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Federalism Issues in Surface Transportation Policy: A Historical Perspective

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Summary

P.L. 114-94, the Fixing America's Surface Transportation (FAST) Act, was signed by President Obama on December 4, 2015. The act reauthorizes federal highway and mass transit programs through the end of FY2020. It also authorizes to be appropriated about $305 billion for these programs, an increase of about 4.2% over current funding levels plus projected inflation for highway programs and 7.9% over current funding levels plus projected inflation for public transportation programs.

Although the federal presence, and influence, on surface transportation policy remains significant, FAST is a continuation of previous reauthorizations' emphasis on increasing state decisionmaking authority. For example, FAST provides states greater flexibility in the use of federal highway assistance by converting the Surface Transportation Program (STP) into a block grant; rolling the Transportation Alternatives Program into the STP and allowing 50% of local government transportation alternatives funding to be used on any STP-eligible project; and consolidating truck and bus safety grant programs. FAST also includes changes to the project delivery approval process in an effort to reduce the average project delivery time for highway and mass transit construction projects.

For many years, state and local government officials have lobbied for increased federal assistance for surface transportation grants and increased flexibility in the use of those funds. They argue that they are better able to identify surface transportation needs in their states than federal officials and are capable of administering federal grant funds with relatively minimal federal oversight. They also argue that states have a long history of learning from one another. In their view, providing states added flexibility in the use of federal funds results in better surface transportation policy because it enables states to experiment with innovative solutions to surface transportation problems and then share their experiences with other states.

Others argue that the federal government has a responsibility to ensure that federal funds are used in the most efficient and effective manner possible to promote the national interest in expanding national economic growth and protecting the environment. In their view, providing states increased flexibility in the use of federal funds diminishes the federal government's ability to ensure that national needs are met. Still others have argued for a fundamental restructuring of federal and state government responsibilities in surface transportation policy, with some responsibilities devolved to states and others remaining with the federal government.

This report provides a historical perspective on contemporary federalism issues in surface transportation policy since the beginning of the nation. It includes a discussion of the five multi-year reauthorizations of the Federal-Highway Act since 1987:

1. the $151 billion, six-year Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA; P.L. 102-240) signed by President George H. W. Bush on December 18, 1991.
2. the $203.4 billion, six-year Transportation Equity Act for the 21st Century (TEA-21; P.L. 105-178) signed by President Bill Clinton on June 9, 1998.
3. the $286 billion, six-year Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA; P.L. 109-59) signed by President George W. Bush on August 10, 2005.
4. the $118 billion ($105.2 billion for FY2013 and FY2014), 27-month, Moving Ahead for Progress in the 21st Century (MAP-21; P.L. 112-141) signed by President Barack Obama on July 6, 2012.

5. the $305 billion, five-year Fixing America's Surface Transportation Act (FAST; P.L. 114-94), signed by President Barack Obama on December 4, 2015.

This report will not be updated.

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Introduction

P.L. 114-94, the Fixing America's Surface Transportation (FAST) Act, was signed by President Obama on December 4, 2015. The act reauthorizes federal highway and mass transit programs through the end of FY2020. It also authorizes to be appropriated about $305 billion for these programs, an increase of about 4.2% over current funding levels plus projected inflation for highway programs ($225.19 billion versus $216.122 billion) and 7.9% over current funding levels plus projected inflation for public transportation programs ($48.904 billion versus $45.331 billion). For example, in the first year, FAST increases current highway spending by about $2.1 billion (from $40.995 billion in FY2015 to $43.1 billion) and current public transportation spending by $753 million (from $8.595 billion to $9.348 billion). In FY2020, FAST increases highway spending by about $2.16 billion over current funding levels plus projected inflation ($47.104 billion versus $44.940 billion) and public transportation spending by $753 million ($10.150 billion versus $9.429 billion).[1]

FAST supersedes P.L. 112-141, the Moving Ahead for Progress in the 21st Century Act (MAP-21), which was signed into law by President Obama on July 6, 2012. It reauthorized federal highway and mass transit programs through the end of FY2014 (27 months) and authorized to be appropriated $105.2 billion for these programs in FY2013 and FY2014 (about $118 billion including already appropriated funding for FY2012). MAP-21 followed 10 short-term reauthorizations of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA; P.L. 109-59), and lengthy consideration of federalism issues in surface transportation policy.[2] MAP-21's authorization was extended five times, most recently by P.L. 114-87, the Surface Transportation Extension Act of 2015, Part II, through December 4, 2015.[3]

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[1] The public transportation amounts do not include general fund authorizations, which pertain mainly to the Federal Transit Administration's New Starts program. Under the FAST conference report, New Starts would be authorized at $2.302 billion annually through FY2020. For further information and analysis see CRS Insight IN10406, *FAST Act (H.R. 22): Highlights of the Surface Transportation Bill Signed by the President*, by Robert S. Kirk.

[2] The 10 short-term reauthorization extensions were P.L. 111-68, the Legislative Branch Appropriations Act, 2010 (Division B, the Continuing Appropriations Resolution, 2010) (reauthorized through October 31, 2009); P.L. 111-88, (Division B, Further Continuing Appropriations, 2010) (reauthorized through December 18, 2009); P.L. 111-118, the Department of Defense Appropriations Act, 2010 (reauthorized through February 28, 2010); P.L. 111-144, the Temporary Extension Act of 2010 (reauthorized through March 28, 2010); P.L. 111-147; the Hiring Incentives to Restore Employment Act (Title IV, Surface Transportation Extension Act of 2010) (reauthorized through December 31, 2010); P.L. 111-322, the Continuing Appropriations and Surface Transportation Extension Act, 2011 (Title II, Surface Transportation Extension Act of 2010, Part II) (reauthorized through March 4, 2011); P.L. 112-5, the Surface Transportation Extension Act of 2011 (reauthorized through September 30, 2011); P.L. 112-30, the Surface and Air Transportation Programs Extension Act of 2011 (reauthorized through March 31, 2012); P.L. 112-102, the Surface Transportation Extension Act of 2012 (reauthorized through June 30, 2012); and P.L. 112-140, the Temporary Surface Transportation Extension Act of 2012 (reauthorized through July 6, 2012).

[3] P.L. 113-159, the Highway and Transportation Funding Act of 2014, extended the authorization for these programs through May 31, 2015. The act also transferred $10.765 billion to the highway trust fund (HTF), with $9.765 billion from the general fund and $1 billion from the Leaking Underground Storage Tank fund, to address an anticipated shortfall between HTF revenue and spending authorization. P.L. 114-21, the Highway and Transportation Funding Act of 2015, extended the authorization for these programs through July 31, 2015. Existing balances in the HTF were sufficient to support the extension. P.L. 114-41, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, extended the authorization for these programs through October 29, 2015. The act also transferred $6.068 billion from the general fund to the HTF's highway account and $2 billion from the general fund to the HTF's mass transit account to address an anticipated shortfall between HTF revenue and spending authorization. P.L. 114-73, the Surface Transportation Extension Act of 2015, extended the authorization for these programs through November 20, 2015.

Although the federal presence, and influence, on surface transportation policy remains significant, FAST is a continuation of previous reauthorizations' emphasis on increasing state decisionmaking authority. For example, FAST provided states greater flexibility in the use of federal highway assistance by converting the Surface Transportation Program (STP) into a block grant; rolling the Transportation Alternatives Program into the STP and allowing 50% of local government transportation alternatives funding to be used on any STP-eligible project; and consolidating truck and bus safety grant programs. FAST also includes changes to the project delivery approval process in an effort to reduce the average project delivery time for highway and mass transit construction projects.

The changes made by FAST and its predecessor, MAP-21, demonstrate that the nature of federalism relationships in American surface transportation policy is continuously evolving over time in reaction to changes in American culture, society, and politics. As will be shown, the federal government's role in determining the nature of American surface transportation policy has become increasingly influential, especially since the Federal-Aid to Highway Act of 1956 that authorized the interstate highway system.

For many years, state and local government officials, through their public interest groups (especially the National Governors Association, National Conference of State Legislatures, National Association of Counties, National League of Cities, U.S. Conference of Mayors, and American Association of State Highway and Transportation Officials), have lobbied for increased federal assistance for surface transportation grants and increased flexibility in the use of those funds. For example, during FAST's consideration, the National Governors Association advocated a multi-year reauthorization of federal highway and mass transit programs that "provide maximum flexibility to the state for implementation and innovation because of our diversity of geography, population, and priorities."[4]

State and local government officials contend that providing them added flexibility in surface transportation policy is justified because they are better able to identify surface transportation needs in their states than federal officials and are capable of administering federal grant funds with relatively minimal federal oversight. They also argue that states have a long history of learning from one another. In their view, providing flexibility in the use of federal funds results in better surface transportation policy because it enables states to experiment with innovative solutions to surface transportation problems and then share their experiences with other states.

Others argue that the federal government has a responsibility to ensure that federal funds are used in the most efficient and effective manner possible to promote the national interest in expanding national economic growth and protecting the environment. In their view, providing states increased flexibility in the use of federal funds diminishes the federal government's ability to ensure that national needs are met. Still others have argued for a fundamental restructuring of federal and state government responsibilities in surface transportation policy, with some responsibilities devolved to states and others remaining with the federal government.

This report provides a historical perspective on contemporary federalism issues in surface transportation policy since the beginning of the nation. It includes a discussion of the five multi-year reauthorizations of the Federal-Highway Act since 1987:

[4] National Governors Associations, "Letter to the Honorable James Inhofe, Barbara Boxer, Bill Shuster, and Peter DeFazio-Surface Transportation Reauthorization," Washington, DC, November 17, 2015, at http://www.nga.org/cms/home/federal-relations/nga-letters/economic-development—commerce-c/col2-content/main-content-list/surface-transport-reauth-1117.html.

1. the $151 billion, six-year Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA; P.L. 102-240) signed by President George H. W. Bush on December 18, 1991.
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5. the $305 billion, five-year Fixing America's Surface Transportation Act (FAST; P.L. 114-94), signed by President Barack Obama on December 4, 2015.

The Federal Government's Role in Surface Transportation Policy: 1789-1956

When the nation was formed in 1789, there was considerable debate concerning whether Congress had constitutional authority to provide direct, cash assistance for surface transportation projects. That uncertainty created a conceptual framework that initially limited congressional options for federal involvement in surface transportation policy. Over time, that conceptual framework has evolved in response to changes in American society and in the American political system. Today, the federal government has a prominent role in surface transportation policy, providing about $51.9 billion annually for highway and mass transit grants, including about $43.1 billion for highways (in FY2016) and $10.9 billion for mass transit (in FY2016).[5] Federal spending represents about one-quarter of total government expenditures on highways and mass transit, and nearly half (44.3%) of government highway and mass transit capital expenditures.[6]

The following section examines the evolution of the federal role in surface transportation policy since the nation's formation in 1789 to 1956, the year the Federal-Aid to Highway Act of 1956, which authorized the interstate highway system's construction, was adopted. The discussion focuses on key provisions, and arguments presented, affecting federalism issues in surface transportation policy in selected Federal-Aid to Highway Acts, starting with The Federal-Aid Road Act of 1916.

[5] See P.L. 113-235, the Consolidated and Further Continuing Appropriations Act, 2015 (Division K: the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2015); and CRS Report R43896, *Department of Housing and Urban Development (HUD): FY2016 Budget Request Overview and Resources*, coordinated by Maggie McCarty.

[6] U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, *National Transportation Statistics*, Table 3-35, at http://www.bts.gov/publications/national_transportation_statistics/; and U.S. Department of Transportation, Federal Highway Administration, "2013 Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance," Washington, DC, at http://www.fhwa.dot.gov/policy/2013cpr/.

Constitutional Limits on Congressional Options

Article 1, Section 8 of the U.S. Constitution provides Congress authority "To establish Post Offices and post Roads."[7] When the Constitution was ratified in 1789, the prevailing view was that because other types of transportation projects were not listed in the Constitution they were excluded purposively, suggesting that other transportation projects were either meant to be a state or local government responsibility, or outside the scope of governmental authority altogether. Nevertheless, during the 1800s there were congressional efforts, primarily from representatives from western states, to adopt legislation to provide federal cash assistance for various types of transportation projects other than post roads to encourage western migration and promote interstate commerce. Most of these efforts failed, primarily due to sectional divisions within Congress which, at that time, made it difficult to build coalitions large enough to adopt programs that targeted most of its assistance to western states; opposition from Members of Congress who viewed reducing the national debt as a higher priority; and opposition from Members who viewed the provision of cash assistance for transportation projects, other than for post roads, as a violation of states' rights, as articulated in the Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[8]

During the 1800s, instead of authorizing cash assistance to states for internal improvements, Congress typically authorized federal land grants to states. The federal land was subsequently auctioned to raise money for internal improvements. For example, in 1823 Ohio received a federal land grant of 60,000 acres along the Maumee Road to raise revenue to improve that road. In 1827, Ohio received another federal land grant of 31,596 acres to raise revenue for the Columbus and Sandusky Turnpike.[9]

In 1841, nine states (Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas, and Michigan), and, with three exceptions, all subsequent newly admitted states were designated land grant states and guaranteed at least 500,000 acres of federal land to be auctioned to support transportation projects, including roads, railroads, bridges, canals, and improvement of water courses, that expedited the transportation of the United States mail and military personnel and munitions.[10] By 1900, over 3.2 million acres of federal land was donated to these states to support wagon road construction. Congress also authorized the donation of another 4.5 million acres of federal land to Illinois, Indiana, Michigan, Ohio, and Wisconsin to raise revenue for canal construction and 2.225 million acres to Alabama, Iowa, and Wisconsin to improve river navigation. In addition, states were provided 37.8 million acres for railroad improvements and 64 million acres for flood control.[11] States were provided wide latitude in project selection and federal oversight and administrative regulations were minimal.

