



Federal Issue Brief

A TRANSPORTATION SYSTEM FOR THE 21ST CENTURY

Issue Description

The Surface Transportation Program as embodied and enacted in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2004 (SAFETEA-LU) has lost its way and does not meet the complex needs of the U.S. transportation system. The scheduled 2009 reauthorization is an opportunity to reorganize and refocus the current program to meet pressing transportation infrastructure requirements.

State Concerns

States need a stable and substantial federal transportation program to supplement robust, but distressed state efforts. Currently, state and local governments generate 78 percent of all transportation funding in the United States, but state transportation revenues are flat or declining due to heavy reliance on the now anemic state gas tax. Revenue losses have reduced both maintenance of existing facilities and construction of new projects. A decrease in driving, coupled with increased use of more fuel-efficient vehicles has further reduced fuel tax collections, while construction costs have skyrocketed.

NCSL Position

A new national vision for surface transportation is needed to guide our nation's transportation system beyond the Interstate Highway era into the 21st century and the needs and challenges that lie ahead. This next authorization should focus federal funds on national priorities involving the interstate mobility of people and goods. NCSL anticipates that a rejuvenated national vision and purpose for the program will work toward eliminating the donor-donee funding debates that have characterized past authorizations and will inspire all Americans, all sectors of the economy, and all states – through their congressional delegations – to contribute to that national goal.

First and foremost, Congress must work with state legislators to establish, in the next authorization, a robust and cooperative state-federal system to set plans and priorities for federal investment. All funding and financing options must be available to state legislatures for state and federal-aid programs and in doing so, Congress should heed the Tenth Amendment and not intervene in or interfere with state-specific transportation priorities. In particular:

- *Infrastructure Investments:* NCSL calls on Congress to increase significantly federal investments for highway and rail infrastructure and provide states added flexibility to improve intermodal connectors and surface transportation systems near the nation's ports.
- *Financing Alternatives:* NCSL urges the creation of pilot alternative funding programs. Options include: a vehicle miles traveled (VMT) system, freight surcharges, container taxes, and customs fees.
- *Gas Tax:* NCSL supports an increase in the federal gas tax, in the short term, to provide sufficient funding for the next authorization until a new national funding stream can be put in place. Transit agencies, including commuter rail operations, should be exempt from the federal fuel or energy taxes.
- *Tolling:* NCSL urges the removal of all current federal restrictions on states' authority to toll so that states can optimize resources for capacity expansion, operations, and maintenance while ensuring free flow of goods and people. Tolling, value-pricing, and public-private partnerships (PPPs) should remain state provinces and are not appropriate federal funding mechanisms.



- *Environmental Protection:* NCSL urges the federal government to allow the current environmental rules under SAFETEA-LU to remain in effect through the next authorization and be thoroughly evaluated so as to inform mid-course corrections in any technical corrections bill or for more substantial reform in the subsequent authorization.
- *Planning:* NCSL supports a negotiated rule-making led by the U.S. Department of Transportation, or another collaborative process congressionally mandated and facilitated by the Transportation Research Board or the American Association of State Highway and Transportation Officials, in which NCSL and state legislatures are fully represented to determine the necessary level of and standards for uniformity among states in data collection efforts.
- *Performance Measures:* NCSL supports a pilot program to gauge the success of using performance standards in the project selection and completion process.
- *Safety:* Federal transportation safety programs should provide funding to promote comprehensive safety programs in the states. Necessary modifications should be made in federal safety grants programs to permit the maximum number of states to qualify, with the level of annual appropriations being adequate to fund grants to all states that qualify.
- *Research:* NCSL supports federal research that promotes fuel efficiency, alternative fuels, high-mileage vehicles, safety, and technology. Findings and best practices identified through federal research should be shared fully with states in an unbiased, nonpartisan, and scientific manner.

State Activity

To fill the gaps discussed above, states have turned to toll roads, public private partnerships, innovative financing, and congestion pricing. Many states have implemented efficiency and accountability programs to stretch scarce dollars and others have applied operations and management efforts to better utilize existing infrastructure. Vehicle fees, sales tax, severance tax, development impact fees and special districts assessments are among the revenue sources states and local governments continue to increase to meet needs. Looking forward, a number of states are considering a mileage fee to eventually replace the gas tax. These state and local efforts will be enhanced by a strong federal partner, making a commitment to national priorities, in coordination with state, regional and local needs.

