Before the Interim Committee on Highway Needs & Financing
of the South Dakota Legislature

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Thank you Mr. Chairman, Madam Vice Chair and members of the committee. I'm pleased to be here in Pierre today.

Senator Vehle I wanted to especially thank you for being a valued member of our CSG Transportation Public Policy Committee, which meets every year at the CSG annual meeting. He gave a great presentation on the work of this committee during our session earlier this month up in Alaska. That public policy committee began life more than six years ago as the CSG Transportation Advisory Committee. At that time, the expiration of SAFETEA-LU was still more than a year away and there were still hopes that the next federal surface transportation authorization bill would be a game changer not only in terms of the changes in policy it would bring but also in a renewed commitment to infrastructure investment at the federal level. South Dakota Transportation Secretary Darin Bergquist was among the members of that advisory committee and played a significant role in helping to draft our policy resolution that year outlining the principles CSG members wanted to see in the successor to SAFETEA-Lu. I was looking back at that resolution recently and I think a lot of states would say these are principles they would still support:

- A multi-modal, multi-year and adequately funded authorization bill to meet the nation's continuing infrastructure needs.
- A bill that provides short-term funding stability and long-term vision. Two of the things mentioned in this regard are that increasing and indexing the federal gas tax may be necessary in the short term and that we must make plans as a nation to migrate the Highway Trust Fund to a new, more diversified funding stream.
- A bill that provides maximum flexibility to states but preserves the federal-state-local partnership in transportation funding; and
- A bill that considers the needs of both urban and rural areas.

But as we've seen in the six years since we put that resolution together, many of these principles have unfortunately become more of a pipe dream than they were even back then.

Congress approved a total of nine short-term extensions between the expiration of SAFETEA-LU in 2009 and the passage of the two-year MAP-21 bill in 2012. For what it is, MAP-21 is a great policy bill. There was a lot in there that state transportation folks had been asking for and working on for a long time: strategies to speed up project delivery and environmental review processes, the first steps toward an emphasis on performance measurement, the streamlining of programs, greater flexibility for states on some things and so forth. What it didn't do is provide the kind of increase in funding that many said was needed to get our infrastructure back on track and it didn't address the long-term future of the Highway Trust Fund, which has seen dwindling gas tax revenues in recent years due to a variety of factors.

That set up the latest round of brinksmanship earlier this summer when the Highway Trust Fund was threatening to run out of money well before the end of the fiscal year when MAP-21 was also due to expire. The U.S. Department of Transportation was warning state DOTs and transit agencies that they would soon be forced to implement a cash management plan and reimbursement funds states count on to pay for road projects would begin to dry up.

Fortunately, Congress did step in before the August 1 deadline and we now have a nearly $11 billion short-term, stopgap patch in place that is expected to get us through to next May, when we're likely to see yet another round of brinksmanship. It cobbles together nine months of temporary funding from something called "pension smoothing," increased customs fees and other sources. It's a plan that brought out the headline writers in a battle of the metaphors:

- Kicking the can down the road
- Punting the football
- Hitting the snooze button

Take your pick. It obviously still does nothing to alleviate the uncertainty that states and the construction industry have experienced in recent years and does nothing to address the long-term transportation funding issues.

The problem has been that long-term solutions have been hard to come by and even harder to win support for on a bipartisan basis. The simplest short or medium-term solution—raising the federal gas tax—was a political non-starter in an election year. There were proposals in Congress but the Administration has never gotten behind it and has seemed at least somewhat content with presiding over the series of general fund transfers we've seen in recent years.

We've also seen this inertia at the federal level during a period when the federal transportation program seems to have lost its defining purpose and when there are no more earmarks to sweeten the pot. Members of Congress have been left asking "what's in it for me" and haven't been able to come up with a good answer to that question that would allow them to support additional revenues.

Sen. Vehle asked me to make a prediction on what's going to happen next year in Washington and in the slightly longer term. If the past five years are any indicator, I can tell you one thing I wouldn't bet on happening. Remember that first authorization principle in our 2008 resolution? The one about a "multi-year, adequately funded bill to meet the nation's continuing infrastructure needs?" I think that's unlikely. And that should be a serious concern for all states, but especially for a state like South Dakota.

