



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

May 16, 2012

The Honorable Barbara Boxer
Chairwoman, Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

Dear Madam Chairwoman:

The Administration supports a long-term surface transportation bill that creates jobs, strengthens safety, spurs economic growth, and provides States and transportation agencies with the certainty needed to plan and execute projects essential to improving the Nation's roads, bridges, railways, transit systems, and intermodal connections.

In Statements of Administration Policy to the Senate on February 9 and to the House on February 14 and April 17, the Administration stated its views on the legislation prepared for consideration for each chamber. As made clear in the April 17 Statement of Administration Policy, the President's senior advisors will recommend a veto of legislation that attempts to circumvent the longstanding and proven process for determining whether major cross-border international projects, including cross-border pipelines, are in the national interest by mandating the permitting of the Keystone XL pipeline before a new route has been formally identified and had the opportunity to be assessed. While a new permit application has since been filed, today, as then, no single, final pipeline route has been identified and assessed for its potential impacts, including impacts on health and safety, the economy, foreign policy, energy security, and the environment.

Likewise, the Administration has previously stated that it cannot support a large number of project delivery and environmental streamlining measures in the House-passed bill that would radically change the application of environmental laws. Many of these provisions would add substantial administrative burden and complexity and would risk undermining the National Environmental Policy Act (NEPA). The Administration has a substantial effort underway to maximize permitting efficiencies while ensuring that public health, safety, and the environment are protected. Setting arbitrary deadlines and project funding thresholds that seek to circumvent the NEPA process will lead to additional delays, suppress public comment and community involvement, and increase the likelihood of costly litigation. Additionally, language that provides for exemptions from several environmental statutes in emergency situations is unnecessary because existing law already allows for expedited action in emergencies. Combined, these changes significantly weaken environmental protections, including threatening the air we breathe and the water we drink.

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The Administration is pleased to share additional views with you in this letter and in the enclosure at this time and may express further views at a later date. S. 1813 and H.R. 4348 are the only bills passed by their respective chambers and therefore determine the scope of the conference. Administration views on some items outside the scope of the conference are included in the enclosure.

Safety

The Administration reiterates its strong support for sections 20021 and 20025 of the Senate bill, which would strengthen the Federal role in transit safety along the lines of the Administration's proposed legislation submitted to Congress on December 7, 2009. While our Nation's transit systems carry more passengers daily than our domestic airlines or passenger rail systems, they remain the only passenger mode within the U.S. Department of Transportation (DOT) without comprehensive Federal safety oversight. The Federal Transit Administration, like other modes in DOT, must have the ability to establish basic common sense transit safety standards to protect the traveling public.

The Administration strongly supports section 31108 of the Senate bill, which would authorize a distracted driving grant, and section 31102 of the Senate bill, which would require and fund statewide plans for traffic safety enforcement to prevent crash fatalities and injuries. The Administration also supports the Senate provisions that increase oversight and authority over unsafe drivers and motor carriers, and that increase safety oversight of roadways, railways, and hazardous materials.

Strengthening and Reforming Programs

The Administration supports reforms in the Senate bill to consolidate programs, focus on national goals, performance and accountability, and continue the ban on earmarks. The Administration strongly supports increasing local decisionmaking and boosting the capacity of agencies that perform statewide, metropolitan, and rural transportation planning. Incentives should not be created to undermine local decisionmaking and encourage the privatization of transit operations through the availability of special taxpayer subsidies.

The Administration supports provisions that improve project delivery and save States, cities and transportation agencies time and money, while ensuring a safe and healthy environment for Americans and their communities. However, we have serious concerns with the provisions in H.R. 4348 that would undermine NEPA and its application to transportation projects. Any provisions to streamline project delivery must also protect our natural resources and create better environmental outcomes.

The Administration supports the strong Buy America language in the Senate bill. We also cannot miss the opportunity to expand domestic manufacturing and job production, and the

Administration therefore strongly supports efforts to ensure compliance with Buy America provisions that are consistent with U.S. obligations under international agreements.

Sufficient administrative funding is critical for agencies to properly carry out their missions and fulfill their management and oversight roles, including safety, state of good repair, planning, research, and workforce development to ensure that we meet the current and future demands of a diverse transportation sector. Proposals that provide inadequate funding for program management and oversight expenses could jeopardize agencies' ability to properly safeguard taxpayer dollars.

