, and for providing authority for participation and cooperation in international activities to enhance highway safety. These are important steps, but we must go further. With respect to incentives, States should be given the freedom to spend these incentive grants in any highway safety area. However, both the Senate and House bills would require that States expend resources on programs or mandatory set-asides, which inhibit their ability to establish priorities, consistent with their unique needs and identified problem areas. For example, both bills require that States expend significant resources on rail-highway grade crossings, safe routes to schools, and rural road safety regardless of need or whether States have identified these areas as priorities in strategic highway safety plans. These set-asides may in fact be good safety improvements in some States, but in other States, these requirements simply divert resources away from programs that can actually save a greater number of lives. While there are deficiencies in the Senate bill, its basic framework and provisions are preferable to the House bill.

In addition, we object to the House bill's reduction in the Administration's proposed \$559.5 million for highway safety research, development, and demonstration funding and omission of authority for the National Highway Traffic Safety Administration (NHTSA) to participate and cooperate in international activities to enhance highway safety.

Rulemakings: Both the Senate bill and the House bill contain mandatory rulemakings for the Federal Motor Carrier Safety Administration (FMCSA) and NHTSA that we oppose. These requirements predetermine timetables, and presuppose scientific and engineering outcomes that have yet to be proven practical or workable. In addition, these requirements will delay or interfere with ongoing safety initiatives and will force the redirection of agency resources away from valuable programs. The Administration

opposes any statutory categorical exemptions to FMCSA hours-of-service regulations. Current exemptions already in place provide sufficient flexibility, and further exemptions would adversely affect highway safety as well as complicate regulatory enforcement. We also object to the Senate bill requiring FMCSA to issue medical certificates to 6.5 million commercial drivers while limiting the performance of medical examinations to physicians alone.

Other: The Administration is pleased that the Senate and House bills 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. Also, the Administration recommends removal of the Senate's emergency waiver of preemption section as unnecessary, as the Departments of Transportation and Homeland Security already have sufficient coordinated policies in place to respond to emergencies.

The Administration urges the conferees to 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.

The Administration opposes section 4245 of the Senate bill that defines foreign trucks and buses engaged in the cross-border transportation of cargo and passengers into the United States as "imports." Existing statutory provisions already address cross-border transportation safety, and the revised definition would significantly disrupt the almost \$2 billion daily cross-border movement of goods.

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 94 percent of total Federal-aid highway program funding through formula programs similar to those contained in TEA-21. Conversely, despite a higher overall funding level, the House proposal directs less than 84 percent of highway authorizations to programs whose funds are distributed by formula – resulting in fewer core dollars. The Administration's structure, inspired by the successes of ISTEA and TEA-21, provides States with high levels of certainty and funding transferability that in turn leads to better project development and decisionmaking.

The proliferation of project earmarks, set-asides, and new programs, predominantly in the House bill, would make it difficult for States to implement their own priorities. Moreover, as the project-specific funding provided by Congress often represents only a small percentage of total project costs, designated projects may languish from a lack of State or local funding. To the extent States are able to complete these projects, they are then often forced to divert core program funds away from other higher

priority projects identified through the State transportation planning process. The funding structure of the Senate bill continues a strong fundamental core formula program emphasis. This emphasis should be maintained in conference.

We oppose the Senate provision that requires a 2-percent set-aside of a State's Surface Transportation Program apportionment that can be used only to mitigate the effects of highway stormwater runoff. This set-aside not only would reduce State flexibility to determine the best use of apportioned funds, it could also be a financial burden on those States with smaller programs and few stormwater mitigation needs.

Likewise, section 1201 of the House bill essentially establishes a new programmatic set-aside for congestion mitigation. The programs and projects that could be funded within this set-aside are already eligible for funding from one or another of the core formula highway programs. There is no assurance that this new set-aside would actually increase funding for the management of traffic congestion, and it would raise issues in the characterization of projects and the accounting for funding.

Financing and Freight Mobility: The Administration supports the Senate provision giving States broad flexibility to implement variable pricing on the Interstate Highway System in order to manage congestion or improve air quality. Conversely, the Administration is concerned that the House bill eliminates current opportunities for States to use variable pricing to reduce congestion.

We believe States should have the flexibility to charge drivers for road use in order to manage and finance their systems. Revenues generated from direct user fees such as tolls can provide the investment capital needed to improve capacity on the tolled facility or enhance public transportation services that operate on the facility. Given the dual benefits of congestion management and increased revenues for infrastructure investment, as well as the development of tolling technologies that eliminate the need for toll booths, tolls have the potential to be much more efficient than other methods currently relied upon to finance highway construction.

