

Statement of
Darin Bergquist,
Secretary of the South Dakota Department of Transportation

Before the

Subcommittee on Surface Transportation and
Merchant Marine Infrastructure, Safety, and Security

Committee on Commerce, Science, and Transportation

United States Senate

Regarding

“Addressing Surface Transportation Needs in Rural America”

Sioux Falls, South Dakota
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Senator Thune:

Good Morning. I am Darin Bergquist, Secretary of the South Dakota Department of Transportation. Thank you for the opportunity to appear before the Subcommittee today to address surface transportation needs in rural America.

We are pleased that the Subcommittee is holding this hearing, as the importance to the nation of good transportation in and across rural states sometimes is underappreciated.

In my statement today I'll address a number of transportation issues important to rural America and to South Dakota.

- I'll discuss why rural States like South Dakota must receive a significant increase in Federal transportation funding and participate at least proportionately in future growth of the Federal highway and surface transportation program.
- I'll address a variety of issues that have been raised in the context of proposals to reauthorize highway and surface transportation programs, including program structure issues and proposals to increase Federal regulation of States through plan approvals, Federal performance targets, and otherwise.
- I'll also address:
 - safety and transit issues;
 - the impact of restrictions on the ability of rail short lines to access large rail carriers; and
 - the challenges of funding the proposed Harrold, SD transload, rail to truck

facility.

- Before closing, I'll also emphasize the importance of maintaining the ability of the Highway Account of the Highway Trust Fund to support at least current funding levels and remain solvent and the importance of passing extension legislation to ensure continuity of the highway program in South Dakota and the Nation.

Highway and Transportation Reauthorization Legislation Must Provide at Least Proportionate Funding Growth for Rural States Like South Dakota, As Well As Increased Funding

At the outset I want to stress that Federal investment in South Dakota's highways is in the national interest. It is imperative that legislation reauthorizing the Federal highway program continues to provide significant investments in highways in and across rural states, allowing us to continue to meet the demands being placed on our highway network, including from interstate travel.

I think it is also important to note that all regions of the country have significant transportation needs. There is a broad consensus, at least in the transportation community, that increased investment would serve the national interest. For example, the American Association of State Highway and Transportation Officials (AASHTO) has proposed a \$375 billion in Federal highway program funding and \$93 billion in Federal transit funding for the six-year period 2010-2015. These levels would represent significant increases over the roughly \$290 billion in Federal funds provided for highway, transit, and safety programs in the 2004-2009 period.

Many ideas have been advanced in recent years and Congress is now starting to shape multi-year surface transportation funding legislation. Certainly our department and others from rural states have clearly stated to Congress and various Commissions that **this next reauthorization bill must provide a rural state like South Dakota at least its current overall share of Federal formula funding and other funds**. That result would be in the national interest, as my testimony explains later on. Yet, it is not a foregone conclusion that Congress will agree to provide such support to South Dakota and similar states.

Early Thoughts on Legislative Proposals

We have concerns about the reauthorization legislation under development in the House of Representatives. While legislation with specific funding levels has not yet been introduced, the House Highways and Transit Subcommittee has reported to the full Transportation and Infrastructure Committee a partial draft bill and Committee leaders have released related position papers outlining their proposal. It apparently calls for an increase in Federal highway program authorizations from the Highway Trust Fund of about \$110 billion over the next 6 years compared to the last 6 years (roughly \$337 billion compared to \$227 billion).

According to position papers distributed by the Committee leadership, the bill would provide \$50 billion of that \$110 billion to a new program **only** for metropolitan areas with a population of 500,000 or more. We understand that traffic congestion is an issue in many cities. But we disagree with committing so much of the overall increase to a program that will benefit only

large metropolitan areas. The proposal also includes another program where \$25 billion is reserved for very large projects to be selected by USDOT. The eligible costs of those projects would have to be at least \$500 million or 75 percent of a state's most recent annual highway apportionment. In South Dakota, that means a single project of more than \$150 million would be needed just to be able to apply for these discretionary funds.