Promoting Multimodal, Merit-based Programs

The Administration supports authorizing merit-based, multimodal programs such as the Transportation Investment Generating Economic Recovery, or TIGER, Discretionary Grant program. TIGER has leveraged more than two private, State and local dollars for every Federal dollar invested (compared with 20 cents for every 80 cents of Federal funds in our formula programs) and has spurred creative and collaborative transportation projects at the local, State, and regional levels. TIGER has also been a catalyst for freight rail and port projects, many of which will provide significant national economic benefits. We look forward to working with Congress on further developing our national freight policy and programs.

The Administration strongly supports provisions of the Senate bill that continue merit-based high-speed and intercity passenger rail programs from the successful Passenger Rail Investment and Improvement Act of 2008, which are necessary to meet the future transportation needs of the Nation as our population continues to grow. We also support increased investment in the New Starts transit capital program consistent with the President's budget to adequately address the demand for this long-standing merit-based discretionary program.

The Administration also supports provisions that expand transportation credit and loan opportunities, such as the Transportation Infrastructure Finance and Innovation Act (TIFIA) program. However, TIFIA should continue to be merit-based and competitive to ensure that Federal dollars are invested in projects that achieve national transportation goals as well as generate economic returns. To protect taxpayer investments in these projects, we believe that the current requirement that prevents a TIFIA lien from being subordinated to other debt should be retained.

The Administration opposes title V of H.R. 4348, which undermines the Federal Government's ability to ensure that requirements for management and disposal of coal combustion residuals are protective of human health and the environment. The 2008 failure of a coal ash impoundment in Kingston, Tennessee, which spilled more than five million cubic yards of coal ash and will require approximately \$1.2 billion for clean-up, is a stark reminder of the need for safe disposal and management of coal ash to protect public health and the environment.

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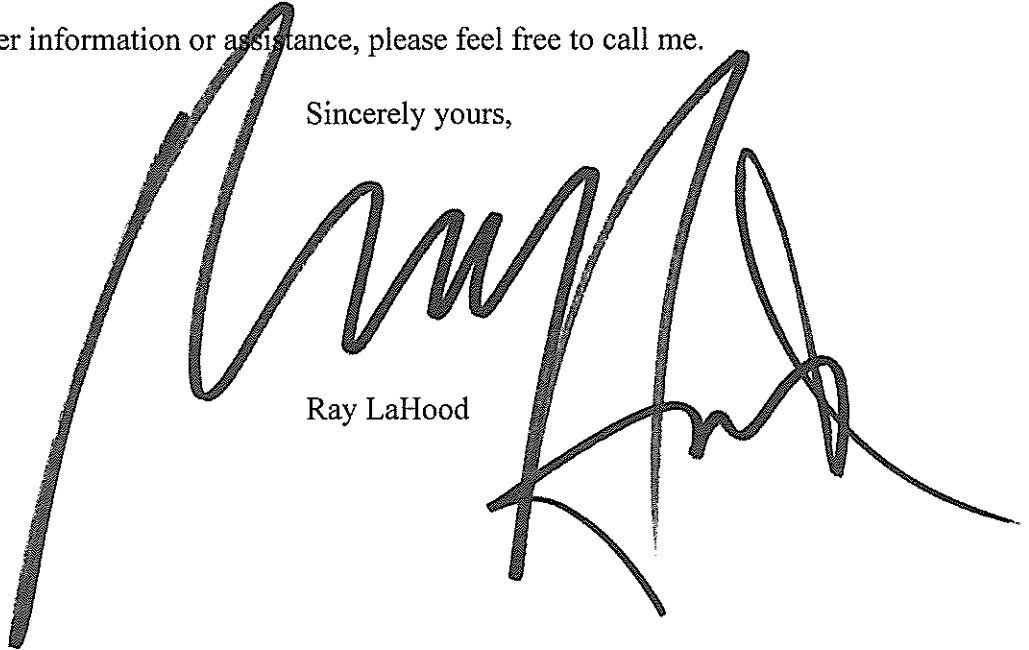
Thank you for the opportunity to provide the Administration's views on this important legislation. We look forward to working with Congress to address these and other important issues. The Office of Management and Budget has advised that there is no objection, from the standpoint of the Administration's program, to the submission of this letter to Congress.