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NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

STANDING COMMITTEE ON TRANSPORTATION

SURFACE TRANSPORTATION FEDERALISM POLICY STATEMENT

The National Conference of State Legislatures (NCSL) calls on Congress to work closely with states to develop a shared, long-term vision for financing and funding surface transportation systems that will enhance the nation's prosperity and the quality of life of all Americans.

The federal government plays a vital role in supporting a national surface transportation system that meets national defense needs, addresses fairly and equally the mobility needs of all Americans and facilitates interstate commerce. NCSL supports the continuation and preservation of a federal-aid surface transportation program. The federal program should direct spending to national priorities while allowing for state and insular area flexibility in local and regional variations. It is also essential that the federal-aid surface transportation program incorporate requirements and foster goals of other national policies that impact transportation decision-making.

Recent federal reauthorizations have recognized the unique contributions of each transportation mode to the productivity of the states and the nation, and to the ability of this nation to compete globally in the emerging and existing international economies. These laws contemplate an integrated transportation system for the movement of both goods and people, with increased emphasis on adopting technologies that improve productivity. NCSL urges Congress to increase funding for federal-aid surface transportation programs and provide states enhanced programming flexibility and increased responsibility for meeting a multitude of national goals. The ability of states to maintain flexibility in decision making and comply with environmental and other mandates is dependent upon regulatory flexibility as well as adequate and reliable funding.

Vision

The Surface Transportation Program as embodied and enacted in Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2004 (SAFETEA-LU) has lost its way. The program, and the surface transportation system in the United States, needs a new vision to guide it beyond the Interstate Highway era into the 21st century and the needs and challenges that lie ahead. The Congress should not re-enact SAFETEA-LU and must look at surface transportation anew, authorizing a new program that better meets current and future needs for interstate mobility. NCSL anticipates that a surface transportation system and program authorized to work toward a new and rejuvenated national vision and purpose will eliminate the donor-donee funding debates that have characterized past authorizations and will inspire all Americans, all sectors of the economy, and all states – through their congressional delegations – to contribute to that national goal.



Congress must clearly articulate this new national vision for surface transportation. In doing so, Congress should consider the following legitimate federal objectives:

- Interstate commerce and freight mobility;
- Interstate movement of people;
- National defense and homeland security;
- Safety;
- Environmental and air quality preservation and improvements; and
- Research and innovation.

Congress should focus federal programs and funds on these interstate goals. In doing so, Congress should heed the Tenth Amendment and not intervene in or interfere with state-specific transportation priorities.

Financing and Funding Mobility

A federal trust fund, financed by user fees, should be retained as the primary method of financing federal-aid surface transportation programs, which must provide states a sustained, reliable source of transportation funding. It is critical that the Highway Trust Fund (HTF) retain spending firewalls that ensure that user fees will be deposited in the HTF to be used on surface transportation and will not be subject to non-transportation federal discretionary spending. NCSL supports the current percentage distribution of user fees within the HTF with added investment for mass transit from the General Fund. NCSL believes the current proportion of fuel tax receipts directed to the Mass Transit Account should be incorporated in any tax increase. Additional surface transportation financing and investment priorities include the following.

- The "user-fee" nature of the federal-aid highway program must be safeguarded from any attempts to divert these fees to non-transportation spending. The interest paid on the gas tax revenues should be retained by the HTF. User fees previously collected and diverted from the HTF must be reclaimed.
- Transit agencies, including commuter rail operations, should be exempt from federal fuel or energy taxes.
- The unobligated revenues should not be allowed to accumulate in the HTF. Moreover, federal highway spending should not be artificially reduced so that HTF revenues will accumulate unspent, thereby helping to lower the federal deficit.
- Annual appropriations should equal authorized spending levels. Obligation ceilings should be set and maintained to reflect gross receipts, plus interest earned.
- Any federal user fee or container fee assessed for transportation security or infrastructure should provide for state flexibility in project selection and may include private sector input when programming projects funded by a security or infrastructure user fee or container fee.
- User fees designated for deposit in the HTF should be made available for flexible transportation usage by states. States should have flexibility in the use of funds for intercity passenger rail service, including Amtrak. The federal match should encourage state efforts in specific programs of national significance, but not discourage flexibility in state or insular area transference of categorical funds. Despite separate federal authorizing legislation for Amtrak, Congress must ensure that surface transportation authorizing legislation acknowledges and fully supports the role of passenger rail for ensuring interstate mobility. States that invest in or otherwise support passenger rail services to complement highway mobility options should be rewarded and encouraged.



- Any examination undertaken on the advisability and feasibility of establishing a federal capital budgeting program should preserve the ability of states to set surface transportation infrastructure priorities.
- Federal formulas designed to distribute discretionary highway funds should consider all state, insular area, and local efforts to fund highways and not be limited to fuel taxes raised.