A more likely scenario and one that may turn out to be the best case scenario at this point would be that once next Spring rolls around, we'd see another short-term extension and perhaps a series of them to get past the 2016 election. Because next May, when this latest extension expires, we'll have a new Congress just getting their legs underneath them and the 2016 presidential campaign will likely already be underway. May is also typically the beginning of peak summer gas prices. That does not bode well for some kind of an effort that would create any new revenues for transportation especially in the form of a gas tax increase.

Here's a quote from one of my favorite transportation thinkers, Joshua Schank of the Eno Center, who is a regular at our Transportation Policy Academies in DC:

"Congress is actually reflecting what people want. People want to have a federal (transportation) program and they don't want to pay for it."

Where have I heard something like that before?

Oh yeah. I think it was this guy…

"Everyone wants good roads and no one wants to pay for them." – Sen. Mike Vehle, 2014

There have been some hopeful signs this year, however. This year we saw Republican Senator Bob Corker of Tennessee and Connecticut Democrat Chris Murphy propose a 12-cent gas tax increase. There was also a report last week that Senators John Boozman of Arkansas and James Inhofe of Oklahoma are predicting Congress will come up with a new highway funding mechanism by next May. Inhofe was quoted as saying "you'll see a new funding mechanism that is going to change how we are funding our roads and highways." He said, somewhat enigmatically "This is not an announcement on my part, because I still maintain opposition to any new tax increases, however it's more of a user fee than a tax increase." I guess we will all have to wait to find out exactly what that entails but at least it sounds like folks are working on some ideas and not resting on this latest stopgap measure.

There are other signs however that are potentially more worrisome for states. During Senate debate on the most recent temporary fix, Senators had the opportunity to vote on an amendment offered by Utah Republican Mike Lee that would have reduced the federal motor fuels tax over five years and devolved most of the federal role in transit and highways programs and projects to the states. It garnered 28 "Yes" votes, including those of the aforementioned Senators Boozman, Corker and Inhofe. Senators Thune and Johnson both voted "Nay" by the way. The Heritage Foundation, the influential conservative think tank in Washington, was a big supporter of the Lee amendment. So you've got to wonder if Republicans are in charge of the Senate next year as many are predicting, what that will mean for the future of the federal program. Will the old guard that has supported the federal program in its existing form continue to hold sway or will Tea Party folks like Mike Lee and the conservative Heritage crowd garner any more votes for essentially dismantling the federal surface transportation program?

And as I said that should be a concern for all states, but especially for a state like South Dakota, which this year is relying on the federal government for more than $380 million for transportation and highways. South Dakota as you may know is 49th out of 50 states in the percentage of transportation funding it derives from state gas taxes and other user fees. Those only account for 21.5 percent of transportation spending, according to a report from the Tax Foundation that came out earlier this year.

So as you look at South Dakota's transportation funding needs going forward, it's important to consider that dynamic in Washington that has led to inertia and stasis and that could lead to decline in the years ahead. More than likely, the cavalry is not coming folks.

Fortunately there are a number of states that have recognized the cavalry is not on its way and have begun to take matters into their own hands in recent years. I want to touch briefly on a few of those, talk about some notable recent failures, and examine some possibilities for the future because I think there are important lessons to take away from all of them as you go through this process.

Last year in 2013, we saw six states plus the District of Columbia that put together major packages revamping how transportation was funded.

