

Member Day Testimony of Congresswoman Gwen Moore
May 1, 2019
House Committee on Transportation and Infrastructure

Chairman DeFazio and Ranking Member Graves,

I appreciate the opportunity to testify today about our nation's infrastructure priorities. As you know, robust investment in infrastructure is a win-win-win: we update the infrastructure, put millions of Americans to work in good-paying jobs, and continue to help our communities be economically competitive.

Transportation projects mean jobs and businesses for communities across our nation. Both of you know the stats better than anyone. According to the Business Roundtable, a significant infrastructure investment will increase real disposable income for Wisconsin households by an average of about \$1200 more per year over 20 years. For Wisconsin families, that's real money. The same report found that significant reinvestment in U.S. public infrastructure systems would create 16,000 additional Wisconsin jobs over the next decade.

In addition, that analysis found that increased infrastructure investment over a 20-year period would result in other benefits to Wisconsin, including \$54 billion of additional output from personal and non-tradable services; \$30 billion of additional output from durables manufacturing; and, \$21 billion of additional output from finance, insurance and real estate.

As you put together an infrastructure package, consider a new Water Resources Development Act, and reauthorization of the Fixing America's Surface Transportation Act, I hope you address the following priorities:

INCLUSIVE INFRASTRUCTURE INVESTMENTS

It must remain a federal priority to ensure that all communities can benefit from investments in infrastructure. And by that I don't just mean the geographically areas where the funds are dispersed, but also diversity in the groups that receive the money to undertake these projects and who are employed on these projects.

Congress has long recognized that certain businesses, especially small and disadvantaged enterprises owned by minorities and women, have faced obstacles competing for and winning such business and has taken steps to rectify those injustices. Yet, despite progress, too many qualified minority businesses are still being frustrated in their attempts to win work on federally funded transportation projects, an outcome that I hope we can avoid as work begins on a robust national infrastructure package. Some of the frustrations I continue to hear are lack of guidance, training, and enforcement regarding participation requirements by federal and state officials overseeing infrastructure funds.

That is the message that 45 of my colleagues joined me on a letter to you earlier this year. We learned the lesson from the 2009 American Recovery and Reinvestment Act (ARRA) that simply hoping that minority and small contractors –again that we know already face great obstacles to winning work—will just naturally benefit from federal infrastructure investments is naïve and damaging.

I appreciate the small steps taken in last year’s FAA Reauthorization Act and the FAST Act. In both, you added provisions to strengthen oversight of federal prompt payment requirements, which is a major concern for small businesses. Those provision will hopefully encourage the U.S. Department of Transportation (DOT) to both better track this issue and provide more assistance to help resolve delayed payments to Disadvantaged Business Enterprises (DBE) and other small businesses, which can be a life or death issue for these businesses.

But we need to do more as made clear by stakeholders and numerous DOT Inspector General reports. The DOT’s implementation of its DBE programs has been the subject of numerous reports by its Inspector General (IG), highlighting problems with DOT’s various DBE programs. One of the most glaring conclusions from the past reports is the IG’s conclusion that “[t]he Department does not provide effective program management for the multibillion-dollar DBE program.” Before we pour billions more of federal transportation dollars to the states as a part of an infrastructure package or surface transportation reauthorization, Congress should listen to, and then appropriately respond to, the needs and concerns of minority contractors and the IG.

As Congress considers infrastructure, we have to proactively engage these communities and strengthen the law and resources dedicated to helping all businesses compete for and win work.

For example, all federal infrastructure agencies have a responsibility for implementing and enforcing rules, guidance, and federal laws that require equal employment and labor opportunities in federal contracting such as Executive Order 11246 (Equal Employment Opportunity). That E.O. requires federal agencies to include certain nondiscrimination and equal employment opportunity provisions in federal contracts, including federally assisted construction contracts. Unfortunately, what is written on paper and what happens in the real world often don’t line up, much to the frustration of these qualified businesses.

One small first step is ensuring that the voices of minority contractors are included in hearings to consider transportation and infrastructure legislation. Hearing from these stakeholders will allow you to better understand existing gaps in federal and state participation requirements and help get to the bottom of the most frequent complaints and problems. Hearing from these contractors will also help the Committee establish a strong record on the need to address under-representation and continuing discrimination in surface transportation contracting. I have a list attached to my testimony that I am pleased to share with the committee.

And the message you will most likely hear is that the DOT needs to improve the effectiveness and oversight of its DBE program, including better enforcement.

Some specific suggestions as you consider infrastructure investments:

1) Strengthen efforts to increase DBE participation, including by adding new requirements or encouragement to use these businesses where none currently exist.

