

# Backbone: Creation Of The National Highway System

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## Backbone: Creation Of The National Highway System

by Richard F. Weingroff

### Part 1: Mapping An Idea

*ISTEA called for designation of the National Highway System. Completing the designation would be a lot harder than anyone imagined!*

#### Introducing The NHS

As the highway community moved into the post-Interstate era, the landmark Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) reconfigured the roles of Federal, State, and local officials in choosing and developing transportation projects. Choice would quickly emerge as the key feature of ISTEA and its 1998 successor, the Transportation Equity Act for the 21st Century. (See "Creating a Landmark" in the November/December 2001 issue of *Public Roads* for the story of ISTEA.)

For the highway community, however, the most important element of the landmark law was the National Highway System (NHS), which would be the backbone of the intermodal transportation system envisioned by ISTEA. In a White House ceremony on February 13, 1991, President George H. W. Bush had unveiled an illustrative map of the NHS as he announced the Administration's proposal for the post-Interstate legislation that would evolve into ISTEA during the course of the year.

The Federal Highway Administration had worked with State transportation officials to identify the routes on the illustrative map. When Federal Highway Administrator Thomas D. Larson forwarded the map to Congress, he indicated that developing the illustrative map helped the FHWA learn "many of the problems involved in designating an NHS in a country as diverse as ours." He added, however, that the process demonstrated "the workability of the concept and the general appropriateness of the 150,000-mile scale."

Moreover, President Bush had acknowledged the importance of the NHS when he addressed the American Association of State Highway and Transportation Officials (AASHTO) shortly after signing ISTEA on December 18, 1991. He told AASHTO that ISTEA "will establish a 155,000-mile National Highway System - roads that will comprise only four percent of our total public road mileage, but that will carry 75 percent of our intercity truck traffic and 40 percent of our highway traffic." He added, "That is efficiency." As we move towards the 21st century, the President told the State transportation officials, ISTEA "will let us build - literally - a road to the future."

There were skeptics. Senator Daniel Patrick Moynihan (D-NY), who had played a vital role in creation of ISTEA, was one of them. He believed in ISTEA, especially the "unprecedented flexibility" to shift funds among modes and the provisions that would "improve the efficiencies of the systems we now have," as he told a reporter for the *National Journal* shortly after ISTEA was enacted. As for the NHS, the Senator said:

I'm sure they had very large hopes for a national highway system that would really be something new... The President had this briefing and there was this big map - a wonderful big map with all these red lines that said "National Highway System" - then in small print it said "Suggested."

As far as he was concerned the NHS was simply a new funding program with now special national significance.

Now, the highway community had to prove him wrong.

## Mapping The NHS

Under ISTEA, the U.S. Department of Transportation was to submit a proposal to Congress by December 18, 1993, for designation of the NHS (up to 155,000 miles, plus/minus 15 percent). Components of the NHS were:

- The Interstate System,
- 21 High Priority Corridors identified in Section 1105,
- Other selected principal arterials,
- STRAHNET (Strategic Highway Corridor Network), and
- Connectors to major military installations.

Prior to congressional approval, NHS funds could be used on any road classified as a principal arterial. However, beginning with fiscal year 1996, no NHS or Interstate Maintenance (IM) Program funds could be apportioned to the States until Congress approved legislation designating the NHS.

With ISTEA completed, the FHWA renewed its efforts to cooperate with its State and local partners to prepare the formal submission to Congress for designation. Under instructions issued on June 12, 1992, by Executive Director E. Dean Carlson, the FHWA would cooperate with the State transportation departments, metropolitan planning organizations (MPO), and the Defense Department to identify routes for inclusion in the NHS. The FHWA initiative was headed by FHWA Planning Director Kevin E. Heanue and the Planning Programs Division's Thomas R. Weeks and Mr. Robert A. Gorman.

The first step by FHWA, State, and MPO officials was a nationwide reclassification of the Nation's roads based on their function. The target date for completion was early 1993. This would allow officials to identify all principal arterials - all of which would be eligible for NHS funding until Congress approved designation of the NHS. The State transportation departments then worked with local officials to develop recommendations on which principal arterials should be included in the NHS. The FHWA also worked with other elements of the DOT to identify major airport, maritime, port, rail, and transit facilities that were sufficiently important to justify connections to the NHS.

Developing the map was, as in the past, a controversial process, with some States seeking more mileage than could be assigned to them while communities on roads not proposed for inclusion fought to have their road added to the final map. Meanwhile, the Surface Transportation Policy Project (STPP), which had worked closely with Senator Moynihan to alter Federal transportation policy, eyed the NHS process cautiously. While STPP liked much of ISTEA, Director Hank Dittmar said, "I guess I would characterize the National Highway System as the dangling participle of ISTEA." The group feared it would "become another investment system that is not tied to community needs."

The designation process was well underway on January 20, 1993, when President Bill Clinton took office. The new Secretary of Transportation would be Federico Peña, a former Mayor of Denver, Colorado, who had made his national reputation promoting construction of the Denver International Airport. The Federal Highway Administrator would be Rodney E. Slater, a former Arkansas State Highway Commissioner with close personal ties to the President.

Often, new Administrations assign a low priority to initiatives launched by the previous Administration of a different political party. But President Clinton, Secretary Peña, and Administrator Slater agreed with the Bush Administration that the NHS would be the backbone of the intermodal transportation system envisioned by ISTEA.

Under their leadership, the NHS map was completed in 1993, the FHWA's centennial year (having begun life as the Department of Agriculture's Office of Road Inquiry in October 1893). On December 9, 1993, Secretary Peña and Administrator Slater unveiled the NHS map that had been submitted to Congress the day before. The site was the Columbus Club in Washington's Union Station, chosen because it was an intermodal hub for highways, transit, and rail transportation.

Addressing the crowd of 300 or so, Slater used a computer and Geographic Information System maps to illustrate the components of the NHS, noting that the NHS will amount to only 4 percent of the Nation's highways but will carry over 40 percent of vehicle traffic. He added:

President Clinton has challenged all of us to help rebuild America. The National Highway System will be a key element in the President's plan. By moving people and goods more efficiently and safely, the National Highway System will create economic growth and jobs, as well as help our country compete in the new global economy.

Following Slater's presentation, Secretary Peña told the gathering:

Just as the Eisenhower Interstate System has helped make the United States an economic powerhouse, the National Highway System will help sustain our strength and enhance our international competitiveness.

He also announced plans to map a companion National Transportation System (NTS). This plan was a response to concerns by the transit and environmental communities, particularly STPP, about the NHS. Their fear was that the NHS would turn into a 160,000-mile Interstate System that was unresponsive to what STPP's member groups perceived as community and environmental needs. As *Passenger Transport*, the magazine of the American Public Transit Association (APTA), put it, the fear was that the NHS would become "a Christmas tree of highway widening to last 30 more years."

The time was right, the Secretary said, "to take an even wider view of America's transportation future." He explained:

[The] National Highway System is really a first step beyond the Interstate highway era towards an investment strategy for all of American's transportation systems - not just roads, but air and waterways, ports, pipelines, rail and urban transit.

The country needed "a fully-integrated national transportation system," instead of transportation facilities developed separately without relationship to other options. He noted that the Department has maps of rail systems, highway, airports, barge channels, and more, but "we have no map - none at all - that shows how these various sub-systems link and interact - or fail to do so." Such a "map" was needed to guide overall analyses.

He wanted to get the transportation community thinking about it:

That is why I am today calling for state and local governments, metropolitan planning organizations, private industry and interested citizens groups to begin considering the transportation issues that should be addressed in developing a comprehensive National Transportation System.

In depicting what the NTS would be, he compared it to the Hubble telescope:

Just as our space shuttle astronauts are even now focusing the lenses of the Hubble Telescope so that we can "see" to the edge of the universe - the National Transportation System will enable us to focus our efforts - to actually "see" better ways to serve America's commuters, travelers and shippers.

He concluded:

It is time to roll up our sleeves and start work on a National Transportation System that will realize the promise of ISTEA and strengthen America's awareness of and commitment to transportation investment.