If I can provide further information or assistance, please feel free to call me.

Sincerely yours,

Ray LaHood

Enclosure

A large, stylized handwritten signature in black ink, which appears to be 'Ray LaHood', is written over the typed name. The signature is fluid and cursive, with a prominent initial 'R' and a long, sweeping tail.

Enclosure—Additional Concerns, Letter from Secretary LaHood

Safety

Public Transportation Safety Program

The Administration's highest priority with respect to public transportation is the enactment of comprehensive transit safety legislation. Although Federal law provides for funding to assist State safety oversight agencies, no such funding is provided to the Federal Transit Administration (FTA) to allow its staff to carry out administrative and oversight activities to successfully implement this transit safety program. Providing this funding would enable FTA to ensure that State safety oversight agencies appropriately focus on the safety of our Nation's rail transit systems. In this regard, the Senate has outlined a far more comprehensive and effective means of ensuring the safety of these systems in section 20021 of the Senate bill, which also provides FTA with the necessary legal authority to issue basic common-sense minimum standards and regulations. These standards take into consideration relevant recommendations by the National Transportation Safety Board (NTSB), as well as best practices developed by the transit industry. The Senate version will provide the resources to enable FTA and States to work together so that passengers using the Nation's public transportation rail systems will be adequately protected against accident and injury.

Positive Train Control

The Administration supports authority for the Secretary to approve the use of alternative strategies of risk reduction that provide benefits similar to positive train control (PTC) but at a lower cost. However, in evaluating such risks, the Agency objects to approaches that use the risk of a release of poison- or toxic-by-inhalation hazardous materials as the basis for comparison, rather than the risk of all PTC-preventable accidents.

In addition, legislation must avoid the implication that the Secretary cannot order the installation of PTC as necessary. In this regard, the Administration supports giving the Federal Railroad Administration (FRA) at least 60 days to review and approve requests for extensions (as compared to the 10 days provided for in section 35301 of the Senate bill)—including a complete review of PTC development plans, PTC safety plans, and notices of product intent—as this period of time is necessary for FRA to fully investigate such applications.

The Administration continues to believe that limiting the duration of PTC extensions to 1-year increments is unnecessary and will likely result in unnecessary and duplicative paperwork (section 35301 of the Senate bill). Situations can occur in which implementation issues take more than one year to overcome. The DOT suggests that this provision be made permanent, rather than subject to annual extensions. Railroads could then apply for an extension and FRA could determine an appropriate length for any extension.

Set-Asides that Undermine a Data-Driven Approach to Safety

Including programmatic set-asides, such as those for high risk rural roads (section 1112 of the Senate bill) and for highway rail grade crossings (section 1112 of the Senate bill, where fatalities have increased to specified levels) would undermine a State's strategic highway safety plan (SHSP), a data-driven, collaborative process to identify the most effective safety strategies. States have had tremendous success in significantly reducing rail crossing fatalities, which now represent less than 1 percent of the annual total of road-related fatalities. Additionally, the set-asides could require States to divert limited safety resources away from strategies and projects identified in their SHSP that could produce the greatest safety benefits and save the most lives. Therefore, these set-asides should not be included in a final version of a surface transportation reauthorization bill.

Weakening Essential Hazardous Material Safety Programs

Redefining the handling of hazardous materials — and all activities related to loading and unloading at a package's origin, en route, and at its destination, including storage — may have unintended safety consequences and could weaken the current multi-agency approach. For example, in language considered by but not passed by the House, the new definition of "hazmat employer" excludes employers who use, but do not directly employ, hazmat employees. This would create negative incentives for hazmat employers to hire temporary or contract workers to perform regulated hazmat functions at the job site, in order to avoid training obligations for employees. Also, reducing the standard of proof for carriers from "knowing or should have known" to "actual knowledge" weakens incentives for carriers to verify the safety and packaging of materials that they receive from offerors. Proving "actual knowledge" would encourage railroads to forego necessary safety inspections in order to remain ignorant of an unsafe condition. Additionally, moving suspected undeclared hazmat packages to a "properly equipped facility designated by the Secretary" could be detrimental to the safe transportation of hazmat by rail for several reasons, including that moving an undeclared or leaking package to another location can pose an unreasonable risk.

