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Laborers' International Union of North America, AFL-CIO ■
National Asphalt Pavement Association ■
National Association of Surety Bond Producers ■
National Lime Association ■
National Ready Mixed Concrete Association ■
National Stone, Sand and Gravel Association ■
National Utility Contractors Association ■
Portland Cement Association ■
Precast/Prestressed Concrete Institute ■
The Road Information Program ■
United Brotherhood of Carpenters and Joiners of America

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June 16, 2004

Dear Conferee:

As the House and Senate begin reconciling the differences between the Transportation Equity Act: A Legacy for Users, H.R. 3550, and the Safe, Accountable, Flexible and Efficient Transportation Equity Act, S. 1072, the 28 national associations and construction unions of the Transportation Construction Coalition (TCC) would like you to be aware of our priorities for these discussions.

Highway and Transit Investment

The TCC has repeatedly stated the authorizations and guaranteed funding contained in S. 1072 are the minimum that should be acceptable for any six-year reauthorization of the Transportation Equity Act for the 21st Century (TEA-21). Funding levels below those called for in S. 1072 would impede the conference report's ability to create jobs, address the nation's infrastructure needs and equitably distribute federal transportation funds among the states. We believe H.R. 3550's proposed "re-opener" is important to ensure that the highway and transit investment levels provided by the Senate bill are included in the final measure. This provision would also provide Congress with an opportunity to further address surface transportation funding during the reauthorization period.

One of TEA-21's historic accomplishments was the establishment of guaranteed highway and transit funding made possible through budgetary firewalls. It is critical that TEA-21's successor retains statutory budget protections for the Highway Trust Fund to ensure all highway user fee revenues are invested in improving the nation's highway and transit network. Along these lines, the TCC supports efforts to improve the accuracy of the revenue aligned budget authority mechanism.

Environment and Planning

There has been broad based support within the TCC and Congress for improving the transportation project delivery process. Sec. 1309 of TEA-21 included provisions that required the U.S. Department of Transportation and environmental resource agencies to cooperatively implement streamlined procedures. Unfortunately this did not take place, and the promise of making substantive reforms to the planning and environmental review process has not materialized.

We are pleased both the House and Senate reauthorization proposals contain key provisions to improve the transportation project environmental review and approval process. By incorporating certain environmental provisions from both H.R. 3550 and S. 1072 in the final conference report, Congress can make needed changes to the administration of environmental reviews without sacrificing existing environmental protections. Specific recommendations for provisions to be included in the conference bill are listed in the attached matrix.

The TCC is extremely concerned, however, the new planning requirements included in S. 1072 could compromise the benefits gained from provisions that improve the environmental review process.

The planning section of S. 1072 mandates the consideration of many new factors,

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including protection of habitat, water quality, agricultural and forest land, and minimizing invasive species. States and metropolitan planning organizations (MPOs) would also be required to consult with many more entities on land use conservation plans, historic resources and wildlife crossings. States would also be required to develop comprehensive discussions on mitigation for projects in their long-range transportation plans. This expansion of state and MPO planning factors contradicts the policy to consolidate the planning process that was enacted six years ago under TEA-21.

The additional considerations and consultation requirements in SAFETEA could substantially increase the time and cost of the planning process, and will provide many new opportunities to delay projects. Furthermore, project sponsors already have the opportunity to consider these factors under existing state and metropolitan planning organization factors. The TCC urges the conference committee to adopt the planning provisions contained in H.R. 3550. Conferees should also consider adding a provision to the conference bill that would make decisions made in planning “stick” during the NEPA process.

S. 1072 includes a provision that would require states to use two percent of their federal Surface Transportation Program (STP) funds for storm water mitigation activities. The proposed creation of a mandatory storm water mitigation “set-aside” is unnecessary and undermines the ability of states to make their own decisions about the best use of federal highway formula funds. Depriving states the ability to address their highway and highway safety needs in order to fund storm water mitigation projects is a false choice. We urge you to oppose this provision.

