



## **EBTC INFORMATION BULLETIN**

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It took a few moments for Tyler Duvall, the top policymaker at the Department of Transportation, to digest the news from the Hill. But when he realized what it meant, he was stunned.

Last year, Congress decided not to dictate how the department could spend its discretionary funds. No earmarks, no strings, no arm-twisting from lawmakers to direct money to bus systems or other mass-transit projects in hundreds of communities nationwide.

Duvall and other top department officials were staring at nearly \$1 billion. And they knew exactly how to spend it.

They used the money to seed five high-profile experiments, in New York, San Francisco, Minneapolis, Miami and Seattle, that feature "congestion pricing" -- tolls that increase when traffic is heavy. The idea is to reduce traffic by discouraging some motorists from driving during peak hours.

"It's almost sort of un-American that we should be forced to sit and be stuck in traffic," said D.J. Gribbin, the department's general counsel and liaison to the White House, who worked closely with Duvall on the project.

For Gribbin, Duvall and Transportation Secretary Mary Peters, the goal is not just to combat congestion but to upend the traditional way transportation projects are funded in this country. They believe that tolls paid by motorists, not tax dollars, should be used to construct and maintain roads.

They and other political appointees have spent the latter part of President Bush's two terms laboring behind the scenes to shrink the federal role in road-building and public transportation. They have also sought to turn highways into commodities that can be sold or leased to private firms and used by motorists for a price. In Duvall and Gribbin's view, unleashing the private sector and introducing market forces could lead to innovation and more choices for the public, much as the breakup of AT&T transformed telecommunications.

But their ideas and actions have alarmed transit advocates, the trucking industry, states struggling to build rail projects and members of Congress from both parties.

"They have a myopic view," said Rep. John L. Mica (Fla.), ranking Republican on the House Transportation and Infrastructure Committee. Pricing transportation to drive down traffic may make market sense, but it harms the public, he said. "This was a country based on some system of equality. People are paying their taxes and have representation. You can't exclude them from having a fair return."

Critics such as Mica do not oppose all tolling, but they argue that the traditional mechanism for funding roads and transit, the federal gas tax, which has not been raised since 1993, must be increased so that the nation's Highway Trust Fund does not run out of money in three years. Some Democrats contend that the Bush administration wants to starve the fund so that states will be forced to sell off roads to private firms, charge tolls and ration the best access to those willing to pay for a faster commute.

"Everything they're doing is designed to drive things to privatization," said Rep. Peter DeFazio (D-Ore.), chairman of the House Transportation and Infrastructure highways and transit subcommittee. DeFazio said the nation long ago settled that roads are public goods. "They're just trying to undo 200 years of history and go back to the Boston Post Road."

Even if the next president reverses its policies, the Bush administration will leave a legacy of new toll roads across the country, a growing number of public roads leased to private companies, and dozens of stalled commuter rail, streetcar and subway projects -- including the \$5 billion extension of Metro to Dulles International Airport.

Tyler Duvall was on his way to a departmental retreat in 2006 when he hit 25 miles of traffic on Interstate 270. At the retreat, the Bush administration officials agreed that congestion should be the focus of their remaining time in office.

Since the 1990s, the Department of Transportation (DOT) has spent about \$10 million a year to study tolls. Inspired by the writings of economist and Nobel laureate William Vickrey, considered the "father" of congestion pricing, Duvall decided it was time to crank up that work. Polling data said the public was fed up with traffic and willing to try something new.

"We thought, let's expand and let every state try congestion pricing," he said.

When Democrats took control of Congress and stripped most earmarks from last year's federal budget, Peters took \$850 million that would have been shipped to hundreds of municipalities and poured it into Urban Partnerships, a pilot program awarded to five cities on the condition that they test congestion pricing.

The focus on toll roads alarmed the transit industry, which argues that public transportation is the best way to fight gridlock in cities. Industry leaders say the DOT has made it increasingly difficult for expensive rail projects to qualify for federal dollars. The number of major new rail

and bus projects on track for federal funding dropped from 48 in 2001 to 17 in 2007, even as transit ridership hit a 50-year high last year and demand for new service is soaring.