Special Permits for Hazmat Activity

Language considered by but not passed by the House mandates "consistency, predictability, and transparency" in the special permit approval process, incorporates existing special permits after 6 years of continuous use, and prohibits denial of applications based solely on hazmat "out-of-service" percentages. Yet, due to the volume and nature of hazardous materials special permit approvals, a 6-year requirement for incorporation is unrealistic and could negatively impact safety. It would be burdensome on DOT to implement the lengthy safety data collection and rulemaking processes for incorporation of every special permit in continuous use. Moreover, it is difficult to set consistency and predictability benchmarks given the variety of businesses and functions covered by special permits. Some materials by their very nature require special attention, and would not be recommended for incorporation into the regulations. Finally, the hazmat "out-of-service" rate is considered a key indicator of safety performance issues. The

DOT supports extending the incorporation period from 6 years to 10 and retaining the use of “out-of-service” percentages as a reason for denial.

Commercial Motor Vehicle Regulatory Exemptions and Delays

The Administration does not support statutory exemptions for operators of motor vehicles from various Federal commercial motor vehicle safety regulations (sections 1529 and 32101 of the Senate bill). Such exemptions eliminate the ability to publicly review and prevent adverse safety impacts. Other proposed provisions prevent the Federal Motor Carrier Safety Administration (FMCSA) from either revoking an exemption or establishing terms and conditions, if necessary, to protect the traveling public. The FMCSA currently provides a process to request regulatory relief for up to 2 years from some of the commercial motor vehicle safety rules.

The Administration opposes prohibiting FMCSA from either issuing proposed safety regulations or allowing such regulations to take effect until 180 days after the Government Accountability Office issues a report analyzing the extent to which Federal motor carrier safety regulations impact small trucking companies and independent operators (as in language considered by but not passed by the House). The FMCSA takes into consideration the impacts its rulemakings have on the public, including small trucking companies and independent operators, and this moratorium may unnecessarily place the safety of the public at risk.

Reincarnated Motor Carriers

The Administration supports the Senate bill provisions that improve FMCSA’s ability to withhold, suspend, amend, or revoke the registration of a motor carrier avoiding compliance with the Agency’s safety rules by providing false information in the registration process or otherwise attempting to mask the carrier’s identity. The Administration supports the Senate’s comprehensive solution to detect and prevent motor carriers from reincarnating that is included in sections 32103, 32107, 32112, and 32113 and urges the Conference Committee to adopt this solution. These provisions are superior because they establish a Federal legal standard on motor carrier successorship, clarify FMCSA’s authority to act on a carrier’s failure to disclose material information, and authorize periodic updating of registration.

Highway Safety Research Activities

The Administration does not support limiting the range of highway safety research activities. For example, the Administration does not support the prohibition on funding for automated traffic enforcement systems (as in language considered by but not passed by the House). Automated traffic enforcement is a tool that State and local law enforcement agencies across the country have proven effective in improving compliance with traffic laws, decreasing crashes and preventing fatalities. Automated enforcement systems are especially appealing for jurisdictions during times of limited local budgets, as it allows them to stretch enforcement resources. The Administration also does not support the provision prohibiting the States’ use of grant funds to

address a growing motorcycle safety problem (as in language considered by but not passed by the House). Motorcycle fatalities have gone up in ten out of the past eleven years, and the issue is highlighted on this year's NTSB Most Wanted List. States should have the option of using grant funds to establish motorcycle checkpoints as part of a comprehensive approach to reducing motorcycle fatalities. The National Highway Traffic Safety Administration (NHTSA) should be provided the flexibility to conduct a broad array of research activities necessary in pursuit of our mission of improving highway safety.

ITS Systems Operations and Deployment Grants Program

The Administration strongly opposes section 53001 of the Senate bill. The requirement that no less than 50 percent of the Intelligent Transportation Systems (ITS) Research Program's funding be directed to competitive infrastructure deployment grants would interrupt critical ongoing research needed to refine cutting-edge Vehicle-to-Vehicle (V2V) technologies in preparation for NHTSA's planned agency decision on possible regulatory action for connected vehicle safety systems in 2013 and the corresponding 2014 decision on heavy vehicle deployment. The NHTSA preliminary crash type analysis estimates V2V technologies could address up to 80 percent of all crash types where driver impairment is not a factor. The Federal Highway Administration (FHWA) estimates that between \$800 million and \$1.3 billion annually are already directed to ITS infrastructure deployment by the States through the Federal-aid highway program; the limited funding that would be added to ITS deployment by these grants would have minimal impact at great opportunity cost to safety and mobility and a loss of U.S. leadership in the world for ITS safety technologies.

