



WESTERN  
GOVERNORS'  
ASSOCIATION

## Policy Resolution 02-16

### *Reauthorization of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21)*

Annual Meeting  
June 25, 2002  
Phoenix, Arizona

SPONSORS: Governors Kempthorne and Hull

#### A. **BACKGROUND**

1. In 1998, Congress enacted Public Law 105-178, the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) which authorized the federal surface transportation programs for highways, highway safety, and transit for 6 years (1998-2003). The Act increased funding levels for highway and transit programs, provided more program flexibility, promised environmental review streamlining and heightened expectations for greater efficiencies in transportation program delivery.
2. Western transportation leaders met in Tempe, Arizona in April 2002 as a working group of the Western Governors' Association, charged to assist the Governors develop a Western position on the reauthorization of the federal highway and transit programs. The participants agreed that the TEA-21 programs were working and require only minor changes to address specific issues. The working group's recommendations were transmitted to the Western Governors for their adoption and are presented in this policy resolution.
3. The Western Association of State Highway and Transportation Officials (WASHTO) and the American Association of State Highway and Transportation Officials (AASHTO) also recommend that Congress approach the reauthorization of TEA-21 as a continuation of the evolutionary process in surface transportation programming started by the ISTEA and TEA-21 acts.
4. The Western Governors lead the nation in calling on Congress to restore FY 2003 funding to the maximum amount that can be sustained by the Highway Trust Fund. Due to poor forecasting methods and revenue accounting, funding to the states for FY 2003 would have been reduced by \$9 billion, even though the Highway Trust Fund has a cash balance of more than \$19 billion. The loss of these funds to states would cause major disruptions in transportation programs for the West and the nation.
5. One strength of TEA-21 has been the predictability of funding levels for federal and state surface transportation programs. This cornerstone of the federal surface

transportation program is being weakened by decreased revenue collections in the Highway Trust Fund due to the downturn in the economy and to greater use of alternative fuels that are taxed at a lower rate or not taxed at all.

The Federal Highway Administrator has requested a study of the effects these changes in national policy are having on the ability of the nation to continue to pay for its transportation infrastructure. Additionally, the Administrator has requested that options be identified for both making changes in the current system of depositing some highway user fee revenues into the general fund, and for implementing new or more stable funding mechanisms.

6. Safety is a primary focus of all the surface transportation programs. The Governors continue to believe that the number of deaths, injuries, and property damage which occurring annually on the Western transportation systems is unacceptable and support improving safety through better engineering, enhanced enforcement and more education. The Governors do not believe in Aone size fits all@ and that federal mandates enforced by funding sanctions is not in the best interest of achieving the safety objective, since they prevent states from addressing their highest priorities.
7. The growth in trade through our ports and bi-national border crossings has placed significant pressure on the surface transportation infrastructure supporting the movement of people and goods. This is true especially along north/south corridors between Canada and Mexico. As a result, Western States are increasingly forced to commit local funding to alleviate congestion, maintenance and safety issues that meet national needs. Meeting the needs of bi-national border infrastructure, international port access, and interstate goods movement corridors is complex process, requiring the involvement of multiple federal, state and provincial authorities, including the U.S. Department of Justice, Treasury, Transportation and Commerce. However, states that are meeting these national needs are doing so by diverting funds from local mobility and safety concerns to meet these national needs.
8. Funding to maintain highways on federal lands under the Federal Public Lands Highway program is not being targeted to the areas of highest need. Public lands highways serve as the gateway to the nation-s National Forests, National Parks and National Monuments. Although only 6 percent of all public lands are located outside of the West, for the past four years between 25-35 percent of the Public Lands Highway funding has been directed to projects in other regions. This is due in part to Congress earmarking funds to local projects, 66 percent in FY1999, 55 percent in FY2000 and 100 percent in FY2001. At the same time the condition of these highways and roads in the West continue to deteriorate, forcing federal land

agencies to close greater numbers of miles and recreation areas to the public each year.

9. Federal Highway Trust Fund revenues are being negatively impacted by the growth in the number of motor fuel and vehicle sales establishments on federally recognized tribal reservations. These establishments are exempt and in some states are prohibited from collecting state and federal fuel and vehicle taxes. The Governors support the continued actions to improve the economic independence of Native Americans, but also find the potential of tax avoidance is hindering the funding of the transportation infrastructure necessary to support national, tribal and state economies.

