FOIA Number: 2015-0463-F

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ISTEA [Intermodal Surface Transportation Efficiency Act]: Memos

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

May 29, 19

cc: MALDON ✓
FORBES
BRAIN

ied
Lew
Bowles
cc: Stein
Bruce / Elena
JDP / SMAT

MEMORANDUM FOR THE PRESIDENT

FROM: Jacob J. Lew
Acting Director

SUBJECT: Technical Corrections to the Transportation Equity Act (TEA)

Erskine asked us to give you a status report on the technical corrections we need in the highway bill. The enrolled bill includes several errors, primarily in the sections on penalties for drunk driving and the veterans tobacco provision.

Highway Safety Errors

Congress is already planning to pass a technical corrections bill for the TEA to correct two other important errors in the bill. In the highway safety area, they failed to include incentives for states to adopt both tougher repeat offenders laws and laws prohibiting the carrying of open alcohol containers in vehicles.

Veterans Tobacco

Our agreement with the Congress was to finance $17 billion in new spending in the TEA bill with an Administration savings proposal to reverse a 1997 Veterans Affairs (VA) General Counsel opinion that veterans are entitled to disability benefits for smoking-related disabilities acquired **after** service, and due **solely** to nicotine dependence begun in the military.

The rationale for the proposal was as follows:

- **We would continue to compensate veterans for smoking-related illnesses that became manifest *during* military service.** However, awarding compensation for tobacco-related illnesses acquired *after* military service -- frequently decades later -- and based *solely* on claims of nicotine addiction beginning during service goes well beyond the purposes of the veterans disability program. In addition, under your proposal, veterans *currently receiving* benefits and veterans *with claims in the pipeline* prior to enactment *would not* lose benefits by the change.

6-1-98

- **The payment of these tobacco claims threatens to put a severe strain on the system.** VA projects some 540,000 claims for tobacco benefits could be filed. The time to process a claim could more than double, and the total number of backlogged claims in the system would grow from less than a half million (currently) to over 2 million in FY 2000, *affecting all veteran claims regardless of the cause.*

- **These are not traditional VA benefits.** Veterans never had them before the VA General Counsel opinion. In 1990, Congress took a similar action regarding drug and alcohol use during military service.

However, instead of including the precise language proposed by the Administration, which had been drafted carefully to reverse the opinion and not affect any other veterans benefits, the Congress included different language at the last minute without consulting with us. This new language included several technical errors, including:

- denying disability benefits for tobacco-related diseases that become manifest in service;
- eliminating possible benefits for over 7,000 veterans with claims who filed for benefits before the law changed;
- pushing Persian Gulf, Agent Orange and indigent veterans out of the medical care system, by giving top-priority status to veterans who acquired tobacco-related illnesses long after leaving military service;
- requiring adjudicating 540,000 claims, which would double processing time for all disability claims regardless of cause -- creating a backlog of 2 million claims by FY 2000;
- grouping tobacco dependency with "wilful misconduct" similar to drug and alcohol abuse, potentially absolving the industry from further liability claims; and
- possibly allowing survivors to receive benefits not granted to the veterans themselves.

These combined errors make the bill save ***more*** money than originally intended, primarily by denying benefits that were not meant to be suspended. We estimate that they increase the savings in the bill from $17.0 billion to $17.8 billion.

6-1-98

We have suggested that Congress pass a technical corrections bill that replaces the current, incorrect language with our original legislative proposal. We understand that the veterans committees support correcting the mistakes in the bill and may be willing to adopt our original language, although they are concerned about opposition from veterans groups if they try to cancel the benefits for survivors.

However, if Congress instead passes a technical corrections bill to reinstate the inadvertently canceled benefits ***without*** also canceling the benefits for survivors, the savings in the bill drop by $1.9 billion from $17.8 billion to $15.9 billion -- $1.1 billion less than the amount we need to finance the new highway programs. Such a technical corrections bill, which would pass overwhelmingly, would effectively spend $1.1 billion of the surplus -- putting the surplus at risk for spending on other items and negating your policy to not spend the surplus until Social Security is fixed.

In the event that the Congress does not enact an adequate technical corrections bill, we are trying to develop an administrative option that would interpret the ambiguous language in TEA to eliminate these benefits. However, VA's General Counsel is not yet prepared to eliminate benefits for survivors administratively. We are working with VA to determine if an administrative option exists. However, we have told Congressional staff that it is not certain that will be able to address the survivors issue administratively.

Conclusion

We should know more about the status of the technical corrections bill on Monday or Tuesday. They are most like to fix these problems with our language if they do it quickly.

CORRECTIONS NEEDED TO THE VA TOBACCO SECTION OF THE TRANSPORTATION EQUITY ACT (TEA)

- In the TEA, Congress enacted provisions that would deny veterans entitlement to service-connected disability for tobacco-related diseases based on claims that they smoked and became "nicotine dependent" when they were on active duty. In so doing, Congress intended to offset the costs of the underlying bill including the costs of the expanded Veterans GI bill educational benefits and for expanded disability and related benefits.

- Regrettably, in drafting language to do this, the legislation made several technical errors that would result in:

  - denying disability benefits for tobacco-related diseases that become manifest <u>in</u> service

  - eliminating possible benefits for over 7,000 veterans with claims who filed for benefits before the law changed.

  - pushing Persian Gulf, Agent Orange and indigent veterans out of the medical care system, by giving top-priority status to veterans who acquired tobacco-related illnesses long after leaving military service.

  - requiring adjudicating 540,000 claims, which would double processing time for all disability claims regardless of cause -- creating a backlog of 2 million claims by FY 2000.

  - grouping tobacco dependency with "willful misconduct" similar to drug and alcohol abuse, potentially absolving the industry from further liability claims

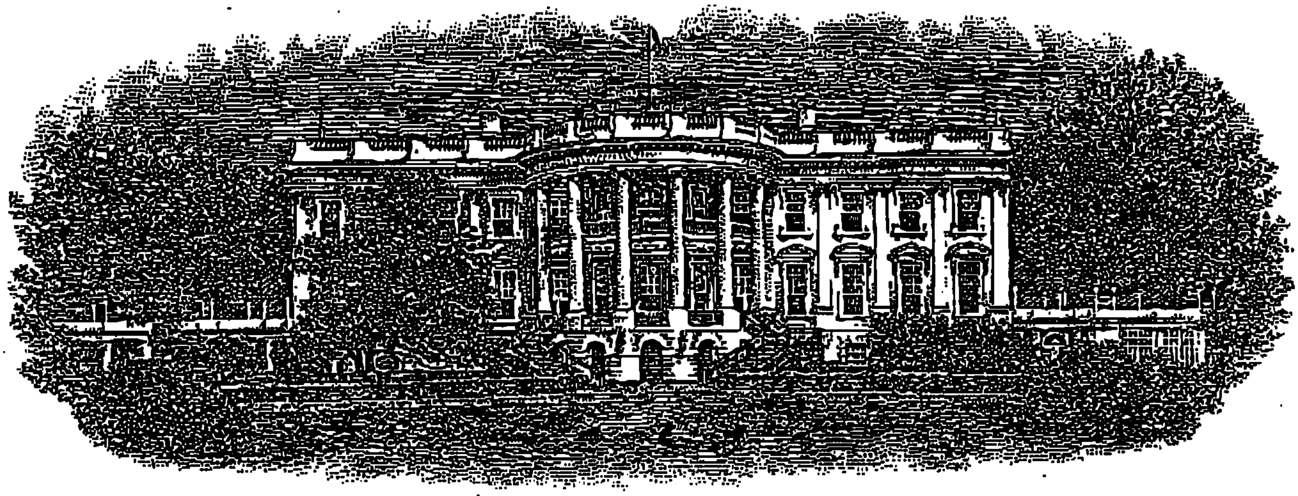
  - possibly allowing survivors to receive benefits not granted to the veterans themselves

- The Administration is deeply concerned about this situation, and has provided language to correct these errors as technical corrections to the TEA. Our language was originally drafted by DVA and submitted as part of the President's budget.

- It is critically important that Congress adopt this language to insure the availability of intended benefits and the efficient operation of the VA systems.

From Palmer

THE WHITE HOUSE
OFFICE OF LEGISLATIVE AFFAIRS



FAX COVER SHEET

TO: Larry Stein / Jessica

FROM: **Jeff Forbes**
Special Assistant to the President and Staff Director

Date: 5/22/98 **No of Pages including cover:** 4

Phone: ____________ **Fax:** ____________

Phone: (202)456-6493 **Fax:(202)456-6468**

MESSAGE: ____________

H.R. 2400, the Transportation Efficiency Act for the 21st Century ("TEA-21")

Status: Conference report approved by leadership of House Transportation & Infrastructure, Commerce, and Ways and Means Committees and Senate Environment & Public Works, Commerce, Banking, and Finance Committees.

Conference report to be filed by 9:00 am on May 22. House Rules Committee scheduled for 9:30 am on May 22 and floor as soon as possible thereafter. Senate action expected later on the 22nd.

Summary of Major Provisions:

Very little is still known about the conference report other than several major provisions noted below. Drafting and summary formula tables are not yet complete.

Infrastructure Investment

- o Authorizes a total of $216 billion for the period FY 98-03 for highway, mass transit, highway safety, and rail programs. The total amount is slightly below those authorized by the House (-$4.2 billion) and by the Senate (-$1.3 billion). The conference report is $41 billion above the President's proposed NEXTEA.

- o Of the total amount authorized, $175 billion is for highway construction and safety, and $41 billion for transit. A new provision will ensure that based on prior year revenues, annual funding levels will be guaranteed for most surface transportation programs.

	Highways/Safety	Transit	Total
Guaranteed Funding	165 B	36.3 B	201.3 B
Authorized subject to Approp.	10 B	4.7 B	14.7 B
Total	175 B	41.0 B	216.0 B

- o **Offsets**. Assumes that there will be a total of $17.5 billion in offsets to cover guaranteed spending that will occur over gas tax receipts. This will be provided by two offsets: veterans tobacco benefit ($15.3 billion) and social security block grant program ($2.4 billion (?)).

- o **Projects/Highway Formula**. The bill purportedly provides 90.5 percent minimum guarantee return for each State of the gas tax receipts contributed to the Highway Trust

Fund. Under the bill, the House will set aside $7 billion for "high priority" projects (a 25 percent reduction from the House bill), while the Senate will distribute $2.35 billion to certain states.

- **Innovative Finance/SIBs**. Authorizes innovative credit techniques for major project construction. Authorizes 4 new State Infrastructure Banks (SIBs). Applies Davis-Bacon and 13© to all succeeding generations of projects in this pilot program.

- **Appalachian Highways**. Provides $2.25 billion over six years for continued development of the Appalachian Development Highway System.

- **Transit**. During six-year life of the bill, the percentage guaranteed funding for mass transit will equal an average of 18.5 percent, ending with 20 percent in FY 02-03. Allows the use of funds for preventive maintenance (without limit on annual amounts).

- **Transit Benefits**. Increases the amount for transit benefits that employers may offer their employees in lieu of compensation to $100 per month (currently $65/month).

- **Over the Road Buses**. Provides incentive grants for the retrofit of intercity buses in order to comply with the Department of Transportation's recent NPRM requiring accessibility for all passengers.

<u>Safety</u>

- **Safety Grant Programs**. Congress did not adopt the .08 BAC standard and state highway construction withholding sanctions; establishes a new $500 million incentive alcohol grant program for states that adopt the .08 BAC standard. For states that do not adopt laws prohibiting open alcohol containers in cars or mandatory repeat offender laws, certain highway construction funds will be re-directed to safety construction. Adopts seat belt incentive program.

- **NHTSA Authorization**. Authorizes and guarantees certain funds for the operations, research, and safety grant programs of the National Highway Traffic Safety Administration (NHTSA).

- **Airbag Safety**. Requires regulatory steps to better protect automobile occupants through the development and a time frame for implementation of advanced air bag technologies.

- **Lobbying Ban**. Prohibits the lobbying of State or local legislators on motor vehicle and other safety issues under NHTSA's jurisdiction .

- **One-Call**. Establishes incentives for states to improve one-call systems that help prevent accidents in underground digging.

