

Statement of the Transportation Departments of
Wyoming, Idaho, Montana, North Dakota, and South Dakota
before the
Committee on Environment and Public Works, United States Senate
presented by
Luke Reiner, Director, Wyoming Department of Transportation
Regarding
Improving Our Nation's Highway and Surface Transportation Infrastructure – Rural Perspectives
July 10, 2019

Chairman Barrasso, Ranking Member Carper, and Members of the Committee:

I am Luke Reiner, Director and chief executive officer of the Wyoming Department of Transportation. Thanks for the opportunity to appear before you today. I am pleased to advise that the transportation departments of Idaho, Montana, North Dakota, and South Dakota have joined the Wyoming DOT in this statement. We hope our comments will enhance understanding of the vital rural perspective as the Congress works to reauthorize highway and surface transportation programs.

Let me turn to our key points.

At the outset, let us commend you, Mr. Chairman, the Ranking Member, and the Committee for your hard work on needed reauthorization legislation. The legislative process is a long and winding road. But the journey has to begin. So, we applaud the effort to move legislation through the Committee soon.

In the legislation under development, we hope to find provisions reflecting five key points.

- **Support for Rural States.** Funding provisions must reflect that significant Federal investment in highways and transportation in rural States continues to be warranted and benefits the entire nation.
- **Emphasis on formula funding.** Formula highway programs, in contrast to discretionary programs, should continue to receive very strong Federal funding emphasis, such as occurred under the FAST Act. Formula dollars are delivered as projects more promptly than discretionary dollars, and the public is eager for transportation investment.
- **Regulatory reduction.** Regulatory burdens can be streamlined and in some cases reduced, so each dollar can deliver greater benefits. This comment is not limited to the project delivery process. Administrative and program burdens can also be streamlined and in some cases eliminated. Congress should streamline where it can, so States will be able to put more time and dollars into delivering transportation benefits to the public.
- **Additional funding,** provided through the Highway Trust Fund. Additional funds are needed and would be put to use promptly, in an environmentally responsible way, enhancing safety, mobility, job creation, and the economy.
- **Multi-year legislation.** This is essential for States to be able to effectively deliver the program.

Additional Issues and Discussion

We turn now to some additional points.

Repeal the approaching rescission of highway contract authority

The Chairman and Ranking Member, joined by Senators Capito and Cardin, recently introduced legislation to repeal the impending \$7.6 billion rescission of unobligated contract authority. We appreciate that leadership. This repeal should be passed as soon as possible, so that the rescission does not reduce program flexibility and funding. The rescission would be a setback at a time of strong support across the nation for infrastructure investment.

Congress should maintain, for transportation safety purposes, the wireless communications spectrum that is currently reserved for safety

The 5.9 GHz spectrum band is currently allocated to public safety use. Direct Short Range Communication (DSRC), including the applications WYDOT is testing in our connected vehicle pilot study on Interstate 80, use technology that operates in this range. Some have called for opening this portion of the spectrum for use by “fifth generation” (5G) cell phones. We see that change as having a significant negative impact on our Nation’s efforts to reduce fatalities. Wyoming is certainly a leader in developing the spectrum for transportation safety purposes, and we ask Congress to help protect this spectrum for transportation safety use.

Significant Federal investment in highways and transportation in rural States benefits the nation

Significant Federal investment in highways and transportation in rural States is a sound policy that must be continued, for many reasons. Consider truck movements from West Coast ports to Chicago or the East Coast. These and other movements traverse States like ours and benefit people and commerce in the metropolitan areas at both ends of the journey.

In Wyoming, about 90 percent of the trucks on Interstate 80 have origins **AND** destinations beyond Wyoming’s borders. This is clearly national transportation and warrants Federal investment.

In addition, the Federal-aid highways in rural States:

- serve the nation’s agriculture and energy production industries, including ethanol and wind power, which are located largely in rural areas;
- provide access to scenic wonders like Yellowstone National Park, Mount Rushmore, and many other great national parks, monuments, and forests located in rural States;
- have become increasingly important to rural America, with the abandonment of many rail branch lines;
- are a lifeline for remotely located and economically challenged citizens, such as those living on tribal reservations;
- enable people and business to access and traverse vast tracts of Federally owned land; and
- facilitate military readiness.

