

RIDER RECOMMENDATIONS FOR “TEA-03”

Reauthorization of the Transportation Equity Act for the 21st Century

MRF TEA-03 INITIATIVE #1

Strengthen the prohibition against use of appropriated funds by the National Highway Traffic Safety Administration to influence State and local legislation.

Executive Summary. The Transportation Equity Act of the 21st Century (TEA-21) specifically prohibits State and local lobbying by the National Highway Traffic Safety Administration (NHTSA). Despite this prohibition, NHTSA continues to expend appropriated funds to influence legislators at the State and local level to favor or oppose pending legislation. To honor the prerogatives of State legislators to pass legislation free from the undue influence of a taxpayer-funded lobbying effort mounted by a federal agency, the prohibition against NHTSA lobbying should not only be retained but strengthened.

Background. To honor state prerogatives and halt the practice of federally-funded legislative advocacy at the State and local levels of government, Congress in TEA-21 prohibited NHTSA from “any activity specifically designed to urge a State or local legislator to favor or oppose the adoption of any specific legislative proposal.” Flaunting this clear language, in testimony before the Senate Transportation Appropriations Subcommittee in February, 2002, and the House Transportation Appropriations Subcommittee in March, 2002, NHTSA testified that it “will continue to support State efforts to enact helmet laws” and “respond to repeal efforts by distributing technical assistance.” In the view of Congress, however, such issues are squarely the province of State decision-making, not federal meddling.

NHTSA indeed “continue[s]” to influence legislators to pass mandatory-use helmet laws and oppose efforts to liberalize mandatory-use laws. Recent examples of NHTSA activity prohibited by TEA-21 include:

“**Urg[ing]...adoption of...specific legislat[ion].**” In March, 2002, NHTSA issued a Request for Proposal (RFP) to “assess state licensing and training practices and then disseminate ‘best practices’ as models for use by other states” -- in short, to influence state licensing laws. The optimal entity to disseminate “best practices” as “models” for state licensing laws is not NHTSA but the National Association of State Motorcycle Safety Administrators (SMSA), a private entity comprised of the very experts who administer and implement motorcycle safety programs in the states and share best practices. SMSA is the ideal entity to offer, as models to other states, recommended program changes and licensing law modifications in such venues as the National Council of State Legislators, the American Legislative Exchange Council, the National Governors Association as well as state legislatures. [NOTE: In MRF T-03 Initiative #3, on motorcycle safety, we recommend the “Transfer of Selected Funds to Non-Federal Management,” specifically the authorization of a modest annual sum to enable the National Association State Motorcycle Safety Administrators to review, determine and disseminate best practices in motorcycle safety training and motorist awareness.]

“**Technical Assistance.**” In its draft proposed Motorcycle Safety Improvement Plan (McSIP) issued May 2001, NHTSA discusses a study of motorcyclist fatalities conducted in Texas and

Arkansas (two states which have liberalized their mandatory-use helmet laws since passage of TEA-21). In McSIP, the agency stated it will track “motorcycle crash experiences in states which repeal their helmet laws” and “use the results of Texas and Arkansas studies to publicize the protective value of helmet use.”

Yet the Texas and Arkansas study findings were misrepresented to buttress NHTSA’s advocacy of mandatory-use laws. Specifically, the studies reported changes in total numbers of fatalities only and failed to report the fatalities as a rate -- a function of some normative number (e.g., fatalities per 10,000 registrations). In fact, expressed as a function of 10,000 registrations, the fatality rate in both states declined since mandatory-use helmet laws were liberalized. (In Arkansas, fatalities per 10,000 registrations were 17.77 before repeal and 11.33 after repeal. In Texas, 5.12 before repeal, and 4.18 after repeal.)

NHTSA has used these studies (termed “technical assistance”) to oppose “specific legislative proposal(s)” in several states aimed at liberalizing mandatory-use in favor of adult-choice and personal responsibility on the question of helmet use.

NHTSA further stated in McSIP that it will hound those states that pass laws allowing adult choice. States NHTSA, the Texas and Arkansas studies will “position NHTSA to implement similar studies in Kentucky, Louisiana, Florida, and other states that may repeal mandatory helmet use laws.”

NHTSA can play a meaningful role in motorcycle safety if its programs reflect “safer riding” over “safer crashing” – that is, accident or crash prevention (over injury reduction) as the agency’s uppermost priority.

Policy Interests. The principal policy interest of the Motorcycle Riders Foundation in advancing this initiative is to **protect state sovereignty to enact legislation without the influence of a taxpayer-funded lobbying effort and re-direct the agency to prevent accidents or crashes as its foremost priority regarding motorcycle safety.**

Comportment with TEA-21 Goals and Objectives. The authors and supporters of TEA-21 strived to honor State government powers and prerogatives and also enhance public participation. Tightening restrictions on NHTSA lobbying advances both goals.

Legislation. To achieve the policy aims discussed, the Motorcycle Riders Foundation recommends the following legislation (proposed changes underscored):

Title 49, U.S. Code, Section **30105. Restriction on lobbying activities.**

(a) In general. No funds appropriated to the Secretary for the National Highway Traffic Safety Administration shall be available for any activity specifically designed to urge a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body, including the development or dissemination of any study or other form of technical assistance which may tend to favor or oppose any specific legislative proposal being considered or having passed into law by and State or local legislative body. Additionally, no funds appropriated to the Secretary for the National Highway Traffic Safety Administration shall be available for any exhibition or booth space at state, regional or national gatherings of

governors and associations of State legislators.

(b) Appearance as witness not barred. Subsection (a) does not prohibit officers or employees of the United States from testifying before any State or local legislative body in response to the invitation of any member of that legislative body or a State executive office, provided any testimony, studies, brochures or technical assistance provided pursuant to this subsection is received at least 30 days in advance of scheduled testimony by all members of the cognizant State or local legislative body or committee thereof.

(c) Priority of Accident Prevention. Programs and policies of the National Highway Traffic Safety Administration relating to motorcycle safety will reflect the uppermost priority of accident or crash prevention.