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.

<u>Park Roads</u>. 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.

<u>Financing and Freight Mobility</u>. 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.

<u>Motor Carrier Safety Issues</u>. 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.

<u>Magnetic Levitation Transportation Technology Deployment (MAGLEV)</u>. 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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TALKING POINTS: 2.6 Million Jobs Lost & Republicans Fail to Pass a 6-Year Highway Bill -- Costing More Good-Paying Jobs

Today, the House will consider to H.R. 4219, a two-month extension of the TEA-21 bill, which provides federal funds for highways and public transit. This is the third extension since the highway bill's authorization expired last fall. While Democrats support an extension, it is critical that Congress get the full six-year surface transportation authorization bill enacted into law to bolster our economy and create good-paying jobs. If Republicans spent as much time working on the highway bill as they have on their new PR effort to convince people they have an economic plan, maybe they would have enacted a new highway law by now. The truth is Bush Administration opposition is creating a huge roadblock to a robust six year highway bill to create good-paying jobs, and that is costing jobs every month that it is delayed.

Our economy is suffering from a huge jobs deficit. Since the beginning of the Bush Administration, 2.6 million private sector jobs have been lost. 8.4 million people are looking for work, and 4.7 million people are working part-time for economic reasons. The average length of unemployment is the worst in 20 years, and two million people have been unemployed for at least six months. While Democrats have offered a number of bipartisan strategies for job creation, including a robust highway bill, Republicans have no plan to fix the economic mess they have created.

Republicans are missing their best and perhaps only opportunity to create jobs. Given that economic record, it is amazing that the House Republican leadership decided to scale back the highway bill, perhaps the one and only job-creating bill to be considered by Congress all year. During that debate, Republicans rejected even having a vote on reasonable compromise, increasing the bill to the Senate level of investment that would create about 1.8 million more jobs than the House GOP leadership bill without adding to the deficit.

Bush Administration threatens veto for better highways and more good-paying jobs. Rather than embrace any of the congressional highway bills, the Administration has issued a veto threat on the Senate-passed bill and now the scaled-back House Leadership bill. After having lost three million private-sector jobs, it is outrageous that the Administration would oppose job-creating highway bills. Earlier this year, the Bush Administration proposed a paltry $256 billion for highway and mass transit over 6 years, which many members in both parties agree is wholly inadequate. In fact, the President's proposal does not provide one new dollar for highways or create one new job over the 2004 level.

GOP failure to enact a six-year Highway bill has already cost jobs. Because they failed to get a full six-year highway bill enacted, Republicans have had to pass two short-term extensions already, creating difficulties for local governments in planning for highway and transit projects resulting in project delays and job losses. Last fall, state transportation officials estimated that the "short-term extension of federal highway and transit programs, rather than enactment of a six-year bill, would mean ….the loss of more than 90,000 jobs." **(American Association of State Highway & Transportation Officials, 9/12/03)**

A short-term extension of the highway is not an economic plan. Republicans have launched a phony P.R. offensive called "Hire Our Workers," but they have yet to explain HOW they lost 2.6 million jobs, HOW they increased the deficit to a record $3 trillion, or HOW their failed economic policies are going to lead to the hiring of even one additional worker. Democrats have a real plan to create jobs, by passing bipartisan tax relief for manufacturers that keep jobs here in the U.S., passing a robust six year highway bill, fully funding the Small Business Administration, passing middle class tax cuts that are fully paid for, and putting the federal government back on a "pay as you go" basis.

Congress of the United States

Washington, DC 20515

May 20, 2004

The Honorable George W. Bush
President, The United States of America
The White House
Washington, D.C. 20500

Dear Mr. President:

"National Transportation Week" is an appropriate occasion to reconsider your SAFETEA surface transportation reauthorization funding proposal. Although this proposal has been portrayed as an increase in funding, on closer examination, it provides zero-percent growth for highway and transit infrastructure investment over the next five years. We believe that this zero-percent proposal is unacceptable to Congress, as evidenced by votes in both bodies in favor of much higher investment levels. If there is to be any hope of reaching agreement on a long-term surface transportation reauthorization bill this year, we urge you to reconsider your SAFETEA proposal and find common ground with Congress on realistic investment levels that begin to address our enormous backlog of highway and transit infrastructure needs.

