NATIONAL TAXPAYERS UNION

May 25, 2021

The Honorable Tom Carper
Chairman
Environment and Public Works Committee
United States Senate

The Honorable Shelley Moore Capito
Ranking Member
Environment and Public Works Committee
United States Senate

Dear Chairman Carper, Ranking Member Capito, and Members of the Committee:

On behalf of National Taxpayers Union, the nation's oldest taxpayer advocacy organization, I write to express our views regarding the markup of the bipartisan "Surface Transportation Reauthorization Act of 2021." First and foremost, NTU is pleased to see a reauthorization package that will provide certainty on long term funding to meet the growing infrastructure needs of our country. We are also pleased to see several important reforms to the surface transportation policy process that will, over time, benefit the economy as well as taxpayers. Yet, the legislation now before you is also marred by the absence of much needed reforms that would address the fiscal condition of the Highway Trust Fund (HTF), as well as provisions (several of which have appeared in previous bipartisan legislation) to remove other regulatory barriers that exist on the construction of infrastructure projects nationwide. As such, we view this legislation as a strong starting point with more comprehensive adjustments needed.

Though NTU has serious concerns over the Surface Transportation Reauthorization Act as written, there are many options available to improve it. To this end, we hope our comments are constructive so they can help craft a final reauthorization package that not only helps meet our country's growing infrastructure needs, but one that also incorporates the interests of taxpayers and our growing debt burdens. Generally, NTU offers the following observations on surface transportation reauthorization:

1. The spending increase it contains is not appropriately offset with regulatory or expenditure reductions.
2. It should not come in addition to a separate deficit-financed large-scale infrastructure bill that might duplicate or irresponsibly expand the programs envisioned under reauthorization.
3. This legislation does not adequately address the imbalances of the Highway Trust Fund, nor does it put the HTF on a path towards fiscal viability.

On a more granular level and a more optimistic note, NTU is highly supportive of several elements contained in the reauthorization draft, among them:

One Federal Decision. This would address lengthy permitting and review processes that plague infrastructure projects by placing a two-year timeline for government completion of environmental reviews and by consolidating the process across federal agencies. The new two-year deadline for environmental reviews and authorization for major infrastructure will convey a greater degree of certainty in a growing market and reduce the capability of the federal government to unduly limit the potential of the construction industry. Other provisions would provide streamlined processes for interagency communication over reviews, as well as clarification on how categorical exclusions may be used in National Environmental Policy Act (NEPA) reviews.

Vehicle Miles Traveled (VMT) Fee Pilot Program. This provision would authorize the Department of Transportation to conduct a large-scale pilot program to better study how a VMT fee would most efficiently operate. With the rise of electric vehicles and more fuel efficient cars, the current federal excise tax on gasoline is no longer a true user fee model and should be replaced with a VMT fee. A pilot program studying potential pitfalls and benefits of a VMT fee will enable the government to understand this policy in depth before it is enacted on a large scale.

Transparency and Flexibility. Parts of the legislative draft would deliver benefits to taxpayers over the long run, such as section 1105, allowing new or expanded use of National Highway Performance Program funds for resiliency and mitigation from climate and other risks. Analyses have shown that in other infrastructure contexts, every mitigation dollar spent can save multiple dollars that would otherwise have to be spent on recovery and rebuilding after an adverse event.

However, our support for these provisions must be weighed against the many other concerns we have with this legislation.Our most immediate concern is the $300 billion authorization over a period of five years, which represents a 33 percent increase over the annual authorizations contained in the 2015 FAST Act. As NTU noted in a recent paper, the Highway Trust Fund already suffers from a large imbalance between what it takes in and what it spends on a yearly basis. As the Committee is no doubt aware, the solvency and long term sustainability of the HTF is in serious jeopardy. On both sides of the balance sheet, the HTF faces a series of challenges: dwindling revenue and growing outlays. The Congressional Budget Office estimates this imbalance will lead to cumulative deficits of $176 billion over the next ten-year budget window. Because the Highway Trust Fund by law is not allowed to run a negative balance, it falls on every taxpayer to fund the general fund transfer from the regular budget into the HTF.

In our view, the best way to revitalize the United States's infrastructure and modernize the transportation system isn't simply spending taxpayer dollars, but instead streamlining the process to make building more efficient and less expensive without sacrificing safety. If more money is to be allocated towards fixing and building American infrastructure, maximizing the value of each dollar spent on these projects should also be prioritized. That means enacting NEPA reforms, procurement reforms, labor reforms, and revenue reforms. This approach would modernize and expand our nation's infrastructure through regulatory reform and ensure more projects come online faster and cheaper -- which means a better deal for taxpayers, infrastructure users, and builders. As such, we believe that including provisions from similar bills introduced this Congress would greatly benefit the Committee bill as it presently exists. The permitting and regulatory reforms included in the bills below will support construction companies, construction workers, drivers, and indeed, taxpayers:

1. **Building United States Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act.**
2. **Surface Transportation Advanced through Reform, Technology & Efficient Review (STARTER) Act.**
3. **Federal Permitting Modernization Act.**

Additionally, the Committee should consider other non-permitting reforms, such as those to labor and procurement, which would have a notable impact on costs on taxpayer-funded infrastructure projects

End Project Labor Agreements on Taxpayer-funded Projects: Project Labor Agreements (PLAs) mandate contractors sign a collective bargaining agreement with workers as a condition to participate in a government-funded construction project. Requiring workers to join a union in order for them to work is a discriminatory policy against the 87 percent of workers who do not belong to a union. In addition to locking the vast majority of the workforce out of the hiring process, PLAs can raise construction costs by as much as 18 percent. Imposing measures that needlessly raise costs and ultimately burden taxpayers would be especially ill-advised in an uncertain economic environment -- one more heavily laden by federal debt than in recent memory.

Implement Reforms to the Outdated Davis-Bacon Act. The 1931 Davis-Bacon Act (DBA) is an expensive mandate requiring contractors for federal construction projects to pay prevailing union wages for non-union labor. On average, taxpayers are forced to pay wages that are 22 percent higher than market rates. The result, according to the Heritage Foundation, is more than $100 billion worth of additional costs over the next decade and fewer job opportunities on each project. DBA gives unionized firms an advantage when bidding on infrastructure projects, keeping taxpayer costs unnecessarily high and competition to a minimum.

Allow for Open Bidding for Construction Materials. Under current law, the U.S. does not have an open and competitive bidding process for construction materials. This lack of competition hurts taxpayers and businesses that want to compete for federally-funded construction projects. In fact, these government-imposed restrictions on materials in infrastructure and construction projects were often put in place to appease special interests by preventing competition in the bidding process. They were also enacted decades ago, when lawmakers could not anticipate the advancements and innovations in infrastructure materials that have taken place in recent years.

Overturn Expensive Buy America Requirements. Buy American provisions damage the United States' credibility as a beacon of open markets. In 2018, former-President Trump signed Executive Order 13858, which expanded "Buy America" requirements to infrastructure projects that receive federal financing as a way to boost the use of American-made products. These mandates require certain components of products must be manufactured within the United States. Protectionist policies like "Buy American" laws limit selection and artificially limit competition, which often lead to higher costs for projects. Essentially, these laws prohibit taxpayers and contractors from getting the best value on projects. Such protectionist measures invite possible retaliation from our trading partners, which could disadvantage domestic industries seeking to export their goods into foreign markets.

Life-Cycle Cost Analysis for Projects. Perhaps one of the most cutting edge and cost-effective provisions that should be a requirement on taxpayer-funded projects is Life-Cycle Cost Analysis (LCCA). This is an important taxpayer guardrail which uses detailed accounting data to accurately estimate the total cost of a project, including initial construction, maintenance, and savings from alternative construction materials. In the private sector, LCCA is a standard technique that investors and managers use to determine if a given undertaking is worth the initial price. LCCA can also help to inform other types of project analysis, including Value Engineering and Technical Auditing. Incorporating LCCA in any infrastructure package would deliver transparency in what many consider an opaque, behind-closed-doors process. It would also provide officials with the most accurate information for projects that require taxpayer dollars.

It would be tempting for Committee members to dismiss some of these recommendations on the grounds that they are not practical in the current partisan environment and under the time constraints of the legislative process. Yet, LCCA is a non-controversial concept embodied for a number of purposes in legislation such as

H.R. 1890 and S. 1538, introduced in the previous Congress. Open competition for materials was most recently reflected in H.R. 4687 (116th Congress), the SMART Infrastructure Act introduced by two Democrats and two Republicans in the House. At the very least, these two items could be expeditiously incorporated in the Committee's current draft.

Our website is also a resource for a more in depth analysis of these reforms, which can be found in our issue brief on infrastructure "A Primer on Infrastructure: Roadmap For a Bipartisan Package." Additionally, we have analysis on reforms to NEPA: "The National Environmental Policy Act: A Roadblock to Infrastructure and How to Fix it" and solutions to fix the HTF: "Repairs Needed on How We Finance Roads: Options to Fix the Highway Trust Fund."

The Highway Trust Fund is set to run a significant deficit over the next decade and policymakers need to address it. With the prospect of at least $300 billion in authorizations on infrastructure, lawmakers should be focusing on how to reform the existing infrastructure funding mechanisms that are not sustainable over the long term. NTU recognizes there may be no silver bullet solution to this problem and some trade offs will likely be required.. Congress must work on ensuring this fund is self-supporting in the years to come -- not hasten the need for more general fund transfers for which all Americans will be liable. We look forward to working with the Committee as you craft bipartisan legislation in the weeks and months ahead.

Sincerely,

Thomas Aiello
Director of Federal Affairs