For example, Wyoming produces significant grain and cattle consumed domestically and exported throughout the world. In 2017, North Dakota lead the nation in the production of many crops, including dry edible beans, canola, flaxseed, honey, peas, durum wheat, and spring wheat. Montana is a leading producer of wheat, peas, and other crops and in 2016 exported 80 percent of its nearly billion dollar wheat crop. South Dakota and Idaho are also major grain producers and possibly billions of people around the world have consumed Idaho potatoes. The highway network is essential to moving these important products to national and world markets and improving the U.S. economy.

Similarly, energy and other natural resources are largely located in rural States and areas. Wind, solar, and other energy production facilities use our highways and Federal lands access roads not only to move product but to maintain their facilities.

Further, without a strong road network in the rural West, access to many of our country's great national parks and other scenic wonders would be limited. The residents of major metropolitan areas may travel the roads approaching national parks or monuments infrequently. But they want quality highway access to these national treasures for those special trips. Millions of those special trips are made even though the roads leading to the parks are distant from the Interstate System. For example, in 2018, Yellowstone, Glacier, and Grand Teton national parks hosted roughly 10.6 million visitors. The entire population of Wyoming and Montana combined is approximately 1.6 million. Similarly, visitors to Mount Rushmore total about three times the population of South Dakota.

Other important scenic destinations are located in this region: Devils Tower in Wyoming, Theodore Roosevelt National Park in North Dakota, the Badlands National Park in South Dakota, and the Craters of the Moon National Monument and the Sawtooth National Recreation Area in Idaho. Investment in highways that provide access to these wonderful places also helps ensure that American and international tourism dollars are spent in America, furthering national economic goals.

Rural States face funding challenges

Rural States face major transportation infrastructure funding challenges. We can't provide these benefits to the nation and ensure a sufficiently connected national system without Federal investment. We –

- are geographically large,
- often include vast tracts of Federal lands,
- have extensive highway networks, and
- have low population densities.

So, we have very few people to support each lane mile of Federal-aid highway even as preserving this aging, nationally connected system is expensive. Yet, citizens from our States contribute to this effort significantly. Nationally, the per capita contribution to the Highway Account of the Highway Trust fund is approximately \$117. The per capita contribution to the Highway Account attributable to rural states is much higher. In Wyoming it is the highest of the States at \$312 annually per capita to the Highway Account; North Dakota, South Dakota, and Montana are the next highest.

The vast extent of Federal lands in many Western States presents a particular challenge to improving surface transportation in those States. Idaho is well over 60 percent Federal and tribal lands; Wyoming, over 50 percent; Montana, roughly one-third.

Development or use of Federal lands is limited, and State and local governments can't tax them. Yet, the nation's citizens and businesses want reasonable opportunities to access and cross those lands. This is an expensive transportation proposition for sparsely populated States. Significant investment of transportation dollars by the Federal government has been, and remains, a proper response, both in terms of apportionments to low population density States and in terms of direct Federal programs generally referred to as the "Federal Lands Programs."

There are needs for surface transportation infrastructure investment in rural States (and in all States). Wyoming's estimates indicate that current funding does not enable Wyoming to maintain, much less improve, its road and bridge conditions, with an annual surface transportation funding deficit of more than \$72 million to maintain current conditions. Any additional Federal funds would be put to good use promptly in Wyoming and, I'm sure, other States. There would be safety, employment, and other immediate benefits.

Let me also mention briefly that we may be approaching a time of increased needs related to technology. For example, prospects for using connected and automated vehicles are advancing. In Wyoming, for instance, we are entering the third stage of a connected vehicle pilot program funded in part through USDOT to demonstrate use of new communications technology to make Interstate 80 safer for commercial trucks and public travel, especially during the treacherous snow season. At some point, States and cities may well begin installing meaningful amounts of equipment, as part of the highway infrastructure, to facilitate vehicle to infrastructure communication to improve safety. The cost of those investments is likely not captured fully in current needs studies. But these innovations hold out promise for reducing fatalities and improving safety performance.