Both H.R. 3550 and S. 1072 would reform existing historic preservation protections to eliminate redundancies in the approval process of transportation projects for which “no adverse effect” is found on a historic site. While both measures share the goal of improving the Section 4(f) historic protection requirements, the Senate provision would have a broader application and, therefore, we urge conferees to support the Senate Section 4(f) reforms.

Conformity

The TCC strongly supports conformity reforms that bring consistency, continuity, and balance to the process. Accordingly, the TCC believes conformity determinations should be aligned with the State Implementation Plan (SIP) process, including 4-year planning and conformity update cycles and 10-year planning horizons. Further, the TCC supports a 12-month grace period for failure to make a conformity finding. Although not addressed in the pending legislation, the TCC supports grandfathering of highway projects that have approved environmental impact statements in the event of a subsequent conformity lapse.

The TCC supports state and local planning flexibility and providing incentives for air quality improvements and congestion reductions, which we believe are more effective than sanctions and penalties in promoting innovative solutions tailored to state and local needs but which meet and advance national goals.

Safety

The TCC supports congressional efforts to improve roadway safety, while, as is the case for many programs, funding levels for construction safety in the House legislation remain problematic. We are concerned with sections of S. 1072 that divert funds from

construction to non-construction safety initiatives. Given the backlog of safety projects and improvements waiting to be implemented, diversions of this type place all motorists at unnecessary risk.

The TCC supports the House proposal to create a High-Risk Rural Road Safety program. Crashes on rural roads result in 60 percent of roadway fatalities while only comprising 40 percent of vehicle miles traveled. Reducing crashes on these rural roads will, in the long-run, reduce federal, state and local government expenditures to address the consequences of these crashes.

The transportation construction industry is also a long-time supporter of improving roadway work zone construction safety. We appreciate that both H.R. 3550 and S. 1072 would make roadway work zone safety initiatives, such as police presence in construction work zones and positive separation between workers and traffic, eligible for funding under each measure's proposed Highway Safety Improvement Program. We also support Section 1106 of H.R. 3550 that would establish "unit bid" pricing for temporary traffic control measures to ensure the appropriate use of safety measures on federal-aid highway projects.

In addition, we request that S. 1072's Section 1407(7), Section 1407(8), Section 1407(9) and Section 1407(10) be dropped from the conference. These work zone provisions set arbitrary limits for liability insurance, percentage of project funding for safety and use of intelligent transportation systems. While we appreciate the intent of these provisions to improve work zone safety, we do not believe that these measures are appropriate.

Research

The TCC strongly supports an adequately funded highway research program that produces longer lasting materials, improves construction techniques, and saves lives. A robust highway research program is also critically important in developing the next generation of engineers who will design, construct, and rehabilitate the highways of the future.

The TCC supports greater oversight and input as recommended by the General Accounting Office in all phases of research to ensure the research programs authorized in the final legislation produce useful outcomes that can be quantified and expeditiously deployed. This would ensure equitable oversight and input from all key stakeholders, including highway contractors, researchers, state Departments of Transportation, and Federal Highway Administration officials. To that end, the TCC supports establishing a Surface Transportation Research Technology Advisory Committee as recommended by S. 1072.

Tolling

The TCC strongly supports efforts to expand the use of toll financing for highway improvement projects. As such, we support the tolling provisions included in S. 1072 and H.R. 3550 as reported by the House Transportation and Infrastructure Committee. During House consideration of H.R. 3550, however, an amendment was approved that greatly limits the measure's tolling opportunities. The amendment included additional language repealing the Congestion Pricing Program and two toll pilot programs in H.R. 3550. The TCC opposes the elimination of existing toll programs and restricting toll facilities only to projects that meet certain criteria. The TCC urges conferees to restore the toll provisions

contained in the original House bill and the Senate-passed bill. Furthermore, the TCC supports providing states with maximum flexibility to design toll solutions that address their unique situations.

Contractor Debarment

Section 1802 of S. 1072 would establish mandatory contractor debarment and suspension requirements in the federal-aid highway program. Existing federal debarment and suspension procedures have worked well in the past. FHWA already has the authority to take the steps called for in the section when it is deemed to be in the government's interest. This new mandatory provision would set the FHWA procedures apart from the government-wide debarment procedures. There is no demonstrated need to take away FHWA's discretion and make debarment a mandatory requirement. This provision denies the contractor due process by presuming guilt without conviction. It also punishes a contractor unduly even if steps have been taken to correct improper activities. TCC recommends that this provision be stricken.