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[7] Constitution of the United States, text available on the National Archives website at http://www.archives.gov/exhibits/charters/constitution_transcript.html.

[8] Ibid.

[9] Thomas Aquinas Burke, "Ohio Lands – A Short History," 8th Edition (Columbus: Ohio: State Auditor's Office, September 1996), at http://freepages.history.rootsweb.ancestry.com/~maggie/ohio-lands/ohl5.html#WROTLNDS.

[10] Benjamin Horace Hibbard, *A History of the Public Land Policies* (New York: The Macmillan Company, 1924), pp. 228-233. Note: Maine and West Virginia were not eligible for the guarantee because they were formed out of other states and Texas was ineligible because it was considered a sovereign nation when admitted to the Union. Also, five states—Wisconsin, Alabama, Iowa, Nevada and Oregon—subsequently were permitted to use their proceeds from federal land sales solely for public education.

[11] Matthias Nordberg Orfield, *Federal Land Grants to the States With Special Reference to Minnesota* (Minneapolis, MN: Bulletin of the University of Minnesota, 1915), pp. 77- 111, 115-118; Morton Grodzins, *The American System*

Balancing Constitutional Concerns and Constituent Interests: The Federal-Aid Road Act of 1916

Congressional interest in providing federal cash assistance for surface transportation increased during the early 1900s, primarily due to the lobbying efforts of the "Good Roads" movement, initially started by bicycle enthusiasts, that gained momentum as automobile ownership in the United States increased rapidly, from 8,000 registered motor vehicles in 1900 to over 2 million by 1915. Often finding themselves stuck in the mud, the public's demand for improved roads intensified. Although most of the lobbying for public investment in roads was directed at state and local government officials, several organizations, including the American Automobile Association, formed in 1902; the National Grange, which advocated public investment in farm-to-market roads; and the American Association of State Highway Officials (AASHO, renamed the American Association of State Highway and Transportation Officials, AASHTO, in 1973) lobbied Congress for federal road assistance.[12] In 1912, their efforts led to the establishment of the Joint Committee on Federal Aid in the Construction of Post Roads, chaired by Senator Jonathan Bourne, Jr., to consider proposals to expand federal assistance for post roads.

The joint committee's final report, issued on November 25, 1914, did not recommend specific legislation. However, it created the groundwork for the Federal-Aid Road Act of 1916, named by the now defunct U.S Advisory Commission on Intergovernmental Relations (ACIR) as the federal government's most significant intergovernmental grant program enacted prior to the New Deal era.[13]

The joint committee argued that federal assistance for post roads was constitutional because "federal aid to good roads will accomplish several of the objectives indicated by the Framers of the Constitution—establish post roads, regulate commerce, provide for the common defense, and promote the general welfare. Above all, it will promote the general welfare."[14] It also argued that federal assistance for paved post roads would generate significant economic benefits for the nation, as much as $504 million annually in reduced freight hauling costs alone, given the emergence of the "auto truck" for hauling freight short distances.[15]

The Federal-Aid Road Act of 1916 authorized $75 million over five years to improve rural, post roads. Funding was prohibited in communities with populations over 2,500 and was offered to states on a 50-50 cost matching basis. Funding was limited to post roads to avoid constitutional challenges based on the Tenth Amendment's language concerning powers reserved to states. State officials did not object to this federal intrusion into what was then considered one of their

(Chicago: Rand McNally, 1966), p. 35; Gary M. Anderson and Dolores T. Martin, "The Public Domain and Nineteenth Century Transfer Policy," *Cato Journal* 6:3 (Winter 1987): 908-910; John Bell Rae, "Federal Land Grants in Aid of Canals," *The Journal of Economic History* 4:2 (November 1944): 167, 168, and U.S. Department of Transportation, Federal Highway Administration, *America's Highways, 1776/1976* (Washington, DC: GPO, 1976), 24. Note: 26 states received federal land grants during the 1800s.

[12] John B. Rae, *The Road and Car in American Life* (Cambridge, MA: MIT Press, 1971), pp. 33-39, 49; and Robert Jay Dilger, "Moving the Nation: Governors and the Development of American Transportation Policy," in *A Legacy of Innovation: Governors and Public Policy*, ed. Ethan G. Sribnick (Philadelphia: University of Pennsylvania Press, 2008), p. 172.

[13] U.S. Advisory Commission on Intergovernmental Relations, *Categorical Grants: Their Role and Design*, A-52 (Washington, DC: GPO, 1978), p. 16.

[14] U.S. Congress, House Committee on Roads, *Federal Aid to Good Roads: Report of the Joint Committee on Federal Aid in the Construction of Post Roads*, 63rd Cong., 3rd sess., November 25, 1914 (Washington, DC: GPO, 1915), p.14.

[15] Ibid., pp. 14-17.

domestic policy areas because the program was voluntary and funds were directed to rural areas. At that time, state apportionment rules allocated most state legislative seats to representatives from rural areas. Also, many farmers used rural post roads to get their produce to market. It was politically difficult at that time for state politicians to object to a federal subsidy for agriculture when most constituents were farmers.[16]

Balancing States Rights, Interstate Commerce Powers, and Constituent Interests: The Federal Highway Act of 1921

Constituent demand for public investment in roads and highways continued to expand as automobile ownership increased across the nation. Motor vehicle registrations reached 10.4 million in 1921. AAA and AASHO lobbied for expanded federal assistance for road construction, but recommended that the increased funding be used in different ways. During the reauthorization of the Federal Aid Road Act of 1916 Congress faced the same fundamental question in 1921 that it faces today: what role should the federal government have in surface transportation policy?

At that time, AAA advocated the creation of a federal highway commission to design and oversee the construction of a proposed 50,000-mile federal highway system.[17] AASHO advocated the continuation of the reliance on states to design and oversee program operations and the use of the grant device to supplement state road development. AASHO argued that state officials were better positioned than federal bureaucrats to make project selection decisions, having superior knowledge of "its populations and its valuations, and a lot of intricate and small things that a commission here in Washington cannot know."[18] Importantly, AASHO also advocated an expansion of grants-in-aid eligibility to roads "divided into two classes, primary or interstate roads and secondary or intercounty roads."[19] AASHO argued that its plan had elements similar to a federal highway system while, at the same time, "takes care of the immediate needs of the largest number of rural communities, recognizing the fact that fully half of the wealth of this country is rural and the modern means of transportation, the automobile and truck, are half in the possession of the farmer."[20]

In a historic decision that continues to influence congressional debate today, Congress adopted AASHO's state-centered approach in the Federal Highway Act of 1921. The act left project selection in the hands of state officials and rejected the idea of creating a direct spending program for surface transportation projects. Congress rejected AAA's federal-centered approach primarily because the use of the grant device was believed to be the best means to avoid constitutional objections that could be raised in the direct provision of domestic services. Because grants are voluntary, it was generally believed that state and local government officials were much less

[16] "Postwar Highway Program," in *Congress and the Nation, 1945-1964* (Washington, DC: Congressional Quarterly Press, 1965), pp. 525-527.

[17] U.S. Congress, Senate Committee on Post Offices and Post Roads, *Interstate Highway System*, Hearing on S. 1355, 77th Cong., 1st sess., May 13, 1921 (Washington, DC: GPO, 1921), pp. 76-97; and U.S. Congress, Senate Committee on Post Offices and Post Roads, *Interstate Highway System*, Hearing on S. 1355, 77th Cong., 1st sess., June 2, 1921 (Washington, DC: GPO, 1921), pp. 536-540.

[18] U.S. Congress, Senate Committee on Post Offices and Post Roads, *Interstate Highway System*, Hearing on S. 1355, 77th Cong., 1st sess., May 19, 1921 (Washington, DC: GPO, 1921), p. 181.

[19] Ibid., p. 173.

[20] Ibid., p. 175.

likely to challenge the legality of a federal grant program than a federal direct spending program.[21]

Congress also increased federal funding to $75 million annually, maintained the 50-50 cost matching basis, and expanded grants-in-aid eligibility to non-post roads. In recognition of constitutional concerns, eligibility was limited to a Primary System of federal-aid highways, not to exceed 7% of all roads in the state. At least three-sevenths of this system had to consist of roads that were interstate in character. Up to 60% of federal-aid funds could be used on interstate routes. By retaining the federal-aid concept, the act appeased advocates of rural, farm-to-market roads. State highway agencies could be counted on to consider local concerns when deciding the mix of projects.[22]

Congress also established in the Federal Highway Act of 1921 that constitutional concerns about states' rights still constrained program eligibility, but that congressional authority to regulate interstate commerce and promote the general welfare also had a role in determining program eligibility. As in the past, the prevailing view was that post roads were eligible for federal assistance because they were mentioned as a federal responsibility in the Constitution. Now, the prevailing view was that highways that were interstate in character and expedited the completion of an "adequate and connected system of highways" were also eligible for federal assistance because of their connection to congressional authority to regulate interstate commerce and promote the general welfare.[23] Indicative of the expansion of the program's scope, the program's title was changed from the Federal-Aid Road Act to the Federal Highway Act.

Expanding the Federal Role: The Federal-Aid Highway Act of 1944

During subsequent reauthorizations of the Federal Highway Act AASHO and the American Municipal Association and its constituent state leagues of municipalities lobbied Congress to increase federal funding and to expand program eligibility to include secondary and urban highways.[24] They argued that all roads were interconnected, forming a single national surface transportation system. In their view, if any portion of that system was in disrepair or lacked sufficient capacity to carry traffic, then the entire national surface transportation system was affected adversely. As Frederick MacMillin, then-executive secretary of the League of Wisconsin Municipalities, testified before the House Committee on Roads in 1944, "while rural highways may not be all that is desired, it is generally conceded now that urban links have become the bottleneck in our highway system."[25] They also argued that Congress should add urban road construction to the program because urban motorists contributed more in federal gasoline and automotive-related excise taxes than they received in funding.

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[21] U.S. Advisory Commission on Intergovernmental Relations (ACIR), *Categorical Grants: Their Role and Design*, A-52 (Washington, DC: GPO, 1978), pp. 51, 52.

[22] Richard F. Weingroff, "The Federal-State Partnership at Work," *Public Roads* 60:1 (Summer 1996): 7, at http://www.tfhrc.gov/pubrds/summer96/p96su7.htm.

[23] John B. Rae, *The Road and Car in American Life* (Cambridge, MA: MIT Press, 1971), pp. 36-39; and Bruce E. Seely, *Building the American Highway System: Engineers as Policy Makers* (Philadelphia: Temple University Press, 1987), pp. 72-80.

[24] U.S. Congress, House Committee on Roads, *Federal-Aid Road Act, Summary of Hearings on H.R. 2426*, 78th Cong., 2nd sess., 1944 (Washington, DC: GPO, 1944), pp. 3-6; and Mark H. Rose, *Interstate: Express Highway Politics, 1939-1989, Revised Edition* (Knoxville, TN: The University of Tennessee Press, 1990), pp. 22-28.

[25] U.S. Congress, House Committee on Roads, *Federal-Aid Road Act, Summary of Hearings on H.R. 2426*, 78th Cong., 2nd sess., 1944 (Washington, DC: GPO, 1944), pp. 4-6.

Trucking organizations opposed the expansion of program eligibility to secondary and urban highways because they worried that expanding the Federal-Aid system might result in higher gasoline taxes and fees. Farm organizations also opposed the expansion of program eligibility because they worried that expanding the system might result in less money for farm-to-market roads.[26]

At that time, traffic congestion was not the nation's most pressing issue. Millions of Americans were overseas fighting in World War II, mandatory gasoline rationing was in place, and civilian automobile production had been halted in 1942 to allow automotive assembly plants to be converted to producing war materials. Nevertheless, there were more than 30 million registered motor vehicles on the nation's roads, and federal, state, and local government officials knew that traffic congestion, especially in and around the nation's largest cities, would be a salient political issue for elected officials at all levels of government once the war was over. Most highway-related organizations, led by AAA, supported the creation of an interstate system of highways, similar to those already present in several European countries, to relieve traffic congestion. The idea of creating an interstate system in the United States had been discussed for several years. For example, Thomas H. MacDonald, chief of the U.S. Bureau of Public Works, advocated the construction of a special system of direct interregional highways in 1939.[27] However, there was no consensus on how to finance it. For example, the National Governors Conference (now the National Governors Association) opposed the use of the federal gasoline taxes to fund interstate highways as an infringement on their sovereign taxing powers.

Although lobby organizations were divided on whether the highway program's scope should be expanded to include secondary and urban highways, Congress was aware that national demographic shifts in the nation had heightened the political relevance of urban areas, as Americans increasingly left rural America in search of employment in the nation's cities, and later its suburbs. At the beginning of the century, about 40% of the U.S. population lived in metropolitan areas. By the time the 20th century ended, that figure had doubled to about 80%. As a result of the ongoing transformation of the nation from a primarily rural nation to an urban one, both major political parties sought political advantage in gaining a political foothold in urban America. Funding urban highways was one of the avenues Congress chose to achieve that goal.