So I urge all of you to join us - first in encouraging Congress to approve without delay the fine work that has gone into drafting today's National Highway System.

And I also urge you today to join the great work of drafting the National Transportation System - the blue-print for America's 21st Century transportation needs.

## The Reaction

The Community Transportation Association of America, APTA, Amtrak and the High Speed Rail/Maglev Association issued a joint statement applauding the pledge to develop a national, multi-modal transportation system. The statement explained why they supported the concept:

This stems from our conviction that a fresh emphasis on public transportation, rail travel, and intermodalism will cut down on solo driving and limit air pollution.

STPP's Dittmar also praised the NTS initiative. He was pleased to see the Secretary "deemphasize the National Highway System and emphasize the connections." He wanted Congress to place several conditions on the NHS:

- A policy of putting maintenance before expansion of highway capacity;
- A fair suballocation to metropolitan areas without altering the allocation formula among the States;
- A set aside for intermodal projects based on efficiency criteria;
- The design of NHS projects must be sensitive to community considerations; and

In addition, Dittmar recommended that Congress not finalize the NHS designation process until the NTS was developed and approved in State and metropolitan areas.

*Passenger Transit* put its readers on alert:

The National Highway System legislation must not become the vehicle for undermining Secretary Peña's move toward a balanced, flexible National Transportation System. In their congressional contacts early next year and at the NTS public meeting sponsored by the Secretary's office, APTA's members have a golden opportunity to protect transit's interests in creating a National Transportation System that means something.

AASHTO President Howard Yerusalem, Secretary of the Pennsylvania Department of Transportation, endorsed the NHS proposal, but also applauded the Secretary's "initiative to build upon that backbone of the National Highway System a truly intermodal national transportation system to meet the demands of the future." As for the NTS, he said:

Important questions are at hand, such as how can we best use the transportation resources we have, and how can we ensure that they work smoothly together. Perhaps most importantly, where will we find the funding that will be required to support needed transportation investments? We at AASHTO are dedicated to the development and maintenance of a national transportation system; that is the business of state transportation departments.

He welcomed the opportunity to work on "this important challenge."

Although the NHS had emerged from years of study, the NTS had been hastily conceived within the DOT rather than from input from the broader transportation community. It was designed to respond to objections by STPP and others opposed to the NHS. However, it was never defined as anything more than a "map," with the Secretary's speech even putting the words in quotation marks. Was it a map? A computer program? A GIS feature? A funding program? A decision-making process? It was never defined beyond the Secretary's presentation on December 9, 1993, and soon disappeared from consideration.

On February 4, 1994, the Department refined its NHS submission by submitting recommendations to Congress for route designations in urbanized areas.

## The "Clean" Bill

On February 22, Secretary Peña maintained the Administration's momentum by submitting its proposal for designation of the NHS. The proposal contained only two sections. Section 1 named the bill the "National Highway System Designation Act of 1994." Section 2 designated the NHS as submitted by the Secretary and allowed for modifications by the Secretary at State request.

This was the "clean" bill. It was no-frills, to-the-point legislation.

With the initiative shifting to Congress, the highway community already had reason for concern. Just the week before, Deputy Federal Highway Administrator Jane F. Garvey had warned trucking and bus representatives that there were "some on Capitol Hill who want to use the approval bill to reopen ISTEA" to all sorts of mischief. She and other FHWA officials were worried that the bill designating the NHS would become a vehicle for added pet projects. Although Representative Nick J. Rahall (D-Wv.), Chairman of the Surface Transportation Subcommittee, promised to look only at "minor, not major" policy changes, there was also a fear that the bill would tempt those who wanted wholesale changes to the ISTEA programs.

Chairman Norman Y. Mineta (D-Ca.) of the House Committee on Public Works and Transportation was eager to pass a bill designating the NHS. He had been in a turf battle with Chairman Bob Carr (D-Mi.) of the Committee on Appropriations' Transportation Subcommittee over funding for earmarked projects in the Department of Transportation's appropriations act for fiscal year (FY) 1993. When Carr's subcommittee tried to use more than \$300 million of Highway Trust Fund money for 58 road projects and three studies, Mineta had successfully challenged the appropriations because none of the activities had been authorized by a bill from his committee. In response, the appropriators complained that with ISTEA covering 6 years, Members had a long time before being able to insert district projects into an authorization bill.

To provide a vehicle for Member earmarks, Mineta agreed to move the NHS bill in 1994, a year ahead of the deadline of September 30, 1995, after which NHS and IM funds would have to be withheld. He would also be able to address issues that had arisen in ISTEA, such as proposals to allow billboards along scenic byways where they pass through commercial and industrial areas; changes in penalties for States that do not require motorcyclists to wear helmets; and the ISTEA requirement that crumb rubber modifier (CRM) from used tires be used in an increasing percentage of asphalt pavements.

The Senate was another story. Senator Moynihan had opposed the NHS in 1991. And he still didn't support the NHS. Aides made clear that he and Ranking Republican John H. Chafee (R-RI) had more important items on their agenda, such as reauthorization of the clean water act, the Environmental Protection Agency's "superfund," and the Endangered Species Act. They also were heavily involved in the Clinton Administration's massive proposal to overhaul the health care system, a proposal that ultimately failed to do much more than add to the partisan rancor of congressional debate. Moynihan and Chafee were willing to support a short bill that simply designated the NHS. They weren't ready to revisit ISTEA or provide a vehicle for earmarks.

This was clear on March 3 when Chairman Max Baucus (D-Mt.) of the Committee on Environment and Public Works introduced the Senate bill. It contained only three sections. It differed from the Administration bill in dividing the designation and modification provisions into two sections, instead of one. To complete work on the bill in 1994, Senator Baucus told his colleagues, "it must remain a clean bill."

## Fighting For A Bill

Slater, who had helped President Clinton and Vice President Al Gore organize bus tours during the presidential campaign in 1992, began planning a roadtour to highlight the importance of the NHS. Because of concerns about violating Federal lobbying restrictions, he altered the purpose of the tour to emphasize the vital role transportation plays in the economy. The 14-day, 14-State, border-to-border road tour began in Buffalo, New York, on April 5 and ended in Laredo, Texas, on April 18. Slater explained that:

President Clinton has challenged all of us to rebuild America, and Transportation Secretary Federico Peña is leading the effort to invest in transportation infrastructure, which will increase productivity, stimulate the economy, and create jobs. This trip will give me a firsthand opportunity to look, listen and learn about the transportation needs of people in their communities.

Although the roadtour was not designed specifically to highlight the NHS, the recreational vehicle Slater used for the trip avoided the Interstate System as much as possible, staying mainly on the U.S. numbered highways and other routes that would become part of the NHS.

The House completed work on its bill on May 25, 1994, by a vote of 412 to 12. Although the bill included designation of the NHS, it differed from the Administration and Senate bills in requiring congressional approval for any future modifications to the NHS. The Administration opposed this requirement, saying it imposed "rigid constraints" on the NHS. The bill also removed the sanctions for failure to meet the CRM mandate; required life-cycle cost analysis and value engineering reviews for NHS projects; retained the motorcycle helmet sanctions; banned conversion of highway systems to metric measures; rescinded \$49.7 million for the Congestion Pricing Pilot Program; and called for development of a National Transportation System, the concept proposed by Secretary Peña, although he did not think the legislative mandate was needed.

The bill also included \$1.4 billion for 283 highway, bridge, trail, and bike path projects, plus \$618 million for 65 transit systems. During floor debate, Chairman Mineta stated that the "net cost is zero" because his Committee had rescinded previously approved projects that were inactive and "shifted funds where they will be productive."

Senate action remained uncertain. On July 15, during a hearing on the Senate bill, Chairman Baucus announced he still favored a clean bill, with no revisions of ISTEA and no earmarks. He offered, however, to hold a hearing in September on technical corrections and thought they might be included in a separate bill with earmarks by the Senators. Senator Harry Reid (D-Nv.) told the Chairman that a clean bill was impossible. At minimum, earmarks would have to be included. He pointed out that earmarks were included in a House bill but excluded from the Senate bill, they would inevitably be added during a Conference Committee. "I'm in favor of making our own deals here in the committee."