Innovative Financing

The TCC strongly supports increasing utilization of State Infrastructure Banks (SIBs) and implementing Private Activity Bonds. These federal financing mechanisms would provide a supplemental source of badly needed funding to help deliver projects. Under current law, SIBs may utilize TEA-21 funds in five states and both S. 1072 and H.R. 3550 allow for the application of this program to all fifty states. In addition, S. 1072 contains the Administration's initiative that gives states additional flexibility in the use of private activity bonds by making highway and freight infrastructure projects eligible for up to \$15 billion of tax-exempt bonding authority. The TCC urges the conferees to continue the SIBS programs as passed by both chambers and adopt the Private Activity Bond initiative as approved by the Senate.

The TCC believes the Build America Corporation as proposed by the Senate could be an important additive to current transportation financing tools. Before providing the Corporation authority to issue bonds, Congress should consider focusing these resources on long-term, capacity enhancing capital improvements and work with the Administration to ensure bonding is fully evaluated as an additional resource for meeting the nation's mounting transportation needs.

Davis-Bacon

We reiterate the TCC position from our earlier letters to the House and Senate, wherein we support the "status quo" regarding Davis-Bacon coverage under the federal-aid highway program: "Since the advent of the modern era federal-aid program in 1956, the 'status quo' regarding Davis-Bacon has been the consistent application of prevailing wage requirements to construction projects financed under the federal-aid highway program."

Thank you for your consideration of these views. Please see the attached document for a more detailed description of the TCC's conference report priorities.

Sincerely,

The Transportation Construction Coalition

Side-by-Side of Key Provisions of H.R. 3550 and S.1072

Issue	H.R. 3550, TEA: LU	S. 1072, SAFETEA	TCC Position
Federal Highway and Transit Investment			
Guaranteed Core Highway Investment (FY 2004-2009)	\$217.4 Billion	\$233.5 Billion	Senate investment level is the minimum that is acceptable
Guaranteed Transit Investment (FY 2004-2009)	\$51.5 Billion	\$56.5 Billion	Senate investment level is the minimum that is acceptable
Total Surface Transportation Authorizations (FY 2004-2009)	\$279.4 Billion	\$318 Billion	Senate investment level is the minimum that is acceptable
Re-opener	Section 1124 would allow Congress to revisit funding levels to meet 95 percent minimum rate of return for all states.	No	Support House provision.
Revenue Aligned Budget Authority (RABA)	Changes RABA by replacing look forward component with look now component. The RABA adjustment is then spread over two years.	Changes RABA by replacing look forward component with look now component. The RABA adjustment is applied to the budget year.	TCC supports efforts to improve the accuracy of the RABA mechanism.

Side-by-Side of Key Provisions of H.R. 3550 and S.1072

Issue	H.R. 3550, TEA: LU	S. 1072, SAFETEA	TCC Position
Transportation Project Environmental Review and Approval Process			
Lead Agency Purpose and Need Alternatives	Yes, but decisions made by USDOT are not binding for other federal review agencies.	Yes, but project sponsors must first opt into a new and complicated process and work plan.	<ul style="list-style-type: none"> ○ The TCC: <ul style="list-style-type: none"> - Opposes the opt-in process included in Sec. 1511 of the Senate bill. - Supports Sec. 1511(f) and 1511(g) of the Senate bill that make decisions made by the lead agency binding for other agencies. - Supports the factors listed in the Senate bill that may be considered in the purpose & need and alternatives development. - Supports Sec. 5252(e)(4) of the House bill that allows the lead agency to develop the preferred alternative in more detail.
Decision Timelines	Yes	Yes, but only through the opt-in process.	<ul style="list-style-type: none"> ○ The TCC supports the following deadlines: <ul style="list-style-type: none"> - 60 days for a draft EIS (Sec. 5252(f) of TEA LU), which should be extended for final EIS documents as well - 30 days for EA and CE documents (Sec. 5252(f) of TEA LU)