- In Wyoming, they raised the fuel tax 10 cents-a-gallon, which is expected to bring in more than $70 million annually, including $47.4 million for state highways, $16.4 million for counties, $6.7 million for cities and $1.2 million for state parks. That's still far short of what the Wyoming Department of Transportation estimates is needed for construction and maintenance, but every little bit helps. And that tax increase was really remarkable for the lack of political rancor it produced. You had an oil-producing state. You had a Republican Senate, House, and Governor's office. You had the business community and even the Wyoming Taxpayers Association come out in support of the tax increase. They all recognized that with the state gas tax being 10 cents lower than surrounding states but the retail price of fuel being about the same, that 10 cents was going to the oil companies rather than to invest in the state's infrastructure. The arguments against the initiative were that citizens are already taxed too much and the Wyoming DOT should instead improve its internal financial management to more effectively use its funds. One of the arguments used to sell the plan was that for every dollar NOT spent on timely, preventive maintenance, $4.00 to $8.00 will be needed for complete reconstruction a few years later.
- In Vermont, they took a slightly more complicated approach. Facing the possibility of losing federal matching funds, they enacted a 2 percent sales tax on gasoline as well as a 0.8 cent decrease in the per gallon gas tax and a two cents per gallon diesel tax increase—all phased in over two years. The net result is expected to be $28 million more per year to support road and bridge improvements in the state. The overall tax hike could reach 6.5 cents per gallon by FY 2016 since it is tied to the wholesale price of gas. Since the sales tax is paid by the distributors, gas stations are determining how much motorists actually pay. The effort in Vermont had strong support from both the Governor and both legislative chambers. The arguments against the measure were that it was a regressive tax that disproportionately hurt low-income folks who would be forced to pay a larger percentage of their income. Trucking and bus groups didn't like the diesel tax being singled out for an increase.
- Maryland enacted a package that combines gasoline and sales tax revenues to generate an additional $830 million annually for road and public transportation improvements. The law raises the gas tax over a four-year period starting with a 4-cent-per-gallon increase last July. It also establishes a new 3 percent sales tax on wholesale gas, which is being introduced over a three-year period. There could also be an additional 2 percent sales tax on gas if Congress does not pass an Internet sales tax bill by 2015. The flat tax on gas

will also be adjusted periodically to account for changes in inflation. Gas taxes are expected to increase by 13 to 20 cents-per-gallon by 2016. State officials had estimated that without the increase in funding, Maryland would have only been able to do maintenance on its transportation system after 2017. The measure had strong support from the Governor and General Assembly as well as business, labor and trade groups. One of the arguments used against the measure was that it burdened motorists in rural areas to pay for mass transit projects in the Baltimore and DC areas.

- Pennsylvania put together a comprehensive, five-year funding package last year that included a $2.3 billion investment in the state's transportation system. It eliminates the 12-cent retail gas tax and over five years abolishes the artificial cap on the Oil Company Franchise Tax, which is charged at the wholesale level. The final bill was a product of compromise and eventually passed with bipartisan support. A huge coalition of industry and business groups called the Keystone Transportation Funding Coalition played an important role in pushing the bill across the finish line.
- Lawmakers in Massachusetts had to override a veto from Governor Deval Patrick last year to enact a three-cents-per-gallon gas tax increase as part of an $800 million transportation plan. Patrick had previously called for a plan to raise $1.9 billion in new revenues. As enacted, the legislation also allows future tax increases to be indexed to inflation. As in Pennsylvania, it was a diverse coalition of stakeholders called Transportation for Massachusetts that helped push the measure forward. But on November 4 of this year, Massachusetts voters will consider a citizen initiative to repeal the automatically indexed gas tax increases that are set to begin next year.
- And then there was Virginia, where they took the everything-but-the-kitchen-sink approach. That state approved a five-year, $3.4 billion bill that eliminated a portion of the 17.5 cents-per-gallon gas tax, increased the sales tax from 5 percent to 5.3 percent statewide, and created new wholesale gas and diesel taxes. The legislation also increased the sales tax from 5 percent to 6 percent in Northern Virginia and Hampton Roads, the state's two major population centers. It implemented a $64 annual registration fee for hybrid, electric and alternative-fuel cars, although the fee for hybrids was later repealed. Similar to Maryland, Virginia also enacted a provision to draw on revenues from the Marketplace Equity Act, if Congress ever gets around to passing that measure to tax internet sales. If they don't, the wholesale gas tax will increase by another 2 percent. There is a new tax on the sale of motor vehicles as well that will increase over a four-year period. The measure was the end of a long road for Virginia that began with a series of audits of the state DOT, saw the use of surpluses to fund transportation in several cycles, saw the creation of a state infrastructure bank, saw the use of bonding, and that has seen the state become a leader in the area of public-private partnerships in recent years. The effort had strong support from the Governor and bi-partisan support in the legislature. Then-Governor Bob McDonnell appealed to his conservative base in making the case for the measure recalling the legacy of Ronald Reagan, who signed a gas tax increase in 1983. McDonnell noted that "it's a conservative principle to pay as you go." The measure faced opposition from anti-tax groups and others but ultimately overcame that with support from the business community.

