

Executive Summary Backgrounder

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Chairman Oberstar's Transportation Plan: A Costly Exercise in Social Engineering

Ronald D. Utt, Ph.D.

In June 2009, Representative James Oberstar (D-MN), chairman of the House Committee on Transportation and Infrastructure, introduced the Surface Transportation Authorization Act (STAA), a 775-page bill to reauthorize federal highway and transit programs for another six years. However, STAA would also dramatically change federal transportation policy by:

- Shifting resources from cars to trolleys and buses;
- Requiring a huge tax increase to fund these new commitments;
- Centralizing transportation decisions in Washington;
- Requiring a substantial increase in the numbers of state, local, and federal government employees; and
- Discouraging the private sector from investing in surface transportation projects.

As if this were not enough of an intrusion into Americans' lives, many of the harmful transportation and land-use proposals in STAA are also in the Senate's cap-and-trade bill (S. 1733) and Livable Communities Act of 2009 (S. 1619).

The Surface Transportation Bill. As written, the chief purpose of many provisions of STAA is to deter the use of automobiles and force residential and commercial development into higher-density urban communities where public transit, walking, and bicycling would be the primary forms of transportation. To accomplish this, Mr. Oberstar's bill

would encourage and require states and metropolitan planning organizations to use new land-use regulations that would lead to much higher population densities than Americans now prefer.

To fund these new commitments and lifestyle changes, STAA would require an additional \$150 billion to \$200 billion in taxes over the next six years. Such an increase would be equivalent to a 112 percent increase in the federal fuel tax. In addition, STAA would require an unspecified increase in other federal taxes to fund a new \$50 billion higher-speed rail scheme.

A major thrust of these bills is reducing greenhouse gas emissions, reinforced by the mistaken belief that—despite all of the evidence to the contrary—this can be accomplished by rearranging existing living and travel patterns. Given the evidence on fuel efficiency and greenhouse gas emissions from the different modes of travel, neither STAA, S. 1733, nor S. 1619 would significantly help the nation or the environment. Instead, in the process of failing, all would impose great costs and inconveniences on American citizens and businesses. For this reason, these bills should be with-

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drawn from consideration or substantially modified so that they would actually benefit the nation.

The Obama Administration and the Senate have proposed delaying passage of this bill for 18 months, but the requested delay has more to do with legislative congestion and the Administration's delays in developing its own "livability" program than any dissatisfaction with the draft bill. Indeed, Oberstar's intention to use the federal government to engineer change in American lifestyles is consistent with goals embraced by U.S. Secretary of Transportation Ray LaHood. In recent months, Mr. LaHood has announced his intention to "coerce" Americans out of their cars and has defined "livability" as "being able to take your kids to school, go to work, see a doctor, drop by the grocery or post office, go out to dinner and a movie, and play with your kids in the park, all without *having* to get into your car."

A Lesson from Britain. In enacting this or similar legislation, the U.S. would be following the sorry land-use and development policies that the United Kingdom embraced in 1947 by enacting the Town and Country Planning Act. Designed to preserve the rustic nature and charm of Britain's countryside, the act empowered the national government to use laws and regulations to concentrate most housing and commercial development in existing urban centers. As a result, the United Kingdom today has the smallest and most expensive

homes of any advanced country. So severe is the problem that British politicians are now promising to change the policy and create incentives to build more and better housing.

Conclusion. In the past several highway reauthorization bills, Congress has demonstrated more interest in spending money on influential constituencies than in relieving congestion and promoting cost-effective mobility. STAA combines this predilection to spend with the goal of substantially altering lifestyles through regulations, subsidies, and penalties to crowd development, create higher population densities, and compel people to use public transit. As STAA now stands, rather than spend the next six months negotiating the terms of their surrender, fiscal conservatives might better devote their energy to ending the federal highway program and turning it and the associated federal fuel tax revenues back to the states.

In the meantime, fiscal conservatives and proponents of an improved transportation program should support the President's request for an 18-month extension, both because the delay would give them opportunities to expose the massive flaws in STAA and because the 2010 elections might produce a more responsible Congress that would write a better bill.

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Background

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Chairman Oberstar's Transportation Plan: A Costly Exercise in Social Engineering

Ronald D. Utt, Ph.D.

Abstract: *The Surface Transportation Authorization Act as currently written would dramatically change federal transportation policy. It would shift transportation funding from cars to mass transit and centralize decision-making in Washington, D.C., at the expense of state and local government authority. Funding and running the many new transportation programs would require massive tax increases and substantial increases in the number of federal, state, and local government employees. Finally, STAA could undermine the basic property rights of Americans.*

In June 2009, Representative James Oberstar (D-MN), chairman of the House Committee on Transportation and Infrastructure, introduced the Surface Transportation Authorization Act (STAA), a 775-page bill to reauthorize federal highway and transit programs for another six years.¹ However, STAA would also dramatically change federal transportation policy by:

- Shifting resources from cars to trolleys and buses;
- Requiring a huge tax increase to fund these new commitments;
- Centralizing transportation decisions in Washington;
- Requiring a substantial increase in the numbers of state, local, and federal government employees; and
- Discouraging the private sector from investing in surface transportation projects.

SAFETEA-LU,² the previous surface transportation reauthorization, expired on September 30, 2009,

Talking Points

- Chairman James Oberstar's proposed transportation reauthorization bill (STAA) would significantly increase social engineering by requiring the federal government to influence where people live and how they travel.
- STAA would shift more federal spending away from the motorists who fund the system to transit riders that are already heavily subsidized.
- Funding the new commitments under STAA would require the equivalent of a 112 percent increase in the federal gas tax.
- Administering STAA's Washington-centric requirements would necessitate a substantial increase in the number of federal, state, and local employees.
- STAA would strongly discourage the private sector from investing in surface transportation projects.
- Fiscal conservatives and proponents of an improved transportation program should support the President's request for an 18-month extension of the current transportation law because the delay will give them opportunities to expose the massive flaws in STAA.