Chairman Baucus prevailed on August 12 when the Committee approved his clean bill. The immediate fear was that a "hold" would be placed on the bill by one or more Senators that would prevent floor consideration. A "hold" is entered by any Senator who wants to delay a measure - essentially hold it hostage - either because of concerns about the measure or to secure an action on another, unrelated matter. AASHTO Executive Director Frank Francois called on all State transportation departments to urge their Senators to avoid delays to the bill. He added:

As you know, the Senate is locked in an acrimonious debate on health care. Tempers are short and there is little benevolent, bipartisan sentiment at the moment.

Nevertheless, floor action was delayed while Senator John Danforth (R-Mo.) put the Committee's bill on "hold" in an attempt to attach legislation on high risk drivers. The "hold" would remain in place through much of September, preventing floor action.

When Senator Danforth lifted his "hold" after finding another vehicle for his amendment, the Senate quickly turned to the National Highway System Designation Act of 1994, which passed on September 23 under a unanimous consent agreement. A week later, on September 29, the House called for a Conference to resolve differences between the two bills.

With such different bills, everyone knew it was going to be a difficult conference. Moreover, with adjournment scheduled for October 7 and national elections covering all House seats and one-third of Senate seats to follow a month later, time was running out. There was, however, some talk of a post-election session to consider the General Agreement on Tariffs and Trade (GATT), so there was hope that additional time would materialize for the NHS bill after the 1994 election.



Despite attempts to find a compromise, conferees were unable to complete work on the bill before Congress adjourned on October 7. An ARTBA newsletter summarized the key issue: "how to finance the approximately \$2 billion in highway and transit demonstration projects in the House bill while keeping states without projects from losing highway funds." Although Chairman Mineta predicted that passage would be even more difficult in 1995, congressional leaders ruled against considering the NHS bill in a planned post-election session on GATT.

At the end of the 103rd Congress, the NHS bill and all other measures not approved would be dead. Still, the fact that the House and Senate had reached the conference stage in 1994 held out hope that many of the hurdles to the NHS Designation Act had been cleared and that action could be completed quickly.

The voters had a surprise in store for the House and Senate leadership.

## Part 2: The Revolution

*When Congress adjourned in October 1994, the Democrats expected to complete work on the NHS early in 1995. The voters had a surprise in store for them.*

### Political Sea Change

As the 103rd Congress adjourned in October 1994, the House and Senate had not resolved differences on the two approved versions of the National Highway System Designation Act of 1994. Both versions would be dead at the end of the Congress.

Not to worry, the Democratic Chairmen of the key transportation Committees and Subcommittees thought. They would restart the NHS bill when the 104th Congress convened in January 1995, with the progress made in 1994 helping to speed a bill to completion.

Of course, they expected to still be Chairmen.

What none of the congressional leaders expected was the shock of the November 1994 elections, as a result of which the Democrats lost control of the House and Senate - the first time since the 1940's that Republicans would control both Houses. The Committee Chairs, all Democrats, would be replaced by Republicans.

One of the first casualties of the election was talk of a post-election session to consider the General Agreement on Tariffs and Trade, during which the NHS might have been considered. The post-election session was canceled because the Republicans wanted to control the debate on GATT, the NHS, and all other issues when they took over Congress in 1995.

For the U.S. Department of Transportation and the transportation community, passage of the NHS bill in 1995 remained a top priority. Under ISTEA, if the bill could not be enacted by October, the FHWA would be prohibited from making \$6.5 billion in additional NHS or Interstate Maintenance (IM) Program funds available to the States as scheduled on October 1, 1995

Other issues, however, would dictate the pace in the new Congress.

### A Contract With America

The House would focus on its "Contract with America," 10 bills the House Republicans under soon-to-be Speaker of the House Newt Gingrich (R-Ga.) had promised voters would be enacted within 100 days of the opening of the 104th Congress. The "Republican Revolution" also created a new focus on reducing Federal expenditures, crafting a tax cut, and rethinking the need for longstanding Federal programs. Budget Committee Chairman John Kasich (R-Oh.) was particularly focused on what he perceived as unneeded programs, including, it soon became clear, most elements of the Federal-aid highway program.

As the *Washington Letter on Transportation* put it "anything that can be labelled as pork is in trouble." Because earmarked projects for Democratic and Republican members had been the primary reason for failure of the NHS bill in 1994, Chairman Bud Shuster (R-Pa.) of the renamed Committee on Transportation and Infrastructure would have to make careful political calculations if, as was the case, he wanted to continue the practice.

He also had another longstanding priority: moving the Highway Trust Fund off-budget so its revenue could be used for transportation projects instead of accumulating balances that made the Federal deficit look smaller than it was. The Highway Trust Fund is not a separate account where highway user tax revenue is pigeonholed until used; it is a crediting device employed by the Department of the Treasury to keep track of the revenue. The revenue is part of the overall "pot" in the general treasury, where it reduces the deficit even though the funds credited to the Highway Trust Fund can be used only for highway and transit projects.

Speaker Gingrich, in his days as a low-ranked Republican member of the Committee on Public Works and Transportation, had voiced support in 1987 for taking aviation trust funds off-budget. So analysts thought he might be receptive to Shuster's proposal. Budget Committee Chairman Kasich was the leading - and very influential - opponent of the proposal.

By March, Chairman Shuster and Ranking Democratic Member Norman Y. Mineta (D-Ca.), along with Chairman Thomas Petri (R-Wi.) and Ranking Member Nick J. Rahall (D-WV) of the Surface Transportation Subcommittee had agreed to link the NHS bill with the off-budget proposal even as they accepted Member project requests. The requests, as they knew from experience, would help Members overcome any objections they might have to other provisions of a bill.

House Republicans were not alone in trying to add new concepts to the NHS bill. When the Administration resubmitted its bill on May 2, the National Highway System Designation Act of 1995 included the Financing Improvement Act of 1995 and the State Infrastructure Bank Financing Improvement Act of 1995, an outgrowth of the Department's Innovative Financing Initiative. The additional legislative proposals included flexible financing options, such as more flexible State matching fund requirements and voluntary State transportation infrastructure banks. They also permitted loans of Federal-aid funds for toll and non-toll projects with a dedicated revenue source and allowed credit toward matching shares for donated funds, assets, and publicly owned right-of-way.

At the same time, the FHWA was working with its partners to identify NHS connections to major intermodal terminals. These links were essential if the NHS was to live up to the claim that it would be the backbone of the national intermodal transportation system. Work on the connectors prior to the December 1993 unveiling of the NHS had been inconsistent, so they were not included in the initial package.

On April 14, 1995, Associate Administrator for Program Development Thomas J. Ptak issued guidelines advising field offices on how to work with the State transportation departments in cooperation with the MPO's and other local officials as appropriate to identify major intermodal terminals and suitable connectors to NHS routes. Legislative action would be needed to decide whether the connectors would be included in the NHS and eligible for NHS funding.

The Senate leadership - Committee Chairman John H. Chafee (R-RI) and Chairman John Warner (R-Va.) of the Subcommittee on Transportation and Infrastructure - also had some new twists. The clean bill sought by former Chairman Max Baucus (D-Mt.) was forgotten as the NHS bill became a vehicle for a series of "mid-course corrections" to ISTEA and other ideas the Republicans were now in a position to implement.

The bill cleared by the Committee on May 10 included many provisions unrelated to the NHS. Some were acceptable to the Administration. For example, Senator Warner had added a new title on replacement, funding, and ownership of the Woodrow Wilson Memorial Bridge (part of the Capital Beltway and I-95/I-495 in the Washington area), the only segment of the Interstate System built and owned by the FHWA. The Administration supported the Warner provision as well as other changes, such as scaling back ISTEA's management systems requirements and repealing the funding sanction on States that did not meet the ISTEA mandates on using crumb rubber modifier (CRM) in asphalt pavements.