If you want to read more about any of these states, the American Road and Transportation Builders Association has a great website called the Transportation Investment Advocacy Center that includes a virtual clearing house of case studies on transportation funding. Here's their list of best practices gleaned from some of these case studies:

- The importance of stakeholder coalitions
- The governor as a champion of the initiative
- Compromise and bipartisan support in the legislature
- Strong political leadership in the legislature
- National momentum; and
- Effective communication & messaging to the public with a focus on job creation and economic benefits.

A couple of other states to note that have approved new transportation funding in 2014:

- Rhode Island, where lawmakers eliminated tolls on the Sakonnet River Bridge but instituted a 1 cent fuel tax increase that kicks in next summer, which is expected to raise $4 million more annually. The tax will also be adjusted every two years based on the rate of inflation. They also created a new road and bridge fund that will be supported by higher vehicle inspection fees, which will raise an additional $4.8 million annually. And they shifted $16.4 million of the revenues produced by inspection sticker fees, motor vehicle title fees and rental car surcharges that used to go into the state's general fund to the new transportation fund.
- New Hampshire back in April became the latest state to raise its gas tax. It went up 4.2 cents per gallon in July. Forty-two percent of the revenues produced by the increase will go to bonding for the widening of I-93. Thirty-three percent will go to municipalities for local road and bridge repairs and another 25 percent will go to repairs of secondary state roads. The bill includes a sunset provision that would repeal the tax increase in 20 years or when the bonds for the I-93 project are paid off. The bill's chief sponsor, State Sen. Jim Rausch—a Republican—noted as a selling point that the entire 4-cent increase will be reflected at the gas pump and that it would cost someone who drives 10,000 miles annually at 25 miles per gallon only about $16 a year.

There were also a number of states this year that either came close to approving new transportation plans or that seemed to have all their ducks in a row for great success and it just didn't happen.

States like Iowa, Minnesota, Wisconsin, Mississippi and West Virginia have all had transportation funding commissions or task forces in recent years that came out with recommendations but those states didn't move forward for a variety of reasons. West Virginia got sidetracked by a little chemical spill for example. Interestingly, Wisconsin will have a measure on the ballot this November that would bar lawmakers from raiding the state's transportation fund to balance the budget. It is hoped that will build trust with the public and pave the way for a future transportation funding package. Maryland is considering a similar measure this year. Elsewhere this year, Delaware Gov. Jack Markell proposed a gas tax increase in January that didn't really go anywhere. And states like Idaho and Washington have been trying for years to move plans and it always seems like "close but not cigar."

There was a notable failure that happened just this month in the state of Missouri. Voters went to the polls in the state's primary election to decide on a constitutional amendment that would have increased the state sales tax by three-quarters of a cent, with all revenue going to transportation, including 10 percent to cities and counties for local transportation needs. During the decade after enacting the sales tax increase, the gas tax rate would have been frozen and existing roads could not have been turned into toll roads. After those 10 years, voters would be able to decide whether to extend the tax. It was projected to raise $534 million annually.

Many elements seemed to be in place for Missouri to be successful. The state has a clear infrastructure deficit. They've had a declining construction budget in recent years. They had a citizens committee that recommended an additional $600 million to $1 billion a year in investment. The state DOT has become a leader in performance measurement, they've cut their workforce to the bone, become a more efficient operation and won the trust of voters who consistently rate the agency high for their efforts. State officials spent four or five years considering all the options before putting the measure before the voters. Polling showed that a sales tax had the most chance of winning approval from the voters. Proponents of the constitutional amendment even outspent opponents more than 100-to-1 on advertising and promotion heading into the final weeks of the campaign.