Environment

o CMAQ. Continues the Congestion Mitigation and Air Quality (CMAQ) program with increased funding levels, increasing funding levels to $1.4 billion in FY 99 (up from $1.0 billion in FY 98) and to $1.75 billion in FY 2000-03.

o Boundary Waters Canoe Area. Includes Representative Oberstar's bill relating to the opening up of the Boundary Waters Canoe Area in northern Minnesota to certain motorized operations.

Welfare to Work

o Access to Jobs. Authorizes $900 million over the six years for the President's Access to Jobs initiative. Of the $150 million annual authorization, $50 million is guaranteed in FY 99, increasing annually to the full $150 million guaranteed in FY 03.

DBEs

o DBEs. Extends the Department's Disadvantaged Business Enterprise program for highways and transit which contains a goal that at least 10 percent of program funds are awarded to DBEs.

Ethanol Tax Credit

o Ethanol. Extends through 2007 the tax exemption provided for the use of ethanol in gasoline.

Financing

o Highway Trust Fund Extension. Extends authority to collect/deposit gasoline and motor fuel taxes at current levels, as well as the authority to make expenditures from the Highway Trust Fund, through 2005.

S. Palmer
5/22/98; 4:15 AM

Michael Deich
05/19/98 07:39:11 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Janet Himler/OMB/EOP, Jill M. Blickstein/OMB/EOP, Melissa G. Green/OPD/EOP
Subject: istea talkers

TRANSIT4.W

Message Sent To:

Jacob J. Lew/OMB/EOP
Lawrence J. Stein/WHO/EOP
Charles M. Brain/WHO/EOP
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David E. Tornquist/OMB/EOP
David J. Worzala/OMB/EOP
Kim C. Nakahara/OMB/EOP

May 19, 1998

Transit Spending in the ISTEA Reauthorization Bill
Talking Points

- The original House and Senate bills would have provided more than $219 billion and would have required offsets of roughly $34 billion in outlays. The Senate bill was simply an authorization; the bill included no guarantee that the funds actually would be appropriated.

- On May 5, the Administration proposed an authorization to spend $184 billion -- $150 billion for highways and $34 billion for transit; all of the spending would be guaranteed through a new budget mechanism.

- On May 13 the Republican Congressional Leadership announced an agreement in principle to spend $201 billion -- $167 billion in highway spending and $34 billion in transit spending for 1998-2003.

- Left unchanged, the Leadership agreement would cost roughly $23 billion in other outlay savings. Paying for the agreement would require either spending the budget surplus, lowering the discretionary caps, or making unacceptable offsets in other discretionary spending.

- The Administration is pressing Congress to change the final agreement in two ways. **First, reduce total spending to a level that can be offset fully by the VA/tobacco proposal alone. Second, increase the share of spending dedicated to transit.**

- Since the Congressional leadership's proposal announcement, policy changes have been identified that could reduce by about $7.7 billion the total offsets needed to pay for the announced plan. About $6.9 billion -- almost 90 percent -- of these outlays savings could be realized by changing the proposed highway spending. The majority of the highway savings would result from lowering by roughly $5.2 billion the amount of money made available for obligation.

- These outlay savings would be achieved without reducing total transit funding below the levels in the Leadership agreement for the period 1998-2003. Simply phasing-in the increased transit spending would realized outlay savings of $0.8 billion. Transit spending would average 17 percent of total spending during the entire authorization. Transit spending would start at 16 percent of total surface transportation spending, and then rise to 20 percent of total spending by the end of the authorization period. For the first time, this transit/highway split would be guaranteed.

- Under the Leadership agreement:

  - For the first time, transit spending levels would be guaranteed. The transit community would no longer have to endure the uncertainty of the annual fights through the appropriations process to secure adequate funding.

  - During 1998-2003, transit would spend 130 percent of prior-year Transit Account receipts; Highways would spend 100 percent of prior-year Highway Account receipts.

  - The Leadership agreement would provide transit with just under 17 percent of total surface transportation spending during the 1998-2003 authorization period -- the same share received by transit during ISTEA (transit *authorizations* were 21 percent of ISTEA spending; transit *appropriations* were only 17 percent).

- The Administration seeks a final bill that can be paid for with a single offset -- VA tobacco -- and provides transit with a share of total spending that rises to 20 percent by the end of the authorization period.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 14, 1998

MEMORANDUM FOR THE PRESIDENT

From: Jacob J. Lew
Larry Stein

Subject: ISTEA Reauthorization

This memo seeks guidance on whether you are inclined to veto the latest Congressional offer on ISTEA reauthorization.

As you know, the House and Senate bills would have provided roughly $220 billion in budget resources during 1999-2003, with outlays roughly $34 billion more than your Budget. The latest Conference document would provide $197-200 billion in budget resources during 1999-2003, with outlays roughly $21-23 billion above your Budget. The attachment describes $23.5 billion in outlay offsets that the Leadership have identified to pay for the bill. About $3-5 billion of these offsets were in your Budget, and the Administration is relying on having access to those offsets later in the '99 appropriations process to pay for some of your key budget priorities. Another $4 billion or so of the offsets seem politically unachievable; if we agreed to the spending levels that those offsets support, and the offsets later were dropped, the Republicans might seek to retain the spending and pay for it with objectionable offsets, by lowering the discretionary caps, or by not fully financing the increased spending levels.

We are not sure if the principle goal of the Republican leadership is to pay for a transportation bill or instead to use up all of the offsets that the Administration needs to pursue our own objectives in the appropriations process. If the former, we believe that a deal is possible. In particular, we should be able to craft a package that includes most, and perhaps all, of the spending in the Congressional offer. By modestly changing the time path and composition of that spending, and by having Congress direct CBO to adopt OMB scoring on certain items (as they already appear ready to do on the VA tobacco offset) we should be able to pay for the bill solely through the VA tobacco offset in our offer. We have asked for a meeting with the leadership to discuss resolving the funding dispute. To date, however, the leadership has shown little eagerness to meet.

We believe that the leadership is unlikely to engage us in serious negotiations unless we make a credible threat that you will veto a bill that contains unacceptable offsets, that spends the surplus, or that skews transportation priorities. Earlier this week, we issued a letter to the conferees with a senior advisors veto threat on these grounds. At the moment, Gephardt and Oberstar appear ready to support a veto, but Oberstar's support seems tentative. There will be no reliable way to assess in advance our chances to sustain a veto. In the Senate, support for the bill is overwhelming, and Senator Daschle is unlikely to support a veto.

Although we do not yet know how the Congressional offer addresses some of our core policy objectives (.08 BAC, environmental provisions, etc), your economic team is inclined to recommend that you veto the bill if it is paid for with the offsets noted at Tab A. John Podesta doubts the wisdom of a veto if it could not be sustained, and the Legislative Affairs staff has concerns about the long-term consequences of an override.

Tab A

Congressional Leadership Proposed Offsets

Offset	Savings over 1999-2003
• *VA tobacco*	$16 billion

CBO would be directed to use OMB scoring of roughly $!6 billion over five years. Congress appears ready to adopt the Administration's request that some funds be reserved for expanded veteran's benefits.

• *Social Services Block Grant*	$3.1 billion

Your budget used this offset to fund increases in other social services programs. Using this offset for highways would make it difficult to fund any program increases in the Labor/H appropriations bill or to pay for even a modest child care proposal.

• *Increase in GNMA fees*	$0.9 billion

This proposal would triple the fee increase proposed in your budget. Although not objectionable from a policy standpoint, an increase of this size could be difficult to achieve. Your budget uses this offset to pay for new housing initiatives.

• *FHA policy reforms*	$1.0 billion

Your budget proposed increasing the limit on FHA-insured loans to pay for a second round of Empowerment Zones. The offset noted above abandons that loan limit increase in favor of unspecified 'reforms.' It is unclear whether such reforms could be either identified or passed by Congress.

• *Fees on Fannie Mae and Freddie Mac*	$4.5 billion

This offset has been proposed and quickly shot down many times over the last ten years. No one believes this has a credible chance of passage.

L. Stein

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

May 13, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Franklin D. Raines

SUBJECT: Status of the Intermodal Surface Transportation Efficiency Act (ISTEA) Reauthorization -- INFORMATION

Erskine asked us to send you a comparison of the House and Senate versions of the transportation reauthorization bill now being considered in Conference.

Background

Earlier this month, the Administration offered a compromise on ISTEA that would provide Congress one of their key objectives (a guarantee that annual surface transportation spending would equal Highway Trust Fund receipts). In exchange for this spending guarantee, the proposal would set spending significantly below the levels contemplated in the House and Senate bills. The compromise would preserve the budget surplus and would protect discretionary funding for your other priorities.

Congress would like to complete floor action on this bill prior to the Memorial Day recess that begins May 22, but it is unclear whether they can meet this deadline. ISTEA programs have been operating this year under a short-term extension that permits transit, highway safety, and Department of Transportation administrative programs to continue at a reduced level for the next several months. However, States have been prohibited from obligating new highway construction funds since May 1, 1998. Although construction work continues using carryover funds, the pressure will increase for Congress to authorize a bill quickly.

On May 12, the Administration sent a letter to the conferees (attached) notifying them that your senior advisers will recommend that you veto the conference report if it "makes available an excessive level of budgetary resources if financed by spending the surplus, by reducing the domestic discretionary caps, by using unacceptable offsets, or by forcing cuts in domestic priorities." In addition, the letter stated that your senior advisers would "also recommend veto of a conference report that skews transportation priorities."

Funding Issues

The following table summarizes the funding levels included in the various reauthorization proposals. Each proposal is described in more detail below. For 1999 alone, surface transportation programs would be funded at more than 25 percent above the levels in the President's budget (roughly 1998 enacted). The attachment provides annual funding levels for each proposal.

Comparison of Budgetary Resources 1998-2003
(Mandatory and Discretionary $ in billions)

	Admin. NEXTEA	House BESTEA	Senate ISTEA 2	Admin. May 5 Proposal
Highways	137.6	183.0	177.5	150.3
Transit	28.7	36.7	40.5	33.5
TOTAL	166.5	219.7	218.0	183.8

House: Building an Efficient Surface Transportation Efficiency Act (BESTEA)

The House bill would provide $219.7 billion in budgetary resources, $53 billion above your request. This includes $9.3 billion for almost 1,500 highway demonstration projects that are funded as mandatory spending. Nearly 17 percent of the spending authorized by BESTEA is provided for transit. BESTEA includes a requirement that the Conference Report identify offsets to pay for any spending in the bill above a baseline frozen at the 1998 enacted level. To date, no offsets have been identified.

Under BESTEA, total budgetary resources (the amounts available for obligation) would be set at levels significantly above HTF receipts. Supporters nonetheless claim that "spending equals receipts" because outlays would equal receipts during the period 1998-2003. This of course means that beyond 2003 outlays would significantly exceed tax receipts. BESTEA would guarantee this spending by taking "off budget" all highway and transit spending that is financed by the Highway Trust Fund. To fund the spending contained in BESTEA, other non-defense outlays would need to be reduced by $34 billion during the period 1999-2003.

Senate: The Intermodal Surface Transportation Efficiency Act 2 (ISTEA 2)

The Senate proposal would provide $218 billion in budgetary resources, $51 billion above the President's Request. ISTEA2 includes no demonstration projects, although some

Senate demonstration projects will likely be included in the final bill. ISTEA2 includes a requirement that demonstration projects be incorporated into the regular highway program formula allocations among the States, thereby diminishing the incentive for earmarking. Roughly 19 percent of the total spending in ISTEA 2 would be devoted to transit.

ISTEA2 continues the current budgetary treatment of highway and transit programs. Almost all funding is subject to the appropriations process and is not guaranteed. ISTEA2 does not include any offsets, although the Senate Budget Resolution assumes that many of your new mandatory offset proposals would be redirected to offset highway spending.

Administration Proposal

On May 5, the Administration proposed a compromise designed to reflect four core principles: (1) the budget surplus shall not be used to pay for the legislation; (2) spending shall be offset fully, without lowering the cap on other discretionary spending; (3) after a phase-in period, total budgetary resources spent annually should equal total Trust Fund receipts; and (4) spending levels must be sustainable for the long-run.

