



BIPARTISAN POLICY CENTER



May 16, 2012

The Honorable Barbara Boxer  
112 Hart Senate Office Building  
United States Senate  
Washington, DC 20510

The Honorable John L. Mica  
2187 Rayburn House Office Building  
United States House of Representatives  
Washington, DC 20515

The Honorable James M. Inhofe  
205 Russell Senate Office Building  
United States Senate  
Washington, DC 20510

The Honorable Nick J. Rahall  
2307 Rayburn House Office Building  
United States House of Representatives  
Washington, DC 20515

Dear Senators Boxer and Inhofe, Congressmen Mica and Rahall, and Members of the Conference Committee:

As the Senate-House conference on the reauthorization of the surface transportation authorization bill begins, we hope that there will be significant attention directed towards enhancing the capacity of states and localities to attract new and expanded sources of investment capital. Unfortunately, while federal dollars for infrastructure are declining, the demand to fund projects to maintain, restore, and improve our current system is growing. We urge you to eliminate federal barriers to state and metropolitan flexibility and innovation, in raising investment capital and in generating revenues.

In the current era of severely constrained investment resources for surface transportation at all levels of government, states and metropolitan regions should be afforded greater flexibility to fund and finance their transportation facilities and networks. Congress does not seem inclined to raise funding for surface transportation through increasing federal motor fuels taxes or by replacing those taxes with other dedicated funding. In the absence of new funding sources, at a minimum, Congress should provide states and metropolitan regions with the tools to develop and expand their potential sources of revenue and investment capital. To that end, federal barriers to state innovation and flexibility should be substantially reduced, and no new ones should be erected.

While the Senate-passed surface transportation authorization bill, S. 1813, Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21), contained many important steps toward the establishment of a performance-based transportation program, it did not reduce these barriers. A bipartisan amendment to extend the Federal Highway Administration's tolling and highway user pilot programs and to expand the number of eligible participants was offered by Senators Carper of Delaware, Kirk of Illinois, and Warner of Virginia, but was ultimately withdrawn. This means that several states that wish to fund the reconstruction

of aging and deteriorating Interstate highways with tolls under existing pilot programs will be unable to do so. Additionally, it will limit the ability of states to utilize some of the innovative tolling programs that would assist in managing traffic congestion, such as establishing high occupancy-tolled (HOT) and variably priced or managed lanes.

Fifteen states are currently moving major projects forward thanks to innovations allowed under the Value-Pricing Pilot Program, Urban Partnership Agreements, and Congestion Reduction Demonstration Programs, and we would not want to see the pace of these innovations falter. More fundamentally, in failing to include such provisions in MAP-21, the Senate has denied states and metropolitan regions the ability to create innovative and flexible programs to finance their transportation needs, as federal funding stagnates or declines.

While we recognize that the scope of this conference may limit Congressional authority to expand the flexibility of states and metropolitan regions to introduce tolling and user-charge regimes beyond current law, we urge the conferees to seek all available opportunities to maximize such state and local discretion.

The ability to establish these new user-related revenue streams would greatly enhance the capacity of states and metropolitan regions to leverage additional private capital for investment in the restoration, rehabilitation, and expansion of major transportation facilities through such credit and credit-enhancement programs as TIFIA and through public-private partnerships (PPPs). MAP-21 would greatly expand TIFIA, and a comparable expansion of TIFIA was contained in the bill adopted by the House Transportation and Infrastructure Committee (T & I) in this session of Congress. Such a provision would have much greater impact in the context of expanded opportunities for tolling and user-based fees at the state and local levels.

We are also concerned that certain provisions incorporated into MAP-21 could discourage states from partnering with the private sector and from developing innovative tools to attract private capital to transportation investment, for fear of losing a percentage of federal funding. These provisions would also eliminate the option to use private activity bonds (PABs) to finance leased highway projects and would substantially lengthen depreciation timetables for long-term highway leases, making them less attractive to investors. While we respect the intent to protect the public interest that motivated these provisions, we are concerned that, as currently drafted, they do not respect the ability of states and localities to make such determinations of the public interest on behalf of their citizens and would make it more difficult to attract important new sources of investment capital for transportation infrastructure.

With the federal government apparently less able or less willing to provide funds to states and localities for surface transportation, we hope that the scope of the conference committee's work will allow you to adopt a report that will expand the flexibility and capacity of states and localities to address their funding and investment challenges. Old obstacles should be dismantled, and no new barriers should be erected. If states and metropolitan regions are going to be asked to do more in transportation, and if more of the funding and investment responsibilities are to devolve to them, it is essential that this legislation remove the restrictions to their capacity to innovate. Such provisions in the

final legislation can be central elements, in advancing innovation, progress, and global competitiveness.

Thank you for your consideration.

Sincerely,

Emil Frankel  
Visiting Scholar  
Bipartisan Policy Center

Building America's Future

The Honorable Slade Gorton  
Co-Chair, National Transportation Policy  
Project, Bipartisan Policy Center

The Honorable Dennis Archer  
Co-Chair, National Transportation Policy  
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Mortimer L. Downey III  
Former Deputy Secretary  
U.S. Department of Transportation

Taxpayers for Common Sense

Arizona Department of Transportation

Sean Connaughton  
Secretary  
Virginia Department of Transportation

Barry Schoch  
Secretary of Transportation  
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U.S. Department of Transportation

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Builders Association

American Society of Civil Engineers

cc: The Honorable John Boehner, Speaker of the House of Representatives  
The Honorable Nancy Pelosi, Democratic Leader of the House of Representatives  
The Honorable Harry Reid, Senate Majority Leader  
The Honorable Mitch McConnell, Senate Minority Leader

Senator Max Baucus  
Senator Dick Durbin  
Senator Tim Johnson  
Senator Bill Nelson  
Senator Charles Schumer  
Senator Robert Menendez  
Senator James Inhofe  
Senator David Vitter  
Senator Orrin Hatch  
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