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TRANSPORTATION AND HOUSING AND URBAN DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2009

THURSDAY, MARCH 6, 2008

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10 a.m., in room SD–192, Dirksen Senate Office Building, Hon. Patty Murray (chairman) presiding.

Present: Senators Murray, Lautenberg, Bond, Specter, and Stevens.

DEPARTMENT OF TRANSPORTATION

STATEMENT OF HON. MARY E. PETERS, SECRETARY

OPENING STATEMENT OF SENATOR PATTY MURRAY

Senator MURRAY. This subcommittee will come to order. Good morning. Today, the subcommittee holds its first hearing of the year and we're very pleased to welcome Transportation Secretary Mary Peters back before the body, and I also want to welcome Phyllis Scheinberg, who's the Department's Assistant Secretary for Budget and Programs and Chief Financial Officer.

You know, much earlier in my career, I was the first woman ever appointed to the Transportation Committee in my State senate and at the time some of my senate colleagues there in Olympia made it very clear to me that they didn't think it was a role for women doing transportation policy. So, I'm only sorry that they can't be here this morning to see this. It takes, as my friend Senator Mikulski says, a lot of women and a few good men to get anything done. So, Mr. Bond, I welcome you here as well.

Last year, the White House and the Democratic Congress went to battle over budget priorities. The majority in Congress believed we could not ignore our needs here at home, including transportation and housing, two areas where we have very grave needs. In the end, we were able to provide over $1 billion more for the Department of Transportation than the President requested. That was $2.3 billion more than the 2007 level.

I certainly hope we can do better this year, but we're starting off at a huge disadvantage. Last year, President Bush wanted to increase the level of spending for the Transportation Department. We just disagreed on how much transportation spending should grow.

This year, however, President Bush wants to take us backward and cut transportation funding by more than $2.1 billion. In fact,

the President wants us to take back the $1 billion we added to his budget request last year and cut an additional $1.1 billion below that level.

The administration's deepest cuts would be to investments in highways and airports along with his usual request to slash Amtrak and throw the railroad into bankruptcy. These cuts would be devastating and his proposal is unacceptable.

In the last 15 months before the President unveiled his 2009 budget, the U.S. economy lost 284,000 construction jobs. Just this week, the Commerce Department reported that construction spending in January, which includes spending on highways and other municipal projects, took its biggest single month's drop in 14 years, but the President's response to the dismal economy and rising unemployment has been to send us a transportation budget that makes a bad situation worse.

By cutting highway and airport investments by a combined $2.6 billion, his budget would eliminate an additional 120,000 jobs. Each one of these jobs represents the difference between a family with some economic stability and a family staying up at night worrying about where they're going to find next month's rent and it would put off for yet another year the repairs and improvements our roads and airports already need very badly.

The President claims that his proposals would return the budget to surplus by the year 2012, but when you dig into the details, you find that the President has to rely on a series of unrealistic and irresponsible gimmicks to get there. One of those proposals should frighten every member of this subcommittee. He wants to cut federally-funded transportation services by 25 percent by 2012. His budget would have the Federal Government just give up its responsibility for funding our highways, airports and maintaining critical safety programs. I guess he expects a quarter of the Department of Transportation to simply disappear in the next 4 years.

Thankfully, five floors above us right now, the Senate Budget Committee is marking up a budget with realistic and responsible priorities for our Nation. I am a long-time member of that committee and I can assure you the budget we will report this evening puts Transportation on a very different path than the one proposed by President Bush.

Under our budget, Transportation would grow by almost $4 billion above the levels requested by the President for next year and Transportation funding will continue to grow above the level of inflation into the future.

The President's budget would effectively slash transportation funding by about $45 million over the next 5 years. The administration has defended its proposals to cut highway funding by $1.8 billion next year because the Highway Trust Fund is rapidly running out of money.

I've been warning Congress and the administration for years about the problem we face with the Trust Fund. We discussed that problem at last year's hearing. This year, I've worked with the Finance Committee to ensure that at least for 2009, we won't have to cut highway funding next year. That bill is awaiting action on the Senate Floor.

The Bush administration has offered an alternative: cut highway funding by $1.18 billion and steal from the Transit Account of the Trust Fund to bail out the Highway Account, and while the DOT maintains this loan from the Transit Account would be paid back once the Highway Account has sufficient resources, there's absolutely nothing in the administration budget projections to indicate whether repaying that loan would actually be possible.

By stealing from Transit to pay for highways, all we do is speed up the time it will take for the Transit Account to be as bankrupt as the Highway Account and that is just not a solution.

So, as we face looming shortfalls in highway funds, the only other idea being proposed by the administration is a sea of new tolls to be paid by the driving public. Secretary Peters recently advocated this new system of road pricing in a speech to the National Governors Association and her testimony addresses this today.

Road pricing basically requires drivers to pay steep new tolls and these new tolls are not just for traveling over brand-new highways and bridges, they'd be levied on the network of roads that have already been built with taxpayer funds. So, the administration is advocating now that working families who are already paying almost $4 a gallon for gas and who are barely making ends meet should pay brand-new tolls on highways they already paid for.

Now I believe new tolls have a place, especially for expensive projects, new projects, like a brand-new bridge, but the administration's plan is simply unrealistic for most Americans. Our families struggle enough to keep their cars on the roads so they can travel between their jobs, their kids' schools, their childcare centers and their homes.

I also believe the Federal Government should be cautious about the idea of leasing major transportation assets, including toll roads, to private investment banks. This idea is popular among mayors and governors. Here's how it works. Banks pay a huge amount of cash upfront, allowing cities and States to spend it immediately, but when the money's gone, their successors in office watch the toll revenues roll directly to the investment bank for as long as 99 years. If the money's used on transportation, this could be a good idea, but I think we have to be very careful if we're talking about leveraging transportation assets to get quick cash to pay down debt or to spend on other things.

So, as we discuss this today, I look forward to hearing the Secretary's views on whether governors and mayors, when they lease out transportation assets, should be required to invest their windfalls on transportation needs, and I also want to hear whether she believes this toll revenue is really a substitute for the Federal Aid Highway Program that has served to unify our communities and our country for the last half century.

Senator Bond?

OPENING STATEMENT OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Senator Murray. I thank you for being such a good working partner, look forward to working with you on this year's THUD bill and we welcome Secretary Peters for appearing before us today to testify on the Department's budget submission for 2009.

Not that I need to add anything to encourage your gambit about woman power but 35 years ago when I started appointing the first women as heads of departments in the State of Missouri Government, one of them very humbly told me, you know, with the trouble that women face today, to take on a job she has to be twice as good, twice as effective and twice as efficient as a man. Fortunately, that's not at all hard, but that is not my quote. That's from a department head woman who is a great friend of mine.

Madam Secretary, this will potentially be the last time that you appear before us. We have appreciated your service in the Department as Administrator of the Federal Highway Administration and now as Secretary overseeing all of DOT, and I look forward to your comments on the overall dismal budget picture for all of the modes of transportation within the Department.

As the chair has noted, the 2009 budget proposes $68.2 billion in gross budgetary resources which is a decrease of $2.13 billion from the level enacted in our recent omnibus appropriations package. That level of reduction in spending for transportation is a nonstarter.

Madam Secretary, during this final year of SAFETEA, I would have hoped that the administration would have remained committed to meeting the guaranteed funding levels for highways and transit as authorized. I understand from your testimony you believe you've lived up to the terms of SAFETEA by providing $286.4 billion over the life of the bill, thereby fulfilling your commitment to the spending agreement made with Congress when the president signed SAFETEA.

I have to disagree respectfully with that assessment and I believe that the chair and I will continue to try to honor our commitment to highways and transit.

Last year on the Senate Floor, I did not support the additional $1 billion for bridges that was included in the final omnibus appropriations bill. As you know, a majority of my colleagues felt that in light of the Minnesota bridge collapse, additional funding for bridges was necessary not only for Minnesota but for all 50 States. For this reason, an additional $1 billion was provided in obligation limitations for bridges in the final omnibus which I call ominous because they always turn out bad things for those of us who work on the individual appropriations bill.

That negotiation was separate and apart from the deal that was agreed to by the administration when SAFETEA funding levels were agreed to and the guarantees under SAFETEA should be met.

SAFETEA guaranteed the States $41.2 billion for highways. However, this budget only provides $39.4 billion. This reduction comes in part from a projected negative revenue aligned budget authority of $1 billion, plus another $800 million in reductions.

Similarly, this budget proposes to fund the Federal Transit Programs at a level which is $200 million below the SAFETEA authorized levels for new starts. These funds allowed an increased investment in key highway and transportation projects which will compliment and assist the continued growth of the U.S. economy.

I stated before and I'll go on record again that these large rescissions of contract authority on the States cannot continue. For the last several appropriations cycles, we have increasingly used the

practice of rescinding unobligated highway contract authority to make the overall size of transportation funding in our bill appear smaller.

The Department's budget submission regrettably joins us once again in using this budget gimmick to mask overall spending. Last year, regrettably, we included a rescission of over $4 billion in contract authority which was much higher than I was able to comfortably accept. Your budget submission now includes a rescission of almost $3.9 billion in contract authority and also does not reflect the $8.5 billion rescission in contract authority which will take place on September 30, 2009, the final day of SAFETEA, making the total rescission proposed for 2009 $12.39 billion.

There are real world consequences to these rescissions that are beginning to materialize from our actions. According to the individuals who run State departments of transportation, rescinding contract authority can limit our State departments of transportation ability to fund the priorities and operate their programs as efficiently as possible.

Our States need the flexibility to identify the Federal Aid Program categories to which these rescissions should apply, assuming we should continue to rescind these large amounts of contract authority. Last year, in exchange for agreeing to this high rescission in the THUD bill, I was able to convince my colleagues that rescission decisions should be made and remain in the hands of the States who know best where they should be made.

However, the Energy Bill passed and mandated in statute that proportional rescissions out of all the core funding categories are required, thereby severely limiting the ability of our States to set our spending priorities.

For example, if these high rescissions continue to be made and Missouri is forced to apply the categorical rescission, Missouri will be forced to cancel projects on their State implementation plan. Missouri has some categories with zero unobligated balances and would be forced to cancel projects currently on the STIP in interstate maintenance, national highway system, and Surface Transportation Program categories.

I've been told by our colleagues from Nevada that they have no remaining balances and our rescission decisions are starting to impact actual capital programming. The same is becoming true in Tennessee and Alaska and maybe many other States. Proportional rescissions of contract authority will hamper Missouri's program as well as many other States.

Madam Chair, this is an area where I think we need to work together to correct. I hope we can find a way to reduce the level of rescissions and, if necessary, at least give them the flexibility so that they don't incur the cost, the expense and the waste of canceling contracts already underway.

I also hope we can work with the Senate Finance Committee to fix the current shortfall in the Highway Trust Fund to get us through 2009 and beyond. It appears to me that no one can really get a handle on the Highway Trust Fund shortfall that we will face this year.

Last August, Madam Secretary, our staffs were briefed on the midyear projection of revenue into the Highway Trust Fund and we

were told that a $4.3 billion gap would occur at the beginning of 2009. Lower than anticipated tax receipts, which fund the Highway Trust Fund, were due in part to a sharp downturn in vehicle miles traveled, VMT, and truck sales being down 20 percent.

It would appear then that high gas prices were having a major impact on the traveling public and their willingness to drive long distances. I expect these issues to continue to limit the availability of funds for the Highway Trust Fund.

The budget you have before us today re-estimates that shortfall in the Highway Trust Fund to $3.3 billion, based upon slower than expected outlays on earmarks and projected negative RABA. To make up for this shortfall, your budget calls for another budget gimmick, allowing the HTF to borrow up to $3.3 billion from the Mass Transit Account to cover the shortfall in the Highway Account. This is what I would call at best a bandage for a bleeding wound, but it's taking a bandage off of another area that will be bleeding just as badly.

What we really need is a solution from the Senate Finance Committee to get us through 2009 and into 2010 until a comprehensive reauthorization proposal can be passed and signed into law.

Madam Secretary, in this year's budget, you've proposed once again a Congestion Reduction Initiative redirecting a $175 million in debt earmarks from ISTEA. Given the fact that $848 million was awarded or is conditionally awarded for five communities using 2007 funds and only one of the five has met all of the terms of its urban partnership agreement, one might ask why do you feel you need more money?

I understand that Minnesota, at $133 million, is close, but New York with $345 million and San Francisco with almost $159 million are not going to know from the State legislatures until March 31, of this year and Seattle is not to be decided until September 2009. No one at this point really knows if any of the three undecided urban partners will meet their deadlines or if their proposals will have any real effectiveness in reducing congestion.

Once again, on another subject, we have a non-starter for Amtrak. Last year, we gave Amtrak $1.3 + billion, $850 million for capital and debt service, $475 million in operations. The budget we have before us proposes to reduce this level by 40 percent.

Beyond the issue of what's the right number for Amtrak lays the recent Presidential Emergency labor board settlement which is not included whatsoever in the budget that we have before us.

As for aviation and, of course, the bad news keeps getting worse, the administration again attempts to slash funding from the Airport Improvement Program by $765 million. This is the third year in a row that the administration has attempted to reduce substantially this critical account beyond acceptable levels.

I look forward to working with the chair and fellow members of this committee to restore these cuts and to ensure that the Nation's airport infrastructure receives the appropriate Federal investment.

Nevertheless, Madam Secretary, you know the importance of airport infrastructure in regards to solving our aviation congestion problems. We applaud you for acknowledging that many of our Nation's major congestion choke points need to develop and improve secondary airports to handle traffic.

I talked last night with several pilots who said that they were very much concerned because we've got a lot more resources up in the air than we have places to land them and it's not just air traffic control, its actual facilities.

Madam Secretary, you deserve credit for seeking to change the landing fee structure to incentivize moving operations to off-peak hours and secondary airports in congested areas and to change the way airport projects are financed both at major hubs and at secondaries. We need to ensure proper investment in these secondaries if we're truly serious about battling congestion and properly funding the AIP Program goes a long way towards that goal.

In closing, I would only say that healthy investment in highway, transit and aviation programs, including safety, improves America's quality of life and is the lifeblood of our Nation's economic growth.

Thank you, Madam Chair.

Senator MURRAY. Senator Lautenberg.

STATEMENT OF SENATOR FRANK R. LAUTENBERG

Senator LAUTENBERG. Thank you, Madam Chair, and Secretary Peters, we wish you well in your next endeavors and I know how hard you worked to put things together. Unfortunately, they did not come together, whether it was the President's choice or whether we didn't bite hard enough to make him aware of the fact that the Nation's suffering terribly as a result of insufficient investment.

If we want to strengthen and grow our economy, the one thing we must do is invest in our transportation infrastructure now. The President isn't willing to make these critical investments. That's kind of obvious. He wants to cut funding for bridges, highways, repairs by almost $2 billion. He also wants to fund transit programs at $200 million below the level that Congress authorized.

Now these cuts hurt States like mine, like New Jersey and its working families that need transit options the most, and airline passengers will fare no better under this budget. The delays will continue. As a matter of fact, the projections are that they'll get substantially worse in the years ahead.

President Bush wants to raise airline taxes, cut funding for our Nation's airports and runways by $765 million. Our air traffic control system is already dangerously understaffed and the FAA has done far too little to prevent runway incidents.

President Bush once again is trying to bankrupt Amtrak and it's really shocking when we see that whether it's out of desperation or choice that Amtrak ridership is substantially higher than it's been. In the year 2006, we had 24,300,000 passengers. In the year 2007, we had 25,800,000 passengers, and the revenues also have showed substantial increases, whether or not the choice was made out of, as I said earlier, desperation or convenience, but the revenues were up almost $200 million in those 2 years.

So, when we look at reductions in funding for Amtrak, it really makes one wonder why. At a time of record high gas prices, record airport delays, we should not be taking away this popular energy

efficient and convenient travel option which people are using in record numbers, as I just described.

Our economy depends on our transportation infrastructure. It demands a greater investment and commitment from the Federal Government and I look forward to working with my colleagues on this subcommittee to provide the leadership that we need for us to provide the critical factors to enable our Nation to function more efficiently, creating less toxic emissions, and to be able to search for new technologies and innovations, remembering that population growth in America in 1970, we had 200 million people, 37 years later, we have 300 million, and the transportation system was certainly not built for that kind of growth and we have to make adjustments and make them rapidly because it doesn't look like we're leveling off in population growth.

Thank you, Madam Secretary.

Senator MURRAY. Thank you. Secretary Specter.

Senator SPECTER. Madam Chairman, Senator Stevens has asked for 30 seconds.

Senator MURRAY. Senator Stevens.

STATEMENT OF SENATOR TED STEVENS

Senator STEVENS. Madam Chairman, I greet the Secretary, but I ask unanimous consent to make my statement appear in the record and the questions submitted for me. I have to go on the Floor.

Senator MURRAY. Without objection.

Senator STEVENS. Thank you very much.

[The statement follows:]

PREPARED STATEMENT OF SENATOR TED STEVENS

Madam Secretary, I understand the challenges that the Department faces to provide funding for our Nation's aging transportation systems, with growing congestion and the continued need to continue to prioritize safety.

It is important that, as we work with the Department of Transportation to address these challenges, we must continue our commitment to increase aviation safety and rural community access.

The FAA has made great strides in aviation modernization and safety. As we move forward, it is important that we understand the challenges faced in Alaska. We're a State that's one-fifth of the United States in size, as you know. We have very few roads. Our taxis, our buses, and our ambulances are almost all aircraft. Seventy percent of our communities are not connected to the outside world or to each other by roads. They are accessible only by air and in some instances by water.

Because of our reliance on air travel, the hazardous weather conditions, and diverse terrain, (AK has 17 of the 20 highest peaks in the United States), Alaska has served a critical role in the development and implementation of aviation safety technology, which will be implemented nationwide as the ADS–B system. (Known as capstone in AK).

In last weeks Commerce Committee hearing, we discussed some of the shortfalls of this years proposed budget, specifically cuts to the essential air service program which provides a lifeline for isolated communities in my State and across the Nation.

Despite the many shortfalls of this years proposed budget, I look forward to working together to address the needs of our Nations' transportation systems, as well as the needs of Alaska.

I appreciate the funding provided in the proposed budget for Alaska Flight Service Modernization ($14.6 million). As the FAA considers the final investment analysis of how to modernize the Alaska Flight Service Stations, I want the Department to understand that the flight stations in Alaska provide services beyond the functions provided by stations in the rest of the Nation, as many facilities do not have towers.

I hope that the Department recognizes that reality, and continues to make safety as primary concern as we move forward.

STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. Thank you, Madam Chairwoman. I will be brief. I left the Judiciary Committee where I'm ranking and I'm needed there for a quorum.

I wanted to raise some issues which are very, very serious to Pennsylvania. Secretary Peters, I know you're aware of them, but I've not had any responses from the Department. So, I repeat them here.

There had been a commitment that the flight routing over Delaware County in Pennsylvania would not be done between 9 a.m. and 11 a.m., and 2 p.m. to 7 p.m., unless there is a significant backlog, and that commitment was made by a representative from your Department named Steve Kelley and the planes are being routed over Delaware County when there is no backlog at all, which has created an enormous and justifiable local furor and other approaches are not being used, such as a river approach, and we would like to know the details.

I've been trying very hard to get Mr. Sturgell to come for a hearing so we could deal with these issues and I would appreciate your assistance on that.

On another matter, the scheduling of flights at the Philadelphia International Airport is intolerable. You don't have to look at the schedules to know it. I can give you lots of personal experience on the subject, and I had written to you back on November 8, of last year and December 18, of last year and I would very much appreciate responses to those letters, and I've asked to have a meeting convened among the carriers, similar to the one which you held in New York. That meeting impacted on Pennsylvania and the Philadelphia International Airport because there are analogous routes. So these are matters of enormous importance to my State and to me personally.

There has been an application pending in your Department regarding MAGLEV, a high-speed line which we're trying to move ahead in Pennsylvania, and it has been pending for more than a year and I personally called the key official and got assurances that something would be done and a long time has passed since then.

So again I would appreciate it if you would give that your personal attention.

In conclusion, let me associate myself with the remarks of Senator Lautenberg about Amtrak. It's enormously vital in this country and Congress has had to intervene consistently and I think that a more realistic approach needs to be taken by the administration on the subject.

Thank you, Madam Chairwomen.

PREPARED STATEMENT OF SENATOR ROBERT C. BYRD

Senator MURRAY. Thank you. The subcommittee has received a statement from Senator Byrd which we will insert into the record.

[The statement follows:]

PREPARED STATEMENT OF SENATOR ROBERT C. BYRD

Madame Chairman, In May 1829, President Andrew Jackson vetoed the Maysville Road bill. The measure would have funded a section of the national highway running through Maysville, Kentucky, across the Ohio River, into Cincinnati. Failing to comprehend or acknowledge the benefits to the national economy, the Jackson administration derided the funding for the Maysville Road as local, pork-barrel spending. But U.S. Senator Daniel Webster, who understood that local projects often have national implications, especially investments in transportation infrastructure, opposed the President's veto. He remarked, "There is no road leaving everywhere, except the road to ruin. And that's an administration road."

I often think about that quote—the administration's "road to ruin." President Bush's budget included lots of bombast against State and local infrastructure projects, derisively dismissing them as special interest earmarks. Once again, a presidential administration is failing to recognize that inadequate infrastructure in one State affects the economies of other States. It affects the Nation as a whole. Therefore, it is the Federal Government's unquestionable role to do something about it.

Let's consider the statistics. According to the American Society of Civil Engineers, our Nation has 590,000 bridges, and one out of every four is structurally deficient or functionally obsolete. One of those bridges was the I–35 bridge that collapsed in Minnesota last year. Because of congested roads, Americans sit in traffic for 3.5 billion hours annually, at a cost of $63 billion to the economy. Our airways are not much better. Airports are struggling to accommodate an increasing number of airplanes and jumbo jets, and passengers are forced to wait interminably on runways. Rail capacity is limited. Intercity passenger rail service is routinely attacked by this administration, leaving it in a precarious state of near-bankruptcy. Commuter rail and transit infrastructure is aging, and budgets are shrinking, as fares increase and services are reduced.

Our Nation's deteriorating infrastructure expands well beyond the Transportation Department. There are 3,500 deficient and unsafe dams posing a direct risk to human life if they should fail. Of the 257 locks on the more than 12,000 miles of inland waterways operated by the U.S. Army Corps of Engineers, nearly half of them are functionally obsolete. For every barge that is affected, it is the equivalent of disrupting 58 semi-trucks carrying cargo across the country.

Aging water facilities fail to comply with safe drinking water regulations. Outdated wastewater management systems discharge billions of gallons of untreated sewage into surface waters each year. Existing transmission facilities within the national power grid are overwhelmed by bottlenecks, which elevates the risk of regional blackouts. Our public parks, beaches, and recreational harbors need attention because they are falling into disrepair. These facilities are anchors for tourism and economic development in many States.

Congested roads and long commutes, crowded airlines and delayed flights, vulnerable bridges, energy blackouts, failing dams, dirty water and waste mismanagement—these are the festering signs of a Nation's infrastructure which is slowly starving. And it's happening on this administration's watch. It's happening because the Bush administration refuses to fund our country's basic infrastructure—the bones on which the muscles of a sound economy depend.

This is Mr. Bush's "road to ruin."

An editorial in The Washington Post in 2005 described the situation this way: "[We] have let the Nation's plumbing rust, its wiring fray, its floor joists warp and its walkways crumble . . . Sooner or later, though, we're going to have to pony up . . . If you continue to ignore that drip, drip, drip in the upstairs bedroom, pretty soon you're going to be pricing a new roof."

This editorial appeared only weeks before Hurricane Katrina. The investments we delayed and postponed in New Orleans cost lives. The investments we delay in transportation infrastructure cost lives, and undermine our economic prosperity. When it comes time to pay, it costs tens of billions of dollars in repairs and new building, much more than would have been necessary had we not ignored the problem. These are painful lessons that this administration is stubbornly refusing to acknowledge. Our constituents expect us to have the vision to look down the road and put policies in place that ensure productivity and prosperity. But instead, some have chosen the rocky road to ruination. One thing is certain. If we allow the drip, drip, drip to continue, we will one day suffer the crushing costs that come when the roof falls in.

Senator MURRAY. Secretary Peters, we will now turn to you for your testimony.

STATEMENT OF HON. MARY E. PETERS

Secretary PETERS. Madam Chairman, thank you very much. I know that Senator Specter has to leave. My apologies that we have not been responsive; we will ensure that we respond right away, sir. I am aware that there is a hearing scheduled in Philadelphia for April 7, on the Philadelphia air routings.

Chairman Murray, members of the committee, thank you for the opportunity to appear before you today to discuss the administration's fiscal year 2009 budget request for the U.S. Department of Transportation.

President Bush is requesting $68.2 billion for America's transportation network in the next fiscal year, including funding for the Department's mandatory programs.

We are working with the President to hold the line on spending, while giving travelers and taxpayers the best possible value for their transportation dollars by transforming the way our transportation system works and is funded.

Our focus is on real transportation solutions that make travel safer, improve the performance of our transportation systems so that they operate more efficiently and serve us better, and apply technologies and contemporary approaches to today's transportation challenges.

For the first time since the creation of the interstate highway system, we have an incredible opportunity to come together and completely reassess our approach to financing and managing the surface transportation systems. Because gas and diesel taxes are levied regardless of when, where or how someone drives, a misperception has been created that the highways are free.

As with any scarce resource that is perceived to be free, demand will chronically exceed supply. In the case of highways, the peak demand is serious and it's growing worse in every medium or large city in the United States today.

While highway spending at all levels of government has increased by 100 percent in real dollar terms since 1980, the hours of delay during peak travel periods experienced by drivers has increased by over 200 percent during the same period of time. Nationwide, congestion imposes delay and wasted fuel costs on the economy of at least $78 billion a year.

The true costs of congestion, however, are much higher. Consider the significant costs of unreliability to drivers and businesses, the environmental impacts of idle-related auto emissions, increased gasoline prices and the immobility of labor markets that result from congestion. All of these costs substantially affect interstate commerce and our ability as a Nation to compete in a global economy.

The President's budget includes $14.6 billion for the Federal Aviation Administration (FAA). The budget request assumes passage of the President's reauthorization proposal for FAA programs and revenue streams associated with that reform package.

With the more efficient revenue structure, we will be able to build on our exemplary safety record in aviation while expanding the number of aircraft that the Nation's airspace can safely handle at any given time.

The key to achieving higher levels of safety and efficiency is to move to 21st century technologies to guide air traffic. The fiscal year 2009 budget request would more than double the investment in these NextGen technologies, providing $688 billion for key research and technologies, including the transformation from radar-based to satellite-based navigation systems.

Without these reforms to help finance increased air traffic control capacity and modernization, we can all expect, unfortunately, to spend more time waiting in airports or strapped in an airplane seat sitting at the end of a runway.

Nearly 31 percent of the funds requested for fiscal year 2009 support safety programs and activities. The budget allows us to build on our successes in delivering safer transportation systems by focusing on problem areas, such as runway incursions, as well as motorcycle crashes and pedestrian injuries on the road.

It is important that we continue a data-driven safety focus that allows us to target our resources more effectively to save lives. Last week, the Department announced a new national strategy that will bring new focus, including resources and new technology, to reducing deaths on the Nation's rural roadways. Our Rural Safety Initiative will help States and communities develop ways to eliminate the risks drivers face on America's rural roads and highlight the available solutions and resources.

The President's fiscal year 2009 budget builds on the exciting things that we're doing at the Department of Transportation, things that will help move America forward on a new course, a course that delivers high levels of safety, takes advantage of modern technology and financing mechanisms, and mitigates congestion with efficient and reliable transportation systems.

Madam Chairman, as I mentioned, I believe that we are at an important crossroads in terms of our Nation's transportation system. I have put some ideas out there, but I am anxious to work with you and to hear your ideas, and those of this committee, as we move forward to meet these challenges.

PREPARED STATEMENT

Thank you for the opportunity to appear before you today. I look forward to working with Congress and with the transportation community so that together we can ensure that America continues to have the best transportation system in the world.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF HON. MARY E. PETERS

Chairman Murray and members of the subcommittee, thank you for the opportunity to appear before you today to discuss the administration's fiscal year 2009 budget request for the U.S. Department of Transportation.

President Bush is requesting $68.2 billion for America's transportation network in the next fiscal year, including funding for the Department's mandatory programs. We are working with the President to hold the line on spending, while giving travelers and taxpayers the best possible value for their transportation dollars by transforming the way our transportation system works and is funded. At the Department of Transportation, our focus is on finding real transportation solutions that make travel safer, improve the performance of our transportation systems so that they operate more efficiently and serve us better, and apply advanced technologies and contemporary approaches to today's transportation challenges.

Consistent with these priorities, nearly 31 percent of the funds requested for fiscal year 2009 support safety programs and activities. The budget allows us to build on our successes in delivering safer transportation systems by focusing on problem areas like runway incursions, as well as motorcycle crashes and pedestrian injuries on the road. It is important that we continue a data-driven safety focus that allows us to target resources more effectively.

Just as the budget supports continued strong progress on the safety front, it also builds on our comprehensive efforts to identify new partners, new financing, and new approaches to reduce congestion. One example is the New York region where the Bush administration has moved aggressively to alleviate congestion in the air and on the ground. The administration recently announced short-term measures to bring passengers relief from chronic flight delays and we have been supporting Mayor Bloomberg's efforts to reduce the crippling congestion on the streets of Manhattan. If last year's record traffic jams and flight delays taught us anything, it is that traditional financial approaches are not capable of producing the results we need to keep America's economy growing and America's families connected.

Fiscal year 2009 is the final year of the current surface transportation authorization—the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The President's budget fulfills the President's commitment to provide the 6-year, $286.4 billion investment authorized by SAFETEA–LU. For 2009, the budget provides $51.7 billion in 2009 for highways, highway safety, and public transportation.

To honor that commitment, even with an anticipated shortfall in the Highway Account balance of the Highway Trust Fund, the President is requesting temporary authority to allow "repayable advances" between the Highway Account and the Mass Transit Account in the Highway Trust Fund. This flexibility will get us through the current authorization without any impact on transit funding in 2009; however, unreliable Trust Fund revenues are another sign that we need to more aggressively begin moving away from our reliance on fuel taxes by partnering with State and local governments willing to develop more effective means to finance our surface transportation infrastructure.

It is increasingly clear that America's transportation systems are at a crossroads. Even as we continue to make substantial investments in our Nation's transportation systems, we realize that a business-as-usual approach to funding transportation programs is no longer effective. We need serious reform of our approaches to both financing and managing our transportation networks.

For the first time since the creation of the Interstate Highway System, we have an amazing opportunity to come together and completely re-assess our approach to financing and managing surface transportation systems. For too long, we have tolerated exploding highway congestion, unsustainable revenue mechanisms and spending decisions based on political influence as opposed to merit.

Now, thanks to technological breakthroughs, changing public opinion and highly successful real-world demonstrations around the world, it is clear that a new path is imminently achievable if we have the political will to forge it. That path must start with an honest assessment of how we pay for transportation. In fact, our continued transportation financing challenges are in many ways a symptom of these underlying policy failures, not the cause.

Because gas and diesel taxes are levied regardless of when, where or how someone drives, a misperception has been created that highways are "free." As with any scarce resource that is perceived to be free, demand will chronically exceed supply. In the case of highways, this peak demand problem is serious and growing worse in every medium or large city in the United States. While highway spending at all levels of government has increased 100 percent in real dollar terms since 1980, the hours of delay during peak travel periods has increased almost 200 percent over the same time period.

Traffic congestion affects people in nearly every aspect of their daily lives—where they live, where they work, where they shop, and how much they pay for goods and services. According to 2005 figures, in certain metropolitan areas the average rush hour driver loses as many as 60 hours per year to travel delay—the equivalent of one and a half full work weeks, amounting annually to a "congestion tax" of approximately $1,200 per rush hour traveler in wasted time and fuel.

Nationwide, congestion imposes delay and wasted fuel costs on the economy of at least $78 billion per year. The true costs of congestion are much higher, however, after taking into account the significant cost of unreliability to drivers and businesses, the environmental impacts of idle-related auto emissions, increased gasoline prices and the immobility of labor markets that result from congestion, all of which substantially affect interstate commerce.

Traffic congestion also has an increasingly negative impact upon the quality of life of many American families. In a 2005 survey, for example, 52 percent of Northern Virginia commuters reported that their travel times to work had increased in the past year, leading 70 percent of working parents to report having insufficient time to spend with their children and 63 percent of respondents to report having insufficient time to spend with their spouses.

Nationally, in a 2005 survey conducted by the National League of Cities, 35 percent of U.S. citizens reported traffic congestion as the most deteriorated living condition in their cities over the past 5 years; 85 percent responded that traffic congestion was as bad as, or worse than, it was in the previous year. Similarly, in a 2001 survey conducted by the U.S. Conference of Mayors, 79 percent of Americans from 10 metropolitan areas reported that congestion had worsened in the prior 5 years; 50 percent believe it has become "much worse."

Around the country, a growing number of public opinion polls reflect the unpopularity of gas and diesel taxes, particularly when compared to open road electronic tolling. Most recently, in a King County, Washington survey conducted in December 2007, respondents preferred financing the reconstruction of a major bridge with electronic tolling instead of gas taxes by a margin of 77 to 17 percent. In addition, the concept of variable tolling using new technologies in which prices vary regularly based on demand levels received support from 76 percent of respondents and opposition from only 22 percent.

A survey of public opinion surveys conducted in November 2007 for the Transportation Research Board by the research firm NuStats found that "in many parts of the United States, a wide gap exists between elected officials' perceptions of what the public thinks about tolling and road pricing and what public opinion actually is." Summarizing their findings, the report said, "in the aggregate there is clear majority support for tolling and road pricing. Among all surveys, 56 percent showed support for tolling or road pricing concepts. Opposition was encountered in 31 percent of the surveys. Mixed results (i.e., no majority support or opposition) occurred in 13 percent of them."

In the 2007 edition of their Annual Survey of U.S. Attitudes on Tax and Wealth, the Tax Foundation wrote, "the one surprise this year was at the State and local level, where gas taxes were viewed as the least fair tax. That's the first time any State-local tax has edged famously-disliked local property taxes out for the honor of most unfair tax."

Virtually every economist who has studied transportation says that direct pricing of road use, similar to how people pay for other utilities, holds far more promise in addressing congestion and generating sustainable revenues for re-investment than do traditional gas taxes. And thanks to new technologies that have eliminated the need for toll booths, the concept of road pricing is spreading rapidly around the world. The brilliance of road pricing is that it achieves three major policy objectives simultaneously.

First, it will immediately reduce congestion and deliver substantial economic benefits. Drivers have proven in a growing array of road pricing examples in the United States and around the world that prices can work to significantly increase highway speed and reliability, encourage efficient spreading of traffic across all periods of the day, encourage shifts to public transportation and encourage the combining of trips. In fact, the National Household Travel Survey shows on an average workday, 56 percent of trips during the morning peak travel period and 69 percent of trips during the evening peak travel period are non-work related, and 23 percent of peak travelers are retired.

Second, it will generate revenues for re-investment precisely in the locations that need investment the most. Recent estimates in a forthcoming paper, "Toward a Comprehensive Assessment of Road Pricing Accounting for Land Use" by economists Clifford Winston and Ashley Langer at the Brookings Institute conclude that utilizing congestion pricing in ONLY the largest 98 metropolitan areas would generate approximately $120 billion a year in revenues while simultaneously solving the recurring congestion problem in those areas. Implementation of a broader road pricing strategy tied to wear and tear and reconstruction costs would obviously produce even higher revenue. In 2006, as a Nation, we spent approximately $150 billion on all of our highways. State and local officials would even gain additional flexibility to reduce the wide array of taxes currently going into transportation that have nothing to do with use of the system.

Third, direct pricing will reduce carbon emissions and the emissions of traditional pollutants. According to Environmental Defense, a nonprofit environmental organization, congestion pricing in the city of London reduced emissions of particulate matter and nitrogen oxides by 12 percent and fossil fuel consumption and CO_2 emissions by 20 percent; a comprehensive electronic road pricing system in Singapore

has prevented the emission of an estimated 175,000 lbs of CO_2; and Stockholm's congestion pricing system has led to a 10–14 percent drop in CO_2 emissions.

Technology must play an important role in relieving traffic on our Nation's highways. Through programs like our Urban Partnerships and Corridors of the Future initiatives, we have been aggressively pursuing effective new strategies to reverse the growing traffic congestion crisis. The interest around the country has proven quite strong—over 30 major U.S. cities responded to our call for innovative plans to actually reduce congestion, not simply to slow its growth.