The Administration proposal would provide total spending equal to $218.9 billion -- the average of the House and Senate bills -- but spread that spending over seven years rather than the six years contained in BESTEA and ISTEA 2. (The Administration offer would provide $183.8 billion during the 1998-2003 period contemplated by the House and Senate bills, an increase of $17.4 billion in budgetary resources and $8.1 in outlays over our original NEXTEA proposal). As in the Senate bill, the Administration's proposal would provide 19 percent of total resources to transit. No demonstration projects would be provided; to the extent they were included in the final legislation, they would need to be funded out of the total for highways.

The Administration proposal incorporates a key Congressional goal: guaranteeing that annual spending on surface transportation equal to annual receipts into the Highway Trust Fund. In contrast to BESTEA, however, the Administration's proposal sets spending so that budgetary resources, not outlays, equal receipts. This not only lowers the cost of our proposal, but also allows program spending levels to be sustained in the long-run (the House and Senate bills would obligate far more than receipts -- thus, at some time not too far beyond the budget window, spending would have to be curtailed or the gas tax would have to be increased). In addition, the Administration's proposal would guarantee *all* spending for transit and highways alike.

The Administration proposal would phase in the spending guarantee. Spending would equal the levels in the President's Budget for 1999 and 2000, and then rise to 97 percent of prior-year Trust Fund receipts in 2001, and 100 percent of prior-year receipts thereafter. This spending level would be guaranteed by creating a third category of spending (surface transportation) under the Budget Enforcement Act. This category would set not only a *floor*, but also a *ceiling* on surface transportation spending, and thereby protect other discretionary spending from pressure to approve even higher levels of transportation spending.

Our proposal would be offset fully by CBO's current scoring of the $13.5 billion VA/tobacco provision contained in your budget. If CBO chose to adopt OMB scoring of this provision (at $21.8 billion), our proposal would support an additional $8.3 billion of transportation spending through 2004 (net of the spending on veterans' training and education programs).

Key Policy Issues

Many of the priorities included in the Administration's NEXTEA proposal are incorporated in both the House and Senate bills. For example, the Disadvantaged Business Enterprise program has been retained and the new Access to Jobs program is funded. Below are several of the issues that still need to be resolved in Conference.

- .08 Blood Alcohol - As you know, the Senate bill includes a provision which withholds highway construction funds from States (beginning in Fiscal Year 2002) if they have not adopted a .08 blood alcohol concentration standard under state drunk driving laws. The House bill does not contain a similar provision. To date, the conferees have made no progress on this issue.

- Environmental Programs - BESTEA includes an onerous provision that would permit the oversight of the National Environmental Policy Act process to be delegated to the States. In addition, we oppose the transferability of environmental program funds to highway construction.

- Woodrow Wilson Bridge - The Woodrow Wilson Bridge is the only Federally-owned bridge on the Interstate System. The bridge is on the Capitol Beltway south of Washington. The Administration requested $400 million as the Federal share of the $1.9 billion replacement cost, with Maryland and Virginia responsible for the remaining cost. The Senate bill includes $900 million as the Federal share for this project, while the House provides no funding. In discussions with the Maryland and Virginia delegations, the Administration has pledged that it will not oppose up to $900 million as the Federal share and, if Maryland and Virginia want it, a Federal loan to help finance the State share. Maryland and Virginia are pushing for no less than $1.5 billion in Federal grant funding. To date, it appears that $900 million is as much as the States can expect from the conferees.

Attachments

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

May 12, 1998

The Honorable Bud Shuster
Chairman
Committee on Transportation
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

As the House-Senate conference on reauthorization of the *Intermodal Surface Transportation Efficiency Act* (H.R. 2400) proceeds, I write urging your consideration of a proposal the Administration has made to resolve the important budget issues raised by this legislation.

On April 30, I sent you a letter expressing the Administration's serious concerns about the excessive spending in the House and Senate bills; in particular, that the spending levels would either require unacceptable reductions in high priority discretionary program funding, or they would drain anticipated budget surpluses prior to fulfilling our commitment to save Social Security first.

These budgetary concerns were reiterated in a May 1 letter to conferees from Secretary Slater, along with a detailed review of other important policy issues that need to be resolved in an acceptable manner in order to bring this legislation to a conclusion. These issues include a stronger national standard for drunk driving and other safety concerns, maintenance of the historical balance in highway-transit funding, and ensuring protection of the environment as we carry out transportation programs.

Last week, during the course of ongoing discussions with conferees, the Administration proposed the attached framework for bridging some of the distance between the funding levels supported by the Administration, the House and the Senate. The framework is based on four principles: (1) the projected budget surplus shall not be used to pay for the legislation; (2) spending shall be offset fully, without lowering the caps on discretionary spending; (3) after a phase-in period, total budget resources spent each year should equal total receipts to the Highway Trust Fund (HTF); and (4) spending levels in the legislation shall be sustainable after the end of the authorization period.

This framework fulfills the objective of many in Congress that one hundred percent of Highway Trust Fund receipts be available for obligation. After an appropriate phase-in period, a new budget mechanism would require that total funding equal 100 percent of total HTF receipts. This funding guarantee would serve as both a floor and a ceiling for fiscal years 1999-2004. In exchange for the unprecedented guarantee of authority to spend all prior year Trust Fund receipts, this framework also establishes that total surface transportation spending will not exceed receipts. Total funding over the reauthorization period would equal $218.9 billion, which is between the amounts called for in the House and Senate bills. However, this funding would be provided over seven years, instead of six, in order to satisfy the Administration's core principles that the surplus not be depleted and the spending caps not be reduced.

The President's senior advisers would recommend that he veto a conference report that makes available an excessive level of budgetary resources if financed by spending the surplus, by reducing the domestic discretionary caps, by using unacceptable offsets, or by forcing cuts in domestic priorities. We would also recommend veto of a conference report that skews transportation priorities.

We need final action now on this critical legislation. The Administration strongly urges the conferees to seriously consider the framework discussed in this letter, which would ensure stable funding for surface transportation, in a manner that is both fiscally responsible and consistent with the President's pledge to save Social Security first.

Sincerely,

Franklin D. Raines
Director

Attachment

Identical Letter Sent To:

The Honorable Bud Shuster
The Honorable James Oberstar
The Honorable Tom Petri
The Honorable Nick Rahall
The Honorable John Chafee
The Honorable Max Baucus
The Honorable John Warner
The Honorable William Roth
The Honorable Daniel Patrick Moynihan
The Honorable Alfonse D'Amato
The Honorable Paul Sarbanes
The Honorable John McCain
The Honorable Ted Stevens
The Honorable Ernest Hollings
The Honorable Pete Domenici
The Honorable Frank Lautenberg
The Honorable Tom Bliley
The Honorable George Brown
The Honorable John Dingell
The Honorable Jim Sensenbrenner

Surface Transportation Reauthorization Funding
Comparison of Congressional and Administration Proposals
(Mandatory and Discretionary $ in billions)

	1998	1999	2000	2001	2002	2003	2004	1998-2003 Total	1998-2004 Total
President's Budget									
BR	28.0	27.8	27.7	27.7	27.7	27.6	27.7	166.5	194.2
OL	26.5	27.3	27.7	27.8	28.0	28.1	28.1	165.4	193.5
Highway/Safety									
BR	*23.1*	*23.0*	*22.9*	*22.9*	*22.8*	*22.8*	*22.8*	*137.6*	*160.4*
OL	*22.3*	*23.3*	*23.4*	*23.3*	*23.2*	*23.1*	*23.2*	*138.7*	*161.9*
Transit									
BR	*4.8*	*4.8*	*4.8*	*4.8*	*4.8*	*4.8*	*4.9*	*28.7*	*33.6*
OL	*4.2*	*3.9*	*4.3*	*4.5*	*4.8*	*4.9*	*4.9*	*26.5*	*31.4*
HR 2400, BESTEA									
BR	29.3	35.0	38.9	38.8	38.9	38.8	–	219.7	–
OL	26.6	28.8	32.9	35.7	37.2	37.9	–	199.1	–
Highway/Safety									
BR	*24.5*	*29.0*	*32.5*	*32.4*	*32.4*	*32.4*	–	*183.0*	–
OL	*22.4*	*24.9*	*28.2*	*30.5*	*31.2*	*31.6*	–	*168.8*	–
Transit									
BR	*4.8*	*6.0*	*6.5*	*6.5*	*6.5*	*6.5*	–	*36.7*	–
OL	*4.2*	*4.0*	*4.7*	*5.3*	*5.9*	*6.3*	–	*30.3*	–
S 1173, ISTEA2									
BR	27.8	36.7	37.4	38.0	38.7	39.5	–	218.0	–
OL	26.4	29.4	33.4	35.5	36.9	38.0	–	199.6	–
Highway/Safety									
BR	*22.9*	*29.8*	*30.4*	*30.9*	*31.4*	*32.0*	–	*177.5*	–
OL	*22.3*	*25.3*	*28.4*	*29.7*	*30.4*	*31.0*	–	*167.1*	–
Transit									
BR	*4.8*	*6.9*	*7.0*	*7.1*	*7.3*	*7.5*	–	*40.5*	–
OL	*4.2*	*4.1*	*5.0*	*5.7*	*6.5*	*7.0*	–	*32.5*	–
Offer									
BR	28.0	27.8	27.7	32.1	33.8	34.4	35.1	183.8	218.9
OL	26.5	27.3	27.7	28.7	30.8	32.5	33.5	173.4	206.9
Highway/Safety									
BR	*23.1*	*23.0*	*22.9*	*26.0*	*27.4*	*27.9*	*28.4*	*150.3*	*178.8*
OL	*22.3*	*23.4*	*23.4*	*24.1*	*25.6*	*26.8*	*27.4*	*145.7*	*173.1*
Transit									
BR	*4.8*	*4.8*	*4.8*	*6.1*	*6.4*	*6.5*	*6.7*	*33.5*	*40.1*
OL	*4.2*	*3.9*	*4.3*	*4.6*	*5.1*	*5.7*	*6.0*	*27.7*	*33.8*

cc: Lew
Stein
Sperling
Forbes
Brain
Emery
Kieffer
Damus
Robyn
Marr
Lance

CHIEF OF STAFF TO THE PRESIDENT

Send to - Larry Stein
- Gene Sperling
- Frank Raines

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

MEMORANDUM TO THE VICE PRESIDENT AND THE CHIEF OF STAFF

FROM: **DAN GLICKMAN, SECRETARY**
JIM LYONS, UNDER SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT

APR 22 1998

SUBJ: **ISTEA BILL AND FOREST SERVICE ROADS**

There is an urgent and immediate need to fund the rehabilitation of roads on the national forests in the amount of $250 million annually through the public lands highway program in the ISTEA. The Forest Service has 386,000 miles of roads. About 20 percent of these roads get 80 percent of the public use. Yet, there is a maintenance backlog on these roads of $10.5 billion and 1000 bridges that are not structurally-sound. Dealing with this backlog is critical to the success of the President's Clean Water Action Plan, to Administration efforts to restore salmon habitat in the Pacific NW and California, and to improving public access for recreation and tourism on the national forests (which is double similar activities on the National Parks).

The ISTEA bill in the Senate and BSTEA in the House include funds for National Park roads (Senate @ $140 million/ House @ $ 99 mil.), for national fish and wildlife refuges (Senate @ $20 mil.), and for Bureau of Indian Affairs (Senate @ $250 mil./House @ $212 mil.). No funds were provided for reconstruction and rehabilitation of National Forest roads - despite the fact that these roads constitute 55 percent of the total public lands highway system mileage.

