Statement of the Transportation Departments of North Dakota,
Idaho, Montana, South Dakota and Wyoming
before the
Subcommittee on Transportation and Infrastructure,
Committee on Environment and Public Works,
United States Senate
Presented by
Chad M. Orn, Deputy Director for Planning, North Dakota Department of Transportation
on
Improving the Federal Highway Program Through Increased Flexibility
July 23, 2025

Chairman Cramer, Ranking Member Alsobrooks, and Members of the Subcommittee:

I am Chad M. Orn, Deputy Director for Planning of the North Dakota Department of Transportation (NDDOT). Thank you for the opportunity to appear before the subcommittee today. At the outset, I'm pleased to advise that the transportation departments of Idaho, Montana, South Dakota and Wyoming have concurred in NDDOT's written statement for this hearing.

Mr. Chairman, Federal highway investment is tremendously important to our country, as well as to North Dakota. USDOT estimates that Americans take over a billion trips daily, and the overwhelming majority of the trips use the road system. Even those who do not travel on a given day benefit as trucks use the highways to get food, clothing and other essentials to stores and households. Clearly, it is important to virtually all Americans that we do what we can to improve the highway and surface transportation system.

We hope our comments today will help the Congress craft reauthorization legislation that will improve the effectiveness of the Federal highway program by making it more flexible in various ways. This will help every dollar go further, and benefit every state and their communities, people and businesses. There are a number of ways to make the program more flexible and effective so that states can promptly and effectively deliver meaningful projects. We would simplify both the highway program as a whole and individual program elements through actions such as reducing unnecessary requirements (whether rules, guidance or other program conditions); reducing the number of programs; reducing data collection burdens; and allowing and increasing transferability of dollars between highway program elements.

We have both broad and specific suggestions to advance flexibility and effectiveness, and we start with specific bipartisan ones proposed by Chairman Cramer.

Support for Highway Funding Transferability Improvement Act, S. 1733

We strongly support S. 1733, your bill, Chairman Cramer, co-sponsored by Senator Alsobrooks, that would increase from 50 percent to 75 percent a state DOT's ability to transfer funds that are already allowed to be transferred between specified highway program elements. This bill will help North Dakota and all states better meet the needs of their citizens, local governments, and businesses.

Not only do the priorities of the various states differ, but the needs and priorities even of a single state will not be the same from year to year. This bill addresses that reality and will help states deliver the highway program and projects more effectively and efficiently.

We also consider it noteworthy, Chairman Cramer, that you are from one of the nation's lowest

population density states, and that Senator Alsobrooks is from one of the highest population density states. Clearly the transportation challenges of North Dakota and Maryland have considerable differences as well as commonalities, and S. 1733 gives each state an improved tool to help address their specific challenges.

Reduce the Frequency of Some Asset Management Reporting, S. 1167

We support the Transportation Asset Management Simplification Act, by Senators Cramer and Kelly. This bill would reduce the frequency of a state's reports to the Federal Highway Administration (FHWA) on certain asset management activities. States are fully committed to quality asset management on a continual basis, so that roads and bridges are collectively in the best possible condition consistent with available resources. Notably, this bill changes none of that commitment nor the activities of asset management themselves. But, today, statute calls for detailed annual reports to FHWA throughout this process. This bill allows states to increase focus on achieving quality asset management and other goals without interruption to annually prepare and present detailed data to FHWA.

The key to asset management is the state's plan that is subject to review every four years, a requirement that would be continued, while the bill wisely would discontinue the annual report requirement. As NDDOT Director Ron Henke has said: "This proposed common sense change to the Asset Management reporting requirements should save NDDOT numerous hours of work every four years, without decreasing the end benefits to the citizens of North Dakota."

We appreciate that our trade association, the American Association of State Highway and Transportation Officials (AASHTO), wrote to you, Senator Cramer, in support of this legislation, as well as in support of the transferability legislation. Thanks to you, Mr. Chairman, and Senator Kelly for advancing this proposal to free state DOTs from unnecessary bureaucratic work when there is so much more impactful work to do.

Flexibility in Safe Routes to School Efforts

The Safe Routes Improvement Act, S. 1828, by Sen. Cramer with Sen. Markey, seeks to address the safety of young people traveling to and from school. Student safety is always a concern. As we understand the bill, a state's Safe Routes to School Coordinator need not be a full-time position and a state could add that responsibility to the portfolio of another official in the state DOT. We think that flexibility is important as state DOTs evolve their approaches to improving safety and relations with local governments, including through improvements such as safe routes to schools.