The fiscal year 2009 budget would encourage new approaches in fighting gridlock by proposing to use $175 million in inactive earmarks and 75 percent of certain discretionary highway and transit program funds to fight congestion, giving priority to projects that combine a mix of pricing, transit, and technology solutions. While State and local leaders across the country are aggressively moving forward, congressional support and leadership is critical. These projects will help us find a new way forward as we approach reauthorization of our surface transportation programs.

Through the Urban Partnership initiative, communities submitted innovative transportation plans that would not just slow the growth of congestion, but would reduce it. The Department promised to allocate the Federal contribution in a lump sum, not in bits and pieces over several years. This initiative is part of a national dialogue about how transportation should be funded in the future. Congestion pricing is being talked about in major newspapers and cutting-edge traffic-fighting packages are combining technology and tolling, using the revenues to expand highway and transit capacity.

In August 2007, the Department awarded $850 million in Federal grants to five cities—Miami, Minneapolis, San Francisco, Seattle, and New York—to support their bold and innovative strategies to reduce gridlock and raise new funds for transportation. The Department's discretionary grant awards under the Congestion Initiative in fiscal year 2007 were awarded in accordance with the statutory criteria of the applicable Federal-aid programs and Federal appropriations law.

Local leaders in Minneapolis, for example, are tackling congestion there by converting HOV lanes to HOT lanes, congestion pricing new capacity on the shoulders of I-35 West, and deploying high-end bus rapid transit service and intelligent transportation technologies.

San Francisco, meanwhile, plans to charge variable tolls on its most congested roadway into the city, implement a comprehensive smart parking system and institute traffic signal coordination at 500 key intersections throughout the city.

And, New York City Mayor Bloomberg—together with key members of the New York State legislature, environmental leaders, and city business leaders—is advancing the most comprehensive congestion solution yet seen in the United States: "cordon pricing" of Manhattan south of 86th Street, supported by new bus rapid transit service to the city center.

Accessible and cost-effective transit projects also help fight congestion, and the President's budget includes over $10 billion for transit programs. The President's budget includes $6.2 billion to help meet the capital replacement, rehabilitation, and refurbishment needs of existing transit systems. Also included is $1.4 billion for major New Starts projects, which will provide full funding for 15 commuter rail projects that are currently under construction, as well as proposing new funding for 2 additional projects. Another $200 million will be used to fund 13 projects under the Small Starts program.

The President's budget includes $14.6 billion for the Federal Aviation Administration (FAA). In addition to critical new technology, the budget includes sufficient resources to hire and train an additional 306 air traffic controllers—people who are key to keeping the system safe.

The budget request assumes Congressional passage of the President's reauthorization proposal for FAA programs and revenue streams. With a more efficient revenue structure, we will be able to build on our exemplary aviation safety record while expanding the number of aircraft that the Nation's airspace can safely handle at any given time. Also, our proposal would modernize how we pay for airport infrastructure projects and allow us to overhaul the Nation's air traffic control system.

Key to achieving higher levels of safety and efficiency is the move to 21st century technologies to guide air traffic. For the flying public, this investment is critical if we are to deploy the state-of-the-art technology that can safely handle dramatic increases in the number and type of aircraft using our skies, without being overwhelmed by congestion. The fiscal year 2009 budget request would more than double investment in these Next Generation Air Transportation System (NextGen) technologies, providing $688 million for key research and technologies including the transformation from radar-based to satellite-based navigation systems.

The fiscal year 2009 budget once again provides the framework of the Next Generation Air Transportation System Financing Reform Act, a new proposal that will make flying more convenient for millions of travelers. As air traffic is expected to nearly triple by 2025, our aviation system requires a more reliable and responsive source of revenue to fund the modern technology required to manage this expanded capacity. The investment in NextGen will allow the FAA to not only handle more aircraft, but also to maintain high levels of safety, reduce flight delays, and reduce noise near airports.

From a finance perspective, our proposal replaces the decades-old system of collecting ticket taxes with a stable, cost-based funding program. Based on a combination of user-fees, taxes and general funds, it creates a stronger correlation between what users pay to what it costs the FAA to provide them with air traffic control and other services. The incentives our plan puts in place will make the system more efficient and more responsive to the needs of the aviation community.

Without reforms to help finance increased air traffic control capacity and modernization, we can all expect to spend more time waiting in airports or strapped in an airplane seat, sitting at the end of a runway. There has already been a vigorous debate about the structure of the system, and we ask Congress to support our substantial aviation reform.

We also urge action on making needed reforms to the Nation's Intercity Passenger Rail system. The President's fiscal year 2009 budget provides a total funding level of $900 million for intercity passenger rail. Included in this total is $100 million for a matching grant program that will enable State and local governments to direct capital investment towards their top rail priorities.

Our "safety first" priority includes ensuring the safe and dependable transport of hazardous materials throughout the transportation network. The President's budget request would increase funding for pipeline safety programs to over $93 million by funding eight new inspectors to increase oversight of poor performing pipeline operators and increasing State pipeline safety grants by $11.3 million.

Last week, the Department announced a new national strategy that will bring new focus, including resources and new technology, to reducing deaths on the Nation's rural roads. The Department's Rural Safety Initiative will help States and communities develop ways to eliminate the risks drivers face on America's rural roads and highlight available solutions and resources. The new endeavor addresses five key goals: safer drivers, better roads, smarter roads, better-trained emergency responders, and improved outreach and partnerships.

We are also requesting $174 million to support a fleet of 60 vessels in the Maritime Security Program to assure the viability of a U.S.-flag merchant marine capable of maintaining a role in international commercial shipping and of meeting the sea lift needs of the Department of Defense.

Finally, the President's budget includes $17.6 million to support the first year of a $165 million, 10-year asset renewal program for the Saint Lawrence Seaway Development Corporation. After 50 years of continuous U.S. Seaway operations, this federally-owned and operated infrastructure is approaching the end of its original "design" life. Coordinated large scale capital reinvestment is now required to assure continuous, safe and efficient flow of maritime commerce.

The President's fiscal year 2009 budget builds on the exciting things we are doing at the Department of Transportation to help America move forward on a new course—a course that delivers high levels of safety, takes advantage of modern technology and financing mechanisms, and mitigates congestion with efficient and reliable transportation systems.

Thank you for the opportunity to appear before you today. I look forward to working with the Congress and the transportation community to ensure that America continues to have the best transportation system in the world.

FUNDING FOR INFRASTRUCTURE INVESTMENTS

Senator MURRAY. Thank you very much, Secretary Peters. As I mentioned in my opening statement, few areas of our economy have deteriorated as badly as employment in the construction sector. By far and away, the two biggest cuts in the transportation budget are your proposals to slash highway funding by almost $2 billion and airport funding by more than $750 million.

Together, those cuts represent a potential loss of about a 120,000 well-paying jobs.

Given the state of the economy, why does the President right now feel that it's the right time to cut back on infrastructure investments and really worsen the job losses in our construction sector?

Secretary PETERS. Madam Chairman, we understand that there's some disagreement with this body in terms of what the President has proposed in those areas.

As I have mentioned, the President asked us to use great care in spending our taxpayers' dollars and to tighten our budget wherever we could.

In terms of highway, highway safety, and public transportation programs, we are meeting the commitment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) legislation in terms of the full $286.4 billion authorized. We are reducing the request for the Federal Highway Administration based on the $1 billion of Revenue Aligned Budget Authority (RABA) that would take place this year, $800 million in highways, and $200 million in transit for a total of $2 billion.

Madam Chairman, we understand that these reductions are going to cause some concern with State leaders, but we believe that we can help them bring new resources to bear that will help them meet their needs, and as you mentioned, create the jobs that are associated with them.

In terms of the Airport Improvement Program, our proposal funds all important safety projects. We also included in the administration's FAA reauthorization proposal other new mechanisms that would allow airports to bring more money to bear to meet infrastructure at our airports.

I think Senator Bond made a very good point. The challenge that we have in aviation is not just in the sky, but it's also on the ground. Improving the efficiency of the capacity that we have today, and expanding that capacity in the future, is going to be crucial if we're able to meet the growing demand for aviation.

AIRPORT INFRASTRUCTURE INVESTMENT

Senator MURRAY. Well, I've heard you justify highway cuts in the past by talking about the precarious situation of the Highway Trust Fund, but in terms of the huge cuts to the Airport Program, there is still a lot of money in the Aviation Trust Fund to maintain the current level of spending.

Your proposed cut in airport investment might cause the loss of more than 30,000 construction jobs.

Can you tell this committee why you're proposing to cut airport infrastructure when we know that airport congestion is worsening and there are adequate funds in the Trust Fund today to cover that?

Secretary PETERS. Certainly, Madam Chairman. The balance, as you indicated, in the Aviation account is about $1.5 billion. Unfortunately, it's only approximately 2 months worth of operations, down substantially from what it has been in the past.

But back to your question about why we are not proposing more for the Airport Improvement Program. Madam Chairman, we included $2.75 billion, which would cover all essential safety projects and those projects that are on deck and ready to go right now.

Last year when we sent the administration's aviation reauthorization proposal to Congress, we proposed new mechanisms that would allow airports to use new ways to bring money to bear for these important capital improvement projects.

Senator MURRAY. And you're waiting for Congress on that?

Secretary PETERS. We have been, Madam Chairman. We understand that there may be some difficulty in reaching that goal.

HIGHWAY TOLLING

Senator MURRAY. Well, let me go back to the highways. You know the condition of the Highway Trust Fund and the Revenue Study Commission that you chaired issued a report and put a lot of options on the table as far as fuel taxes, user fees, public-private partnerships, freight fees, streamlined funding categories, a number of things.

You dissented from that report and instead you are here in front of this committee today advocating a $1.8 billion funding cut which is by using a raid on the Mass Transit Trust Fund of expanded tolling.

Can you talk to us about how you see tolling to be a near-term solution to the crisis that we're facing?

Secretary PETERS. Madam Chairman, I would be pleased to do that. I think the goal that we together have is to move the solutions to transportation challenges that our Nation faces into 21st century solutions.

We, as a Nation, have depended on fossil-based fuel taxes for most of our surface transportation funding on a Federal level since the mid-1950s when the interstate highway system was first authorized. That mechanism served us well to deal with the challenges that we had at the time in terms of connecting major cities in the United States. But because it bears no direct relationship to the use of the system, and because those revenues, as you said, are dropping off substantially at this point in time, it no longer is adequate, responsive, or sustainable. In fact, it's not a popular taxing mechanism with the public as well.

The Energy Independence and Security Act, and other important reforms that this Congress passed and the President signed, will move us into more fuel efficient vehicles, which is very good and very important. It will help our environment. We'll also move away from burning fossil-based fuels and use more alternative and renewable fuels.

All of those things point to the way that we need to do something different in the future, Madam Chairman, and that is why I dissented from the committee majority recommendation to increase by some 40 cents a gallon fuel taxes——

Senator MURRAY. In favor of tolls, but tell us how, if you think the cities and States are ready to collect an additional $1.8 billion by this coming October to fill the hole in this.

Secretary PETERS. Madam Chairman, I will do that. There is conservatively right now about $400 billion available in private sector investment funds that could be brought to bear not only to meet that $1.8 billion, but to meet substantially more than that if we create the proper environment. Many States have done so already, where these funds can be used.

In fact, Madam Chairman, I think you mentioned earlier a new SR520 bridge in your home State.

Senator MURRAY. For a new bridge?

Secretary PETERS. For a new bridge. Yes, ma'am. A new bridge for SR520 has enjoyed popular support in Seattle and in Washington State, and I think Governor Gregoire has properly targeted use of private sector funds for an important and, you said, new project like that.

Senator MURRAY. But your proposal is on existing highways. You're asking taxpayers to pay tolling on roads that are already paid for, and I know in your testimony, you talked about New York and London as innovative approaches to financing our highway system.

Most of America doesn't look like London or New York and I know this committee has become well aware of public concern about tolling. Last year, the Texas delegation on a broad bipartisan basis insisted on a provision in our bill to prohibit Governor Perry from implementing a toll plan.

So, based on that Texas experience, do you really think America is ready for widespread tolling?

Secretary PETERS. Madam Chairman, if I may correct, I am not advocating tolling on existing highways. Some of the local and State governments did for five urban partnership proposals, but it is not something that we're driving.

I wouldn't necessarily take it off the table, but I would say it has to be up to State and local elected officials to make a decision about where and how they would provide tolling and bring these new revenue sources to bear.

Again, I believe, Madam Chairman, that we have an opportunity to bring substantial new revenues into the system. That is my goal. My goal is to make more money available to us on a Federal level, and on a State and local level without imposing new taxes on our citizens, which several of you have mentioned with the high fuel prices today places a very great burden on those of limited income.

Senator MURRAY. Well, tolling is a burden on those with limited income, too, and you mentioned King County in my State. I just want you to know that a survey was conducted by the Washington State DOT and it found that 57 percent of those in King County oppose tolls on our major freeways. So that's not an easy route to this decision either.

Senator Bond?

SAFETEA–LU RESCISSIONS

Senator BOND. Thank you very much, Madam Chair, and let me go back to the questions on rescissions, if you don't mind, Secretary.

SAFETEA–LU requires an $8.5 billion rescission. How much contract authority would be available for future rescissions if we were to include the $3.89 billion that is in your budget, along with the $8.5 billion rescission for SAFETEA–LU? I've heard it's only about $4.5 billion, is that correct?

Secretary PETERS. Senator Bond, I'm going to refer to our Assistant Secretary for Budget and Programs, so I hopefully can give you the correct and right answer on that.

Ms. SCHEINBERG. Senator, I don't have the exact number that would be left, but as you know, SAFETEA–LU itself authorized the rescission of the $8.5 billion.

Senator BOND. I know.

Ms. SCHEINBERG. So that was——

Senator BOND. How much is left if you take another $3.89 billion out?

Ms. SCHEINBERG. I don't have that number.

Senator BOND. I'm going to guess its $4.5 billion. So, let me know if I'm wrong.

Ms. SCHEINBERG. Okay.

[The information follows:]

The Federal-aid highway program currently has $16.8 billion in excess contract authority. Under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), $8.6 billion in contract authority will be rescinded in fiscal year 2009. If Congress were to also enact the $3.2 billion in rescissions proposed in the fiscal year 2009 President's budget request, approximately $5 billion in excess contract authority would remain at the end of the current authorization.

AVAILABLE CONTRACT AUTHORITY

Senator BOND. But in any event, the point is we're scraping the bottom of the barrel.

And my second question, Madam Secretary, would be what would be the practical effect on State DOTs of having to utilize their annual Federal highway funds without excess contract authority?

Secretary PETERS. Senator Bond, the effect would be that they would not be able to let certain contracts if they hit up against the limit of their contract authority. It's a little like requiring a minimum balance be kept in an account. Even though funds are there, they would not be able to spend it absent sufficient contract authority.

Senator BOND. So, this would be another major roadblock, to mix a metaphor, in construction, is that correct?

Secretary PETERS. Senator, it certainly could be limiting and I think it's indicative of what we're facing right now. The system has supported our surface transportation needs for over 50 years, but will not be able to do so in the future.

URBAN PARTNERSHIPS

Senator BOND. Well, that's my major worry. Madam Secretary, you come from State government. I was in State government. One of the things that I really didn't appreciate in State government, when the Federal Government told us that we could get some money or they'd take some money away, when we made decisions that normally are appropriate for the people in the State through their elected officials to make in the State government.

Now it looks to me that this urban partners effort which gobbled up $844 million in 2007 is designed to provide, pick one of them, you can call it an incentive or you can call it a bribe to State legislatures to pass bills authorizing tolling and it may or may not work, but now you come back and you proposed 75 percent of the funds for discretionary programs be made available for critical congestion relief projects.

Well, just as you did today, I suffer from congestion problems as well, but when you look across the country, we kill people in areas outside of—when traffic is going very slowly, you don't kill so many people.

Now I'm one who got hit by a car in the congestion, so I know that's bad, but I survived it, but in many of our States, the real need is to keep people safe on the highways and I really question the judgments going into this urban partnership and, No. 2, I'd like to know if the States involved, King County, Washington, New York, California, Minnesota, don't go along with the incentive or bribe, what's going to happen to all that money?

Why is it necessary to have $175 million more for congestion pricing when there's still potentially huge 2007 dollars that have not been awarded and we are facing drastic shortfalls elsewhere?

Secretary PETERS. Senator Bond, I'm to start with my apologies for being a little bit late this morning. I would have happily paid a toll to get on an express lane and be here on time this morning, but I didn't have that option.

That said,——

Senator BOND. Maybe when enough people see congestion, they can make up their own minds in their areas whether they want to use tolls while we use some of the other money, some of the money to keep people off of crowded highways and rural efforts.

Anyhow, excuse me. Pardon the interruption.

RURAL AREA ROAD SAFETY

Secretary PETERS. Senator, let me first speak to the rural areas. You are correct. We're very concerned about rural area road safety. That is precisely why we designed a program to bring resources available from all across the Department to complement and supplement those revenues already available in safety programs.

It is a huge concern of mine and one that I've been devoting personal resources to and have asked, in fact, our Deputy Secretary to stay on top of as well.

Let me go back to the cities that you asked about, the urban partner cities.

Senator BOND. Thank you.

URBAN PARTNERSHIPS

Secretary PETERS. As you mentioned, several of them have to get enabling legislation in order to go forward and spend the money that we allocated from the 2007 budget for them. They have until March 31, 2008 to do that, the one exception being Seattle which has until September 2009.

If they fail and are not able to get the legislation they need to move forward with those projects, then we will take back the funds and redistribute them to other cities.

Why other cities, sir? We received 26 applications from cities who had put together very comprehensive plans to reduce congestion in their cities. If we are not able to go forward with New York or San Francisco or some of the other cities, then we will move to other cities who have good plans.

Cities like Los Angeles who wish they had been in the opportunity the first time, cities like Houston, St. Louis, Atlanta, Den-

ver, and many other cities at the ready to give us a very strong proposal to spend this money in their areas. That is why we have requested an additional allocation of money in the President's 2009 budget because there is a tremendous pent-up demand in our urban areas.

Senator Bond, if we were able to fix some of these problems in urban areas, then we would improve air quality substantially, as well as congestion. We're going to use technology and learn tools that will help us to reduce congestion in other areas.

Where we are able to bring private sector revenues to bear, as would be the case in supplementing what we have allocated to these cities in many areas, then that frees up money that we can spend on other important priorities, like our rural roads.

STATUS OF THE DULLES RAIL PROJECT

Senator BOND. Jumping over to mass transit, what's the status of the Dulles project? I understand you're reviewing it. When's there a final determination? If the money doesn't go forward, I understand there will be considerable funds lapsing. How would you handle them should that project not go forward?