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but has been temporarily extended until a new bill is signed into law. Although the Obama Administration has not objected to the provisions of STAA, it has requested that SAFETEA-LU be extended for 18 months to allow the President and the Senate time to develop and market their own transportation plan.

Other reasons that the President and the Senate are seeking an 18-month extension include:

- The legislative congestion caused by ongoing debates on health care, cap-and-trade legislation, and Afghanistan;
- The President's need for more time to develop his new "livability" program; and
- The hope that Congress will be more amenable to raising the federal fuel tax after the 2010 mid-term elections.³

Fiscal conservatives and proponents of an improved transportation program should support the President's request for an 18-month extension, both because the delay would give them opportunities to expose the massive flaws in STAA and because the 2010 elections might produce a more responsible Congress that would write a better bill.

The Oberstar Bill

Chairman Oberstar is actively opposing the 18-month extension and instead wants Congress to enact his bill immediately. He suggests that STAA would cost \$500 billion over the next six years, but the bill that he proposes to enact is technically no bill at all, but just a draft that is far from complete and has not yet been reported out of the Transportation and Infrastructure Committee. The bill has not yet been enrolled, so no number has been assigned. It does not include a single spending total for any program, and four major federal highway

provisions—equity bonus, formula allocations, revenue-aligned budget authority (RABA), and earmarks—are left blank, with the language to be added later.

The Oberstar plan would need to increase the federal gas tax by 20.6 cents per gallon, from 18.3 cents to 38.9 cents per gallon.

Most deceptive of all, the bill has no source of finance. Virtually all federal highway and transit spending comes from the highway trust fund, and the highway trust fund is replenished with the 18.3 cents per gallon federal tax on gasoline. The typical highway reauthorization bill makes recommendations and requests to the House and Senate tax committees for the necessary revenue streams to fund the bill.

On July 23, 2009, Oberstar testified to the House Ways and Means Committee, requesting a general fund bailout of the highway trust fund, eight new taxes, and a tax to be named later to help pay for his proposed massive increase in transportation spending. The committee was unresponsive, so Oberstar still lacks the funding for his significant expansion in federal transportation policy and spending.⁴

A Huge Tax Increase. In marketing the bill to the media and his colleagues, Oberstar has said that the bill would authorize \$500 billion in spending over the next six years: \$450 billion from the highway trust fund for highways and transit and another \$50 billion in general tax revenues for a new higher-speed rail program. The \$450 billion in spending from the trust fund would be a significant increase over the \$285 billion authorized by SAFETEA-LU.

1. Staff of the H. Comm. on Transportation, Surface Transportation Authorization Act of 2009, 111th Cong. (Comm. Print, June 22, 2009), at http://transportation.house.gov/Media/file/Highways/HPP/OBERST_044_xml.pdf (November 23, 2009). The draft bill can also be accessed at http://www.heritage.org/research/smartgrowth/upload/oberst_044_xml.pdf.
2. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109-59.
3. As of late October 2009, the House-Senate compromise plan would extend the current law for six months.
4. James R. Oberstar, "Statement Before the Subcommittee on Select Revenue Measures, Committee on Ways and Means, Hearing on Surface Transportation Financing," July 23, 2009, at <http://waysandmeans.house.gov/media/pdf/111/oberstar1.pdf> (November 23, 2009).

The \$450 billion in proposed spending averages \$75 billion per year, and the existing federal fuel tax on gasoline and the annual general revenue contribution to transit yield roughly \$40 billion per year,⁵ leaving Mr. Oberstar with a gap of \$35 billion per year. Given that a penny increase in the federal gas tax would yield about \$1.7 billion per year in increased revenue, the Oberstar plan would need to increase the federal gas tax by 20.6 cents per gallon, from 18.3 cents to 38.9 cents per gallon. This 112 percent increase in the federal gas tax would be particularly regressive. In addition, the \$50 billion for higher-speed rail would require increasing either general taxes or the budget deficit.

Although the bill and its sponsors have only speculated on how to raise the desired revenues, motorists and truckers face the serious risk that Congress could also increase the gas tax above the level needed to fund STAA. The higher tax rate could discourage automobile use, encourage transit use, and reduce greenhouse gas (GHG) emissions. It could also, however, be used to reduce the massive budget deficit.

Oberstar's STAA would change the federal-state relationship by increasing federal micromanagement to unprecedented levels and imposing immense paperwork, planning, approval, and performance burdens on the states.

Although there has been little public discussion about this deficit reduction opportunity, there is recent precedent for using the federal fuel tax to reduce the deficit. In 1990 and 1993, Congress increased the federal fuel tax by 2.5 cents per gallon and 4.3 cents per gallon, respectively, and applied the proceeds to deficit reduction, not to the highway trust fund. These taxes were extended in the late 1990s, with the proceeds going to the highway trust fund.

Heritage Foundation analysts have determined that the federal budget deficit for the next several years could total \$13 trillion,⁶ 44 percent higher than the current Congressional Budget Office estimates. With many in Congress and the Obama Administration looking for ways to discourage automobile use, a Euro-style gasoline tax (\$3.00 per gallon in the United Kingdom and \$6.28 in Germany as of October 2009) might strike them as an attractive way to reward environmentalists for their political support, to discourage Americans from driving, and to reduce the deficit.

Shifting Power to Washington

Enacted in 1956, the federal highway program was designed to maintain the states' prominence in surface transportation investment and management decisions, and its formal title—the Federal-Aid Highway Program—reflects this division of labor and responsibility. Although the federal government has added many mandates to the program over the past three decades, state governments still largely choose (except for earmarks) their own projects and priorities, subject to federal guidelines for each of the several components of the federal program. Oberstar's STAA changes this relationship by increasing federal micromanagement to unprecedented levels and imposing immense paperwork, planning, approval, and performance burdens on the states.