The three-year, $1.5 billion Federal-Aid Highway Act of 1944 expanded federal surface transportation funding eligibility by adding three new programs to the existing Federal-Aid Highway Primary System: a Federal-Aid Highway Secondary System, comprised of principal secondary and feeder routes, including farm-to-market roads, rural mail and public school bus routes, local rural roads, and county and township roads, either outside of municipalities or inside of municipalities of less than 5,000 population; urban extensions of the Federal-Aid Highway Primary System in municipalities and other urban places having a population of 5,000 or more; and an interstate highway network, not to exceed 40,000 miles, to be called the National System of Interstate Highways.[28]

The Primary System was authorized at $225 million annually, the Secondary System at $150 million annually, and the urban extension program at $125 million annually, all on a 50-50 cost matching basis. Routes for the National System of Interstate Highways were designated the

[26] Ibid.; and Mark H. Rose, *Interstate: Express Highway Politics, 1939-1989, Revised Edition* (Knoxville, TN: The University of Tennessee Press, 1990), pp. 22-28.

[27] Richard F. Weingroff, "The Genie In The Bottle: The Interstate System and Urban Problems, 1939-1957," *Public Roads* 64:2 (September/October 2000), at http://www.tfhrc.gov/pubrds/septoct00/urban.htm.

[28] U.S. Congress, House Committee of Conference, *Federal Highway Act of 1944*, Conference Report to Accompany S. 2105, 78th Cong., 2nd sess., December 11, 1944, pp. 2, 3.

following year, but budgetary pressures related to World War II precluded the expenditure of more than token amounts for the interstate system's construction.

One of the more significant effects of the Federal-Aid Highway Act of 1944 on federalism relationships in surface transportation policy was Congress's abandonment of constitutional constraints on program eligibility. Congressional Members and hearing witnesses no longer mentioned states' rights as a factor limiting congressional options to the funding of post roads and roads with direct influence on interstate commerce. Now, states, through AASHO and, to an increased extent following the adoption of the Federal-Aid Highway Act of 1956, the National Governors Association, were actively lobbying Congress for increased federal assistance. The congressional focus was on determining the best means to expedite traffic flow and promote economic prosperity, within the constraints of available federal resources and a federalism framework. The result was the expansion of program eligibility, with each of the new programs focused on the needs of specific constituencies. The Primary System focused on projects that addressed county transportation needs. The Secondary System focused on projects that addressed rural America's transportation needs. The urban highway extension program focused on projects that addressed urban America's transportation needs. The Interstate Highway System, given its expansive scope, addressed transportation needs throughout the nation.

The Interstate Highway System Redefines Federalism Relationships in Surface Transportation Policy: The Federal-Aid Highway Act of 1956

The $25 billion, 13-year Federal-Aid Highway Act of 1956 authorized the construction of the then-41,000 mile National System of Interstate and Defense Highways, with a 1972 target completion date. For the next 35 years, federal surface transportation policy focused on the completion of the interstate system.

Financing the interstate system had been a key sticking point for many years. Motorist and trucking organizations opposed tolls to finance the system. Governors and highway-related organizations, including AAA, opposed raising federal fuel taxes to finance the system. A special panel formed by the Eisenhower Administration in 1954, the Advisory Committee on a National Highway Program, recommended that 30-year bonds, financed by federal fuel taxes, be used to finance the system. However, that proposal failed to achieve congressional approval, primarily because Senator Harry Byrd, chair of the Senate Committee on Finance, wanted a pay-as-you-go financing system that avoided interest charges. The funding impasse was resolved by The Highway Revenue Act of 1956, which created the Highway Trust Fund to finance the system. A relatively small increase in the federal gasoline tax, from two to three cents per gallon, appeased governors and AAA. Governors continued to oppose the federal fuel tax on principle, but recognized that using federal fuel taxes to fund interstate highways was the only viable political option available. One factor contributing to their support was that all Highway Trust Fund revenue was dedicated to highways. In the past, one-third to one-half of federal gasoline revenue had been diverted to other uses. Providing a 90% reimbursement for interstate system expenses also played a role in attracting gubernatorial support. Prohibiting tolls on interstate highways, with an exception for the 2,447 miles of toll roads already in operation, appeased motorist and trucking organizations.[29]

[29] Robert Jay Dilger, "Moving the Nation: Governors and the Development of American Transportation Policy," in *A Legacy of Innovation: Governors and Public Policy*, ed. Ethan G. Sribnick (Philadelphia: University of Pennsylvania Press, 2008), p. 177.

The Federal-Aid Highway Act of 1956 was a defining moment in surface transportation policy because it expanded and solidified the federal government's role in shaping the nation's transportation system. The act elevated the role of federal and state highway department officials in determining the scope and nature of the nation's highway system. Local government officials and urban planners still had a role, but the overall design and location of the interstate system, and increasingly, of primary and secondary highways, were decided by federal and state officials whose goals of promoting national economic growth and expediting traffic flow sometimes conflicted with those held by local government officials who were also interested in clearing slums and other blighted areas, and promoting local economic development. In addition, federal and state highway engineers imposed professional, uniform road construction and design standards throughout the nation. Some local government officials resented the imposition of these standards because they increased construction costs and impinged on their autonomy.[30]

The Federal Government's Role in Surface Transportation Policy: 1956-1991

From 1956 to 1991, state and local government officials focused their efforts in surface transportation policy on maximizing the provision of federal assistance and minimizing federal involvement in how they used federal funds. Specifically, they opposed efforts to increase federal fuel taxes to pay for the increasing cost to complete the interstate highway system on the grounds that any such increases infringed on their sovereign authority to tax fuel by making it more difficult for them to raise state fuel taxes. They also opposed efforts to divert federal Highway Trust Fund revenue to other uses, including mass transit and deficit reduction; and opposed the proliferation of intergovernmental crossover sanctions requiring states to take specific actions, such as limiting highway speeds, removing certain highway billboards, and imposing uniform alcohol standards for determining drunk driving, or lose a portion of federal highway assistance. States also supported efforts to increase federal surface transportation funding levels and to increase the federal share of non-interstate highway expenses.

Debating Reimbursement Rates: The Federal-Aid to Highway Acts of 1970 and 1978

When the Federal-Aid Road Act of 1916 was debated, there was a general consensus that the federal reimbursement rate for expenses would be set at 50%. At that time, a 50-50 cost sharing arrangement was viewed as "an equitable apportionment of burdens, an automatic check upon the demands from the States for Federal appropriation, insures the accomplishment of tangible results, and affords a sound basis for the exercise by the Federal officials of the most searching scrutiny and a conservative policy of approval."[31]

As the federal intergovernmental grants-in-aid system matured and federal cost sharing requirements became more varied both across and within policy areas, academics, stakeholders, and policymakers became increasingly interested in the impact federal cost sharing requirements had on state and local government budgetary behavior. Critics of federal grants with state or local government cost sharing requirements (particularly federal grants that had a 50% or higher state

[30] Mark H. Rose, *Interstate: Express Highway Politics, 1939-1989, Revised Edition* (Knoxville, TN: The University of Tennessee Press, 1990), pp. 95-104.

[31] U.S. Congress, Senate Committee on Post Offices and Post Roads, *Federal Aid in the Construction of Rural Post Roads*, Report to accompany H.R. 7617, 64th Cong., 1st sess., March 10, 1916 (Washington, DC: GPO, 1916), p. 21.

and local government cost sharing requirement) argued that cost sharing requirements distort state and local government budgetary decisions in favor of the federally assisted activity. In their view, because state and local government officials are better positioned than federal bureaucrats to identify and respond to state and local government needs, the distortion of state and local government decisionmaking resulting from the imposition of cost matching requirements led to the non-optimal use of public funds. They argued that lowering state cost matching requirements, or eliminating them altogether, would result in less distortion of state and local government budgetary decisions and would maximize the public interest. Others argued that providing federal funds with very low or no cost matching requirements may lure state and local governments into programmatic activities that they could not afford if the federal assistance was later withdrawn, or could result in spending on projects that never could have stood on their own merits. Still others argued that the imposition of state and local government cost sharing requirements are an appropriate means to stimulate state and local government spending in areas deemed to be in the national interest. In their view, federal cost sharing requirements should be proportional to the extent to which the aided activity aligns with an identified national interest. In academic terms, "the danger of distortion and waste of resources occurs when the cost-sharing requirement is more generous to the recipient government than is justified by the degree of spillover or national interest characterizing the aided state or local government activity."[32]

In 1970, several organizations, including AASHO and the American Road Builders Association, joined state and local governments in advocating an increase in the federal share of expenses for non-interstate highways. They argued that increased highway maintenance costs and "increasing requirements for non-Federally aided state highway improvements" were making it more difficult for states to meet the federal government's 50% matching requirement for non-interstate highways.[33] Representatives of the National League of Cities and U.S. Conference of Mayors argued that the focus on interstate highway construction had led the nation to neglect urban highway systems and that the cost of improving urban highways had increased dramatically, justifying an increase in the reimbursement rate for non-interstate highways.[34] The National Association of Counties argued that because the interstate system was nearing completion that Congress should focus additional resources on non-interstate highways and increase the federal share of expenses to 70% for any additions to the interstate system and for all other federally aided highways. In their view, increasing the reimbursement rate to 70% was justified because "many States and most local governments are finding it increasingly difficult to come up with 50 percent matching funds."[35] Congress subsequently increased the federal share of expenses for non-interstate highways from 50% to 70% in the Federal-Aid Highway Act of 1970.

In 1978, states advocated another increase in the federal share of expenses for non-interstate highways, arguing that rising gasoline prices had led motorists to drive less and, coupled with improvements in automotive fuel economy, had caused state fuel tax revenue to fall, making it more difficult for them to find state funds to meet their 30% share of expenses. The National Association of Counties argued that some local governments were also having difficulty

[32] ACIR, *Categorical Grants: Their Role and Design*, A-52 (Washington, DC: GPO, 1978), p. 176.

[33] U.S. Congress, Senate Committee on Public Works, Subcommittee on Roads, Statement of Burton F. Miller, Executive Vice President, American Road Builders' Association, *Federal Highway Act of 1970, Part 3*, hearing on S. 4055 and S. 4260, 91st Cong., 2nd sess., September 9, 1970 (Washington: GPO, 1970), p. 1224.

[34] U.S. Congress, Senate Committee on Public Works, Subcommittee on Roads, *Federal Highway Act of 1970 and Miscellaneous Bills, Part 2*, 91st Cong., 2nd sess., July 14 and 15, 1970 (Washington: GPO, 1970), pp. 603-608.

[35] U.S. Congress, Senate Committee on Public Works, Subcommittee on Roads, *Federal Highway Act of 1970 and Miscellaneous Bills, Part 1*, 91st Cong., 2nd sess., July 13 1970 (Washington: GPO, 1970), p. 512.

participating in the program because of the required matching rate.[36] Secretary of Transportation Brock Adams indicated that the Carter Administration also supported an increase in the federal share of expenses for non-interstate highways, arguing that "we find about 70 percent is a breaking point, the States are simply unable to raise sufficient money to match Federal moneys and then the program languishes.... we would like to establish uniformity in percentages of grants, whether it is 75-25 or 80-20."[37] Congress subsequently increased the federal share of expenses for non-interstate highways from 70% to 75% in the Federal-Aid Highway Act of 1978.[38]

The following sections discuss several efforts during this time period to "sort out" or devolve federal surface transportation programs to state and local governments. This discussion is pertinent given recent proposals to sort out federal-state responsibilities in surface transportation policy.

Efforts to "Sort-out" Governmental Responsibilities in Surface Transportation Policy: Presidents Nixon's and Reagan's New Federalism Proposals

During the 1960s and 1970s, the number of federal grants to state and local governments, including those provided for surface transportation, increased dramatically. The total number of federal grants to state and local governments increased from 132 in 1960 to 387 in 1968, the year before President Richard Nixon became President, and to 539 in 1981, when President Ronald Reagan become President.[39]

The number of federal surface transportation grant programs funded by the Federal-Aid to Highway Act also increased. There were nine surface transportation programs in the Federal Highway Act of 1960: forest development roads and trails, forest highways, Indian Reservation Roads and Bridges, Park Roads and Trails, Parkway, Public Land Highways, Federal Aid Primary System, Federal Aid Secondary System, and Federal-Aid Primary and Secondary Systems Extensions in Urban Areas.[40] In 1975, there were 37 programs: Interstate Highway System; Federal-Aid Highway Primary System in Rural Areas; Federal-Aid Secondary System in Rural Areas; Federal-Aid Urban Systems; Federal-Aid Primary and Secondary Systems Extensions in Urban Areas; Emergency Relief; Forest Highways; Priority Primary Routes; Special Urban High Density Traffic Program; Motor Vehicle Diagnostic Inspection Demonstration Projects; Off-System Road Projects; Railroad Safety; Carpool Demonstration Projects in Urban Areas; Surveys, Planning, Research and Development for Highway Programs; Public Land Highways; three grant programs for Highway Beautification; Education and Training Program for Highway Personnel; four grant programs for urban mass transportation; Transportation Planning in Urban Areas;

[36] U.S. Congress, Senate Committee on Environment and Public Works, Subcommittee on Transportation, Statement of Milton Johnson, on behalf of the National Association of Counties, *Federal Aid Highway Act of 1978*, hearing on Federal Aid Highway Act of 1978, 95th Cong., 1st sess., July 26, 1977 (Washington: GPO, 1977), p. 121.

[37] U.S. Congress, Senate Committee on Environment and Public Works, Subcommittee on Transportation, Statement of Brock Adams, Secretary of Transportation, *Federal Aid Highway Act of 1978*, hearing on Federal Aid Highway Act of 1978, 95th Cong., 1st sess., July 26, 1977 (Washington: GPO, 1977), p. 67.

[38] Ibid., 178-181.

[39] Robert Jay Dilger, "The Expansion and Centralization of American Governmental Functions," in *American Intergovernmental Relations Today: Perspectives and Controversies*, ed. Robert Jay Dilger (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1986), p. 18.