Secretary PETERS. Senator Bond, we're in continuous discussions with the project sponsors about the Dulles Rail Project. It's been emphasized to me by many people how important that project is to this region.

Our responsibility, of course, based on statutes that govern the program, is to ensure that we are allocating the money in a manner that gives the public, whose money it is, the best opportunity for investment. So, we're working very hard with the project sponsors to try to work out details on that project.

Senator BOND. I understand from the head of that division that there are significant problems with that in your initial analysis.

Secretary PETERS. Senator Bond, that is correct. In January we put in writing for the project sponsors some of our significant concerns about the project. They have been back in touch with us and we are working to obtain additional information from them, but we have not yet reached a final decision.

Senator BOND. Thank you very much, Madam Secretary. Senator Lautenberg?

AMTRAK

Senator LAUTENBERG. Thank you. Madam Secretary, you were careful to suggest that the President wants us to be responsible to the taxpayer dollars and as a consequence guards them very carefully.

But is that without concern for the convenience of our—the reliability, the innovations that we desperately need on our transportation systems?

I don't understand why, for instance, that when we look at Amtrak, Amtrak said it needs more than twice the $800 million that President Bush asked for in order to operate safely and reliably next year, and when I look at the President's budget requests over the years, there's no contact with reality.

In 2002, the President requested $521 million. The appropriation came out to $826 million. The scene was repeated the next year,

$520 million from the Bush office and the Amtrak request was $1.2 billion. It wound up over a billion. There's this constant reduction in offers to help Amtrak get to where it has to be to accommodate the rush and the interest for passenger loads.

So, by law, you're granted a seat on the Amtrak Board along with six more of the President's appointees. Does the President know what the railroad's actual funding needs are when he makes these; you'll forgive me, ridiculous requests?

Secretary PETERS. Senator Lautenberg, as you mentioned, I have a seat on the Amtrak Board and I am represented on a regular basis by Administrator Boardman, the head of our Federal Railroad Administration (FRA). He works with the Board in terms of establishing their budget.

We believe that Amtrak can operate more efficiently. You mentioned earlier the significant increase in ridership that Amtrak is experiencing. In fact, they generate about $2 billion in revenue annually. I have to say it is confusing to me how ridership can go up substantially but requests for subsidies also go up substantially. It would seem that there ought to be some economies with substantially increased ridership, that Amtrak would be able to operate more efficiently.

That said, the President's budget proposes $900 million in funding, including $100 million that could be State matching grants. The reason for that, Senator, is that we see substantially increased ridership and efficiency in circumstances where States support routes. In fact, ridership was up 88 percent in those circumstances as opposed to 17 percent overall.

And finally, we believe that Amtrak management must continue the reforms and make strong business decisions——

Senator LAUTENBERG. That recommendation is so hollow; you'll forgive me, Madam Secretary. You say that because the ridership has gone up on this antiquated system, it can't stand it. There are constant calls for better maintenance. There are constant calls for better trackage. There are constant calls for better equipment.

So, why the needs are less is for me unfathomable. The fact of the matter is that the system is overworked just like our highways are overworked and our skyways are overworked. There's too much demand, and you cannot take profits out of these things and expect it to be realistic.

It surprises me that the logic that you produced suggests that you're doing less and expecting more from the railroad. The railroad has never been funded properly, never, and as a consequence, they're ricketing along with equipment that long since should be off the tracks. I use Amtrak a lot and I see it. You can't ride on the best line that Amtrak has, the Acela line, and you can't write with a steady hand there because the ride is so bumpy and the thrusts right and left are so sharp. I saw one of the cabin attendants fall down the other day and that's the way the system is.

Do you think it ought to be better than it is? Are you satisfied with what we've got out there?

Secretary PETERS. Senator, we think it would be better for the Government to invest in capital for Amtrak, and to reduce substantially over time the operating subsidies being paid to the railroad.

Senator LAUTENBERG. Do you know of any system, any commuting system where they're able to cover their costs from ticket revenues?

Secretary PETERS. Senator, as you know, most do not. However, most——

Senator LAUTENBERG. Most don't. I can't think of any that do.

Secretary PETERS. But most do not substantially continue to increase subsidies over time.

AIRLINE CONSUMER RIGHTS

Senator LAUTENBERG. If they don't increase the subsidies, then the quality of the operation deteriorates rapidly.

Last year I worked with leaders on this subcommittee to include a $2.5 million program for enforcement of airline consumer rights. Why did the President cut this funding level by $1.4 million in the 2009 budget? Shouldn't we be increasing funding during a time of more frequent delays and a rising number of consumer complaints, and don't you look at the—the Department look at what the prospects are that by 2014, delays are going to be 60 percent higher than they are now?

Where do we deal with the customer complaints, learn from them and make the appropriate adjustments?

Secretary PETERS. Senator, you're right. Consumer complaints are a problem and we need to do something to fix the root cause so that people don't have unhappy experiences.

That said, the 2008 appropriation includes $2.5 million for the Office of the General Counsel's Aviation Consumer Protection Enforcement Program. We are spending the money that was provided by Congress in December when the Consolidation Appropriations Act passed.

We're increasing staffing levels so that we can pursue investigations and enforcement actions. We are also using the funding to enhance the Aviation Enforcement and Consumer Protection Program, including updating the Consumer Complaint Application System, and updating the Aviation Consumer Protection Web site so that flyers have access to information.

Senator LAUTENBERG. But it all boils down to one thing. I don't mean to be rude. That is, we're not able to maintain the kind of service reliability that we need, and I point out here to you that since fiscal year 2004 till fiscal year 2007, that the subsidy per passenger mile on Amtrak has gone down over 20 percent.

So, it doesn't wash and we can go ahead with this unspecified response to these things by talking about what we ought to be doing and how we ought to make this adjustment and it doesn't wash.

Madam Secretary, what we're doing today is not only a serious impairment to our functioning as a society but what it's doing is setting a trap for much worse things in the future and it's too bad.

Thank you very much.

AVIATION DELAYS

Senator BOND. Thank you very much, Senator Lautenberg. Madam Secretary, as those of us who try to fly know, delays in our aviation system were some of the worst on record last year with flights arriving on time only 73 percent of the time.

Aside from the caps on operations for the New York-New Jersey area, what else is your Department doing to ensure what some of the folks who fly the airplanes see as being not just a repeat of last year but even a bigger problem?

Secretary PETERS. Well, Senator, we're working very hard to hopefully not let that happen. First of all, the caps that have been imposed already at JFK International Airport will be very quickly announced for Newark. LaGuardia, of course, is already operating under some limitations and we're looking at what we may need to do to refine that.

Also, as Senator Specter indicated, Philadelphia is in the airspace. We want to make sure that we don't push in one place and have that pop out and overburden another airport.

That said, a substantial redesign of the airspace in the New York region will give us operating efficiencies. We also put forth a change in what we call the airport rates and charges policy to allow airports more flexibility by varying charges by time of day. This hopefully, would help spread out the peak demand for those flights. As was just mentioned with Senator Lautenberg, substantially beefing up the Consumer Complaint Office would enable us to know what those complaints are and to respond to them.

In fact just last week I met with a task force that deals with tarmac delays so that we can work with the airlines and the airports to find better ways not to have planes sitting out on the tarmac for lengthy periods of time in the event of weather system delays.

We're working with the Department of Defense to establish "holiday express" lanes. These are flight lines that the military normally uses along the Atlantic seaboard, but would be made available to commercial flights on a more frequent basis should the weather systems require that.

We believe that if we can relieve congestion in the New York City region, where about 40 percent of the delays nationally emanate, then we can make a big difference. But I promise you, Senator, that the airlines, the airports, our air traffic controllers, and I, all of us are doing everything we can not to have a repeat of the Summer of 2007.

AIRLINE SERVICE TO SMALL AND RURAL COMMUNITIES

Senator BOND. As I believe I mentioned to you last year, I was one who experienced one of those tarmac delays. Not only was the 2½ hours I sat on Reagan runway unproductive, we landed from St. Louis and the airline said that the FAA won't let us move, the FAA said it's the airline's problem. So, I sat there for 2½ hours as the NFC playoff game was finished on television and that was brought back to mind as I was watching some recent football playoff games and I do hope that there are some common sense solutions. I would be happy to share ideas but something has to go be done.

Now you mention pushing in one place and causing a problem in another place. I know that there's aviation congestion initiatives to charge higher rates during peak hours has some appeal, but let me ask you about how this could impact service to small and rural communities.

Some of the carriers are telling us that feeder flights—if they're moved to off-peak hours—will not be profitable for a lot of carriers and small communities can lose service. You've got a one hand and the other hand. How are you going to balance that?

Secretary PETERS. Senator, that is an excellent question. We negotiated with the airlines when putting the caps in place. We did not want to cut out feeder flights that feed into other line-haul flights, and in the case of a number of airlines, international flights, which provide greater profitability than many domestic flights. That is why we negotiated with individual airlines in setting caps and in monitoring the situation so that we don't disadvantage certain areas from having flights meet at the feeder airport, if you will, at the right time.

Senator BOND. Well, as one who sometimes uses those feeder flights, if you're maybe going a half hour earlier, if that would allow you to get the small planes in so you can meet with the larger plane and delaying the outbound feeder flight from the incoming plane, but that's going to require a lot of negotiations and I'll look forward to seeing that.

Secretary PETERS. And Senator, let me apologize to you and to all other passengers who had such miserable experiences. My youngest daughter spent the better part of a day in one of those delays with a then 8-month-old baby. So, it is unacceptable and I do——

Senator BOND. I think that 8-month-old baby may have been on the plane on which I was delayed.

Secretary PETERS. Was she beautiful and quiet?

Senator BOND. You talk about instant consumer feedback, that young passenger expressed him or herself very, very vocally and very firmly.

Secretary PETERS. You would have recognized her, sir. She is the most beautiful grandchild in the world with the exception of yours.

FEDERAL ROLE IN TRANSPORTATION FUNDING

Senator BOND. Fortunately or unfortunately, I don't have one yet.

Madam Chair, for the record, I think I better go vote, but I would ask the Secretary as chair of the National Commission Report to describe either in your testimony here or for the record what you believe the Federal role in transportation funding should be, and I thank you very much for your service and for your kind work in attempting to answer very difficult questions, and I wish you well and I'm happy to return it to the chair.

[The information follows:]

Our country is at a transportation policy crossroads. For the first time since the creation of the Interstate Highway System, we have an amazing opportunity to come together and completely re-assess our approach to financing and managing surface transportation systems. For too long, we have tolerated exploding highway congestion, unsustainable revenue mechanisms and spending decisions based on political influence as opposed to merit.

Now, thanks to technological breakthroughs, changing public opinion and highly successful real-world demonstrations around the world, it is clear that a new path is imminently achievable if we have the political will to forge it. That path must start with an honest assessment of how we pay for transportation, not simply how much (our current focus). In fact, our continued transportation financing challenges are in many ways a symptom of these underlying policy failures, not the cause.

Until we decide what our national transportation priorities are, and what roles are appropriate for Federal, State and local government as well as the private sector, we will be unable to adequately address our Nation's infrastructure needs. Trying to be all things to all people has proven to be an unsuccessful strategy.

The Department believes that the Federal role in transportation should be completely re-focused on truly national imperatives. In our view those include:

—Improving and maintaining the condition and performance of the Interstate Highway System. Roughly one quarter of all highway miles traveled in the United States takes place on the Interstate System;

—Reducing congestion in major metropolitan areas and increasing incentive funds to State and local officials that pursue more effective congestion relief strategies. A more effective integration of public transportation and highway investment strategies is central to this challenge;

—Investing in and fostering a data-driven approach to reducing highway fatalities;

—Using Federal dollars to leverage non-Federal resources;

—Focusing on cutting edge, breakthrough research areas like technologies to improve vehicle-to-infrastructure communications; and

—Establishing quality and performance standards.

To better prioritize funding, earmarks should be eliminated. In a September 2007 report by the DOT Inspector General, a review was done of 8,056 earmarked projects within the Department's programs that received more than $8.54 billion for fiscal year 2006. Ninety-nine percent of the earmarks studied "either were not subject to the agencies' review and selection process or bypassed the States' normal planning and programming processes."

Beyond earmark proliferation, there are a wide array of special interest programs that have been created to provide funding for projects that may or may not be a State and local priority. While it is true that not all earmarks or special interest investments are wasteful, it is also true that virtually no comparative economic analysis is conducted to support these spending decisions. No business could survive for any meaningful period of time using a similar investment strategy. Recent studies have shown that the economic return on highway capital investments has declined into the low single digits.

Virtually every economist who has studied transportation says that direct pricing of road use, similar to how people pay for other utilities, holds far more promise in addressing congestion and generating sustainable revenues for re-investment than do traditional gas taxes. And thanks to new technologies that have eliminated the need for toll booths, the concept of road pricing is spreading rapidly around the world. The brilliance of road pricing is that it achieves three major policy objectives simultaneously.

First, it will immediately reduce congestion and deliver substantial economic benefits. Drivers have proven in a growing array of road pricing examples in the United States and around the world that prices can work to significantly increase highway speed and reliability, encourage efficient spreading of traffic across all periods of the day, encourage shifts to public transportation, and encourage the combining of trips. In fact, the National Household Travel Survey shows on an average workday, 56 percent of trips during the morning peak travel period and 69 percent of trips during the evening peak travel period are non-work related, and 23 percent of peak travelers are retired.

Second, it will generate revenues for re-investment precisely in the locations that need investment the most. Recent estimates in a forthcoming paper, "Toward a Comprehensive Assessment of Road Pricing Accounting for Land Use" by economists Clifford Winston and Ashley Langer at the Brookings Institution conclude that utilizing congestion pricing in ONLY the largest 98 metropolitan areas would generate approximately $120 billion a year in revenues while simultaneously solving the recurring congestion problem in those areas. Implementation of a broader road pricing strategy tied to wear and tear and reconstruction costs would obviously produce even higher revenue. In 2006, as a Nation, we spent approximately $150 billion on all of our highways. State and local officials would even gain additional flexibility to reduce the wide array of taxes currently going into transportation that have nothing to do with use of the system.

Third, direct pricing will reduce carbon emissions and the emissions of traditional pollutants. According to Environmental Defense, a nonprofit environmental organization, congestion pricing in the city of London reduced emissions of particulate matter and nitrogen oxides by 12 percent and fossil fuel consumption and carbon dioxide (CO_2) emissions by 20 percent; a comprehensive electronic road pricing system in Singapore has prevented the emission of an estimated 175,000 pounds of

CO_2; and Stockholm's congestion pricing system has led to a 10–14 percent drop in CO_2 emissions.

AIRLINE CONSUMER COMPLAINTS

Senator MURRAY. All right. Thank you very much, Senator Bond. Madam Secretary, it seems that every couple years or so when passenger conditions get really bad, the airlines provide improvements for awhile and then things get worse again and the DOT Inspector General has said that your Department should take a more active role in overseeing some of the customer service and he made several recommendations, some of which date back to 2001, asking that your Department conduct incident investigations of long onboard delays, oversee the airlines policies for dealing with these onboard delays and improving the airlines performance reporting.

Can you tell us what progress you have made on any of those recommendations?

Secretary PETERS. Senator, I would be happy to. I want to go back to what you said about this being a recurring theme. In the summer of 2001, there were some pretty miserable circumstances. Tragically when 9/11 happened, that wasn't the case again.

It is my goal and the goal of the Department not to have recurring delays. The Inspector General's report has been very important to us and we are following each recommendation very carefully. For example, I just mentioned the Tarmac Delay Task Force that we convened last week. It includes representatives of the airlines, airports, and passenger groups. Kate Hanna, for example, who by virtue of having had a miserable experience, started a passenger group to look at aviation delays.

As I mentioned earlier, we are beefing up the Airline Enforcement Office to make sure that we are more responsive to consumers when they have complaints. We are categorizing delays and in the case of chronically delayed flights, we're going back to the airlines and putting them on notice that they will face substantial penalties if they continue to misrepresent to the public that a plane will take off at a certain time when in fact more than 70 percent of the time it does not take off on time.

Each of the recommendations that the Inspector General made are very important to me. We're following up on those and I am taking this very seriously.

Senator MURRAY. Okay. Well, one of the things the IG complained about was that your office was issuing enforcement orders to airlines and then just letting the airlines certify in writing that they'd complied, no onsite follow-up occurred.

Do you really trust the airlines to police themselves when complying with your enforcement orders?

Secretary PETERS. Senator Murray, we're going to be able to do random checks to ensure that they have complied.

Senator MURRAY. Are you doing random checks now?

Secretary PETERS. I don't—Madam Chairman, I will get back to you if they've started yet. I believe they have, but let me confirm that for you.

Senator MURRAY. Okay. I'd appreciate an answer back on that.

[The information follows:]

The adoption of or compliance with voluntary airline customer service commitments is not required by statute or Department of Transportation regulation. Neither are carriers required to track their compliance with their commitments. In fact, only a limited number of air carriers have adopted such commitments and the commitments that have been adopted are couched in terms that would, in general, make them unenforceable. The Department is currently conducting a rulemaking to enhance airline passenger protections, 72 Federal Register 65233 (November 20, 2007), which, in part, proposes to require carriers to conduct self audits of compliance with their customer service commitments.

PRIVATIZATION OF PUBLIC TRANSPORTATION FACILITIES

Senator MURRAY. Let me change the topic a little bit. You've been an advocate for the privatization of public transportation facilities and in my opening remarks, I talked about an increasing number of mayors and governors who've enjoyed huge cash windfalls by privatizing transportation projects, Indiana Toll Road, Chicago Skyway.

However, in many cases, these cash windfalls have not been used to pay for transportation improvements. Now the city of Chicago wants to privatize Midway Airport which is one of the 30 busiest airports in the country, over 300,000 flights a year.

Do you believe that a mayor or a Governor that privatizes a transportation facility, be it an airport, a highway, should use their cash windfalls strictly for transportation?

Secretary PETERS. Senator Murray, ideally I think it should be spent on transportation. I will caveat whether or not I should substitute my judgment for that of Mayor Daley or someone else, if they believe that a higher public good can be served by spending the money elsewhere. I believe that it would break trust with people if that money were spent elsewhere, absent a thorough and open dialogue with the public and with elected officials before decisions are made.

Senator MURRAY. Well, in terms of that, Midway Airport has received $370 million in direct airport grants from the FAA for infrastructure improvements and several million dollars more in direct investments to modernize its navigation air traffic control systems.

