



Position Paper

REAUTHORIZATION OF TRANSPORTATION LEGISLATION

**“Moving the Nation—
An Inclusive Initiative”**

September 2008

Conference Of Minority Transportation Officials
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COMTO

Vision

To see the diverse faces of America equally in all levels of the transportation industry.

Mission

To ensure a level playing field and maximum participation in the transportation industry for minority individuals, businesses and communities of color through advocacy, information-sharing, training, education and professional development.

Membership

The Conference Of Minority Transportation Officials (COMTO) has 38 chapters throughout the United States. Members include individuals, transportation agencies, academic institutions, industry non-profits and Historically Underutilized Businesses (HUB). From highways and roads, to mass transit systems, from subways to rail systems, and from port authorities to airports, COMTO members represent every level of the transportation industry—from presidents and chief executive officers, through mid-level officials, to engineers and mechanics and operators—and ensure safe passage for millions of transportation users each day.

History

Founded in 1971 on the campus of Howard University, by Rev. Jerry Moore and Harold B. Williams, the Conference Of Minority Transportation Officials was created to provide a forum for senior level minority professionals in the transportation industry. It was an occasion to act, born of the need to address the inequities of a rapidly expanding transportation industry, within which its minority workers, *upon whose shoulders the industry was built*, were not allowed the same access to employment, promotion and contract opportunities. It was recognized by its founders from the beginning, that COMTO was positioning itself for a long and arduous but rewarding history.

Since its inception, COMTO has continued to evolve to become the premier organization for the training, education and professional development of minority transportation professionals. From the advancement of Historically Underutilized Businesses (HUB), legislative initiatives, and scholarship and program opportunities, our scope is varied and far-reaching. COMTO has chronicled numerous successes and victories, but, the true measure of how far we have come is revealed by the talent, tenacity and accomplishments of our members who have joined forces to correct the inequities of the past and chart the direction of the future.

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I. Legislative Reauthorization Overview

America's transportation system—public transportation, aviation, maritime, student transportation, freight, and trucking—is rapidly approaching a critical juncture. The nation's existing transportation infrastructure needs, which are projected to exceed more than \$1 trillion over the next five years, are in urgent need of attention, investment, and resources. The extent to which the nation and industry stakeholders address this matter will have a long-term impact on the future of our country.

Surface Transportation

Next year, in 2009, the 111th Congress and a new Administration will consider major legislation concerning two key segments of the national transportation system—surface transportation (highways and transit) and aviation (the Federal Aviation Administration (FAA), airports, and the air traffic control system). COMTO strongly believes that it is imperative for Congress, at a minimum, to maintain the same level of funding for the reauthorization as that of the expiring legislation; as well as make improvements and enactments of these programs a priority--and that the next President sign the legislation into law.

In 2005, President Bush signed into law the last major surface transportation bill—the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). With guaranteed funding for highways, highway safety, and public transportation totaling \$244.1 billion, SAFETEA-LU represented the largest surface transportation investment in our nation's history. The two landmark laws that preceded it brought surface transportation into the 21st century. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21) shaped U.S. surface transportation programs to meet the nation's changing transportation needs. SAFETEA-LU is built on the foundation established by these two previous acts.

SAFETEA-LU addressed the many challenges facing our transportation system today—challenges such as improving safety, reducing traffic congestion, improving efficiency in freight movement, increasing inter-modal connectivity and protecting the environment, as well as laying the groundwork for addressing some of our future challenges. SAFETEA-LU provided guaranteed funds and refined the programmatic framework for investments needed to maintain and grow our vital surface transportation infrastructure. The act also promoted more efficient and effective federal surface transportation programs, by focusing on transportation issues of national significance, while giving state and local transportation decision makers more flexibility for solving transportation problems in their communities.

Since SAFETEA-LU is due to expire on September, 30, 2009, the country's transportation advocacy organizations are preparing to influence the reauthorization process to ensure their missions and constituents' concerns are addressed - specifically, ensuring Congress funds the reauthorization of SAFETEA-LU at the same or greater level of funding than the previous bill.