Other provisions were more controversial. One provision would allow the States to charge tolls on toll-free Interstate highways, a controversial subject with many motorist groups, such as AAA, but especially truckers. Another provision would end sanctions for States that allow speed limits above 55 mph (the Surface Transportation and Uniform Relocation Assistance Act of 1987 had allowed the States to increase speeds to 65 mph on rural Interstate routes). The bill also proposed to remove Federal-aid projects from the prevailing wage requirements of the Davis-Bacon Act, a provision that immediately provoked threats of a filibuster on the floor of the Senate.

At the same time, some States were calling for delay based on doubts about the NHS concept. Senator Connie Mack (R-Fl.), reflecting the new Republican emphasis on federalism, proposed to delay action on the NHS map, which he said creates "the specter of an expanded federal system." Delay would allow time to rethink the State and Federal roles in transportation. He thought "it may well be time to overhaul the cumbersome, centralized, one-size-fits-all federal transportation mentality of the past.

In California, Republican Governor Pete Wilson also believed in devolution of Federal activities to State jurisdictions. The California Department of Transportation (Caltrans) called for a delay in adopting the NHS map while allowing the funds to be released. In support of this position, Caltrans released a paper on the Federal-aid highway program that asked: "Is It Relevant to Today's Changed Environment?" The paper stated:

Public demands for austerity at all levels of government have been underscored by major political changes that raise new and urgent questions concerning the appropriate "sorting out" of federal and state responsibilities.

The paper also raised issues related to the donor-donee debates of 1991 and suggested:

Recipient State [donee] concerns over a continuing share of donor state contributions can be addressed without creating a large NHS that will absorb inordinately large portions of the annual trust fund apportionments (at the expense of State flexibility), justify a larger than necessary federal bureaucracy, encourage unnecessary federal regulation and oversight of state NHS management, and perhaps create an unfunded mandate that will require states to augment already large proposed federal earmarks.

When debate began in June on the Senate floor, one of the first issues raised and resolved was repeal of the Davis-Bacon Act provision for Federal-aid projects. When Senate leaders realized they did not have the votes to block the filibuster threatened by Senators Edward M. Kennedy (D-Ma.) and Paul D. Wellstone (D-Mn.), the amendment was dropped on June 16.

The Senate voted to allow the States to set their own speed limits for passenger vehicles despite tense and at times emotional debate - Senator Mike DeWine (R-Oh.), whose 22-year old daughter had been killed in a car crash the year before, told the Senate, "If we raise the speed limit, people will die." At the same time, the Senate adopted an amendment offered by Senator Harry Reid (D-Nv.) to retain the sanctions for speed limits for trucks and buses. The Senate also voted to weaken the motorcycle helmet law by eliminating funding sanctions for States that do not mandate helmet use. The Senate rejected attempts to weaken Federal requirements on safety belt use.

On another controversial issue, the Committee's provision permitting tolls to be imposed on Interstate highways was rejected. However, the Senate approved an amendment by Senator William Roth (R-De.) that allowed States, for the first time, to use Federal-aid funds (under the Congestion Mitigation and Air Quality Improvement Program and the Surface Transportation Program, both ISTEA creations) for improvements in the Amtrak system and to subsidize its operations.

In addition to approving designation of the NHS, the Senate bill included changes to the High Priority Corridors of the NHS, including redefinition of corridors identified by ISTEA and addition of new corridors. It redefined the I-73/I-74 corridor to clarify the connections at the Virginia, North Carolina, and South Carolina borders in accordance with an agreement Senator Warner had reached with Senator Strom Thurmond (R-SC) and other Members of Congress from those States. The longest addition, the 414-mile James W. Dalton Trail in Alaska, was included at the insistence of

Senator Ted Stevens (R-Ak.), Chairman of the Senate Rules Committee that receives all bills and determines the rules for their consideration on the Senate floor.

Further, the bill not only contained no lists of earmarked projects but included a provision sponsored by Senator John McCain (R-Az.), the Senate's self proclaimed pork buster, that prohibited new "demonstration projects," which he referred to as new-style "pork finagling." Current projects were allowed to continue. "I anticipate that this is not the last shot fired," McCain said. "I will never underestimate the imagination of the staff of the Appropriations Committee," which was already adding earmarks to the annual Department of Transportation and Related Agencies Act.

The Senate bill, which passed on June 22, outraged safety advocates. Judith Lee Stone of the Advocates for Highway and Auto Safety accused the Senate of dealing "a fatal blow" to the safety advances of the past 15 years. During that time, the rate of fatalities per 100 million miles of travel (a measure used to compare fatalities from year to year as traffic volumes change, usually increasing) had dropped to an all-time low and the number of fatalities had stabilized in the range of 41,000-42,000 a year despite significant increases in travel since the early 1970's when over 50,000 people were killed in crashes on the Nation's highways each year.

## In The House

Safety advocates were not alone in expressing concerns about the Senate bill. The day after the Senate approved the National Highway System Designation Act of 1995 on June 22, Chairman Shuster of the House Committee on Public Works and Transportation made clear that he had a different vision. In a talk to the Executive Committee of the American Trucking Associations, he said he would move "a cleaner bill" than the Senate version in July and expected to secure House approval before the House recessed for a month on August 5.

Shuster indicated he was "very, very seriously" considering reauthorization of ISTEA in 1996, a year ahead of schedule since ISTEA included authorizations for FY 1997. If he did so, other issues could be considered sooner rather than later. With his eye on the next election cycle that could return House control to the Democrats, Shuster told the ATA Executive Committee, "The only thing we're really sure of is that we'll be in control next year." Shuster also believed he had a better chance of increased funding for ISTEA programs in 1996 than in 1997, when the Republican's multi-year budget plan began to hit hardest.

Shuster was especially critical of the Senate provision allowing the use of Highway Trust Fund revenue for Amtrak. "Over my dead body are we going to spend highway money" on Amtrak, he told the ATA. As for repeal of Federal law on speed limits, "The evidence is very clear - speed kills." He was especially concerned, as was the ATA, about the differential of speeds for passenger vehicles and trucks.

Senator Warner, also addressing the Executive Committee, agreed with some of Shuster's criticism. The Amtrak provision "was an outright raid" on the trust fund, he said. He also shared the concern about the speed limit provision, explaining, "There are some issues in America that override states rights." As for the provision allowing tolls on toll-free segments of the Interstate System, he said it had been included at the request of a few States, including Shuster's Pennsylvania, which wanted to put tolls on aging I-80, which truckers had identified in Overdrive magazine polls as the worst in the country. "We threw it in the mix, just to make it a target." He did not express disappointment that the provision failed in the Senate.

As the weeks passed, Shuster did not move an NHS bill through the Committee. Although he was publicly supporting a clean NHS bill that would include only a few other provisions plus earmarks, he was holding the bill as a bargaining chip for securing passage of a separate measure, the Truth in Budgeting Act. The Act, which had 220 cosponsors, would take the Highway Trust Fund off-budget, thus allowing the growing balance to be used for transportation project, as he said taxpayers intended. Although Shuster had the votes to pass the Truth in Budgeting Act in the House, he knew it would face strong opposition in the Senate. Senators Pete Domenici (R-NM), Chairman of the Budget Committee, and Mark Hatfield (R-Or.), Chairman of the Appropriations Committee, strongly opposed the measure. Adding the measure to the NHS bill and then fighting to preserve it in Conference was, Shuster thought, a way around the obstacle.

Speaker Gingrich had established a Transportation Task Force in June to consider the off-budget proposal, but it did not meet until July 26. The provision would have to be reconciled with separate efforts to decide how to count income and outlays in trying to balance the Federal budget. While the Congressional Budget Office and the House Budget Committee debated "baseline scoring," Shuster held both bills.

With the start of the new fiscal year coming on October 1 and the House not moving an NHS bill as the recess approached, the Senate took a precautionary step to ensure NHS and IM funding could be apportioned for FY 1996 without delay. In passing the Department of Transportation and Related Agencies Appropriations Act for FY 1996, the Senate approved an amendment on August 9 that added the Senate bill's NHS designation language. A separate measure provided a second NHS funding option by extending the cutoff by 2 years.

