



September 23, 2021

The Honorable Kyrsten Sinema
United States Senate
Washington, DC 20510

The Honorable Rob Portman
United State Senate
Washington, DC 20510

Dear Senators Sinema and Portman:

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, deeply appreciates the extremely valuable work you have undertaken to advance the nation's investment in infrastructure. We truly appreciate your leadership on this important effort and congratulate you on the Senate passage of the "Infrastructure Investment and Jobs Act (IIJA)." As the House proceeds to a vote on the IIJA the Highway Users are pushing hard to generate a bipartisan vote next week.

We write to call to your attention a proposed policy change relating to infrastructure that has been included in Budget reconciliation legislation under development in the House of Representatives. The **greenhouse gas (GHG) performance measure** provision included in the House Committee on Transportation and Infrastructure (T & I) portion of the reconciliation bill marked up by that committee last week is a clear case of "double dipping" from our perspective. It is our understanding that items that were either included or intentionally excluded from the IIJA after debate were not to be included in the budget reconciliation under the agreement made by the Senate and the Administration.

Section 110002(a) of [reconciliation](#) would provide \$50 million to the Federal Highway Administrator to --

- (1) establish a greenhouse gas performance measure that requires States to set performance targets to reduce greenhouse gas emissions;
- (2) establish an incentive structure to reward States that demonstrate the most significant progress towards achieving reductions in greenhouse gas emissions;
- (3) establish consequences for States that do not achieve reductions in greenhouse gas emissions;
- (4) issue guidance and regulations, and provide technical assistance, as necessary to implement this section; and
- (5) from any remaining amounts after carrying out paragraphs (1) through (4), for operations and administration of the Federal Highway Administration.

As you know, the IJA includes the text of the highway legislation developed by the Environment and Public Works Committee (EPW), marked up on May 26, 2021. The version of the bill released by the EPW leadership on May 23 by press release included a GHG performance measure and shortly after releasing the text the committee decided to delete it from the bill. As such, it was closely considered in the development of the Senate bill and not included. Further, during Senate floor consideration, Senator Cardin (D-MD) filed a GHG performance measure amendment, but it was not included in the bill that passed the Senate.

Accordingly, **the provision should be considered adding material already within the scope of the bipartisan bill.** To conclude otherwise would be to take the view that a provision rejected in the development of the bipartisan bill is considered a separate issue, outside the scope of that bill, and able to be enacted through reconciliation, even though it was considered and rejected.

In addition, the EPW Committee's portion of IJA includes a carbon reduction program. Other aspects of section 110002 of the House reconciliation bill similarly provide funds for carbon reduction.

Furthermore, the Highway Users has concerns that this provision is regulatory in nature and the funding is incidental to this policy change. In fact, in 2016 and 2017 FHWA promulgated a GHG performance measure requiring states to develop targets for GHG emissions. The regulation was later deleted as it was 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 is more in the nature of a device creating an argument that the provision is budgetary.** So in addition to already being debated and rejected it is a violation of the Bryd Rule as well. This far-reaching policy change does not belong in the reconciliation bill.

The Highway Users thank you for your leadership on infrastructure issues and are happy to help in any way we can. It is our hope that as the Senate looks to fine tune reconciliation and target the most important items that this GHG performance measure will be rejected. If you have any questions, please feel free to contact me at lauraperrotta@highways.org or 571-239-0765. Thank you for your time and consideration.

Sincerely,



Laura Perrotta, CAE
President and CEO