STAA also proposes to create several new spending programs, piling new offices and programs on top of the existing U.S. Department of Transportation (USDOT) bureaucracy and further complicating the already complicated chain of command among federal, state, and local authorities and within the federal government. Under STAA, state departments of transportation (DOTs) would be required to share federal resources and responsibility with existing (and federally funded) metropolitan planning organizations (MPOs)⁷ and the

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5. John W. Fischer, Robert S. Kirk, William J. Mallett, David Randall Peterman, John Frittelli, Linda Luther, and James E. McCarthy, "Surface Transportation Reauthorization Legislation in the 111th Congress: Summary of Selected Major Provisions," Congressional Research Service *Report for Congress*, August 26, 2009, p. 2, at <http://www.itsa.org/itsa/files/pdf/ReauthMajorProvisions.pdf> (November 23, 2009).
 6. Brian M. Riedl, "President Obama's Agenda Would Bring \$13 Trillion in Budget Deficits, Not \$9 Trillion," Heritage Foundation *Background* No. 2319, September 22, 2009, at <http://www.heritage.org/Research/Budget/bg2319.cfm>.

proposed rural planning organizations that would cover the areas not covered by MPOs, which are currently the responsibility of state DOTs.

More Bureaucracy. A few examples from Oberstar's STAA illustrate the bureaucratic expansion and redundancy that the bill would foster.

First, STAA would create two new programs: the Metropolitan Mobility Access (MMA) program and the Projects of National Significance,⁸ which would bypass state DOTs and have USDOT work directly with eligible MPOs.

Second, STAA would create a Freight Improvement Program, a Critical Asset Investment (CAI) Program, and a Highway Safety Improvement Program.

Each program would require states to submit detailed plans to USDOT for approval according to USDOT specifications. Many programs would require submission of annual reports to USDOT, and USDOT in turn would be required to submit numerous annual reports for each program to Congress. According to the Congressional Research Service, "These planning and performance mandates could require a significant increase in personnel at [US]DOT, state DOTs and MPOs."⁹

Higher Taxes on Motorists, Less Funding for Roads. Ironically, most of the funding to pay for this costly bill would likely come from substantially higher taxes paid by the motorist. Yet the bill is explicitly hostile to automobile users, and many of its initiatives are designed to discourage automobile use. Not surprisingly, the bill avoids any discussion of exactly how it will deter automobile use, instead putting its faith in an enhanced and expanded planning process in which state DOTs and MPOs are required to submit plans to USDOT to achieve these and related results.

The bill is explicitly hostile to automobile users, and many of its initiatives are designed to discourage automobile use.

Fewer New Roads. In other instances, the bill would restrict the use of federal funds to add new road capacity. For example, Section 1109 of STAA states that non-attainment areas eligible for Congestion Mitigation and Air Quality funds can add new road capacity only if that capacity is limited to high-occupancy vehicles during peak periods.¹⁰ Section 1110 creates the new CAI program and states:

A project cost attributable to the expansion of the capacity of the highway located on the National Highway System shall not be eligible for funding under this section if such new capacity consists of one or more travel lanes that are not auxiliary lanes.¹¹

Since 1991, federal highway trust funds have been diverted to roads on federal lands managed by the Departments of Interior and Agriculture, but STAA would prohibit use of any federal funds to construct new roads on lands managed by the national forest system or the Bureau of Land Management (but not for the reconstruction and repair of existing roads).¹²

New Office of Livability. Section 1203 of the bill establishes a new Office of Livability. The first several pages of this section justify the new office's creation and provide a rationale for its subsequent efforts to discourage automobile use in favor of "sustainable modes of transportation," "land use and planning decisions [that] must include consideration about transportation options," and "alterna-

7. For a detailed review of some of the problems associated with MPOs, see Randal O'Toole, "Roadmap to Gridlock: The Failure of Long-Range Metropolitan Transportation Planning," Cato Institute *Policy Analysis* No. 617, May 27, 2008, at <http://www.cato.org/pubs/pas/pa-617.pdf> (November 23, 2009).

8. This program would replace the Projects of National and Regional Significance but shift responsibility to MPOs instead of state DOTs. Congress heavily earmarked previous reauthorizations and will likely give the new bill the same treatment.

9. Fischer *et al.*, "Surface Transportation Reauthorization Legislation in the 111th Congress," p. 17.

10. Staff of the H. Comm. on Transportation, Surface Transportation Authorization Act of 2009, at 93–94 (§ 1109 (b)(2)(A)).

11. *Id.* at 103 (§ 1110(a), amending 23 U.S. Code § 150(d)(3)(A)).

12. *Id.* at 152–156 (§ 1110 (d)(1), amending 23 U.S. Code § 204 (m–n)).

tive modes of transportation to complement personal vehicle travel, including public transit, walking and bicycling.”¹³ It argues that “[o]ver reliance on automobiles can have adverse impacts on public health, both through lessened physical activity and from increased pollutants,” and that “[i]ncreasing the availability and use of sustainable modes of transportation and the development of livable communities are national priorities.”¹⁴ It should be noted that the term “sustainable” pervades STAA, and a new Section 331(q)(7) defines *sustainability* simply as “public transit, walking and bicycling.”¹⁵

In fairness, the goals of Chairman Oberstar’s Office of Livability are less extreme than the “livability” criteria established by Secretary of Transportation Ray LaHood. In recent months, LaHood has announced his intention to “coerce” Americans out of their cars¹⁶ and has defined “livability” as “being able to take your kids to school, go to work, see a doctor, drop by the grocery or post office, go out to dinner and a movie, and play with your kids in the park, all without *having* to get into your car.”¹⁷

At least Chairman Oberstar offers choices, however constrained they might be. Secretary LaHood offers only prohibitions. More important, Secretary LaHood’s vision can be achieved only in one of two ways: either by building more post offices or by crowding more people into smaller spaces. He and others in the Administration want more crowding in the belief that higher population densities will lead to the fulfillment of the liberal dream of putting more people on buses and trolleys.