Side-by-Side of Key Provisions of H.R. 3550 and S.1072

Issue	H.R. 3550, TEA: LU	S. 1072, SAFETEA	TCC Position
Time Limit on Legal Claims	Yes – 90 days	No	<ul style="list-style-type: none"> ○ The TCC supports the 90-day limitation on claims contained in Sec. 5252(k) of TEA LU.
Delegation of Decision Making Authority	No, but does contain a 5-state pilot program to delegate decision making authority to states for recreation trails, transportation enhancements and ITS projects.	Yes – allows a state to assume responsibility for categorical exclusions (CE). Also includes a 5-state pilot program to delegate decision-making authority to states for EISs and EAs.	The TCC supports Sec. 1512 and the pilot program contained in SAFETEA.
Section 4(f) Reform	For projects with minor impacts, allows Sec. 106 reviews to suffice for 4(f) only for historic properties. Includes an exemption for projects on the Interstate system from 4(f) reviews.	Allows 106 reviews to suffice for 4(f) for projects with minimum impacts involving historic properties <u>and</u> parks and recreation areas. Calls for development of guidance on defining prudence and feasibility. Includes an exemption for projects on the Interstate system from 4(f) reviews.	<ul style="list-style-type: none"> ○ The TCC prefers the 4(f) reforms included in Sec. 1514 of SAFETEA. ○ The TCC would support additional language in the conference bill that provides a sense of the Congress that 4(f) reviews for projects on the Interstate system should only apply to truly unique facilities on the system.

Side-by-Side of Key Provisions of H.R. 3550 and S.1072

Issue	H.R. 3550, TEA: LU	S. 1072, SAFETEA	TCC Position
Metropolitan and Statewide Planning	Contains no new mandates or consultation requirements. Does not link decisions made in the planning process to the NEPA process.	Includes numerous new mandates and consultation requirements. New environmental and quality of life factors, and comprehensive mitigation plans, must be considered in the plans. New consultation requirements offer opportunities for numerous parties to delay projects.	<ul style="list-style-type: none"> ○ The TCC prefers the planning provisions included in TEA LU. ○ The TCC strongly supports additional language to make decisions made in the planning process stick during the NEPA process.
Conformity			
In general	<p>Conformity finding must be based on last year (20th year) of plan.</p> <p>With agreement of MPO and applicable air quality agency, conformity finding may be based on the latest of:</p> <ul style="list-style-type: none"> • The 10 year of plan; • The latest year of the SIP for which there is an emissions budget; or • The year after the completion date of a regionally significant project. <p>'Regional emissions analysis' must be done for remaining years of Plan.</p>	<p>Conformity finding must be based on the latest of:</p> <ul style="list-style-type: none"> • The 10 year of plan; • The latest year of the SIP for which there is an emissions budget; or the year after the completion date of a regionally significant project. <p>No 'regional emissions analysis' on remaining years of Plan required.</p>	TCC supports requiring a conformity finding at least once every five years based on 10 year planning horizons.

Side-by-Side of Key Provisions of H.R. 3550 and S.1072

Issue	H.R. 3550, TEA: LU	S. 1072, SAFETEA	TCC Position
Conformity determinations	Conformity determinations required every 4 years, except when MPO elects to update plan or TIP more frequently; or change in SIP triggers new conformity determination. (Current law is 3 years)	Conformity determinations required every 4 years, except when the MOP elects to update Plan or TIP more frequently; or change in SIP triggers new conformity determination. (Current law is 3 years)	TCC supports
Frequency of SIP Trigger	Conformity determination is required within 2 years after EPA approval of a new SIP and/or a new motor vehicle emissions budget in a SIP (existing law is 18 months.)	Conformity determination is required within 2 years after EPA approval of a new SIP and/or a new motor vehicle emissions budget in a SIP (existing law is 18 months.)	TCC supports
Conformity Lapse	'Conformity lapse' does not take effect until 12 months after failure to make required conformity finding.	No comparable provision.	TCC supports at least a 12-month grace period for failure to make a conformity finding.
Induced Travel Demand Modeling	No comparable position.	Requires EPA to study and create models that deal with induced travel demand	Consistent with historical functions, the TCC believes travel demand modeling is a function of FHWA, not EPA.