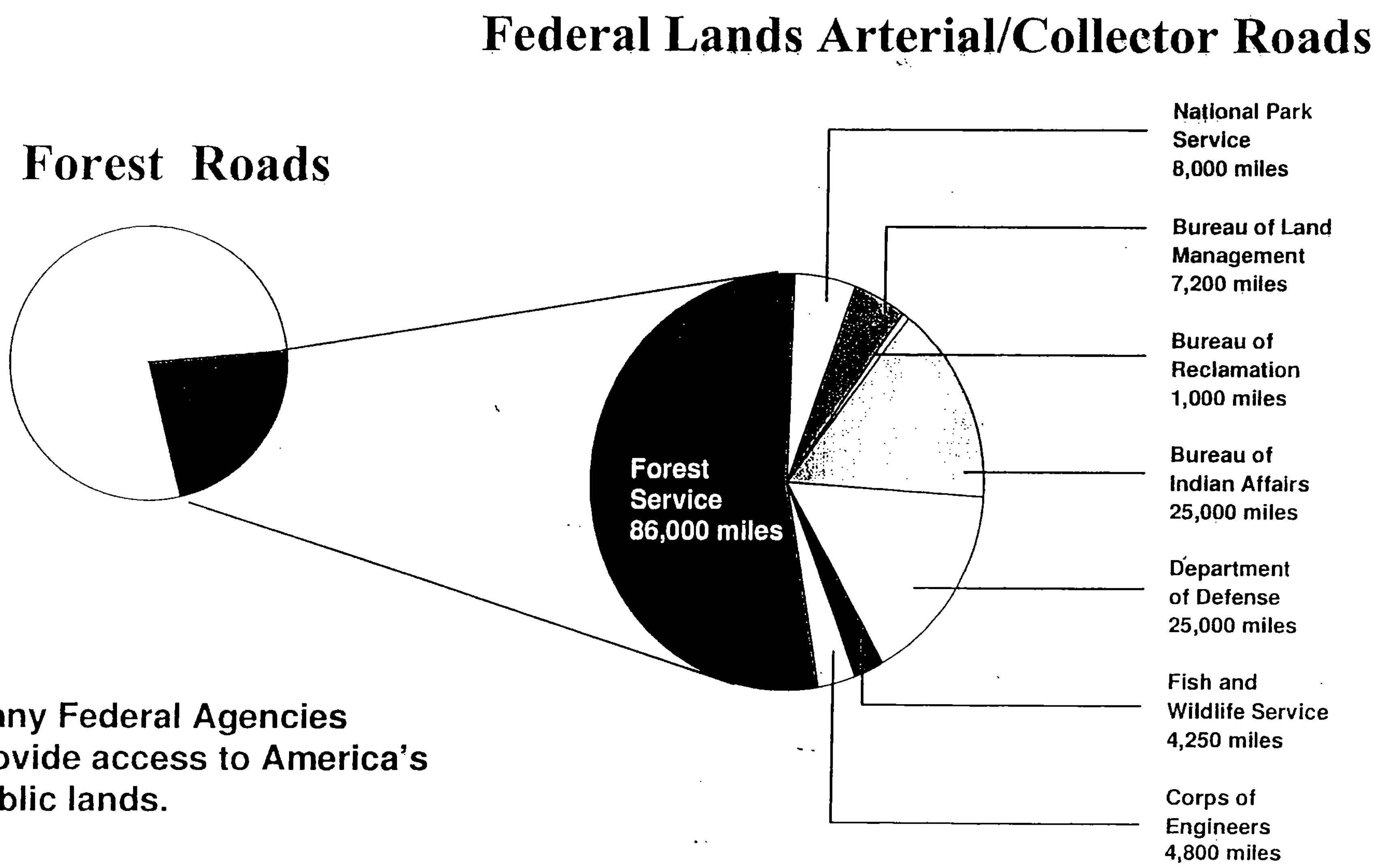
The Forest Service has been the focus of much Congressional, environmental, and media attention during the Administration's tenure. Last year, Mike Dombeck became Chief and began a substantial effort to turn the organization in a fundamentally new direction. As a part of this effort, Mike established a moratorium on new road building into roadless areas. Strong Administration support for this initiative was met with stiff opposition from Western Republicans. Next, Mike introduced his "Natural Resources Agenda" which focuses on four key items: (1) restoring watershed health; (2) sustainable forestry; (3) recreation; and (4) roads.

A key to Mike's success is Administration support for ISTEA funds to deal with the maintenance backlog on national forest roads. This is not funding for new road construction, but to address public safety and environmental problems on the most heavily used national forest roads.

Adding $250 million in contract authority for the Forest Service under the Public Lands Highway Program in ISTEA should be a top priority for the Administration in conference. This could be an environmental win for the Administration, demonstrate support for the Chief (see attached N.Y. Times editorials), and will help Mike set a new course for the Forest Service.

cc: Katie McGinty, Chair, Council on Environmental Quality

Federal Lands Road System



- Many Federal Agencies provide access to America's public lands.

SATURDAY, APRIL 4, 1998

The New York Times

Founded in 1851

ADOLPH S. OCHS, *Publisher 1896-1935*
ARTHUR HAYS SULZBERGER, *Publisher 1935-1961*
ORVIL E. DRYFOOS, *Publisher 1961-1963*
ARTHUR OCHS SULZBERGER, *Publisher 1963-1992*

Showdown on the National Forests

Michael Dombeck made it clear from the start that he was going to be different from other Federal Forest Service chiefs. He wanted to trim the annual timber harvest, protect watersheds, restore wildlife habitat. He wanted to save the national forests, not cut them down.

This was heresy from an agency long regarded as a willing captive of the timber industry and its Congressional allies from timber-producing states. No less surprising was that Mr. Dombeck came equipped with a strategy. In January he announced a moratorium on new logging roads, a move that would effectively put 30 million acres of national forest — one-sixth the total — off-limits to logging.

The timber interests and their political patrons have reacted in fury. By letter and in public hearings, Republican committee chairmen with jurisdiction over the Forest Service — Alaska's Frank Murkowski and Idaho's Larry Craig in the Senate, Alaska's Don Young and Idaho's Helen Chenoweth in the House — have threatened to slash the Forest Service budget unless Mr. Dombeck increases timber production. On the legislative front, Mr. Craig has offered a mischievous rider to an appropriations bill that would require the Forest Service to make up for the loss of timber sales in roadless areas by authorizing compensatory cuts elsewhere. Meanwhile, Ms. Chenoweth's allies have organized anti-Dombeck rallies, warning of big layoffs in the industry if his policies survive.

This has the makings of one of the nastiest environmental struggles of the year, in part because the timber interests and their political patrons were already feeling aggrieved. Following decades of heavy production, the timber harvest on public lands has declined by more than half in the last 10 years. More vigorous prosecution of environmental laws and setting aside land to protect the spotted owl had much to do with this.

Mr. Dombeck will need help from the White House, which should threaten to veto any bill that undercuts his strategy. He will also need help from the same moderate Republicans who roused themselves three years ago to turn back efforts by their right-wing colleagues to weaken the country's basic environmental laws. Working together, the White House and the moderates, organized by Representative Sherwood Boehlert of New York, have already managed to fend off early Congressional challenges to Mr. Dombeck's program. But they must stick together in the weeks to come. Mr. Dombeck's opponents are resentful and resourceful.

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WEDNESDAY, JANUARY 14, 1998

A Positive Shift in Forest Policy

Michael Dombeck, the chief of the United States Forest Service, will soon announce a moratorium on construction of new logging roads in remote sections of most of the national forests. That will be a courageous change in policy for an agency long regarded as a willing captive of the timber industry it is supposed to regulate.

The moratorium will protect millions of acres from new logging, elevating the forests' environmental values — clean water and wildlife — above commercial values. It will also greatly annoy powerful politicians from resource-driven states in the West. This means that the White House, which agrees with Mr. Dombeck in principle, should be prepared to support him against an almost certain legislative effort to overturn the policy.

The moratorium would only apply to pristine areas that have so far been left untouched by roads or logging — about 60 million acres, or roughly 30 percent of the national forest system. But Mr. Dombeck will also tighten rules governing new roads in those parts of the system where logging roads already exist. In addition, he will close some roads that have outlived their usefulness and try to extract money from Congress to repair others that threaten the environment. Of the more than 400,000 miles of roads that crisscross the national forests, fully 60 percent are in bad shape — inviting floods and landslides, clogging streams and destroying habitat for fish and other species.

The environmental community has been cheering Mr. Dombeck on, even though it fears that political pressures will force him to exempt two huge timber zones from the road-building ban. These are Alaska's Tongass National Forest and the forests in the Pacific Northwest that provide habitat for the spotted owl. Northwestern legislators, especially Alaska's small but influential Congressional delegation, control the committees that oversee and finance Mr. Dombeck's agency. If provoked, they may try to scuttle his entire plan.

Our hope is that Mr. Dombeck — with President Clinton's vocal support — will take them on, applying his moratorium to the Tongass and the Pacific Northwest as well. That would make a very good policy even better.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 24, 1998

MEMORANDUM FOR DISTRIBUTION

FROM: Michael Deich
David Tornquist

SUBJECT: 4/27 Meeting on ISTEA Conference Issues

In preparation for Monday's meeting to discuss ISTEA conference issues, attached is the Department of Transportation's summary of Secretary Slater's priorities in the bills.

Attachment

Distribution:

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CONFIDENTIAL

FHWA
4/24/98

Suggested Provisions for S-1 Attention

	Issue	NEXTEA	House	Senate	DOT Goal
	GENERAL				
1	Funding levels & offsets	$174.3B in authorizations No offset provision	$220.2 B in authorizations Secretary may not release any funds unless bill contains necessary budgetary offsets in compliance with Balanced Budget Act of 1985. [1001]	$217.3 B in authorizations No offset provision	Only support funding levels if the necessary funding offsets are consistent with the President's priorities.
2	Off-budget provisions	No provision	Receipts & disbursements of HTF not counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of the Budget or the Balanced Budget Act of 1985. HTF exempt from any general limit imposed by statute on outlays. [701]	No provision	Oppose taking the Highway Trust Fund off-budget as it would endanger the bipartisan budget agreement, force cuts in other areas of national priority, and circumvent the Budget Enforcement Act.
3	Demonstration projects / earmarks	FHWA : No provision FTA: No provision	FHWA: $9 billion for 1,507 "high priority" demonstration projects for highways. [127] FTA: 167 new start earmarks; 146 bus project earmarks [332,333]	FHWA: No provision FTA: No provision	Oppose. State and local government planning process are best able to determine priorities.

	Issue	NEXTEA	House	Senate	DOT Goal
	Demonstration projects/ earmarks (continued)	University Research Institutes (URI) and University Transportation Centers (UTC): Consolidates URI and UTC programs; no earmarked centers -- all universities must compete.	Consolidates URI and UTC programs; mandates 20 centers (10 Regional and 10 "Other Centers").	Conflicting provisions included: Banking committee -- Same as current law, but adds one earmark. EPW -- Consolidates URI and UTC programs; earmarks 16 of 20 centers.	Support consolidation of the URI and UTC programs; should be some opportunity for other universities to compete for the grants -- not all earmarked.
4	Expiration of partial tax exemption for ethanol	All exemptions to highway-user taxes, including ethanol, extended at current law rates through 2005.	Partial exemption for ethanol allowed to expire on 10/1/00 as provided for in current law.	Partial exemption for ethanol extended through 2007, but at slightly phased down rates in FY2002-2007.	We object to the House's lapse of the partial exemption for ethanol and support the Senate's extension of the ethanol credit, but without the phasedown.
5	Mid-course correction	No provision	Would delay release of FY 2001 highway and transit funds for as long as 8 months if Congress failed to enact certain highway & transit "corrections" legislation by 10/1/00. [508]	No provision	Object to potential sequester of highway and transit funds. Sequester not needed; Congress can enact corrections legislation without endangering program funding. Disruptive to continuity so important to public works programs.
6	Inadequate funding for FHWA & FTA administrative costs	FHWA: Retains 3.75% takedown from core programs. FTA: Such sums as may be necessary	FHWA: Reduces takedown to 1%; larger base of funds for takedown than Senate. [104] FTA: Dollar amount	FHWA: Reduces takedown to 1.5%; smaller base of funds for takedown than House. [1201] FTA: 0.96%	FHWA: Support a 1.5% maximum takedown, as in Senate, but from the larger base of programs in the House bill. FTA: "adequate percent"

	Issue	NEXTEA	House	Senate	DOT Goal

SAFETY

7	.08 BAC standard	No provision for .08 BAC. Alcohol-impaired driving countermeasures incentive program. [2002] Administration has strongly endorsed Senate provision.	Study only for .08 BAC. [209] Alcohol-impaired driving countermeasures incentive grants. [205]	Mandates a national .08 BAC standard for drunk driving. States that do not enact this standard by 2002 would have 5% of certain Federal-aid highway funds withheld; in 2003 and beyond, 10% would be withheld. [1408]	Strongly support the Senate provision.
8	Piecemeal exemptions to Federal truck size and weight laws	No provision	Provides exemptions from current Interstate weight limits for LA, ME, and NH. Provides exemption to definition of non-divisible load for CO. [134]	Sense of the Senate not to ease current LCV standards. [1803]	Support sense of the Senate -- object to House's patchwork exemptions which discourage compliance and potentially undermine safety. LA exemption premature (possible grandfather right, issue never raised by State). Concrete panels-- CO refuses to issue divisible load permit; industry trying to circumvent State policy. ME and NH exemptions ratify current violations and further undermine uniformity of Interstate weight limits.