So, we see \$75 billion of the \$110 billion in additional trust fund authorizations for highways dedicated to two programs that are not available to our State in any practical way. In addition, the draft bill includes a \$50 billion non-trust funded program for high-speed rail for which our state is not eligible.

We, like AASHTO, support a different approach, under which not less than 90 percent of highway program funds would be distributed by formula to the states. Further, it is essential to recognize the importance of investment in highways in and across rural states like ours in the final formula and funding package. Our state's share of the overall highway and surface transportation reauthorization program should be at least as large as our share of the present program in order to ensure national access and connectivity and provide other national benefits, as I will describe.

We know you understand this, Senator Thune, both from your work on transportation issues through the years and from your recent work. For example, we appreciate that you are a co-sponsor of S. 308 and S. 309, bills introduced by Senator Baucus that would strengthen Federal funding for investment in highways in and across rural states.

Also of concern, the House draft bill would provide a disproportionately small share of its overall funding increase to the highway program, even though it is highway users who pay for the program in user taxes. Instead, the draft House proposal would provide an increased share of its overall funding to transit, relative to highways. South Dakota's share of Federal transit dollars is far less than its share of Federal highway dollars. Transit is a small portion of the transportation need in our state. We, like AASHTO, support keeping the ratio between the highway and transit programs at 4-1, with four times as much funding going to the highway program as going to the transit program from all sources of funding. Let me add that this 4-1 ratio is before any adjustments reflecting transfers of funds from highways to transit, which have regularly been in the range of a billion dollars annually. We support continuing such flexibility, which allows each state to better address its own needs.

In addition, the House Committee's position papers regarding the draft bill state that it will include an infrastructure bank, probably supported from outside the Trust Fund. We are not certain how much public governmental funding will be committed to the bank's activities but we do foresee these funds as not being easily accessible to a rural state like ours. An important consideration for any new Federal transportation financing mechanisms like an infrastructure bank is to ensure all areas of the country, both rural and urban, are not only eligible, but can compete on a level playing field. Also, funding sources for the bank should not compete for funding against sources for the regular surface transportation program.

In contrast, the Build America Bonds bill (S. 238) that you are co-sponsoring would ensure that

both rural and urban areas of the country participate in its program. We greatly appreciate your leadership in developing a proposal that would benefit both rural and urban areas.

In short, even without knowing the details of any proposed formula changes in the draft House bill, we are concerned over the structural changes in the highway program that we do see. Those changes would emphasize funding for new, non-formula programs for the benefit of large metropolitan areas. This approach will dramatically reduce our state's share of the overall program. So, while details of the House bill are not set, we currently expect that the House legislation would provide South Dakota with a reduced share of the transportation bill's programs compared to current law, perhaps a considerably reduced share.

In addition to preserving our share of overall funding, I would like to address some additional highway program issues.

- Don't Put New Restrictions on the Use of Federal Funds. The current highway and transportation program is complex. We would like to see processes streamlined so we can deliver projects more efficiently. The role and authority of states in delivering the highway and surface transportation program should be respected and not diminished. We see proposals for additional requirements as counterproductive, adding time and cost to the project delivery process.

The draft House bill includes restrictions on the ability to use a considerable portion of the bill's funding for investments that would add capacity or strengthen roads. States and local governments are in the best position to know which projects should be implemented. Restricting the ability of states to add capacity and strengthen roads is not the correct approach, at least in rural America.

- Transportation-related Climate Change Provisions May not Make Sense in Rural States. Both the climate change legislation that has passed the House of Representatives and the draft legislation reported by the House Highways and Transit Subcommittee would require all states to develop targets to reduce transportation-related greenhouse gas (GHG) emissions. States will be required to make efforts to increase transit ridership, walking, and bicycling. While South Dakota has made great strides in this area, our state is very rural in nature and there is only so much we can do to cost-effectively promote walking, bicycling, and transit ridership. Performance requirements would be imposed and under some proposals states not meeting performance targets could have funds withheld. There are several proposals with new planning requirements that would compel states to reduce GHG emissions. These proposals may be viable options in metropolitan areas, but due to our low population density, great distances, and harsh winters, they are not practical transportation options for rural states like ours. We believe that the proper, national interest approach is to ensure that any such statute would not force, or allow an agency to force a state like ours to undertake unrealistic efforts to reduce transportation-related GHG emissions. We generate very little GHG from transportation compared to other states and we will do our part to remove GHG emissions using modern, no-till agricultural practices.