Aviation

The 111th Congress will also consider a multi-year reauthorization of the FAA and programs concerning airport development and the air traffic control system. COMTO also believes that reauthorization of FAA and in particular, the multi-year reauthorization of the Airport Improvement Programs (AIP) should be a priority, to provide stability and build on the efforts already under way to modernize the nation's air transportation system.

The nation's airways and airports are reaching capacity. The failure to update air traffic control technology and support the development of additional airport infrastructure will have significant adverse effects on the U.S. economy and the air traveling public. The AIP is an important source of funding for airport capital projects, especially for smaller airports that have less ready access to private capital markets. Those airports should receive at least the same level of funding from the program as currently provided. AIP should also be reauthorized with greater discretionary funds and a fortified "Letter of Intent" program for runway and other large projects important to the national air transportation system.

To foster financial stability and meet future resource requirements, the current structure of federal taxes and user fees supporting the federal Airport and Airways Trust Fund (AATF) should be reformed as well. The current system, combined with uneven and declining general fund participation, results in an unpredictable funding source to pay for aviation system needs. In order to plan for, and support, long-term capital investment in airport infrastructure and the air traffic control system, the FAA and system stakeholders need a stable and predictable funding stream that allocates cost reasonably to users of the system, and one that is bolstered by an equitable and guaranteed general fund contribution.

With regard to resources for airports, aviation and the air traffic control system, COMTO believes Congress should:

- > Fund AIP at a level of no less than \$3.9 billion
- > Prevent the diversion of AIP and Passenger Facility Charge (PFC) funds for purposes not traditionally supported by the program, while giving airport operators more autonomy and flexibility
- > Increase the PFC cap to \$7.50, index the PFC for construction cost inflation, and expand the eligible use of the PFC
- > Provide funding for aviation-related research including workforce diversity
- > Prevent airport proprietor rights from being negatively impacted regarding congestion pricing
- > Oppose provisions that would limit the ability of airports to use a variety of environmental/wetland mitigation options

As a result of the legacy of inequity of employment and business opportunities for minorities and women within the transportation sector, COMTO's mission—to ensure a

level playing field and maximum participation in the transportation industry for minority individuals, businesses, and communities of color through advocacy, information-sharing, training, education, and professional development—is as relevant as ever. Our organization will continue to focus on improving quality of life for minorities in the transportation sector. In preparation for the reauthorization of SAFETEA-LU and the FAA bill, COMTO undertook a policy development process to produce legislative recommendations supported by the organization’s mission and strategic plan.

In 2009, during the 1st Session of the 111th Congress, COMTO—on behalf of its valued members—will be committed to advocating for:

- > Workforce Diversity
- > Historically Underutilized Businesses
- > Funding Earmarks

II. Workforce Diversity

Today, minorities and women are still under-represented in all segments of the transportation industry’s workforce. According to the American Public Transportation Association’s 2007 report, *“A Profile of Public Transportation Passenger Demographics and Travel Characteristics Reported on On-Board Surveys,”* the demographic profile of the ridership using public transportation reveals that, in urban areas, 57% of transit riders using rail as a mode of transportation describe themselves as African American, Latinos or Asian, and 60% of transit riders using roadway modes describe themselves as African-American, Latinos, or Asian.

Of the \$10 billion in public transportation fares collected annually, more than half of those fares are paid by minorities. While studies confirm that minorities are the majority of public transportation end-users, they are significantly under-represented in terms of management positions in the industry. It is recognized that a diverse workforce represented in all levels of an organization that reflects the demographics of the public served increases the public’s confidence in a transportation agency. When these realities are confirmed with the results of reviews about increased diversity in the workplace creating greater productivity, efficiency, and positive impact on the business environment, a business case for a diverse management team is clear.

Despite important gains and achievements, COMTO believes that discrimination is still a barrier to the recruitment and advancement of minority transportation professionals to senior positions within the industry. Within the public transportation sector, minorities in senior level management positions hold less than 10 percent of all such positions. By comparison, minorities are over represented at the level of operating personnel—for example, as drivers in bus or subway/light rail systems.

