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ISTEA [Intermodal Surface Transportation Efficiency Act]

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NATIONAL GOVERNORS' ASSOCIATION

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March 30, 1998

CC: EK
CR
CD
Chris J.
Josh G.

The Honorable John McCain, Chair
Senate Commerce, Science, and Transportation Committee
241 Russell Senate Office Building
Washington, DC 20510

Dear Senator McCain:

The Senate Commerce, Science, and Transportation Committee will soon begin to mark up one of the most important bills Congress will consider this year -- comprehensive tobacco settlement legislation. Given the vital role you and your committee will play in determining the fate of tobacco legislation in the Senate, the nation's Governors want to make you aware of the states' priorities and concerns as you prepare to move forward. It is critical that Governors and your committee work together closely and engage in an ongoing dialogue as mark up begins and the bill moves through the legislative process.

The states' interest in taking action to reduce youth smoking is longstanding. The national debate over tobacco settlement legislation was made possible by years of state effort and leadership. In 1994 the first broad lawsuits were filed by states against the tobacco industry based on claims including consumer protection, fraud, racketeering, antitrust violations, and health care costs. Since that time, forty-one states and territories have filed their own lawsuits to reduce youth smoking, secure public disclosure of tobacco documents, and recoup health care costs, among other goals. Medicaid represents only a portion of the state suits, in some states only a small portion.

Because the state lawsuits made a national settlement possible, the states must be full partners in drafting settlement legislation. The ultimate success of a nationwide effort to reduce youth smoking will depend on state implementation, so states must be involved in designing programs that will work.

Programmatic reforms will be at the center of any tobacco settlement. The Governors are committed to reducing youth smoking and restricting young people's access to tobacco products. We recognize that Congress will likely adopt the Food and Drug Administration's (FDA) recommendations related to nationwide access standards, but the states should be given flexibility to design and implement the most effective means of enforcing those standards. States must be involved in setting targets so that these goals are not arbitrary and can be achieved through aggressive implementation of the reforms set forth in the bill. Retail licensing should remain a state responsibility, and penalties for violations should be state designed. Efforts to reduce exposure to environmental smoke should be undertaken at the state and local levels. Any bill under consideration must address the needs of tobacco farmers and their communities and the need for a tobacco program.

In addition to these programmatic priorities, the distribution of settlement funds will also be an issue of considerable importance to the nation's Governors. The Governors strongly believe that settlement funds fall into two basic categories: direct payments to states and federal settlement funds. If legislation is intended to resolve the state lawsuits against the industry, a significant portion of any tobacco settlement funds must go to the states. We are not arguing that states should receive all of the funds flowing from national legislation, but they should receive a portion of the total that reflects state leadership in bringing about a settlement. This state portion must be a distinct and protected core of the final package, and states should not be restricted in the use of these funds. The federal government should receive a separate pool of funds to finance its prioritized investments.

The Governors strongly oppose federal recoupment of state tobacco settlement funds. However, some in Congress and the administration consider a portion of the state share of settlement funds to be vulnerable to federal recoupment as Medicaid overpayments. To resolve this issue and keep the disputed funds in the states, the Governors would be willing to agree to use that percentage of state settlement funds potentially vulnerable to recoupment for health, education, and welfare programs.

K

Legislation currently being developed by Senators John Chafee (R-R.I.), Bob Graham (D-Fla.), and Tom Harkin (D-Iowa) includes a state payment section that successfully addresses Governors' priorities related to settlement funds. Their bill includes a number of important elements. First, the federal government is precluded from recouping funds through the Medicaid program. Second, states are guaranteed an amount similar to that negotiated by the state attorneys general in the original agreement. Third, states will receive both an unrestricted pool of funds and a separate, directed pool to be used to prevent youth smoking and to improve the health, education, and welfare of our citizens. The Governors support the state payment mechanism set forth in the Chafee/Graham/Harkin legislation and encourage you to incorporate it into your bill.

Absent passage of comprehensive legislation settling state lawsuits, it will be critical to the states that a more targeted tobacco package include clarification that funds negotiated by the states to resolve their individual lawsuits are not vulnerable to seizure by the federal government. State lawsuits were developed and pursued without federal assistance. The Governors will strongly oppose efforts by the federal government to stretch current law to take from the states what could amount to more than half of some states' settlement awards.

An analysis of how federal legislation addresses our programmatic and financial concerns will help Governors determine whether we counsel our attorneys general to sign consent decrees resolving state lawsuits or whether instead states would be better served by pursuing their individual lawsuits against the industry. National legislation must not reduce states to afterthoughts in the process we initiated.

We appreciate your consideration of our perspective. If we can provide you with additional information, please contact the National Governors' Association.