- Do Not Agree to Increased Regulation Through National Performance Measures, Targets and Plan Approvals. Performance measures are important, and the South Dakota DOT uses them in making project selections and in other aspects of program delivery. However, we are concerned that national performance measures established by the Federal Government will not be sensitive to all states' needs and may result in reduced emphasis on funding projects in rural states. The House legislation has the Federal government, not states, establishing certain performance targets and gives the Federal government authority to impose sanctions for failure to meet certain performance targets.

We believe that national performance measures should be general in nature and that each state should be allowed to establish its own specific measures and targets. Deference should be shown to the owners and operators of the nation's transportation system. States, local governments and transit providers have decades of success in delivering transportation and such success should be respected. The role and authority of states in the delivery of highway and surface transportation should be enhanced, not diminished, compared to present law. Simply, we don't see increased Federal regulation, even if cloaked in the new terminology of "performance," as a way to achieve increased efficiency in program delivery. Reduced regulation should be the goal.

- Highway Safety Provisions Should Provide Flexibility to States. Transportation safety is a critical concern in South Dakota, as it is in all states. Contrary to the House draft legislation, states, not the USDOT, need to have control and approval authority over their safety plans. Inflexible Federal requirements in safety planning and specific program requirements can be counterproductive. For example, the draft House bill includes a provision that would withhold some highway funding from a State if it does not have a law that requires ignition interlocks to be installed in the cars of first time drunk drivers. Ignition interlock devices do not always work very well in cold climates like we have in the Dakotas. The South Dakota Attorney General has developed another approach to dealing with convicted drunk drivers that requires them either to be tested twice a day to ensure zero alcohol consumption or to wear a continuous alcohol sensing bracelet. Both of these approaches have been found to be very effective at reducing repeat offender drunk driving. States need to be able to choose the most effective methods to promote safety. Top down mandates, funding restrictions and specifying the use of particular technologies is not an approach that provides incentives for state innovation and successful program outcomes.
- Do Not Agree to Increased Regulation Through Comprehensive Street Design Policy. The draft House legislation would significantly restrict state flexibility, project design and project selection by inviting significant new and prescriptive USDOT regulation and potential litigation regarding issues such as whether states have "balanced" costs with the "necessary" scope of a project and adequately preserved "aesthetic resources" and "adequately" accommodated all users. Defining and interpreting such terms may broaden project scopes substantially and increase project costs while delaying project delivery.

So, a state like South Dakota faces both funding and regulatory challenges in this legislation. However, the way to improve transportation in this country is to pass reauthorization legislation

that, among other things, ensures that rural states like South Dakota receive at least their current share of transportation dollars without undue regulatory burdens.

Let me turn now to some of the reasons why the reauthorization legislation should continue to provide rural states like ours with at least their current share of funding under the Federal highway and surface transportation programs.

The Nation Benefits from Federal Transportation Investment In and Across Rural States

Federal-aid highways in our state, not just those on the National Highway System, provide many benefits. Among other things, they:

- Serve as a bridge for truck and personal traffic between other states, advancing interstate commerce and mobility;
- Support agricultural exports and serve the nation's ethanol production and energy industries, which are located largely in rural areas;
- Are a lifeline for remotely located and economically challenged citizens, such as those living on tribal reservations;
- Enable people and business to traverse the vast tracts of sparsely populated land that are a major characteristic of the western United States; and
- Provide access to scenic wonders and facilitate tourism.

The Federal-aid system extends beyond the NHS and allows enhanced investment to address safety needs on rural routes.

Further, Federal investment in rural transit helps ensure personal mobility, especially for senior citizens and people with disabilities, connecting them to necessary services. Federal public transit programs must continue to include funding for rural states and not focus entirely on large metropolitan areas. Let me amplify a few of these points.

