



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 30, 2004
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 3550 - Transportation Equity Act: A Legacy for Users

(Rep. Young (R) Alaska and 145 cosponsors)

The Administration supports enactment of a six-year highway, highway safety, and transit authorization bill. Such a multi-year authorization would provide States and localities with predictable funding that enhances long-term transportation planning. The Administration's proposal, as modified by the President's FY 2005 Budget, would provide \$256 billion over six years, an historically high level of investment for highways and transit. This proposal represents a \$45 billion, or 21 percent, increase over the amounts provided in the Transportation Equity Act for the 21st Century (TEA-21), the six-year bill enacted in 1998.

The Administration believes that surface transportation reauthorization legislation should exhibit spending restraint, provide long-term funding certainty for States and localities, and adhere to the following three principles: (1) transportation infrastructure spending should not rely on an increase in the gas tax or other Federal taxes; (2) transportation infrastructure spending should not be funded through bonding or other mechanisms that conceal the true cost to Federal taxpayers; and (3) highway spending should be financed from the Highway Trust Fund, not the General Fund of the Treasury. All spending for highways should be authorized and appropriated from the Trust Fund and derived from taxes imposed on highway use, thereby maintaining the link between Trust Fund revenues and highway spending. The Administration's proposed authorization level of \$256 billion over six years is consistent with these three principles.

The House of Representatives has made welcome progress towards meeting the Administration's requirements regarding spending levels. However, as approved by the Committee, H.R. 3550 would authorize \$232 billion for highways and highway safety, which is \$20 billion above the President's request, and \$52 billion for mass transit, which is \$8 billion above the President's request. In total, the House bill authorizes \$284 billion in spending on highways, highway safety, and mass transit over the next six years, a full \$28 billion above the President's request for the same period. Accordingly, if this legislation were presented to the President in its current form, his senior advisors would recommend that he veto the bill.

In addition, the Administration notes that section 1124 of the bill would prohibit States from receiving most of their highway program funds after September 30, 2005 (approximately 18 months from now), unless a subsequent law is enacted addressing guaranteed rates of return. This provision is an attempt to obtain significantly higher funding levels by threatening a shutdown of the highway program next year. These levels cannot be supported by current and proposed revenues to the Highway Trust Fund, almost certainly necessitating either an increase in taxes or additional spending financed from the General Fund, violating the principles set forth above. Additionally, the uncertainty created by this provision, which effectively transforms the legislation into a two-year bill, negates the stability and planning benefits of a six-year bill. Accordingly, if legislation were presented to the President that includes a provision such as Section 1124, his senior advisors would recommend that he veto the bill.

The Administration supports the House's efforts to advance a surface transportation bill through the legislative process and hopes to work closely with Congress to achieve an acceptable bill. In addition to the foregoing concerns, the Administration recommends attention to the following areas.

State and Local Flexibility. The Administration opposes the proliferation of new categorical programs, set-asides, and thousands of special projects in H.R. 3550 that would deprive State and local officials of the capacity to make transportation decisions affecting their communities and to establish priorities in addressing State and local problems. State and local flexibility and discretion are fundamental principles of the Administration's proposal. Under the Administration's proposal, approximately 92 percent of Federal Aid Highway funds would be distributed to States via formula versus approximately 83 percent in H.R. 3550.

Safety. H.R. 3550 does not treat safety as a "core" highway program as the Administration proposed. The Administration believes that both the relative size of the program and its structure are insufficient to make significant progress in reducing highway fatalities. The Administration is disappointed that this bill obstructs a positive agenda for increased flexibility in State funding, and does not reward and encourage States to take a more aggressive stand against non-safety belt users through safety incentive and performance grants. The bill does nothing to encourage States to enact primary safety belt laws or to achieve safety belt use rates of 90 percent and fails to provide a sufficient focus on those States that have the greatest need to make progress against impaired driving. The failure to provide appropriate incentives in these areas could result in a reversal in the current trend of lowered fatality rates nationwide. In addition, the Administration opposes requiring States to spend safety funds on programs that may or may not be consistent with State and local needs, and believes that States should be encouraged to develop strategic highway safety plans to guide highway safety investments of all types.

Environmental Provisions. The Administration believes that the bill should improve project delivery while protecting our environment. H.R. 3550 would not align the transportation and air quality planning horizons and update cycles for purposes of transportation conformity as proposed by the Administration. The bill also includes no provisions to include nonattainment areas that are newly designated under the fine particulate matter and eight-hour ozone standards in the apportionment formula for the Congestion Mitigation and Air Quality Improvement (CMAQ) Program. Without such provisions, the States' CMAQ funding will not adequately reflect the extent of their air quality problems that could negatively influence their ability to meet their responsibilities under the Clean Air Act. Furthermore, the Administration opposes substantially broadening the list of eligible projects for CMAQ funding because many of these new projects would have minimal air quality benefits. Eligibility for CMAQ funds should be limited to projects that achieve air quality benefits, particularly because the number of Clean Air Act nonattainment areas, which need this type of funding, will increase.