An increase in the federal gas tax is needed in the short-term to provide sufficient funding for the next authorization to meet the new vision and until a new, more stable long-term funding mechanism for surface transportation can be put in place. Any fees or taxes imposed on carbon-based fuels used by vehicles should be recognized as a traditional source for transportation funding and should remain dedicated to the Highway Trust Fund.

The gas tax is a diminishing revenue stream due to inflation, new technologies, and alternative fuels. Congress must migrate the Trust Fund to a new national funding stream and should consider a vehicle miles traveled (VMT) fee system, freight surcharges, container taxes, and customs fees, among others, that capture all system users. Any system should ensure the privacy of users. Congress should authorize and appropriate pilot program funding to states for experimentation with approaches, methods, and mechanisms. Congress should continue and enhance funding for the National Academy of Sciences to study feasibility and operations of vehicle miles traveled pricing and other funding systems and their enabling technologies.

Apart from the existing Highway Trust Fund flows for transit, NCSL discourages expansion of federal-local funding streams without appropriate coordination with state legislatures as these complicate state-local relationships, financial arrangements, and state match expectations for transportation programs.

In this vein, Congress should continue to encourage and expand incentive-based programs, such as the Urban Partnership Program, to spur local and regional transportation innovation in full coordination with state authorities and to promote the use of tolling, congestion pricing, public transit, telecommuting, real-time traffic and other advanced technologies, and other strategies in a comprehensive approach to achieve interstate mobility goals through urban congestion reduction.

All funding and financing options must be available to state legislatures for state and federal-aid programs. All current federal restrictions on states' authority to toll should be removed so that states can optimize resources for capacity expansion, operations, and maintenance while ensuring free flow of goods and people. Tolling, value-pricing, and public-private partnerships (PPPs) should remain state provinces and are not appropriate federal funding mechanisms.

Federal guidelines should be designed to accommodate private sector support. The level of private sector participation is best determined by state and local authorities, and private participation should not be a prerequisite for receiving federal funds. Statutory or regulatory barriers to state and locally-granted revenues should be removed.

Congress should not mandate or prescribe state use of toll revenues or tolling mechanisms, though Congress may seek to incentivize states to avoid redirection of toll revenues to non-transportation uses. State legislators understand and will protect the public interest.

Congress should continue Transportation Infrastructure Finance and Innovation Act (TIFIA), Grant Anticipation Revenue Vehicles (GARVEE), private-activity bond, and State Infrastructure



Bank (SIB) programs. Congress should expand credit-based and loan guarantee programs to incentivize private sector investment – particularly for freight mobility by rail, highway, and waterway – when and if such projects appear in state plans.

Extensive categorization of programs reduces the flexibility of states and insular areas in addressing transportation needs and arbitrarily encourages expenditures according to the availability of federal funding. Categories should be reduced and states' and insular areas' flexibility increased. Barriers to transferability of funding should be eliminated.

The federal government should serve as a reliable and dependable partner in highway construction and transit projects that involve shared financial responsibility and honor financial commitments made and approvals given to States for such projects.

Congressional earmarks on transportation spending or for transportation projects should represent additional funding, should be distributed from non-formula funds, and should not redirect base funding. Earmarks should fit within a national objective as defined in the surface transportation program's new vision and must appear in a state DOT's plan.

Technology

NCSL recognizes that a vast domestic market and a new technology industry are moving American surface transportation into the information age to better serve customers.

Intelligent Transportation Systems (ITS) are being developed to enhance system performance, travel demand management, public transportation operations, electronic payment, freight management, commercial vehicle operations, emergency management, and advanced vehicle control and safety. Deployment of viable ITS can increase safety for transportation users, improve mobility, reduce congestion, facilitate interstate commerce, generate jobs, improve public safety and homeland security, provide environmental protection, conserve energy, and facilitate intermodalism.

NCSL endorses the U.S. Department of Transportation's goal of deploying basic ITS for consumers of passenger and freight transportation across the nation. These services should be integrated, interoperable, intermodal and voluntary. NCSL recognizes that the private sector and the federal government should lead in the development and bringing to market of reliable and affordable ITS.