Side-by-Side of Key Provisions of H.R. 3550 and S.1072

Issue	H.R. 3550, TEA: LU	S. 1072, SAFETEA	TCC Position
Title V—Research			
Overview	The House bill authorizes \$1.36 billion for transportation research and continues programs such as Long-term Pavement Performance Program and the University Transportation Centers Program. The bill establishes a new Exploratory Advanced Research Program to carryout basic research; authorizes funding for a new Future-SHRP program carried out by the TRB; requires a 5-year strategic highway research plan; authorizes a Long-Term Bridge Performance and Deployment Program; and establishes an Innovative Pavement Research and Deployment Program to demonstrate new pavement technologies.	The Senate bill authorizes \$1.3 billion for transportation research. S. 1072 establishes a Surface Transportation Research and Technology Advisory Committee to provide for greater external stakeholder input in a number of research focus areas. The bill establishes a new Advanced, High-Risk, Long-Term Research Program to carry-out basic research; authorizes funding for a new Future-SHRP program carried out by the TRB; requires a strategic plan for all core research areas with stakeholder input into the strategic plan; establishes a new High-Performance Concrete Bridge and Research Program; and authorizes a new \$90 million pavement research program.	In general, the TCC supports highway research programs that generate outcomes that are useful to the contractors and benefit the highway user. Therefore, the TCC supports the Senate provision that establishes a Surface Transportation Research and Technology Advisory Committee for the purpose of obtaining external stakeholder input and providing greater accountability in the research program.
Other Provisions			
Infrastructure Safety	Creates a highway safety improvement program with dedicated funding for infrastructure safety.	Creates a highway safety improvement program with dedicated funding for safety. Up to 25 percent of the safety funds could be transferred to non-infrastructure safety activities.	TCC opposes the transfer of infrastructure safety resources to non-infrastructure safety initiatives.

Side-by-Side of Key Provisions of H.R. 3550 and S.1072

Issue	H.R. 3550, TEA: LU	S. 1072, SAFETEA	TCC Position
Work Zone Safety	Makes work zone safety items eligible for Highway Safety Improvement Program funds. Section 1106 would establish “unit bid” pricing for temporary traffic control measures.	Makes work zone safety items eligible for Highway Safety Improvement Program funds.	TCC supports the eligibility of work zone safety initiatives for Highway Safety Improvement Program funds and Section 1106 of H.R. 3550.
Liability Insurance Limits	No comparable provisions	Sections 1407(7), 1407(8), 1407(9) and 1407(10) would set arbitrary limits for liability insurance, percentage of project funding for safety and use of intelligent transportation systems.	The TCC opposes the Senate provisions and urge that they be dropped from the conference.
High Risk Roads	Creates a High Risk Rural Roads Program for roadways with demonstrated safety challenges.	Allows highway safety improvement program funds to be used on all public roads.	TCC supports establishment of high risk rural roads program.
Contractor Debarment	No provision.	Includes a provision that would require contractors indicted for criminal or civil crimes related to fraud to be suspended.	TCC opposes the Senate provision which eliminates existing due process protections and urges conferees to strike this section.
Tolling	As modified by the Kennedy amendment, the bill permits states to collect tolls only on new lanes as long as parallel free lanes are available. When construction costs and debt service are paid off, tolls must be lifted.	Modifies the existing Interstate System Reconstruction and Rehabilitation Pilot Program to make it easier for states to participate. Establishes a new Variable Toll Pricing Program on congested facilities.	The TCC believes states should have maximum flexibility in the use of toll financing for highway improvement projects. As such, we oppose the unnecessary tolling restrictions imposed by the Kennedy Amendment.
Storm water set aside	No comparable provision.	Section 1620 would establish a mandatory two percent set aside of federal Surface Transportation Program funds for storm water mitigation activities.	The TCC opposes establishing a mandatory set-aside of federal highway funds for non-infrastructure purposes.