Senate rules generally prohibit "authorizing on appropriations," but in this case, Senator Warner of the authorizing committee offered the amendment. He explained that he proposed the amendment to avoid the funding cutoff that would penalize the States "because the Congress failed to do its job."

Unlike the Senate's NHS bill, the appropriations bill included a mechanism for correcting a budgetary cap imposed by Section 1003(c) of ISTEA that limited the amount that could be authorized through FY 1996 to \$98.6 billion. In 1991, the cap was included as a concession to "deficit hawks," but was not expected to come into play. Because of high levels of minimum allocations (additional apportionments under ISTEA to ensure each State received at least 90 percent of its estimated contributions to the Highway Trust Fund), the FY 1996 funding would unexpectedly take the program over the limit. The result would be an automatic across-the-board reduction of between \$2.8 billion and \$4.2 billion. Simply eliminating the cap was the obvious solution, but it ran afoul of the tight deficit reduction plan the Republicans had adopted, as did any other measure to protect the highway budget authority under ISTEA.

The Appropriations Committee dealt with the Section 1003(c) problem by allowing States to shift unobligated balances from most categories to any other category up to ISTEA authorization levels. Funding for CMAQ, transportation enhancements, and certain other projects were exempt from the shift.

Senator Warner's NHS designation amendment to the appropriations bill put the pressure on Chairman Shuster, whose NHS bill would be unnecessary if the Senate provision in the FY 1996 appropriations act survived a Conference Committee with the House. Securing an NHS bill of his own was essential to Shuster's strategy for approving his off-budget bill and tacking on earmarks. He also wanted to include his measure triggering ISTEA reauthorization a year early by postponing FY 1997 apportionments until the last day of the fiscal year.

As for this trigger, the prospects were doubtful, but not impossible. The *Washington Letter on Transportation* summed up the problem:

It's even less clear how Shuster will convince other House lawmakers that they should vote to put their states' highway, transit and safety funding at risk for 364 days to give Shuster a hammer to force early reauthorization of the entire program.

## Say Yes To \*Just\* NHS

As the August recess began, NHS designation was by no means certain. The Senate had two shots at it (the separate NHS Designation Act and the FY 1996 appropriations act), but House strategy was unclear. The issue had also been caught, along with many other measures, in the partisan bickering and budget brinksmanship that pitted President Clinton against the Republican leadership over the annual appropriations bills that would have to be enacted, with the President's signature or over his veto, to avoid a widespread government shutdown. Neither his signature nor a veto override was certain.

For supporters of the NHS and those who feared the funding cutoff, the delays and uncertainties were sufficiently frustrating to generate a lobbying campaign. Its purpose was symbolized by a lapel pin distributed by AAA: **SAY YES TO JUST NHS**. The campaign was designed to preserve the NHS designation amendment in the appropriations act,

rather than risk loss of designation in a bill filled with the controversial provisions contained in the Senate bill and drafts of the House Committee bill.

This effort was bolstered by an August 14 letter from Senators Chafee and Warner asking State transportation officials "to join us to make certain that nothing will stand in the way of releasing all the highway money this October 1." They expressed concern that if the House insists on "Avery contentious issues," such as the trigger mechanism and off-budget provisions, "the conference will fail and these highway funds will be lost." The Senators told the States:

Our challenge now is either to see that the amendment [to the appropriations act] is retained by the conference committee on the... bill or to convince the House to pass a simple approval of the NHS without the addition of other, contentious issues.

A staff bill released by the House Committee in July was stirring criticism as well. To address the Section 1003(c) problem, the House draft proposed several measures to overcome the cap, including one that gave the States the flexibility to spend unobligated balances accumulated during ISTEA on State priorities in any category. This provision drew opposition from the U.S. Conference of Mayors and the environmental and pro-transit groups represented by STPP. An STPP letter to Members of Congress explained the issue:

[The] proposal would allow states to trade in prior commitments for a wide-range of transportation projects and programs for which localities and private organizations have planned, received funding awards and completed planning and place these funds in a state controlled fund for state identified priorities. It would cancel the current law's careful balance between states and local governments for determining transportation priorities.

The U.S. Conference of Mayors described the issue in terms that Mayors would appreciate:

[The proposal jeopardized local ISTEA priorities] by allowing governors to recapture or rescind unilaterally unobligated or unspent ISTEA funds from prior years - funds that hundreds of local governments and other recipients have planned for and have already programmed in current transportation programs.

## Tied Up In Knots

When Congress returned from its recess in September, one of the few elements of several versions of the designation legislation, approved or drafted, that everyone agreed on was designation of the NHS. One issue to be resolved on NHS designation was whether the Secretary of Transportation or Congress would approve changes following the initial designation. The Secretary preferred to have the authority to simplify the process; some Members of Congress favored retained congressional approval authority because each bill offered an opportunity for earmarking additional projects.

Beyond the designation issues, the approved Senate bill and the draft House Committee bill contained elements that offended a wide range of interests and threatened passage by the September 30 deadline - or thereafter. The Committee wasted no time in releasing its bill - and offending still more constituencies.

On September 5, the Surface Transportation Subcommittee unveiled the Committee bill, which the Committee on Transportation and Infrastructure approved on September 8. In achieving the most basic purpose of the bill, it designated the NHS and required congressional approval of changes and additions. The bill also required the Department of Transportation to submit a list of intermodal and international connectors and any congressional designated high priority corridor segments not already on the map within 6 months of congressional action. Upon acceptance by the Department, the connectors would be eligible for NHS funding on an interim basis pending formal action by Congress. Those were among the bill's least controversial provisions.

Beyond these basics, the bill courted controversy. It included the trigger mechanism for ISTEA reauthorization a year early, despite Senate and Administration objections. When the Committee rejected by a vote of 34 to 21 an amendment by Representative Rahall to drop the trigger provision, former Chairman Norman Mineta announced he would no longer support the NHS bill.

The bill also included provisions allowing the States to get around the ISTEA funding cap that STPP and the Mayors opposed. The subcommittee voted unanimously to add an amendment by Representative Bill Emerson (MO) to incorporate Shuster's Truth in Budgeting Act, a provision that the Administration and Senate opposed and that Speaker Gingrich and the transportation task force he had appointed had not cleared. The bill eliminated the national speed limit for all vehicles (not just passenger vehicles as in the Senate bill) and motorcycle helmet law funding sanctions despite objections by Secretary Peña.

In less controversial provisions, the bill extended by 1 year the penalty for failing to implement ISTEA's management systems and eliminated the sanction for failure to meet the CRM usage requirements. In what was seen as a rebuke to Massachusetts for the ever-growing cost and controversy of the Central Artery/Tunnel Project, the bill required annual financial plans for high-cost Federal highway and transit projects of \$1 billion or more. It also required life-cycle cost analysis and value engineering analyses for projects on the NHS costing \$25 million or more. The bill prohibited the Department of Transportation from requiring States to post metric highway signs.

The transit program, which was under the Committee's jurisdiction, was also addressed in the bill. As part of the trigger mechanism, FY 1997 transit funds would be withheld along with highway funds until August 1, 1997. The bill directed that 75 percent of transit operating assistance must be awarded to urbanized areas of less than 200,000 people. It also prohibited the Federal Transit Administration from approving new letters of intent or full financing agreements for transit projects unless Congress had authorized all needed Federal dollars for that project or operable segments. Another provision repealed pre-employment alcohol testing for certain transit workers.

The Committee completed work on a Friday. The following Tuesday, Judith Lee Stone of Advocates for Highway and Auto Safety, Joan Claybrook, President of Public Citizen, and a dozen other organizations announced they were calling for a "Clean" NHS - not a "Mean" NHS. Their press release began: "For the first time in U.S. history, the Congress is considering a highway bill that will kill more people than it will save..."

Former Chairman Mineta's stinging comments also hurt the bill:

This bill is no longer a reasonable compromise. I no longer support it. We have forgotten what we're here to do: designate a national highway system and fix a budget problem.