	Issue	NEXTEA	House	Senate	DOT Goal
9	Inadequate NHTSA funding				
	(a) 402	- Consolidated (NHTSA & FHWA) Section 402 - $167.42 M/yr (avg)	- Separate NHTSA & FHWA 402 programs - NHTSA, $177 M/yr (avg) FHWA, $25 M/yr	-Consolidated (NHTSA & FHWA) - $129.024 M/yr (avg)	Consolidated at House funding levels
	(b) Alcohol, occupant protection and data incentive programs	Alcohol $43.36 M/yr (avg) Occ.Prot. $20.72 M/yr (avg) Data $12 M/yr (avg)	Alcohol $33.3 M/yr (avg) Occ.Prot. $18.16 M/yr (avg) Data $10.42 M/yr (avg)	Alcohol $32.83 M/yr (avg) Occ.Prot. $18.22 M/yr (avg) Data $8.85 M/yr (avg) for FYs 98-01	Support House funding levels
	(c) Section 403 R&D	$60.36 M/yr (avg) $73.1 M for FY 99 in President's budget	Separate NHTSA & FHWA 403 authorizations NHTSA, $55 M/yr FHWA, $20 M/yr	Authorizes 403 funds for NHTSA only. $66.36 M/yr (avg)	Senate authorization for NHTSA only and House 403 funding amount, combining NHTSA and FHWA levels
10	Lobbying ban	No provision	No provision	Prohibits use of Title 23 funds for any activity to support for or against, or to influence the formulation or adoption of State or local legislation, unless such activity is consistent with previously existing Federal mandates or incentive programs. [1807]	Strongly oppose Senate provision. It will severely compromise our ability to provide important highway safety information to our State and local partners.

	Issue	NEXTEA	House	Senate	DOT Goal
11	Air bag safety	No provision	Directs Secretary to design Federal motor vehicle safety standards for occupant protection to protect improperly restrained and out-of-position occupants only to the extent that the risk of injury to properly restrained and positioned occupants is not substantially increased. [2691]	Suspends unbelted testing standard pending: (1) rulemaking to minimize risk of airbags, or (2) determination that current testing standard is necessary [3106] Inadvertently retains section repealing the unbelted testing standard. [1402]	Support Senate provision (and strike earlier Senate section simply repealing current standard). Note -- The implications of the House requirement are impossible to predict. If this requirement had been enacted last year, it might well have precluded NHTSA from issuing the 1997 rule permitting manufacturers to expedite their efforts to depower air bags to protect improperly restrained children and adults, since depowering could also reduce the protection afforded belted occupants.
12	Drugged driving countermeasures	Creates new drugged driving incentive program. One basic grant only for meeting various criteria. Grant amount equals 20% of State's Sec. 402 apportionment. Authorizes total of $25.13M.	No provision	Directs the Secretary to do research on: (1) the relationship between the consumption and use of drugs and their effect on highway safety and drivers, and (2) driver behavior research and measures that may deter drugged driving. Authorizes total of $10M.	Support Senate provision.
13	Hazmat reauthorization	Reauthorizes program -- clarifies inspection authority -- enhances enforcement authority	No provision	Reauthorizes program -- contains most NEXTEA provisions -- includes exceptions for special interests [3201,3216]	Support Senate provision to reauthorize program, but object to special interest exceptions.

	Issue	NEXTEA	House	Senate	DOT Goal
14	One-call program	Establishes incentives for States to improve one-call programs. Establishes model program for States to use. [11002]	No provision	Provides incentives for States to improve one-call systems. [3302]	Provide incentives for States to improve one-call systems and avoid exceptions for special interests.
15	Grade crossing funding	$165 M	Retains 10% STP safety set-aside $150 M (based on BESTEA funding levels)	2% STP safety set-aside for grade crossings -- $163 M (based on ISTEA II funding levels)	Support a funding level of $165M.

WELFARE TO WORK

16	(a) Funding & scope of program	$100 M/yr for access to jobs, no limit on projects [3021]	$150 M/yr for access to jobs, 10 projects	$150 M/yr for access to jobs and $100M/yr for reverse commute; no limit on projects	Support Senate$150M access to jobs provision
	(b) Reserving positions for welfare recipients	States "should" reserve highway training positions for welfare recipients [1017]	States "may" reserve highway training slots for welfare recipients, but should not displace/supplant current employees [129]	States "may" reserve highway training positions for welfare recipients [2009]	Support provisions permitting reserving highway training positions
	(c) Employment preferences	States "should" implement an employment preference for welfare recipients and people in empowerment zones and enterprise communities (EZ/ECs) [1017]	No employment preference for welfare recipients or EZ/EC residents.	No employment preference for welfare recipients or EZ/EC residents.	Support employment preference for welfare recipients or EZ/EC residents.

	Issue	NEXTEA	House	Senate	DOT Goal

ENVIRONMENT

17	Environmental streamlining	No change from current law; CEQ's NEPA regulations include streamlining & process integration.			
	(a) process		Coordinated environmental review process for highway projects; concurrent Federal review & NEPA process, to be completed within agreed-to time periods.	Integrated decision-making for highway and transit projects ; integrate NEPA regulations at earliest possible time.	Since neither section appears to be binding on other Federal agencies, most of these process changes could probably be accomplished thru regulations under existing law.
	(b) dispute resolution		If a Federal agency doesn't act within the agreed time period, the Secretary may "close the record". If an environmental issue raised by a Federal agency is not resolved, the Secretary and head of such Federal agency "shall resolve" the matter within 30 days.	Unresolved issues between the lead agency and a cooperating agency shall be elevated to agency heads to attempt resolution within 30 days, with CEQ consultation, prior to referral to CEQ.	House provision for "closing the record" may not be sufficient to satisfy the underlying environmental requirement. The Administration opposes this provision. It appears the Senate provision could be accomplished by regulation.
	(c) use of Title 23 funds		The Secretary may approve a State's request to use its Title 23 funds to enable an affected Federal agency meet the time limits established by this section.	A State may use its Title 23 funds to enable an affected Federal or State agency to meet a time schedule established by this section.	States currently have authority to transfer Title 23 funds to resource agencies for environmental review expenses.

	Issue	NEXTEA	House	Senate	DOT Goal
17 cont.	(d) pilot program		Establishes a 3-year pilot program to allow up to 8 States to fulfill the Secretary's responsibilities under NEPA based on a certification, to be approved by the Secretary "in cooperation" with CEQ. The Secretary and CEQ shall monitor the pilot States and report annually to Congress on this pilot. [502]		Strongly oppose House pilot program. Oppose delegation of statutory authorities of Federal agencies to States. DOT should continue to be responsible for ensuring that environmental concerns regarding transportation projects are appropriately addressed.
18	CMAQ transferability	No change to current law. States receiving minimum CMAQ apportionment but have no non-attainment or maintenance areas can use CMAQ funds for any project eligible under Title 23.	Permits States to transfer to other FA programs 50% of the increase in future CMAQ apportionments over FY97 CMAQ levels. [505 (c)]	Would permit States receiving minimum CMAQ apportionment to use difference between minimum amount and amount attributable to its non-attainment areas for any project eligible under Title 23. [1123]	Object to transfer of CMAQ funds in States that have air quality non-attainment or maintenance areas. Do not object to such transfers in States that do not have non-attainment or maintenance areas (this is current law). Oppose Senate provision and strongly oppose House provision.
19	Transit benefits	Eliminate in-lieu of compensation restriction; increase transit benefits to $175.	No provision	Eliminates in-lieu of compensation restriction; increases transit benefits to $100 by 2000.	Senate language or better ($175 limit for transit, as proposed in the Administration's FY99 budget. This limit is the same as the limit for parking under current law).

	Issue	NEXTEA	House	Senate	DOT Goal

POLICY

20	Transit & rail eligibility for Title 23 funds	NHS -- Expanded eligibility: -- publicly owned intercity passenger rail capital projects in NHS corridors -- publicly owned intracity or intercity passenger rail or bus terminals -- intermodal surface freight transfer facilities (not air or sea) that are at or adjacent to the NHS or NHS corridors. [1003] STP -- public or private vehicles and facilities for intercity bus or passenger rail service -- publicly owned rail safety infrastructure and highway non-infrastructure safety improvements -- publicly owned intercity passenger and freight rail infrastructure [1014]	Retains current NHS and STP eligibility.	Includes STP & NHS flex for rail and bus passenger projects and use of NHS funds for intermodal surface freight transfer facilities but does not authorize expenditure of STP funds for publicly-owned rail freight infrastructure [1235]	Support at least Senate provisions, but also want STP eligibility expanded to include publicly owned rail freight projects.
21	Inadequate Park Roads funding	Authorization of $161M/year [1001]	Parkways and Park Highways authorized at $85.3 M for FY98, $86.2M for FY99, and $99M for FY2000 - 2003. [102 (11) (c)]	Authorization for park roads is $90 M for FY98, $140M annually for FY99-03. [1115]	Object to the inadequate funding for park roads and parkways in both bills. Over 40% of the 5,000 miles of paved park roads are in poor and failed condition, with another 2% deteriorating into poor and failed condition each year. A minimum of $120M/yr needed just to prevent further deterioration. Support $161M/yr, the NEXTEA level.

	Issue	NEXTEA	House	Senate	DOT Goal
22	ITS eligibility	Clarifies eligibility of Interstate Maintenance, NHS, and STP funds for infrastructure-based ITS capital improvements. Changes definition of "operational improvements" to expressly include installation, operation, or maintenance of ITS infrastructure. [1002,1003,1009, and 1014]	No provision under individual fund eligibilities. Adds to definition of "operational improvements" a list of ITS-type activities, but doesn't specifically mention ITS. [143]	Clarifies eligibility of Interstate Maintenance, NHS, and STP funds for infrastructure-based ITS capital improvements (same as NEXTEA). [1209, 1234, 1235] Changes definition of "operational improvements" as proposed in NEXTEA. [1231]	Strongly support the Senate provisions. Although ITS is already an eligible activity, the legislative clarification would strengthen this position.
23	Transit preventive maintenance	No cap, no detailed definition, operating assistance allowed for areas under 200,000. Repealed for areas over 200,000.	$400M cap, restrictive definition on preventive maintenance. Operating assistance allowed for areas under 200,000. Repealed for areas over 200,000.	No cap, no definition on preventive maintenance. Operating assistance allowed for areas under 200,000. Not repealed for areas over 200,000.	Recommend no cap, no detailed definition, operating assistance allowed for areas under 200,000. Repeal for areas over 200,000.
24	Trade corridor/ border crossings programs	Provided $45M in funding for multi-state corridor and bi-national border transportation planning & border gateway pilot program. [1030]	Authorizations to assist in planning, developing and constructing specified highway corridors. [115]	Authorizations for trade corridor planning incentive grants. Further authorizations over 6 years for planning, design and implementation of safety and congestion relief. [1116]	DOT strongly supports multi-state corridor and border planning but doesn't support Secretarial or Congressional determination of corridors. Increase border program authorizations to $90M as proposed in the President's 1999 budget to modify border grant program to fund work of Federal inspection agencies (ONDCP, INS, & Customs Service) at border crossings.
25	BTS funding	Programs funded at $31M/year. [6002]	Authorizes $31M//year. [631]	Authorizes $26 to $31M/year at $1M increments. [2004]	Funding below $31M/year would not allow BTS to maintain current services or develop the new initiatives contained in the bills.

	Issue	NEXTEA	House	Senate	DOT Goal
26	Retaining labor standards				Davis-Bacon usage standards should continue to cover transportation construction projects that they have applied to in the past, and should apply to any new Federally assisted transportation construction projects authorized under the bills (e.g., House and Senate rail projects, including MAGLEV, and all construction projects funded by Federal dollars loaned and re-loaned by State infrastructure banks).