In 2007, the Transportation Research Board published a report titled, *“Racial and Gender Diversity in State DOTs and Transit Agencies.”* The report was designed to examine racial and gender diversity in state departments of transportation and transit agencies for

purposes of establishing a baseline measurement that reflects the current diversity status based on existing data. The conclusive finding of the report stated, *“The research revealed that the EEO data submitted on existing employees by transit agencies and state DOTs was incomplete and not comprehensive, making it challenging to establish a credible benchmark.”* (http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_585.pdf)

The population of the United States continues to grow increasingly diverse. In recent years, Hispanics and minority racial groups (defined here as racial and ethnic groups that make up less than 50 percent of the population and include non-Hispanic blacks, Asians and American Indians) have each grown faster than the population as a whole. In 1970 these groups together represented only 16 percent of the population. By 1998 this share had increased to 27 percent. A report in August 2008 from the Census Bureau projected that by 2042 non-Hispanic whites will no longer make up the majority of the population. The report also forecasts the Hispanic population rising from 15% today to 30% by 2050. Today, African Americans make up 12% of the population; in 2050 they are projected to comprise 15% of the population. Asian Americans make up 5% of the population today and they are expected to make up 9% in 2050.

COMTO was founded 37 years ago in the belief that the inclusion of all segments of America’s increasingly diverse workforce would be paramount to the existence of an effective national transportation system. COMTO still believes that this premises is true today and that it is imperative that legislation reauthorizing surface and aviation and airport transportation programs in the next Congress contain provisions that address diverse workforce development and prescribe effective measures to increase career opportunities for the nation’s diverse population.

COMTO’s commitment to developing a diverse workforce to support the current and future needs of the transportation sector is supported by the following initiatives:

COMTO Initiatives:

- Establish a unified, electronic DOT and FAA EEO reporting process to collect relative data to be used to determine a credible baseline of minorities and women in the transportation sector
- Create a federally-funded professional training program for diverse workforce development and the advancement of senior and middle management careers
- Request that federal transportation grant recipients and sub-recipients be required to establish professional and technical training and outreach efforts, targeted to minorities and women
- Ensure all federally-funded projects utilize the designed .5 of 1% of funding for state diversity workforce development training programs to support the project
- Create a federally-funded web-based national clearing house of qualified diversity candidates for senior management transportation positions
- Mandate an annual report on the country’s DOT and FAA human resource practices, specifically analyzing the diversity practices which will correlate to a federally-mandated diversity outreach program.

III. Historically Underutilized Businesses (HUBs)

Just as with employment in the transportation industry, COMTO believes redressing past and ongoing discrimination, with regard to contracting and business opportunities for smaller minority and women-owned firms, is a critical issue (as well as for veteran/service-disabled veterans). Federal transportation statutes and regulations refer to and define these firms as “disadvantaged business enterprises” (DBE). Minority- and women-owned/ run airport concessions firms are referred to as “Airport Concessions Disadvantaged Business Enterprises” (ACDBE). COMTO believes that these firms are more accurately characterized as “Historically Underutilized Businesses” (HUBs) and the organization’s five-year strategic plan addresses efforts to serve as a resource for HUBs—specifically, to facilitate business development opportunities for HUBs, as well as training and mentoring opportunities.

The history of the current U.S. Department of Transportation’s (DOT) DBE/ACDBE programs dates back to the 1980s, when they were referred to as the “minority business enterprise and women business enterprise program”. By 1983, Congress enacted the first DBE statute, establishing a minimum national 10% aspirational goal for the participation of DBEs and ACDBEs, in contracting opportunities with state and local transportation agencies receiving federal funding for highway, airport or transit projects. By 1987, the program was reviewed and Congress reauthorized and amended the earlier provision by including small firms owned by women to the definition of a DBE.