Vehicle-to-Vehicle and Vehicle-to-Infrastructure Communications Systems Deployment

The Administration endorses section 53006 of the Senate bill, which enables final planning of Dedicated Short Range Communications implementation, an essential element supporting deployment of ITS/V2V and Vehicle-to-Infrastructure applications for safety and mobility.

Strengthening and Reforming Programs

Strong Buy America

The Administration supports ensuring that Buy America compliance is both strong and carried out in a manner that is consistent with U.S. obligations under international agreements. We cannot miss an opportunity to strengthen domestic manufacturing and job production, and the Administration supports efforts to increase domestic production of public transportation rolling stock.

In addition, tying Amtrak's domestic spending preference or FRA's High-Speed Intercity Passenger Rail Buy America provision from the Passenger Rail Investment and Improvement Act (PRIIA) to the National Environmental Policy Act (NEPA), as section 35210 of the Senate bill does, presents difficulties because the scope of a NEPA study is not always clear.

Furthermore, to provide an incentive to limit or divide up NEPA reviews to avoid Buy America requirements builds a potential flaw into the process. With respect to the application of this provision to Amtrak specifically, Amtrak is not subject to NEPA, although FRA is when spending Federal funds on Amtrak. Therefore, tying Amtrak and its domestic preference statute to NEPA makes even less sense. This proposed language could be interpreted to mean that Amtrak's domestic preference statute applies only when FRA has done a NEPA review on an Amtrak project to which FRA has contributed Federal funds.

Transit State of Good Repair

The Administration's budget request includes \$3.2 billion in FY 2013 to begin the effort of fully addressing the Nation's \$78 billion backlog of public transportation assets requiring repair and maintenance. The Administration believes improving public transit is of the utmost importance, and limiting funding to distressed transit systems, as in language considered by but not passed by the House, takes what is already a significant challenge to impossible levels. Limiting Bus and Bus Facilities Formula Grant funds to operators of fixed-route bus services in urbanized areas means that multi-mode providers will not have the needed capital to maintain their buses in a state of good repair. Such a limitation would have far-reaching effects because multi-modal operators carry the vast majority of the Nation's bus riders. Denying these funds to multi-modal operators would also stretch their non-Federal capital funding more thinly, further undermining needed investment to ensure the safety and reliability of their rail operations. The Administration supports a program that requires transit agencies to develop transit asset management plans and provide funding for public transportation asset management systems to help guide capital investments that will support a state of good repair.

High-Speed Rail

In order to continue with the investment to build new high-speed rail (HSR) corridors that expand and fundamentally improve passenger transportation in the geographic regions they serve; to upgrade existing intercity passenger rail corridors to improve reliability, speed, and frequency of existing services; and to lay the groundwork for future HSR services through corridor and State planning efforts, the Administration strongly supports continued funding to develop corridors throughout the Nation, including in California. The Administration will not endorse any provision that restricts the necessary resources required for HSR in California.

Project Delivery/NEPA

The Administration cannot support project delivery/NEPA streamlining measures that would radically change the application of environmental laws. Many of these provisions in H.R. 4348 would add substantial administrative burden and complexity and would risk undermining NEPA and its application to transportation projects. For instance, section 618 of H.R. 4348 would impose an explicit deadline for the environmental review process that would neither provide the time necessary to produce an adequate environmental impact study for most projects nor provide the flexibility necessary to adequately analyze and review projects of differing complexity and

challenges. The shortened deadlines leading to a default determination of no significant effect would incentivize applicants to slow down, rather than expedite the review process. In addition, the Administration opposes language in the House bill that seeks to waive NEPA analysis for Federally funded transportation projects if the Federal funds constitute 15 percent or less of the total estimated project costs; or are less than \$10,000,000 (section 608 of H.R. 4348). Based on how funding is received, this kind of provision would give recipients an improper way to circumvent the NEPA process.