DBE

	Issue	NEXTEA	House	Senate	DOT Goal
27	Retention of DBE program	Retains program [1018]	Retains most of current program, but drops requirement for uniform certification criteria. Adds requirement for GAO review of impact of program. [102]	Retains program. Adds requirement for GAO review of impact of program. [1111]	Strong focus on retaining current DBE program; prefer Senate language. Strongly urge retention of uniform criteria for certifying DBEs to maintain integrity of the program.

TECHNICAL

	Issue	NEXTEA	House	Senate	DOT Goal
28	RSPA multimodal program	Establishes a multimodal transportation R&D program at $10 million/year [6001]	No provision	Establishes a multimodal transportation R&D program at $2.5M/year. [2002]	Support establishing multimodal R&D program at NEXTEA funding level.
29	Over-the-road (OTR) buses	No provision	No provision at this time, although Shuster may introduce provision to prevent DOT from implementing recently proposed NPRM.	No provision	Oppose possible provision by Shuster. Rulemaking process should be allowed to work. DOT proposed NPRM calls for OTR buses purchased in year 2000 for larger buses and 2001 for smaller buses to be fully accessible.

CLOSE HOLD

Document No. ——

WHITE HOUSE STAFFING MEMORANDUM

CC: FORBES

Date: 4/20/98 ACTION / CONCURRENCE / COMMENT DUE BY: ____

Subject: HIGHWAY BILL MEMO

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	✓	McCURRY	☐	☐
BOWLES	☐	✓	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
PODESTA	☐	✓	REED	☐	✓
MATHEWS	☐	✓	RUFF	☐	☐
RAINES	☐	✓	SMITH	☐	☐
BEGALA	☐	✓	SOSNIK	☐	☐
BERGER	☐	☐	SPERLING	☐	✓
BLUMENTHAL	☐	☐	STEIN	☐	✓
ECHAVESTE	☐	☐	STERN	☐	☐
EMANUEL	☐	✓	STREETT	☐	☐
GIBBONS	☐	☐	VERVEER	☐	☐
IBARRA	☐	☐	WALDMAN	☐	☐
KLAIN	☐	✓	YELLEN	☐	✓
LEWIS	☐	☐	JACK LEW	☐	✓
LINDSEY	☐	☐	SALLY KATZEN	☐	✓
MARSHALL	☐	☐	MICHAEL DEICH	☐	✓
			____	☐	☐

REMARKS:

THIS HAS BEEN FORWARDED TO THE PRESIDENT

RESPONSE:

CLOSE HOLD

Staff Secretary's Office
Ext. 62702

THE WHITE HOUSE

WASHINGTON

April 20, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: LARRY STEIN
GENE SPERLING

SUBJECT: ISTEA BILL

I. OVERVIEW

The highway bill now in conference spends approximately $34 billion in outlays over six years above the surface transportation levels proposed in your budget submission. The intent of Congressmen Shuster and Oberstar is to fund that additional highway spending with the mandatory spending cuts proposed in your budget as offsets for your initiatives. If the mandatory offsets are insufficient, as they are likely to be, the Speaker has instructed the conferees to reduce the discretionary spending pot by the amounts needed to offset the rest of the bill. Coupled with the Senate-passed Budget Resolution's exclusive reservation of tobacco proceeds for Medicare Part A, the exorbitant highway funding levels will inevitably exert a crowding out effect on the already constrained pool of domestic discretionary resources.

The ultimate endpoint of the highway process is by no means clear. For example, it is uncertain whether the conference can get a majority of votes for all the offsets proposed in your budget, with the veterans tobacco offset (more than $10 billion over 5 years) presenting particular problems. In addition, the House bill contains approximately 1600 "demonstration" projects portioned out roughly 55% to 45% between Republicans and Democrats. The Senate bill contains none. Finally, the House bill contains provisions putting highway spending off budget, thereby allowing the "trust fund" (paid for with dedicated gas taxes) to finance transportation spending irrespective of budgetary rules or constraints. Any or all of these questions could cause a delay in the conference's progress or lost votes or both. Though it is unlikely that so sought-after a block of funds would be held up for long (especially given that the current extension of existing funding expires on May 1), there is some possibility that the bill will not come out of conference with the overwhelming level of support it had in both bodies--96-4 in the Senate and 337 to 80 in the House.

On the other hand, there is a high probability that the biggest public works bill in a decade will present us with veto proof majorities in both houses at the end of the day. The ISTEA debate in the early '90s devolved into a fight among the various regions of the country and between donor and donee states. During those years, bitter quarrels over distribution resulted in extensions and delays without appropriate modernization of the funding formula. Everyone suffered. The main reason that the bills have moved this year with near unanimity is that the formula fights have been overwhelmed by the sheer volume of cash. Each state has gotten at least 93 cents on the dollar and that fix has been available simply because the massive amount of money made it possible. In short, reducing the overall level of spending could well thrust both bodies back into another bitter formula fight--a situation that neither party will accept. The bottom line is that even if we were able to sustain a veto, you would ultimately be presented with a highway bill that spends very nearly as much money as this one will.

Our problem is both optical and real. The bill will harm our priorities now and in the future. Moreover, there are significant downsides to signing a bill that transparently overspends. On the other hand, one cannot deny the powerful pent up demand for transportation funding reinforced by the argument that the Highway Trust Fund, and its dedicated gas tax, are being used to balance the budget. At the state level, the appetite for this bill is nearly overwhelming. Labor (Building Trades) will be vigorously activated against any attempt to slow it down. And members (Democrats and Republicans) will be incensed at any ascription of "pork" status to their projects, especially if it comes from the Oval Office.

II. KEY ISSUES

1. Squeezed Domestic Discretionary Priorities

The excessive spending in the Congressional bills pose a threat to your priorities. Cuts of the magnitude required to fund these bills out of discretionary would sharply stress virtually every program. If we assume the level of domestic discretionary funding in your budget (a level that is $60 billion in gross dollars above the discretionary caps, which is paid for with mandatory offsets to make room under the caps), the highway bill would require a 2 percent outlay reduction in the other non-defense accounts and up to a 3.9 percent reduction in budget authority for fiscal year '99. Assuming that our offsets are rejected, along with the spending they would support, the highway bill would cut the remaining spending under the caps by roughly half that, 1 percent in outlays and 2 percent in budget authority. Over 5 years, the cut from the level in your budget would be 5.5 percent in outlays and 6.7 percent in budget authority in FY1999. And again, half that 5 year level of cut would apply if the assumed starting point is caps without offsets.

A good public case about the crowding out effect can be made and would have the potential to erode support for the bill. Making a very strong public case along these lines, however, would make it more difficult to sign a bill that is likely to pass with overwhelming support.

2. Mandatory Offsets

To the extent that the effort to lower the excessive highway spending fails, additional highway spending must come out of other discretionary programs as described above, or from mandatory offsets or out of the surplus.

The Senate budget resolution reserves the mandatory offsets from your budget for highways. According to CBO, the Senate list raises $18.5 billion over five years. We obviously proposed these offsets to fund priorities other than highways. For example, your budget uses administrative reforms in the Food Stamp program to fund food stamps for legal immigrants. Authorizing Committees in Congress will not easily let go of savings under their jurisdiction to fund a program, highways, that is outside their jurisdiction. However, the Republican leadership appears committed to reserving these funds for highways.

3. Highway Trust Fund

a. Level of Spending

In addition to the political pressure for a high spending level as described above, proponents will continue to make the case on the Highway Trust Fund -- that this money is raised from a dedicated source, the gas tax, and that it should be spent on its intended purpose. Many will find this argument compelling. We have a case to make in response: Contrary to conventional wisdom, spending from the trust fund has exceeded gas tax receipts over the life of the fund (up until 1996), but particularly in recent history (1980-1995). The current trust fund surplus is largely the result of accumulated compound interest on balances from the late 1960s and 1970s --balances reflecting deliberate federal efforts to control non-defense spending.

They will fight back saying that interest is part of the surplus, just as interest is part of the Social Security trust fund. Even if they concede the past, they might say just give us the gas tax money going forward (this would amount to $19 billion above our budget over FY1999-2003). We would expect that their argument would include past statements you made as Governor in support of the trust fund argument

b. Relationship to Saving Social Security First

The Highway Trust Fund could likely become entangled with our argument on Saving Social Security First. Highway supporters could claim that their high spending levels are consistent with Saving Social Security First pledge -- because money owed from the Highway Trust should not be considered a legitimate part of the surplus.

On the one hand, allowing a self-financed transportation or highway account that was outside the caps could be a way of allowing the Congressionally desired amounts of highway spending without lowering the caps excessively and squeezing out other domestic priorities. On the other hand, many your advisors believe that budget experts will see this as surplus spending and that you could be sharply criticized for breaking a solemn pledge to reserve every penny of the surplus until there was a long-term Social Security fix.

4. Possible Veto

Given the excessive spending in the bill and the threat it poses to your priorities, a veto should be considered. Three veto formulations include:

1) Veto and Sustain -- If we were able to muster a veto sustaining margin in one house, it would give us powerful leverage over the final product. Such a course would have the virtue of putting Democrats on the side of fiscal responsibility and the Republicans on the side of spending tax dollars for pork. The problem is that, given the overwhelming votes, we are unlikely to lock in

with certainty an override-proof margin.

2) Uncertain Veto -- We could veto in absence of having a certain sustaining coalition. This would be risky and, if we lost, the issue of diminished effectiveness would likely be raised.

3) Symbolic Veto -- Your advisors have discussed, and are split, on the wisdom of a symbolic veto -- a veto in which you say you are taking a principled stand for fiscal discipline, while saying that you know you will not prevail. On the one hand, some of your advisors believe that any time a President loses on a veto the President is harmed. Others believe that a principled stand would be positively received as you would be standing up for fiscal discipline and responsibility.

6. Demonstration Projects -- Issue of Pork

The large number of projects in the House bill is an inviting target to elevate in the mind of the public. We could increase our chances of changing votes if we go hard against the explosion of pork projects. The downside of hitting the projects hard is the bitter hostility it would generate on the Hill, on both sides of the aisle. We know from our line item veto experience that this hostility can be quite poisonous.

III. OPTIONS

As should be obvious from the above, no really good course of action presents itself. We have discussed, however, the alternatives presented below:

Option 1:

Take a hard fiscal discipline position: the bill will be vetoed outright because it includes excessive spending. Reject trust fund argument. We would cast the bill as a threat to education, health, the environment and crime reduction, detailing the likely impact on critical programs. We could reinforce the crowding out argument with a moral argument against wasteful spending as illustrated by the outrageous 1600 demonstrations.

Pros:
- Consistent and clear fiscal discipline message.
- Principled position, strong character.
- Consistent with Saving Social Security First.

Cons:
- Veto override defeat likely, draining future power.
- Puts in position of opposing Democrats, calling their projects pork.
- Trust fund argument is compelling on its face.

Option 1a

See if Gephardt, Bonior and Frost could be convinced to help us sustain the veto in the spirit of blowing up the highway bill as they want to blow up other pieces of sensitive legislation. This would increase our leverage, but it is unlikely to be successful.

We have already contacted the AFL to persuade them on the crowding out problem. They in turn have gone to the building trades. Although we are making some progress, it seems unlikely we can overcome the momentum of this bill.

Option 1b

Take a hard fiscal discipline stand, but don't repudiate trust fund argument, and, thereby, leave a possible escape hatch. This option would be similar to Option 1, but we would not go hard at the trust fund argument. While we would not initiate a possible mechanism, the idea would be to leave room for you to sign a bill if they were to come up with some trust fund proposal.

Pros:

- Possible way of getting highway spending without dramatically lowering caps while avoiding allowing them to use your words against your current position.

Cons:

- Would violate Saving Social Security First and could open door to tax cuts.

Option 2:

Take a hard fiscal discipline and squeezing priorities line, but work behind scenes to create a self-financing, on-budget Transportation Fund employing the revenues provided by the gasoline tax and funding surface transportation at levels very close to those in the House and Senate bills. This dedicated fund would be moved outside the discretionary spending caps, and the caps would be lowered only by amounts reflecting surface transportation spending patterns as they were in 1998--before the current highway bill.

Pros:

- Protects your priorities by solving the crowding-out problems by sustaining overall discretionary spending at essentially the levels agreed to in last year's budget.
- Avoids veto override defeat.