But Constitutional Amendment 7 was voted down by 59 percent of the voters. Opponents including Governor Jay Nixon argued that raising the gas tax was a better option than the sales tax. In June he said the sales tax would "fall disproportionately on Missouri's working families and seniors by increasing the cost of everyday necessities like diapers and over-the-counter medication while giving the heaviest users of the roads a free pass." There were also concerns as to whether sales taxes collected locally would be spent on local projects and whether an emphasis on building roads made sense in the face of declining vehicle miles traveled statewide. About 7 percent of the new revenues would have gone for transit and a smaller fraction to local governments. The fact that Nixon placed the measure on the August ballot instead of the November ballot played perhaps the biggest role in its defeat, since that ensured a smaller, more conservative electorate that would be more hostile to higher taxes and limited the amount of time proponents had to get their message out.

In the wake of the Missouri defeat, some are predicting it may be years before transportation funding can again appear on a statewide ballot. Unfortunately, Missouri doesn't have years to wait. It's estimated that by 2017, the state's transportation budget is expected to dip to $325 million, which wouldn't be enough to even maintain the state's current highway system.

Senator Mike Kehoe, who chairs the Senate Transportation Committee was quoted as saying "We've got to have the table wide open for any suggestion that's out there. We've got to find something that's palatable to the voters."

Unfortunately finding where those two statements intersect and don't contradict each other is one of the biggest challenges facing policymakers across this country today.

Among the ideas Missouri may look at in the future: a smaller sales tax combined with a small gas tax increase. Higher vehicle registration fees, new fees for electric or hybrid vehicles, and indexing the fuel tax to inflation could factor in. Public-private partnerships and tolling may also be in Missouri's future. Missouri's constitution requires any large tax increases be submitted for voter consideration. However, by law, the legislature could raise up to about $87 million without seeking a public vote. A two-cent increase in the gas tax, which would raise about $80 million, could be possible without another election.

The Missouri results in many ways mirror what happened in a failed local option sales tax referendum vote in Atlanta in 2012. Despite the success of the referendum elsewhere in the state, the Atlanta region wasn't able to align the local interest groups and questions about the extensive project list and its ability to better connect that sprawling, congested region undermined its chances. The Sierra Club and the Tea Party formed an unlikely alliance that spelled its demise. And like in Missouri, the Georgia referendum was held on primary election day rather than at the November general election, which ensured a smaller, more conservative turnout. Georgia lawmakers are only now starting the process of trying to find a Plan B, it has been reported recently.

Still on the horizon this year is a ballot measure that **is** on the November general election ballot in Texas. There voters will decide whether to divert about $1 billion annually from the state's Rainy Day Fund to transportation. When measured against that state's infrastructure spending deficit, it's an inadequate solution, a presumably one-time-only funding source, and its success is far from guaranteed. Though I'm sure TxDOT would welcome the extra funds if voters agree to the measure.

One of the other very interesting developments that happened last year was that Oregon passed legislation under which next year it will implement an operational mileage-based charging system for 5,000 motorists. The state has had two successful pilot programs in the last several years but this is no pilot program. This is a permanent, fully scalable program that is easily transferable to other states. We did one of our CSG Transportation Policy Academies for a group of state legislators from around the country out in Portland last year and got a briefing on the program from Jim Whitty, who directs the effort for the state DOT, and members of his team and it's clear that they believe mileage-based user fees or VMT fees are not just the way of the future, they're ready to go now. The technology is there. The system is there. Oregon has gotten the private sector involved. They've resolved some of the privacy concerns, at least to the satisfaction of the ACLU, once they addressed who would have access to location data and how quickly it would be destroyed after it was used for billing. They're going to give users a choice of how their data is collected and who collects it. They will be able to choose from options like a smartphone app, an onboard GPS system or a flat fee based on an odometer reading that requires no tracking at all. The collection of more data can be incentivized with lower costs. They've also addressed some of the concerns about whether rural drivers would be at a disadvantage in a mileage-based system and how that might be taken into account. Washington State, California and a number of other states are taking a hard look at mileage-based systems too. Really, the only hurdle left to climb is a political one. Most transportation experts will tell you it is a much more accurate version of a user fee. In fact, not only are VMT fees likely to be our future, they were almost our past. Before the federal government enacted a gas tax in the last century, one of the ideas being talked about was a mileage-based fee. It wasn't technologically feasible at the time. It is now. It's simply a matter of finding the political will to move forward.