Bridge States Serve a National Connectivity Interest for People and Business

Highway transportation between our country's major metropolitan areas is simply not possible without excellent roads that bridge those vast distances. This connectivity benefits the citizens of our nation's large metropolitan areas because air or rail travel frequently will not be the best option for moving people or goods across the country. The many commercial trucks on our rural interstate highways demonstrate every day that people and businesses in the major metropolitan areas benefit from the nation's investment in highways in rural states.

The most recent FHWA data on tonnage origins and destinations shows that just over 68 percent of the truck traffic using South Dakota's highways does not originate or terminate within the state. This is well above the national average of about 45 percent, underscoring that South Dakota highways help connect the nation in a way that benefits other states and the nation.

Essential Service to Agriculture

A significant portion of the economy in our State is based on agriculture. Agriculture is one sector of the economy where the United States has consistently run an international trade surplus, not a deficit. Over the last two decades roughly 30 percent of all U.S. agricultural crops were exported.

Apart from its value to the state, there is a strong national interest in ensuring that value-added agricultural products and natural resources have the road network needed to deliver products to markets, particularly export markets. A key part of that total road network is the roads below the National Highway System, where export crops begin their journey from point of production to their final destination.

South Dakota is a major contributor of energy production in the nation. Our state is currently fifth in the nation in ethanol production and has nearly a one billion gallon a year production capacity. Good roads throughout the state allow grain to be harvested and delivered to ethanol production facilities by truck. These roads are paramount to the nation becoming energy independent and providing agricultural products to feed a hungry world.

It is also worth noting that, over the last three decades, tens of thousands of rural rail branch lines have been abandoned nationwide. Since 1980 in South Dakota over 152 miles of railroad branch lines have been abandoned or rail banked. The reduced reach of the rail network means that many areas, particularly rural areas, must rely more heavily on trucks to move goods.

These trucks are subject to spring load restrictions. The underlying reason for spring load restrictions is inadequate road base strength and roadway thickness. During the spring thaw, the ground is waterlogged and can't support a fully loaded 18-wheeler on many highways. Given their current funding, many northern states have little choice other than to limit axle weights on highways during those times. Like congestion, load restrictions slow down commerce and add greatly to the cost of doing business.

To better serve agriculture and the nation, projects that facilitate truck to rail transfers at grain elevators and other locations should be an eligible activity to be funded by direct grants and broader formula programs in the next reauthorization at the national level. Freight bottlenecks in metropolitan areas and access to ports or other waterborne freight locations are not the only freight activities that should be eligible for funding.

Tourism Access

Without a strong highway network in rural states, citizens from across the country as well as visitors from abroad would have limited access to many scenic destinations. Tourism is vital to the economy of South Dakota and tourism is enhanced by a good highway network. Badlands National Park, Mount Rushmore National Monument, Wind Cave and Jewel Cave National Parks, the Spearfish Canyon and Peter Norbeck National Scenic Byways are important tourist destinations and they and many other state attractions are served by the non-interstate highway network. Continuing access to such destinations remains a strong national interest and must be

backed up by funding for rural states and areas.

Rural States Face Transportation Funding and Financing Challenges that Require Federal Financial Assistance

Rural states like South Dakota face a number of serious obstacles in preserving and improving the Federal-aid highway system within their borders. We:

- are geographically large;
- have low population densities; and
- have extensive highway networks.

Our large road network has few people to support it. In South Dakota there are about 19 people per lane mile of Federal aid highway. The national average is approximately 129 people per lane mile. Our per capita contribution to the Highway Trust Fund also exceeds the national average. The per capita contribution to the Highway Account of the Highway Trust Fund attributed to South Dakota is \$160 compared to the national average of \$114 per person.

These factors make it very challenging for rural states to provide, maintain, and preserve a modern transportation system that connects to the rest of the nation. Our low population and traffic densities also mean that tolls are not an answer to funding transportation needs in rural areas.

Rural Transit

I have explained earlier that we support proportionate increases in the Federal highway and Federal transit programs and we continue to support flexibility to transfer funds between the highway and transit programs. This allows many of the more heavily populated states to make additional investments in transit.

