

**REPORT of the SOUTHERN GOVERNORS' ASSOCIATION
TRANSPORTATION TASK FORCE
with RECOMMENDATIONS on the REAUTHORIZATION of the
TRANSPORTATION EQUITY ACT for the 21st CENTURY (TEA-21)
July 11, 2002**

Transportation investment is fundamental to the Southern states' economies, productivity, mobility, security and quality of life. Because of this, the Southern Governors' Association established a Transportation Task Force in March, with an appointee from each governor, to examine the issues facing the region. Attached is its report and recommendations on the reauthorization of the Transportation Equity Act for the 21st Century (TEA-21), the six-year, \$219 billion authorization legislation that will expire on September 30, 2003.

The task force identified three basic principles:

1. **Retaining the TEA-21 program structure. Specially, this means:**
 - a. **no additional funding categories, mandates or set-asides;**
 - b. **guaranteed spending levels with an improved RABA mechanism; and**
 - c. **budgetary firewalls.**
2. **Increasing transportation revenue and equity, innovative financing programs and program flexibility.**
3. **Improving program delivery.**

In addition, three key areas of concern and regional significance were identified and articulated:

- **Rural transportation;**
- **Transit;**
- **Mobility, congestion and intermodalism.**

At the conclusion of the report are four additional policy recommendations.

PART I – BASIC PRINCIPLES

(1) RETAINING TEA-21 PROGRAM STRUCTURE

(a) Retaining TEA-21 Program Structure with no additional fund categories, mandates or set-asides: TEA-21 was landmark legislation that increased funding for highways and transit by 40 percent, and created a "guarantee" that tax revenues collected in the Highway Trust Fund (HTF) would be used for transportation improvements. For the first time, transit systems had guaranteed funding levels which allowed them to plan for transit services instead of reacting to the roller-coaster appropriations under previous transportation authorization legislation. TEA-21 resources are being invested well and are making a difference in every state. The current program structure, which features state and local planning and decision-making, flexibility, guaranteed funding levels for highways and transit, and an intermodal approach, is working well and should be retained.

The federal transportation program is most effective when states retain maximum flexibility in order to meet the needs of their transportation systems. Additional funding categories, mandates and set-asides, while often noble in their goals, reduce states' abilities to respond to their particular needs and priorities. *The task force does not support any attempt to create new spending categories, mandates or set asides.*

(b) Guaranteed Spending Levels While Improving the Revenue Aligned Budget Authority (RABA) Mechanism: The RABA distribution helps to ensure that all revenue coming into the HTF is spent for its intended purpose – transportation. Beginning in 2000, a mechanism was established so that, as HTF revenues increased or decreased, budget authority to states also increased or decreased. That is, the budget authority is aligned with revenue. For the first three years of TEA-21, the U.S. Department of the Treasury calculations provided additional dollars for the highway program under a complex mechanism using historical and projected data. In FY00, the first year RABA was in effect, the Federal-Aid Highway Program increased by \$1.5 billion, followed by increases of \$3 billion and \$4.5 billion respectively for FY01 and FY02.

However, the receipts to the HTF have not met the Treasury projections in TEA-21 since FY01. This decline is projected to continue through FY03, making RABA \$4.4 billion less than the TEA-21 authorized level for FY03, and \$8.6 billion less than what was realized in FY02. Therefore, as the RABA formulas are presently designed, our nation would experience an unprecedented 27 percent cut from the federal-aid highway funding level for 2003 — the final year of TEA-21 — as compared to FY02.

Of further concern, Congress has traditionally used the final year's authorization levels of a transportation authorization bill as the baseline for the first year of the new authorization bill. Because of the inaccurate forecasting calculations, the TEA-21 final year (FY03) actual budget authority levels could be significantly lower than originally proposed in the TEA-21 legislation. *If these RABA-adjusted authorization levels are used as a baseline for reauthorization, it will be extremely difficult to enhance the federal transportation program spending levels in the next authorization bill.*

Congress is currently working to remedy the situation through the remainder of TEA-21. Analysis suggests that the current forecasting mechanism is unreliable and must be refined in order to avoid radical up and down swings in funding amounts. It is imperative however, that the basic principle of RABA continues.