[40] U.S. Congress, Senate Committee on Public Works, Subcommittee on Public Roads, *Federal-Aid Highway Act of 1960*, hearing on H.R. 10495, 86th Cong., 2nd sess., June 9, 1960 (Washington: GPO, 1960), p. 2.

Urban Area Traffic Operations Improvements; Bridges on Federal Dams; Economic Growth Center Development Highways; and 10 grant programs for highway safety.[41]

During the 1970s and 1980s, there were several attempts to change federal, state, and local government roles in surface transportation policy. Presidents Nixon's and Reagan's efforts are particularly noteworthy as both were convinced that federal grants to state and local governments had become duplicative and wasteful, and both attempted to sort out the appropriate roles and responsibilities of each level of government in several programmatic areas, including surface transportation policy.[42] For example, in his 1971 State of the Union speech, President Nixon announced a plan to focus federal resources on areas of national interest by consolidating 129 federal grant programs in six functional areas—33 in education, 26 in transportation, 12 in urban community development, 17 in manpower training, 39 in rural community development, and 2 in law enforcement—into six special revenue sharing programs. Unlike the categorical grants they would replace, the proposed special revenue sharing programs had no state matching requirements and relatively few auditing or oversight requirements, and the funds were distributed automatically without prior federal approval of plans for their use.[43]

President Nixon's proposal to consolidate 26 federal surface transportation programs into a special revenue sharing program failed to gain congressional approval, primarily because it generated opposition from interest groups affiliated with highway construction who worried that the programs' future funding would be compromised, and from state highway officials worried about losing programmatic influence to governors.[44] Nonetheless, President Nixon and his successor, President Gerald Ford, continued to oppose further expansion in the number of federal surface transportation programs, and those numbers remained fairly stable for the remainder of the decade. When President Ronald Reagan entered office in 1981, there were 34 federal surface transportation programs funded by the Federal-Aid Highway Act, compared to 37 in 1975.[45]

President Reagan also wanted to change federal and state roles in surface transportation policy. In 1982, he proposed a $20 billion "swap" in which the federal government would return to states full responsibility for funding Aid to Families With Dependent Children (AFDC) (now Temporary Assistance for Needy Families) and food stamps in exchange for federal assumption of state contributions for Medicaid. He also proposed a temporary $28 billion trust fund or "super revenue sharing program" to replace 43 other grant programs, including all non-interstate highways, Appalachian highways, and urban mass transit construction and operating grants. The trust fund, and federal taxes supporting it, would begin phasing out after four years leaving states the option of replacing federal tax support with their own funds to continue the programs or allowing the programs to expire.

Both the swap proposal and the proposed devolution of 43 federal programs failed to gain congressional approval. Both proposals were opposed by organizations that feared that if enacted, they would result in less funding for the affected programs. For example, the National Governors

[41] ACIR, *Categorical Grants: Their Role and Design*, A-52 (Washington, DC: GPO, 1978), pp. 118, 129; and ACIR, *A Catalog of Federal Grant-In-Aid Programs to State and Local Governments: Grants Funded FY 1975*. A-52A (Washington, DC: GPO, 1977), pp. 13-15.

[42] Claude E. Barfield, *Rethinking Federalism: Block Grants and Federal, State, and Local Responsibilities* (Washington, DC: American Enterprise Institute for Public Policy Research, 1981), p. 3.

[43] Ibid.

[44] Timothy Conlan, *New Federalism: Intergovernmental Reform From Nixon to Reagan* (Washington, DC: The Brookings Institution, 1988), pp. 36-38.

[45] ACIR, *A Catalog of Federal Grant-In-Aid Programs to State and Local Governments: Grants Funded FY 1981*, M-133 (Washington, DC: GPO, 1982), pp. 26-28.

Association supported the federal takeover of Medicaid, but objected to assuming the costs for AFDC and food stamps. The economy was weakening at that time and governors worried that they would not have the fiscal capacity necessary to support the programs without continued federal assistance.[46]

President Reagan's Surface Transportation Block Grant Proposals and Opposition to Highway "Demonstration Projects"

In 1983, President Reagan proposed the Federalism Block Grant Highway Act of 1983. It would have provided states the choice of continuing to receive funds for highway programs focused on local and state needs (Urban System, Secondary System, bridges other than Primary and high-cost bridges, highway safety, hazard elimination, and rail-highway crossings) under existing statutory mechanisms or receiving them in the form of a block grant. The federal role in highway programs that focused on "the federal interest" (primary and interstate highways and bridges, as well as high-cost bridges) was to be continued.[47] In 1986, he proposed the Surface Transportation Reauthorization Act of 1986, which would have combined the Primary, Interstate reconstruction, and Interstate construction programs into a single program. It would have also created a block grant for the remaining highway programs and mass transit. Neither proposal was approved by Congress.[48]

In 1987, President Reagan vetoed the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), the last surface transportation authorization bill of the Interstate era. In the first, and only, veto of a federal-aid highway bill in the 20th century, President Reagan cited several objections to the bill, but was especially critical of the bill's 121 "demonstration projects," which he considered wasteful. Members of Congress who wanted funds for a project in their state had adopted the practice of inventing a concept it would "demonstrate" indicating that it was part of an important research initiative. Using this idea, for example, funding for two parking lots became a demonstration of "methods of facilitating the transfer of passengers between different modes of transportation."[49] Congress initially sustained President Reagan's veto by a single vote in the Senate on April 1, 1987, but the following day one of the Senators who had voted to sustain the veto switched his vote, and the veto was overridden.[50]

The inclusion of demonstration projects in STURAA, and the inclusion of increasing numbers of congressionally earmarked projects in subsequent reauthorizations have implications for federalism relationships in surface transportation policy. Although many Members of Congress discuss their surface transportation earmarks with their state and local government officials prior to making their requests for an earmark, earmarks, by definition, reduce state and local government flexibility. The extent of congressional earmarks' impact on state and local government flexibility is related to how the earmarks are treated in the distribution of the

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[46] Timothy J. Conlan and David B. Walker, "Reagan's New Federalism: Design, Debate and Discord," *Intergovernmental Perspective* 8:4 (Winter 1983): 6-15, 18-22; and Timothy Conlan, *New Federalism: Intergovernmental Reform From Nixon to Reagan* (Washington, DC: The Brookings Institution, 1988), pp. 182-198.

[47] Elizabeth Parker, "Major Proposals to Restructure the Highway Program," *Transportation Quarterly*, 45:1 (January 1991): 55-66, at http://www.fhwa.dot.gov/infrastructure/restructure.cfm.

[48] Ibid.

[49] Richard F. Weingroff, "President Ronald Reagan and the Surface Transportation and Uniform Relocation Assistance Act of 1987," U.S. Department of Transportation, Federal Highway Administration, at http://www.fhwa.dot.gov/infrastructure/rw01e.cfm.

[50] Ibid. Note: Senator Terry Sanford switched his vote.

program's funds. For example, congressional earmarks in SAFETEA's National Corridor Infrastructure Improvement Program ($1.9 billion), Projects of National and Regional Significance ($1.8 billion), and Transportation Improvements ($2.5 billion), as well as discretionary programs earmarked during the annual appropriations process, are all outside the scope of SAFETEA's Equity Bonus (EB) program. The EB program is designed to guarantee each state at least a 92% return on payments to the Highway Account in the Highway Trust Fund for those programs listed in the EB program (which includes all of the core formula programs as well as several other programs).[51] Because these earmarks are outside of the EB program's scope, they have no direct impact on the calculations that determine the distribution of the EB program's funds to states. As a result, although states have little discretion concerning how those earmarked funds are to be spent, the funds are considered additional funding, often referred to as being "above the line."

On the other hand, SAFETEA's High Priority Project (HPP) earmarks (nearly $15 billion) are included within the scope of SAFETEA's EB program, often referred to as being "below the line." As a result, these earmarks are counted in the calculations that determine the distribution of the EB program's funds to states, reducing the amount that each state receives through the EB program. Because EB program funding is distributed to states through the program's core formula programs, states receiving HPP earmarks not only have little discretion concerning how those earmarked funds are to be spent, but also experience a reduction in the amount of formula program funds that they would otherwise receive and rely on to implement their state transportation improvement plans. The issue is whether congressional earmarks, if continued, should be inside or outside the scope of the EB program. Keeping congressional earmarks outside, as opposed to inside, the EB program would place less of a restraint on state flexibility in regard to the funding received for the core formula programs, but it would also dilute the impact of a rate-of-return guarantee.[52]

Although President Reagan's New Federalism and block grant proposals were not adopted, he continued to advocate further reductions in the number of surface transportation programs, and had some success. There were 27 federal surface transportation programs funded by the Federal-Aid Highway program at the conclusion of his second term in office, compared to 34 at the outset of his presidency.[53] Among the programmatic changes that took place during his presidency was a reduction in mass transit operating assistance and a refocused emphasis on capital expenditures.

ACIR: The Geographic Range of Benefits Argument

In 1987, the now defunct U.S. Advisory Commission on Intergovernmental Relations (ACIR) recommended that Congress "move toward the goal of repealing all highway and bridge

[51] The following programs are included in SAFETEA's EB program: Interstate Maintenance, National Highway System, Surface Transportation Program, Bridge and Bridge Maintenance, Congestion, Mitigation, and Air Quality, Highway Safety Improvement Program, Recreational Trails, Appalachian Development Highway System, High Priority Projects, Metropolitan Planning, Coordinated Border Infrastructure Program, Safe Routes to School Program, and the Rail-Highway Grade Crossing program. For further analysis, see CRS Report R40451, *The Donor-Donee State Issue: Funding Equity in Surface Transportation Reauthorization*, by Robert S. Kirk; and CRS Report RL33119, *Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU or SAFETEA): Selected Major Provisions*, coordinated by John W. Fischer.

[52] For further analysis, see CRS Report R40053, *Surface Transportation Program Reauthorization Issues for the 111th Congress*, coordinated by John W. Fischer.

[53] ACIR, *Characteristics of Federal Grant-In-Aid Programs to State and Local Governments Funded FY 1991*, M-182 (Washington, DC: GPO, 1992), pp. 24, 28; and ACIR, *Characteristics of Federal Grant-In-Aid Programs to State and Local Governments Funded FY 1981*, M-133 (Washington, DC: GPO, 1982), pp. 26-29.

programs that are financed from the federal Highway Trust Fund, except for (1) the Interstate highway system, (2) the portion of the bridge program that serves the Interstate system, (3) the emergency relief highway program, and (4) the federal lands highway program."[54] The commission also recommended that Congress "relinquish an adequate share of the federal excise tax on gasoline" to enable states to finance the devolved programs.[55]

ACIR was one of the first organizations to offer specific criteria for defining areas of national interest and determining roles for federal, state, and local government officials in surface transportation policy. ACIR conceded that all roads are physically interconnected. As noted earlier, the highway system's interconnectedness had been used as a rationale for expanding federal program eligibility in surface transportation policy. ACIR argued that while all roads are interconnected, "they differ systematically in the length of trips on them and in the travel purposes for which they are used."[56] ACIR argued that "most trips on Interstate highways are much longer than trips taken on the Secondary and Urban systems" and that "this fact argues that the Interstate network provides transportation benefits over a wider geographic range than Secondary and Urban systems."[57] ACIR went on to conclude that "This concept of the geographic range of highway benefits is a key test to determine which unit of government should bear responsibility for highway finance."[58]

ACIR argued that "roads that serve largely local purposes—helping to make quicker trips to the supermarket, for example—compete with financing for roads that provide truly national benefits—for instance, facilitating the interstate commerce and economic health on which the whole nation's welfare depends."[59] It recommended that the approximate geographical range of benefits associated with surface transportation programs supported the idea of incremental devolution, where roads that provide virtually no national benefits were devolved first and others that, on balance, provide some national benefits could be devolved later. ACIR noted that incremental devolution was "likely to be more palatable politically than a wrenching, once-and-for-all change."[60]

ACIR also introduced the notion of interstate spillovers, or externalities, as an example of the use of the geographic range of benefits criteria. Economists use the term spillover or externality to describe the market imperfection that results when producers and consumers in a market either do not bear all of the costs or do not reap all of the benefits of an economic activity. Wastewater and air pollution treatment are often used as examples where economic spillovers occur. The primary beneficiaries of cleaner water and air are often those who live downstream or downwind from a pollution source, not those who live where the effluent or polluted air is treated. Those living at the source of the pollution have no, or little, incentive to pay for activities that primarily benefit those living downstream or downwind. Economists argue that services with spillover effects are not likely to be provided at optimal levels without some form of government intervention,

[54] ACIR, *Devolving Selected Federal-Aid Highway Programs and Revenue Bases: A Critical Appraisal*, A-108 (Washington, DC: GPO, 1987), p. 2.

[55] Ibid.

[56] Ibid., p. 27.

[57] Ibid.

[58] Ibid.

[59] Ibid., p. 28.