- i. Require DBE participation or engagement for Passenger Facility Charges (PFC's) funded projects. Since its creation in 1990, the PFC program has allowed airports to apply to impose local charges to finance and pay for capital development projects. Unlike the AIP program, the PFC statute does not require an airport to establish DBE participation goals for PFC-only financed projects or to make good faith efforts to include DBEs.
- ii. As the annual total raised by PFC's approaches AIP funding, we know that DBE participation on those projects is lagging. One study found that DBE participation in PFC-only financed projects is substantially lower than the rate for AIP financed projects. That report noted that MIA spent \$435 million on PFC-only financed projects but reported no DBE participation/spend on these projects. By contrast MIA's AIP spending was \$102 million with a DBE participation rate of 15% which again reiterates the importance of participation requirements. .
- iii. The existence of little to no federal encouragement in the PFC program to use DBE's or small businesses is resulting in little to no participation which runs contrary to Congress' long standing policy in this area.

2) Expand the DOT's DBE Supportive Services Program

- i. This program provides training, assistance, and services to minority, disadvantaged, and women-owned enterprises in order to help these firms develop into viable, self-sustaining businesses. The program receives about \$10 million annually, about the same level it has received since its creation in 1982.

Increase funding for the Department's Office of Small and Disadvantaged Business Utilization

- i. The Office of Small and Disadvantaged Business Utilization's mission is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented throughout the Department in a fair, efficient, and effective manner to serve small and disadvantaged businesses across the country. This includes the Office's short-term lending and bonding assistance programs to help small businesses overcome financial barriers to participation.

- i. It's funding has been flat funded for too long. For just small additional investments, this existing office can be better positioned to support the engagement of DBE's.

Increase access to capital

- i. ***Increase funding for DOT's Minority Business Outreach:*** The Office provides contractual support to assist small, women-owned, Native American, and other disadvantaged business firms in securing contracts and subcontracts resulting from transportation-related Federal support.
- ii. ***Increase funding for DOT's Minority Business Resource Center:*** This program provides assistance in obtaining short-term working capital for minority, women-owned and other disadvantaged businesses and Small Business Administration 8(a) firms. This account includes the subsidy costs for capital obtained through this program as well as administrative expenses.
 - o This could be an opportunity to re-envision this agency. Changes in the past few years have slashed its budget and its lending authority. While it makes sense to help consolidate and strengthen SBA programs when appropriate, it may be worthwhile for the DOT to retain some ability to address capital needs of DBE contractors.

Increase funding for DOT oversight, reporting, and enforcement of DBE requirements

- i. Increase oversight of state DBE performance including better tracking of the results of funding set-aside for DBE's or won by DBE's, including ensuring that states and other grantees are providing accurate data, including on the DBE certification process.
- ii. Transparency in how federal dollars are spent in the DBE program is critical for ensuring accountability in the program and ensuring the effective and efficient performance and management of the program. For example, Congress and the states must be able to compare actual DBE spending data reported by state DOTs to state DOTs' DBE goals in a meaningful way. I know this has been an area of concern in the past and I hope you will work to address it moving forward.

Provisions encouraging or incentivizing the use of best practices

- Provide greater funding incentives to recipients who unbundle contracts. Unbundling of contracts has been shown time and time again to be a great way to increase DBE and small business participation.

Lastly, there has been some discussion about the pros and cons of public-private partnerships (P3). As you consider P3 concepts, I just hope that you keep in mind the needs of minority contractors and put in place safeguards that help ensure minority participation. Or that tool simply becomes another avenue to get around longstanding federal minority participation requirements.

TRIBAL COMMUNITIES

I would be remised if I did not mention the need to ensure that any infrastructure package must be inclusive of tribal communities. A key part of that is to ensure that federal agencies spending these dollars consult and engage with tribal communities in a meaningful way on projects in or affecting their communities. Doing so is a key way of respecting these sovereign communities. Federal policy and Executive Orders call for it. But we need meaningful provisions in any infrastructure bill to make real and consistent consultation a reality.

As noted by the National Congress of American Indians (NCAI), Indian reservation roads, which make up the principal transportation system for residents and visitors to tribal and Alaska Native communities, are some of the most underdeveloped road network in the nation. This is just one example of the many inequities between Native and non-Native communities. Congress has the opportunity to address tribal infrastructure gaps and we should.

Unsafe reservation road conditions are a significant barrier to economic development and efforts to improve living conditions on reservations will be frustrated if we miss this opportunity. According to NCAI, tribal communities have “an unmet immediate need of well over \$258 million in maintenance funding for roads and bridges.”

The poor condition of these roads, bridges, and transit systems jeopardizes the health, safety, security, and economic well-being of tribal members and the traveling public. Data I have seen from my state of Wisconsin shows that in 2012, crashes on tribal lands resulted in fatalities at almost four times the statewide rate

One recommendation is to create a new roads maintenance program that targets road and bridge projects on tribal lands that would rectify treacherous conditions, taking condition, remoteness and impact of weather/seasons, into consideration.