The task force strongly recommends that governors endorse federal legislation to maintain the RABA mechanism, but refine the calculations so the program funding is predicable and not subject to wide, annual variations.

(c) Protect the Budgetary Firewalls: TEA-21 set forth a guaranteed level of federal funding for surface transportation programs (e.g., highways, bridges, and mass transportation). New budget categories were established for highway and transit discretionary spending, effectively establishing a budgetary firewall between these programs and all other domestic discretionary programs. The HTF is the source of funding for most of the programs under TEA-

21, where its major source of income is federal motor fuel taxes. The firewall allows revenues in the HTF to be spent only for their intended, dedicated purposes.

Prior to TEA-21, the unobligated HTF balance, including interest income, was available for other entities to draw from on credit; however, repayment was not guaranteed. Therefore, these “excess” funds forgone were actually never available for surface transportation use. As part of the changing budgetary treatment of the surface transportation programs, when TEA-21 went into effect, the HTF could no longer earn interest, and amounts in excess of \$8 billion in the cash balance of the HTF were transferred to the general fund. Establishment of the budgetary firewall was indeed a breakthrough in ensuring all available HTF funds are spent for the intended dedicated purposes.

The firewall has ensured that at least \$27 billion per year has been apportioned and allocated for surface transportation programs. Strongly believing that revenues collected from highway users need to be used for highways and transit, *the task force strongly recommends that governors endorse federal legislation to maintain the language of TEA-21 that sets forth the budgetary firewalls.*

(2) INCREASING TRANSPORTATION REVENUES

The economy and the quality of life that we enjoy in the South depend on good highway and transit systems. The federal transportation program has enabled Southern states and local governments to make investments to fund a transportation system that well serves citizens and stimulates economic growth. The following recommendations and issues speak to the overriding need for increased revenues for surface transportation in the South and the nation:

(a) *Congress should increase funding for transportation.* Despite the considerable increase in transportation funding from the previous authorizations (i.e., ISTEA and TEA-21), significant investment needs still exist for our nation’s transportation system. The American Association of State Highway and Transportation Officials (AASHTO) has proposed scenarios that would increase highway funding levels from \$34 billion to \$41 billion over the next six years. The American Public Transportation Association (APTA) recommends increasing the federal investment in public transit by 12 percent annually, to an eventual doubling of the current \$7 billion investment by FY09.

The task force supports the highest level of transportation funding possible in the reauthorization of TEA-21. We recognize there will be administrative take-downs for the Federal Highway Administration (FHWA) and set-asides for funding of high priority projects. However, FHWA has estimated that it will cost an additional \$10 billion annually just to maintain the 47,000-mile Interstate Highway System at its present level of service. The remainder of the National Highway Systems and local roads will need similar investments as well. APTA estimates future needs will dramatically expand to upwards of \$42 billion per year. Given transit’s importance in reducing highway congestion, providing mobility to millions of citizens and improving air quality conformity, this area continues to be worthy of significant federal support. There are also critical investment needs for homeland security, safety improvement programs, congestion mitigation, mobility programs, environmental streamlining and stewardship, research, transportation workforce development and education, and technology transfer activities. These

are vital national needs that cannot be deferred without jeopardizing our economic strength and quality of life.