Right now, there are a variety of financial institutions that are preparing bids to pay the city of Chicago a huge cash windfall in exchange for the right to lease that airport for a period as long as 99 years.

Given that the Nation's airline passengers have provided hundreds of millions of dollars in grants to that airport, do you think the city should be required to spend their cash windfalls specifically on transportation needs?

Secretary PETERS. Senator, we're looking at that as the process moves forward on Midway Airport and on privatization. I hear what you're saying and will take another look at the decisions that we may be making in that light.

Senator MURRAY. Well, since that city is moving to privatize the Midway Airport, the law does require the airport to pay back a portion of Federal grants that they've received over the years. However, we know that you as Secretary do have the authority to waive that requirement if the city requests it.

Do you expect to grant Chicago an exemption from repaying its Federal grants?

Secretary PETERS. Senator, it would be premature for me to respond right now, absent knowing more about it, but I will look at the arrangements and the negotiations that are ongoing and get back to you specifically with an answer on that point.

Senator MURRAY. Have you talked about that situation at all?

Secretary PETERS. We've talked about it, Madam Chairman. We have talked about it, but I don't—not to the level of detail that I would be comfortable giving you a definitive response to that question today.

Senator MURRAY. Okay. Well, I would like to hear back from you on that question.

[The information follows:]

Under title 49 United States Code section 47134, "Pilot program on private ownership of airports," a public-use airport that has received Federal assistance may apply to the Secretary of Transportation, and through delegation the FAA Administrator, for certain exemptions to allow for the sale or lease of an airport. In the case of Midway, for example, the city of Chicago may only apply for exemptions to lease the airport because the statute only permits the sale of general aviation airports. The FAA's decision to grant exemptions is permissive under 49 U.S.C. 47134(b). The statute provides that the Secretary "may" grant an exemption. An exemption is neither automatic nor required by the statute.

Two exemptions may be granted under the statute to a sponsor of a public-use airport. First, the statute permits the FAA to exempt a sponsor from the requirement to use proceeds from the sale or lease of the airport for airport purposes only. However, FAA may grant this exemption only if the amount is approved by at least 65 percent of the air carriers serving the airport, and by the air carriers that account for at least 65 percent of the total landed weight of all aircraft landing at the airport in the preceding year. Second, the FAA is permitted to exempt the sponsor of a public use airport from any obligation to repay to the Federal Government any grants, or to return to the Federal Government any property.

The FAA accepted Midway's preliminary application to the FAA for participation in the Airport Privatization Pilot Program, established pursuant to 49 U.S.C. 47134. The city of Chicago states, on page 18 of its preliminary application for privatization of Midway, "As part of its application to the FAA for approval of the proposed transaction the city will request that the FAA grant exemptions from otherwise applicable regulatory requirements, including the prohibition on use of airport revenues for non-airport purposes by the city and the private operator; and the requirement to repay Federal grant funds." However, this is only a preliminary application. If the city of Chicago applies for these exemptions in its final application, the FAA will apply, at a minimum, the statutory and policy requirements necessary for the FAA to evaluate an application, including any exemptions requested by the sponsor. The FAA may consider an application for an exemption only if the FAA finds the sale or lease agreement includes provisions to ensure the following:

—The airport will continue to be available for public use on reasonable terms and conditions without unjust discrimination;

—The operation of the airport will not be interrupted in the event lessee becomes insolvent or files bankruptcy;

—The lessee will maintain, improve, and modernize the facilities of the airport through capital investments;

—Every fee of the airport imposed on an air carrier the day before the date of the lease of the airport will not increase faster than the rate of inflation unless a higher amount is approved by at least 65 percent of the air carriers serving the airport, and by air carriers who had a total landed weight during the preceding year of at least 65 percent of the total landed weight at the airport;

—The percentage increase in fees imposed on general aviation aircraft at the airport will not exceed the percentage increase in fees imposed on air carriers at the airport;

—Safety and security at the airport will be maintained at the highest possible levels;

—The adverse effects of noise from operations at the airport will be mitigated to the same extent as at a public airport;

—Any adverse effects on the environment from airport operations will be mitigated to the same extent as at a public airport;

—Any collective bargaining agreement that covers employees of the airport and is in effect on the date of the sale or lease of the airport will not be abrogated by the sale of the lease; and

—he approval will not result in unfair and deceptive practices or unfair methods of competition.

The FAA will need a final application from the city of Chicago before FAA can apply these provisions.

AIR TRAFFIC CONTROLLERS

At the end of 2004, the Department of Transportation published its first Workforce Plan for Air Traffic Controllers. That plan showed that the number of air traffic controllers the Department expected to lose and how many it planned to hire over the following 10 years. That plan has now, I believe, been updated twice and the record shows the FAA has gotten it wrong each and every year. They have consistently underestimated the number of controllers who leave the Department every year, and I continue to hear reports that the air traffic control facilities are understaffed, new air traffic controllers are not adequately trained, experienced air traffic controllers are too busy doing their own job to train new hires and experienced controllers will retire before your Department will be able to bring on fully trained replacements.

Can you tell this committee if you are confident that the FAA management really has a handle on how to manage this workforce?

Secretary PETERS. Madam Chairman, we may have underestimated in some cases, but the differences are not as large as I think some folks have been led to believe. I'll give you the specific numbers.

But before I do that, let me say how important the air traffic controllers are to the fact that we are enjoying the safest period ever in aviation safety. I think a great deal of the credit goes to air traffic controllers who do a magnificent job managing the planes with an antiquated system.

We're facing a substantial increase in the number of retirements because, after the Professional Air Traffic Controllers Organization strike back in the 1980s, significant numbers of new air traffic controllers were hired to replace the controllers who were fired. Many of the new controllers who were hired back then are reaching retirement age. So, we're going to have a need for new controllers.

Last year we planned to hire 1,386 controllers. We actually hired 1,815. We planned for 700 controllers to retire. The actual number of retirements was 828. There is other "leakage" of air traffic controllers, such as resignations, removals and, tragically, deaths. We had assumed 243. There were actually 264.

Transfers and promotions, this is an area where a number of the air traffic controllers are promoted into management. We had estimated 185 and the actual number that moved up was 407. There are also academy failures; we had estimated 69, and the actual number was 60.

Based on the first quarter of this year, Madam Chairman, we are within the range of accuracy for the number of retirements we had forecast. We continue to monitor and modify the Workforce Planning document so that it can be as accurate as possible.

I can tell you that we are meeting the controller hiring goals. We are also meeting the goals of getting those controllers through their

training. The simulators that we have allow us to get the training done a little quicker without taking an experienced controller off terminal——

Senator MURRAY. Yes.

Secretary PETERS [continuing]. And to assist them.

Senator MURRAY. I'm well aware of that earmark that provided those simulators and I have heard you in the past say we don't—we shouldn't be doing earmarks and I just have to comment as you say that, that is one of those earmarks that's making a huge difference out there.

Secretary PETERS. Yes. The simulators are doing a great job.

Madam Chairman, we never put an air traffic controller that isn't fully certified for a task on terminal to do that task. As air traffic controllers complete their training program, and prior to full certification on the tasks that they're certified to handle, we are mindful of not taking our more experienced controllers off terminal to assist others.

Senator MURRAY. Well, I guess the larger question is do you feel confident that the FAA is managing its workforce well? I know now that bonuses are being paid to retain experienced controllers, there was no request for or money budgeted or planned for those bonuses. You're just paying them to keep experience levels there.

So, I'm just asking you a confidence question. Do you think the FAA is managing its workforce? Are you confident in that?

Secretary PETERS. Madam Chairman, I am more confident today than I was 15 months ago. I have worked with Acting Administrator Sturgell very carefully on this issue.

As you know, our Inspector General and others in the Department of Transportation, including our Assistant Secretary for Budget and Programs, have looked at the management of the FAA workforce. I am more comfortable today than I was when I first came to this position that we are managing the workforce correctly, but it is something we're going to have to stay on top of because, as I said, we're hitting a big retirement wave.

Senator MURRAY. Well, you should know that we are very concerned. We're hearing a lot across the country, as I told you, about understaffing and not adequately trained and experienced air traffic controllers who are having a very hard time trying to train because of inadequate staffing. So, I would hope that you'd stay on it and get back to this committee throughout the next several months as we follow this.

Secretary PETERS. Madam Chairman, I will do that.

MOTORCYCLE FATALITIES

Senator MURRAY. Okay. Let me turn to a topic that I know is near and dear to your heart and that is an issue about motorcycles.

At last year's hearing, I complained about the fact that your agency was delaying by 3 years your very own deadline for reaching your highway safety goal of one fatality per 100 million vehicle miles traveled.

Now when you dig into the data as to why you are not reaching that goal, you discover that there's a big problem in the rising number of motorcycle fatalities. They have increased every year

now for 9 years in a row and I know you're a motorcyclist yourself. You know the issue.

Your own Department maintains that helmets are estimated to be 37 percent effective in preventing fatal injuries to motorists. However, over the last 5 years, helmet use has actually declined by 20 percent and now today there only 20 States, the District of Columbia, and Puerto Rico, that actually require helmet use by all motorcycle operators.

Do you support the mandatory enactment of motorcycle helmet laws?

Secretary PETERS. Madam Chairman, I support giving the information to States so that they can act on helmet laws. I have also made myself available to a number of States and, in fact, have called governors when I see substantial increases in the number of motorcycle deaths in a State, especially a State that has repealed its helmet law.

I think it's very important. We could have saved easily 700 lives last year if all motorcyclists wore helmets. So, I am very interested in pursuing this. In fact, we have recently sent out a letter asking that we have the ability to use some of our safety money for education on the importance of helmet use. We got some pushback, frankly, on that, but we think it's that important that we've stepped out to do that.

Also, following our discussion last year, I filmed a public service announcement on motorcycle safety, including a hard push on helmet use, and reiterated the fact that had I not had a helmet on when I had a crash, I think that I would be a brain injury patient today.

Senator MURRAY. I was aware of that.

Secretary PETERS. I keep that helmet in my office to remind me of how important that is.

Senator MURRAY. Well, I understand that there are restrictions on DOT's lobbying efforts on behalf of specific laws, such as motorcycle helmet laws. However, as part of the last reauthorization law, DOT was given an exception that allows you to lobby on behalf of the enactment of primary seatbelt laws.

Would you support a similar exception that would allow DOT to lobby on behalf of motorcycle helmet laws?

Secretary PETERS. Madam Chairman, yes, I would.

Senator MURRAY. Very good.

Secretary PETERS. Maybe I should be careful with the use of the word "lobby." There's been some concern about that term, but yes, I would support our ability to——

Senator MURRAY. An exemption similar to the seatbelt law. Would you use that authority, if you had it, to go out and talk to States?

Secretary PETERS. Madam Chairman, yes, I would.

ALCOHOL-RELATED FATALITIES

Senator MURRAY. Okay. Great. Let me ask you about another safety issue. Your staff has explained that another factor in missing your highway fatality reduction goal has been your failure to make progress in reducing the number of fatalities resulting from drunk driving.

In 2006, the most recent year for which we have data, there are over 17,500 alcohol-related fatalities and 50 percent of those had a blood alcohol level that was at least twice the legal limit. I think we've got to start taking bolder steps to prevent drunk drivers from getting behind the wheel and this summer, the NHTSA Administrator urged increased use of ignition interlocks for our repeat drunk driving offenders.

Given that we have not made any measurable progress in reducing the alcohol-related fatalities, haven't we moved past the point of merely urging, just asking for these ignition interlocks? Shouldn't we be looking at some requirements?

Secretary PETERS. Madam Chairman, as I mentioned earlier, generally speaking, we would prefer to use education and let State officials make these decisions.

Governor Richardson in New Mexico, for example, was one of the first States to help pass a law for mandatory ignition interlocking devices for those convicted of drunk driving. The requirement has been very effective in that State and has since been replicated in a number of other States.

So if one State shares with another what's been effective, then we believe that more States will adopt laws like this. Arizona, my home State, recently adopted very strict penalties for repeat offenders, especially for repeat DUI offenders.

We're also aiming more of the money that you have made available to us for what we call "high visibility enforcement" DUI checkpoints, especially around holidays. Every holiday, I go out and meet with officers who are doing these kinds of checkpoints to reassure them that they're doing the right thing.

Another problem we're having, Madam Chairman, is substance abuse. We haven't always provided the tools that law enforcement officials could use to distinguish someone who doesn't register a blood alcohol level in excess of the legal limit, but is obviously impaired. So, we're supporting law enforcement in terms of more tools to identify impaired drivers, and that's been very successful. More often, that requires a blood test instead of a breathalyzer test. But again, we are working with States to educate and make resources available to them to use to detect impaired drivers.

Continued advertising campaigns such as, "You Drink and Drive, You Lose" help to push more information out there. Governor Napolitano in Arizona has been very effective in saying that if you drink and you drive, then you will go to jail. Make no mistake about it. They have worked with the judicial branch on adjudication. Too often, someone who is caught driving drunk pays a lawyer, gets a plea bargain, and the offense never appears on their driving record. Governor Napolitano has done a very good job of working with the judicial community to make sure that when drivers are caught drunk, then they're not allowed to plea bargain.

Senator MURRAY. Okay. All right, well, thank you. I appreciate your aggressive efforts on that.

Secretary PETERS. Thank you.

CROSS-BORDER TRUCKING PILOT PROGRAM

Senator MURRAY. Let me turn to one of your favorite topics. There has been a lot of discussion over the Department's interpre-

tation of the language that was included last year in the Consolidated Appropriations Act on the Cross-Border Trucking Pilot Program.

I understand the Commerce Committee is going to have a special hearing on the question and it may be that the courts will have to make the final decision, but I want to focus on a different question about this demonstration program. It's a question that I first asked you when you appeared before this subcommittee last March and I didn't get a very clear answer.

And I wanted to know if your Cross-Border Program continues precisely what happens at the end of the 1-year pilot period in September?

Secretary PETERS. Chairman Murray, we will evaluate the pilot at the end of the year, and report back to you on the results. It would not be my intent to continue the program past that time, absent learning something different. We would certainly come back and talk with you about that.

Senator MURRAY. So, we will expect that program to cease in September?

Secretary PETERS. Madam Chairman, that is my understanding because there is a prohibition in the 2008 appropriation against establishing a program. Our interpretation, as you're aware, is different than others. We are continuing to implement a program that has already been established.

If we were to move forward at the end of our pilot program, I believe we would be in violation of the 2008 appropriation.

Senator MURRAY. So, will the Cross-Border Trucking stop then in September?

Secretary PETERS. Madam Chairman, that would be my intent, absent something changing in the law prior to that time.

Senator MURRAY. Okay, all right. Well, I will then assume you will come back to us with your exact intent at that time and if you want to continue any Cross-Border Trucking after that point, you will have to get our authority to do so?

Secretary PETERS. Madam Chairman, that is my understanding, based on the language in the 2008 appropriation. I will ask our Counsel's Office to follow up with you and be more precise. I am not an attorney, but that is my understanding, yes.

[The information follows:]

In clarification, as announced in February 2007, the Cross Border Demonstration Project was intended to last a period of 12 months. However, section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (the Supplemental Appropriations Act) required the Department to undertake the Demonstration Project in accordance with the pilot program statute found at 49 U.S.C. § 31315(c). The latter provision authorizes the Department to extend the Project to a maximum period of 3 years. As the Department noted in its brief in the 9th Circuit case challenging the Project, the Department has the discretion to extend the project up to 3 years pursuant to that provision.

Section 135 of the Consolidated Appropriations Act, 2008, division K, provides that "[f]unds appropriated or limited" in that act for transportation into the United States by Mexico-domiciled motor carriers would be subject to the terms and conditions of section 6901 of the 2007 Supplemental Appropriations Act. The 2008 Appropriations Act also prohibited the expenditure of funds "to establish" a cross border motor carrier demonstration program. The Department read that language as prohibiting the funding of any new programs, but not as prohibiting the funding of the ongoing Project, which was established in September 2007. The continued implementation or extension of an existing program, by definition, does not constitute the

establishment of a new program and, therefore, would not be barred by the 2008 Appropriations Act. At this time, although this extension authority is available, the Department has made no decision whether to extend the time frame for the Demonstration Project.

ADDITIONAL COMMITTEE QUESTIONS

Senator MURRAY. Okay. Well, I will submit some other questions on that and we will look forward to what your response is at that time.

I do have some other committee members and myself included that do have some questions that will be submitted for the record and your prompt reply would be very much appreciated.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR PATTY MURRAY

AIRLINE CUSTOMER SERVICE

Question. Domestic airline delays last year were the second-worst ever recorded. In fiscal year 2008, this committee provided an additional $2.5 million for your General Counsel's office to increase its enforcement activities and better protect airline consumers.

What specific activities are you funding with these additional funds?

Answer. Our Aviation Enforcement Office is increasing its staffing levels in fiscal year 2008 to pursue investigations and enforcement action with respect to many areas of public concern, such as unrealistic scheduling, failing to provide timely refunds, and failing to provide flight delay information. A portion of the requested funds has been and will be used to pay the salaries and expenses of the new hires.

The office is also using the additional funding for start-up costs to enhance the aviation enforcement and consumer protection program, including: (1) upgrading the consumer complaint application system and computerized tracking and monitoring system; (2) upgrading the DOT aviation consumer protection Web site to make it more consumer friendly and useful; (3) contractor support for drafting a regulatory evaluation to accompany a consumer protection rulemaking and a task force on tarmac delays; and (4) hosting "listening" forums to hear the problems that air travelers are encountering, and a disability forum concerning a new disability regulation. We have also put aside travel funds for on-site investigations and compliance reviews and trips related to carrier compliance education and consumer information and assistance. Further, the additional funds will be used by the Aviation Enforcement Office to print consumer brochures (e.g., Fly Rights) and widely distribute them to help consumers understand their rights and responsibilities as an air traveler. It would also enable the office to translate into Spanish new consumer protection-related materials developed by the office.

Question. Do you believe your agency's enforcement actions have any meaningful impact on the airlines' behavior when it comes to customer service?

Answer. Enforcement is one of the best ways to effect change. For example, the U.S. Department of Transportation's Aviation Enforcement Office has had significant success in reducing the number of chronically delayed flights as a result of its on-going investigations of chronically delayed flights operated by the airlines that are required to report on-time performance data to the Department. The office considers any flight that is late by 15 minutes or more at least 70 percent of the time it operates during a calendar quarter to be chronically late. There were 183 chronically delayed flights in the first quarter of 2007. This was reduced to 79 chronically delayed flights in the first quarter of 2008. Moreover, during the first two consecutive quarters we reviewed (the first and second quarters of calendar year 2007), there were 27 chronically delayed flights in both quarters. This was reduced to 3 chronically delayed flights in both the fourth quarter of calendar year 2007 and the first quarter of calendar year 2008. No flights remained chronically delayed during three consecutive quarters.