Within that context we do want to emphasize that transit is not just for large metropolitan areas. Our larger cities, Sioux Falls and Rapid City, have transit needs. Our more rural and smaller cities and Indian reservations also have needs for public transportation. Accordingly, we offer a few thoughts on transit program legislation.

We support the Rural Transit Improvement and Flexibility Act, S. 1144, introduced by Senator Johnson with four co-sponsors. One section of that legislation would ensure a slightly increased share of rural transit funds for very rural states. That is appropriate given the special transit challenges facing a very low population density state like ours.

Consider that in rural areas transit is usually provided via small bus and van service. Frequently, it is on demand service for the elderly and disabled, such as non-emergency trips to the hospital, pharmacy, or clinic, or trips to a grocery store. This is especially challenging in the very low population density states, where the one-way trip to a medical facility for one or two riders can be 50 miles or more.

There are some basics needed for transit service regardless of population or traffic density. Service requires a bus (or van). It requires qualified drivers. It requires a well-maintained and well-equipped vehicle. It requires vehicle parts. These elements are essential whether a bus is carrying 4 people and has to travel 50 miles (big state, low density) or is carrying 15 or more people in towns with a population of 45,000. Simply, there are diseconomies of geographic scale in providing essential public transit connectivity in extremely rural areas. We appreciate that S. 1144 would try to respond to those challenges.

Another section of that bill would provide additional flexibility in the use of funds under the elderly and disabled transit program, by allowing a small portion of those funds to be used for operating expenses. Given funding pressures on state and local governments, to help ensure continued transit services for the elderly and disabled, it is appropriate to provide the flexibility to use at least a portion of section 5310 funds for operating expenses. The bill would provide that flexibility by allowing -- but not requiring -- up to 25 percent of section 5310 apportionments to be used for operating expenses. This proposal will provide states both rural and urban increased (but limited) flexibility to ensure that there are funds to operate transit service for the elderly and disabled.

The draft House bill would completely exclude rural states from eligibility for discretionary transit grants (eliminating bus and bus facilities from the program under 49 USC 5309). This would eliminate a source of funding that has benefited citizens throughout South Dakota, including Indian tribes, in recent years.

We have outlined above some of the special challenges of providing transit service in rural areas and hope the Congress can help us meet them.

NHTSA and FMCSA Programs

The Commerce Committee has jurisdiction over programs of the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration. These are important safety program areas and South Dakota's participation in them is administered by our State's Department of Public Safety. Our broad concern with these programs is that any changes that are made to current law should be done in a way that does not adversely impact South Dakota's eligibility to receive funds under the programs or reduce its share of funds from the programs. To the extent that is not the case, our state's ability to invest in safety enforcement and education and related safety programs would be impaired. As the legislative process advances with respect to these programs, we would welcome the opportunity to work with you and the Committee to ensure that the needs of rural states like ours are taken into account.

Rail Issues -- Barrier Rates When Short Lines Access a Large Rail Carrier Can Adversely Impact Rural Shippers

When a large railroad decides a branch line is not profitable, it is often not abandoned but, instead, sold to a short line carrier. The sales of these lines usually will include terms referred to as "paper barriers," which restrict the short line from interchanging freight with carriers other than the seller. These restrictions often work to the detriment of the shippers on the line. South

Dakota shippers might be able to access new markets or have more competitive shipping rates if rates between short lines and major carriers improved. In South Dakota, the sale of the core rail system and the settlement agreement with the BNSF eliminated many of these paper barriers. In any case, a large carrier should not be discouraged from selling lines to short line carriers as an alternative to abandonment but some improvements in rates between short lines and major carriers may be possible.

Where paper barriers have been eliminated and other carriers can be reached, or where rail freight competition exists, we see much lower freight rates. These lower freight rates are a direct benefit to the shippers and producers in the state and to the economy of the state as a whole.

In addition, we support programs, funded from outside the Highway Trust Fund, that encourage rail freight infrastructure improvements to lessen the traffic and wear on our state highways.

Harrold Transload Facility

A very exciting project has been proposed for Harrold, South Dakota, but there are real challenges finding a way to fund it. This project will construct an intermodal handling facility, rail to truck, for wind power components. Many of these oversize and overweight components are currently trucked long distances causing interference with normal traffic and additional stress on the roads. Use of the railroad will create a shorter freight haul over the highway and reduce road damage.