I would also recommend the recent GAO Report 19-22: Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects for specific ways to help ensure that agencies consult, consider, and address the needs in these communities. For example, I strongly support the GAO recommendation that the Administrator of the Federal Highway Administration document in the agency’s tribal consultation policy how agency officials communicate with tribes about how tribal input from consultation was considered in the agency’s decisions. It should embarrass us that an agency that receives tens of billions of dollars each year to build and maintain roads and bridges has a consultation policy that doesn’t require them to tell tribes how their input was used in the decision making process. Consultation for the sake of checking a box is not consultation.

PUBLIC TRANSPORTATION

A well-funded public transportation system is vital to economic competitiveness and development, especially as job centers shift and change. Please significantly boost investments in public transportation.

Public transportation remains a vital need in my community; and must remain be a key part of any infrastructure package. Public transportation is essential to moving people in both rural and urban areas and is a key part of any strong multimodal transportation system. Public transportation also provides a basic mobility option for seniors, those with disabilities, and low-income individuals. The vast majority of transit trips are work related or education related.

In the last decade, too many transit systems found themselves without sufficient federal, state or local support, and often have no choice but to raise fares, cut service, or both. When local transit spending has increased, nearly all has been directed to pay for the increasingly expensive maintenance of an aging fleet of vehicles. Today, over 40% of buses and 25% of rail transit assets are in marginal or poor condition. Estimates from the National State of Good Repair Assessment indicate that there is an \$86 billion backlog of deferred maintenance and replacement needs — a backlog that continues to grow.

Unfortunately, with aging transit fleets, now is not the time to skimp on needed investments. MAP-21 took a drastic step backwards when it cut public transportation funding. Let's not repeat that mistake.

We need to continue to strongly invest in public transportation and programs that ensure that those with the most mobility barriers, such as low-income communities, also benefit from a rebuilt and stronger transportation network.

The American Society of Civil Engineers gave public transportation a D- on its most recent report card. New transportation legislation should spur innovation and provide new funding streams that allow greater investment in multi-modal transportation, infrastructure, mobility management, bus transit systems, and other public transit systems.

Even before we get to the expiration of the FAST Act, I was alarmed by a recent report from the Congressional Research Service that warned unless legislative action is taken, formula funding for the federal transit program could be decreased by approximately \$1 billion in FY2020, roughly 12% of the total in the FAST Act. The result is reductions in almost all major federal transit grants to buy new buses, railcars, to maintain facilities, and, in the case of many smaller systems, for operating expenses.

Our communities cannot afford another reduction in federal investment in transit. In my district, between 2001 and 2010, the largest transit provider in my district cut bus service hours by 20 percent. One study on the impact of those cuts estimated that in 2014, this system served 1,300 *fewer* employees (about 31,000 jobs) than would be the case if the transit system of 2001 were still in place.

That means that nearly 31,000 jobs became transit inaccessible which is problem for both employees and the employers. No community can thrive if you have a growing gap between where employers are located and the ability of prospective employees to get there.

WATER

The cost needed to repair and replace crumbling drinking water and wastewater infrastructure just in the eight Great Lakes states of Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio, Pennsylvania, and New York is about \$179 billion over 20 years according to the EPA.

The Committee knows better than everyone that we cannot afford to delay or neglect the needed investment in our water infrastructure.

I urge the Committee to provide a significant boost for water infrastructure programs under its jurisdiction. As part of those efforts, I hope you will include provisions to create greater awareness about a growing problem: the inability of people to pay their water bills. Along with long delayed investment, water affordability is quickly rising as an issue that policy makers must address. Higher water rates, which are frequently a part of efforts to fund infrastructure improvements at the local level, do not work for families that already cannot pay their water bills and face water shutoffs that jeopardize their health and the health of their children.

According to data from the U.S. Water Alliance and other experts, from 2010 to 2017, water costs increased 41 percent across the country. While water rates rise for consumers, federal funding for water infrastructure has dropped significantly since 1977. In that year, investments from the federal government made up 63 percent of total spending on water infrastructure. By 2014, the federal government's contribution had dropped to 9 percent.

One of the best ways the federal government can help is to pass an infrastructure bill that includes robust support for fixing drinking water, wastewater, and stormwater infrastructure.

And any additional funding should:

- i. Include provisions to help ensure affordability for households, income the most vulnerable. Ratepayers support the vast majority of water infrastructure investments but there is a limit to the ability of many individuals and families to continue to bear ever increasing costs.
- ii. Ensure that the federal government supports the increased use of green infrastructure and nature-based solutions such as restoring wetlands, rain gardens, and permeable roads and sidewalks.
- iii. Ensure that infrastructure legislation does not undermine or weaken environmental protections.

Infrastructure is so important to our communities and the need for investment is so great. It is critical that we get it right. Thank you for allowing me to share the priorities for my community and I look forward to working with you to address our nation's infrastructure needs.