STAA would also establish a Metropolitan Mobility and Access program “to provide multimodal transportation funding and financing authority directly to metropolitan planning authorities.”¹⁸ MPOs receiving grants from this new program must agree to “improv[e] public transportation within an urbanized area”; “reduc[e] vehicle emissions, noise, and other environmental impacts within an urbanized area”; and “reduc[e] the percentage share of travel within the urbanized area made by single occupancy vehicles.”¹⁹

A Lesson from Britain. In enacting this or similar legislation, the U.S. would be following the sorry land-use and development policies that the United Kingdom embraced in 1947 by enacting the Town and Country Planning Act. Designed to preserve the rustic nature and charm of Britain’s countryside, the act empowered the national government to use laws and regulations to concentrate most housing and commercial development in existing urban centers. As a result, the United Kingdom today has the smallest and most expensive homes of any advanced country. So severe is the problem that British politicians are now promising to change the policy and create incentives to build more and better housing.²⁰

Congress is not the only political institution in an advanced country that has failed to learn the painful lesson of Britain’s counterproductive land use. In late October, Australian Prime Minister Kevin Rudd announced that he wants to impose greater control of urban planning by denying infrastructure funding to states and councils that will not agree to improve public transport and ban haphazard devel-

13. *Id.* at 200–201 (§ 1203(a), amending 23 U.S. Code §331(a)(9, 11, and 13)).

14. *Id.* (§ 1203(a), amending 23 U.S. Code §331(a)(8 and 15)).

15. *Id.* at 219 (§ 1203(a), amending 23 U.S. Code §331(q)(7)).

16. Ronald D. Utt, “Obama Administration’s Plan to Coerce People out of Their Cars,” Heritage Foundation *WebMemo* No. 2536, July 10, 2009, at <http://www.heritage.org/Research/SmartGrowth/wm2536.cfm>.

17. Amy Phillips, “Transportation Officials Stress Importance of Administration’s Livability Initiatives,” Bureau of National Affairs *Daily Report for Executives*, September 28, 2009. Emphasis in original.

18. Staff of the H. Comm. on Transportation, Surface Transportation Authorization Act of 2009, at 230 (§ 1205(b), amending 23 U.S. Code § 701(b)).

19. *Id.* at 246–247 (§ 1205(b), amending 23 U.S. Code § 701 (k)(1)(1)(A) (vi–viii)).

20. Ronald D. Utt, “Will Obama’s ‘Livability’ Program Bring Britain’s ‘Hobbit Homes’ to America?” Heritage Foundation *WebMemo* No. 2601, September 1, 2009, at <http://www.heritage.org/Research/SmartGrowth/wm2601.cfm>.

opment. In implementing the plan, he believes that increasing density in cities is part of the solution to urban growth.²¹

Less Driving. Section 1207 authorizes a new Under Secretary of Transportation for Intermodalism to solicit projects from states, to be included in a new National Transportation Strategic Plan.²² Among the selection criteria are “the ability of projects to improve mobility by increasing transportation options for passengers and freight” and “the degree to which projects create intermodal links between different modes of transportation.”²³

Section 1301 would restrict the use of tolls and public–private partnerships (discussed in more detail later) and require that any surplus tolls collected from motorists be used to fund public transportation.²⁴

Section 1508 adds more requirements to MPO operations and goals, including minimum requirements that “include efforts to increase public transportation ridership...walking, bicycling, and other forms of nonmotorized transportation.”²⁵ The section also requires large area MPOs to include new provisions in their long-range transportation plans:

- (i) Land use patterns that support improved mobility and reduced dependency on single-occupant motor vehicle trips.
- (ii) An adequate supply of housing for all income levels.
- (iii) Limited impacts on valuable farmland....
- (iv) A reduction in greenhouse gas emissions.

(v) An increase in water and energy conservation and efficiency.

(vi) An improvement in the livability of communities.²⁶

Section 3004 requires that these same provisions be included in the MPOs’ new performance measures.²⁷

Section 1509 requires states to develop strategic long-range transportation plans covering a minimum of 20 years into the future and establish greenhouse gas emission targets and strategies to meet them.²⁸ Minimum plan requirements must “include efforts to increase public transportation ridership...walking, bicycling, and other forms of nonmotorized transportation.”²⁹ Section 1509 also authorizes USDOT to withhold 20 percent of certain federal funds from any state that does not meet the GHG reduction requirements.³⁰

Deeper Commitment to Transit. The parts of the STAA that amend the transit sections of the existing federal surface transportation laws would deepen the federal government’s commitment to transit. Section 3002 amends the law to establish that it is government policy “to significantly increase the number of individuals using public transportation systems and services” and “to reduce transportation-related fuel and energy consumption and reliance on foreign oil.”³¹

Other analysts have pointed out that these statements of principle are incompatible with the bill’s lofty national goals, such as reducing energy consumption. In many cases, its proposed solutions,

21. Matthew Franklin, “Kevin Rudd Launches Planning Takeover,” *The Australian*, October 28, 2009.

22. Staff of the H. Comm. on Transportation, Surface Transportation Authorization Act, of 2009 at 282 (§ 1207(a), amending 23 U.S. Code § 703(a)(1)(B)).

23. *Id.* at 283–284 (amending Section 703(a)(1)(C)(iii)(III and IV)).

24. *Id.* at 296 (§ 1301(b), amending 23 U.S. Code § 129(d)(2)).