Exemptions in Emergencies

The Administration opposes language in section 603 of H.R. 4348 that authorizes exemptions from seven fundamental environmental statutes (NEPA, the Clean Water Act (CWA), the Endangered Species Act (ESA), the National Historic Preservation Act, the Migratory Bird Treaty Act, the Wild and Scenic Rivers Act, and the Fish and Wildlife Coordination Act), an Executive Order, and any law intended to ensure adequate protection of wetlands. Existing processes under NEPA, ESA, CWA, and other environmental statutes allow for expedited action in emergencies. Additionally, this provision would not allow structures, such as culverts and bridges, to be replaced with improved structures that could help to minimize future damage, unlike the existing emergency process.

Disadvantaged Business Enterprises

The Administration strongly supports the continuation of highway and transit disadvantaged business enterprises (DBE) programs, and the addition of a rail DBE program, as provided in both versions of the bill.

Transit New Starts

The Administration supports many of the reforms made to the New Starts program by section 20010 of the Senate bill. However, authorized funding levels for the New Starts program must remain sufficient to fund ongoing New Starts projects and critical New Starts projects in the pipeline. The \$2.2 billion requested in the Administration's budget for FY 2013 is needed to support necessary capital investment in the expansion of Nation's public transportation systems.

Public Transportation Emergency Relief Program

The Administration strongly supports a public transportation emergency relief program as contained in section 20007 of the Senate bill. The authorization of an emergency relief grant program will allow FTA to assist grantees in restoring transit operations as quickly as possible in the wake of disaster. Further, the Administration understands the need for agreements with the Department of Homeland Security (DHS) for these activities, recognizes that the program should be implemented in a way that does not duplicate or conflict with DHS functions, and further encourages consistency in implementation with these provisions across other DOT transportation modes.

University Transportation Research/University Transportation Center Program

The DOT's administration of the University Transportation Center (UTC) program consistently results in positive research and education outcomes. The process currently in place to evaluate and select applicants is sound and does not require the extended time and expense of a rigid external review process vested in a non-governmental body, as required by language considered by but not passed by the House. The Administration prefers that all UTC grants be multi-modal in nature, rather than requiring the regional grants to focus exclusively on highway or public transportation research as in section 52010 of the Senate bill. Such an approach could result in loss of UTC multi-modal and intermodal expertise and research opportunities relevant to all modes, and reduced competition. The Administration also supports opportunities for small and minority institutions across all grant categories of the UTC Program—not just Tier I, as in section 52010 of the Senate bill—and we endorse changes that will lead to this policy.

National Cooperative Freight Research Program

The Administration supports a competitive National Cooperative Freight Research Program (NCFRP), the principal program tasked with conducting research and disseminating timely findings that inform investment and operational decisions affecting the performance of the freight transportation system. The work of the NCFRP is an important element of the Administration's goals for a national freight program. We endorse continuation of the NCFRP, as in section 52008 of the Senate bill.

Air Tour Management

The Administration supports section 100301 of the Senate bill providing technical amendments to the National Parks Air Tour Management Act of 2000. The amendments include and refine recent amendments enacted in the FAA Modernization and Reform Act of 2012. The amendments provide the Federal Aviation Administration (FAA) and the National Park Service (NPS) with an improved and streamlined process to implement the intent of Congress for commercial air tours to be conducted in a way that does not negatively impact national park visitors or resources, while assuring safe operation. This is a unique program, and these amendments do not set precedents that would affect other FAA programs. By replacing broadly shared FAA and NPS responsibilities across all aspects of the commercial air tour program with more focused and complementary agency responsibilities, the amendments will facilitate the establishment of air tour management plans in national parks in less time and using fewer resources. The amendments clarify that NPS will primarily administer this program, while fully preserving FAA authority and jurisdiction for aviation safety, management of the national airspace system, and other aviation oversight.

Funding, Financing and Reinvestment

Harbor Maintenance

Both bills include language (section 401 of H.R. 4348 and section 1533 of the Senate bill) that encourages the Congress, in future appropriations bills, to base the level of Army Corps of Engineers spending for harbor maintenance on the amount collected from an existing ad valorem tax, mostly on imports. While spending levels would continue to be determined through subsequent annual appropriations actions, these provisions would encourage the Congress to roughly double Federal appropriations for harbor maintenance and related work immediately, and to nearly triple the level of these appropriations by FY 2022—costing an additional \$12 billion to \$13 billion over 10 years. Federal spending for these activities should reflect consideration for the economic and safety return of these investments. The Administration has serious concerns with these provisions, and would like to work with Congress to resolve this issue on the merits.