Averting Disproportionate Adverse Impact on Rural States

Before turning to additional topics, let us add that one of the reasons that we speak up on these and other specific regulatory and program requirements is that the burdens of regulatory and program requirements fall particularly heavily on rural, limited construction season, low population states like North Dakota. Such states have limited staff and budgets to work through regulatory and program compliance while attending to the paramount task of delivering good projects and programs for the traveling public. Thus, delays and cost increases from requirements can limit the ability of rural states to help people through safer and better transportation.

Distribute a Higher Percentage of Highway Program Dollars by Formula and Avoid Complexities in Formula Programs

The public is eager for transportation program dollars to become delivered projects. All other things being equal, the faster program dollars translate to projects, the faster the public benefits are provided, including: safety; efficiency; economic growth; enhanced personal mobility to help people travel to work, school, medical appointments and other destinations; and enhanced movement of commercial and agricultural freight and natural resources. And, given that there is almost always some inflation, the faster program dollars become projects, the larger the benefits.

The record is clear that highway formula dollars, distributed to states, are delivered as projects more promptly than discretionary dollars. Secretary Duffy and USDOT have stated, in testimony and press releases, that there had been delays in distributing discretionary funds, including in finalizing grant agreements for projects that USDOT had selected for discretionary program funds. While the precise numbers are always changing as USDOT administers the discretionary programs, the record is clear that, for various reasons, discretionary grant programs are not obligating funds as promptly as states are obligating formula funds, and some discretionary programs spend out more slowly than others.

So, for the reauthorization bill to better serve the public interest, the percentage of Federal highway program dollars, both from the Highway Trust Fund and otherwise (should the reauthorization bill include highway funding from other sources), distributed by formula, should be meaningfully increased.

Simplify the Process of Finalizing a Grant to Implement a Selected Discretionary Project

The processes of finalizing the terms of a grant to a state that has been selected for a discretionary project take too long and are too complex. Legislation should require a simplified approach that allows a state to agree to meet applicable requirements as if the project were a project being implemented with formula funds. Additional requirements beyond that should be limited to items specifically required by the relevant NOFO. And the NOFO should not add to statutory requirements.

ND Governor Kelly Armstrong addressed this problem in his testimony before the full Committee just last week, using a North Dakota example to make the point. In June of 2023, the NDDOT was selected for a $30 million Railroad Crossing Elimination grant from the Federal Railroad Administration. The grant will fund a long-overdue grade separation project in Grand Forks, a city with nearly 60,000 residents. As of today, more than two years later, we are still awaiting the execution of a grant agreement.

Further, USDOT should publish a NOFO for comment before using it in the grant application process – at least for the first time it is used by an Administration. In addition, many grants require the grantee to file quarterly reports on the project with USDOT/FHWA. Time can be saved for awardees and USDOT by limiting reporting to once a year or, failing that, semi-annually.

Reconsider and Eliminate or Shrink and Reform Slow Obligating Programs

Returning to the need to put funds to work promptly, in the reauthorization bill the Congress should, upon reconsideration, eliminate or shrink and reform slow obligating programs.

To illustrate, by 2024 it had become strikingly clear that the backlog of funds made available by Congress for the Transportation Infrastructure Finance and Innovation Act (TIFIA) was growing and growing, with few funds dispersed, and that this backlog was likely to continue.

Chairman Capito, at the time Ranking Member, took an initiative to address that underutilization of valuable funding and worked with then Chairman Carper to enact a provision that transferred $1.8 billion of those funds to the states by formula. That was excellent leadership and legislation.

The reauthorization bill needs to similarly take a close look at other slow dispersing programs and not continue them in the reauthorization, or at least shrink and/or reform them so that the overall program becomes more effective – and combine that with redirecting the slow dispensing program funds to effective formula programs.

For example, within the Surface Transportation Block Grant (STBG) program, of 23 USC 133, a highway formula program, by law 55 percent of those funds are suballocated for areas of specified population, nearly all to urban areas (essentially to projects within local government boundaries). AASHTO has advised that, as of the close of FY 2024, 91.4 percent of unobligated STBG funds were suballocated funds.

Beyond relatively slow obligation rates associated with suballocated funds, we would add another perspective that calls for caution as the Congress considers calls by some for more suballocation. Suballocation does not create only winners, it also creates losers. Any dollar committed to a set aside or narrow class of beneficiaries is a dollar that the state DOT cannot commit (and sooner) to a ready-to-go project in some other worthy community or area.