25. *Id.* at 337 (§ 1508(h)(3), amending 23 U.S. Code § 134(k)(6)(B)(ii)(III–IV)).

26. *Id.* at 343–344 (§ 1508(h)(3), amending 23 U.S. Code § 134(s)(2)(C)(i–vi)).

27. *Id.* at 489 (§ 3004(k), amending 49 U.S. Code § 5303(s)(2)(C)(i–vi)).

28. *Id.* at 347 (§ 1509(c)(1)(B), amending 23 U.S. Code § 135(f)(1)).

29. *Id.* at 352 (§ 1509(c)(1)(E), amending 23 U.S. Code § 135(f)(9)(B)(ii)(III–VI)).

30. *Id.* at 355 (§ 1509(e), amending 23 U.S. Code § 135(k)(5)).

31. *Id.* at 474–475 (§ 3002(a) amending 49 U.S. Code § 5301(b and f)).

“Even if more subsidies to transit could attract significant numbers of people out of their cars, it would not save energy or reduce greenhouse gas emissions.”

such as increased use of public transportation, would lead to more energy use, not less. As Randal O’Toole of the Cato Institute recently testified before the Senate Banking Committee:

Even if more subsidies to transit could attract significant numbers of people out of their cars, it would not save energy or reduce greenhouse gas emissions because transit uses as much energy and generates nearly as much greenhouse gas per passenger mile as urban driving.³²

A Massachusetts Institute of Technology review of a new report from the National Academy of Sciences concluded:

Increasing the population density in metropolitan areas would yield insignificant CO₂ reductions.... If just 25 percent of housing units were developed at such densities and residents drove only 12 percent less as a result, CO₂ emissions would be reduced by less than 2 percent by 2050.³³

An earlier Heritage Foundation study reveals that heavily subsidized passenger rail uses three times more fuel (measured in BTUs) than lightly subsidized intercity buses.³⁴ O’Toole’s study of transit

fuel efficiency found that 36 of the 49 leading urban transit systems were less fuel-efficient per passenger mile than the average automobile and that all 49 systems were less fuel-efficient than a Toyota Prius.³⁵

Section 3004 further expands requirements for MPOs by requiring their plans to “encourage and promote livability and sustainability of all communities, increase coordination among land use, housing, and transportation plans and projects, and increase surface transportation connectivity and intermodality through metropolitan and statewide planning processes identified in this chapter.”³⁶

The same section requires MPOs to include “public health” issues in their plans,³⁷ thereby potentially giving road-building opponents a new tool with which to delay or stop road construction. Much as activists have used environmental requirements to delay or terminate many road-building proposals, opponents could force proponents to prove that the road will not harm public health. STAA would also require existing MPOs to become “certified” in order to receive funding, and the lack of an acceptable plan for GHG reduction would prevent certification.³⁸

An Interstate Bike Path? The Office of Livability would also be responsible for establishing a U.S. Bicycle Route System “to support an interconnected, intercity network of bicycle facilities of all classes, to improve and enhance mobility, modal choice, economic development, and quality of life.”³⁹ In effect, STAA would create a federally financed national system of bicycle paths that

32. Randal O’Toole, testimony before the Subcommittee on Housing, Transportation and Community Development, Committee on Banking, U.S. Senate, July 7, 2009, p. 3, at <http://ti.org/O%27TooleTestimony7-7-09.pdf> (November 23, 2009).

33. Phil McKenna, “Forget Curbing Suburban Sprawl,” *Technology Review*, September 3, 2009, at <http://www.technologyreview.com/energy/23343> (November 23, 2009).

34. Ronald D. Utt, “Congress Should Link Amtrak’s Generous Subsidy to Improved Performance,” *Heritage Foundation Backgrounder* No. 2072, September 18, 2007, p. 12, at <http://www.heritage.org/research/budget/bg2072.cfm>.

35. Randal O’Toole, “Does Rail Transit Save Energy or Reduce Greenhouse Gas Emissions?” *Cato Institute Policy Analysis* No. 615, April 14, 2008, p. 14, Table 6, at <http://www.cato.org/pubs/pas/pa-615.pdf> (November 23, 2009).

36. Staff of the H. Comm. on Transportation, Surface Transportation Authorization Act of 2009, at 477 (§ 3004(a)(3), amending 49 U.S. Code § 5303(a)(3)).

37. *Id.* at 479 (§ 3004(f)(3), amending 49 U.S. Code § 5303(h)(1)(E)).

38. *Id.* at 484–485 (§ 3004(j)(3), amending 49 U.S. Code § 5303(k)(6), and § 3004(k), amending § 5303(q)(2–3)).

would rival the interstate highway system, allowing residents of Washington, D.C., for example, to travel safely and seamlessly by bike to New York City and residents of Minneapolis to bike to visit relatives in Oklahoma City. The Office of Livability would also establish a Comprehensive Street Design Policy or Principle to ensure “the adequate accommodation, in all phases of project planning and development, of all users of the transportation system, including pedestrians, bicyclists, public transit users, children, older individuals, motorists (including motorcyclists), and individuals with disabilities.”⁴⁰

Keeping the Poor on the Bus. Reflecting the urban elite’s attitude toward those who are less fortunate in their access to transportation, Section 3009 creates a new grant program to subsidize access to transit by the poor, the elderly, and welfare recipients.⁴¹ In 2000, President Bill Clinton attempted—but failed—to break this elitist bias against the poor

STAA would create a federally financed national system of bicycle paths that would rival the interstate highway system.

when he proposed relaxing auto ownership restrictions in food stamp eligibility requirements “so that people can access reliable transportation to get to work without sacrificing their food stamp benefits.” Nonetheless, as The Heritage Foundation has pointed out, liberals and progressives still seem to be obsessed with their goal of putting the poor on bicycles and buses while most Americans travel in the privacy and convenience of cars.⁴²

