

“TEA-21” TRANSPORTATION LAW REAUTHORIZATION

A PLATFORM FOR ENVIRONMENTAL DEFENSE

December 7, 2002

The Transportation Equity Act for the 21st Century (TEA-21) is the key law shaping the nation’s transportation investments, with profound effect on the environment and communities. The act funds and sets the rules for over \$32 billion annually in federal spending, shaping over \$100 billion in state/local transportation investment and influencing a trillion dollars of private transportation expenditures – nearly a fifth of America’s economic activity.

ATTACK ON CORE ENVIRONMENTAL LAWS OR AN EFFORT TO ENHANCE STEWARDSHIP AND ACCOUNTABILITY?

Reauthorization of TEA-21 presents an opportunity to implement new incentives and improve priorities in our nation’s transportation laws and spending, strengthening stewardship and accountability in transportation. But in the name of “environmental streamlining” and regulatory “reform”, some seek to weaken core environmental laws. These threats extend well beyond the realm of transportation funding. They will undermine the fundamental architecture of this country’s clean air, land use and environmental review laws. Major threats are posed to the:

- National Environmental Policy Act (requiring environmental impact studies of major federal decisions),
- Clean Air Act (requiring transportation plans to contribute to air quality and setting science-based air quality targets to protect health in metropolitan areas),
- Section 4(f) of the 1996 DOT Act and Section 106 of the National Historic Preservation Act (protecting parks and historic resources),
- Title VI of the Civil Rights Act (requiring consideration of disparate impacts of federal spending and decisions on minorities),
- and laws protecting water quality and endangered species.

For many critical pollutants, the transportation sector is the largest contributor to poor air quality in many major metropolitan areas. Yet this is not the first time that clean-air critics would seek to subvert the Clean Air Act by amending transportation legislation. In 1998, for example, Senator Inhofe successfully advanced a legislative rider to TEA-21 that extended the Clean Air Act’s statutory deadlines for implementing the fine particle and 8-hour ozone national air quality standards, and postponed implementation of the program to curb regional haze in national parks and wilderness areas. Today, similar efforts are underway to extend these timelines in ways that could make attainment essentially meaningless – and thus doom metropolitan areas across the country to unhealthy air.

The 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) reforms - reaffirmed and extended in the 1998 TEA-21 law - expanded opportunities for state and local governments to pursue smart transportation system management to curb traffic growth. States have flexibility to use Federal transportation funds to support transit, pedestrian safety, and market incentive programs, such as promoting employer-paid transit benefits and cash-in-lieu-of-parking benefits. There is greater accountability for states and regions to consider the short and long-term effects of

transportation decisions on air quality and transportation system performance. TEA-21 brought a 40% increase in federal funding, yet a commensurate increase in performance has not followed. TEA-3 must provide performance measures and hold agencies accountable for meeting targets and goals related to public health, social equity, land use impacts, and other environmental indicators.

Some states have begun to embrace environmental stewardship, forge partnerships with resource agencies and stakeholders, and use TEA-21's flexibility to support smart growth, resource protection, system management and incentives, and expanded travel choices as a core part of transportation plans and programs. From Oregon to Florida, state agencies are proving that integrated land use, natural resource, and transportation planning and interagency collaboration can deliver better transportation projects with less delay, fewer adverse impacts, and reduced conflict.

Other states continue to pursue the failed old strategy of trying to build their way out of congestion. Some scapegoat environmental laws for their own administrative failures: lack of consensus on proposed projects, insufficient local matching funds, and projects delayed by inadequate consideration of alternatives, inadequate mitigation and avoidance of adverse impacts, and efforts to end-run federal requirements. So-called 'environmental streamlining' proposals (HR 5455 and SB 3031) have been proposed to undermine core environmental accountability laws. HR 5455, for example, would undermine NEPA by establishing:

- Arbitrary review deadlines and time limits on judicial review of transportation decisions
- Limits on the determination of purpose and need for projects and lead agency designations,
- Circumscribed public involvement,
- Mandatory concurrent processing of reviews and permits.