Perhaps the process would improve if states were able to obligate outside of the suballocated area and even transfer some 23 USC 133 geographically suballocated funds after the third year (counting the year of apportionment), so that a state can take action to help ensure prompt use of funds, and avoid any lapse of funds at the end of the fourth year.

And, beyond suballocation, we would broadly encourage avoiding program complexities, new or existing, whether new reporting requirements, planning requirements, detailed project requirements, or other features. State DOTs can be trusted. They already take the public interest into account in everything they do. And they are already subject to requirements of state law and regular oversight by the legislatures and Governors as well as longstanding Federal requirements. And, with all that, states have a proven record of promptly delivering projects and programs.

The Committee knows which programs are working well and which are not -- and should take appropriate action based on that record.

Strong Support for Bridge Formula Program

One program created in the infrastructure law that is strongly supported by states is the bridge formula program. That program is working, as states make these important bridge investments. The formula bridge program included in the infrastructure law should be continued in the reauthorization bill, preferably as contract authority and as part of title 23.

Support for S. 1066, by Sen. Lummis, which would increase flexibility by allowing electric vehicle (EV) charging program funds to be used on conventional highway and bridge projects

On a related point, Senator Lummis has indirectly addressed slow spend out of EV charging program funds in the infrastructure law, formula and discretionary. Under S.1066, upon enactment, any remaining unobligated EV charging funds are to be distributed by formula for use for highway and bridge projects. Enabling the redirection of EV charger funds to highway and bridge projects is a thoughtful flexibility

initiative.

Support Robust Funding Levels for the Highway Program, which is Well-Justified by Needs

Since 2021 there has been very substantial highway construction inflation, roughly 80 percent from the start of 2021 to the end of Q3 2024 (latest available quarter) per FHWA's National Highway Construction Cost Index (NHCCI).[1]

While not the focus of this hearing, we could not help but mention today our hope that the Committee can advance increased funding levels for highways in the reauthorization bill. Without some increase in dollar levels, the impact of recent highway construction inflation will effectively mean a noticeably reduced highway program in real dollar terms.

We also note the findings of USDOT's 25th and most recent report on the condition and performance of the Nation's Highways, Bridges, and Transit, released in 2024. The report finds (see, e.g., page vii) a repair backlog for highways and bridges (no capacity enhancements) of $852 billion and a transit State of Good Repair backlog of $101 billion. These cost increases and needs data are supportive of strong investment. And, of course, investment improves safety and provides personal mobility benefits and economic benefits.

So, both needs and the importance of responding to inflation make it appropriate for the Committee to strive to include robust funding for highways and bridges in the forthcoming reauthorization bill.

Robust funding, as well as the reforms we recommend in this testimony, will help all parts of the country: urban, suburban, and rural—and help them work well together

As to the benefits of the funding, and sticking to our goal of advocating legislation that will help all states, we take a moment to make clear that investment in highways in rural states benefits the entire nation.

Consider truck movements from West Coast ports to Chicago, or all the way to the East Coast. These and other long distance movements traverse States like North Dakota, South Dakota and Wyoming and benefit people and commerce in the metropolitan areas at both ends of the journey.

In addition, Federal-aid highways in rural states:

- serve the nation's agriculture and energy production industries, which are located largely in rural areas and are important contributions by North Dakota to the national economy;
- 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;

Further, North Dakota has long been a national leader in the production of many crops, including dry edible beans, canola, flaxseed, honey, peas, durum wheat, and spring wheat. The highway network is essential to moving these important products to national and world markets, improving the U.S. economy.

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[1] https://explore.dot.gov/views/NHIInflationDashboard/NHCCI_1?%3Aiid=1&%3Aembed=y&%3AisGuestRedirectFromVizportal=y&%3Adisplay_count=n&%3AshowVizHome=n&%3Aorigin=viz_share_link

As you have said, Senator Cramer, without a good transportation system in North Dakota, home of the nation's durum wheat, there could be challenges accessing good pasta in downtown and suburban restaurants and markets across America.

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 travel the roads approaching national parks or monuments, spending valuable time with family and friends. They want quality highway access to these national treasures for those special trips.

While Yellowstone and some other attractions are better known, the Great State of North Dakota proudly hosts Theodore Roosevelt National Park and the soon to open Theodore Roosevelt Presidential Library—and all are invited to that exciting facility's grand opening in July of 2026 and to return later, as well. 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.