The project will include engineering, property acquisition, grading, and gravel surfacing for the rail yard area, installation of switches and construction of 5,800 feet of railroad track. The completed project will allow wind power generating equipment to be shipped into Harrold, South Dakota, by rail and then loaded onto trucks and shipped to its final destination. It is expected that these components will be trucked as far as southern North Dakota and northern Nebraska. Total estimated project costs are \$3 million.

We believe the project is eligible under the Transportation, Community, and System Preservation Program (TCSP), within the Federal Highway program. However, we have not received confirmation of that from USDOT. Further, that is a very small discretionary program that is often oversubscribed. Further, the program would be terminated under the draft House bill. So, there is no reliable way to fund it under the current program.

If TCSP funding is to be used, the plan is for the non-Federal match to be loaned by the State of South Dakota to the Hughes County Regional Railroad Authority. The Hughes County Regional Railroad Authority will lease track to the DME Railroad. The DME Railroad will repay the loan.

The new legislation needs to provide a clear path that enables this kind of project to be funded.

Ensure Highway Trust Fund Solvency and Program Continuity

Before closing, I also want to emphasize that, when the Congress returns in September, it should promptly enact legislation to ensure the solvency of the Highway Account of the Highway Trust

Fund and to extend highway and surface transportation programs.

Even though the Congress just passed welcome and sorely needed legislation to transfer \$7 billion into the Highway Account, that merely prevented serious financial problems for the Account, at present funding levels, from happening this month. The Highway Account could still reach a zero balance around the end of September or shortly thereafter. It will be highly disruptive to states if FHWA begins to delay payment of state claims to reimburse costs. As a zero balance gets closer, states will begin to curtail bid openings and take steps to avoid the risk of not having funds to pay for the work. Compounding the situation, South Dakota, like other states, already has contracts in place for which the Federal Highway Administration may not be able to reimburse funds. This would create a financial crisis for the SDDOT. For the public at large, the jobs and transportation benefits of the program would be denied, or at least delayed, if the program is disrupted.

Therefore, we hope the Congress will pass legislation in September providing the highway Account of the Highway Trust Fund with the resources to pay for highway work funded at least at current funding levels. USDOT and AASHTO have estimated that an additional \$8 to \$10 billion must be added to the Account in order to continue current highway program levels through FY 2010. This is needed just to continue programs at current levels, avoid disruption to the program, and avoid job losses and cutbacks in construction. We note that S. 1474, recently introduced by Senator Baucus with Senators Rockefeller and Menendez, would provide sufficient funding to ensure program continuity for the highway, transit, and safety programs funded from the Highway Trust Fund for a period of time that hopefully will facilitate development and enactment of a multi-year reauthorization of these programs.

Another matter that we hope can be addressed by Congress in September is the need to pass legislation that would repeal the rescission of some \$8.7 billion in highway contract authority that is scheduled to take effect in late September. Rescissions on this scale will reduce the programming flexibility available to every state DOT and make it harder for states to pursue priority projects.

Further, there is no question but that highway, transit and highway safety programs need to be extended before the end of September to avoid program disruption. Various Senate committees, including the Commerce Committee, have reported "clean" extension legislation. We think that is the appropriate course, as we have concerns with respect to a number of the "reforms" some would have included in extension legislation. Enactment of an extension is necessary to continue transportation investments while Congress works on multi-year authorization legislation. The clean extension is needed to continue investments -- which means jobs, highway and transit mobility, and safety -- while work on a multi-year bill continues.

Conclusion

In conclusion, we consider it essential that Congress pass legislation reauthorizing the highway and surface transportation programs that recognizes that significantly increased Federal investment in highways and surface transportation in rural states is, and will remain, important to the national interest. The citizens and businesses of our nation's more populated areas, not just

residents of rural America, benefit from a good transportation network in and across rural states like South Dakota. With such legislation, we will be better equipped to address transportation needs in our state to the benefit of South Dakotans and all Americans.

That concludes my testimony. I'd be happy to respond to any questions you may have.