Cons:

- As mentioned above, agreeing to anything like this would likely be viewed as violating your Saving Social Security First pledge -- even without our active participation. While trying to engineer an immaculate conception of a self-financing mechanism would lessen the risk, it would be difficult to engineer and would potentially open the door to spending surpluses on tax cuts.
- Republicans may not agree to this because, for at least some of them, a reason to support additional highway spending is precisely to reduce other spending that we support.

Option 3:

Express some reservations about the bill's high level of spending, but sign it, praising it for meeting our unaddressed infrastructure needs in an environmentally sensitive way and with appropriate attention to the various transportation modes.

Pros:

- Avoids veto override defeat.
- Would emphasize the positive wins we did get out of the bill in terms of its mitigation funding, its investments in mass transit, its safety and health priorities and its protection

of the Disadvantage Business Enterprise program.

Cons:

- Priorities will not be protected and will be crowded out.
- This position would be viewed as disingenuous.

Option 4:

An incremental approach -- we would do all we could to improve the bill, then reluctantly sign it, vowing to continue to fight for our priorities in the Appropriations process.

We would continue to issue negative statements about the highway bill and the long-term investment squeeze it creates. Attempt to get OMB and Legislative Affairs as much involved in the conference as possible using veiled veto threats behind the scenes to enhance our leverage in our effort to improve the bill. We would use the intervening time between the Congress's return and the completion of the conference report to explain the budgetary consequences of the squeeze and make it clear that the whole process is heading towards a show-down about education on the Labor, Health and Human Services Bill and about the environment on the Veterans, HUD, Independent Agencies Bill this fall.

This is an incremental, realistic approach. Though there is relatively little room here for alleviating the cap compression, there is at least some hope that we might hold the spending level down.

Pros:

- Allows us room to shape each appropriations bill within the context of a strong education and environment communications strategy.
- Allows us to recognize the probability that events will change the entire context of budgeting in the near future. There is no certainty that the discretionary caps will stay where they are. New possibilities could emerge as well in the future debates about Social Security and Medicare.
- This final approach does the most to preserve positive relations with our friends in Congress. Certainly, a veto will alienate them. Incrementalism averts that. But in addition, the almost inevitable battles on appropriations bills in the fall generated by this option should please those Democrats who are seeking principled fights with the Republicans in an election year.

Cons:

- The outcome on the final spending on our priorities is unlikely to be satisfying.
- Open to criticism that you did not stand up for fiscal discipline.

April 14, 1998

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MEMORANDUM FOR THE PRESIDENT

FROM: LARRY STEIN
GENE SPERLING

SUBJECT: ISTEA BILL

The highway bill now in conference spends approximately $33.4 billion in outlays above the surface transportation levels proposed in your budget submission. The intent of Congressmen Shuster and Oberstar is to fund that additional highway spending with the mandatory spending cuts proposed in your budget as offsets for your initiatives. If the mandatory offsets are insufficient, as they are likely to be, the Speaker has instructed the conferees to reduce the discretionary spending pot by the amounts needed to offset the rest of the bill. Coupled with the Senate-passed Budget Resolution's exclusive reservation of tobacco proceeds for Medicare Part A, the exorbitant highway funding levels will inevitably exert a crowding out effect on the already constrained pool of domestic discretionary resources.

If we assume the level of domestic discretionary funding in your budget (a level that is $60 billion in gross dollars above the discretionary caps), the highway bill would require a 2 percent outlay reduction in the other non-defense accounts and up to a 3.9 percent reduction in budget authority for fiscal year '99. Assuming the caps themselves as a point of reference, the '99 cut would be roughly half that, 1 percent in outlays and 2 percent in budget authority. Over 5 years, the cut from the level in your budget would be 5.5 percent in outlays and 6.7 percent in budget authority. And again, half that 5 year level of cut would apply if the assumed starting point is the existing caps.

The ultimate endpoint of the highway process is by no means clear. For example, it is uncertain whether the conference can get a majority of votes for all the offsets proposed in your budget, with the veterans tobacco offset (more than $10 billion over 5 years) presenting particular problems. In addition, the House bill contains approximately 1600 "demonstration" projects portioned out roughly 55% to 45% between Republicans and Democrats. The Senate bill contains none. Finally, the House bill contains provisions putting highway spending off budget, thereby allowing the "trust fund" (paid for with dedicated gas taxes) to finance transportation spending irrespective of budgetary rules or constraints. Any or all of these questions could cause a delay in the conference's progress or lost votes or both. Though it is unlikely that so sought-after a block of funds would be held up for long (especially given that the current extension of existing funding expires on May 1), there is some possibility that the bill will not come out of conference with the overwhelming level of support it had in both bodies--

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96-4 in the Senate and 337 to 80 in the House.

On the other hand, there is a high probability that the biggest public works bill in a decade will present us with veto proof majorities in both houses at the end of the day. The ISTEA debate in the early '90s devolved into a fight among the various regions of the country and between donor and donee states. During those years, bitter quarrels over distribution resulted in extensions and delays without appropriate modernization of the funding formula. Everyone suffered. The main reason that the bills have moved this year with near unanimity is that the formula fights have been overwhelmed by the sheer volume of cash. Each state has gotten at least 93 cents on the dollar and that fix has been available simply because the massive amount of money made it possible. In short, reducing the overall level of spending could well thrust both bodies back into another bitter formula fight--a situation that neither party will accept. The bottom line is that even if we were able to sustain a veto, you would ultimately be presented with a highway bill that spends very nearly as much money as this one will.

None of this reduces the threat posed by the bill to your priorities. Cuts of the magnitude described above will sharply stress virtually every discretionary account. A good public case about the crowding out effect can be made and would have the potential to erode support for the bill. In addition, the demonstration projects subject members of both bodies to charges of waste, greed and fiscal irresponsibility. That such charges would be easily made and resentfully received is a gross understatement.

Our problem is both optical and real. The bill will harm our priorities now and in the future. Moreover, there are significant downsides to signing a bill that transparently overspends. On the other hand, one cannot deny the powerful pent up demand for transportation funding reinforced by the argument that the Highway Trust Fund, and its dedicated gas tax, are being misused. At the state level, the appetite for this bill is nearly overwhelming. Labor (Building Trades) will be vigorously activated against any attempt to slow it down. And members (Democrats and Republicans) will be incensed at any ascription of "pork" status to their projects, especially if it comes from the Oval Office.

Options:

As should be obvious from the above, no really good course of action presents itself. We have discussed, however, the five alternatives presented below:

1. Veto the bill outright casting it as excessive spending that threatens education, health, the environment and crime reduction. Fight to sustain the veto in the House.

This option is the most straightforward expression of our actual views and would be the most satisfying choice. It runs headlong into the powerful "trust fund" argument--the contention that the gas tax is collected to build roads and should be allocated only to build roads. It would result, almost certainly, in an override unless we choose to reinforce the crowding out argument with a moral argument against wasteful spending as illustrated by the outrageous 1600 demonstrations. This last is a charge that would build powerful hostility in the House. All

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members, most of whom have already put out their releases taking credit for at least one project, would see attacks on the demos as direct assaults on their integrity.

1A. A variant on #1. See if Gephardt, Bonior and Frost would help us sustain the veto in the spirit of blowing up the highway bill as they want to blow up other pieces of sensitive legislation.

This option casts the Republicans as fiscal hypocrites and charges them with intentionally trying to defund the necessary functions of government. It has the virtue of putting Democrats on the side of fiscal responsibility and the Republicans on the side of spending tax dollars for pork. The only problem with it is that Gephardt and Bonior have their projects in the bill. Moreover, they are both being swayed by Labor, and neither presently wants to stand in the way of this train.

2. Express some reservations about the bill's high level of spending, but sign it, praising it for meeting our unaddressed infrastructure needs in an environmentally sensitive way and with appropriate attention to the various transportation modes.

This option would emphasize the positive wins we did get out of the bill in terms of its mitigation funding, its investments in mass transit, its safety and health priorities and its protection of the Disadvantage Business Enterprise program. Such an approach would remain silent about the out-year squeeze we would suffer, however, and would appear to ignore disingenuously the huge block of demonstration projects. It would clearly subject us to charges of fiscal irresponsibility after you have been very successful in establishing the opposite.

3. Veto the bill as an expression of fiscal responsibility and in opposition to spending education dollars on highways, but state the veto as a fiscal protest rather than as an actual effort to defeat an over-ride.

This could be turned into a substantial public success. It would be a powerful expression of opposition to waste and would be interpreted (given that Shuster is a nearly perfect foil) as a vote against business as usual in Washington. The potential downside is that a "symbolic" veto could also be interpreted as an expression of ineffectuality. Charges of failing to back up talk with action could follow from the press. Moreover, this strategy only deals with the optics of the issue and does nothing to alleviate the crowding out of discretionary dollars by highways.

4. Create a self-financing, on-budget Transportation Fund employing the revenues provided by the gasoline tax and funding surface transportation at levels very close to those in the House and Senate bills. This dedicated fund would be moved outside the discretionary spending caps, and the caps would be lowered only by amounts reflecting surface transportation spending patterns as they were in 1998--before the current highway bill.

This approach would solve our crowding-out problems by sustaining overall discretionary spending at essentially the levels agreed to in last year's budget. Any growth in highways would be funded outside the caps. It would be justified on the highly credible ground that the gas tax is collected to fund surface transportation and ought to be used to fund surface transportation. In addition, you have already proposed a Transportation Fund in your budget submission, and an

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"off-budget" fund of this type is already included in the House version of the bill.

On the other hand, the spending over the amount of the cap reduction would not be offset and would therefore come out of the surplus. Since your powerful fiscal discipline profile is based in some measure on your stand against spending any of the surplus until Social Security is reformed, this option opens obvious vulnerabilities. Although we could attempt to encourage this outcome without our own active involvement, there is always the danger that it could be attributed to you. Such an immaculate conception would be difficult to engineer and would potentially open the door to spending surpluses on tax cuts.

5. Continue to issue negative statements about the highway bill and the long-term investment squeeze it creates, attempt to get OMB and Legislative Affairs as much involved in the conference as possible using veiled veto threats behind the scenes to enhance our leverage. Our objective would be actually try to improve the bill. Use the intervening time between the Congress's return and the completion of the conference report to explain the budgetary consequences of the squeeze and make it clear that the whole process will culminate in a show-down about education on the Labor, Health and Human Services Bill and about the environment on the Veterans, HUD, Independent Agencies Bill this fall.

This is the incremental, realistic approach. Though there is relatively little room here for alleviating the cap compression, there is at least some hope that we might hold the spending level down. Moreover, this option allows us room to shape each appropriations bill within the context of a strong education and environment communications strategy. In addition, this option allows us to recognize the probability that events will change the entire context of budgeting in the near future. There is no certainty that the discretionary caps will stay where they are. New possibilities could emerge as well in the future debates about Social Security and Medicare.

Finally, this final approach does the most to preserve positive relations with our friends in Congress. Certainly, a veto will alienate them. Incrementalism averts that. But in addition, the almost inevitable battles on appropriations bills in the fall generated by this option should please those Democrats who are seeking principled fights with the Republicans in an election year.

Recommendation:

There is a slight chance that events, and the difficulty of constructing a paid-for bill, may allow us to pursue option 1A--Gephard helping us with a veto and thereby pinning the irresponsible highway bill on Republicans. The pressence of member projects is the target here, but because House Democrats have their projects too, this alternative is not highly likely to materialize. In the absence of this possibility, the majority of your advisors favor option #5, with the caveat that we should preserve our option to supplement it with the symbolic veto outlined in option #3. The two are consistent.

NEW DRAFT

April 13, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: LARRY STEIN

SUBJECT: ISTEA BILL

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On the other hand, there is little question that the biggest public works bill in a decade

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will present us with veto proof majorities at the end of the day. The ISTEA debate in the early '90s devolved into a fight among the various regions of the country and between donor and donee states. During those years, bitter quarrels over distribution resulted in extensions and delays without appropriate modernization of the funding formula. Everyone suffered. The main reason that the bills have moved this year with near unanimity is that the formula fights have been overwhelmed by the sheer volume of cash. Each state has gotten at least 93 cents on the dollar and that fix has been available simply because the massive amount of money made it possible. In short, reducing the overall level of spending could well thrust both bodies back into another bitter formula fight--a situation that neither party will accept. The bottom line is that even if we were able to sustain a veto, you would ultimately be presented with a highway bill that spends very nearly as much money as this one does.