Better accessibility to opportunities, better air quality and less delay – these are the result of integrated planning. Scrapping environmental laws (“streamlining”) will yield the opposite result: more congestion, unhealthy air and projects delayed because they fail to meet local needs.

ENVIRONMENTAL DEFENSE'S TEA-3 PRIORITIES

1) Bolster Accountability for Public Health and the Environment

- **Strengthen accountability and performance requirements.** DOT and EPA are failing to enforce laws that hold transportation agencies accountable for health and environmental impacts and financial reporting. Some states cook their books with unfunded promises of transit expansions to offset pollution from new roads. The roads get built, but the transit doesn't. Transportation cost accounting problems and shaky debt financing schemes in many states exacerbate a growing fiscal morass. TEA-3 should strengthen oversight of transportation and air quality planning to assure transportation plans and programs contribute to timely attainment of environmental, health, and equity standards, including avoiding or mitigating cancer risks from diesel exhaust, impacts on water quality and conservation lands, and disparate benefits and burdens of transportation plans on minorities.
- **Enhance transportation project delivery and environmental stewardship with better integrated plan and project reviews and impact avoidance, mitigation, and remediation.** State and metropolitan areas that develop effective integrated transportation, natural

resource protection, and growth management plans and systems to avoid and monitor adverse impacts and meet established health and environmental goals should have opportunities to use plan activities to meet some project review requirements. Long-range plans should identify how new and existing transportation facilities will be brought up to best practice standards in accommodating pedestrians, bicyclists, and transit, access management, land conservation, stormwater management, and context-sensitive design.

- **Improve transportation agency travel and emissions models, and bolster transportation data collection and evaluation.** Most traffic emission models undercount future traffic and emissions caused by road expansions and undercount the benefits of smart growth, pricing, information technologies, and improvements that aid pedestrians, bicyclists, and transit users. This results in dirtier air, more congested roads, and wasted tax dollars. TEA-3 should fund and mandate better data collection and modeling.

2) Promote Incentives for Clean Air and Wise Stewardship

- **Finance transit with automated road pricing:** A promising option for unclogging roads, especially in more congested metropolitan areas, is automated time-of-day tolls on bridges, tunnels and toll roads, and High Occupancy Toll (HOT) lanes, which allow solo drivers to pay to use High Occupancy Vehicle (HOV) lanes, while giving a free ride to buses, vans, and sometimes carpools. These can put to work unused capacity in HOV lanes and help pay for expanded transportation choices. TEA-3 should foster new HOT lanes on existing highways to fund transit and provide better congestion relief than building new roads.
- **Promote Bus Rapid Transit for productivity gains.** New information technologies and smart management strategies are vital to making America's transit systems more efficient and attractive for users while controlling costs. While new investments in rail are often a preferred choice to expand travel options and support transit oriented development, the family of strategies known as Bus Rapid Transit - including improved fare collection systems and greater priority in traffic for buses and trolleys - should get expanded support and access to funding.
- **Promote use-based auto insurance.** Use-based car insurance is a very promising near-term voluntary market-based strategy that could save consumers money, cost nothing to the public sector, and cut air pollution and traffic by 10 percent or more. TEA-3 should fund expanded research and pilot testing of this market based strategy, including risk sharing with insurance companies pilot testing this approach to policy pricing, paying for expanded actuarial research, marketing, partnership development, evaluation, and promotion.
- **Invest in clean technology for the worst polluters.** Diesel on-road and non-road fleets present attractive opportunities to achieve large and cost-effective clean air gains in many metropolitan areas. As a class, non-road engines emit more fine particulate matter than cars, trucks and power plants combined. To ensure that communities across the country can realize the cost-effective public health and environmental protections that have been demonstrated in pilot projects under EPA's successful voluntary diesel retrofit program, TEA-3 should designate fleet retrofits for school buses, construction machinery, ferries and

other diesel vehicle fleets as a reasonably available control strategy to reduce emissions in non-attainment areas and make these investments eligible routine uses of National Highway System funds, Surface Transportation Program funds, and other major highway and transit funding categories.