The federal government should set national standards for original equipment manufacturers to install the necessary technology so that states can take full advantage of the efficiencies and safety benefits of intelligent transportation systems. Congress should require the Secretary of Transportation to initiate a rulemaking proceeding that new motor vehicles be equipped with platforms for interoperable systems that enable vehicle-to-vehicle and vehicle-to-roadside communications for the purposes of active safety and electronic tolling and tax collection and to provide a means of accelerating the deployment of this equipment in existing vehicles. Congress should incentivize states to explore and deploy technology for intelligent infrastructure, making it a high priority and performance measurement benchmark in the restructured federal surface transportation program. Privacy protections must be developed and incorporated into all policies and practices governing use of intelligent transportation systems and technologies. ITS should not be mandated except for legitimate governmental purposes. Any information collected with such technology should be governed by state laws.



The federal government should encourage states to cooperate with the private sector in the development of real-time traffic information systems.

Planning

Congress must work with state legislators to establish in the next authorization a robust and cooperative state-federal system to set system plans and priorities for federal investment. Transportation program plans developed by entities other than those created by the states must be coordinated with state legislatures to ensure that proposals fit into state programmatic and funding plans.

The federal government is uniquely situated to identify and collect data of importance to the development of, maintenance of, and planning for a national transportation system. Congress should incentivize states to share data with the federal government and not use mandates to elicit participation in data collection and analysis.

NCSL supports a negotiated rule-making led by U.S. Department of Transportation, or another collaborative process congressionally mandated and facilitated by the Transportation Research Board or American Association of State Highway and Transportation Officials (AASHTO), in which NCSL and state legislatures are fully represented to determine the necessary level of and standards for uniformity among states in data collection efforts.

Performance Measures

NCSL encourages the federal government to establish a cooperative process through which performance measures can be crafted for gauging the success of programs. Federal funding should not be directly linked to performance measures; instead, a pilot program should be established in which states can voluntarily participate to gain incentives such as additional funding or reduced regulatory burdens upon successful deployment and use of performance measures. Performance measures should be framed as goals for which states may determine the specific measures and benchmarks.

Freight and Interstate Commerce

Ensuring the safe and timely movement of goods across the nation is an appropriate federal transportation priority. Robust state-federal consultation should evaluate freight flows and collaboratively plan the routes and development necessary to maintain and expand the freight corridors.

Railroads are a critical component for achieving the national goal of moving interstate freight commerce. To encourage railroads to maintain and expand their capacity, the federal government should provide an infrastructure investment tax credit. Rail capacity expansion should be coordinated with the states to ensure intermodal cooperation and maximum public benefit.

The federal government should incentivize states to explore methods of separating highway freight traffic from passenger traffic for the purposes of efficiently moving interstate commerce and public safety.

Federal engagement with, and investment through, the states to ensure effective and efficient movement of freight through ports or other commerce choke-points is appropriate.

Environmental Issues



The federal government has a role to play in ensuring that national environmental policy meshes with national transportation policy while assuring efficient and cost-effective approaches to both goals.

- Efforts to streamline regulatory review processes must continue so that construction projects can again be realized on-time and on-budget. The rules and regulatory changes prescribed in SAFETEA-LU were only released late in the authorization cycle and have not yet been in effect long enough to evaluate. These new rules should be allowed to remain in effect through the next authorization and thoroughly evaluated so as to inform mid-course corrections in any technical corrections bill or for more substantial reform in the subsequent authorization. Nonetheless, Congress should allow and enhance states programmatic permitting.
- Incentives to states to achieve environmental quality standards through transportation projects should replace prescriptive federal regulation and punitive funding actions.

Safety

NCSL supports a continued federal role in setting national performance and safety goals. Safety programs should be expanded to incorporate emerging safety issues while respecting state sovereignty.

Federal transportation safety programs should provide funding to promote comprehensive safety programs in the states. Necessary modifications should be made in federal safety grants programs to permit the maximum number of states to qualify, with the level of annual appropriations being adequate to fund grants to all states that qualify. NCSL opposes the use of federal sanctions or redirection penalties to enforce federal safety standards. Federal mandates that are enforced through the use of "reprogramming" sanctions should be repealed. Any existing federal compliance standards should reflect overall state effort to promote safety.

Research and Innovation

NCSL acknowledges that federal leadership and investment in transportation related research and innovation is needed and appropriate. In particular, NCSL supports federal research that promotes fuel efficiency, alternative fuels, high-mileage vehicles, safety, and technology. Findings and best practices identified through federal research should be shared fully with states in an unbiased, nonpartisan, and scientific manner.

Indian Programs

Transportation is an important service program that provides the infrastructure upon which American Indian tribes' initiatives can be achieved. NCSL recognizes the unique and extensive transportation funding needs on Indian lands. In an effort to ensure that these needs are adequately addressed, NCSL supports a direct planning relationship between Indian Nations and state departments of transportation. NCSL further supports the continuation of the Federal Lands Program and its work with Indian reservations.