Sincerely,

George V. Voinovich

Governor George V. Voinovich
Chairman

Tom Carper

Governor Thomas R. Carper
Vice Chairman

Governor Tony Knowles
State of Alaska

Governor Roy Romer
State of Colorado

Governor John G. Rowland
State of Connecticut

Governor Lawton Chiles
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State of Maryland

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State of Massachusetts

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State of Michigan

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State of Montana

Governor E. Benjamin Nelson
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State of Nevada

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State of New York

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State of North Dakota

Governor Frank Keating
State of Oklahoma

Governor John A. Kitzhaber
State of Oregon

Governor Tom Ridge
State of Pennsylvania

Governor Pedro Rosselló
Territory Puerto Rico

Governor Lincoln Almond
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State of Wyoming

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State of Tennessee

Governor James B. Hunt
State of North Carolina

Governor Michael O. Leavitt
State of Utah

Governor Howard Dean, M.D.
State of Vermont

Governor Cecil H. Underwood
State of West Virginia

Governor Tommy G. Thompson
State of Wisconsin

Bill H.

FAX COVER SHEET

Number of pages: **5**
(excluding cover sheet)

Date: **5-12-98**

TO: **SAP DISTRIBUTION LIST**

FROM: **OMB LEGISLATIVE AFFAIRS**
Phone: 395-4790

SUBJECT OF SAP:

Director Raines ISTEA Conferees Letter

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

ISTEA REAUTHORIZATION

May 5, 1998

Core principles. Final legislation must be consistent with the following principles:

- The projected budget surplus shall not be used to pay for the legislation.
- Spending shall be offset fully, without lowering the cap on other discretionary spending.
- After a phase-in period, total budget resources spent each year should equal total receipts to the Highway Trust Fund (HTF).
- Spending levels in the legislation shall be sustainable after the end of the authorization period.

Aggregate Funding. Any agreement reached on funding issues is contingent on agreement regarding policy issues.

- Aggregate budgetary resources (obligation limitations plus any budget authority not subject to limitation) will total $218.9 billion over the period 1998-2004.

- A new budget mechanism will provide, after an appropriate phase-in period, negotiated assurances that all receipts to the HTF will be obligated. Total budgetary resources in each year will equal estimated *prior year* receipts (as in the Chafee-Bond proposal) in order to provide States with certainty about spending levels.

- Assured spending will be distributed between highway spending and transit spending in the same proportions as total authorizations are distributed between highways and transit in the Senate bill. Within the total for highways, highway safety will be funded at the authorization levels contained in the Administration's NEXTEA proposal. This offer assumes that no demonstration projects are funded. If any demonstration projects are included in final legislation, they will need to be funded within the total for highways.

- Balances in the Highway Account of the HTF, except those amounts needed to pay for prior year spending, will be transferred to the General Fund. The Highway Trust Fund will not collect interest.

- In 1999 and 2000, total funding would equal the levels in the President's Budget; in 2001, total funding would equal 97 percent of total HTF receipts; in 2002 and beyond, total funding would equal 100 percent of total HTF receipts:

(In billions of dollars)

	1998	1999	2000	2001	2002	2003	2004	Total
Prior-Year Receipts[1/]	23.9	32.3	32.4	33.2	33.8	34.4	35.1	225.2
Total								
Budget resources	28.0	27.8	27.7	32.1	33.8	34.4	35.1	218.9
Outlays	26.5	27.3	27.7	28.7	30.8	32.5	33.5	206.9
Hwy Funding								
BR	*23.1*	*23.0*	*22.9*	*26.0*	*27.4*	*27.9*	*28.4*	*178.8*
OL	*22.3*	*23.4*	*23.4*	*24.1*	*25.6*	*26.7*	*27.4*	*173.1*
Transit Funding								
BR	*4.8*	*4.8*	*4.8*	*6.1*	*6.4*	*6.5*	*6.7*	*40.1*
OL	*4.2*	*3.9*	*4.3*	*4.6*	*5.1*	*5.7*	*6.0*	*33.8*

1/ Receipts have been normalized to eliminate the '97 TRA one-time shift of deposits between '98 and '99.

- All outlays above those called for in the President's Budget will be offset fully under CBO scoring by implementing, as part of the reauthorization, the "VA tobacco" proposal contained in the President's Budget. Outlays savings associated with the VA tobacco offset, *net of funds needed for the President's GI Bill initiative*, are as follows:

(In billions of dollars)

	1998	1999	2000	2001	2002	2003	2004	Total
OMB scoring	n.a.	-0.7	-1.2	-2.1	-6.0	-6.0	-6.0	-21.8
CBO scoring	n.a.	-0.4	-0.8	-1.7	-2.6	-3.6	-4.6	-13.5