The social elite’s obsession with the mobility of the poor dates back at least to the dawn of the rail-

road age in the early 19th century, when Arthur Wellesley, the Duke of Wellington, observed that railroads would “only encourage the common people to move about needlessly.” As Sam Kazman notes, not much has changed since then. Prince Charles, reputed owner of two Audis, two Jaguars, a Range Rover, and an Aston Martin, complains about the “domination of the car.” On World Car-Free Day in September, Prince Charles called for a new type of society “in which we are not dependent on [automobiles] to such a great extent for our daily needs.”⁴³

Federal Intrusion into Local Land-Use Regulations. Since Colonial times, land-use regulations in the United States have been a state and local responsibility. Zoning practices have varied from state to state and county to county according to local preference. Over the past decade, smart growth advocates have tried to involve the federal government more deeply in the issue, but neither Congress nor the White House had shown much interest in expanding federal involvement in this state and local responsibility. However, that may be changing.

Recognizing that land-use patterns based on individual preferences and private property rights may lead to population densities that are inimical to transit use, STAA includes several provisions that would require states and MPOs to include land-use issues in their planning and performance measures. Section 1508 gives MPOs the new responsibility to “encourage and promote the livability and sustainability of all communities, increase coordination of land use, housing and transportation plans and projects, and increase surface transportation system interconnectivity and intermodality through metropolitan and statewide transportation planning processes.”⁴⁴

39. *Id.* at 214 (§ 1203(a), amending 23 U.S. Code § 331(k)(2)).

40. *Id.* at 218 (§ 1203(a), amending 23 U.S. Code § 331(q)(1)(A)).

41. *Id.* at 544–563 (§ 3009(a), amending 49 U.S. Code § 5310)).

42. Wendell Cox and Ronald D. Utt, “Transit Advocates Want the Working Poor to Use Bikes and Buses, Not Cars,” Heritage Foundation *Background* No. 1687, September 10, 2003, at <http://www.heritage.org/Research/SmartGrowth/bg1687.cfm> (November 23, 2009).

43. Sam Kazman, “Aristocrats Can Afford Car-Free Days,” *The Washington Examiner*, September 29, 2009, at <http://www.washingtonexaminer.com/opinion/columns/OpEd-Contributor/Aristocrats-can-afford-car-free-days-8309689-62364542.html> (November 23, 2009).

For large metropolitan areas (populations greater than 1 million), the bill requires that the long-range transportation plans include “[l]and use patterns that support improved mobility and reduced dependency on single-occupant motor vehicle trips” and “[l]imited impacts on valuable farmland, natural resources, and air quality, and an improvement in the livability of communities.”⁴⁵

More Paperwork, More Bureaucracy. The draft bill’s 775 pages represent only a fraction of the language that will be included in the final version, because a number of significant existing programs in current law were not included in the draft and will be added later. Among these are earmarks under the High Priority Projects Program, which accounted for 197 pages of SAFETEA-LU and more than 7,000 earmarks. The earmarks in other programs would add even more pages. With many of the more important and controversial sections yet to be included, the current draft is largely a collection of new federal mandates that will impose substantial paperwork burdens on states, MPOs, the federal government, and the dozen or so new public entities that STAA would create.

Section 1105 illustrates these massive new bureaucratic burdens. The section creates a new freight improvement program to improve the operation of the existing freight transportation system. For starters, the bill would require each state to create a freight advisory committee that would “advise,” “serve as a forum for discussion,” “communicate and coordinate regional priorities,” and “promote cross-sharing of information.”⁴⁶ In addition, each state would be required to “develop a freight plan that provides a comprehensive overview of the state’s current and long-range freight planning activities and investments.”⁴⁷

These new committees would participate in this process, and the bill includes a number of provi-

sions listing what information the plan must include. Among them, the plan would need to include performance targets and measurements, subject to the guidelines provided by the U.S. Secretary of Transportation, within six months of the enactment of STAA. Within a year of the bill’s enactment, the Secretary would establish performance targets for the state, and each year the state would report to the Secretary on progress to date.⁴⁸ The bill is silent on what happens if a state fails to meet these performance targets, so the additional paperwork and processes apparently will be their own reward.

Yet this is only the beginning. Section 1105 also allows states to designate “secondary freight routes” that are not part of the National Highway System, provided that “they are certified by the State’s department of transportation at the request of local officials.” The inventory of such routes is to be submitted to the Secretary, who will review the inventory and decide which submitted roads may be designated as secondary freight routes. The bill establishes standards for designation, and once designated, the state must provide the Secretary with detailed information on the status and condition of each such route within one year of designation and every five years thereafter.⁴⁹

Section 1105 allows creation of Freight Corridor Coalitions and Plans and specifies who can be a member of such coalitions, how to apply to the Secretary for such a designation, and eligibility requirements for federal grants. The section copiously details the information required for application, the review process, and freight corridor plan. It also requires that the plan be consistent with the plans of the freight advisory committees, MPOs, and urbanized areas that lie within the corridor and have approved MMA plans.⁵⁰

44. Staff of the H. Comm. on Transportation, Surface Transportation Authorization Act of 2009, at 332 (§ 1508(a)(3), amending 23 U.S. Code § 134(a)(3)).

45. *Id.* at 343 (§ 1508(i), amending 23 U.S. Code § 134(s)(2)(C)(I and iii)).

46. *Id.* at 29 (§ 1105(a), amending 23 U.S. Code § 119(d)(2)(A–D)).

47. *Id.* (§1105(a), amending 23 U.S. Code § 119(e)(1)).

48. *Id.* at 30 (§ 1105(a), amending 23 U.S. Code § 119(e)(2)–(f)).

49. *Id.* at 33–36 (§ 1105(a), amending 23 U.S. Code § 119 (h)(1)).