Preserving the TIFIA Credit Assistance Program

The current statutory requirement that prevents a Transportation Infrastructure Finance and Innovation Act (TIFIA) lien from being subordinated to other debt in the event of bankruptcy has proven essential to the Government's ability to preserve the value of TIFIA. Language that weakens or eliminates this protection of the springing lien by allowing a borrower to subordinate a TIFIA loan without limitation (sections 1201(c)(2)(D) and 1201(d)(3)(D) of the Senate bill) would undermine the Government's ability to protect taxpayer investments, and should not be included in the final version of the surface transportation bill.

Transit Operations

Given the need for increased operating assistance in urbanized areas, the Administration strongly supports temporary and targeted public transportation assistance for large urbanized areas under FTA's Urbanized Area Formula Grant, particularly support for transit systems in large urbanized regions experiencing a 3-month unemployment rate greater than 7 percent or a similar formula as is included in section 20008 of the Senate version. This assistance is especially critical to stabilize local service levels during the current period of raising ridership and uncertain gas prices.

The Administration opposes providing a higher Federal share for capital projects when transit agencies contract out for a portion of their service. The Federal Government should not be providing taxpayer subsidies in the form of incentives for transit agencies to contract out their service. The decision to contract out public transportation service should be made at the local level based on a level playing field.

Excessive Set-Aside of Highway R&D Funds for Transportation Revenue Research

Mandating a high set-aside of Research and Development (R&D) funds (50 percent of \$90 million) to be used for specific activities related to the planning and integration of transportation revenue mechanisms (section 52003(a) of the Senate bill) would leave only \$45 million per year dedicated for all other FHWA highway research priorities. To ensure other research priorities are adequately funded, the Administration suggests broadening the highway R&D base on which a set-aside for revenue mechanism funding is calculated.

High-Speed Rail Rolling Stock

An important component to growing American jobs remains the standardization of equipment used for HSR purposes. To enforce a requirement that the Secretary cannot preclude the use of Federal funds made available to purchase rolling stock to purchase any equipment used for HSR that otherwise complies with all applicable Federal standards potentially weakens the essence of this systemization (section 35203 of the Senate bill). Ultimately, the current mandatory use of PRIIA § 305 Next Generation Equipment Committee specifications could become voluntary, which would potentially undermine efforts to standardize intercity passenger rail rolling stock and to achieve life cycle cost efficiencies.

Railroad Rehabilitation and Improvement Financing Program

While making the Railroad Rehabilitation and Improvement Financing program more attractive is a goal the Administration strongly supports, DOT approval of riskier loans is not sound policy for creating a sustained program. For instance, it would be imprudent to assume the cost of labor and materials associated with the installation as part of the collateral value (section 35302 of the Senate bill). The benefit of collateral is that it can be sold to cover the debt owed, in the event that the borrower fails to pay principal and interest. The Government can determine the chances for recovery by estimating the collateral value at the time of default. It is flawed to require PTC's collateral value to equal labor and materials during installation. Any potential recovery from a default would not include costs relating to already incurred labor costs. Thus, to value collateral as the initial PTC labor and materials costs would result in a flawed governmental risk and recovery analysis.

Alternative Minimum Tax Relief for Private Activity Bonds

The Administration strongly supports section 40202 of the Senate bill, which would provide alternative minimum tax (AMT) relief to investors in private activity bonds. Bonds are an important financing component for infrastructure improvements. The AMT provision would help spur additional transportation infrastructure investments and generate new jobs and economic growth. The Administration supports its inclusion in the final conference bill.

Authorization of Appropriations – Bureau of Transportation Statistics

Both sections 7001 and 51001 of the Senate bill increase the mission demands on the Bureau of Transportation Statistics (BTS)—to administer data collection, conduct analysis and reporting, and ensure the most cost-effective use of transportation-monitoring resources—but do not provide a commensurate level of resources required to meet the demands of delivering a high-quality and timely transportation data for decisionmaking. Specifically, additional funding is required to enable the BTS Director to establish a program to effectively integrate safety data across modes (section 52001 of the Senate bill), increase BTS responsibility for the National Census of Ferry Operators (section 1119(a)(3) of the Senate bill), and to address gaps in existing safety data programs of DOT.