On a related point, in Wyoming high winds on the high plains on our Interstates present a safety risk to trucks, which can be blown over or off the road. Addressing this can require increased investment in message signs and other weather related investments.

Wyoming and other rural States and areas also have safety investment needs due to the risk of vehicle-wildlife collisions. Needs studies may not always consider such accommodations as crossings for wildlife, but those are public interest investments that improve safety.

Reauthorization legislation should very strongly emphasize formula funding

In reauthorization legislation, the highway program should continue its extremely strong emphasis of funding distributed by formula programs, as was the case under the FAST Act. Discretionary and allocation programs are usually slower to put funding to work than formula programs. So, the approach that puts the funds to work faster has much to commend it, including faster generation of direct and indirect jobs, faster deployment of projects that enhance safety, and prompter deployment of projects enhancing freight movement.

As to discretionary programs, we all hope for recognition of the issues we face as discretionary programs are structured or implemented. Freight programs, for example, sometimes are thought of in the context of crowded Interstates near major cities. But the intersection of two Interstate System routes in a rural state, for example, can also be very important to the national transportation network and worthy of consideration.

In addition, we would have serious concern if any new, non-formula surface transportation programs were structured in a way that made it challenging, or even impossible, for rural States to benefit meaningfully.

Streamlining regulatory processes and requirements will enable transportation dollars to be put to work more efficiently – while protecting the environment and other public interests

Congress should continue to find ways to streamline regulatory processes and requirements. This absolutely can be done consistent with environmental protection, public involvement, and other public interests.

We have testified on this before, so we will be brief in highlighting ways to achieve this.

As to project delivery, we believe that the lead agency can be given a stronger hand in setting the schedule for environmental review of EIS projects after consultation with other agencies. This would not mean that other agencies would be compelled to issue any permits within their authority, but it would mean more certainty as to schedule and should result in prompter schedules.

As to review of smaller projects, we support the idea that, as to a project, an agency should be able to use any categorical exclusion available to another agency for the project.

Don't subject rural States to rules inspired by the problems of heavily populated States

Another concern we have is that rules sometimes are not merely burdensome. They also maddeningly subject rural States to requirements intended to help address traffic congestion in America's largest metropolitan areas.

Our States are rural, without a high population metropolitan area. Yet, in the NPRM for the system performance and congestion management rule, where FHWA described the "Purpose of the Regulatory Action," the first purpose identified was "Congestion Reduction." See 81 Federal Register at 23807.

Our States do not experience anything remotely resembling the congestion in large metropolitan areas, but we are still subject to the rule. We are subject to data-related costs and management, and staff must put time in to achieve regulatory compliance. Adding such requirements to the already heavy workload of State DOTs is not appropriate for rural States like Wyoming. We have to report to FHWA how many vehicles were on the road, for example, at some point between Cody and Casper at 10 o'clock on a Tuesday morning. This information is not needed to combat congestion, and every dollar used to obtain the data and implement the rule is unavailable for much better use.

Subject Stewardship and Oversight “Agreements” to notice and comment and reduce the burden they impose on States

Another area of concern is the “Stewardship and Oversight” agreements between FHWA and State DOTs. These “agreements” initially were brief but now routinely exceed 50 single-spaced pages per State. Their requirements cumulatively, and in some cases specifically, have become burdensome.

While some State-specific material is included in a State’s stewardship and oversight agreement with FHWA, most text in these documents consists of standardized clauses. And the number of clauses periodically expands – far beyond the subject matter of 23 USC 106(c), the provision that gave rise to these agreements. Under 23 USC 106(c) a State is able to “assume the responsibilities of the Secretary under this title for design, plans, specifications, estimates, contract awards, and inspections with respect to the projects.”

Yet, as the American Association of State Highway and Transportation Officials (AASHTO) has noted, the stewardship and oversight agreements require advance notice of or approval of changes in many kinds of State DOT policies and practices. This includes those for which the State supposedly assumed the responsibilities of the Secretary, such as for: the State’s standard specifications; pavement design policy; value engineering policy; quality assurance programs; and other matters. Statute does not require such advance notice or approval of such State decisions. As noted, the statute actually calls for the State to assume the Secretary’s responsibility in many of these areas. But, in practice, the “assumption” is subject to periodic approvals as to many matters. This is not what most people think of as an assumption of a responsibility. Nor is it straightforward oversight of how a State exercises assumed responsibility. Yet, States have no real choice other than to accept those terms.