The Aviation Enforcement Office has been encouraged by the results of its investigation. In addition, based on carrier correspondence and meetings with the majority of the reporting carriers, the Aviation Enforcement Office has observed that carriers are now monitoring chronically delayed flights more closely. Moreover, the of-

fice is aware that the carriers are now taking concrete steps to correct chronically delayed flights, such as adding more flight time, moving departure times, changing aircraft routings, and providing spare aircraft and crews.

NEW STARTS PIPELINE

Question. Madam Secretary, your budget proposal would fund the Federal Transit Administration at a level that is $200 million less than what is authorized by SAFETEA–LU. Your budget would fully fund the Small Starts program, but it would take the full $200 million cut out of the New Starts program. According to your staff, this is because a larger pipeline of projects is developing for the Small Starts program, while there is less demand for the New Starts program.

From where I sit, there seems to be a great demand for the New Starts program. I hear all the time from metropolitan areas trying to compete for a New Starts full funding grant agreement, or "FFGA."

Please tell me why the pipeline of projects competing for a New Starts FFGA is shrinking at the same time that there seems to be a great demand for Small Starts funding?

Answer. Several factors likely contribute to the smaller New Starts pipeline, which the Federal Transit Administration (FTA) defines as the list of projects in the preliminary engineering and final design phases of project development.

First, the reduction of the number of projects in the pipeline reflects FTA's improved management of the New Starts program. FTA is more actively managing the New Starts pipeline, approving into preliminary engineering only projects that FTA believes have a very strong likelihood of receiving a Full Funding Grant Agreement (FFGA). Many projects do not meet the criteria, so they never make it into the pipeline or drop out along the way.

Second, project development delays sometimes reduce the New Starts pipeline. Such delays can be attributed to the lack of local funding commitments, unforeseen environmental impacts and concerns, and local decisions to make significant changes in the scope of the project under development to meet revised priorities, goals, and objectives. When these situations occur, project sponsors withdraw from the pipeline until such time as they can resolve local issues.

Last, the simplified and streamlined Small Starts process created by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) is causing metropolitan areas to reconsider major capital investments in favor of less costly, smaller scaled projects.

In summary, local decisionmakers determine whether they want to pursue funding under the rigorous New Starts program. The need for considerable technical resources and strong political and financial support can affect those decisions.

PROMOTION OF THE NEW STARTS PROGRAM

Question. At a time when oil prices reach over $100 per barrel, and the President is learning that prices at the gas tank may pass $4 per gallon this spring, I do not believe that this administration is doing enough to invest in transit alternatives. Americans need another option than sitting in traffic congestion and burning gasoline.

Madam Secretary, what are you doing to promote the New Starts program and ensure that metropolitan areas are able to compete for these valuable grants?

Answer. During the past year, FTA has offered numerous training courses, attended conferences, and issued guidance pertaining to the New Starts program. The following table lists training courses sponsored by FTA and conferences at which FTA made presentations on the New Starts program.

RECENTLY SPONSORED FTA NEW STARTS TRAINING

Training or Conference	Location	Month and Year
Alternatives Analysis	Washington, DC	April 2007.
APTA Bus and Paratransit Conference	Nashville	May 2008.
Association of Public Transportation Association (APTA) Legislative Conference.	Toronto, Canada	June 2007.
Transportation Research Board: Transportation and Land Use	Denver	August 2007.
Travel Forecasting	St. Louis	September 2007.
Alternatives Analysis	San Francisco	November 2007.
Alternatives Analysis	San Diego	February 2008.
APTA Legislative Conference	Washington, DC	March 2008.
Small Starts Workshop	Pittsburgh	April 2008.

RECENTLY SPONSORED FTA NEW STARTS TRAINING—Continued

Training or Conference	Location	Month and Year
New Starts Roundtable	Pittsburgh	April 2008.
Alternatives Analysis	New York	April–May 2008.
Small Starts Workshop	Phoenix	May 2008.
New Starts Roundtable	Phoenix	May 2008.
World Bank	Washington, DC	June 2008.
TRB-Innovations in Travel Forecasting	Portland, OR	June 2008.

FTA plans to sponsor an alternatives analysis course in Seattle in July 2008, and an alternatives analysis course in Washington, DC during the fall.

FTA has also issued several guidance documents, which can be found on FTA's public Web site at http://www.fta.dot.gov, including: (1) New Starts, Small Starts, and Very Small Starts Fact Sheets—Spring 2007; (2) Reporting Instructions and Templates—May 2007; (3) Guidance on New Starts Policies and Procedures—June 2007; (4) Preliminary Engineering Checklist—August 2007; and (5) Proposed Guidance on New Starts Policies and Procedures—April 2008.

In addition to promoting New Starts, FTA has been actively involved with the following other programs: (1) Public Transportation Participation Pilot Program; (2) Transit-Oriented Development & Joint Development; (3) Transportation Planning Capacity Building Program; (4) Public-Private Partnership Pilot Program (also known as Penta-P); and (5) Urban Partnership Agreement Program.

OVERSIGHT OF THE NATION'S BRIDGES

Question. Recent news reports have highlighted some problems with your Department's National Bridge Inventory. While these stories may not have told the whole story, it seems that the best case scenario is that this database needs to be greatly improved in order to be a useful tool for overseeing bridge conditions. The worst case scenario is that States are neglecting to inspect thousands of bridges within a 2-year time frame as required by Federal regulations.

Madam Secretary, other than collecting data from each State, please describe to me exactly what your Department does to ensure the safety of the Nation's bridges.

Answer. The National Bridge Inventory (NBI) database contains more than 90 individual data items on nearly 600,000 highway bridges. Information in the NBI is used for apportioning Highway Bridge Program funds to the States, preparing the biennial Conditions and Performance Report to Congress and the annual report on bridge materials required under SAFETEA–LU, monitoring bridge conditions and compliance with the National Bridge Inspection Standards (NBIS), research, and other reporting.

The collection and maintenance of bridge inspection data by the Federal Highway Administration (FHWA) does not, by itself, ensure bridge safety. However, this information is of critical importance to States, localities, and Federal bridge owners as they carry out their inspection responsibilities under the NBIS. Based on these inspections, safety is enhanced through timely maintenance, repair, and rehabilitation conducted as a result of these inspections, along with proper load posting and enforcement of load restrictions.

FHWA monitors compliance with the NBIS regulation through various oversight activities. FHWA Division Offices oversee each State's bridge inspection program. The primary means of monitoring the State program is through a comprehensive annual review. The review includes assessing overall compliance with the NBIS as well as the quality of bridge inspection.

A typical review involves a field check of a sampling of bridges to compare inspection reports for quality and accuracy; interviews with bridge inspection staff to review procedures; and a review of various inventory data reports to assess compliance with such things as frequencies, load posting, and data accuracy. Annual reviews are supplemented with periodic in-depth reviews of specific program areas such as bridge load capacity rating and posting practices.

The FHWA Resource Center assists in oversight by providing expert technical assistance to Division Offices and partners; assisting in development and deployment of policies, advanced technologies, and techniques; and deploying market-ready technologies. Also, the FHWA Resource Center assists in coordinating and conducting bridge inspection reviews and program exchanges, as well as delivering and updating training.

FHWA Headquarters' oversight responsibilities include issuing bridge inspection policies and guidance; maintaining the NBI; monitoring and updating an array of

bridge inspection training courses; collecting, reviewing, and summarizing the Division Office annual program review reports; and monitoring overall NBIS compliance.

FHWA also works with the States at Technical Committee Meetings of the American Association of State Highway and Transportation Officials Highway Subcommittee on Bridges and Structures to assure that the States and local agencies apply the state-of-the-knowledge in bridge design, construction, maintenance, and inspection practices to assure bridge safety and durability.

Question. Are there additional tools that you need to be more effective in overseeing bridge safety?

Answer. Bridge safety is ensured by the States, localities, and Federal bridge owners as they carry out their responsibilities under the NBIS. Various tools are used during bridge inspections as appropriate based on the type of inspection being performed. These tools include basic items such as hammers, binoculars, tape measures, and laptop computers, as well as more sophisticated non-destructive evaluation tools such as ultrasonic testing, eddy current, and infrared thermography equipment.

With respect to FHWA oversight of the national bridge inspection program, the need for the types of tools described above is limited as FHWA does not conduct the physical inspections. FHWA relies on computers to assist in analyzing, summarizing, and maintaining data as part of its compliance monitoring activities. There have been advances in computing and software technology that have the potential to improve the effectiveness of FHWA oversight as well as general program administration, and those advances are currently being explored.

Question. According to the news reports and staff at your Department, field offices of the Federal Highway Administration are not required to make a thorough review a State's bridge database to ensure that its inspections are up-to-date. I am disconcerted to hear that your staff may be doing "spot checks" of this important data.

Madam Secretary, are "spot-checks" an adequate method for overseeing a State's bridge inventory?

Answer. The NBI contains more than 90 individual items of data for nearly 600,000 highway bridges. More than half of the bridges are owned by localities. With such a large and complex database, spot checks and sampling of data are considered effective means of strategically utilizing limited resources to monitor a very large program; however, they do not guarantee 100 percent compliance with NBIS regulation provisions nor complete data accuracy.

It is important that the NBI data be accurate and up-to-date. There are provisions in the NBIS regulation to ensure that States and Federal bridge owning agencies are keeping their data up-to-date (refer to 23 CFR 650.315). There are also provisions within the regulation pertaining to the need for quality control and quality assurance procedures, in part, to maintain a high degree of accuracy and consistency in bridge inspection data (refer to 23 CFR 650.313(g)).

The "spot checks" of data do not represent the entirety of FHWA's oversight. FHWA oversight of the National Bridge Inspection Program includes the following major components:

—An annual review of each State's bridge inspection program with a sampling of bridge site visits;
—Resolution of any issues resulting from the annual reviews;
—Preparation of an annual NBIS summary report for submittal to Headquarters; and
—Ensuring that the State submits their annual NBI data to Headquarters.

Procedures and guidelines for conducting the annual reviews are documented in the FHWA Bridge Program Manual. The reviews typically involve interviews with inspection personnel, bridge site visits, and data review and analysis using standardized and ad-hoc reports from the NBI along with data from specific inspection records. As an additional check on quality, individual NBI data submittals from the States and Federal agencies are checked for errors and inconsistencies prior to loading into the NBI.

Inspection frequency is one of the NBIS provisions that are evaluated during each annual review, per FHWA policy. This evaluation most often requires the analysis of data; however, it may involve only a sample population of an individual State's total bridge stock. Since the NBI contains a snapshot of data at a given point in time, an analysis of inspection frequency often requires use of more up-to-date data from the individual State's inventory.

Question. States can negotiate with your Department on a set of criteria for putting some bridges on a 4-year schedule for inspection, instead of the usual 2-year schedule required by highway regulations. The criteria for putting bridges on a slower schedule vary from one State to another, and your Department has set no

overall standard for setting these schedules. Yet, on its own Web site, the Federal Highway Administration promises "to work with our partners to ensure quality and uniformity in signs, signals, and design standards on the Nation's major highways."

Madam Secretary, can you explain to me why the Highway Administration should not also promote uniformity in bridge inspections?

Answer. FHWA promotes uniformity in the national bridge inspection program. By definition, the National Bridge Inspection Standards developed by the FHWA establish national uniformity in inspection procedures, inspector qualifications, inspection frequency, inventory data, and organizational responsibilities.

With respect to extended inspection intervals, the National Bridge Inspection Program statute, 23 U.S.C. 151, requires the establishment of minimum standards, including the maximum time period between inspections.

Effective October 12, 1993, FHWA adopted as final the interim final rule that introduced a provision for adjusting the frequency of routine inspection for certain types or groups of bridges to better conform with their inspection needs. The provision allowed States to develop an alternative inspection program which specifies bridges that may be inspected at intervals longer than 2 years, not to exceed 4 years; however, FHWA approval was required to go beyond the normal 2-year interval. This provision was retained in the 2005 NBIS regulation update, but the intervals were revised to be stated in terms of months instead of years.

The baseline requirements for FHWA approval of a 48-month inspection frequency policy are described in the Technical Advisory T 5140.21, dated September 16, 1988. The Technical Advisory defines uniform basic criteria for identifying classes of bridges that, in general, would not be considered for routine inspection at intervals longer than 24 months. The basic criteria that apply to all State requests include:

—Bridges with any condition rating of five or less.
—Bridges that have inventory ratings less than the State's legal load.
—Structures with spans greater than 100 feet in length.
—Structures without load path redundancy.
—Structures that are very susceptible to vehicular damage, e.g., structures with vertical over- or under-clearances less than 14 feet, narrow thru or pony trusses.
—Uncommon or unusual designs or designs where there is little performance history, such as segmental, cable stayed, etc.

The Technical Advisory further states that the criteria developed for establishing the interval between inspections, if greater than 24 months, shall include the following:

—Structure type and description.
—Structure age.
—Structure load rating.
—Structure condition and appraisal ratings.
—Volume of traffic carried.
—Average daily truck traffic.
—Major maintenance or structural repairs performed within the last 2 years.
—An assessment of the frequency and degree of overload that is anticipated on the structure.

The basic criteria are not negotiable; however, individual States may add to this list or establish more stringent criteria.

Once the criteria for extended intervals have been approved by the FHWA, monitoring is required to ensure continued compliance with the criteria. FHWA has recognized the need to improve monitoring in this area and will focus on reviewing this during future annual compliance reviews.

ADA COMPLIANCE OF COMMERCIAL BUSES

Question. Madam Secretary, access to transportation is critical to ensuring our Nation's disabled citizens can lead full and independent lives. Since the passage of the Americans with Disabilities Act (ADA), great strides have been made in making transportation more accessible to the disabled, yet work remains. As you know, DOT has its own ADA regulations, yet one agency—the Federal Motor Carrier Safety Administration (FMCSA)—contends that it lacks the authority to enforce the Department's own ADA regulations.

This issue has already been litigated in court and the D.C. Circuit Court disagreed with FMCSA's claim that it lacked the authority to deny or revoke operating authority to commercial buses that are unwilling or unable to comply with DOT's own ADA regulations and remanded the case back to FMCSA. Yet, notwithstanding these reports of disabled travelers being denied access to transportation and the court's ruling, FMCSA's position has not changed. In response to the court, the

agency reasserted its position that it lacks the authority to enforce compliance with DOT's ADA regulations.

Can you explain to me why FMCSA—the sole Federal agency responsible for granting or denying operating authority to commercial buses—does not have the authority to enforce the Department's own ADA regulations?

Answer. The U.S. Department of Transportation (DOT) is mindful of its responsibilities for ensuring access to transportation services for all travelers, including those with disabilities, and its multi-year Strategic Plan emphasizes the importance of enhanced access to transportation services by travelers with disabilities. The Federal Motor Carrier Safety Administration (FMCSA) also works to ensure access to transportation services by individuals with disabilities within the limits of its legal authority.

In the D.C. Circuit decision that addressed FMCSA's authority to consider alleged violations of the Americans with Disabilities Act of 1990 (ADA) in determining whether a passenger carrier is fit to receive operating authority, *Peter Pan Bus Lines, Inc. and Bonanza Acquisition, LLC* v. *Federal Motor Carrier Safety Administration,* 471 F.3d 1350 (2006), it was the position of FMCSA that it did not have such authority. The court remanded the case to the agency because it disagreed with the FMCSA's determination that the relevant statutory language clearly did not permit the agency to deny operating authority for a carrier's failure to comply with ADA requirements. The court did not support FMCSA's interpretation that the statutory language was clear and unambiguous. It determined that the text of the statute was ambiguous, instructed FMCSA to re-examine the statute, and emphasized that remanding the case to the agency did not mean that FMCSA's interpretation of the statutory language was necessarily incorrect. The court further stated that after the agency revisits the issue, its decision will be entitled to deference by the court, as long as the agency's reading of the statute is reasonable.

In a decision issued October 26, 2007, after thoroughly re-examining the governing statute, FMCSA reaffirmed its earlier finding that it lacks statutory authority to enforce the ADA through the agency's licensing procedures. Peter Pan Bus Lines, Inc. and Bonanza Acquisition, LLC have sought review of this decision in the D.C. Circuit Court of Appeals and the parties will be filing their respective briefs with the court later this year.

Question. While I disagree with your assessment that FMCSA lacks the authority to enforce the Department's own regulations, have you requested the specific authority that you think you need to begin enforcing these regulations?

Answer. While this case is under consideration by the D.C. Circuit Court of Appeals, FMCSA has not sought specific authority to enforce ADA requirements when reviewing passenger carriers' requests for operating authority. However, FMCSA is closely monitoring the status of the pending legislation entitled the "Over-the-Road Bus Transportation Accessibility Act of 2007," H.R. 3985. H.R. 3985 was passed by the U.S. House of Representatives on December 12, 2007, and was reported by the Committee on Commerce, Science, and Transportation, U.S. Senate, on April 24, 2008.

FUNDING FOR PIPELINE SAFETY OFFICE

Question. I want to take a moment to discuss your budget request for the Office of Pipeline Safety. This office is seeing an increase of nearly $14 million, or 17 percent. I want to applaud you for recognizing the needs in that area. Just this past year alone, we saw pipeline-related fatalities in Mississippi, Louisiana and Minnesota.

Last year, the Congress added 15 new inspection positions and your budget request for 2009 proposes to add 8 additional positions.

Given the importance that we both see in this area, can we expect to see these positions filled promptly?

Answer. The Pipeline and Hazardous Materials Safety Administration (PHMSA) has launched an aggressive recruitment strategy to promptly fill vacant inspection and enforcement positions. PHMSA's strategy is a three pronged approach: (1) entry level—outreach to colleges and universities training future inspectors; (2) mid-level—offer current industry inspectors recruitment bonuses; and, (3) senior level—recruit retiring senior inspectors that are industry experts.

PHMSA offers a variety of Federal incentives such as remote deployment from home and recruitment incentives. Recent legislative proposals with regard to pay setting in Alaska (as well as other non-foreign areas) will, if passed, also assist in the longer term attractiveness of employment in that location and should aid in recruitment in that State. Since the Consolidated Appropriations Act of 2008 was enacted, PHMSA has recruited 13 inspection and enforcement personnel.

Question. Do you expect to have problems recruiting the right candidates for these positions? We would like to ask you to keep us regularly updated as to the progress you are making at bringing these people on board.