As noted previously, Congress enacted the DOT DBE program to address the problem of discrimination against businesses owned by women and minorities in federally-supported transportation contracting. Over the years, the program has helped provide opportunities to thousands of businesses. Unfortunately, despite advances, more than two decades after the DBE program was established, discrimination still remains a serious problem. Disparity and other studies have documented well the ongoing problems faced by DBEs and ACDBEs in both the public and private markets. These barriers to participation include a wide range of issues, such as: the use of antiquated “old boy networks,” to exclusion of DBEs and ACDBEs from business opportunities, to discrimination in credit, bonding and insurance; to bid-shopping and discrimination in supply-pricing, to attempts to induce DBEs to act fraudulently as “fronts”; and to discriminatory application of procurement and contracting rules.

Provisions of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and of the 1998 Transportation Equity Act of the 21st Century (TEA-21) contained minimum 10% national aspirational DBE participation goals. SAFETEA-LU, the most recent comprehensive surface transportation law, reauthorized the DBE program and also extended the DBE participation goals funds spent through the DOT’s highway and safety research program.

When Congress has acted to reauthorize surface transportation, and airport and aviation programs, it has also made findings regarding the ongoing scourge of discrimination. COMTO urges the next Congress to continue to do so, and to include such findings in the legislative history of the bills, as well as to play a much larger role in investigating and publicizing the discrimination that minority and women-owned firms confront in today’s marketplace. COMTO strongly believes that ongoing oversight in Washington, and in field hearings around the country, is needed to ensure that the DOT DBE programs meet their

goal of preventing discrimination, leveling the playing field, and ensuring opportunities for DBE participation.

The DOT DBE program was a catalyst for the establishment of Unified Certification Programs (UCP) in each state across the country. The UCP was designed to help facilitate and streamline certification of disadvantaged businesses through a 'one-stop shop' concept. This year, in 2008, all 50 states have established UCPs and have compiled a DBE/ACDBE database. However, there is currently no national database or central repository for this vital data. Moreover, Congress should exercise greater oversight regarding compliance with this program reform. Further, to enhance best practices and consistent results, Congress should encourage or require greater reciprocity of DBE certifications nationally.

As noted above, while some progress has been made with regard to DBE program certification, additional efforts to streamline the process are needed to reduce unwarranted burdens on DBE and ACDBE firms or applicants, and on certification officials. The current DBE eligibility and certification process is often unnecessarily cumbersome and burdensome. Even though the DOT DBE program is governed by a single set of federal rules,¹ the information requested by one certifying entity is, far too often, not the same information required by another (both as to the content and to the form of the information). One way to correct this problem is for Congress, to require by statute, that all certification officials undergo formal, structured training and be tested and accredited. In this way, Congress can promote the consistent and fair interpretation and application of program eligibility rules.

As part of the eligibility process, firms that seek DBE or ACDBE certification are subject to certain size standards, and their minority and/or women owners are required to meet certain individualized net worth requirements. COMTO believes that such standards, while needed, should be established at realistic levels and grounded in the market requirements for competing in business regardless of the race or gender of business owner(s). Otherwise, such standards act as a "glass ceiling" on the potential growth of DBE/ACDBE firms. For example, the current "personal net worth" (PNW) standard that is used in the DOT DBE/ACDBE program, taken from certain U.S. Small Business Administration (SBA) programs, is more than twenty years old and has not been adjusted for inflation during this period. In the 2nd Session of the 110th Congress, the House of Representatives passed legislation that would increase the SBA's PNW standard and thereafter authorize periodic inflation adjustments. COMTO believes the same approach should be adopted for the DOT DBE/ACDBE programs.

For COMTO and its members, challenges remain in the process of goal setting, the DBE certification process, DBE/ACDBE eligibility requirements, and the usefulness of the UCPs in terms of streamlining and opening up more potential opportunities for contracts in federally-supported transportation projects across the country. If the DBE/ACDBE program was supported with increased federally-funded vigilance, including education, training, outreach, compliance, and enforcement mechanisms, COMTO believes its intent would be steadfastly evident and achieved in more measurable ways.