William Millar, who heads the American Public Transportation Association, says he set up three appointments with Duvall to try to influence how the Urban Partnership money would be spent, but each was cancelled. "They just see no role for transit," Millar said.

Duvall, 35, is a fourth-generation Washingtonian whose father is a well-connected lawyer. He had no transportation experience when he was plucked from his job handling corporate mergers and acquisitions at Hogan & Hartson and was offered a political appointment at the DOT in 2002. "It was a friend of a friend of a friend sort of thing," he said.

Within four years, he was setting national policy.

Tall and lanky, Duvall is a kinetic intellectual who talks animatedly about pricing theories and e-mails stray thoughts to colleagues in the middle of the night. In his office, he keeps a bust of Dwight D. Eisenhower, father of the interstate system. One recent day, he was reading a paperback copy of Barry Goldwater's book "The Conscience of a Conservative," lent to him by Peters.

Fans say Duvall savors a good policy debate; critics call him an ideologue who doesn't know how to compromise. All acknowledge his influence on major DOT initiatives and statements.

"Tyler Duvall is a little pointy-headed neocon with grand ideas about the future of transportation, and they all involve tolling," DeFazio said. "He's bright, young, energetic -- just totally wrong, and has a bizarre, neocon view of transportation."

Soon after Duvall arrived at the DOT as a "schedule C" -- the lowest-level political appointee -- Peters asked him to interview for the job of general counsel at the Federal Highway Administration. He lost out to another lawyer -- D.J. Gribbin.

Duvall and Gribbin soon became allies, bonded by a shared passion to inject free-market theory into transportation policy.

Gribbin, 44, grew up well connected to the Republican Party. His father was a longtime aide to Vice President Cheney and a former head of Halliburton's Washington office. The younger Gribbin worked as a lobbyist for the National Federation of Independent Business and as a national field director for the Christian Coalition under Ralph Reed. For six months in 2005, he moved his wife and seven children to Guatemala, where they performed missionary work.

A cautious man who leaves nothing on his desk at the end of the day, Gribbin hatched the DOT's controversial plan to charge airlines a fee for landing at New York's JFK and other busy airports during peak hours -- a proposal the airlines say they will fight.

"Milton Friedman said 30 years ago you should price roads for users, but you couldn't because you can't have a toll booth on every corner," Gribbin said, invoking the Nobel Prize-winning

conservative economist. But now, transponders and automatic toll collection have made Friedman's prescriptions possible, Gribbin said.

The cities that won the Urban Partnership grants -- New York, San Francisco, Minneapolis, Miami and Seattle -- are represented by Democratic leaders and a key Republican. "Basically, they bought off five urban areas," said Mica, who represents Miami. "I got the smallest amount, probably because I squealed the most about what they were doing."

Mica and other lawmakers curtailed the program this year by barring it from using more than 10 percent of the department's bus money.

But communities on the losing side last year were hit hard. Without funds for new buses, Dubuque, for example, had to rely on volunteers such as Shorty Harris, who drove passengers around northeast Iowa in his 2002 Chevy Cavalier.

"I couldn't believe they could get away with this, to just take that money away," said Mark Munson, director of the Regional Transit Authority in Dubuque, which has been frequently forced to deny trips to the elderly and disabled because there are not enough buses and volunteers can't fill all the gaps.

Duvall is unapologetic, saying the traditional pork-barrel process of divvying up transportation dollars is bad policy. The proof, he said, is the fact that increased government spending on transportation has not slowed congestion.

None of the five Urban Partnership projects has opened yet, and several face local opposition. New York faces a deadline this month for approval from the state legislature and city council or it will lose the money. Duvall hopes at least one project -- on I-95 in Miami -- will be operating by summer and will demonstrate the value of his theories.

"There are 250,000 people a day sitting on I-95 in Miami," he said. "In four months, thousands of people will have faster commutes, guaranteed trip times."

As they have crafted policy, Duvall, Gribbin and other Bush officials have been working closely with private equity funds. The DOT persuaded Congress to change the tax code to make \$15 billion in tax-exempt bonds available for private firms to build road and freight projects.