[60] Ibid.

typically by providing an incentive to the provider to undertake the service at optimal levels or by a mandate to do so.[61]

ACIR argued that highways, especially interstate highways, are subject to spillovers and the "best government for providing services is one with an appropriately large jurisdiction so that the jurisdiction can encompass the externalities."[62] It argued that

> an interstate spillover occurs when road benefits are not fully captured in-state, or are not fully captured by taxes and other charges levied by the providing state. The state budgetary process has little reason to value fully out-of-state benefits. An all too logical consequence might be underfinancing of roads with large out-of-state benefits relative to their in-state benefits. For example, by charging tolls on Interstate 80 (which is not currently permitted), Pennsylvania could reap the savings of fuel and time gained by the highway's efficient New York to Chicago routing, with the tolls defraying maintenance costs for efficient transportation. In this case, toll finance could internalize what would otherwise be an interstate spillover, namely the region-wide advantages of a direct, swift, well-maintained superhighway. However, it the hypothetical tolls on Interstate 80 were set too high in relation to the additional cost incurred by additional use (e.g., wear or perhaps the need for extra lanes) motorists would be overcharged. In effect, they would be paying twice, through both tolls and taxes, and the interstate motorist would be exploited.[63]

ACIR also advocated the principle of fiscal equivalence to sort out surface transportation financing. It argued that "Those who benefit from the government function should pay for it" and that jurisdictions that pay for a function and receive its benefits have an incentive to make "judicious fiscal choices, neither skimping on valuable public investment nor squandering other person's tax dollars."[64] It went on to argue that "without fiscal equivalence, highway beneficiaries who do not pay their fair share are motivated to exaggerate their demands, if successful they improve their services at the expense of others."[65]

ACIR noted that "over time, considerable national standardization has been developed in the highway transportation system" largely due to the efforts of "transportation officials (notably AASHTO)" and that such standardization "most likely would continue after devolution, even if direct, federal control were limited to the Interstate system."[66] It argued that the benefits of standardization, such as for safety requirements, "serve both the national and local goals."[67]

Applying these principles, ACIR argued that the "great preponderance of the Interstate System ... merits continued federal support."[68] However, the "national role of the Primary system has been greatly reduced by the Interstate system," and "with well functioning Interstate and Primary systems, the national benefits of the federal-aid Urban system are contained, by and large, within individual states or metropolitan areas."[69] Also, "by and large, Secondary highways are even more appropriate for state-local financing and control than the Urban system" because "most

[61] ACIR, *Categorical Grants: Their Role and Design*, A-52 (Washington, DC: GPO, 1978), p. 51.

[62] ACIR, *Devolving Selected Federal-Aid Highway Programs and Revenue Bases: A Critical Appraisal*, A-108 (Washington, DC: GPO, 1987), p 29.

[63] Ibid., pp. 29, 30.

[64] Ibid., p. 28.

[65] Ibid.

[66] Ibid., p. 30.

[67] Ibid.

[68] Ibid.

[69] Ibid., pp. 30, 31.

Secondary roads are only lightly traveled, because of shifts in population and the presence of alternative routes that are designed to higher standards."[70]

ACIR argued that it was "doubtful" that any general principle of fiscal federalism governs the award of funds through demonstration projects but noted that highway demonstration projects "rarely convey important national benefits."[71] It also argued that certain bridge safety programs serve a "coordinating as well as an operational safety function that is not appropriate for devolution" but programs to widen bridges to remove traffic bottlenecks may be appropriate for devolution if the bridge's traffic is primarily local in nature.[72]

The Federal Government's Role in Surface Transportation Policy: The Post-Interstate Era

There have been five multi-year reauthorizations of the Federal-Aid Highway Act since 1987:

- the $151 billion, six-year Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA; P.L. 102-240) signed by President George H. W. Bush on December 18, 1991;
- the $203.4 billion, six-year Transportation Equity Act for the 21st Century (TEA-21; P.L. 105-178) signed by President Bill Clinton on June 9, 1998;
- the $286 billion, six-year Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA; P.L. 109-59) signed by President George W. Bush on August 10, 2005;[73]
- the $118 billion ($105.2 billion for FY2013 and FY2014), 27-month, Moving Ahead for Progress in the 21st Century (MAP-21; P.L. 112-141) signed by President Barack Obama on July 6, 2012; and
- the $305 billion, five year Fixing America's Surface Transportation Act (FAST; P.L. 114-94), signed by President Barack Obama on December 4, 2015.

The following discussion examines the major federalism issues involved in each of these reauthorizations, including efforts to sort out appropriate roles for federal, state, and local governments in surface transportation policy.

ISTEA: A New Direction for Federalism Relationships in Surface Transportation Policy

Although most lobbying organizations involved in the 1991 reauthorization of the Surface Transportation and Uniform Relocation Assistance Act of 1987 had not changed their positions on federal surface transportation policy, circumstances had changed a great deal. From 1956 to 1991, there had been a shared consensus among policymakers and lobbying organizations that the highway program's primary goal was to build the Interstate System. Now that the Interstate system was, for all practical matters, complete, that consensus no longer existed. During

[70] Ibid., p. 31.

[71] Ibid.

[72] Ibid., pp. 31, 32.

[73] Because SAFETEA's enactment took place late in FY2005, it could be argued that a more useful representation of its funding is that it provided $244 billion in spending authority from FY2005 through FY2009. See CRS Report R41512, *Surface Transportation Program Reauthorization Issues for the 112th Congress*, coordinated by Robert S. Kirk.

reauthorization, President George H. W. Bush, the House, and the Senate advocated fundamentally different approaches to structuring federalism relationships in surface transportation policy.

President George H. W. Bush shared President Reagan's view that the intergovernmental system had become duplicative and wasteful and targeted surface transportation policy as an area in need of reform. On February 13, 1991, he announced a five-year, $105 billion reauthorization proposal for the Federal-Aid Highway program, called the Surface Transportation Assistance Act (H.R. 1351, S. 610). It included a 40% increase in funding for highways ($88.5 billion) and a marginal increase for mass transit ($16.5 billion). His proposal was guided by two fundamental principles: (1) that state and local government officials should have greater influence on project selection and (2) that federal financial assistance should reflect the program's geographic range of benefits. In his words, "Our approach will provide States and localities with flexibility to select which highways will receive targeted Federal dollars, and States and localities will be able to choose whether to spend Federal dollars on transit or highway solutions. As never before, we are encouraging creative new financing and management by the States."[74]

Using the geographic range of benefits principle, he recommended that the Interstate, Primary, Secondary, and Urban Highway programs be replaced by two programs: a $43.5 billion, 150,000-mile National Highway System (NHS) consisting of highways with significance for national defense or that carried goods and people across state lines and a $22.2 billion urban and rural highway block grant for other federally funded roads (about 716,000 miles at that time).[75] Because the block grant consisted of roads lacking national significance, he recommended that it receive less funding than the proposed national highway system and that its reimbursement rate be lowered from 75% to 60%. The federal reimbursement rate for highways in the national highway system would remain the same, 90% for interstate highways and 75% for primary highways. He also recommended that states be allowed to shift funds between urban and rural highways, from urban and rural highways to mass transit and, with the exception for new mass transit starts, from mass transit to urban and rural highways.[76] Because the President believed that mass transit's benefits accrue primarily within state and metropolitan areas, in addition to proposing that mass transit funding be increased only marginally, to $16.5 billion over five years, he also recommended that the federal reimbursement rate for mass transit capital expenses be reduced from 80% to 60%, and for new starts from 75% to 50%.

Senator Daniel Patrick Moynihan, chair of the Senate Committee on Environment and Public Works' Subcommittee on Water Resources, Transportation, and Infrastructure, led the Senate's reauthorization effort. The Senate bill took a fundamentally different approach to federalism relationships in surface transportation policy than what was offered by the President.[77] Senator Moynihan had a close working relationship with the Surface Transportation Project, a coalition of urban, environmental and intermodal transportation advocates, and crafted a bill, S. 965, the Surface Transportation Efficiency Act of 1991 (later incorporated into S. 1204 with the same

[74] President George H.W. Bush, "Remarks Announcing Proposed Transportation Legislation," *Public Papers of President George H.W. Bush*, February 13, 1991, at http://bushlibrary.tamu.edu/research/public_papers.php?id=2703&year=1991&month=2.

[75] Samuel Skinner, Secretary, Department of Transportation, *Intermodal Surface Transportation Efficiency Act of 1991 – A Summary* (Washington, DC: U.S. Department of Transportation, 1991), at http://ntl.bts.gov/DOCS/ste.html.

[76] Mike Mills, "Administration Asks States to Carry the Transit Load," *Congressional Quarterly Weekly Report*, March 9, 1991, pp. 599, 600.

[77] U.S. Department of Transportation, Federal Highway Administration, Highway History, Richard F. Weingroff, "National Highway System: Imagining The Future," at http://www.fhwa.dot.gov/infrastructure/nhsorigins.cfm. Note: Senator Quentin Burdick, Chair, Committee on Environment and Public Works, was in failing health at the time and allowed Senator Moynihan to take the lead.

title), that would have shifted the focus of federal policy away from highway construction toward maintenance, placed greater emphasis on mass transit and intermodal solutions to traffic congestion, further decentralized programmatic authority to states and metropolitan planning organizations in the project development process, increased public participation in the project development process, and strengthened environmental protections. Specifically, the Senate bill authorized funding at $123 billion, with over one-third of the bill's highway funds ($44.7 billion) for a Surface Transportation Program, which would allow states to fund a broad range of surface transportation projects, including construction, restoration, and operational improvements for highways and bridges; capital and operating costs for mass transit, rail, and magnetic levitation systems; carpool projects and parking and bicycle facilities and programs; and surface transportation research and development programs. The bill also included $21 billion for mass transit.[78]

The Senate bill rejected the geographic range of benefits argument in the determination of federal reimbursement rates. Instead of lowering cost matching rates for transportation projects lacking a national interest, the Senate bill would have "leveled the playing field" by setting reimbursement rates at 80% for maintaining and improving transportation facilities, and 75% for new construction. The financial incentive to fund new construction over maintenance was to be eliminated by giving maintenance a higher reimbursement rate than new construction.

The Bush Administration indicated that it could not support S. 965 because it did not include its recommended National Highway System, and did not focus federal resources on highways of national interest. Dr. Thomas Larson, Administrator of the Federal Highway Administration, testified before the Senate Committee on Environment and Public Works that "While we are moving to the post-Interstate construction era, we are not yet ready for a post-highway transportation economy."[79] He added that "50 strong state programs will not necessarily provide a strong national program, and the experience in the European Community and the experience that we've had in working with the 50 States in response to the House Public Works [Committee's] charge that we develop an illustrative national [highway] system suggests that there is a need for Federal oversight of coordination."[80] To avoid a presidential veto, the Senate bill was amended on the Senate floor to include funding for a National Highway System.

The House bill (H.R. 2950, the Intermodal Surface Transportation Efficiency Act of 1991) took yet another approach to structuring federalism relationships in surface transportation policy, incorporating some elements of the Administration's proposal and some elements from the Senate bill. It authorized $151 billion for the program, including $32 billion for mass transit. It included funding for a National Highway System (up to 155,000 miles, plus or minus 15%, to be designated within two years) and, although it did not go as far as the Senate bill in providing states additional programmatic flexibility, it would have provided states added flexibility to shift funds among existing highway programs, including for mass transit purposes. It accepted Senator Moynihan's "level playing field argument" and set federal reimbursement rates at 80% for most programs, and 90% to 95% for interstate highways, with the higher reimbursement rate offered to states with relatively large amounts of federal land.

The $151 billion, six-year Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, P.L. 102-240), subsequently adopted by Congress, represented a compromise between the House and

[78] S. 965, Surface Transportation Efficiency Act of 1991 (Introduced in Senate) and S. 1204, Surface Transportation Efficiency Act of 1991 (Engrossed as Agreed to or Passed by Senate).

[79] U.S. Congress, Senate Committee on Environment and Public Works, *Pending Highway Legislation*, hearing on S. 823 and S. 965, 102nd Cong., 1st sess., May 14, 1991, S. Hrg. 102-142 (Washington: GPO, 1991), p. 339.

[80] Ibid., p. 282.

Senate approaches to federalism relationships in surface transportation policy. ISTEA was authorized at the House level, $46 billion more than the President had requested, and nearly doubled the amount the Administration requested for mass transit, providing $119 billion for highways and $32 billion for mass transit. ISTEA replaced the Interstate, Primary, Secondary and Urban Highway programs with two programs: a $21 billion, 155,000 mile National Highway System (NHS), including all interstate routes, a large percentage of urban and rural principal arterials, the defense strategic highway network, and strategic highway connectors; and a $23.9 billion Surface Transportation Program (STP) for all roads not functionally classified as local or rural minor collector. ISTEA retained separate programs and authorizations for Interstate Highways ($7.2 billion), Interstate Maintenance ($17 billion), Bridge Replacement and Rehabilitation ($16.1 billion), and created a new, $6 billion Congestion Mitigation and Air Quality Improvement Program.

ISTEA's impact on federalism relationships in surface transportation policy was particularly noteworthy for several reasons. First, it increased state programmatic authority to shift funds among existing programs, allowing states to shift up to half of their NHS funds to other highway programs and mass transit and up to 100% with the approval of the Secretary of the U.S. Department of Transportation. Second, ISTEA enhanced the role of Metropolitan Planning Organizations (MPOs) in project selection by requiring states to reserve approximately $9 billion of STP funds for the use of MPOs representing urban areas with populations of 200,000 or more. Third, ISTEA mandated a new style of performance planning for managing and monitoring highway pavement conditions, bridge maintenance, highway safety programs, traffic congestion mitigation, transit facility and equipment maintenance, and intermodal transportation facilities and systems. In addition, statewide transportation improvement plans, both for the long term and for a shorter term, were required for the first time, in addition to metropolitan transportation improvement plans that had been required since 1962. Fourth, ISTEA rejected the application of the geographic range of benefits argument in setting reimbursement rates. Instead, it "leveled the playing field" by retaining interstate reimbursement rates at 90% for interstate construction and maintenance (with up to 95% for states with relatively large amounts of federally owned land) and increased reimbursement rates to 80% for most non-interstate highway and mass transit projects. This change removed the financial incentive to fund highways over mass transit, and new construction over maintenance.[81]

TEA-21: Debating Program Devolution and Continuing the Expansion of State Programmatic Flexibilities

In 1995, there were 633 federal grants-in-aid programs, including 618 categorical grants and 15 block grants.[82] There were 30 surface transportation grant programs, 28 categorical grants, and 2 block grants. Several prominent members of President Bill Clinton's Administration, including Alice Rivlin, Director of the Office of Management and Budget, advocated a sorting out of intergovernmental responsibilities to reduce expenses and improve government performance. However, President Bill Clinton proposed more modest intergovernmental reforms. For example, his ISTEA reauthorization proposal, the six-year, $174.5 billion National Economic Crossroads Transportation Efficiency Act (NEXTEA; H.R. 1268, S. 468), would have retained and increased

[81] Mike Mills, "Highway and Transit Overhaul is Cleared for President," *Congressional Quarterly Weekly Report*, November 30, 1991, pp. 3518-3522; Kirk Victor, "Skinner's Final Act," *National Journal*, December 14, 1991, pp. 3016-3019; and Bruce D. McDowell, "Reinventing Surface Transportation: New Intergovernmental Challenges," *Intergovernmental Perspective* 18:1 (Winter 1982): 6-8, 18.