COMTO's commitment to elevate Historically Underutilized Businesses (HUBs), the backbone of our economy, is supported by the following initiatives:

¹ See generally Parts 23 and 26 of Title 49 of the Code of Federal Regulations.

COMTO Initiatives:

- Conduct disparity studies in conjunction with each state DOT Disadvantage Business Enterprise Office and the FAA's Small Business Development Office
- Develop and co-manage with the DOT and FAA a HUB "success" program to educate and train owners and principals about building a business, including access to capital
- Ensure provisions for the monitoring and compliance of DBE programs extend to the transit vehicle manufacturers in the reauthorization of SAFETEA-LU
- Establish a technology-based, unified HUB certification process that is clearly standardized with compliance reviews, to ensure consistency throughout the participating entities and national outreach.

IV. Funding Earmarks

In fiscal year 2008, there were 1,276 funding earmarks totaling \$1,558,852,000 for appropriations accounts for the following Department of Transportation bureaus.

Bureau	# of 2008 Earmarks	Amount (\$K)
Federal Aviation Administration	134	\$144,027
Federal Highway Administration	722	\$801,171
Federal Railroad Administration	15	\$8,349
Federal Transit Administration	396	\$599,617
Office of the Secretary	9	\$5,688

In an effort to ensure that COMTO's mission is accomplished, and that it continues to be the premier organization for the training, education, and professional development of minority transportation officials, COMTO is delineating the following requested federal earmarks to be appropriated in accordance with the reauthorization of SAFETEA-LU.

- Mandate the General Accounting Office (GAO) to commission a report on the current status of the Department of Transportation DBE/ACDBE program and to provide the critical information necessary to understand its impact when implemented, according to its mission, as was completed in June of 2001
- Identify COMTO to be responsible for the creation and maintenance of a national clearing house database of qualified and diverse mid to senior management transportation professionals. This will alleviate the inability of DOT and FAA entities to identify a pool of potential candidates
- Request funding to compile and disseminate "best in class" practices for the outreach, education, and training of a diverse transportation workforce of senior and middle managers, as well as rank and file workers

- Create outreach opportunities in collaboration with federally-funded transportation entities to connect prime contractors with HUB firms across the country
- Seek federal funding to create a web-based HUB opportunity clearing house, where transportation agencies post potential opportunities for HUB firms
- Continue education and training for HUBs on certification, marketing, and mining potential contract opportunities across the country
- Develop a campaign to educate HUBs on the significance of metropolitan and statewide planning programs and future procurement transportation opportunities

V. Specific Opportunities and Recommendations

The reauthorization of SAFETEA-LU, and the FAA and the AIP program provides COMTO the opportunity to address key issues and advocate positions aligned with its strategic plan. As described above, some of the most important opportunities and recommendations include:

A. Diverse Workforce Development

- **Opportunities:** The United States of America is a diverse nation and according to the U.S. Census Bureau's 2008 report, minorities will be the majority by 2042. Several studies have indicated that the number of minorities and women in the U.S. labor force is projected to see a significant increase in the coming years. COMTO is in a position to be the leading advocate of a diverse workforce in the transportation sector, specifically in senior and mid-level management positions. To recognize that representational data, to analyze the status of racial and gender diversity in the workforce of the country's DOTs, was unavailable in a technology rich nation, is deemed inexcusable.

- **Recommendations:** Specific diverse workforce development provisions should be included in the reauthorization of SAFETEA-LU and the FAA-AIP legislation. The funds earmarked for COMTO will be used to establish a national clearing house database to identify, attract, recruit and retain a diverse pool of qualified professionals for employment in the transportation industry. This recommendation also calls for the funding of a national transportation diverse workforce outreach and training initiative, as well as an educational campaign espousing the benefits and opportunities of a career in the transportation sector.

B. Historically Underutilized Business (HUB) Program

- **Opportunities:** The inclusion of the HUB Program provisions has the potential to allocate billions of dollars to HUB firms throughout the next reauthorization period. As stated previously, without compliance monitoring of the programs, the initiative and the reality of HUB firms' potential contracting opportunities are minimized, and clearly put them at a disadvantage.