Expedite Environmental Review

We continue to support efforts by Congress and the Executive Branch to expedite environmental review. And we emphasize that we deliver projects while protecting the environment. But there is room to complete the environmental review process more promptly. And that is particularly important to North Dakota and similar states with a very short construction season. Delays of a month or so become delays of a year, as a project must be rolled over into the next construction season.

Many ideas have been and will be advanced for streamlining and expediting the environmental review process for projects, and we are broadly supportive. Recent delegations of review tasks to states have proven successful in moving projects forward. Facilitating the delegation of review tasks to states that are willing to do the work is one approach that we support.

We also strongly support the One Federal Decision concept, as frequently delay in advancing projects results not from implementation of NEPA, but from review pursuant to other more specific environmental statutes that may be applicable to a project. Ensuring a coordinated approach to reviews for all applicable requirements is important, and we support strong implementation of One Federal Decision.

Further, we note here two specific environmental streamlining proposals.

We support, the SPEED Act, S. 1894, introduced by Senator Lummis and co-sponsored by you, Chairman Cramer, Senator Kelly, and Senator Barrasso

The SPEED Act builds on a provision enacted in 2012 as part of MAP-21. Section 1317 of MAP-21 established a categorical exclusion under NEPA pursuant to 23 CFR 771.117(c) for projects of limited financial assistance. In 2012 (MAP-21) this exclusion applied to any project that receives less than $5 million in Federal funds; and to a project with a total estimated cost of not more than $30 million if Federal funds comprise less than 15 percent of the total estimated project cost. Today, after amendment by sections 1314 of the FAST Act and 11317 of IIJA, those amounts are $6 million and $35 million, respectively, increased only slightly. Congress was correct to establish a categorical exclusion for projects of limited Federal assistance. These low-cost projects do not require extensive environmental review and, in any event, states protect the environment in delivering projects.

Yet, as noted earlier, since 2021 there has been very substantial highway construction inflation, roughly 80 percent from the start of 2021 to the end of Q3 2024 per FHWA's National Highway Construction

Cost Index (NHCCI). Accordingly, the thresholds in the statute do not reach as many projects as expected. Inflation has eroded the intended benefit of this provision. The response must be to substantially increase the categorical exclusion dollar levels under this provision, such as doubling them to capture inflation since Q1 2021 through today and allow for near term future inflation.

Without this excellent legislation, inflation will have served not only to directly increase costs, but to increase them indirectly by extending the reach of regulation.

Enable a State DOT to act as An Agent of USDOT for Certain Purposes

23 USC 327 enables a state DOT to assume USDOT's environmental review responsibilities and authority under certain conditions, including that the state would waive its sovereign immunity from suit in Federal courts in order to defend its decisions pursuant to having assumed USDOT's authority for environmental review. The section 327 program has proven to accelerate completion of environmental review. However, many states whose DOTs are interested in assuming USDOT's environmental review authority are not willing to waive sovereign immunity or have been unable to secure consent from their respective states to waive sovereign immunity.

One alternative could allow USDOT and a state to agree that the state DOT can be the agent for USDOT in undertaking aspects of the environmental review of a highway project, such as from the beginning up to and including drafting the final EIS and any Record of Decision (ROD). However, under this approach, FHWA would then resume control of the process and would have to issue the final EIS and/or ROD (as applicable) within a short time and be the defendant in any court challenge – eliminating the need for a sovereign immunity waiver. But the state would be able to undertake review and help accelerate the process.

Congress Should Establish at FHWA an Efficient Buy America Waiver Process

FHWA should be directed to implement an expedited process for considering waiver requests and, when lawful, issuing waivers to allow purchase/use of materials that do not satisfy Buy America requirements absent a waiver. This could be done by requiring publication of an interim final rule with opportunity to comment within 60 days of enactment.

Whether for manufactured products or iron and steel, the statute should direct that under the expedited process –

- a state or local government must be able to file a waiver request with FHWA;
- FHWA must have it published in the Federal Register for comment, within 20 days of the filing of the Buy America waiver request with FHWA, and the Federal Register notice must provide a comment period of at least 30 but no more than 45 days from publication; and
- FHWA must be required to review comments and issue a decision within 45 days of the close of the comment period, after considering whether a U.S. made alternative is available, is expected to be available shortly or, if applicable under statute, available only at a cost sufficiently higher than the cost of alternatives that do not meet buy America requirements to be considered not available.