If Congress does not provide additional sources of transportation revenues, HTF revenues will grow only with expanded economic activity and travel. This growth is estimated at 2 percent per year. Starting with a baseline of \$28.9 billion, as provided in the proposed FY03 Senate budget resolution, the program could increase to \$32.5 billion by FY09. This yields \$186 billion, which is only a nine percent increase over TEA-21's total of \$171 billion. This is not sufficient to meet the highway and transit needs for the country. Under this scenario, the actual purchasing power of current highway taxes will decline by 26 percent from 1996 to 2009, resulting in a real and serious decline from current funding levels provided in TEA-21. In addition, more fuel efficient vehicles and the exemption for gasohol have resulted in lower receipts to the HTF. ***Therefore, it is imperative that all viable options be considered to increase revenues to the programs.***

For almost every Southern state, the goal of equitable distribution is at least as important as increased funding. Southern states are experiencing rapid population growth — significantly more rapid than the national average. This growth and the economic expansion associated with it is both increasing demand for a well-maintained and balanced transportation system and accelerating the deterioration of the existing system. The federal funds available to Southern states are not keeping up with this increasing demand for adequate transportation. Many states (i.e., “donor states”) believe the minimum return on states' highway user contributions to the HTF should be raised from its current level — about 87 cents on the dollar — to a more equitable level. Setting the minimum guaranteed return at 95 cents on the dollar would more accurately reflect the current transportation needs of most Southern states.

(b) *Congress should continue to streamline and expand current innovative project financing and contracting techniques.* Congress should continue and expand the use of innovative techniques for contracting and finance, including Public-Private Partnerships, Performance Based Contracting and Warranties, Design Build Projects, Tax Exempt Bonds for Infrastructure Projects, Asset Management, and expansion of the Transportation Infrastructure Finance Innovative Act (TIFIA) projects to include more projects by lowering the eligibility threshold from \$100 million to \$50 million and expanding the eligibility of State Infrastructure Banks (SIBs) to all states.

(c) *Congress should permit greater flexibility in transferring funds among and within major categories to achieve greater funding efficiency.* Congress should permit expanded eligibility and greater flexibility rather than establishing new set-asides, sub-categories or sub-allocations.

(d) *Congress should expand eligibility for safety initiatives and continue targeted safety funding.* We must do everything possible to make our roads safer. While emphasis is often placed nationally on congestion in urban areas, the need for modern, safe highways is prevalent in rural areas where the accident and death rates are considerably higher than in urban areas. Congress should permit additional flexibility within existing highway and bridge program categories for safety initiatives; continue the hazard elimination, grade crossings, motor carrier safety and section 402 programs; and establish a pilot program within the existing funding

categories to test expedited project development procedures. ***The task force strongly recommends that safety be held one of the highest priorities in the reauthorization.***

(3) IMPROVING PROGRAM DELIVERY

The public expects State Departments of Transportation to deliver transportation projects on time and within budget. However, some federal regulations unintentionally delay and impede projects thus significantly increasing the costs and time required to complete them. Often, different federal agencies have conflicting or duplicative processes that delay and derail necessary projects. We are committed to full compliance with the spirit and letter of air conformity, environmental, historic preservation, and other federal regulations that ensure that our environment and our citizens are not adversely impacted by transportation construction and reconstruction projects. However, Congress must address the need for improving coordination and streamlining processes in reauthorization. Some proposals for improving program delivery are that:

(a) *Congress should provide for maximum flexibility in programming CMAQ dollars for projects that reduce congestion or improve air quality.* Eligibility for Congestion Mitigation and Air Quality (CMAQ) funds should be extended to all types of projects that reduce congestion or improve air quality, including traffic flow improvements and capacity enhancement projects that have air quality benefits. States should be allowed to use CMAQ funds in attainment areas if emissions benefits can be attributed to surrounding non-attainment or maintenance areas or to areas identified by the states, working with the Environmental Protection Agency (EPA), as high risk for being non-attainment. For projects originally funded with CMAQ funds, the three-year restriction on highway and transit projects, including operation and inspection and maintenance, should be eliminated.

(b) *Congress should direct the U.S. Department of Transportation (USDOT) to eliminate the Major Investment Study (MIS) requirement for highways and transit,* and should authorize states and Metropolitan Planning Organizations (MPOs) to establish procedures under which planning decisions can be made binding in the environmental process.