3) Expand Funding for Clean Transportation and Environmental Stewardship

- **Expand and strengthen the Congestion Mitigation Air Quality Program (CMAQ).** CMAQ provides \$1.3 billion a year for non-highway widening projects that reduce pollution in non-attainment areas. With the number of people living in ozone non-attainment areas expected to grow from 59 million in 1999 to as many as 175 million in 2004, due to revised health standards, CMAQ funding must grow considerably to keep up with growing needs. States have refused to spend 1 in 5 available CMAQ dollars since 1992, choosing instead to fund highways. Steps must be taken to assure priority access of transit agencies and local governments to CMAQ and other funds for pollution-reducing projects.
- **Safe Routes to Schools and Transit by foot and bike.** Walking and biking are pollution free modes of transportation that millions of Americans enjoy where street and community design allows them to be done safely. And public transit is only as useful when people can get to and from its stops. A key part of the transit success story of recent years is due to increased support for investments in walking and bicycling. TEA-3 should require planning and timely progress to deliver safe routes to all schools and transit stops across America, adapting successful strategies from the most bicycle and pedestrian friendly communities, including expanded funding for the Transportation Enhancements funding program.
- **Expand funding for natural resource planning, mitigation, and remediation.** TEA-21 allows states to fund positions at resource agencies to expedite project reviews. It allows 20% of Surface Transportation Program funds to be spent on stormwater mitigation in conjunction with reconstruction of major highways. Use of these programs has been limited. Expand eligibility, requirements, set-asides, and incentives for use of federal transportation funds for resource agency staffing, advance mitigation, purchase of conservation lands and development rights, state conservation lands and biodiversity mapping, analysis, data collection, and monitoring. Require transportation plans to show how they will remediate adverse impacts of past projects on water quality and flows over 20 years, with timely progress in short-term transportation programs. Require adoption of best stormwater management practices and context sensitive design in all transportation projects that are part of metro/state TIPs and plans.

4) Level the Playing Field between Roads/Sprawl vs. Transit/Smart Growth Alternatives

- **Equal treatment for new highway projects and Transit New Starts.** Require new road projects to meet the same criteria and local funding match as required for new transit projects. Currently new transit projects are typically offered only 50% federal matching funds compared to new roads at 80% and new transit projects must justify their cost-effectiveness and demonstrate the availability of full funding for project completion and operation, while highway projects do not face such scrutiny.

- **Equalize commuter tax benefits.** In 1998, Congress took steps to make tax policies more equal for all commuters, allowing employers to offer tax-free transit and vanpool benefits of up to \$100 a month, with taxable cash-in-lieu-of-parking benefits allowable for the first time. But tax-free benefit limits for employer-provided parking are \$175 per month – a practice which still leaves solo drivers at an advantage. TEA-3 should equalize commuter benefits and assure timely, wider adoption of Commuter Choice by all employers and as part of transportation plan and program development.
- **Mandate consideration of alternative transportation/land use plans in the planning process.** Require all state and metropolitan areas to develop and periodically update, with public involvement, integrated transportation, natural resource protection, growth management, housing, and economic development plans that consider alternative scenarios that reduce traffic growth and pollution while enhancing environmental performance and access to jobs and public facilities for all residents through better system management.
- **Adopt a National Mobility Goal.** To assure progress in accord with Title VI of the Civil Rights Act, metropolitan and state transportation plans should be required to demonstrate that they provide equal access to jobs and public facilities for all residents, including those without cars, without undue time and cost burdens, and short-term metropolitan and state transportation programs should demonstrate timely progress towards that national mobility goal.