To me one of the best arguments with regards to the privacy concerns about big brother tracking us is that it's already happening. That ship has sailed folks. How many of you have a smartphone in your pockets? Have you checked in on Facebook, used a car sharing service that tracks rides, used rideshare and taxi services like Uber that make use of GPS and geolocation data, or driven electric cars which have become great sources of data on things like energy use? It's not just the NSA and you're not just paranoid. Everybody really is watching you. And the younger generations are a lot more comfortable with that idea than some of the older ones.

The other promising area I think is public-private partnerships. P3s aren't just about big city toll roads anymore. States are increasingly turning to the private sector for help in tackling all kinds of projects. While it is the abundance of private capital that attracts states to the concept of P3s, it's not free money. The private sector is increasingly being looked at to bring innovation and efficiency to projects of all sorts and to bring projects to completion years ahead of time. We're seeing a transition to something called availability payment deals, where the state maintains a greater share of the risk and makes payments over time to the private sector to design, build, operate and maintain the project based on the achievement of project milestones or performance metrics. In many cases, states are able to do this because they've already passed their transportation packages and demonstrated a commitment to investing in their own infrastructure. They have skin in the game and the private sector likes to see that. Case in point is Pennsylvania, where as I mentioned, they passed a major package last year. Now they're also engaged with the private sector on a project to rebuild 600 of the state's crumbling bridges in one fell swoop, one of the most innovative P3s anywhere in the country. These aren't big bridges that are going to be tolled eventually. Many of them are highway overpasses and the like, where the private sector can bring uniformity to the process and efficiencies in scheduling. But the project likely wouldn't have been possible had the state not passed that major transportation funding package last year.

The private sector is looking to invest in the infrastructure of this country and to apply their skills and experience to all kinds of transportation projects. In some cases it may simply be necessary for someone to act as the middleman or the matchmaker, if you will, to bring the public and private sides together and allow them to recognize the possibilities, particularly in rural parts of the country where the benefits of P3s may not be as apparent. That's why I was intrigued by a couple of initiatives announced recently by the Obama administration.

- Last month, the President announced an executive action to create the Build America Investment Initiative, which will create a one-stop shop at USDOT to help states and communities take advantage of innovative financing and forge partnerships with public and private developers and investors.
- In addition, the White House Rural Council announced plans to start a $10 billion investment fund that will give pension funds and large investors opportunities to invest in rural America agricultural programs including wastewater systems, energy projects and infrastructure development.

I wanted to wrap up here with a few thoughts based on what I've gleaned from the folks I talk to on a regular basis.

- You are not alone and there's no need to reinvent the wheel. Numerous state legislative and citizen committees have struggled with these issues over the last several years. There is no shortage of solutions. They may not be solutions you like. They may not be solutions your constituents will like. They may not be solutions the South Dakota DOT will be entirely happy with. But when presented with the obvious needs and the list of options, it is not a binary choice to simply do nothing.
- Transportation investment in the near term is the conservative approach. It will only cost more in a few years. You're not going to get a better deal. If you want to be good stewards of taxpayer dollars, invest now. In many ways South Dakota is in great shape. Only 2 percent of the miles of South Dakota state highways are currently in poor condition. There are plenty of states that would kill for a number that low. But within 10 years, that number will climb to 25 percent if funding levels remain constant. There are plenty of big transportation projects that take 7 to 10 years to complete. So you do the math. The ideal time is now.
- If you want to create jobs both in the short and long term, it's hard to come up with something better than infrastructure investment. Moreover, continuing to allow infrastructure to deteriorate is a drag on the economy and on the wallets of your constituents, who pay considerably every time their car hits a pothole and screws up their suspension. The American Society of Civil Engineers had a great series of reports a couple of years ago called the "Failure to Act" series, which you can find online for further details.
- Maintaining the concept of a user fee is a conservative approach. It is paying directly for use of a service.
- A gas tax increase, either at the federal or state level, is the solution that for now makes the most sense, that is the most honest, that is the easiest to accomplish logistically, that is the most transparent and that keeps faith with the taxpayer. There are better user fees that will be better for the long term, including those based on mileage, but in terms of something ready to go now, cheap to implement and viable for probably the next decade if done right and indexed, the gas tax is still your best bet. The Institute on Taxation and Economic Policy came out with a great report in 2011 called "Building a Better Gas Tax." The report has three policy recommendations:
  - Increasing gas tax rates to (at least) reverse their long-term declines
  - Restructuring state gas taxes so that their rates rise automatically alongside the inevitable growth in the cost of transportation construction projects; and
  - Creating or enhancing targeted tax credits for low income families to offset the impact of gas tax reform.