(c) *Congress should strengthen and expand the environmental streamlining provisions in TEA-21* by establishing statute changes, including the establishment of USDOT and state DOTs as co-lead agencies for determining purpose, need and range of alternatives, and more timely submittal of comments.

(d) *Congress should revise and streamline historic preservation regulations.* This provision has been a source of serious delays for transportation projects. To improve the process and interject reasonableness into the decisions, Congress should:

- Allow exemption of projects that have no significant impacts on Section 4(f) resources after considering the value of the resource, nature and extent of the impact, mitigation and future use of the resource.
- Allow Section 106 of the Historic Preservation Act (16 U.S.C. 470f) to satisfy Section 4(f) requirements.
- Redefine the “prudent and feasible” standard of Section 4(f) to allow balancing of impacts and costs of alternatives.

(e) Congress should authorize USDOT to delegate its responsibilities under federal environmental laws to state transportation agencies for projects with no significant environmental impacts.

(f) Congress should establish a specific, reasonable time limit (e.g., 60 to 90 days) within which lawsuits could be filed challenging federal approvals for surface transportation projects.

(g) Congress should direct USDOT to adopt more effective program oversight and management for the environmental review process to reduce delays associated with surface transportation projects. The task force recognizes that transportation improvements cannot come at the expense of clean air and water. However, there are substantial inconsistencies between federal laws and regulations for transportation and environmental impacts. The task force strongly supports revisions to these federal laws and regulations that will integrate these requirements and, as changes are made to environmental quality standards or processes, provide for an adequate consultation and transition process that permits transportation projects and programs that are already planned and funded to be implemented.

(h) Congress should support a change in planning requirements to allow for the updating of Metropolitan Planning Organizations in attainment, non-attainment, and maintenance areas every five years. This will ensure that MPOs have adequate time to update plans without concern about short deadlines for updates.

(i) Congress should continue to provide flexibility to states as to the content of long-range plans, performance measures, and planning horizons so long as a minimum of a 20-year horizon is maintained.

PART II - KEY AREAS OF CONCERN

RURAL TRANSPORTATION

The economic health and quality of life in rural areas depends upon a healthy transportation infrastructure. It is important that rural issues be addressed during the TEA-21 reauthorization process and that the needs of rural areas not be overshadowed by urban challenges. Although there are more rural roads in the United States than any other type — over 3 million of the 3.9 million miles of roads in the United States are in rural areas — states are spending on average over four times more per lane mile on urban roads than on rural roads. Additional emphasis and consideration by the states will be needed for improving and maintaining these systems in the future.

Although additional funding is necessary to improve rural transportation systems, the task force opposes mandated set-asides to address rural transportation issues. Because each state is unique, the transportation problems, issues and desired solutions of each state differ. Setting aside funds for specific programs limits a state's ability to prioritize issues effectively and address them in

the most efficient manner. Therefore, *the task force supports maximum flexibility in program development and funding allocation for each state.*

Local Involvement: A good transportation system is essential to meet local, state and national goals. It is imperative, therefore, that representatives of all these interests have a strong role in transportation planning. Currently, in rural areas, TEA-21 requires state DOTs to consult with local elected officials and agencies, such as economic development and land use planning agencies, when planning and funding transportation improvements. Each state is unique in its legal framework, state and local planning processes, and local technical capabilities. *The current consultation process can and should be improved, but these improvements must be determined and implemented at the state level in cooperation with its local partners.*

Rural Transit: Planning rural transit systems is difficult due to the great distance between rural communities and the smaller number of potential customers to support the system. Additional federal funding is needed to address the needs in rural public transportation. Depending upon the specific needs of the rural area, improvements could include bus modernization and replacement, capital improvements, maintenance, public access to bus and rail services, environmental streamlining, and use promotion. *The task force believes that states should be allowed great flexibility in determining where and how additional funds will be put to use.* The task force also believes that *additional flexibility in the use of urban and rural transit program funds in blended or consolidated urban/rural and regional transit systems is crucial.*

