

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

December 2, 2011

The Honorable Max Baucus
Chairman
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20515

Dear Mr. Chairman:

On Wednesday, November 9th, the Senate Committee on Environment and Public Works (EPW) reported the “Moving Ahead for Progress in the 21st Century Act of 2011,” or “MAP-21.” According to Chairman Boxer and Ranking Member Inhofe, this legislation would authorize the Federal-aid highway program at the Congressional Budget Office’s baseline level, plus inflation, through September 2013. EPW has made it known that they expect the Senate Committee on Finance to produce \$12 billion in revenues above and beyond estimates of Highway Trust Fund (HTF) receipts. The Congressional Budget Offices (CBO) month-to-month estimates of revenues generated from current fuel taxes have often provided projections of future revenue that exceed actual revenues, and outlays from the trust fund are uneven and difficult to estimate on a year-to-year basis. Though we have serious concerns as to the accuracy of current estimates of HTF revenues and outlays, we believe it is in the best interest of the nation for states to be provided the certainty guaranteed by a surface transportation reauthorization bill. In addition, we think it would be a mistake to raise fuel or other taxes given the fragile economic climate the country is currently afflicted with. We suggest the following proposals as possibilities for closing the estimated \$12 billion hole in the EPW bill by a more efficient allocation of federal resources.

Rescission of funds provided for the Advanced Technology Vehicle Manufacturing Loan Program. The “Energy Independence and Security Act of 2007” established this program to support the development of advanced technology vehicles. The FY 2009 Continuing Resolution, enacted on September 30, 2008, appropriated \$7.5 billion to support a maximum of \$25 billion in loans. We understand that up to \$3.5 billion could be rescinded for outlay savings. Given the continuing concern regarding the administration of federal loan programs, we think it is appropriate to consider this program for HTF funding

Transfer of funds from the Leaking Underground Storage Tank Trust Fund. Funded primarily by a 0.1 cent-per-gallon tax on motor fuels, the Leaking Underground Storage Tank (LUST) Trust Fund was established in 1986 to support states and the Environmental Protection Agency in efforts to remediate leaks from underground storage tanks. Due to the fact that revenues to the LUST Fund have consistently been greater than outlays, the fund has accumulated a balance of more than \$3.5 billion as of the end of fiscal year 2011, according to a report released by the Treasury Office of Inspector General. A Joint Committee on Taxation

report titled “Present Law and Background Information on Federal Excise Taxes,” which was released this past January, utilizes the latest CBO estimates available to show that the LUST Fund is estimated to hold cash balances that increase year-by-year through 2020, and that estimated revenues attributable only to tax revenue, as opposed to interest, are projected to be greater than estimated outlays every year. Given this information we encourage the Committee to consider a transfer of up to \$3 billion from the LUST Fund to the HTF. This option is not suggested to signal a lack of support for the purpose of the LUST Fund, but rather to make the most efficient use of available resources to avoid the impending insolvency of the HTF. Additionally, for the long-term the Finance Committee should consider altering the 0.1 cent-per-gallon tax on motor fuels so that the LUST Fund is able to fulfill its intended purpose without diverting money from other important programs, such as those funded by the HTF.

Reclamation of HTF funds transferred to the Land and Water Conservation Fund (LWCF) and redirection of Outer Continental Shelf receipts. Created by the “Land and Water Conservation Fund Act” in 1964, the LWCF has received more than \$573 million from the HTF since then. Though the LWCF is authorized at \$900 million a year, historically less than half of that has been appropriated in a given year. Given that the LWCF is a federal fund, as opposed to a trust fund, a transfer should be offset. Additionally, the LWCF received most of its revenues from oil and gas leasing in the Outer Continental Shelf (OCS). Given that the full \$900 million annually authorized has never been appropriated, and that the unappropriated receipts balance of the LWCF is greater than \$17 billion, we encourage the consideration of a diversion of a portion of future OCS revenues to the HTF. We think oil and gas revenues are an appropriate source of highway funding given that current highway funding is largely derived from excise taxes on fuels. If \$250 million were to be diverted annually from the LWCF, it would be unlikely to affect current appropriations from the LWCF, provided they remain consistent with past history. A diversion of \$250 million a year from the LWCF to the HTF would deposit an additional \$2.5 billion in the HTF over 10 years.