Here's a quote from the report's conclusion: "Most state gas taxes are built to fail, and cannot generate sufficient transportation revenue today or in the long-term. … States are losing $10 billion in annual gas tax revenue that could have been collected if they had planned for inevitable increases in the price of construction materials the last time they raised their gas taxes."

Some states are indexing their gas tax. The gas tax in eight states is determined by gas prices: California, Connecticut, Georgia, Kentucky, New York, North Carolina, Vermont, West Virginia. That can prove problematic as it did in Kentucky earlier this year where gas prices actually went down for a quarter and so the state lost a lot of revenue at a critical time. When

Sen. Vehle and I were in Alaska earlier this month we heard Senator Jerry Rhoads of Kentucky talk about that.

Florida, Maryland and Massachusetts index to inflation. Florida and Maryland are chained to the CPI.

The tax in Nebraska varies with gas prices and the legislature's spending decisions.

Michigan, Illinois and Indiana have variable rates because a general sales tax is applied to gas.

West Virginia has a combo gas tax where they do a flat 20.5 cents-per-gallon plus 5% of the average wholesale price.

No state currently does this but it has been suggested that indexing gas taxes to the Construction Cost Index—the rate of growth in the costs of concrete, steel and other infrastructure components—might be the best way to ensure a more stable and reliable gas tax going forward.

- A sales tax or really any other solution that's not a mileage fee is a step away from a user fee and could logically be seen—whether intended or not—as an effort to confuse your constituents. The American public already doesn't have a good idea how transportation is funded. They think their gas taxes go up every year. They're not at all sure their tax dollars are going to the transportation projects that benefit them in their own communities. Some of them are not even sure the state DOT is run as efficiently as it could be. I'm speaking generically of course. I'm sure Secretary Bergquist and his colleagues are doing a great job. But there isn't a great understanding out there in the general populace about how it all works and the further you get away from being able to say to folks "the state gas tax is a user fee that we use to pay for fixing the roads," the harder you make it for yourselves. Just try explaining what they did in Virginia to the average citizen. It sounds good to start. We're going to get rid of the state gas tax. Wow, that's great. We're also going to raise the sales tax and establish a tax on the wholesale cost of gas and diesel, which will get passed through to the consumer. O.K., how is that going to work?
- Just like all politics is local, all transportation is local. Keep it local. There were a couple of polls I saw recently that just made me want to throw stuff. If you ask people if they want to have their gas taxes increased to pay for "transportation" generically, you can guess what the answer will be. If however you tell them their extra five cents a gallon is going to go to help shave 20 minutes off their daily commute or that it's going to create X number of jobs and bring new development to an underserved area, they may be more inclined to support such an increase. So don't just poll your constituents on whether or not they want a tax increase (and expect a different answer than the one they gave you last time), ask them what projects in their area would convince them to support that. Keep it local: despite the failure of the Missouri and Atlanta referenda, ballot initiatives to fund transportation—especially local ones—win much more than they lose. In the last election cycle, their success rate was 79 percent. Transportation projects have a good track record of generating local support because usually the projects reflect local preferences to which politicians really are responsive. You guys like to go to ribbon cuttings and get your

picture taken. Transportation-wise we may not have any truly national priorities but we have lots of local ones. When you talk about transportation funding, bring it home. Localize it.