With respect to project review under the National Environmental Policy Act (NEPA), the Administration is pleased that H.R. 3550 would establish a time limitation on environmental lawsuits. However, the Administration notes that the rigid process contained in Section 6002 could actually have the unintended consequence of penalizing the States that have been most progressive in implementing efficient environmental review processes. In addition, the bill would give the lead agency authority for a more detailed level of analysis of the preferred alternative to facilitate the development of mitigation measures or concurrent compliance with other applicable laws, if such development would not prevent the lead agency from making an impartial decision as to whether to accept another alternative. A better approach to focusing on

alternatives with broad support would be to provide that the results of studies developed as part of the metropolitan and State planning processes establish the basis for NEPA analysis (per Section 5201(n) of the Administration's proposal).

The Administration also believes that the bill should clarify 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 forestall confusing standards applied unevenly by the Federal Courts of Appeals. In addition, the bill inadequately addresses the overlap between Section 4(f) and Section 106 of the National Historic Preservation Act.

Park Roads. The Administration objects to reductions in the Administration's proposal for park roads 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 increased funds could be offset with reductions in other components of the Federal Lands Highway Program that are funded at levels above the Administration's request.

Financing and Freight Mobility. The Administration supports giving States the ability to manage congestion and raise additional revenue by allowing drivers of single occupant vehicles to use High Occupancy Vehicle lanes by paying tolls; however, the bill's confusing array of overly restrictive pricing pilot programs would not give States needed flexibility to implement variable tolls on existing Interstate System routes to manage congestion or improve air quality.

In addition, the bill does not adopt the Administration'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. This amendment would stimulate significant private sector investment and innovation in surface transportation infrastructure. The Administration appreciates the bill's lower project threshold under the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program, but believes that the list of eligible projects should be expanded to better address freight needs.

Finally, the Administration opposes removing the TIFIA program requirement that a borrower have a dedicated source of revenue for repaying its TIFIA loan.

Motor Carrier Safety Issues. The Administration is pleased that H.R. 3550 puts an emphasis on reducing trucking fatalities and injuries and adopts the grant and administrative structure included in the Administration's reauthorization proposal. The Administration strongly opposes mandated rulemakings. These requirements pre-determine timetables and outcomes without adequate grounding in science and engineering or adequate evidence of net safety benefits. By prescribing specific requirements and mandating priorities, these provisions will delay or interfere with ongoing safety initiatives and may have the unintended consequence of redirecting agency resources away from programs that will do more overall good for safety. The Administration also opposes any statutory, categorical exemptions to Federal Motor Carrier Safety Administration (FMCSA) hours-of-service regulations. Such exemptions adversely impact highway safety, as well as complicate regulatory enforcement.

Magnetic Levitation Transportation Technology Deployment (MAGLEV). The Administration opposes the continued authorization of funding for MAGLEV. The Administration's proposal did

not seek funding for MAGLEV and funds can be better spent investing in the Nation's public transportation systems.

Innovation and Research. The Administration is pleased that Section 1504 of the bill includes a provision to foster greater highway construction innovation. The Administration opposes research provisions that unduly restrict flexibility for research managers to administer an effective program. The Administration is disappointed that the bill does not include a hydrogen infrastructure safety research and development program. The bill also does not provide for full and open competition for University Transportation Centers, as the Administration proposed.

Public Transportation Programs. The Administration objects to the bill's failure to require evaluations for New Starts projects below \$25 million. The Administration opposes the bill's requirement that the majority of "small starts" projects be fixed guideway. This requirement will increase the costs of Bus Rapid Transit projects, as well as discourage innovation. The Administration also believes the bill should include a meaningful ridership incentive grant program.

Sanitary Food Transportation. The Administration is disappointed that the bill does not 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.

Accountability and Oversight. The Administration does not believe the bill's emphasis on improved "Stewardship and Oversight" of Federal funds is sufficient. Specifically, the bill does not require annual reviews of State financial management and project delivery systems, does not develop minimum standards for estimating project costs, does not require project management plans for projects over \$1 billion, and does not require recipients of \$100 million or more in Federal project funds to prepare financing plans.

Appalachian Regional Commission. The Administration opposes section 1805, which would expand the geographic jurisdiction of the Appalachian Regional Commission (ARC) by 12 non-distressed counties and thus weaken ARC's ability to target rural communities with the greatest needs.

Funding Firewalls and Guarantees. The Administration supports a separate category or "firewall" for spending from the Highway Trust Fund, but only in the context of the Administration's proposal for annual statutory limits on discretionary spending. In addition, the Administration does not propose the creation of "firewalls" for general fund spending on such critical areas as homeland security, and therefore opposes such treatment for general fund spending on mass transit programs.

Constitutional Concerns. The Administration looks forward to working with Congress to resolve constitutional issues involving the Recommendations Clause.

Budget Estimates and Enforcement

This bill would affect direct spending. It is critical to exercise responsible restraint over Federal

spending and the Administration looks forward to working with Congress to control the cost of this bill. The Budget Enforcement Act's pay-as-you-go requirements and discretionary spending caps expired on September 30, 2002. The President's FY 2005 Budget includes a proposal to extend the discretionary caps through 2009, a pay-as-you-go rule that would require spending offsets for direct spending increases, and a new mechanism to control the expansion of long-term unfunded obligations.

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