To date, your Administration has appeared unwilling to consider any highway and transit infrastructure investment proposal that exceeds its $256 billion SAFETEA proposal. The Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003 (SAFETEA), as amended by the President's Budget request for FY2005, provides no increase for highway funding and no increase for transit funding over the next five years – not a single additional dollar of infrastructure investment. As a result, no new construction jobs would be created and sustained under this zero-percent growth infrastructure investment level. The following table outlines our understanding of the revised SAFETEA proposal.

ADMINISTRATION'S SAFETEA PROPOSAL
(in millions)

Program	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009	Percent Increase from FY2004 to FY2009
Federal-Aid Highways	**33,643**	33,643	33,643	33,643	33,643	**33,643**	0.0%
Transit	**7,266**	7,266	7,266	7,266	7,266	**7,266**	0.0%
FMCSA and NHTSA	**663**	1,005	1,026	1,050	1,075	**1,102**	66.2%
SAFETEA TOTAL	**41,572**	**41,914**	**41,935**	**41,959**	**41,984**	**42,011**	**1.1%**

Moreover, your proposal cuts guaranteed transit investment by 18 percent from $7.27 billion in FY2004 to $5.95 billion in each of FY2005 through FY2009. Compared to your original SAFETEA proposal, the revised proposal also cuts highway and transit investment levels in the last two years of the bill. Specifically, the revised SAFETEA proposal cuts highway funding by $360 million and transit funding by $808 million in FY2009 from the original proposal. To our knowledge, your Administration has never indicated how it proposes to make these or other significant transit cuts included in its revised proposal, and we request that the Administration provide us with authorization tables that reflect the revised proposal.

This zero-percent proposal for highway and transit infrastructure is unprecedented. In contrast, under the Transportation Equity Act for the 21st Century, highway investment jumped from $21.5 billion in FY1998 to $31.6 billion in FY2003, a 47 percent increase. Transit investment grew even faster: from $4.6 billion in FY1998 to $7.3 billion in FY2003, a 56 percent increase. Even under very difficult budget conditions in the early 1990's, the Intermodal Surface Transportation Efficiency Act still managed to increase highway investment from $16.8 billion in FY1992 to $18.3 billion to FY1997, a nine percent increase.

In contrast, your zero-percent proposal does not account for inflation. Consequently, even assuming the Administration's very conservative inflation estimates, the proposal will result in an 8.0 percent cut to the purchasing power of these infrastructure investment dollars over the next six years.[1] By FY2009, real spending for Federal highway and transit investment will be cut by almost $3.3 billion.

As a result, under your SAFETEA proposal, more than 150,000 workers would lose family-wage, construction jobs.[2] Given that 850,000 construction workers are already out of work, we cannot afford to add any more workers to the long list of the unemployed created during your Administration.

Over the past two years, we have consulted extensively with our congressional colleagues regarding highway and transit infrastructure investment funding levels. We strongly believe that the SAFETEA proposal is wholly unacceptable to an overwhelming bipartisan majority in the House and the Senate, as evidenced by huge votes of the House and Senate in favor of funding levels considerably higher than SAFETEA.

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[1] Source: *Historical Tables: Budget of the U.S. Government FY2005*, non-defense capital price deflator, p. 184-5.

[2] The Federal Highway Administration estimates that $1 billion of Federal highway infrastructure investment creates 47,500 jobs.

Therefore, we urge you to reconsider your zero-percent proposal and find common ground with Congress on highway and transit infrastructure investment levels. The summer highway construction season is upon us and our economy has already lost more than 90,000 construction jobs because of the delay in enactment of a long-term surface transportation reauthorization bill.

Thank you for your consideration.