The Administration appreciates that both bills give States the flexibility to allow drivers of single occupant 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. The Administration, however, opposes the requirement in the House bill that States develop procedures to permit low-income individuals to pay reduced tolls on HOT Lanes. This requirement presents enormous administrative and enforcement challenges.

The Administration appreciates the Senate's proposal 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. Coupled with tolling liberalizations, this amendment has the potential to stimulate significant private sector investment and innovation in surface transportation infrastructure. However, the Administration 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. It is also not a requirement currently applicable to traditional municipal tax-exempt highway debt issuances. Moreover, this restriction could limit the use of such bonding authority by State and local governments.

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 and 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 the Senate on freight and goods movement. Both the Senate and the 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 bill allowing for the funding of railroad crossings will divert funds away from NHS road connectors. We also believe that a certification process should be available to States that are properly maintaining their connectors so that funds are not wasted. We also favor the Senate provision that requires designation of a freight coordinator in each State to foster public and private sector collaboration on freight transportation issues and solutions.

Park Roads: The Administration objects to the House bill’s reductions in the Administration’s proposal for park road funding by 35 percent, or \$670 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. The Administration also objects to the provisions in section 1806 of the Senate bill to establish a park funding priority system that would reduce the Administration’s ability to implement the President’s Park Legacy Program. Allocation of park road funding should be consistent with a sound asset management approach that best addresses the needs of all parks, not just a few.

Environment: The Administration believes that this reauthorization legislation presents a unique opportunity to improve project delivery while protecting our environment.

With respect to project review under the National Environmental Policy Act (NEPA), the Administration is pleased that the House bill establishes a time limitation on environmental lawsuits. This limitation is necessary to reduce the litigation uncertainty that hinders project development. However, we believe that a 180-day period is more appropriate.

We are concerned that the new NEPA process contained in section 1511 of the Senate bill could actually have the unintended consequence of penalizing the States that have been most progressive in implementing efficient environmental review processes. While we appreciate the optional nature of this new process, 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. This section 1309 authority has proven to be an invaluable means of addressing resource needs that are critical to improving project delivery.

Although the Administration did not propose a new statutory NEPA process, section 6002 of the House proposal may help the Federal Government and the States more efficiently review projects that affect the environment. We would prefer this new process to be optional for project sponsors and the Department.

The Administration does not support provisions in the House and Senate bills that unduly limit the environmental review responsibilities of cooperating agencies by mandating the use of the lead-agency-determined “purpose and need” and project alternatives, including the provision in the House bill that allows for a greater level of detailed analyses for the preferred alternative as opposed to the other reasonable alternatives identified by the Secretary. The Council on Environmental Quality has already issued guidance to Federal agencies clarifying that the Department of Transportation should be given “substantial deference” with respect to purpose and need determinations for transportation projects.

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. Information developed during the transportation planning process helps identify transportation needs and potential solutions, and should be integral to project definition and development during the NEPA process.

The Administration supports the Senate bill 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.

We urge the conferees to clarify in statute the standards pertaining to public park and recreation lands, wildlife and waterfowl refuges, and historic sites – commonly referred to as “Section 4(f)” standards. A clarification of the Section 4(f) definition of “prudent” is needed to alleviate the uncertainty caused by different Federal Courts of Appeals interpretations. Project sponsors often avoid Section 4(f) protected properties at the expense of good transportation decisions, by not advancing a needed transportation project, or selecting an alternative with greater overall environmental impact. The Senate included a Section 4(f) provision directing the Secretary to issue standards, which is helpful in this regard, but it falls short of the need for revising 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. We believe that if parties to the Section 106 process are able to reach agreement regarding the treatment of a Section 4(f) protected property, Section 4(f) should be deemed satisfied. Under current law, the Section 106 process is separate and distinct from Section 4(f) determinations, even when

both address treatment of exactly the same underlying historic resource. The House bill's "no adverse impact" requirement contradicts the purpose of eliminating the Section 106/Section 4(f) redundancy, and we believe that the Senate bill's new statutory standard for "de minimis" impact findings may provide little additional benefit to project sponsors. In addition, if the Senate language is retained, the conferees should clarify that the provision applies only to "actual" and not "constructive" use of Section 4(f) properties.

Both the House and Senate bills exempt the Interstate Highway System itself from being treated as historic under Section 4(f), but we urge that the exemption be extended to apply to Section 106 of the NHPA consistent with the Administration's proposal. The Interstate Highway System requires constant improvements that should not be subject to negotiation under either Section 106 or Section 4(f). The Advisory Council on Historic Preservation (ACHP) and the Department are working to achieve this objective through an administrative exemption, using a provision of the regulations that implement Section 106. If we are able to conclude such an administrative solution, we will advise Congress that this additional legislation is no longer needed.

The Administration objects to section 1615(b)(3) of the Senate bill and believes this provision should be deleted, as it would alter current responsibilities for travel modeling.