In addition, such an approach to expediting the waiver decisionmaking process should require USDOT to place a relatively short time limit, appropriate to the marketplace for the particular product, on the effectiveness of the granted waiver. For example, in the case of a granted waiver, the grant should specify that the waiver applies to contracts put out to bid by a state or local government within a few years of the decision, but not less than 2 years or more than 4 years. This approach of short waivers would continue to

incentivize development of made in America products while avoiding, or at least mitigating, transportation project and program cost increases and delay.

Today, Buy America waiver applicants face uncertain prospects on the merits of a waiver and as to the waiver process. It is a lose-lose situation. The lack of, or denial of, a waiver does not make American-made products instantly available. Nor does the absence of a waiver prevent project cost increases and delay. Importantly, this approach would not change Buy America requirements—but would make them workable through short waivers.

As an example, ND sent its first of five Buy America waiver requests, to use submersible pumps, to FHWA in December of 2023. The pumps are simply not made in this country at this time. To this date, there has been no decision on our waiver requests. Again, it is a lose-lose situation.

Safety is Part of Everything We Do

In almost every public forum, state DOT and USDOT officers invariably note that safety is the top priority. We want to reinforce that, even as our focus today is on other issues. The record shows that in North Dakota, since 2014, we have had a steady decline in roadway fatalities and the fatality rate. Last year, North Dakota had its lowest number of fatalities in 20 plus years and a fatality rate that was the lowest since we have been tracking it.

This is in part because safety is a priority part of everything we do. It is not just our work with parts of the highway program and NHTSA safety grant programs that are labeled "safety" programs.

For example, as you know, Senator Cramer, we have been working for years to widen U.S. Highway 85 in western North Dakota to accommodate the increased traffic from the energy development boom and the associated general economic and population growth. Upgrading parts of that highway to four lanes, with wider shoulders and less severe curves, helps ensure that passenger cars can safely pass slower moving oil industry trucks and equipment. Some may not think of the project as a safety project but it improves the safety of that road. We take safety into consideration in all our projects, and are confident other states do as well.

Several Additional Suggestions for Reducing the Regulatory Burden on States

Before closing, we quickly note several further ways in which the Congress can reduce regulatory burdens that we suggest should not be controversial.

Adjust Value Engineering Requirements to Reflect Recent Construction Inflation

Current statute and regulations require value engineering for projects with an estimated total cost exceeding specified thresholds. The current statutory threshold was set in 2012, in MAP-21, and does not reflect the very significant construction cost inflation since then, which we have described as roughly 80 percent just from the start of 2021 through the first 9 months of 2024. At this point, doubling the estimated project cost threshold is the practical approach.

Without such an adjustment, the statute is requiring more frequent value engineering than was contemplated when enacted in 2012. Put another way, without such adjustments, not only is the public losing some of the value of highway program dollars due to highway construction inflation, value is further lost because construction inflation has the effect of increasing regulation in instances such as value engineering requirements.

Moreover, to the extent that other title 23 requirements include dollar thresholds, consideration should be given to adjusting them to reflect inflation – otherwise, inflation works to expand the effective reach of a requirement and increase regulation.

Limit data collection burdens, including by elimination of duplicative data collection

The reauthorization bill could constructively include a provision, at least as to the highway program, directing USDOT/FHWA to reduce requirements not explicitly required by statute that require state DOTs (and others) to develop, provide, and/or submit data. More specifically, some Highway Performance Monitoring Systems (HPMS) data collections duplicate planning, bridge and other data.

The Specifications for the National Bridge Inventory (SNBI) are among current data requirements that call out for simplification. The March 2022 edition is 354 pages of detail as to how to keep bridge data. Some of it requires entering into a bridge system data already kept for the highways on which bridges are located. Maintaining duplicate data is always time consuming and further effort is warranted to reduce such requirements.

Legislation should direct USDOT to eliminate such duplications and other excessive data requirements. This can be done in a way that does not require the Congress to take positions on detailed issues as to particular items.

Summary and Conclusion

Federal investment in highways in rural states helps safely move people and goods throughout the country, helps move agricultural, energy and natural resources to market, and is in the national interest. We believe that our Nation's highways can better advance these important national objectives and objectives important to other states if reauthorization legislation advances our suggestions, including:

- robust funding;
- an increased percentage of overall funding being distributed to states by formula;
- some consolidation and reduction of discretionary and other programs, particularly to deemphasize slow to spend programs; and
- streamlining and trimming of regulatory and program burdens, including the flexibility and regulatory reduction bills introduced by Chairman Cramer that we supported in our testimony today.

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.

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