Instead, States should have more flexibility, subject to FHWA oversight. After all, State DOTs are public sector entities, serving the public interest, and subject to public review within the State. Legislation should be drafted with appreciation that there should be a very high bar to jump – higher than it has been to date – before regulating a State.

USDOT should minimize the number of standard clauses in a stewardship agreement and publish a revised draft agreement for notice and comment. That notice should be required to include justification for any proposed requirements for advance notification or approval of State policies not specifically called for by statute or for any other requirements not specified by statute. The provisions that survive the comment process and that are adopted in final rule or notice would supersede the current agreements, with allowance made for any appropriate State-specific adjustments that are mutually agreed. Regulatory filings from States to USDOT, urging these kinds of improvements, have not brought about change, making thoughtful legislation on this point appropriate.

Planning and flexibility issues

For a project to be subject to the environmental review process, it must first emerge from the planning process. That is a frightfully complex process that needs no more requirements. This does not mean that new planning approaches should not be tried, but any additions to current planning requirements should be voluntary, not mandatory. And if any planning requirements can be streamlined, such as fiscal constraint requirements, that would be helpful.

Similarly, it is important that any legislation maintain or increase flexibility available to States under the current highway program. This is not just a question of maintaining current flexibility across programs but, in some cases, a matter of improving flexibility within programs. For example, more flexibility to designate additional mileage as critical urban or rural freight corridors would enhance flexibility in the use of freight program funds.

The current ratio between Federal Highway Program funding and Federal Transit Program funding is appropriate

We support the relative weighting of major surface transportation infrastructure program elements adopted by Congress in the FAST Act. Congress should not reduce the relative weighting accorded to the highway program.

This is consistent with USDOT's most recent Conditions and Performance Report. Among other data points, the report identifies a backlog of highway capital projects with a positive benefit to cost ratio that is roughly 7-8 times the dollar value of the comparable transit backlog.

Public Private Partnerships (P3s) and other approaches to infrastructure investment that depend on a positive revenue stream from a project are not a surface transportation infrastructure solution for rural States.

The relatively low traffic volumes on projects in rural States, including on projects that provide excellent public benefits, are often not suitable for tolls, even if one wanted to impose them. Projects in rural areas are unlikely to generate revenues that will attract investors for bonds or other instruments to finance those projects – even if the revenues are supplemented by tax credits for investors. Further, an emphasis on preserving existing infrastructure reduces the relevance of P3s as a funding source, as resurfacing and reconstruction projects tend not to generate new revenue streams. In short, as to funding surface transportation, P3s can play at most a limited role, particularly in rural areas.

Public Transportation

Before closing, let us mention public transportation, which is not just for big metropolitan areas. Even though our States' share of Federal transit program funds is small, transit plays a role in the surface transportation network in rural States.

The Federal transit program includes apportionments for rural transit. Federal investment in rural transit helps ensure personal mobility, especially for senior citizens and the disabled, connecting them to necessary services. Transit service is an often vital link for citizens in small towns to visit the hospital or clinic as well as to work or other destinations. Some rural areas are experiencing an increase in the age of the population, as is occurring throughout Wyoming. Public transit helps senior citizens meet essential needs without moving from their homes. In short, the transit component of reauthorization legislation must continue to include funding that will help meet transit needs in rural States as well as in more densely populated areas.

Conclusion

Federal investment in highways in rural States helps move people and goods throughout the country, helps move agricultural, energy and natural resources to market, and is in the national interest for the many reasons we have presented. We believe that our highways can better advance these important national objectives if legislation is structured as we suggest: with strong emphasis on formula funding and thoughtful streamlining of regulatory burdens.

That concludes our statement. I'll be pleased to respond to questions though, to the extent the responses go beyond what we have addressed in writing, I am able to respond only for my own department.

Thanks again for the opportunity to present testimony today.