Before the House considered the bill, Mineta announced he would resign effective October 10 to become a vice-president with Lockheed Martin Corporation. He stated that he was leaving to pursue "a great new opportunity to build a better society." Although he denied he was dissatisfied with the increasingly partisan Congress, he added that public servants had to "know when to turn back the mandate of the people to the people."

With House consideration of the bill pending and the Conference Committee getting underway on the appropriations act, Shuster announced on September 14 that he had reached agreement with House leaders to get his bill to the House floor. He agreed to drop the Truth in Budgeting Act from the NHS bill, while the leaders agreed to bring the bill up for separate House action in late 1995 or early 1996. Shuster also announced he had secured agreement to drop the bare-bones NHS provisions of the appropriations act. The agreement was confirmed by Representative Frank R. Wolf (R-Va.), Chairman of the Appropriations Subcommittee on Transportation, but not by the Senate conferees (one Senate aide commented sarcastically about Shuster's agreement, "I didn't know he had been made one of the conferees."). Still, Shuster considered it "a major step forward."

On September 19, as the House Rules Committee met to consider the rule for the bill, Shuster announced he also would drop the "trigger" provision for early reauthorization. His decision removed the second biggest obstacle to

agreement in Conference with the Senate. "I have responded in good faith and now I would expect that [the Senate] would respond in good faith."

With those concessions, Secretary Peña wrote to Chairman Shuster on September 19 to express the Administration's views. While praising the decision to drop the two provisions that the Administration had "strongly opposed," the Secretary outlined concerns about other provisions, especially the actions to repeal safety measures in current law. However, he did not issue a veto threat regarding the safety-related provisions or any other provision. Instead, he said:

While I know you share the commitment of the Administration to the timely approval of the NHS, I hope we can work together to continue to resolve contentious issues that might jeopardize enactment of this vital legislation.

Shuster's bill reached the House the next day and was approved by a vote of 419 to 7. Safety issues, especially related to speed limits, dominated the single day of debate. Representative Rahall offered two amendments to revise the Committee provision, but both were defeated, primarily on States rights claims, despite his statement that repeal of the speed limit sanction would turn the Nation's highways into "killing fields." He predicted an additional 5,000 deaths per year.

Transit provisions also survived floor debate, some with changes. The final bill directed the allocation of transit operating assistance to cities under 1 million population (instead of 200,000, as in the Committee bill).

Following passage of the bill, Shuster issued a press release that confidently predicted:

The next stop is a conference with the Senate and then it's on to the Rose Garden.

Despite the predicted importance of the NHS, the media was primarily interested in one aspect of the House and Senate bills: repeal of the speed limit. *The Washington Post's* front page article on House action was headlined: HOUSE REJECTS U.S. SPEED LIMITS and just in case readers missed the point, the continuation of the article on page A12 was headlined: HOUSE VOTES TO ELIMINATE FEDERAL SPEED LIMITS. It quoted opponents, including Representative Rahall, whose comment about "killing fields" was repeated in many articles about the House action. The *Post* article and others included his additional comment that "This is not a matter of states' rights, it's a matter of human rights." Supporters, such as Representative Thomas Petri (WI), were also quoted ("What we're saying here today is that it's up to the states").

*USA Today's* article, under the headline HOUSE PUTS THE 55-MPH LIMIT NEAR END OF ROAD, reported that "GOP efforts to repeal the 55-mph speed limit picked up velocity" with the House action. The Associated Press began its summary, "You could almost hear the growl of auto engines revving up."

House action aside, the NHS designation provision in the Senate appropriations act had emerged as one of the few controversial aspects of the Conference Committee's work. With most issues between the House and Senate conferees resolved, the NHS fallback measures caused the Conference to break down on the same day the House approved Shuster's NHS bill.

Senate conferees led by Senator Hatfield refused to yield the fallback provisions for fear of being blamed for States losing their FY 1996 NHS and IM apportionments if Congress, in the end, failed to approve a separate NHS designation act. Hatfield offered to make the fallback provision effective November 1 to give the NHS conferees time to reach agreement. But Chairman Wolf refused to back down from the commitment he and the House leadership had made to Shuster. "My own preference," Wolf said, "is to do what Senator Hatfield says. But I gave my word I wouldn't do this."

With the President and Republican leaders in Congress locked in combat over the annual appropriations acts needed by October 1 to keep the government running, the Department of Transportation and Related Agencies Appropriations Act was one of the few not subject to a veto threat. But if it could not be enacted on time, it might have to be rolled into



a continuing resolution to keep Department programs in operation. The fate of such a resolution could not be predicted under the bitter partisan nature of the budget battle, with the President and the Congress fighting on two fronts, first to prevail in securing their budget priorities and second to convince the public that it was the other side's fault.

Ideally, the transportation impasse would be settled by passage of the NHS Designation Act, but the timing of approval was uncertain because of the difficult issues separating the House and Senate bills. In addition, Senator Alfonse M. D'Amato (R-NY), Chairman of the Committee on Banking, Housing, and Urban Affairs, raised a new concern related to the transit provisions in the House bill. Because his Committee has jurisdiction in the Senate over transit programs that had not been considered in the Senate's NHS bill, he objected to inclusion of any transit provisions in the bill unless his Committee had an opportunity to hold hearings on them. When the Senate named conferees for the NHS Designation Act on September 22, the list did not include members from the Banking Committee.

As the fiscal year neared its end, the conferees could report no progress. On September 28, Secretary Peña informed Conference Committee leaders that the Administration would be unable to apportion NHS and IM funds on October 1 because of the continuing impasse. Failure to designate the NHS, he said, "would delay important infrastructure development projects and result in the loss of thousands of jobs." He also objected to repeal of the safety measures. "Repealing the programs that have laid the foundation for [the country's] record low fatality rate is a step in the wrong direction."

The Secretary objected to other provisions as well. The need for congressional approval of NHS changes, he said, "is unworkable." He objected to the "fundamental changes in the transit laws" prior to ISTEA reauthorization and to a provision allowing billboards in commercial and industrial areas along designated State scenic byways. He questioned the decision to rescind the balance of funding for the Congestion Pricing Pilot Program and transfer to a new high priority project restoration program. He noted, too, that the bill increased highway spending by \$2.2 billion over amounts permitted under the current deficit reduction law.

The letter concluded with provisions the Administration supported, such as the use of highway funds to support Amtrak, although he thought Amtrak should be subject "to the same criteria for funds under the Congestion Mitigation and Air Quality Improvement Program applicable to all other recipients." He also endorsed the provision on the Woodrow Wilson Memorial Bridge.

One thing Secretary Peña did not do is threaten or even hint at a veto. At a time when such threats were common in the partisan war between the Administration and the Congress, he instead expressed "our willingness to assist you during the conference committee deliberations."

## The New Fiscal Year Begins

By October 1, conferees on the NHS bill and the appropriations act agreed some progress had been made. Staff had resolved many lesser disagreements in the two versions of the NHS bills, prompting Chairman Shuster to promise a final agreement within 2 weeks. As he pointed out, the NHS and IM funds "will not be lost if the deadline is not met. These funds will simply be held up until the NHS is approved." Although the major items had still not been resolved, his promise caused Senator Hatfield to drop the Senate's insistence on the fallback NHS provisions in the appropriations act.

On the appropriations bill, conferees were still split on the NHS, with no sign of give on either side. The Department's funding, therefore, would be included in a Continuing Resolution that would keep the government functioning through November 13. As the *Washington Letter on Transportation* pointed out, "The few billion dollars at stake in transportation programs, with even less than that in dispute, rank as an afterthought in the grand budget debate, for the time being."

Chairman Shuster was not able to deliver on his 2-week promise. He and Senator Warner expressed continued optimism for a breakthrough in late October, but several divisive issues remained to be resolved. Shuster had retreated on his Section 1003(c) correction, but repeated his "over my dead body" comment regarding the use of

highway funds for Amtrak. He was willing to consider the use of highway user revenue credited to the Transit Account of the Highway Trust Fund, but Senator D'Amato and Ranking Democratic Member Senator Paul S. Sarbanes (D-Md.) reiterated their opposition to any transit provision that had not cleared the Banking committee. The billboard provision introduced by the House was strongly opposed by Senate conferees, especially Chairman Chafee.