The Administration supports conformity language that provides flexibility, streamlines the conformity process, and ensures continued improvement in air quality. In particular, the Administration supports the Senate bill provisions that align the transportation and air quality update cycles and planning horizons in a manner consistent with the Administration's proposal. However, we believe that a regional emissions analysis should be completed for informational purposes for the last year of the transportation plan, as proposed by the Administration.

The Administration objects to the 12-month "grace period" provided by section 1824 of the House bill, and instead supports lengthening the transportation and air quality update cycles to 5 years as the Administration proposed. The Administration also opposes the new definition of "regionally significant projects" contained in section 1615 of the Senate bill, and the interim measures contained in section 1616 of the Senate bill to determine conformity in the absence of a State Implementation Plan motor vehicle emissions budget. These changes could increase air pollutant emissions and complicate efforts by States to meet their air quality goals.

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 bills that would broaden the use of CMAQ funding to allow for the purchase of alternative fuels or emergency operations equipment.

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. The Department plays an essential role in the Administration's climate change efforts by bringing a transportation decisionmaking focus to climate change research.

Planning: The Administration proposed a roughly 50 percent increase in metropolitan planning funding, a 40 percent increase in State planning and research funding, and a new Planning Capacity Building Program. We urge the House and Senate to provide this appropriate level of resources. We also request that conferees drop detailed planning requirements from the Senate bill, which are likely to engender new controversies and Federal rulemaking issues.

Public Transportation Programs: The Administration commends the inclusion of provisions in both the House and Senate bills 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. Both the Senate and House bills discourage local decisionmaking – the House bill by creating a \$25 million exemption and requiring that the majority of each project be fixed guideway, and the Senate bill 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. 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.

Operations: Section 1205 of the House bill would promote the deployment of intelligent transportation systems (ITS) and help ensure that ITS investments are used more broadly to improve transportation operations. While we support the emphasis in section 1205 on improved transportation system performance, we believe the House provision could be strengthened by clearly linking project selection to such 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 is also pleased that both bills recognize the importance of collecting, sharing, and providing real-time system management information as a means of better managing and operating the transportation system. The Administration favors the Senate version of this program, since it would require the deployment of Statewide Incident Reporting Systems. These systems, many of which already exist, are critical to being able to provide effective system conditions information to travelers through mechanisms such as 511 traveler information telephone services.

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 bill. These provisions contribute to improved program accountability.

Innovation and Research: The Administration is pleased that the House bill includes a new “Highways for Life” program, which will foster the use of new technologies and more efficient ways of building highways.

We oppose research provisions in both the House and Senate bills that unduly restrict flexibility for research managers to administer a national research program responsive to the needs of transportation stakeholders. Such provisions include the detailed mandates for data programs in the Bureau of Transportation Statistics (BTS). Both bills, in particular the Senate, earmark BTS funding for certain studies, which would have the effect of depriving BTS of sufficient funding to continue operations in the current fiscal year.

Both the Senate and House bills authorize a new Future Strategic Highway Research Program, but propose different funding approaches for it. The Administration supports this program, and prefers the Senate approach of funding the program from a takedown on major Federal-aid programs.

With regard to the ITS research program, the Administration favors the House approach to use an advisory committee to provide input to the ITS program. The House language would provide flexibility with regard to the overall makeup of the committee and its members.

We are pleased that both the House and Senate bills recognize the critical role training and education play in implementing new technology, particularly the level of investment necessary as reflected in the Senate bill, and the focus on preparing the next generation of transportation workers included in the House bill. We also urge the conferees to provide for a full and open competition for University Transportation Centers, as the Administration proposed.

The Administration is disappointed that neither the Senate nor the House bill includes a hydrogen infrastructure safety research and development program, as proposed in the Administration’s bill. The Department of Transportation has regulatory responsibility for vehicle safety and for pipeline and hazardous material safety, including the safety of

hydrogen-powered vehicles and the safe transportation and distribution of hydrogen. We believe that this research is critical to the Department's role in supporting the President's Hydrogen Initiative.

Magnetic Levitation Technology Deployment: The Administration did not seek authorization or funding for Magnetic Levitation Transportation Technology Deployment and, instead, would invest additional resources in the Nation's public transportation system.

Airport and Airways Trust Fund Transfer: The Administration also strongly opposes section 5212 of the Senate bill that directs the Secretary of the Treasury to transfer an amount annually from the Airport and Airway Trust Fund into the Highway Trust Fund. There is no meaningful data or any other basis to support such a provision.

Additional Concerns: The Administration has a number of other concerns, which are described in the enclosure to this letter.

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,

A handwritten signature in black ink, appearing to read 'N. Mineta', written in a cursive style.

Norman Y. Mineta

Enclosure