## **B. GOVERNORS' POLICY STATEMENT**

### *Continuation of TEA-21 Programs*

1. The Governors find that TEA-21 programs are meeting their legislative objectives, but there needs to be refinement of the programs to better address specific issues, deficiencies and inequities. Therefore, Congress is urged to approach the reauthorization of the TEA-21 legislation as an evolutionary process and to build on the TEA-21 programs.
2. The Governors urge Congress to address both the need to increase revenues to the Highway Trust Fund and to make the process of distributing funds to the states from the Trust Fund more predictable. Congress is encouraged to:
  - a. Review the current sources of revenue to ensure that all the taxes paid by the users are deposited to the fund, such as retaining the taxes collected on gasohol which currently go into the General Fund, and holding the highway trust fund harmless from tax incentives for ethanol.
  - b. Increase the amount of revenues to the Highway Trust Fund to assure the dollars are available to meet the legislative commitments.
  - c. Retain the firewalls and funding guarantees for the highway and transit programs as established in TEA-21.
  - d. Refine the current Revenue Aligned Budget Authority (RABA) mechanism to address the current flaws that cause the funding to the states to fluctuate radically between fiscal years.
  - e. Address the need for greater flexibility in transferring funds among and between major program categories thereby allowing states to address their highest priorities.
  - f. Create no new set-asides or suballocations which prevent States from directing Federal Highway funds to their greatest needs

*Environmental Process Streamlining*

3. The Governors fully support the goal of protecting the environment, and the health and safety of the public. The Governors believe that the states have developed some exemplary practices in the area of environmental review and believe that Congress should look to these examples for best practices to improve the TEA-21 project environmental review process. The Western Governors have identified similar best practices for the natural resource programs through their Enlibra Program. The Governors recommend that a similar approach be used for transportation.
4. The Governors urge Congress to refine the current project environmental review process to reduce the delays, time frame and unpredictability of the current process. Specifically, Congress is urged to:
  - a. Authorize the Secretary of Transportation to certify state project environmental review processes as being equivalent to that of the U.S. Department of Transportation. In doing such, the Secretary would delegate the review process to the certified states subject to oversight by the Department.
  - b. Charge the Secretary of Transportation to establish the tests and standards that must be met by the states in seeking the environmental review certification and delegation authority.
  - c. Direct the Secretary to work with the states and federal resource agencies to define applicable guidance for the project environmental review process.
  - d. Direct the federal resource agencies to define the time frames necessary to conduct project environmental reviews and to refine the mitigation negotiation process to allow for accountability and predictability in the system. Congress is urged to provide these agencies with the funding necessary to fully staff the environmental reviews in a timely manner.
  - e. Direct the Secretary to work with his counterpart agencies to establish a one-stop permitting process for Sections 4(f) and 106 processes or to combine the overlapping portions into one regulation.
  - f. Authorize the Secretary of Transportation to establish a defined dispute resolution process that may be led or chaired by the Secretary of US DOT to resolve disputes between the state transportation agencies and federal resource agencies.
  - g. Clarify the points in the project environmental review process where judicial challenges are appropriate in order to bring predictability to the review process, rather than the continual use of such challenges as a measure to extend both the time and scope of the review process.

5. Congress is urged to level the playing field for the project environmental review processes for projects that include multiple modes. Currently, there are differing processes and criteria for conducting the environmental reviews for each mode of transportation, transit, highways and railroads. This creates both difficult and conflicting procedures for the reviews and offers additional points for challenging the decisions.
6. Governors support the use higher gas mileage cars, hybrid cars, and other technologies for improving energy efficiencies and protecting the environment. At the same time, there is an increasing demand for an efficient transportation system that requires that revenues collected from the system users be sufficient to fund the necessary improvements. The Secretary has requested that a study be conducted to examine the funding mechanisms to ensure that the transportation system and TEA-21 programs are fully funded.
7. Governors support the sovereign status of tribes and their ability to establish self-sustaining economies. One negative impact of the tribes establishing businesses, such as service stations, bulk fuel sales and vehicle sales agencies on federally recognized tribal lands has been the reduction in transportation revenues to the federal and state highway trust funds. Both tribal members and state residents demand efficient transportation systems to support their economic needs. The Governors urge Congress to look to the best practices of the states and to the Federal Highway Administrator's study on revenue to assist in developing a fair tax collection process through an equitable settlement negotiations process, possibly using the Western water rights settlement process as a model.