[82] ACIR, Characteristics of Federal Grant-in-Aid Programs to State and Local Governments: Grants Funded FY 1995, M-195 (Washington, DC: GPO, 1995), p. 3.

funding for virtually all ISTEA programs (providing $139 billion for highways and $35.5 billion for mass transit). It also included $4.7 billion for Amtrak and would have made Amtrak eligible for STP funding.

During ISTEA's reauthorization, Congress addressed efforts to devolve programmatic authority to states and to expand state authority to "flex" federal funding among existing programs, but it focused most of its attention on resolving differences related to the program's allocation of resources among states. The STEP 21 Coalition, representing the "donor" states of Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Virginia, and Wisconsin, advocated a minimum 95 cents return per dollar their highway users contributed to the Highway Trust Fund. They also wanted to merge the interstate maintenance program and portions of the bridge program into the national highway system and create a Streamlined Surface Transportation Block Grant program which would receive about 60% of the program's highway funding and could be used for all existing program activities.[83] The Alliance for ISTEA Renewal (U.S. Conference of Mayors, National Association of Counties, National League of Cities, American Public Transit Association, Association of Metropolitan Planning Organizations, and the Surface Transportation Policy Project) wanted to prevent the redirection of federal fuel tax revenue from the Highway Trust Fund, but otherwise recommended relatively minor changes to ISTEA. California, Ohio, South Carolina, and Michigan endorsed efforts by Representative John Kasich in the House and Senator Connie Mack in the Senate to devolve most non-interstate highway and mass transit programs to states. Their Surface Transportation and Transit Empowerment Act (H.R. 3045 and S. 1494) would have returned "to the individual States maximum discretionary authority and fiscal responsibility for all elements of the national transportation systems that are not within the direct purview of the Federal Government."[84]

The proposed Surface Transportation and Transit Empowerment Act did not generate the level of congressional attention provided to the state donor-donee debate. Nonetheless, the arguments presented both for and against its adoption are relevant today given that the devolution issue may be considered during SAFETEA's reauthorization. However, current fiscal conditions are much different today than in 1997 and 1998. It could be argued that the current economic fiscal crisis may limit the states' fiscal capacity to assume responsibility for federal surface transportation projects if they were asked, as they were in 1997 and 1998, to increase state fuel taxes to fund those projects.

At a House subcommittee hearing on ISTEA's reauthorization in 1997, Senator Mack defended his devolution proposal, arguing that "the simple fact is that states now have the technical capability to build their own roads and, frankly, they know better than Washington what their transportation needs are. A continued role for the federal government is appropriate in certain areas, such as the maintenance of the interstate highway system or limited coordination functions."[85] He added,

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[83] For further analysis, CRS Report R40451, *The Donor-Donee State Issue: Funding Equity in Surface Transportation Reauthorization*, by Robert S. Kirk.

[84] Rep. John Kasich, "Building Efficient Surface Transportation And Equity Act of 1998," House debate, *Congressional Record*, vol. 144, part 4 (April 1, 1998), p. 5723.

[85] U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Surface Transportation, *Reauthorization of the Intermodal Surface Transportation Efficiency Act (ISTEA): Comprehensive Reauthorization Proposals*, 105th Cong., 1st sess., February 12, 1997 (Washington, DC: GPO, 1997), p. 11.

> current policy has been unable to keep up with our Nation's growing infrastructure needs. One reason for this is that we have not been getting as much out of our transportation dollars as we used to. For instance, since 1956 Federal Highway Administration costs have grown from 7 percent to 21 percent today. Moreover, studies suggest the elimination of Federal mandates and restrictions would increase States' real purchasing power for transportation projects by 20 percent.[86]

Representative Kasich stated at the hearing that Ohio was one of 32 states at that time that received less from ISTEA than its highway users paid into the Highway Trust Fund. He added that the governors of Michigan, Ohio, California, South Carolina, and Florida, all states that received less ISTEA funding at that time than their highway users paid into the Highway Trust Fund, had endorsed his bill. He argued that "if you let us keep our money and get rid of all the Federal bureaucracy and all the Federal rules, we'll be able to actually have more highway construction."[87]

On April 1, 1998, Representative Kasich offered his bill as an amendment in the nature of a substitute to BESTEA (Building Efficient Surface Transportation and Equity Act of 1998), the House ISTEA reauthorization bill. During floor debate, Representative E. G. "Bud" Shuster, chair of the House Committee on Transportation and Infrastructure, rose in opposition to the amendment, arguing,

> while this would simply turn things back to the States, ironically there is a greater need for us to have a coordinated, tied-together national transportation system than ever. Why? Because more people and more goods are moving interstate than ever before.[88]

He also argued that "Indeed, there is a greater need to have this tied together than ever before. Our bill not only does that, but it also gives flexibilities to the States and the cities by saying that 50 percent of the funding in each category can be flexibly moved about to other categories."[89] He added that "It is very important, also, to recognize that, of the money that comes to Washington now, only 1 percent stays here down at the Department of Transportation for administrative purposes, 88 percent goes back to the States to be spent, 5 percent goes to the Secretary of Transportation to be sent back to the States for high cost discretionary projects, 5 percent goes back to the States through the congressional projects, and only 1 percent stays in Washington."[90] He concluded by arguing,

> Further, State regulations, which in many cases are as onerous, if not more onerous, than Federal regulations, would obviously stay in place. Indeed, we have no assurance whatsoever that, if we turn this back to the States, that the States would pass and increase their gas taxes. Indeed, I am told that, on the average, each State would have to pass the State gas tax increasing it by 15 cents per gallon. So what assurance do we have? No, this is simply destroying what must be a national program which is to tie our country together from a transportation point of view. For those reasons, I say we should defeat this amendment.[91]

Representative James Oberstar also opposed the amendment, arguing that it would

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[86] Ibid.

[87] Ibid., pp. 12, 13.

[88] Rep. Bud Shuster, "Building Efficient Surface Transportation and Equity Act of 1998," House debate, *Congressional Record*, vol. 144, part 4 (April 1, 1998), p. 5728.

[89] Ibid.

[90] Ibid.

[91] Ibid.

> take us back to a time that none of us here could possibly imagine, a time when some States started roads, others did not, they built it up to a certain point and then it stopped. Bridges were started and then stopped. If we followed the gentleman's logic all the way through, we would have bridges go halfway across a river because one State would want to build it and the other State would not or would run out of money, or we would have roads that go up to a State's border and the other State would say "Well, we don't think that we want to build a road there." ... [the amendment] would have us in chaos. ... This is a vote for the past, not a vote for the future. ... If we are going to be a Nation, and if my colleagues believe in the Constitution that said a responsibility of the Congress shall be to build post roads, that it shall have authority over interstate and foreign commerce, then it is our duty to promote interstate and foreign commerce, and the way to do it is through transportation.[92]

The amendment was defeated, 98-318.[93]

Much of the remaining congressional debate on ISTEA's reauthorization focused on the state return-on-investment (state donor-donee) issue, ending the diversion of revenue generated by 4.3 cents per gallon of the gasoline tax from the Highway Trust Fund to the general revenue account for deficit reduction (enacted in 1993), and the inclusion of congressional earmarks.

The $203.4 billion, six-year Transportation Equity Act for the 21st Century (TEA-21; P.L. 105-178), signed by President Clinton on June 9, 1998, effectively ended the diversion of highway trust fund revenue for deficit reduction by authorizing $167.1 billion for highways and $36.3 billion for mass transit, roughly equivalent to the amount of revenue expected to be generated by the Highway Trust Fund. TEA-21 also created a three-part state minimum guarantee program. First, each state was guaranteed a percentage share (set forth in tabular form) for the apportioned programs: Interstate Maintenance Program, National Highway System Program, Surface Transportation Program, Highway Bridge Replacement and Rehabilitation Program, Congestion Mitigation and Air Quality Program, Metropolitan Planning, Recreational Trails Program, Appalachian Development Highway System Program, and Minimum Guarantee, as well as High Priority Projects. Second, each state was guaranteed at least 90.5% of the amount its highway users paid into the Highway Trust Fund (based on the most recent year for which the data are available, typically from two fiscal years before). Third, each state was guaranteed that as part of the minimum guarantee it will receive at least $1 million in minimum guarantee funds.

Although efforts to devolve surface transportation programs to states failed, TEA-21 retained ISTEA's programmatic flexibilities and increased them further by reducing from 16 to 7 the number of required planning factors to be used by states and MPOs when selecting projects, and increasing the role of local elected government officials in project selection. Congress did not accept the President's proposed language making Amtrak eligible for STP funding, but it did make Amtrak eligible for Congestion Mitigation and Air Quality Improvement funding.

SAFETEA: Balancing State Program Flexibilities with the Need to Address National Interests

On May 14, 2003, President George W. Bush announced his Administration's TEA-21 reauthorization proposal, the six-year, $247 billion, Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003 (SAFETEA; H.R. 2088, S. 1072). One of the bill's stated goals

[92] Rep. James Oberstar, "Building Efficient Surface Transportation And Equity Act of 1998," House debate, *Congressional Record*, vol. 144, part 4 (April 1, 1998), p. 5730.

[93] Rep. John Kasich, "Building Efficient Surface Transportation And Equity Act of 1998," House debate, *Congressional Record*, vol. 144, part 4 (April 1, 1998), pp. 5723-5734.

was to change federalism relationships in surface transportation policy by eliminating "program silos" that can alter state and local government decisions based on the availability of funds.[94] The bill proposed to accomplish this by eliminating most discretionary highway grant programs and making those funds available under the core formula highway grant programs; creating a new Highway Safety Improvement Program, in place of the existing Surface Transportation Program safety set-aside; and merging several highway safety programs into a new General Performance Grant and a new Safety Belt Performance Grant. It also would have merged mass transit grants into three main programs: an Urbanized Area Formula Grant, which would have included the existing Urbanized Area Formula Grant and the Fixed Guideway Modernization program; a Major Capital Investments Program, which would have included the New Starts program and non-fixed guideway corridor improvements, such as Bus Rapid Transit; and State-Administered Programs, which would have included the Rural, Elderly and Disabled, Job Access and Reverse Commute, and New Freedom Initiative programs.[95]

Although Congress did consider proposals to change federalism relationships in surface transportation policy during TEA-21's reauthorization, most of its attention, once again, was focused on resolving disagreements over funding levels and how funds were to be distributed among states.[96] Donor states, mainly those with growing populations located in the South and Southwest, wanted TEA-21's state minimum guarantee increased from 90.5% to 95% of the amount their highway users contributed to the Highway Trust Fund. Several donor states, including Arizona, California, Florida, North Carolina, and Texas, also wanted to increase the scope of the guarantee by increasing the range of programs included when calculating each state's share.

Donee states did not object to a higher minimum guarantee in principle, but only if it did not reduce their funding. However, because the President threatened to veto any substantial funding increase above his initial recommendation of $247 billion and Congress lacked the votes to override his veto on this issue, it became virtually impossible to increase the state minimum funding guarantee without reducing funding for at least some states. Unable to reach agreement, Congress extended TEA-21 for short periods 12 times before finally passing the $286 billion Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA) on July 29, 2005. It was signed by President Bush on August 10, 2005. It was only after the President removed his veto threat (partly due to a 2004 change in the tax treatment of ethanol fuel, which was expected to generate an additional $18.9 billion for the Highway Trust Fund) and the program's overall funding level was increased to $286 billion that the impasse over the minimum guarantee was resolved.

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[94] U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *The Administration's Proposal for Reauthorization of the Federal Public Transportation Program*, Hearing on the Reauthorization of the Public Transportation Title of the Transportation Equity Act For the Twenty-First Century (TEA-21), 108th Cong., 1st sess., June 10, 2003, S. Hrg. 108-640 (Washington, DC: GPO, 2004), pp. 17, 18.

[95] U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Highways, Transit and Pipelines, *Overview of the Administration's Proposed Reauthorization Bill (SAFETEA)*, Hearing on the Safe, Accountable, Flexible, and Efficient Transportation Equity Act (SAFETEA) of 2003, 108th Cong., 1st sess., May 15, 2003, Committee Serial No. 108-26 (Washington, DC: GPO, 2003).

[96] For additional information, see CRS Report RL32226, *Highway and Transit Program Reauthorization Legislation in the 2nd Session, 108th Congress*, by John W. Fischer (out of print; available to congressional clients upon request); CRS Report RL33119, *Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU or SAFETEA): Selected Major Provisions*, coordinated by John W. Fischer; and CRS Report RL31735, *Federal-Aid Highway Program: "Donor-Donee" State Issues*, by Robert S. Kirk (out of print; available to congressional clients upon request).