Answer. The expertise required to maintain and expand any safety program is specialized, constituting inherent challenges to recruiting the "right" candidates. However, PHMSA's recruitment strategy is predicated on those challenges and the agency expects to address and overcome them. For example, qualified candidates are interviewed by an expert panel. In an effort to ensure that PHMSA is meeting its recruitment goals, the agency is monitoring the process and will provide the committee with monthly updates; the most recent is provided below.

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

PIPELINE SAFETY—FISCAL YEAR 2008 INSPECTION/ENFORCEMENT POSITIONS AS OF 5/31/2008

Location	Number of Inspection/Enforcement Positions	Actual On-Board	Accepted Offers	Vacancies	Percent of Positions Filled
Headquarters	12	9		3	75
Eastern Region	13	11		2	85
Southern Region	14	11	1	2	79
Central Region	20	16	1	3	80
Southwest Region	25	22	1	2	88
Western Region	25	22	1	2	88
TOTAL	109	91	4	14	82

FEDERAL INVESTMENT IN TRANSPORTATION

Question. Secretary Peters, you have argued that tolling and privatization can translate into a greatly reduced role for the Federal Government in financing transportation infrastructure. In fact, the President's out-year projections for the Department of Transportation call for a major reduction in the Federal investment transportation.

How would tolling and the private sector support a national transportation system that includes building infrastructure in disadvantaged areas? For example, would the private sector and tolling have built the Appalachian Development Highway System?

Answer. Public private partnerships are a valuable supplement to, not a replacement for, the national highway system and networks of local streets and roads. In some parts of the country tolling could certainly be considered one of the options by States that can not afford desired improvements with the existing mix of Federal and State highway taxes to replace bridges or expand capacity of existing highways running through disadvantaged areas.

Question. If certain States choose to toll, does that mean that the Federal Government should be spending less in those areas? Or put another way, will the citizens in those States be financing their own transportation while other places receive a greater share of Federal resources?

Answer. Under current law, the amount of Federal funding that is distributed to States is not affected by whether or not a State has toll roads.

Question. The details of your proposal are not part of your budget request; when will we see the specifics? Are you working on a legislative proposal?

Answer. The authorization for current Federal surface transportation programs does not expire until the end of fiscal year 2009. Reauthorization will be a major factor in the fiscal year 2010 budget deliberations.

Question. Most Federal oversight over the highway system consists of requiring State and local governments to meet Federal standards before receiving their highway grants.

How would your Department continue to oversee the safety and performance of the transportation system when it no longer plays as critical a role in highway financing?

Answer. Even if support from the private sector significantly enhances our transportation capacity, the Federal Government will continue to play a critical role in both highway financing and safety. The U.S. Department of Transportation has a proven ability to oversee the safety and performance of both transportation systems that it helps finance, such as highways and transit, as well as those that are predominantly controlled by the private sector, such as trucks, pipelines and railroads.

NATIONWIDE DIFFERENTIAL GLOBAL POSITION SYSTEM (NDGPS)

Question. The fiscal year 2009 budget requests funding at $4.6 million for the NDGPS, which is consistent with the requests in prior years. However, the cost of this program is likely to increase in fiscal year 2009 by as much as $800,000.

Is the budget request sufficient funding to maintain all current services and keep NDGPS equipment in good repair?

Answer. The U.S. Department of Transportation (DOT) is committed to maintaining current inland (terrestrial) NDGPS services to the many and varied users of these services, as identified by the Research and Innovative Technology Administration (RITA) in its recently completed NDGPS Assessment. President Bush's fiscal year 2009 budget includes $4.6 million to continue inland NDGPS operations.

In March 2008 DOT approved, and the interagency National Space-Based Positioning, Navigation and Timing (PNT) Executive Committee (EXCOM) endorsed, a decision to continue inland NDGPS services as a national utility in support of America's surface transportation, precision agriculture, natural resources and environmental management, and surveying communities. (See: http://www.dot.gov/affairs/dot5508.htm).

Question. If NDGPS costs were to increase in 2009, where would the additional funds come from? Alternatively, in what way and to what extent might service be reduced?

Answer. As part of its decision to continue inland NDGPS operations, DOT is seeking a cost-share mechanism with other Federal agencies that use NDGPS. DOT is still developing this mechanism through the interagency NDGPS team, and is examining if there are any changes that may be made to the near-term costs of operating and maintaining the NDGPS system.

Question. The NDGPS has deferred maintenance requirements and also needs an upgrade to catch up with the Coast Guard's DGPS technology. It is reported that these could be completed in 2009 for $3.5 million, but will grow more expensive in the future.

Does RITA expect to complete this refresh? If so, when, and what is the cost expected to be at that time?

Answer. The 2009 budget includes $4.6 million for annual operating costs of the NDGPS system. The U.S. Coast Guard is expected to complete the Maritime DGPS refresh by second quarter fiscal year 2009. As is prepares the fiscal year 2010 budget and develops a cost share methodology, DOT and its partners are evaluating the costs of deferred maintenance, and of upgrading the inland component of NDGPS to be equivalent with the Coast Guard maritime component.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

INFRASTRUCTURE MAINTENANCE

Question. On your congestion initiative, which I do not believe has been authorized by Congress. There are vast areas of the country with transportation funding needs that have more to do with aging infrastructure than overcrowded roads. In Vermont, for instance, 453 of our 2,675 State- and town-owned bridges (nearly 20 percent) are structurally deficient.

In fiscal year 2007, DOT was granted full authority to make spending decisions with all of its discretionary funding. Instead of using this opportunity to show fairness and evenhandedness nationwide, modal agencies across the DOT decided to give away all of their money to a few big cities. You should have seen the letters I received from my constituents back home. They ranged the gamut from disappointment to frustration to infuriation. And I agreed with every one of them.

While the Minnesota bridge tragedy last year refocused Congress in the fiscal year 2008 appropriations process on the need to repair deficient bridges and roads, it is disappointing to look at the DOT's budget request for the coming year and again see a proposal that emphasizes congestion mitigation and kicks essential infrastructure maintenance further down the road.

How will you ensure that rural areas around the country will be treated fairly and equitably under this budget proposal?

Answer. The foremost transportation goal of Federal, State and local governments no longer is establishing connectivity, but rather ensuring that people and commerce are able to move efficiently. The Department is deeply concerned about the massive problem of traffic congestion, which presents significant challenges to this goal and affects millions of people across the Nation every day. Hence, we have proactively established the congestion initiative under the Department's existing authorities. It also bears mentioning that the Government Accountability Office has

testified favorably before Congress regarding the Congestion Initiative, highlighting our efforts as "encouraging" and stating that "successfully addressing the Nation's mobility needs [will require] strategic and intermodal approaches and solutions."[1]

When implementing programs, I have been consistent throughout my tenure as Secretary in attempting to focus the Department's limited discretionary resources on projects that yield the greatest possible benefits. With this in mind, fiscal year 2007 discretionary funding decisions focused not on a big city "give-away," but rather on the results of a competitive and comprehensive application and review process. This was Congress's intended role for the Department when Congress established various "discretionary" grant-making programs in SAFETEA–LU and in prior authorizations.

With respect to the question of highway spending in rural areas of the Nation, I can assure you that the Department is concerned with the condition, safety, and performance of rural roads. The latest information published in the 2006 Conditions and Performance report notes that the percentage of travel in rural areas on roads of good pavement quality has steadily increased from 46 percent in 1995 to 58.3 percent in 2004. Further, over this same time the condition of bridges in rural areas has also improved from year-to-year, with the percent in deficient condition at their lowest levels in the most recent year for which we have data. Safety levels on rural highways have also shown considerable improvement over the last decade.

The steady improvements we have witnessed on the condition of rural highway and an safety performance nationwide is commensurate with the level of spending on these roads. Highway capital outlays in 2004 on arterial and collector roads in rural areas amounted to $22.9 billion, as contrasted with $36.2 billion for the same class of roads in urban areas. When looked at on a per vehicle-mile of travel (VMT) basis, outlays were 2.4 cents per VMT for rural roads and 2.2 cents per VMT for urban roads.

In summary, highways in rural areas of the Nation are being improved at a steady pace, and their condition and performance reflect the fact that highway funds are being directed to these road systems at an appropriate level.

INFRASTRUCTURE MAINTENANCE

Question. You recently chaired a national commission on transportation financing that concluded we are not spending nearly enough to build and maintain our transportation infrastructure. While a majority on that panel agreed that we must keep open the option of increasing the Federal gas tax in order to upgrade our existing transportation system, you dissented and said the Federal Government should instead pursue "a different kind of investment," like tolling, congestion pricing, and public-private partnerships. I am not sure if you have been to Vermont before, but I am afraid that the traffic volume on our roads will not even pay for the tollbooth operators, much less the huge backlog in deferred maintenance projects piling up at the Vermont Agency of Transportation. On top of that, I do not foresee many private equity firms being interested in getting a piece of the action on I–89, I–91, or I–93 in Vermont—except maybe during leaf peeping season.

Has your Department developed any specific financing proposals that would be ready to implement as part of this year's appropriations bill or next year's reauthorization bill to address the over $225 billion in new investment that the national commission said we need annually to upgrade our transportation system?

Answer. The Department disputes the validity of the Commission's assertion of $225 billion in annual needs. First, this figure represents simply an estimate of projects whose benefits slightly outweigh their costs—a criterion that does not take into account the fact that resources are limited, and on which we do not base investment decisions in any other sector of the economy. Raising the fuel tax reduces disposable incomes available for private sector expenditures—many of which may have benefits in excess of their costs. Second, several of the investment assumptions used in the Commission analyses include unjustifiable investments, and are not based on a strict benefit-cost analysis. Finally, the Commission Report gives inadequate consideration to the potential for controlling demand for investment and increasing the efficiency of the current system, including through the use of congestion pricing to increase the performance of existing roads.

Regarding congestion pricing, this is one tool available to States and localities for improving the performance of transportation systems. We do not suggest it is a blanket solution for addressing all highway funding needs. Where there is consider-

[1] Statement of Patricia A. Dalton, Managing Director, Physical Infrastructure Issues, GAO. Testimony before the Subcommittee on Transportation, Housing and Urban Development & Related Agencies; Committee on Appropriations; House of Representatives; March 7, 2007.

able congestion, pricing can be an effective strategy for managing traffic and producing revenues that can support local transportation systems. Where there is not congestion, local governments will likely continue to rely on conventional financing mechanisms, at least for the near term. As technologies develop Federal, State, and local governments will have growing opportunities to use innovative means to raise transportation funds, regardless of the level congestion.

The Department is currently developing financing proposals to address the Nation's surface transportation infrastructure needs, which we hope to present to Congress later this year as part of a broader surface transportation reauthorization proposal.

ESSENTIAL AIR SERVICE

Question. I am disappointed that the administration once again has proposed such a significant cut in the Essential Air Service program and a new general provision that would lead to considerable reductions in service to rural communities across the country. Specifically, the President's budget requests only $50 million for the EAS program—far less than half of the $125 million that Congress appropriated last year. The $50 million funding level is clearly insufficient to meet the needs of EAS communities around the country, as over 60 would be dropped from the program immediately under the administration's proposal.

While this is not the first time that this administration has tried to kill the EAS program, as its chief administrator, how do you expect small communities around the country, like Rutland, Vermont, to maintain their Essential Air Service with only $50 million in direct funding?

Answer. The Essential Air Service program was designed when airline rates, routes, and services were regulated as means of providing temporary support to some communities during the transition of the airline industry to a deregulated structure. Although the program was eventually made permanent, it has remained fundamentally unchanged since its inception. That is one reason the administration has proposed reforms over the last several years. We believe that the program needs to be targeted to serve the needs of the most truly isolated communities across the country, and the administration's plan offers specific proposals to accomplish that objective.

It is clear that the EAS program must be reformed or the costs will continue to escalate. As more and more regional carriers upsize their fleets to larger turboprops or even regional jets, it will leave more and more communities reliant upon subsidized EAS. In addition, as the spread of low-fare carriers continues, more local communities will be unable to support their local airport's service as travelers will drive to nearby, low-fare jet service. EAS service of two or three round trips a day cannot compete with low-fare jet service, and more and more communities are falling into this situation. The administration's budget request is wholly consistent with the notion that the most isolated communities should continue to receive subsidized EAS in order to keep them connected to the national air transportation system.

QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

SMALL STARTS

Question. The fiscal year 2009 budget proposal included funding for five projects in California through the "small starts" program. These projects will allow a number of California communities to expand their public transit offerings. I have worked to secure past funding for this project, and I appreciate the administration's support.

Can you describe for us the rigorous review that "small starts" proposals undergo? Am I correct that these projects are some of the most cost effective transportation projects in the Country?

Answer. The Small Starts evaluation and rating process is a simplified version of the process used for New Starts projects. Small Starts projects must meet the criteria specified in law, which include: project justification (cost-effectiveness, transit supportive land use, and other factors such as economic development) and local financial commitment. The rigorousness of the Federal Transit Administration's (FTA) review depends on the estimated capital and operating costs of the Small Starts project. Those projects which qualify as Very Small Starts (under $50 million total capital cost, less than $3 million per-mile capital cost, and more than 3,000 riders in the corridor today) essentially qualify automatically as meeting the project justification criteria specified in law. Therefore, FTA performs little review other than to ensure the project qualifies.

For projects that do not qualify as Very Small Starts, FTA reviews and evaluates their estimates of ridership, cost-effectiveness, and transit supportive land use. Those projects with estimated operating costs totaling less than 5 percent of system-wide operating costs automatically qualify as meeting the local financial commitment criteria, so FTA again performs little review. If the project's operating costs are greater than 5 percent of system wide-expenses, then FTA reviews and evaluates a detailed financial plan submitted by the project sponsor.

There are seven projects in California approved for project development and these are included in the Annual Report on Funding Recommendations (the "New Starts Report"). Four are Very Small Starts (limited review and evaluation by FTA) and three are Small Starts (subject to more rigorous FTA review/evaluation). The Very Small Starts are automatically "warranted" as being cost-effective based on the aforementioned qualifying criteria. The three Small Starts projects are cost-effective (San Francisco received a High rating for cost-effectiveness, San Bernardino received a Medium-High rating for cost-effectiveness, and Riverside received a Medium rating for cost-effectiveness.) Of these seven projects approved for project development, five were recommended for funding in the fiscal year 2009 President's Budget. The other two projects, San Bernardino E Street Corridor and Van Ness Avenue BRT, were not ready for a funding recommendation.

CORPORATE AVERAGE FUEL ECONOMY (CAFE) STANDARDS

Question. The fiscal year 2009 Department of Transportation budget proposal requests $855 million for the National Highway Traffic Safety Administration (NHTSA), an increase of only $17 million for the agency that administers Corporate Average Fuel Economy (CAFE) Standards. Considering that NHTSA has to write a whole new set of CAFE standards to comply with the Ten-in-Ten Fuel Economy Act, I am concerned that this increase is insufficient. What assurance can you provide the Senate that this budget request will allow NHTSA to put out new CAFE regulations on time?

Answer. On April 22, 2008, NHTSA issued a notice of rulemaking proposing standards for Model Years 2011 through 2015 passenger cars and light trucks. The CAFE program was appropriated $1.88 million in fiscal year 2008 as part of the $12.8 million provided by Congress for NHTSA's rulemaking activities. NHTSA estimates that it will require an additional $3.8 million in fiscal year 2008 to support expanded CAFE activities, and submitted a reprogramming request to the committee on June 2, 2008. The fiscal year 2009 budget request is $3.88 million.

Question. The law requires NHTSA to issue draft CAFE regulations at least 30 months before they go into effect. Therefore, NHTSA must issue draft CAFE regulations for Model Year 2011 this year. Is NHTSA on track to issue draft CAFE regulations on time? In what month do you expect NHTSA to issue draft regulations?

Answer. On April 22, 2008, NHTSA announced a notice of proposed rulemaking for CAFE standards applying to model years 2011–2015. After a 60-day comment period that ends July 1, 2008, NHTSA will begin work to finalize CAFE standards for those years. NHTSA expects to publish the final rule before the end of this year. This rule must be published by April 1, 2009, to be effective for the 2011 model year.

Question. The Ten-in-Ten Fuel Economy Act requires a fleet-wide average of at least 35 miles per gallon by 2020. Between now and 2020, NHTSA must increase fuel economy "ratably" and issue the regulations in 5 year increments. Will the draft rule, for the first 5 years, accomplish at least a 5 mile per gallon increase, so that NHTSA maintains steady progress towards 35 mpg in 2020?

Answer. Overall proposed CAFE standards for the entire light duty fleet would increase by approximately 25 percent over 2011–2015, as shown the table below. This is a 4.5 percent average annual rate of growth and exceeds the 3.3 percent annual average increase required in the Energy Independence and Security Act of 2007 (EISA). The overall proposed fuel economy requirement in 2015 is 31.6 miles per gallon (mpg). This is 6.3 mpg higher than the combined standard in 2010. If these standards were finalized, the agency would only need to increase CAFE standards by 2.1 percent per year from 2016–2020 to achieve a combined standard of exactly 35.0 mpg in 2020 (as required by EISA).

PROPOSED PASSENGER CAR AND LIGHT TRUCK CAFE STANDARDS

Year	Car Standard	Truck Standard	Combined Standard
2011	31.2	25.0	27.8
2012	32.8	26.4	29.2

PROPOSED PASSENGER CAR AND LIGHT TRUCK CAFE STANDARDS—Continued

Year	Car Standard	Truck Standard	Combined Standard
2013	34.0	27.8	30.5
2014	34.8	28.2	31.0
2015	35.7	28.6	31.6

Question. Last year the 9th Circuit Court of Appeals struck down NHTSA's new fuel economy standard for light trucks and SUVs, in part because NHTSA refused to quantify the benefits of reducing greenhouse gas emissions as part of its cost effectiveness analysis. Has NHTSA now developed a valuation method to quantify the benefits of reducing emissions of gases that cause global warming?

Answer. In its April 22nd notice of proposed rulemaking, NHTSA proposed placing a value on reductions in carbon dioxide emissions. NHTSA reviewed the literature and proposed a value based on information from Working Group II's contribution to the Fourth Assessment Report of the United Nations Intergovernmental Panel on Climate Change (IPCC). The IPCC report tentatively concluded that the most likely value for the global benefits was $14 per metric ton of carbon dioxide. However, the value for benefits to the United States could be as low as $0 per metric ton of carbon dioxide. The IPCC conclusion was derived from a peer-reviewed study that examined 103 estimates of the social cost of carbon from 28 published studies. While NHTSA used the midpoint of the $0–$14 range ($7 per ton) as a value for the analysis in our notice, it also conducted sensitivity analyses around the upper and lower boundaries. NHTSA realizes that substantial variability exists in estimates of the domestic and global values of carbon dioxide reductions. The agency consulted with the Environmental Protection Agency and the Department of Energy on this issue and will continue to do so for the final rule. The agency also requested and anticipates receiving comments during its rulemaking process on how to estimate properly the value of reducing carbon dioxide emissions.