All of this is required for just one of the many new or modified programs that STAA would create. The new CAI program requires similar plans, reports, and documentation; a multiyear investment strategy; a rationale for investment strategy; an approval process; reasons for disapproval; resubmission; annual state reports to USDOT; and USDOT reports to Congress. Of course, disapproval of plans at any stage allows the Transportation Secretary to withhold funds until state plans conform to federal wishes. The new MMA and new safety programs (Title II and IV of STAA) impose similar paperwork, planning, and performance measure burdens.

The STAA's chief impact will be a significant increase in the number of government employees at all levels. They will be needed to write all of the new plans, reports, and performance programs and then to review, approve, disapprove, manage, and/or oversee the flow of required information.

Years of Delay. As is apparent from the latest STAA draft, this enhanced paperwork, bureaucracy, planning, and performance measurement will cause substantial delays in getting projects underway. USDOT is allotted many months to write new regulations, and the states and MPOs will need additional months to write and submit their plans to USDOT in accordance with the new regulations. Then USDOT staff will need even more months to review the plans and performance measures and to approve or disapprove them. Even if everything runs smoothly, getting a transportation project underway will likely take an additional year or two.

The authors of the bill, apparently recognizing that their enhanced bureaucracy might slow down the process, have proposed adding even more bureaucracy to “expedite” matters. Section 1202 would create an Office of Expedited Project Delivery (OEPD) in USDOT “to enhance the speed of project delivery for highway construction projects.”⁵¹ The authors seem to be operating under the belief that a cumbersome bureaucracy is needed to fight another cumbersome bureaucracy effectively. The OEPD would be tasked with monitoring

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projects, monitoring USDOT, participating in the development of any schedule for completion, assisting states in developing schedules, promoting practices that accelerate project delivery, encouraging good communication practices, and—oddly—maintaining up-to-date state inventories of historic, cultural, and natural resources.⁵²

The bill also includes several more pages of similar bureaucratic nostrums, new-age management platitudes, and a fairly significant series of reporting requirements for all who are involved in a federal government decision-making process infected by what President Abraham Lincoln once described as the “slows.”

Discouraging Private-Sector Investment and Toll Roads

Just as the proposed Office of Expedited Project Delivery reflects a blind faith in the ability of larger and competing layers of federal bureaucrats to make a better world, Chairman Oberstar's bill reflects an equal distrust of the ability of the private sector and market forces to assist federal and state governments in improving the transportation system. On May 10, 2007, Chairman Oberstar and Peter DeFazio (D-OR) sent a letter to state governors, legislators, and public officials questioning the use of toll roads and public-private partnerships (PPPs) to provide more resources for roads and transit, stating that they strongly discourage states from entering into public-private partnerships that are not in the long-term public interest.⁵³

Notwithstanding the billions of dollars that the private sector has invested in and committed to U.S. roads, Mr. Oberstar remains determined to rely on higher taxes and deficit spending to maintain the

50. *Id.* at 36–49 (§ 1105(a), amending 23 U.S. Code § 119 (i)).

51. *Id.* at 183 (§ 1202(a), amending 23 U.S. Code § 330)).

52. *Id.* at 184–186 (§ 1202(a), amending 23 U.S. Code § 330(d)(1)).

government's grip on America's failing transportation system. His July 2009 plea to the House Ways and Means Committee for more taxes underscores his continued opposition to the private sector and his support for a substantially expanded Washington role in America's transportation system.

As currently written, STAA would be a major setback for the use of tolls and PPPs to improve transportation. For one thing, Section 1301 deletes several key provisions in existing law that were enacted to enable states to use tolls under certain conditions, including several pilot projects on existing interstates.⁵⁴ Section 1301 also places a number of limits on new tolled facilities, including a prohibition of noncompete clauses, a requirement that the U.S. Transportation Secretary review and approve toll rates and any subsequent increases, a provision that limits private partners to a "reasonable rate of return on investment," and a requirement that tolled facilities have "no substantial negative impacts on interstate commerce or travel."⁵⁵ The bill requires that any toll revenues collected from HOT (high occupancy/toll) lanes that were converted from HOV (high occupancy vehicle) lanes be devoted to public transportation in the same corridor.⁵⁶

Section 1204 creates an Office of Public Benefit in USDOT to administer all of these new federal toll road responsibilities and regulations. The purpose of the new office is to protect the public interest in any new PPP toll project on any federal-aid highways. Its responsibilities include reviewing and approving all toll rate schedules, consideration of impacts on interstate commerce, "provision of operational improvements and transit service sufficient to accommodate travel diverted from the facility due to the collection of the toll," and "provision of measures to mitigate the impact of the toll on low-income travelers."

The office also has the responsibility to "assess whether the use of a public-private partnership agreement...provides value compared with traditional public delivery methods." In addition, it monitors compliance with the prohibition on non-compete agreements and the requirement that PPP agreements allow the government to buy back projects before the end of the agreement.⁵⁷

Some experts on transportation PPPs believe that the enactment of these provisions would substantially deter the use of PPPs, thus severely limiting the volume of funds that the private sector would willingly invest in U.S. transportation projects. A PPP proposal usually takes several years of negotiation with a state DOT, and the engineering, economic analysis, legal review, and administrative costs required to bring the process to a final agreement are considerable.

Under STAA, new federal regulations would undermine the rights of the private-sector partner or investor and could subject the final agreement to substantial federal changes, increasing the risk that the project as finally approved (if approved) by the new Office of Public Benefit would not be economically viable. As a consequence, few PPPs would be initiated, and motorists would become even more dependent on the federal government and higher taxes to fund transportation investment.