SAFETEA created an Equity Bonus (EB) program that ensures that states receive a specified percentage of the revenue their highway users contribute to the highway account of the Highway Trust Fund for programs listed in the EB program. The guaranteed rate was set at 91.5% for FY2007, and 92% for FY2008 and FY2009. SAFETEA also includes a guaranteed overall increase for all states over the previous reauthorization bill, and a number of "hold harmless" provisions intended to mitigate the impact on certain donee states of the shift in funding to donor states. Meeting all of these requirements is done by providing a spending overlay across all of the programs listed in the EB program in a way that gives spending increases to all states, but larger increases to donor states. The EB program is the largest formula program in SAFETEA ($41 billion over five years).[97] In an important concession to donor states, funds for Members' projects were included in the funds that are distributed by the equity bonus formula.

Balancing its interest in ensuring that the program meets national needs with its interest in continuing to expand state programmatic flexibility, Congress did not adopt President Bush's recommendation to eliminate discretionary programs and reduce the number of formula programs in SAFETEA. Instead, SAFETEA added three new formula programs: the previously described core formula Highway Safety Improvement Program ($7.5 billion), the Coordinated Border Infrastructure Program, which replaced a TEA-21 discretionary program of the same name, and the Safe Routes to School Program. Also, a new discretionary transportation improvement program, a redefined national corridor infrastructure program (formerly part of the national corridor planning and development and coordinated border infrastructure program), and a new program for projects of national or regional significance were added. SAFETEA retained TEA-21's provisions that had expanded state authority to shift funds among core, formula-driven highway programs and between highways and mass transit. It also included a new provision allowing states to transfer certain discretionary program funds for administration of highway projects and mass transit projects. It also enhanced environmental streamlining regulations, changed clean air conformity regulations, funding for transit new starts, expanded reliance on innovative financing and tolls and spending on congressional high priority projects.

SAFETEA Reauthorization Efforts During the 111th Congress

Funding Issues

In February 2009, the National Surface Transportation Infrastructure Financing Commission issued a congressionally mandated report that concluded that "the federal Highway Trust Fund faces a near-term insolvency crisis, exacerbated by recent reductions in federal motor fuel tax revenues and truck–related user fee receipts" and that baseline revenue projections for the Highway Trust Fund fall short of anticipated transportation needs by nearly $400 billion in 2010-2015, and about $2.3 trillion through 2035. It recommended a 10 cents per gallon increase in the federal gasoline tax, a 15 cents per gallon increase in the federal diesel tax, and "commensurate increases" in all special fuels taxes and indexing these rates to inflation to address the Highway Trust Fund's immediate revenue shortfalls. For the long term, it recommended a shift from the present reliance on federal fuel taxes to fund federal surface transportation programs to a "federal funding system based on more direct forms of 'user pay' charges, in the form of a charge for each mile driven (commonly referred to as a vehicle miles traveled (VMT) fee system)."[98]

[97] For further analysis, see CRS Report R40451, *The Donor-Donee State Issue: Funding Equity in Surface Transportation Reauthorization*, by Robert S. Kirk.

[98] National Surface Transportation Infrastructure Financing Commission, *Paying Our Way: A New Framework for*

The Obama Administration indicated shortly after the report's release that it was interested in exploring alternative means to ensure the long-term sustainability of the Highway Trust Fund.[99] However, concerned that the congressional agenda already included several high-profile issues, including health care reform, global warming, and appropriations legislation, and still considering various proposed options for funding surface transportation projects, the Obama Administration later announced, on June 17, 2009, that instead of pursuing a comprehensive reauthorization of SAFETEA, it supported a cash infusion of $20 billion to replenish the Highway Trust Fund to avert a revenue shortfall later that year and the enactment of an 18-month reauthorization of SAFETEA, without major programmatic changes. The Administration asserted that an 18-month extension of existing legislation would provide "Congress the time it needs to fully deliberate the direction of America's transportation priorities."[100]

The House and Senate Disagree Over a Short-term or Long-term Reauthorization

Senator Barbara Boxer, chair of the Senate Environment and Public Works, endorsed the Administration's call for a 18-month extension of SAFETEA, stating at a congressional hearing on June 25, 2009, that "we have a lot of issues on the table in terms of a long-term solution to our funding" and an 18-month extension "provided a level of funding certainty" for state and local government transportation officials that was preferable to a shorter-term extension.[101]

Representative James Oberstar, then-chair of the House Committee on Transportation and Infrastructure, and others in the House preferred a long-term, comprehensive reauthorization bill. On June 18, 2009, Representative Oberstar, then-ranking Member John Mica, and others on the House Committee on Transportation and Infrastructure released a draft of a six-year, $450 billion SAFETEA reauthorization bill.[102] The proposal would have also authorized an additional $50 billion to develop 11 high-speed rail corridors linking major metropolitan regions within the United States. The committee's Subcommittee on Highways and Transit held a hearing on the proposal on June 24, 2009.

The proposal, which was not formally introduced as a bill, would have provided $337.4 billion for highway construction, $99.8 billion for mass transit, and $12.6 billion for highway and motor carrier safety. It also would have

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Transportation Finance (Washington, DC: National Surface Transportation Infrastructure Financing Commission, February 2009), pp. 3, 4, 7.

[99] U.S. Office of Management and Budget, "A New Era of Responsibility: Renewing America's Promise," Washington, DC, p. 91, at http://www.whitehouse.gov/sites/default/files/omb/assets/fy2010_new_era/A_New_Era_of_Responsibility2.pdf; and U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Sustainable Transportation Solutions: Investing in Transit to Meet 21st Century Challenges*, 111th Cong., 1st sess., March 12, 2009, S.Hrg. 111-68 (Washington: GPO, 2009), pp. 8, 9.

[100] U.S. Department of Transportation, "Let's face reality on the Highway Trust Fund, not rush comprehensive legislation," Washington, DC, June 18, 2010, at http://fastlane.dot.gov/2009/06/lets-face-reality-on-the-highway-trust-fund.html. Also see Ray LaHood, Secretary of the Department of Transportation, "Statement Before the Committee on Environment and Public Works, United States Senate," Washington, DC, June 25, 2009, at http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=186af0e4-fa98-49e1-874b-b14d8c3ab270.

[101] U.S. Congress, Senate Committee on Environment and Public Works, *Impacts of Expected Highway Trust Fund Insolvency*, 111th Cong., June 25, 2009.

[102] House Committee on Transportation and Infrastructure, "The Surface Transportation Authorization Act of 2009: A Blueprint for Investment and Reform Executive Summary," Washington, DC, June 18, 2009, at http://t4america.org/docs/061809_STAA_summary.pdf. The draft bill can be viewed at http://atfiles.org/files/pdf/STransJune22bill09.pdf.

- consolidated funding in four, core formula categories: highway and bridge systems; highway safety; improved capacity; and congestion and greenhouse gas emissions;
- focused the majority of transit funding in four core categories: repair, restoration, mobility and access, and planning;
- required states and local governments to establish transportation plans with specific performance standards, measure their progress annually in meeting these standards, and periodically adjust their plans as necessary to achieve specific goals;
- created a national infrastructure bank to leverage transportation funding; and
- consolidated or terminated more than 75 transportation programs.

Congress subsequently passed legislation that transferred an additional $21.7 billion in general fund revenues associated with transportation-related activities to the Highway Trust Fund.[103] Congress also passed six short-term SAFETEA reauthorizations during the 111th Congress.[104]

On September 6, 2010, President Obama proposed a six-year reauthorization of surface transportation programs, with $50 billion in "upfront investment in our nation's infrastructure" to "help jump-start additional job creation."[105] The Administration did not provide an estimate for the total amount of funding for the reauthorization, but indicated that the $50 billion would represent a significant portion of any increase above current levels. The proposal called for

- establishing an infrastructure bank "to leverage federal funding and focus on investments of national and regional significance that often fall through the cracks in the current siloed transportation programs."[106]

[103] P.L. 111-46, To restore sums to the Highway Trust Fund, and for other purposes ($7 billion); and P.L. 111-147, the Hiring Incentives to Restore Employment Act ($14.7 billion). P.L. 111-147 also transferred $4.8 billion to the mass transit account. Earlier, P.L. 110-318, To amend the Internal Revenue Code of 1986 to restore the Highway Trust Fund balance, transferred $8 billion into the Highway Trust Fund. See CRS Report R41512, *Surface Transportation Program Reauthorization Issues for the 112th Congress*, coordinated by Robert S. Kirk.

[104] P.L. 111-68, the Legislative Branch Appropriations Act, 2010 (Division B, the Continuing Appropriations Resolution, 2010) (reauthorized through October 31, 2009); P.L. 111-88, (Division B, Further Continuing Appropriations, 2010) (reauthorized through December 18, 2009); P.L. 111-118, the Department of Defense Appropriations Act, 2010 (reauthorized through February 28, 2010); P.L. 111-144, the Temporary Extension Act of 2010 (reauthorized through March 28, 2010); P.L. 111-147; the Hiring Incentives to Restore Employment Act (Title IV, Surface Transportation Extension Act of 2010) (reauthorized through December 31, 2010); and P.L. 111-322, the Continuing Appropriations and Surface Transportation Extension Act, 2011 (Title II, Surface Transportation Extension Act of 2010, Part II) (reauthorized through March 4, 2011).

[105] The White House, "President Obama to Announce Plan to Renew and Expand America's Roads, Railways and Runways," Washington, DC, September 6, 2010, at http://www.whitehouse.gov/the-press-office/2010/09/06/president-obama-announce-plan-renew-and-expand-america-s-roads-railways-;. Also, see The White House, "Remarks by the President at Laborfest in Milwaukee, Wisconsin," Milwaukee, Wisconsin, September 6, 2010, at http://www.whitehouse.gov/the-press-office/2010/09/06/remarks-president-laborfest-milwaukee-wisconsin.

[106] The White House, "President Obama to Announce Plan to Renew and Expand America's Roads, Railways and Runways," Washington, DC, September 6, 2010, at http://www.whitehouse.gov/the-press-office/2010/09/06/president-obama-announce-plan-renew-and-expand-america-s-roads-railways-. The Administration argued that the establishment of the infrastructure bank "marks an important departure from the federal government's traditional way of spending on infrastructure through earmarks and formula-based grants that are allocated more by geography and politics than demonstrated value."

- integrating high-speed rail on an equal footing into the surface transportation program "to ensure a sustained and effective commitment to a national high speed rail system over the next generation."[107]
- consolidating more than 100 different programs and focusing on using performance measurement and "race-to-the-top" style competitive pressures to drive investment toward better policy outcomes.[108]
- increasing funding for safety, environmental sustainability, economic competitiveness, and livability projects, "helping to build communities where people have choices about how to travel, including options that reduce oil consumption, lower greenhouse gas emissions, and expand access to job opportunities and housing that's affordable."[109]

Congress did not act on the proposal.

MAP-21: Increasing the States' Role

In July 2011, Chairman John Mica of the House Committee on Transportation and Infrastructure (T&I) and Chairman Barbara Boxer, with Minority Ranking Member James Inhofe, of the Senate Committee on Environment and Public Works (EPW) announced separate SAFETEA reauthorization proposals.[110] The two proposals differed in both scope and policy direction, and both were seen as works in progress because they were initially presented in outline form rather than in the form of detailed legislative language introduced in either the House or Senate. However, both proposals addressed many of the same issues, such as funding levels; program consolidation, restructuring, and elimination; the efficiency of existing programs; and the speed of project delivery and environmental review. Both proposals also eliminated all earmarks.[111]

As Congress considered these proposals, it passed four additional, short-term extensions of highway and mass transit program authorization: P.L. 112-5, the Surface Transportation Extension Act of 2011 (reauthorized through September 30, 2011); P.L. 112-30, the Surface and Air Transportation Programs Extension Act of 2011 (reauthorized through March 31, 2012); P.L. 112-102, the Surface Transportation Extension Act of 2012 (reauthorized through June 30, 2012); and P.L. 112-140, the Temporary Surface Transportation Extension Act of 2012 (reauthorized through July 6, 2012).

[107] Ibid.

[108] Ibid.

[109] Ibid.

[110] U.S. House of Representatives, Committee on Transportation and Infrastructure, Press Release, "Transportation Committee Leaders Roll Out Transportation Proposal," Washington, DC, July 7, 2011, at http://transportation.house.gov/news/PRArticle.aspx?NewsID=1337; and U.S. Senate Committee on Environment and Public Works, Press Release, "Senator Boxer and Senator Inhofe Release Bipartisan Transportation Reauthorization Bill Outline," Washington, DC, July 19, 2011, at http://epw.senate.gov/public/index.cfm?FuseAction=Majority.PressReleases&ContentRecord_id=43ff8abd-802a-23ad-4f87-e7d37ed3d493&Region_id=&Issue_id=.

[111] For a full discussion of these proposals and issues see CRS Report R42445, *Surface Transportation Reauthorization Legislation in the 112th Congress: MAP-21, H.R. 7, and H.R. 4348—Major Provisions*, coordinated by Robert S. Kirk; and CRS Report R41512, *Surface Transportation Program Reauthorization Issues for the 112th Congress*, coordinated by Robert S. Kirk.

