



September 23, 2021

The Honorable Lindsey Graham  
Ranking Member  
Budget Committee  
United States Senate  
Washington, DC 20510

Dear Ranking Member Graham:

The American Highway Users Alliance (Highway Users), a coalition of 300 organizations including companies, trade associations, safety advocacy groups, and motoring clubs that represent millions of motorists and large portions of the economy, and also serve as the united voice of the roadway users' community, **urges you to raise concerns with the Senate Parliamentarian regarding the greenhouse gas (GHG) performance measure** provision included in the House Committee on Transportation and Infrastructure section of the reconciliation bill marked up by that committee last week.

In Section 110002, the [bill](#) (subsection (a)) does not provide even general much less specific direction to the Federal Highway Administration (FHWA) as to how it is to use the authority provided to set GHG performance measures and for States to reduce GHG emissions. The provision straightforwardly directs only that a reduction in greenhouse gas emissions is to be achieved by states or states that do not achieve the reductions will face "consequences."

For example, FHWA could claim that "consequences" could be nearly anything within FHWA's purview -- a reduction in funds for a State, or a restriction on the State being able to use funds for new highway capacity, or a requirement to shift some funds eligible for investment in highway projects to sidewalks, bike paths or transit, environmental mitigation or purposes not focused on moving cars and trucks and buses.

The nature of the "consequences" that FHWA might claim it could impose likely would motivate States to adjust their plans for use of Federal-aid highway funds to give more emphasis to non-highway investments or to the few highway investments believed to help reduce emissions, such as investments in better synchronized traffic lights.

The subsection also authorizes FHWA to create incentives to reward states for reducing emissions. The potential for incentives could be wide ranging, including preference in distribution of discretionary funds.

Importantly, these changes or other changes in investment behavior that might occur due to implementation of the provision are unlikely to result in changed budget outcomes. States do

not want to fail to use Federal money that is provided. So, while it may be hard to predict the specific changes, one can expect any decrease in investment in traditional highway projects to be offset by increased investment in other types of projects believed to help drive down emissions.

**This underscores that subsection (a) is not basically a budget provision but a provision of a regulatory and programming nature.** It will not change the dollars spent by states pursuant to the “highway” program, it will change the makeup of the specific projects undertaken by the states. **The small amount -- \$50 million provided to FHWA over 5 years to implement the provision** – is very small compared to the hundreds of billions of program dollars it would impact – **is clearly incidental to its main regulatory purpose.**

Nor is it necessary; in 2016 and 2017 FHWA promulgated a GHG performance measure requiring states to develop targets for GHG emissions. The regulation was later deleted as without statutory authority. But no special funds were appropriated to support FHWA’s development of the regulation. So, the **funding included in subsection (a) does not appear to be needed to enable implementation of the regulatory and program directives in the subsection but are more in the nature of a device creating an argument that the provision is budgetary.**

Regulatory issues, of course, can be addressed by the Congress. But, we submit, provisions that are predominantly regulatory in nature should not be included in budget reconciliation legislation.

The Highway Users urges you to raise these concerns with the Senate Parliamentarian quickly to prevent this regulatory change with potentially sweeping policy impact from being included in the budget reconciliation bill this fall. If you have any questions, please feel free to contact me at [lauraperrotta@highways.org](mailto:lauraperrotta@highways.org) or 571-239-0765. Thank you for your time and consideration.

Sincerely,



Laura Perrotta, CAE  
President and CEO

CC:

The Honorable Shelley Moore Capito, Ranking Member, Senate Environment and Public Works Committee