TRANSIT

The Southern states support considerable growth in federal investment for transit programs over the next six years. The American Public Transportation Association proposal for transit reauthorization recommends a cumulative building of federal investment towards an eventual annual target of \$14 billion in FY09. This level of investment would help Southern states deliver critical service in areas such as New Starts projects and Full-Funding Grant Agreements, bus capital expansion and replacement and through rural initiatives. Allocation of funding among individual transit programs must not disadvantage the Southern states but should allow our region to meet its dramatically expanding need for transit services and federal support for the next six years. *The task force urges Congress and the Administration to give high priority to significantly increasing transit funding over the course of the next reauthorization period.*

MOBILITY, CONGESTION & INTERMODALISM

As our nation's transportation system has matured, there has been an increasing need for state DOTs to focus their attention on the management and operations of their systems. While construction and rehabilitation of the existing transportation infrastructure will always be core functions for state DOTs, the concept of "mobility management" has emerged as an equally important core mission. The goal of mobility management is to truly manage and operate the nation's transportation system and to make the traveling experience efficient, seamless, safe and secure.

Unfortunately, the current federal legislation (TEA-21), does not provide explicit federal aid policy or an emphasis on mobility management functions on the same level as construction activities. In some cases, existing federal regulations designed for construction projects create unnecessary obstacles and barriers for operations projects in areas such as planning, procurement, and public-private partnership efforts.

As stated earlier, the task force does not support any additional mandates, earmarks, or decreased flexibility in the next transportation bill. However, the task force does believe that ***additional language should be added to the existing funding categories and that certain rules should be eliminated to make federal transportation funding more readily available for operations and mobility projects.***

The relationship between land use and transportation becomes ever more important as our states grow. The next reauthorization needs to recognize this interaction and provide ways to encourage and promote better land use planning to maximize highway and transit investments and transportation system efficiencies.

Therefore, Congress must:

- ***Clarify the federal priority and policy on operations:*** Explicitly define operations as a federal priority equal to but separate from construction. Language should clarify policy, eligibility, administrative, and a procurement approach that is specific to mobility projects.
- ***Broaden the planning process to exempt operations projects from unnecessary transportation planning requirements.*** The traditional transportation planning process works well for traditional capital improvement projects. Planning for operations, however, is often short-term and performance-oriented and does not fit well into a long-term planning exercise.
- ***Encourage and support innovative partnerships and cross-jurisdictional cooperation.*** Unlike traditional infrastructure models, mobility management systems are rarely owned, operated, and maintained by a single entity. Therefore, it is often necessary for multiple jurisdictions and organizations to pool resources and to develop new business models for their system's operations. Federal regulations must address these issues. Finally, legislation is needed to allow multiple federal agency projects to select a single set of federal requirements to follow which will be accepted by all the partner agencies.

PART III - ADDITIONAL POLICY RECOMMENDATIONS

(1) *Congress should continue its support for efforts to curtail motor fuel tax evasion* with continued funding to the Internal Revenue Service, and eligibility of Surface Transportation Program funds, for enforcement and monitoring.

(2) *Congress should maintain close communication with State Departments of Transportation (DOTs) during the selection process for High Priority Projects,* and be aware of existing State DOT current and long-range plans and programs as these selections are being made.

(3) Congress should authorize a study of the long-term viability of the motor fuels tax as the predominant means of funding federal highway and transit programs.

(4) Congress should address the impacts of gasohol usage on the Highway Trust Fund and transfer to the HTF the revenue from the 2.5 cent per gallon of tax imposed on gasohol that is currently credited to the general fund. While continuing to promote renewable energy policies, Congress should also replace the loss of revenues due to the 5.3 cents per gallon gasohol tax exemption by transferring an equivalent amount from the general fund to the Highway Trust Fund.

The task force members of the participating Southern states concurred with the report, with the exception of West Virginia on the section regarding “equitable distribution,” [Part I, (2), (a)].