None of this reduces the threat posed by the bill to your priorities. Cuts of the magnitude described above will sharply stress virtually every discretionary account. A good public case about the crowding out effect can be made and would have the potential to erode support for the bill. In addition, the demonstration projects subject members of both bodies to charges of waste, greed and fiscal irresponsibility. That such charges would be easily made and resentfully received is a gross understatement.

Our problem is both optical and real. The bill will harm our priorities now and in the future. Moreover, there are significant downsides to signing a bill that transparently overspends. On the other hand, one cannot deny the powerful pent up demand for transportation funding. At the state level, the appetite for this bill is nearly overwhelming. Labor (Building Trades) will be vigorously activated against any attempt to slow it down. And members (Democrats and Republicans) will be incensed at any ascription of "pork" status to their projects, especially if it comes from the Oval Office. As should be obvious from the above, no really good course of action presents itself. We have discussed, however, the four alternatives presented below:

1. Veto the bill outright casting it as excessive spending that threatens education, health, the environment and crime reduction. Fight to sustain the veto in the House.

This option is the most straightforward expression of our actual views and would be the most satisfying choice. It runs headlong into the powerful "trust fund" argument--the contention that the gas tax is collected to build roads and should be allocated only to build roads. It would result, almost certainly, in an override unless we choose to reinforce the crowding out argument with a moral argument against wasteful spending as illustrated by the outrageous 1600 demonstrations. This last is a charge would build powerful hostility in the House. All members, most of whom have already put out their releases taking credit for at least one project, would see attacks on the demos as direct assaults on their integrity.

1A. A variant on #1. See if Gephardt, Bonior and Frost would help us sustain the veto in the spirit of blowing up the highway bill as they want to blow up other pieces of sensitive legislation.

This option casts the Republicans as fiscal hypocrites and charges them with intentionally trying to defund the necessary functions of government. It has the virtue of putting Democrats on the

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side of fiscal responsibility and the Republicans on the side of protecting waste. The only problem with it is that Gephardt and Bonior have their projects in the bill, both are likely to be swayed by Labor, and neither presently wants to stand in the way of this train.

2. Express some reservations about the bill's high level of spending, but sign it, praising it for meeting our unaddressed infrastructure needs in an environmentally sensitive way and with appropriate attention to the various transportation modes.

This option would take advantage of adversity by emphasizing the positive wins we did get out of the bill in terms of its mitigation funding, its investments in mass transit, its safety and health priorities and its protection of the Disadvantage Business Enterprise program. Such an approach would remain essentially silent about the out-year squeeze, however, and would appear to ignore disingenuously the huge block of demonstration projects.

3. Veto the bill as an expression of fiscal responsibility and in opposition to spending education dollars on highways, but state the veto as a fiscal protest rather than as an actual effort to defeat an over-ride.

This could be turned into a public success. It would be a powerful expression of opposition to prodigality and would be interpreted, given that Shuster is a nearly perfect foil, as a vote against business as usual in Washington. The potential downside is that a "symbolic" veto could also be interpreted as an expression of ineffectuality. Charges of failing to back up talk with action could follow from the press. Moreover, this strategy only deals with the optics of the issue and does nothing to alleviate the crowding out of discretionary dollars by highways.

4. Create a self-financing, on-budget Transportation Fund employing the revenues provided by the gasoline tax and funding surface transportation at levels very close to those in the House and Senate bills. This dedicated fund would be moved outside the discretionary spending caps, and the caps would be lowered only by amounts reflecting surface transportation spending patterns as they were in 1998--before the current highway bill.

This approach would solve our crowding-out problems by sustaining overall discretionary spending at essentially the levels agreed to in last year's budget. Any growth in highways would be funded outside the caps. It would be justified on the highly credible ground that the gas tax is collected to fund surface transportation and ought to be used to fund surface transportation. In addition, you have already proposed a Transportation Fund in your budget submission, and an "off-budget" fund of this type is already included in the House version of the bill.

On the other hand, the spending over the amount of the cap reduction would not be offset and would therefore come out of the surplus. Since your powerful fiscal discipline profile is based in some measure on your stand against spending any of the surplus until Social Security is reformed, this option opens obvious vulnerabilities. Although we could attempt to encourage this outcome without our own active involvement, there is always the danger that it could be attributed to you. Such an immaculate conception would be difficult to engineer and would potentially open the door to spending surpluses on tax cuts.

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5. Continue to issue negative statements about the highway bill and the long-term investment squeeze it creates, attempt to get OMB and Legislative Affairs as much involved in the conference as possible using veiled veto threats behind the scenes to enhance our leverage, and actually try to improve the bill. Use the intervening time to explain the actual budgetary consequences of the squeeze and make it clear that the whole process will culminate in a show-down about education on the Labor, Health and Human Services Bill and about the environment on the Veterans, HUD, Independent Agencies Bill this fall.

This is the incremental, realistic approach. Though there is relatively little room here for alleviating the cap compression, there is at least some hope that we might hold the spending level down. Moreover, this option allows us room to shape each appropriations bill within the context of a strong education and environment communications strategy. In addition, this option allows us to recognize the probability that events will change the entire context of budgeting in the near future. There is no certainty that the discretionary caps will stay where they are. New possibilities could emerge in the future debates about Social Security and Medicare.

Finally, this final approach does the most to preserve positive relations with our friends in Congress. Certainly, a veto will alienate them. Incrementalism averts that. But in addition, the almost inevitable fights on appropriations bills in the fall generated by this option should please those Democrats who are seeking principled fights with the Republicans in an election year.

The majority of your advisors seems to favor option #4, with the caveat that we should preserve our option to supplement it with the symbolic veto outlined in option #3. The two are consistent.

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April 10, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: LARRY STEIN

SUBJECT: ISTEA BILL

The highway bill now in conference spends approximately $33.4 billion in outlays above the transportation levels proposed in your budget submission. The intent of Congressmen Shuster and Oberstar is to fund that additional highway spending with the mandatory spending cuts proposed in your budget as offsets for your initiatives. Coupled with the Senate-passed Budget Resolution's exclusive reservation of tobacco proceeds for Medicare Part A, the exorbitant highway funding levels will almost inevitably exert a crowding out effect on the already constrained pot of domestic discretionary resources.

If we assume the level of domestic discretionary funding in your budget (a level that is $60 billion in gross dollars above the discretionary caps), the highway bill would require a 2 percent outlay reduction in the other non-defense accounts and up to a 3.9 percent reduction in budget authority for fiscal year '99. Assuming the caps themselves as a point of reference, the '99 cut would be roughly half that, 1 percent in outlays and 2 percent in budget authority. Over 5 years, the cut from the level in your budget would be 5.5 percent in outlays and 6.7 percent in budget authority. And again, half that 5 year level of cut would apply if the assumed starting point is the existing caps.

The ultimate endpoint of the highway process is by no means clear. For example, it is uncertain whether the conference can get a majority of votes for all the offsets proposed in your budget, with the veterans tobacco offset (more than $10 billion over 5 years) presenting particular problems. In addition, the House bill contains approximately 1600 "demonstration" projects portioned out roughly 55% to 45% between Republicans and Democrats. The Senate bill contains none. Finally, the House bill contains provisions putting highway spending off budget, thereby allowing the "trust fund" (paid for with dedicated gas taxes) to finance transportation spending irrespective of budgetary rules or constraints. Any or all of these questions could cause a delay in the conference's progress or lost votes or both. Though it is unlikely that so sought-after a block of funds would be held up for long (especially given that the current extension of existing funding expires on May 1), there is some possibility that the bill will not come out of conference with the overwhelming level of support it had in both bodies--96-4 in the Senate and 337 to 80 in the House.

On the other hand, there is little question that the biggest public works bill in a decade

DRAFT

will present us with veto proof majorities at the end of the day. The ISTEA debate in the early '90s devolved into a fight among the various regions of the country and between donor and donee states. During those years, bitter quarrels over distribution resulted in extensions and delays without appropriate modernization of the funding formula. Everyone suffered. The main reason that the bills have moved this year with near unanimity is that the formula fights have been overwhelmed by the sheer volume of cash. Each state has gotten at least 93 cents on the dollar and that fix has been available simply because the massive amount of money made it possible. In short, reducing the overall level of spending could well thrust both bodies back into another bitter formula fight--a situation that neither party will accept. The bottom line is that even if we were able to sustain a veto, you would ultimately be presented with a highway bill that spends very nearly as much money as this one does.

None of this reduces the threat posed by the bill to your priorities. Cuts of the magnitude described above will sharply stress virtually every discretionary account. A good public case about the crowding out effect can be made and would have the potential to erode support for the bill. In addition, the demonstration projects subject members of both bodies to charges of waste, greed and fiscal irresponsibility. That such charges would be easily made and resentfully received is a gross understatement.

Our problem is both optical and real. The bill will harm our priorities now and in the future. Moreover, there are significant downsides to signing a bill that transparently overspends. On the other hand, one cannot deny the powerful pent up demand for transportation funding. At the state level, the appetite for this bill is nearly overwhelming. Labor (Building Trades) will be vigorously activated against any attempt to slow it down. And members (Democrats and Republicans) will be incensed at any ascription of "pork" status to their projects, especially if it comes from the Oval Office. As should be obvious from the above, no really good course of action presents itself. We have discussed, however, the four alternatives presented below:

1. Veto the bill outright casting it as excessive spending that threatens education, health, the environment and crime reduction. Fight to sustain the veto in the House.

This option is the most straightforward expression of our actual views and would be the most satisfying choice. It runs headlong into the powerful "trust fund" argument--the contention that the gas tax is collected to build roads and should be allocated only to build roads. It would result, almost certainly, in an override unless we choose to reinforce the crowding out argument with a moral argument against wasteful spending as illustrated by the outrageous 1600 demonstrations. This last is a charge would build powerful hostility in the House. All members, most of whom have already put out their releases taking credit for at least one project, would see attacks on the demos as direct assaults on their integrity.

1A. A variant on #1. See if Gephardt, Bonior and Frost would help us sustain the veto in the spirit of blowing up the highway bill as they want to blow up other pieces of sensitive legislation.

This option casts the Republicans as fiscal hypocrites and charges them with intentionally trying to defund the necessary functions of government. It has the virtue of putting Democrats on the

DRAFT

side of fiscal responsibility and the Republicans on the side of protecting waste. The only problem with it is that Gephardt and Bonior have their projects in the bill, both are likely to be swayed by Labor, and neither presently wants to stand in the way of this train.

2. Express some reservations about the bill's high level of spending, but sign it, praising it for meeting our unaddressed infrastructure needs in an environmentally sensitive way and with appropriate attention to the various transportation modes.

This option would take advantage of adversity by emphasizing the positive wins we did get out of the bill in terms of its mitigation funding, its investments in mass transit, its safety and health priorities and its protection of the Disadvantage Business Enterprise program. Such an approach would remain essentially silent about the out-year squeeze, however, and would appear to ignore disingenuously the huge block of demonstration projects.

3. Veto the bill as an expression of fiscal responsibility and in opposition to spending education dollars on highways, but state the veto as a fiscal protest rather than as an actual effort to defeat an over-ride.

This could be turned into a public success. It would be a powerful expression of opposition to prodigality and would be interpreted, given that Shuster is a nearly perfect foil, as a vote against business as usual in Washington. The potential downside is that a "symbolic" veto could also be interpreted as an expression of ineffectuality. Charges of failing to back up talk with action could follow from the press. Moreover, this strategy only deals with the optics of the issue and does nothing to alleviate the crowding out of discretionary dollars by highways.

4. Continue to issue negative statements about the highway bill and the long-term investment squeeze it creates, attempt to get OMB and Legislative Affairs as much involved in the conference as possible using veiled veto threats behind the scenes to enhance our leverage, and actually try to improve the bill. Use the intervening time to explain the actual budgetary consequences of the squeeze and make it clear that the whole process will culminate in a show-down about education on the Labor, Health and Human Services Bill and about the environment on the Veterans, HUD, Independent Agencies Bill this fall.

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