The department waived regulations to speed development of toll road projects and wrote sample laws to help state legislatures permit the lease or sale of their roads to private companies, with laws now enacted in 23 states.

As a consequence, private equity funds focused on transportation attracted an estimated \$100 billion to \$150 billion in 2006, according to industry analysts.

The new opportunities for private equity have also created job opportunities for government officials. In the past three years, nine current and former top DOT appointees have worked for

such funds or for engineering or construction firms interested in tolling projects subject to federal review.

Gribbin is one of those officials.

He came to the department in 2003 from Koch Industries, which has a road-building subsidiary and is owned by a prominent donor to Republican and libertarian causes. As general counsel at the Federal Highway Administration, he wrote a report to Congress praising private-public partnerships, citing a study he commissioned on the benefits of tolling while he was at Koch.

That report also included ideas attributed to Macquarie Holdings, a major toll-road builder based in Australia. Gribbin left the federal government in 2005 to work at Macquarie, where he earned \$265,000. He returned to the DOT last year as general counsel.

Peters followed a similar path. She served as federal highway administrator from 2001 to 2005, then worked as a senior vice president at HDR, a construction firm with several tolling projects, where she was paid a salary and bonus of \$225,833 to craft its public policy. She returned to federal government as transportation secretary in 2006.

Peters said she sees no conflicts.

"Having someone like D.J. Gribbin who has worked in the private sector helping us decide what kinds of protections [are needed in tolling deals] is a big advantage," she said. "I don't think the policies that we're advocating are premised on the fact that it creates this opportunity for people to go out and work in this industry at all. We're doing so because we firmly believe these are in the best interest of America."

Public distrust of privatization, however, remains high. Republicans lost control of the Indiana state legislature in 2006 partly because of controversy over the governor's lease of a public highway to Macquarie. Political opposition has also forced governors in New Jersey and Pennsylvania to suspend plans to lease roads. Texas lawmakers put a two-year freeze on the governor's strategy to privatize a 4,000-mile network of tolled highways.

Last month, the Government Accountability Office warned that tolls on privatized roads are typically higher than if the roads remain under public control, because of the need to generate steady profits for private investors. The report said the federal government needs to better protect the public interest.

"This is all about making money," said Frank Busalacchi, the Wisconsin transportation secretary and a member of a congressionally chartered commission that last year studied transportation funding and supported raising the gas tax. "The financiers, bankers, people coming in -- the foreign dollars coming in and buying infrastructure in this country that American people put down."

For Macquarie, the Dulles Toll Road has enormous appeal. The company approached Virginia in 2005 about leasing the road, pocketing motorist fees and financing the rail extension to the

airport. But Virginia officials had other ideas. They wanted to keep the road in the hands of a public entity -- the Metropolitan Washington Airports Authority -- and let it build the rail line.

According to four former senior DOT officials, Virginia's decision upset Duvall and then-DOT chief of staff John A. Flaherty. "They went ballistic," one of the officials said. "[They] wanted that to be their pet project in the nation's capital. Tyler would mention that frequently . . . that it would be better for the project to go to Macquarie."

Duvall said the DOT is not trying to steer Virginia toward a public-private partnership for Dulles rail and that Flaherty was angered because the state did not notify the department, not by the substance of its decision. "My interest in this was solely to make sure the taxpayer was getting the right deal," he said.

When the DOT said in January that it would not fund the rail project, Macquarie repeated its interest to Virginia officials, as did another private equity firm, the Carlyle Group, which created a \$1.5 billion fund to invest in U.S. infrastructure and has hired Flaherty to head it.

A final decision on the Dulles extension is on hold. But Duvall and his colleagues have ignited a national argument -- the first real debate about how to fund transportation in 50 years.

"This is as big as it gets in terms of policy changes in America," Duvall said. "It's clear that we've ruffled feathers -- right, left and center -- in talking about new approaches. That said, I think the public is really dying for new ways to do things. . . . The genie is somewhat out of the bottle."