Modal Administrative Expense Reductions

Sufficient funding is necessary to adequately administer each of the authorized programs, as the costs of many items, such as rent and utilities, increase each year outside of the operating administrations' control. In some cases, the funding levels provided in both bills are not sufficient to maintain current staffing levels and would impact the ability to carry out programs.

Transit Technical Assistance and Training

While the Administration agrees with the policy of sub-allocating funding levels for technical assistance and training under the Senate bill (section 20029), firewalling the majority of funds away from critical technical assistance, capacity building, and training activities would not provide sufficient funding for assistance. Just to maintain the current level of FTA technical assistance requires at a minimum \$10 million for each fiscal year.

Registration of Brokers and Freight Forwarders

The Administration supports imposing new registration requirements for brokers and freight forwarders, as well as new non-safety functions on FMCSA, as is specified by section 32915 through 32920 of the Senate bill. Such new provisions, however, should not be mandated without the necessary increase in funding. Not funding these provisions would overwhelm FMCSA and significantly reduce the Agency's current focus on safety oversight of the motor carrier industry. Moreover, the Administration supports the Senate's repeal of the current jurisdictional carve-out for passenger carrier brokers in 49 U.S.C. 13506(a)(14), which would allow FMCSA to take action against entities that help mask the identity of unscrupulous and unsafe bus companies (section 32201 of the Senate version).

FMCSA New Entrant Audits

To reduce the time it takes to complete a motorcoach new entrant preauthorization safety audit (PASA), the Administration supports employing a risk-based approach that selects motorcoach applicants based on preauthorization criteria. The Administration recommends that the current

time to complete a new entrant safety audit be maintained at 18 months. To reduce the time to complete a new entrant safety audit from 18 to 12 months, and to complete a PASA on all motorcoach applicants within 90 days (section 32102 of the Senate bill), with no commensurate increase in FMCSA resources, is not realistic. Diverting personnel from other critical safety work to meet this new PASA requirement would present a significant burden on the Agency's workforce and could place the safety of the public at risk.

FMCSA Grants to Non-State Entities

The authority for FMCSA to award grants to non-State entities such as local governments, local law enforcement, or other stakeholder organizations, significantly strengthens the Agency's ability to implement national and high priority safety activities. The Administration supports neither the repeal of these grants nor the allocation formula found in language considered by but not passed by the House. Under the formula, eight States (Alaska, Arizona, Kentucky, Nevada, New Jersey, New Hampshire, Rhode Island, and Texas) will see reductions of ten percent or more in their motor carrier safety funding.

Gulf Coast Restoration

The Administration continues to support dedicating a significant amount of the Clean Water Act civil penalties resulting from the Deepwater Horizon oil spill for Gulf Coast recovery in a manner that best serves the people and environment of the Gulf Coast. The Administration looks forward to working with the Congress to achieve this goal.

Land and Water Conservation Fund

The Administration also supports section 1701 in S. 1813, which provides authorization for the Land and Water Conservation Fund (LWCF) from 2015 through 2022 and provides \$700 million in FY13 and \$700 million in FY14 for the LWCF. Created in 1964, the LWCF helps preserve, develop and assure access to outdoor recreation resources; provide clean water; and preserve wildlife habitats by providing funds for Federal land acquisition and grants. Outdoor recreation and conservation are engines for our nation's economy, creating jobs and infusing hundreds of millions of dollars into local communities and businesses through activities like hunting and fishing and tourism. LWCF state grants leverage public-private partnerships to support locally-driven conservation efforts, which is at the heart of President Obama's America's Great Outdoors initiative.

Congestion Mitigation and Air Quality

The Administration does not support an element of language considered by but not passed by the House that would reduce the important air quality benefits of the Congestion Mitigation and Air Quality (CMAQ) program by eliminating the requirement that CMAQ funds be directed to reducing air pollution. This program is an important source of funding for air quality

improvements that help States and localities meet health-protective air quality standards, and projects that have no impact on air quality should not receive funding from it.