Sincerely,

Steny H. Hoyer
Democratic Whip

Nancy Pelosi
Democratic Leader

Robert Menendez
Democratic Caucus Chairman

James L. Oberstar
Ranking Democratic Member

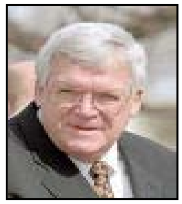
William O. Lipinski
Ranking Democratic Member
Subcommittee on Highways and Transit

The Republicans' Fiscal Flip-Flop

The Republican Hall of Shame on Pay-As-You-Go Rules


Pres. George Bush


Rep. Tom DeLay


Rep. Dennis Hastert


Rep. Jim Nussle


Rep. Deborah Pryce


Rep. Bill Thomas

"I fondly remember a time when real Republicans stood for fiscal responsibility. Apparently those days are long gone for some in our party."

- Senator John McCain, 05/20/04

Senator McCain, three of his Republican Senate colleagues (Lincoln Chafee, Olympia Snowe and Susan Collins) and nearly every Congressional Democrat recognize the economic danger of deficits as far as the eye can see, including a record budget deficit of more than $500 billion in Fiscal Year 2004. At the same time, Congress prepares to increase the statutory limit on the national debt by $690 billion.

That's why Democrats and these four Republicans strongly support common-sense "pay-as-you-go" (PAYGO) rules, which were enacted during the last deficit crisis in 1990 and re-enacted in 1997 before expiring in 2002. These PAYGO rules required increases in mandatory spending *and* decreases in revenue to be offset elsewhere in the budget so that they don't add to the deficits. They are widely credited with producing record budget surpluses in Fiscal Year 1998 to Fiscal Year 2001.

President Bush and Congressional Republican leaders all previously supported PAYGO rules for both spending and taxes – rules that they now ignore. Today, nearly all Republicans oppose the re-enactment of PAYGO rules that apply to taxes; instead, they support sham PAYGO rules that apply *to spending only*. This is a monumental policy flip-flop.

First Three Bush Budgets Supported PAYGO For Spending And Taxes

"To start the budget on a firm course back toward balance, the President further proposes to extend the Budget Enforcement Act controls [applying PAYGO rules to spending and taxes] that expired in 2002."

- The President's Budget for FY04 (Page 29)

"The Administration will work with the Congress during the next session to develop budget enforcement mechanisms, including future discretionary spending limits and a PAYGO requirement for entitlement spending and tax legislation that are consistent with the needs of the country."

- The President's Budget for FY03 (Page 283)

"The President also proposes to extend the PAYGO requirement for entitlement spending and tax legislation. The President's Budget sets aside the Social Security surplus and additional on-budget surpluses for debt reduction and contingencies. These levels ensure the President's tax plan and his Medicare Helping Hand and modernization reforms are fully financed by the surplus. Any other spending or tax legislation would need to be offset by reductions in spending and increases in receipts."

- The President's Budget for FY02 (Page 172-173)

Top Republican House Leaders Voted For The Balanced Budget Act Of 1997, Which Included PAYGO Rules For Spending And Taxes…

…Including Speaker Hastert, Majority Leader DeLay, Conference Chair Pryce, Budget Committee Chairman Nussle, Ways and Means Committee Chairman Thomas, Appropriations Committee Chairman Young, Rules Committee Chairman Dreier, and White House Liaison Portman

"I rise in support of this legislation that finally balances our Federal budget. It is about time. I have waited my entire adult life for it."

- **Majority Leader Tom DeLay (R-TX), Congressional Record, 07/30/97**

"I think we need to step back a moment and think about what a victory this is for the American people. For the first time in more than a generation, we are actually going to balance the budget. We are going to stop spending more than we take in every year, an immoral practice that leaves the bill for the next generation."

- **Rep. Rob Portman (R-OH)**

After Paygo Budget Rules Expired In 2002, The Chairman Of The Budget Committee Called For Their Reinstatement

"With the other body unable to pass even a budget this year, we were obviously unable to reach an agreement on legislation to extend PAYGO and other budget rules. It is my hope that this can be done next year as part of a normal budget process. I would close by reminding our Members and colleagues that the PAYGO rule contributed to the taming of deficits over the past seven years, and it is my hope that a successor to PAYGO can be developed and coupled with caps on discretionary appropriations."

- **Budget Committee Chairman Jim Nussle (R-IA), Congressional Record, 1/14/02**