Expires Annual Meeting 2011



Partners Project on Public-Private Partnerships (P3s/PPPs)

State authorization and use of Public-Private Partnerships – also known as Public-Private Ventures, P3s, and PPPs – date back to the early 1990s. P3s cover as many as a dozen types of arrangements with the private sector ranging from outsourcing litter pickup to outright sale of a transportation asset. About two dozen states have enacted authority for a state transportation agency to consider and enter into P3s, and over 50 P3s have been completed in the states involving \$30 billion in investment. Several require the approval by the legislature for implementation of specific projects.

P3s have gained particular notoriety in the recent past as several states and localities have embarked on highly publicized experiments with this infrastructure financing mechanism and as the topic has become a political punching bag in Washington, D.C. Plans to “privatize” or “monetize” the Chicago SkyWay and the Indiana Toll Road received much press both as “sales” of public assets to private interest and as effective ways of leveraging those assets. The U.S. Department of Transportation, in the face of diminishing gas tax revenues to support the Highway Trust Fund and federal-aid transportation projects, has been touting P3s as a veritable silver bullet to solve transportation funding woes. On Capitol Hill, however, congressional leaders who will guide the next surface transportation authorization bill have lambasted P3s and suggested that state officials considering P3s are not looking out for the “public interest.” Caught in the middle of this political pickle, forced to seek innovative yet effective funding mechanisms to maintain and expand transportation infrastructure, and faced with conflicting opinions in the press, state legislators are in urgent need of reliable information and effective tools for evaluating the merits of P3s.

To meet this need, the NCSL Foundation for State Legislatures seeks to launch a Partners Project to link legislators, legislative staff, and interested private sector entities to analyze legislators’ needs and to develop nonpartisan, balanced, and useful materials to aid legislators’ decision-making, both in their respective states and as they consider state-federal relationships. The P3s Partners Project will largely focus on publicly held surface transportation systems – namely roadways – but may incorporate linked water-based systems or intermodal installations as Project time and resources permit. In particular, the 18-month Project will:

- Develop and offer educational sessions;
- Develop and provide a Legislative P3 Toolkit, including, but not limited to, items legislators and staff can use to:
 - Evaluate the merits of P3s when considering implementing legislation,
 - Assist state transportation officials as they evaluate tenders and bids,
 - Understand P3 contracts,
 - Oversee the operation and performance of P3s, and
 - Respond to public and press inquiries about P3s;



- Develop greater NCSL expertise on P3s, offer episodic technical assistance upon request from legislators and staff, and increase capacity to respond to information requests; and
- Inform the NCSL Transportation Committee's deliberation of P3s in the context of state-federal relations.

While NCSL's Transportation Committee, with the support of the Transportation Program, will take the lead on this Project, other potentially interested units of NCSL include:

- Budgets & Revenue Committee,
- National Legislative Performance Evaluation Society, and
- National Association of Legislative Fiscal Offices.

Proposed Timetable

June 2008 – Partners recruited to participate in Project; legislators and staff identified to guide Project

July 2008 – NCSL Legislative Summit, New Orleans (www.ncsl.org/summit)– P3s Partners Project approved by NCSL Foundation Board; NCSL Transportation Committee, Budgets & Revenue Committee, and National Legislative Performance Evaluation Society hold joint session on PPP oversight; Partners Project announced and launched; initial Project Business Meeting held

September 2008 – ARTBA Public-Private Ventures Conference (http://www.artba.org/meetings_events/2008/PPV/index.htm), preceded by P3s Partners Project pre-conference

December 2008 – NCSL Fall Forum, Atlanta, Georgia – P3s Partners Project Business Meeting, educational session, and update/report to Transportation Committee

April 2009 – NCSL Spring Forum, Washington, D.C. – P3s Partners Project Business Meeting, educational session, and update/report to Transportation Committee

July 2009 – NCSL Legislative Summit, Philadelphia, Pennsylvania -- P3s Partners Project Business Meeting, educational session, and update/report to Transportation Committee and NCSL Foundation Board

September 2009 – ARTBA Public-Private Ventures Conference, preceded by P3s Partners Project pre-conference

December 2009 – NCSL Fall Forum, location TBA -- P3s Partners Project Business Meeting, educational session, and final update/report to Transportation Committee

Proposed Budget

Taking into account the proposed deliverables and schedule, NCSL staff estimate a budget of \$120,000 for this Partners Project. It is recommended that 12 Partners contribute \$10,000 to the Project.

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