Still, with assurances that conferees on the NHS bill were close to agreement, conferees on the appropriations act finally completed their Conference Report on October 16. After the NHS designation fallback provisions were dropped, agreement was quickly reached on other issues. The House approved the Conference Report by a 393-29 vote. The Senate followed suit on October 31. President Clinton signed the legislation on November 15, one day after non-essential Department of Transportation employees had been furloughed (actually only about 20 percent of the workforce) along with other Federal employees in the aftermath of the budget stalemate. (FHWA employees were not furloughed; salaries and administrative expenses are paid from Highway Trust Fund contract authority that is not dependent on the annual appropriations act.)

With the appropriations act, minus the fallback NHS provision, enacted, pressure on NHS bill conferees increased. The National Governors Association sent a letter to the House and Senate leadership consisting entirely of one sentence:

The Governors urge Congress to pass National Highway System legislation as quickly as possible.

It was signed by 50 Governors.

At AASHTO's annual meeting (DATE), some of the players in the bill's development addressed State transportation leaders. Secretary Peña warned the Nation's transportation leaders that the longer the conference is delayed, the more issues may "come unraveled." Senator Warner explained the compromise the Senators had offered, under which the Senate would drop the Amtrak provision if the House would drop its billboard provision. He had also offered to codify current billboard regulations, leaving the status quo until reauthorization provides an appropriate time to address the issue. At his request, AASHTO's Board of Directors adopted a resolution endorsing the compromise, but a staffer for Chairman Shuster called the resolution "very ill-advised."

In essence, the billboard issue had become the final issue to be resolved, although in any conference, it is often said that no issues are resolved until all issues are resolved.

The breakthrough came on November 18 when conferees reached agreement on the National Highway System Designation Act of 1995. The bill's provisions included:

- Designated the NHS and gave the Secretary of Transportation the authority to make modifications that are proposed by a State if they meet the criteria established for the NHS and enhance its national transportation characteristics.
- The Secretary would submit a report on intermodal connectors within 180 days for approval by Congress. Pending congressional action, the connectors would be eligible for NHS funds.
- The bill repealed Federal speed limit law, leaving the States to set their own speed limits for cars. The States could ask the Secretary to approve the same speed limits for trucks and cars.
- Repealed sanctions related to motorcycle helmet mandates.
- Required States to enact and enforce a law that considers an individual under the age of 21 to be driving while intoxicated or under the influence of alcohol if he or she has a blood alcohol concentration of 0.02 percent or greater while operating motor vehicle. Failure to do so would result in funding reductions.
- Established a pilot program to exempt vehicles and drivers of vehicles between 10,000 and 26,000 pounds from the Federal Motor Carrier Safety regulations.
- To mitigate the Section 1003(c) problem, the legislation first provided \$291.5 million (\$266.5 million authorized from specified rescissions and reductions plus \$25 million earmarked by ISTEA for Congestion Pricing) in FY 1996 and \$180 million (\$155 million from the same sources) in FY 1997. The funds could be used for any project eligible under Chapter 1 of Title 23. Second, the States could designate part of their unobligated

balances as of September 30, 1995, for use on projects of their choice that are eligible under Chapter 1 of Title 23.

- Allowed up to 10 States or multi-State entities to establish transportation infrastructure banks to make project loans, enhance credit, subsidize interest rates, and provide other assistance for eligible highway and transit capital projects. This provision, originally part of the Senate's appropriations bill, had been dropped from that bill and incorporated in the NHS Act.
- The sanctions requiring the States to adopt management systems were dropped.
- The sanctions requiring States to use CRM in asphalt pavements were dropped.
- Provided that no State can be required to erect or modify any highway signs to present measurements in the metric system. Also, the legislation extended an FHWA-imposed deadline for the use of metric units in all activity by the States related to Federal-aid highway projects, such as environmental impact statements and project agreements (i.e., contracts). The new deadline was September 30, 2000.
- The bill adopted the Department's current interpretation of outdoor advertising law, namely that a State may exclude from a State-designated scenic byway any segment of highway that is determined not to possess the scenic criteria for which the byway is designated.
- The Woodrow Wilson Memorial Bridge Authority Act of 1995 was adopted as Title 4 of the NHS Act. It allowed local officials to establish an authority for replacement of the bridge, while directing the Secretary to continue ongoing work on environmental review of the proposed replacement.

In a joint statement, Senator Warner and Representative Shuster referred to the bill as "one of the most important pieces of legislation in the 104th Congress." They called the \$6.5 billion that would be released by the bill for the NHS and IM programs "a down payment on future federal-aid highway spending [that] will bring economic benefits to our nation for decades to come."

Despite continuing concerns about safety, the Senate approved the legislation on November 17 by a vote of 80 to 16. The House completed action the following day by unanimous consent.

As had been true throughout deliberations, the media reaction focused more on the speed limit changes than any other element of the bill. "Bill Ending Speed Limit Clears House" said *The Washington Post*, while the *New York Times* headlined its article, "Ending of Federal Speed Limit Wins Congressional Approval." *The Washington Times* headlined its article:

'Double-nickel' Comes to End of Road.

*USA Today* told its readers, "The federal speed limit will soon be a relic of the roadway." The article made no mention of the NHS or any other provision of the legislation. It did, however, quote Jim Baxter of the anti-speed limit National Motorists Association as saying, "It's about time. Several million people a year have been receiving speeding tickets for traveling what were indeed safe speeds." The article also quoted consumer activist Ralph Nader, who predicted that "thousands of people... will soon lose their lives or be permanently disabled" because of the change. Pro-and-con debate aside, the article updated readers on State reaction to the change. States were raising or planning to raise their speed limits, some to 75 mph. One State, Montana, planned to eliminate numerical speed limits during daytime, and instead require motorists to drive at "reasonable and proper" speeds.

## Will He Or Won't He?

The last remaining question was whether the President would sign the bill in spite of the Administration's reservations about its safety implications.

The highway community was clear. William D. Fay, President and CEO of HUFSA, wrote to the President on November 16 to say, "On behalf of America's highway users - who not only depend on this vital system, but pay for it - I am writing to ask you to sign this legislation." AASHTO President William G. Burnett (Executive Director of the Texas Department of Transportation) urged the President, on behalf of the 52 State departments of highways and transportation, to sign the legislation. As for safety concerns, he noted that the changes "merely return that

responsibility to the state capitals." He added that as a former Governor of Arkansas, President Clinton "can certainly appreciate that state elected officials are no less concerned and responsible than their counterparts in Washington, and being closer to their constituents, reflect more adequately the needs and concerns of the citizens."

President and CEO Thomas J. Donohue of the ATA pointed out that the ATA supported the current national speed limit law, but added, "now that Congress has adopted the repeal overwhelmingly, we believe your wisest course of action is to work with us and other safety groups to encourage states to enact speed laws that protect public safety." He also noted that the bill "will improve highway safety by removing bottlenecks, improving sight distances, widening lanes, and improving intersections." In closing, Donohue stated:

Finally, the record will show that the Administration has communicated frequently with the Congress during the 18 month odyssey of this bill. At no time did the Administration threaten a veto. A veto decision at this late date would be a breach of faith with the Congress and the American people.

Similarly, ARTBA President and CEO T. Peter Ruane urged the President to sign the bill. He also noted that the funding released by the bill would help in "designing and building safety improvements into the nation's most heavily traveled highways." As for the critics who say the bill's safety repeals demand a veto, Ruane "vigorously" disagreed.

We have more faith in the good judgment of the nation's governors and state legislatures than that. ARTBA believes they are committed to highway safety and will act appropriately.

Safety advocates, however, had no intention of letting up on their pressure to veto the bill, even though it had passed Congress by "veto-proof" numbers (well over the two-thirds votes that would be needed to overturn a veto by the President). Even as the Senate completed its vote in favor of the bill, the Advocates for Highway and Auto Safety released a statement headlined:

Safety Groups Decry Senate Passage of Highway Bill with "Killer Amendments," Step Up Efforts to Urge Presidential Veto

The statement quoted Claybrook, a former Administrator of the National Highway Traffic Safety Administration who had long been affiliated with Ralph Nader. She said, "This \$6.5 billion highway bill will create a \$19 billion national public health problem each year." Nader concurred, saying "If this bill is allowed to become law, these provisions will reverse three decades of bipartisan leadership in Congress and the White House in fighting the number one cause of death and injury for all Americans between the ages of 5 and 35 - motor vehicle crashes."