Other Problem Legislation

The STAA is one of several major bills before Congress that would diminish the role of automobiles, shift transportation spending to public transit, and make recommendations on land-use regulations. The Clean Energy Jobs and American Power Act (S. 1733), the Senate's leading cap-and-trade bill, is a prime example of this growing trend. As currently written, S. 1733 would authorize the Administrator of the Environmental Protection

53. Robert W. Poole, Jr., and Peter Samuel, "Federal Interference in State Highway Public-Private Partnerships Is Unwarranted: A Response to Oberstar and DeFazio," Reason Foundation, May 22, 2007, at <http://www.tollroadsnews.com/sites/default/files/Poole&SamRiposte.pdf> (November 23, 2009).

54. Staff of the H. Comm. on Transportation, Surface Transportation Authorization Act of 2009, at 299-300 (§ 1301(d)(1)).

55. *Id.* at 292-293 (§ 1301(a), amending 23 U.S. Code § 129(a)(3)(G)).

56. *Id.* at 296 (§ 1301(b), amending 23 U.S. Code § 129(d)(2)).

57. *Id.* at 220-227 (§ 1204(a), amending 23 U.S. Code § 611)).

Agency (EPA), in consultation with the Transportation Secretary, to “promulgate...regulations to establish...national transportation-related greenhouse gas emission reduction goals.”⁵⁸ In effect, it would formally involve the EPA in U.S. transportation policy and encourage it to impose environmental regulations on transportation.

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S. 1733 would amend existing law governing federal transportation policy in ways similar to those proposed in STAA. It would legislate such new goals as “sustainability, and livability, reduce surface transportation-related greenhouse gas emissions and reliance on oil, adapt to the effects of climate change.”⁵⁹ It would also require MPOs serving a transportation management area to “address transportation-related greenhouse gas emissions by including emission reduction targets and strategies to meet those targets.”⁶⁰

Other provisions would require the adoption of strategies to meet these targets and strategies, including:

- (aa) efforts to increase public transportation ridership, including through service improvements, capacity expansions, and access enhancement;
- (bb) efforts to increase walking, bicycling, and other forms of nonmotorized transportation;
- (cc) implementation of zoning and other land-use regulations and plans to support

infill, transit-oriented development, or mixed use development;

(dd) travel demand management programs (including carpool, vanpool, or car-share projects), transportation pricing measures, parking policies, and programs to promote telecommuting, flexible work schedules, and satellite work centers;...

(ff) intercity passenger rail improvements.⁶¹

Identical language is also used to amend other sections of the U.S. Code.⁶²

S. 1733 would also create a new grant program to assist MPOs in carrying out the provisions of the act and for various public transportation projects.⁶³ As is apparent from this brief review, enactment of S. 1733 would add to existing law some of the more troublesome components in STAA.

In August 2009, Senator Christopher Dodd (D-CT) introduced the Livable Communities Act of 2009 (S. 1619) to establish an Office of Sustainable Housing and Communities within the Department of Housing and Urban Development, which presumably (and hopefully) would interface, coordinate, and maintain liaison with the Office of Livability in the Department of Transportation as proposed in STAA to carry out the new mandates requiring that state and local government do more planning.

Like STAA and S. 1733, S. 1619 would use a comprehensive planning grant to coordinate land use, housing, transportation, and infrastructure planning processes across jurisdictions and agencies and would use local zoning and other code changes to implement a comprehensive regional plan and promote sustainable development. Thus, Senator Dodd’s S. 1619 joins S. 1733 and STAA as one of several legislative initiatives that would undermine the basic property rights of American citizens.

58. Clean Energy Jobs and American Power Act, S. 1733, 111th Cong., 1st Sess., § 112(a) (adding Part C, § 831).

59. *Id.* § 112(b)(1)(B) (amending 23 U.S. Code § 134(h)(1)(E)).

60. *Id.* § 112(b)(1)(D) (amending 23 U.S. Code § 134 (k)(6)(A)).

61. *Id.* (amending 23 U.S. Code § 134 (k)(6)(C)(iv)(V)(aa–ff)).

62. See *id.* § 112.

63. *Id.* § 113 (adding Part C, § 832).

Conclusion

A common goal of STAA and the Senate's current version of the Clean Energy Jobs and American Power Act is to shift substantial numbers of passengers from cars to public transit and nonmotorized forms of transportation. These bills attempt to achieve this goal by raising existing taxes, imposing new taxes, and diverting the increased federal revenues from roads to transit and bicycle paths. These bills would also create new federal regulations that would further discourage automobile use and crowd existing and new residential development into higher density communities, which would be more compatible with the more primitive forms of mobility common to America in the early years of the 20th century.

A major thrust of both bills is reducing greenhouse gas emissions, reinforced by the mistaken belief that—despite all of the evidence to the contrary—this can be accomplished by rearranging existing living and travel patterns. Given the evidence on fuel efficiency and greenhouse gas emissions from the different modes of travel, neither STAA, S. 1733, nor S. 1619 would significantly help the nation or the environment. Instead, in the process of failing, these bills would impose great costs and inconveniences on American citizens and businesses. For this reason, these bills should be with-

drawn from consideration or substantially modified so that they would actually benefit the nation.

In the past several highway reauthorization bills, Congress has demonstrated more interest in spending money on influential constituencies than in relieving congestion and promoting cost-effective mobility. STAA combines this predilection to spend with the goal of substantially altering lifestyles through regulations, subsidies, and penalties to crowd development, create higher population densities, and compel people to use public transit. As STAA now stands, rather than spend the next six months negotiating the terms of their surrender, fiscal conservatives might better devote their energy to ending the federal highway program and turning it and the associated federal fuel tax revenues back to the states.

In the meantime, fiscal conservatives and proponents of an improved transportation program should support the President's request for an 18-month extension, both because the delay would give them opportunities to expose the massive flaws in STAA and because the 2010 elections might produce a more responsible Congress that would write a better bill.

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