Expanded oil and gas exploration in Alaska and the Outer Continental Shelf (OCS). Currently our nation is not fully utilizing available energy resources. Based on past Congressional Budget Office estimates, an expansion of oil and gas exploration and development could result in up to \$5.2 billion in revenue to the federal government within a 10-year budget window. Allowing for increased oil and gas exploration would actually create new jobs, and provide additional revenues that are badly needed.

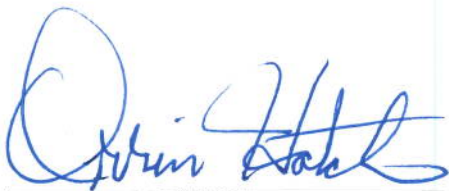
Rescission of unspent federal funds. Though we recognize that this option has not been popular with the current Senate majority and the White House, we include it as an option in order to emphasize our conviction that we do not, and should not, need to raise taxes to fund transportation infrastructure, but instead more efficiently utilize current federal resources. Informally the Congressional Budget Office has indicated that a rescission of \$30 billion would be required to produce \$12 billion in outlay savings over a 10-year period. Though in the past criticism of variants of this proposal have been based on the dollar amount of budget authority rescinded, the actual amount of outlays, or real spending impacted is much lower. Assuming the administration is less than enthusiastic about other ideas for filling the \$12 billion hole in the EPW bill, this proposal would allow the administration to determine what federal spending it prioritizes as less or more important than surface transportation funding. A rescission of unspent

federal funds was used earlier this year as an offset for an amendment agreed to by unanimous consent that repealed an expansion of information reporting enacted into law as part of health care reform. Before adoption of the amendment, a vote on a motion to waive budgetary discipline with respect to the amendment passed 81 to 17.

We also want to note that there are many ways current funding for highways could be spent more efficiently. This would allow a given amount of money to do more. Specifically, repeal or relaxation of Davis-Bacon requirements could drastically increase the efficiency of highway spending. "The Davis-Bacon Act" requires that all federally funded projects worth more than \$2,000 must pay workers the "prevailing wage," which, according to a study released by the Republican staff of the Joint Economic Committee, has resulted in wages being 22 percent higher, on average, than prevailing market rates. Though modifications to Davis-Bacon requirements would not produce new revenue to be spent on infrastructure projects, modifications such as an increase in the project cost threshold, or a temporary suspension, would reduce the cost of individual projects while promoting job creation.

Mr. Chairman, we offer the suggestions in this letter as a commitment to you of our willingness to work together to provide for the creation and maintenance of transportation infrastructure that enhances our economy. However, we also note that at best, a fully funded "MAP-21" would only give us up to two more years to address the disparity between current transportation funding levels and revenues deposited into the HTF. It is doubtful that "MAP-21" will even be sufficient to fund surface transportation programs through the end of fiscal year 2013, as is currently promised. Our efforts now are, at best, a down payment on a necessary rethinking of infrastructure funding and financing that circumstances will demand, whether we are prepared for it or not. Finance Committee Republicans are prepared to engage in this process, and this letter represents the beginning of a long-term plan, and not the conclusion of a two-year extension.

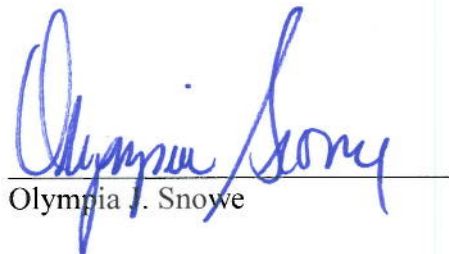
Sincerely,



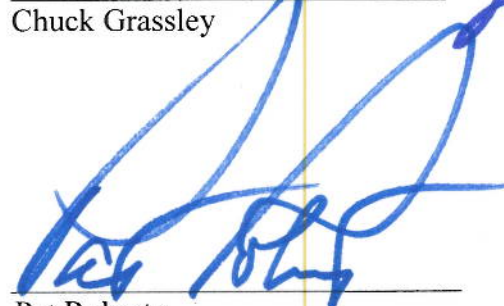
Orrin G. Hatch
Ranking Member



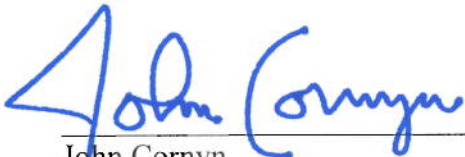
Chuck Grassley





Olympia J. Snowe



Pat Roberts


John Cornyn


Tom Coburn


John Thune