David F. Snyder, Assistant General Counsel of the American Insurance Association, predicted 6,000 additional deaths each year "and nearly \$20 billion in extra costs to taxpayers and insurance policyholders." Ed Eckenhoff, President and CEO of the National Rehabilitation Hospital in Washington, D.C., was more explicit:

We know what these higher speeds will mean - more patients for our facilities suffering from spinal cord and brain injuries.

Editorial cartoonists joined in. In *The Washington Post*, Herblock pictured an ambulance on a road littered with crash debris and a NO SPEED LIMIT sign. One of the emergency medical technicians is depicted as saying, "Keeps us moving faster too." Mike Luckovich in *The Atlanta Constitution* portrayed a driver saying, "I was wondering what they were going to replace those '55 mph' signs with." The cartoon depicts the answer in a series of signs:

MOVE IT BABY  
GIVE IT SOME GAS!  
HAUL \$\*!  
FLOOR IT, GRANDMA.

Nevertheless, the President was expected to sign the bill, which had many positive features and had passed Congress by veto-proof majorities. But as Thanksgiving arrived, the President spent the weekend at Camp David while Members of Congress went home. The signing was delayed. The *Washington Letter on Transportation* predicted a White House ceremony by the middle of the next week "or whenever the key parties can be assembled for a signing ceremony." Citing Chairman Shuster's comment about the "next and last stop" being the Rose Garden, the newsletter speculated on the venue:

Since it is overcoat and earmuff weather in the Rose Garden these days, look for an Oval Office event instead unless the president decides, as President Bush did for the 1991 ISTEA signing, that the occasion requires a scenic backdrop such as a construction project.

The prediction did not come true.

The President signed the bill on Tuesday, November 28. But in recognition of the concerns of safety advocates, the President signed the bill in the evening with no prior announcement, little flourish, and no ceremony. Only Secretary Peña and Administrator Slater stood behind him as he placed his signature on the National Highway System Designation Act of 1995, Public Law 104-59.

In his statement, President Clinton noted that after accepting the Democratic Party's nomination in 1992, he and Vice President Al Gore "traveled much of this great land in buses." They "saw the way in which our Nation's highways reach all Americans." The NHS would not only help achieve his commitment "to rebuild America," but was "a prime example of the strategic investment of Federal resources." He explained:

The National Highway System comprises only 4 percent of our Nation's highways, but these roads carry almost half our highway traffic and most of our Nation's truck and tourist traffic. The improvements made to these roads will not only support our Nation's economic, national defense, and mobility needs, but directly and significantly improve the safety of roadways. The funds released by this legislation and used to upgrade noninterstate highways will provide significant safety benefits.

He was also pleased by the "Zero Tolerance" standard for drivers under the age of 21.

Still, in the second paragraph of his signing statement, the President acknowledged the concerns of safety advocates. "I am disturbed, however, by the repeal of certain key safety measures and will work to mitigate the impact of their repeal." Returning to this concern near the end of his statement, the President said:

I am, therefore, strongly committed to the requirement in this Act for Federal and State officials to work together to assess the costs and benefits of any change in speed limits. I have instructed the Secretary of Transportation to develop an action plan to promote safety consistent with my Administration's continuing commitment to highway safety. My Administration will redouble our efforts to protect those who travel on our Nation's highways.

While safety advocates continued to oppose the bill, White House Press Secretary Mike McCurry presented a very practical response. Citing "overwhelming support" in the House and Senate for the bill, he said, "There's not a certainty that any veto that he would exercise would be sustained by the Congress."

Secretary Peña's statement on the new law was devoted to explaining the President's plans for promoting highway safety:

When a plane crashes and kills people, every news show in the country reports it. People are concerned, and that's appropriate. Last year, we lost 262 lives through seven major airline crashes. Yet on our highways, we lost 40,000 lives, and it doesn't make page one. That is the equivalent of 110 people killed in an airplane crash every day, for an entire year, 365 days of the year.

Motor vehicle crashes, he said, "cost the public more than \$137 billion a year," including property losses, market and household productivity, medical costs, insurance administration, and legal and court costs. Now, the Congress "has granted the states the right to set virtually their own highway safety laws." He added:

I accept this change in legislation as an opportunity to engage in a national debate, not only with the state elected leaders, but with the American people as well, about what our true commitment is to reducing the loss of 40,000 lives.

In response he announced eight actions:

- He urged the Governors of States where legislation automatically increased speeds upon repeal of the national law to work with legislators to consider the costs and to hold public hearings on the costs and benefits.
- Begin a public education campaign on highway safety.
- Establish a nationwide safety team to educate State policy-makers on the consequences of weakening highway safety laws.
- Assist the States in tracking data on State-specific costs of motor vehicle crashes and the ultimate payor of these costs.
- Aggressively support the "zero tolerance" provision.
- Promote and support safety management systems.
- Carefully exercise discretion in implementing the pilot program to reduce regulations for medium-sized trucks.
- Carefully monitor the results of numerous statutory exemptions granted for hours-or-service requirements.

These plans could not placate the safety critics. Nader released a statement urging the President to "express his apologies to the thousands of people - children, women and men - who will soon lose their lives or be permanently disabled due to higher truck and auto speeds and exemptions from other safety standards."

## The Aftermath

In the long run, predictions have a way proving themselves - or not.

The safety concerns expressed during the debate on the National Highway System Designation Act of 1995 did not prove valid. Fatalities and injuries have remained relatively stable. In April 1994, Secretary Peña announced that the motor vehicle fatality rate in 1993 had been at the lowest level ever. The rate was 1.7 fatalities per 100 million vehicle miles of travel, reflecting 39,850 fatalities. This was only the second time in 30 years that traffic fatalities had fallen below 40,000, the previous time being 1992, when 39,235 people died in highway crashes. These figures contrasted with a fatality rate of 2.6 and 42,589 fatalities in 1983.

Even more impressive, the fatality rate declined even though there were more cars and drivers on the road and more vehicle miles traveled.

In 1995, the year of the NHS Designation Act, the fatality rate remained 1.7, but with 41,798 fatalities in 2.42 trillion vehicle miles traveled.

In August 2005, Secretary of Transportation Norman Y. Mineta, who had returned to public service in 2000 as Secretary of Commerce under President Clinton and had switched to the Department of Transportation under President George W. Bush, announced that the fatality rate was 1.46 in 2004 and that 41,945 people died on the Nation's highways during the year in 2.92 trillion vehicle miles traveled. Based on these statistics, Secretary Mineta said that, "Drivers today are safer... than they have ever been, in part because of the safer cars, higher safety belt use and stronger safety laws that this Department has helped champion." He added, however, that "as long as the number of highway deaths remains as high as it is, we will keep advocating for the kind of vehicles, roads and driving habits that make people safer in their cars and trucks."

While highways have not turned into the "killing fields" predicted during the congressional debate in 1994-95, the predictions about the importance of the NHS also have not been borne out by experience. The NHS proved to be one of the least controversial elements of the National Highway System Designation Act of 1995, but the NHS has not become the dominant highway system its advocates had predicted. For motorists, the NHS has no separate identity that sets it aside from other highways - no unique sign, no special color for road signs, no unique design standard. It includes existing Interstate highways, future Interstate highways that are simply lines on a map today, and thousands of miles of two-lane roads without control of access, grade separation of interchanges, median separation, or other needed safety features. And the NHS routes, unlike the Interstate highways, have not been a magnet for economic development.

As Senator Moynihan had predicted in 1991, the NHS remains a funding category, similar to the Federal-aid primary category that had been eliminated by ISTEA, and has resulted in the types of benefits associated with the former category.

Today, the NHS remains a work in progress.

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