Question. The fine for failing to meet CAFE standards equals $55 per mile per gallon, per vehicle below the standard, which is below the cost effective price of improving fuel economy. As a result, some European firms choose to pay CAFE fines year after year instead of improving fuel economy. Historically the big three U.S. automakers have complied with the standards because paying fines would have led to stockholder lawsuits. But now one of these firms is privately held, creating the possibility of increasing fuel economy violations. Should Congress consider increasing CAFE fines so that it is in the economic interest of automakers to comply with the standards?

Answer. NHTSA is committed to achieving the fuel savings sought in EISA, and will continue to work with Congress to achieve the goals of EISA. Historically, most manufacturers have met fuel economy standards. Should we see a reversal of this trend, NHTSA will examine all options, including a provision to double the fine and/or additional legislative authority.

Question. According to an investigation conducted by the House Oversight Committee, Secretary Peters and numerous other staffers contacted the Environmental Protection Agency and Members of Congress to "solicit comments against the California waiver," as a Department of Transportation official put it. Did Secretary Peters call Governors and urge them to oppose the California waiver? According to internal DOT e-mails, Secretary Peters spoke with Steve Johnson about the California waiver on June 6, 2007. Did Secretary Peters encourage him to deny the waiver?

Answer. To repeat a clarification that we have made in response to previous Congressional inquires on this subject, the Department of Transportation (DOT) did not under take any improper "lobbying", as that term is used in the anti-lobbying restrictions found in 18 U.S.C. 1913, or provisions routinely contained in annual appropriations acts restricting the use of appropriated funds for "publicity or propaganda purposes" to support or defeat pending legislation. As we have previously acknowledged, however, DOT undertook an effort to contact Governors and Members of Congress to inform them of California's waiver petition and of its possible implications.

As I have previously indicated, I spoke with EPA Administrator Stephen Johnson concerning the California waiver petition. I recall a conversation in which he indicated that the docket would benefit from a wider array of commenters, including State Governors or other elected officials who represent stakeholders. We discussed the possibility that such potential commenters might need an extension to the comment period on order to submit comments. We also discussed DOT's longstanding position in favor of a uniform national fuel economy regulatory scheme.

CALIFORNIA MARITIME INDUSTRY

Question. On February 11, I wrote to Maritime Administration Administrator Sean T. Connaughton:

". . . to express my concern that the actions of the U.S. Department of Transportation Maritime Administration (MARAD) are causing harm to the maritime industry in the State of California. This industry, which I have worked to expand for more than three decades, employs thousands of Californians on board ships, in ports, and in our shipyards. I request that you explain why MARAD has pursued an effort that may significantly decrease cruise ship visits, cruise ship turn-around operations, and cruise ship maintenance in California."

In order to better understand how MARAD's recent efforts conformed to its mission, I asked a series of questions, but I have received no response. Please answer the following questions, first asked in my letter nearly one month ago:

If CBP finalizes its draft "Hawaiian Coastwise Cruises" rule, does MARAD estimate that any U.S. flagged cruise ships will begin servicing Californian ports of call? If so, how many annual ports of call will result?

Answer. Based on information available to the Maritime Administration, operators of large U.S.-flag cruise ships do not appear to currently have plans to offer services from ports in California to Hawaii, regardless of the final outcome of the Customs and Border Protection (CBP) rule. Whether U.S.-flag cruise ships service California ports of call is a market decision, so it is not possible to provide at this time a specific number of annual ports of call that will result.

Question. If CBP finalizes its draft "Hawaiian Coastwise Cruises" rule, does MARAD estimate that total cruise ship visits to California ports will decrease? If so, how many annual ports of call will be lost as a result?

Answer. Under the CBP proposal, foreign-flag ships could alter itineraries and still call in Hawaii in order to provide a cruise experience similar to what is currently offered, resulting in little or no decrease in calls to California ports. However, it is far more likely that poor economic conditions and highly elastic demand for leisure travel will reduce the total number of cruise ships visits to California ports in the short term. The Maritime Administration has not received specific information from cruise ship operators on the projected effects of the CBP draft rule. Therefore, the Maritime Administration has not developed estimates of the potential reduction in the number of port calls in California.

Question. Have you or any other MARAD officials visited cruise ship operating companies to discuss their round-trip cruise itineraries that depart from California ports and visit ports of call in Hawaii?

Answer. The Maritime Administration regularly meets with ship operating companies. Some companies have identified some aspects of their plans to reduce round-trip cruise voyages from California to Hawaii based on operating economics and poor demand. These business decisions, however, were based on the industry market assessment made prior to the November 2007 announcement of the CBP to reinterpret Passenger Vessel Services Act (PVSA) rules.

Question. If so, have you or any other MARAD officials encouraged cruise ship operating firms to reduce their total number of annual round-trip cruises that depart from California ports and visit ports of call in Hawaii?

Answer. The Maritime Administration has not encouraged any operator to reduce any legal vessel operations in any trade. On the contrary, in pursuit of its mission to improve and strengthen the U.S. marine transportation system, the Maritime Administration supports the cruise industry, operating in compliance with the PVSA.

Question. Do you believe that advocating for decreased cruise ship activity in California's ports is consistent with the mission of MARAD if no increase in U.S. flagged service in Californian ports is expected to result?

Answer. The Maritime Administration has not advocated for decreased cruise ship activity in California's ports. Rather, the Maritime Administration strongly supports cruise industry operations that are in compliance with the PVSA.

Question. Approximately 40 percent of all container traffic enters the United States through the ports of Los Angeles and Long Beach. Moving the goods out of the ports has severe economic consequences and human health impacts. What does this budget proposal do to address these impacts?

Answer. One of the primary objectives of the Maritime Administration is to ensure the continued success of our Nation's Marine Transportation System. This includes not only the ports and near-port intermodal connectors, but also ensuring water access and the interstate road, rail and Marine Highway corridors that move the freight into and out of the ports.

Nowhere is this more important than the ports of Los Angeles and Long Beach. Included in this budget are the resources necessary to staff our Southern California

Gateway Office, located in the port of Long Beach. This Gateway Office, as in the other nine Gateway Offices in our Nation's major ports, works to identify bottlenecks and ways to improve freight movement, as well as work on environmental and community challenges in the ports and their intermodal connectors.

This office also supports the broader Department of Transportation National Strategy to Reduce Congestion and one of its key elements, the initiative to reduce Southern California freight congestion. The Maritime Administration led the development of a Southern California National Freight Gateway Cooperation Agreement, signed in October 2007, among Federal, State and local entities to achieve an agreed agenda to seek improvements in freight throughput capacity in Southern California, balanced with environmental and community concerns. The team is actively assessing issues and potential solutions that are compatible with California's Goods Movement Action Plan. The Maritime Administrator and Deputy Administrator have met frequently with port, environmental, and community stakeholders to identify solutions that improve the environment, health and community while sustaining international trade.

For example, the Maritime Administration is actively working with the Port of Los Angeles and Pacific Rim ports to transfer emissions reduction and energy efficiency technology. The Maritime Administration continues to participate in the International Maritime Organization and the International Standards Organization to develop international regulations standards that address marine emissions from vessels and ports. At the same time, the Maritime Administration continues to collaborate with academia to develop unique and groundbreaking tools that assess optimal crossmodal freight routing in an effort to reduce energy consumption and emissions.

NATIONAL GOODS MOVEMENT STRATEGY

Question. California has identified $48 billion in transportation infrastructure needs directly related to goods movements. In November 2006, Californians passed Proposition 1B, agreeing to tax themselves to pay for a $20 billion transportation bond, $2 billion of which are about to go towards goods movement projects. What is the status of the Department of Transportation's efforts to develop a national goods movement strategy and what revenue sources do you intend to seek to finance a national system?

Answer. The Department of Transportation commends the State of California for its vision and planning to improve freight flows, both through individual efforts at the local level as well as through the comprehensive Goods Movement Action Plan released in 2005 and the follow-on Multi-County Goods Movement Action Plan. The continued efficient flow of freight through Southern California to and from factories and consumers across the Nation is a vital component of the national economy. The port complex of Los Angeles/Long Beach is the busiest container seaport in the Nation and the fifth busiest in the world. The rapid increase in freight volumes through the complex has strained existing infrastructure and has raised the urgency of environmental concerns surrounding this activity that is so essential to our Nation's economic growth.

The Department of Transportation is addressing the need to improve freight movement nationwide through our comprehensive National Strategy to Reduce Congestion. Transportation system congestion is one of the single largest threats to our Nation's economic prosperity and way of life. Whether it takes the form of cars and trucks stalled in traffic, cargo stuck at overwhelmed seaports, or airplanes circling over crowded airports, congestion costs America almost an estimated $200 billion a year.

In 2006, the Department of Transportation announced a major initiative to reduce transportation system congestion. This plan provides a blueprint for Federal, State, and local officials to consider as we work together to reverse the alarming trends of congestion, which is critical to improving freight flows through our transportation system. Several components of the initiative are directly addressing goods movement. They include congestion relief programs, public-private partnerships, national road and rail corridors, and technological and operational improvements to the transportation system and its business processes.

A recent example of the actions taking place to improve freight flows is the plan announced by Secretary Peters on April 25, 2008, to cut traffic jams, provide better bus service, and clean the air in Los Angeles. The area is eligible for more than $213 million in Federal Congestion Reduction grants. The funds would also finance the creation of new High-Occupancy Toll (HOT) lanes, which single-occupancy vehicles can use by paying a variable toll. Through the concept of "congestion pricing," these tolls would vary with travel demand and real-time traffic conditions through-

out the day so that transportation authorities can better manage the number of cars in the lanes to keep them free of congestion, even during rush hour. As congestion is reduced, freight velocity will improve.

The Department is implementing other congestion pricing demonstrations in areas of extreme congestion in order to reduce gridlock and clear the air. These demonstrations can be replicated in other cities and regions to improve the efficiency of the transportation system across the Nation. The initial demonstrations are being funded with grants from the Department of Transportation, including $495.1 million through the Urban Partnership Program and $366.7 million through the Congestion Reduction Demonstration Program. In addition, the Department is advocating that metropolitan planning organizations designate freight projects as funding priorities in their transportation planning.

The Department also recognizes the potential for private sector participation in national, regional and local transportation projects. A major element of the National Strategy to Reduce Congestion is the potential for public-private partnerships (PPPs) to jointly finance transportation projects. PPPs provide benefits by allocating the responsibilities to the party—either public or private—that is best positioned to control the activity that will produce the desired result. With PPPs, this is accomplished by specifying the roles, risks and rewards contractually, so as to provide incentives for maximum performance and the flexibility necessary to achieve the desired results.

CONTAINER FEES

Question. There seems to be a growing consensus that container fees are likely to be the most significant source of funds to pay for the billions of dollars necessary to move goods through Southern California, if not the Nation. For example, there are now bills both in Congress (Rep. Rohrabacher) and the California legislature (State Sen. Lowenthal) proposing container fees. The ports of Los Angeles and Long Beach have already approved, but not yet implemented, their own container fee plans. Has the Department of Transportation explored the feasibility of a national container fee system at water, land and air ports of entry as a means to finance goods movement infrastructure specifically? What is the department's position on container fees?

Answer. The Department of Transportation has not explored the feasibility or desirability of a national container fee system to finance goods movement infrastructure. There are several approaches and alternatives to the implementation of container fees that the Department is evaluating. Direct assessments on shipments is an approach that has been presented to Congress and to the California legislature. Other approaches, such as the successful PierPass program at the ports of Los Angeles and Long Beach, uses a congestion pricing model that provides an incentive for cargo owners to move shipments at night and on weekends. Cargo owners moving containers at the two ports during peak daytime hours are required to pay a Traffic Mitigation Fee, which helps fund the cost of operating five new shifts per week at marine terminals. Another approach is the use of public-private partnerships as a means to finance infrastructure growth and congestion mitigation.

The Department has consistently heard from shippers, carriers and the transportation industry that the acceptability of the concept of a fee depends upon how the fee is structured and collected, the amount of the fee, and how the funds are used. Of particular concern is that an assessment be clearly tied to specific transportation improvement projects that will improve freight flows, and that it be clear from the outset whether the fee is permanent or would sunset after the specific projects are completed. Another key issue is whether non-containerized cargoes using port facilities and rail and road connectors would also be included in the assessment.

SUPPORT FOR S. 406

Question. Public Transportation Systems serving urbanized areas exceeding 200,000 in population may not use funds received through section 5307 of the United States Code to pay for operating expenses. However, some very small systems—with fewer than 100 buses—exist in urbanized areas. I have cosponsored a bill (S. 406) that would allow a system with fewer than 100 buses to use these funds for operating expenses, as other small bus systems are allowed to do.

Does the Secretary of Transportation support S. 406? If not, please explain why.

Answer. Currently, the Federal Transit Administration's (FTA) urbanized area formula program is focused on capital assistance; during the remaining time under the current authorization—SAFTEEA–LU—the agency is not prepared to support operating assistance in areas over 200,000 in population. FTA believes a proposal based on fleet numbers is not appropriate for at least three reasons:

—The urbanized area formula program is based on urbanized area populations. The manner in which public transit is organized in an urbanized area is a local decision, which FTA is prohibited from regulating.
—FTA also believes good public policy should not include any feature in the urbanized area formula program that could be viewed as discriminating between transit agencies in a single urbanized area.
—A proposal based on fleet numbers would discourage agencies from expanding bus service for fear of losing operating assistance.

QUESTIONS SUBMITTED BY SENATOR TED STEVENS

ALASKA FLIGHT SERVICE STATION NETWORK

Question. The FAA is currently reviewing how to modernize the Alaska Flight Service Station network. As part of the FAA fiscal year 2009 budget request, the FAA intends to conduct a final investment analysis of how to modernize the Alaska flight service stations. Could you provide the committee with an analysis of the alternatives the FAA is considering? Does the FAA intend to consolidate any current facilities? Will any new technologies be approved for new sites?

Answer. The Federal Aviation Administration (FAA) has laid out a plan to modernize Alaska flight services in an evolutionary manner. FAA plans to modernize the current technology while maintaining existing operational flight services. The Alaska Flight Service Modernization (AFSM) plan is divided into two segments. Segment 1 is defined as the one-for-one replacement of the current automation system by February 2010 when the current automation system's (Operational and Supportability Implementation System) period of performance on the contract will expire. Segment 2 is composed of two parts—the deployment of a new technology voice switch and the modernization of facilities (infrastructure).

FAA is looking for ways to expedite the deployment of the voice switch (part of segment 2) by the end of 2011. After the automation and voice switch technologies are delivered with remote user access capability, FAA will have implemented the new flight services concept of operations.

The strategy for the modernization of the facilities will be determined by what is required to support the new concept of operations in Alaska flight services. After approximately a 2-year period of demonstration and analysis, FAA will determine whether projected user benefits are being achieved and adjust our plan as necessary. Generally, FAA does not support the consolidation of Alaska flight services facilities, but does support expansion of flight services delivery. FAA has not completed the investment analysis work for facility modernization but expects to do so by 2014.

FAA has an ongoing program to sustain Alaska flight service facilities that will continue to operate while the system is modernized. FAA will not consider implementing any strategies to consolidate facilities in Alaska until the technology has proven itself efficient, and full coordination has been completed with users and primary stakeholders, including congressional oversight authorities.

SMALL SHIPYARDS

Question. The shipbuilding industry is vital to our Nation's commerce and security. In 2006 the Congress enacted legislation establishing a program within the Maritime Administration that provided financial assistance to small shipyards throughout the Nation. This program is especially beneficial to shipping communities in my State of Alaska. Small shipyards received $10 million in assistance last year, but the administration's 2009 Budget proposes no funding for this program. What do you plan to do to ensure the viability of our nation's shipping industry and small shipyards specifically?

Answer. The Maritime Administration's (MARAD) fiscal year 2009 budget proposal was developed well in advance of the enactment of the fiscal year 2008 appropriation for the small shipyard grants program, the first time this program has been funded. On April 22, 2008, MARAD awarded $9.8 million in grants to 19 shipyards throughout the United States. These funds will be expended for projects over the next 2 years, which will enhance the viability of small shipyards.

PIPELINE AND HAZARDOUS MATERIALS SAFETY

Question. Why is the President's budget request for Pipeline Safety $10 million below what this committee authorized in the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006?

Answer. The Pipeline and Hazardous Materials Safety Administration (PHMSA) is making good progress toward achieving the goals of the Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006. In its first budget submission since the PIPES Act, the Department is requesting a significant increase in funding of PHMSA's Pipeline Safety Program in order to continue implementation of the PIPES Act. The $93.3 million request, a $13.5 million increase over the fiscal year 2008 enacted level, supports the top three PIPES Act priorities: (1) increasing financial support for State pipeline safety programs; (2) preventing excavation-related damage to pipelines; and, (3) increasing Federal inspection and enforcement personnel. The administration has kept its commitment to help States with increased financial support, up to an average of 60 percent of program costs and closer to our shared goal of funding 80 percent of costs. We are supporting stronger damage prevention programs by providing incentives to States to develop more effective programs and to expand the use of civil enforcement authority against anyone who violates "one-call" laws. We are increasing PHMSA's pipeline safety inspection and enforcement personnel to 123 full-time positions. The national pipeline safety program has been successful in driving down risk by targeting safety areas of greatest concern. This budget will allow PHMSA to continue to sharpen its focus while maintaining the gains it has made over 20 years.

Senator MURRAY. We thank you for taking your time today and your testimony as well as all your staff I know who have worked very hard for this as well.

Secretary PETERS. And again my apologies for being late this morning.

Senator MURRAY. All right. Well, it was a transportation issue, I understand?

Secretary PETERS. Yes, it was.

Senator MURRAY. That's under your jurisdiction.

Secretary PETERS. Indeed.

SUBCOMMITTEE RECESS

Senator MURRAY. With that, this subcommittee is recessed, subject to the call of the Chair till next Thursday.

[Whereupon, at 11:29 a.m., Thursday, March 6, the subcommittee was recessed, to reconvene subject to the call of the Chair.]