- **Recommendations:** Make findings regarding the ongoing problem of discrimination in the transportation industry, reauthorize the DOT DBE programs (in those instances where reauthorization is required) and retain the minimum national 10% DBE/ACDBE participation

goal. It is also recommended that the DBE participation goal be made applicable not only to federally-funded transportation projects, but also to all programs or projects authorized by SAFETEA-LU and the AIP program (including, for example, airport projects funded with federally-approved “passenger facility charges”). Additionally, COMTO recommends funding for the establishment, maintenance and monitoring of a national UPC DBE/ACDBE program to ensure its success. This inclusive initiative will require additional compliance requirements and there will be a need to allocate funding to perform the required tasks.

C. Funding Earmarks

- **Opportunities:** The reauthorization of SAFETEA-LU and FAA bills will further assist in promoting balanced integrated and efficient transportation to improve economic competitiveness. This legislation offers the opportunity to continue the balanced investment of highways, transit, aviation, intermodal projects and state and local flexibility, in the use of available funding. The ability to direct federal funds to support COMTO’s vital mission is imperative.
- **Recommendations:** It is recommended that the language in the reauthorization of SAFETEA-LU and FAA bills incorporate funding earmarks to include a GAO report on the status of the DOT’s DBE and ACDBE programs, the establishment of a national clearing house of diverse transportation professionals for mid to senior level positions, the compilation of “best in class” human resource practices targeted to minorities and women, and the creation of a technology base database of HUB contracting opportunities in the transportation sector.

VI. Next Steps

COMTO suggests the following steps to successfully clarify the issues associated with the passing of the reauthorization of SAFETEA-LU and the FAA legislation:

A. A strong effort is required to properly advocate and publicize these issues to COMTO’s membership, Congressional leadership and staff, as well as other transportation, civil rights, and special interest advocate groups and organizations, and the concerned community.

A key element to the inclusion of these issues, in the reauthorization of SAFETEA-LU and the FAA bill, is to let Congress know that COMTO, various advocate groups, and the community are concerned and want them addressed. The opponents to these positions will certainly make their stances heard and COMTO must do the same.

B. A strategic approach to address these issues must be developed and implemented during the next few months. The outcome will most likely be successful if the entire COMTO organization becomes vocal and delivers the same consistent message. This approach will involve the COMTO national office, Board of Directors, President’s Council and the entire membership. Other participants should include COMTO’s partners, affiliates,

and organizations with whom COMTO has a Memoranda of Understanding, including the American Public Transportation Association, Women's Transportation Seminar, Airport Minority Advisory Council, and the National Forum of Black Public Administrators. COMTO will also collaborate with other organizations that advocate similar positions on these issues including environmental groups, the Congressional Black Caucus, the Congressional Hispanic Caucus, the Hispanic Chamber of Commerce, and the National Association for the Advancement of Colored People (NAACP).

C. Awareness of the reauthorization of SAFETEA-LU and the FAA's legislation issues, and the recommended opportunities to address them, must be cultivated among elected officials, political candidates, business leaders (especially HUBs), and the public. This can be accomplished through existing groups and public meetings, as well as via the internet and a public education campaign.

Special thanks to the following COMTO members for their valuable input in this paper:

Al Brunson (COMTO HUB Advisor and Principal of Brunson Technical Associates, LLC); Raymond Christy (Procurement officer for Salt Lake City Transit); Shirley DeLibero (National Chair and President of DeLibero Transportation Strategies, LLC); William Kirk (Partner, K&L Gates, LLP); Bradley Mims (Vice President, Aviation Market Group, Parsons Brinckerhoff); Ken Neal (Director of Office of Civil Rights for New York MTA); Ricky Smith (Board Member and Director of Ports, Cleveland Airport System); Nancy Strine; and Lester Woods (Board Member and External Civil Rights Administrator Missouri Department of Transportation).

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