*State - MPO Planning Process*

8. Governors support a cooperative process between the states' transportation agencies and the metropolitan planning organization (MPO). The Governor's also support the consultative planning process between the states' transportation agencies and its local governments. There are several excellent examples of how the state-MPO planning and review process can work effectively and Congress should request from the Secretary a summary of best practices in order to clarify the current misconceptions in the process.

*Security*

9. Congress is urged to provide guidance related to the roles and responsibilities of the Office of Homeland Security, Departments of Transportation, Justice, Commerce and Defense, and the states and local units of government in providing for the security of the nation's transportation systems. In providing such guidance Congress is requested to address the following:

- a. Guidance for performing criticality and vulnerability assessments of the surface transportation systems. Such standards have been defined for the nation's aviation system.
  - b. Guidance for identifying and protecting critical elements of the surface transportation system which support interstate commerce, information exchange, and the movement of critical military and emergency response resources.
10. In defining the roles and responsibilities, Congress must address the issues related to funding for these activities and resulting improvements to the surface transportation systems. Security of the transportation system is such a broad and potentially costly issue that it is best funded from all appropriate resources, including non-transportation related sources. Congress also needs to make it clear that all agencies of the federal government must coordinate their activities in order for there to be an effective response to terrorism.

*Intelligent Transportation Systems*

11. The Governors recognize the important role that ITS can play in the operation and management of all surface transportation systems. The federal government has invested significant amounts of money into the development of innovative technologies, but they are not being deployed onto the highway system in a timely manner. The Governors urge Congress to adjust the program priorities to address the deployment of these systems and, where appropriate, integrating them across different components of the surface transportation system in order to achieve the maximum utilization of this investment.
12. Congress is urged to direct the U.S. Department of Transportation to work with the Western states and the Western Association of State Highway and Transportation Officials to identify selected multi-state highway corridors on which to deploy ITS systems in an effort refine the tools and institutional mechanisms needed to create a national network operations system.

*Federal Lands Roads*

13. The Governors urge Congress and the U.S. Department of Transportation to ensure that funds under the Public Lands Highway program are allocated to areas of greatest need and to states with the largest amounts of public land acreage. No new program categories or set-asides should be created within the Federal Lands Highways Program.

*Discretionary Programs*

14. The Congress has employed the earmarking privilege to fund specific transportation projects under the highway discretionary program. The value of these projects toward improving the transportation system, technology and system operation may be appropriate, but the use of this process has significantly reduced or consumed the entire funding available to some programs. Congress, in reauthorizing TEA-21, should review the process by which these projects are designated and criteria established for determining the ability of project sponsors to implement the projects. The criteria should address the ability of the project sponsors to meet program, design, timing and contracting standards. Second, Congress is encouraged to address the issue of excessive ear marking in certain programs, i.e. Public Lands Highways and the Trade Corridor programs.

*Border Crossing and Trade Corridor Programs*

15. The Governors believe that Congress must restate its original objective of establishing a trade corridor program in support of the North American Free Trade Agreement (NAFTA) and reform that program to facilitate the movement of goods, services and people between the United States, Mexico and Canada. Congress is encouraged to give priority to those multi-state projects that facilitate bi-national trade.
16. Congress must also address the need to adequately fund a reformed trade corridor program and directing funding to corridors that support NAFTA objectives and international trade.
17. Congress is urged to direct the U.S. Departments of Transportation, Justice, and Commerce to establish a process for coordinating their activities to improve the movement of commerce through the northern and southern ports-of-entry. The Coordinated Border Infrastructure Discretionary Program was established to fund border enhancement projects. But transportation infrastructure is not the only solution to capacity problems. With the increased emphases on national security Congress needs to provide guidance for coordinating the response to these needs and balance the sources of funding for improvements.

*Modal Integration*

18. In planning and constructing multi and inter-modal projects, the procurement and management requirements imposed by Congress and U.S. Department of Transportation must be made more uniform. The Governors urge both Congress and the Secretary of Transportation to work collaboratively with the states to identify where these processes can be made more simplified and uniform thereby reducing the cost and time to complete these projects. Examples of best practices

should be used in defining these processes, i.e. the Alameda Corridor in California.

**C. GOVERNORS' MANAGEMENT DIRECTIVES**

1. WGA is to transmit this resolution to the Secretary of Transportation, the Western congressional delegation, the transportation and appropriation committees of Congress, and to WASHTO and AASHTO.
2. The Governors request WASHTO to monitor the reauthorization of the federal surface transportation programs and to report on Congressional actions.

*This resolution was originally adopted in 1999 as WGA Resolution 99-017.*

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