- Remember the locals. It's important that you not only carve out some portion of state funding to send to the local communities, you need to also empower them and give them the tools they need to help themselves. Fifteen states authorize local governments to levy local income taxes to fund public expenditures including transportation. Property taxes are a big one for local governments but transportation has to compete with all the other expenditures they have to worry about. In most states, local governments can levy a local option sales tax, which has proven to be a significant and popular source of revenue, according to AASHTO. Local and county governments have also formed regional partnerships, and explored land value capture options including tax increment financing, special assessment districts, and development impact fees, linking transportation investments to the economic growth in their counties. And they've entered into public-private partnerships like the Port of Miami tunnel project. So remember the locals and give them the tools. An organization called the State Smart Transportation Initiative put out a great report last year called "State and Local Transportation Revenue Sources," which you can read for more information.
- The best solution ultimately is the one you can win support for and get across the finish line. "Politics is the art of the possible." That's what Otto von Bismarck said in the 19th Century and it's more true today than ever. The important thing is getting to yes.
- That being said: try to come up with a solution that is adequate, that is fair, that is transparent, and that is sustainable.
- It may be necessary for you to use your bully pulpit to make the case for infrastructure investment, to show leadership, to exhibit political courage. You may be called on to be the authority on something because you all are the ones who are sitting in the meetings and briefings with the state DOT folks, with the traffic engineers and others who are telling you the number of deficient bridges in the state, the deteriorating quality of the roads, the needs that are coming 20 or 30 years from now. Your constituents aren't sitting in those meetings. The mom in Sioux Falls driving her kid to soccer practice every day doesn't have time to pay attention to all that. While you are called to be her voice in Pierre, there are other, more informed voices that you must take into consideration, especially the guys telling you which bridges might fall down. I don't envy what you have to do to achieve that balancing act. But your job should be about more than garbage in, garbage out. One of my favorite South Dakotans, Tom Brokaw, had a great quote. Tom Brokaw said "It's easy to make a buck. It's a lot tougher to make a difference." Which brings me to my next point…
- Go big or go home. Don't expend political capital on an inadequate solution that's going to require you to come back to the voters in a couple of years and say "remember a couple of years ago when we raised your taxes? Well, um, funny thing. It wasn't enough so we need to ask you to pay a little more." A stopgap solution that gets you past the next election can ultimately be more harmful to your credibility in the long run. One thing you may or may not want to factor into that calculation is whether there is going to even be a federal transportation program and a Highway Trust Fund going forward. You may want to make your decisions based on flat federal funding as a best case scenario. I certainly wouldn't bet on more money from the federal government anytime soon. But you may

want to look at what life could be like for South Dakota without a federal program and plan accordingly with that in mind.

- “States are the laboratories of democracy.” Justice Brandeis said that back in the 1930s and it is certainly still true today. There are lots of exciting things happening with state transportation funding all around the country and your counterparts in those other states are excited to share with you. Don’t be afraid to steal from the best. Also don’t be afraid to try to do something different, something that fits the values of South Dakota.
  For all the great ideas coming out of the states, there are plenty of terrible ones coming out of Washington. Here’s how Gail Collins in the New York Times described pension smoothing, that mechanism they used to fund the latest highway bill extension:
  “It involves allowing companies to put less than the required amount into their pension funds, thus creating more profit, which leads to more tax revenue for the government. Until later, when the whole thing turns into geysers of red ink. I think I speak for us all when I respond: “Say what?””

Of course this wasn’t the first bad idea to come out of Washington this year. It may have been just the latest, especially when it comes to transportation. Remember this Spring when they were floating the idea to somehow get some transportation funding out of the bankrupt U.S. Postal Service? Lots of bad ideas coming out Washington. Lots of good ideas coming out of state governments. Sounds about right to me.

I thank you for your time today and I’m pleased to try to answer any questions you may have.