H.R. 7, the American Energy and Infrastructure Jobs Act of 2012

Initially, the House T&I majority's draft proposal would have funded federal highway and mass transit programs at $230 billion over six years, which is roughly equivalent to the amount of revenue expected to be generated by the Highway Trust Fund during that time period. The proposal was formally introduced as a bill, H.R. 7, the American Energy and Infrastructure Jobs Act of 2012, on January 31, 2012, and reported by the House Committee on Transportation and Infrastructure on February 13, 2012. As introduced and reported, the bill would have provided $260 billion for federal highway and mass transit programs over five years (including already appropriated funding for FY2012).[112]

H.R. 7, included a number of changes that would have affected federalism relationships in surface transportation policy. For example, it would have

- provided states greater flexibility in the use of federal highway funds by reducing the number of federal highway "core" programs and reorganizing the programs that remain. Under SAFETEA, the federal highway program had seven "core" programs: Interstate Maintenance Program, Highway Bridge Program, National Highway System, Surface Transportation Program, Congestion Mitigation and Air Quality Improvement (CMAQ) Program, Highway Safety Improvement Program, and Equity Bonus (EB) Program.[113] H.R. 7 would have folded the Interstate Maintenance and Highway Bridge programs into the National Highway System and Surface Transportation programs. The CMAQ program, Highway Safety Improvement program, and EB program would be retained, with modifications.
- provided states greater flexibility in the use of highway funds by consolidating or eliminating 70 federal highway and mass transit programs that are "duplicative" or "do not serve a federal purpose … such as the National Historic Covered Bridge Preservation Program and the Nonmotorized Transportation Pilot Program."[114] While many existing federal highway and mass transit programs would be discontinued as separate entities, states would be authorized but not required, to spend their federal highway and mass transit funds for many of the same purposes.
- eliminated the mandated set-aside of 10% of Surface Transportation Program funding for transportation enhancement projects. Under SAFETEA, 12 activities were eligible for transportation enhancement funding, including landscaping, bikeways, historic preservation, environmental mitigation, and transportation

[112] U.S. House Committee on Transportation & Infrastructure, "The American Energy & Infrastructure Jobs Act: Summary of Transportation Reauthorization Proposal," Washington, DC, January 31, 2012, p. 1, at http://www.dot.ca.gov/fedliaison/documents/Reauthorization_document.pdf. Also see the original six-year proposal: U.S. House Committee on Transportation & Infrastructure, "A New Direction: Transportation Reauthorization Proposal," Washington, DC, July 7, 2011, p. 2, at http://republicans.transportation.house.gov/Media/file/112th/Highways/2012-01-31-Final_Rollout.pdf.

[113] Under SAFETEA, equity bonus funds were distributed into the other core programs to ensure that total formula program funding is equal to at least 92% of the state's highway users' tax payments to the highway account of the Highway Trust Fund.

[114] U.S. House Committee on Transportation & Infrastructure, "The American Energy & Infrastructure Jobs Act: Summary of Transportation Reauthorization Proposal," Washington, DC, January 31, 2012, p. 2, at http://www.dot.ca.gov/fedliaison/documents/Reauthorization_document.pdf.

museums.[115] Under the bill, "states will no longer be required to spend highway funding on non-highway activities. States will be permitted to fund such activities if they choose, but they will be provided the flexibility to identify and address their most critical infrastructure needs."[116]

- reduced the number of transportation enhancement activities that are eligible for federal funding, to 7 from 12, by removing the eligibility for the acquisition of scenic or historic easements, including battlefields; historic preservation; rehabilitation and operation of historic transportation facilities; preservation of abandoned railway corridors; and the establishment of transportation museums.
- provided states greater flexibility to toll non-interstate highways and allowed states to toll new lanes on the Interstate Highway System as a means to generate additional revenue.
- increased funding, to $1 billion annually from $122 million annually, for the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program. TIFIA provides public or private entities "seeking to finance, design, construct, own, or operate an eligible surface transportation project" direct loans, loan guarantees, and standby lines of credit to finance up to 33% of eligible project costs for surface transportation projects of national and regional significance.[117] The bill also would have increased TIFIA's maximum support, to 49% from 33%, of eligible project costs.
- made several changes to the project delivery approval process in an effort to reduce the anticipated average project delivery time for highway and mass transit construction projects. It would have allowed "federal agencies to review transportation projects concurrently," delegate "project approval authority to states," establish "hard deadlines for federal agencies to make decisions on permits and project approvals," and expand "the list of activities that qualify for categorical exclusions ─ an approval process that is faster and simpler than the standard [environmental review] process."[118] For example, National

[115] SAFETEA's 12 eligible transportation enhancement activities were (1) provision of facilities for pedestrians and bicycles; (2) provision of safety and educational activities for pedestrians and bicyclists; (3) acquisition of scenic easements and scenic or historic sites (including historic battlefields); (4) scenic or historic highway programs (including the provision of tourist and welcome center facilities); (5) landscaping and other scenic beautification; (6) historic preservation; (7) rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals); (8) preservation of abandoned railway corridors (including the conversion and use of the corridors for pedestrian or bicycle trails); (9) inventory, control, and removal of outdoor advertising; (10) archaeological planning and research; (11) environmental mitigation to address water pollution due to highway runoff or to reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and (12) establishment of transportation museums.

[116] U.S. House Committee on Transportation & Infrastructure, "The American Energy & Infrastructure Jobs Act: Summary of Transportation Reauthorization Proposal," Washington, DC, January 31, 2012, p. 2, at http://www.dot.ca.gov/fedliaison/documents/Reauthorization_document.pdf. Under SAFETEA, states spend about 1.5% of their federal highway funding on transportation enhancement projects.

[117] U.S. Department of Transportation, Federal Highway Administration, Office of Innovation, "TIFIA," Washington, DC, at http://www.fhwa.dot.gov/ipd/tifia/.

[118] U.S. House Committee on Transportation & Infrastructure, "A New Direction: Transportation Reauthorization Proposal," Washington, DC, July 7, 2011, p. 16, at http://republicans.transportation.house.gov/Media/file/112th/Highways/2012-01-31-Final_Rollout.pdf. Categorical exclusions are actions … which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either

Environmental Policy Act requirements would no longer apply to highway or mass transit projects that cost less than $10 million, or for which federal funding constitutes 15% or less of total project costs.

S. 1813, the Moving Ahead for Progress in the 21st Century (MAP-21)

The Senate proposal would have retained highway and mass transit funding at current levels, with a small inflationary adjustment, for FY2012 and FY2013 ($109 billion).[119] It was formally introduced as a bill, S. 1813, the Moving Ahead for Progress in the 21st Century (MAP-21), on November 7, 2011, and reported, with amendments, by the Senate Committee on Environment and Public Works on February 6, 2012. The Senate began consideration of the bill in early February. The bill remained on the Senate floor for more than a month as Senate leaders attempted to reach an agreement on offsets to pay for the bill, and to secure sufficient votes necessary for adoption. On March 14, 2012, the Senate adopted S. 1813, as amended, by a vote of 74-22.

S. 1813 included a number of changes that would have affected federalism relationships in surface transportation policy. For example, it would have

- increased state flexibility in the use of federal highway assistance by reducing the number of federal highway "core" programs and reorganizing those that remain. SAFETEA's seven "core" programs would have reduced to five: the existing CMAQ and Highway Safety Improvement Programs; a new National Highway Performance Program that consolidates several existing highway programs; a new Transportation Mobility Program to fund a broad array of surface transportation projects; and a new National Freight Network Program.[120]
- provided states greater flexibility in the use of federal highway assistance by reducing the total number of federal highway programs from about 90 to 30. This would be accomplished mostly by shifting program eligibility to the core programs. Nearly all discretionary grant programs nominally under the control of Federal Highway Administration would be eliminated. While many existing highway programs would be discontinued as separate entities, states would be authorized, but not required, to spend their federal highway funds for many of the same purposes.
- retained a set-aside equal to the 10% set-aside of Surface Transportation Program funds for transportation enhancement projects apportioned in FY2009, and rolled the program into the CMAQ program. Eligible activities would be expanded to include a revised list of eligible transportation enhancement projects (i.e., some controversial activities, such as for the establishment of transportation museums, were removed from the list), recreational trails, safe routes to school projects, and planning and construction of roads largely in the right-of-way of former interstate

individually or cumulatively, have any significant environmental impacts. See 23 CFR §771.117.

[119] U.S. Senate Committee on Environment and Public Works, "Summary of Moving Ahead For Progress In The 21st Century (Map-21)," Washington, DC, at http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=6d1e2690-6bc7-4e13-9169-0e7bc2ca0098.

[120] For further information and analysis, see CRS Report R42445, *Surface Transportation Reauthorization Legislation in the 112th Congress: MAP-21, H.R. 7, and H.R. 4348—Major Provisions*, coordinated by Robert S. Kirk; and CRS Report R41512, *Surface Transportation Program Reauthorization Issues for the 112th Congress*, coordinated by Robert S. Kirk.

system routes or other divided highways.[121] As amended by the Senate, the bill would also require that 50% of these set-aside funds be obligated to local governments, Metropolitan Planning Organizations, transit and natural resources agencies, school districts, or other such entities in proportion to their relative share of the total state population.

- made several changes to the project delivery approval process in an effort to reduce the anticipated average project delivery time for highway and mass transit construction projects. Among other provisions, it would allow contracting agencies to issue two-phase contracts for pre-construction and construction services; and expand the list of activities that qualify for categorical exclusions ─an approval process that is faster and simpler than the standard environmental review process.
- increased funding, to $1 billion annually from $122 million annually, for the TIFIA loan program. It also would have increased TIFIA's maximum support, to 49% from 33%, of eligible project costs.
- increased the use of national performance measures by requiring states and Metropolitan Planning Organizations to set targets for highway condition and performance.

S. 1813 did not include a provision, as in the House proposal, to expand state authority to use tolling as a means to generate revenue to supplement highway funding.

S.Amdt. 1756, the Transportation Empowerment Act

Numerous amendments were offered during Senate consideration of S. 1813. Among them was S.Amdt. 1756, the Transportation Empowerment Act. It would have had a major impact on federalism relationships in surface transportation policy by devolving most federal highway programs, and the taxes that support them, to states.

S.Amdt. 1756 was proposed, on March 8, 2012, by Senator Dan Coats on behalf of Senator Jim DeMint. Senator DeMint had previously introduced the Transportation Empowerment Act during the 109th Congress (S. 2512), 110th Congress (S. 2823), and 112th Congress (S. 1164).[122]

The amendment would have phased-out most of the federal fuel and excise taxes that support the Highway Trust Fund over five years; preserve federal responsibility for interstate highways, transportation facilities on public lands, national transportation research and safety programs, and emergency transportation assistance; and devolve most other federal highway programs to states.

[121] S. 1813 removed the establishment of transportation museums as an eligible transportation enhancement activity and narrowed the eligibility of landscaping and other scenic beautification projects.

[122] Sen. Jim Inhofe introduced similar legislation (S. 2861, the Transportation Empowerment Act) during the 107th Congress. During the 109th Congress, Rep. Jeff Flake introduced companion legislation in the House (H.R. 5205). During the 112th Congress, Rep. Tom Graves introduced companion legislation in the House (H.R. 3264). During the 109th Congress, S. 2512 was introduced on April 4, 2006, and referred to the Senate Committee on Finance. H.R. 5205 was introduced on April 26, 2006, and referred to the House Committee on Ways and Means, the House Committee on the Budget, and the House Committee on Transportation and Infrastructure and its Subcommittee on Highways, Transit and Pipelines. During the 110th Congress, S. 2823 was introduced on April 7, 2008, and referred to the Senate Committee on Finance. During the 112th Congress, S. 1164 was introduced on June 9, 2011, and referred to the Senate Committee on Finance. H.R. 3264 was introduced on October 26, 2011, and referred to the House Committee on Ways and Means, the House Committee on the Budget, and the House Committee on Transportation and Infrastructure and its Subcommittee on Highways and Transit.

During Senate floor debate on the amendment, which took place on March 13, 2012, Senator DeMint stated that

> it is time to get the Washington bureaucracy out of the way and empower states to be the primary decision-makers for their own local and state infrastructure. My amendment allows for states to keep their gas taxes and set their own priorities while avoiding an additional layer of Washington bureaucracy.[123]

Senator Barbara Boxer spoke against the amendment, stating that adopting the amendment would be "the end of the federal highway and transportation system … and without this transportation bill there is no guarantee that states would prioritize transportation investments that support national interests."[124] The amendment was defeated on March 13, 2012, by a vote of 30-67.[125]

The House Response

As the Senate considered MAP-21, House Speaker John Boehner attempted to secure sufficient support within the House to adopt H.R. 7 and H.R. 3864, the American Energy and Infrastructure Jobs Financing Act of 2012. As mentioned previously, H.R. 7 would have provided $260 billion over five years for highway and mass transit programs. It also would have made a number of changes to existing programs, including consolidating or eliminating approximately 70 programs that "are duplicative or do not serve a federal purpose"; streamlining and condensing the project review process by "allowing federal agencies to review transportation projects concurrently, setting hard deadlines for federal agencies to approve projects, and delegating more decision making authority to states"; increasing the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program's funding to $1 billion per year "to provide $10 billion in low interest loans to fund at least $20 billion" per year in public-private transportation projects; eliminating the mandatory set-aside for transportation enhancements (e.g., for landscaping, beautification projects, preservation of abandoned railway corridors, bikeways), and providing states authority to "toll new capacity on the Interstate System" and provide states "greater flexibility to toll non-Interstate highways."[126] H.R. 3864 would have supplemented Highway Trust Fund revenue with revenue from royalties generated from an expansion of domestic energy production.

Unable to secure sufficient votes to pass these bills, Speaker Boehner decided to support a short-term extension of SAFETEA authority (through the end of FY2012) and to include provisions expediting the approval of the proposed Keystone XL oil pipeline project from Canada to the Gulf Coast; language in the Coal Residuals Reuse and Management Act (H.R. 2273) limiting the Environmental Protection Agency's (EPA) ability to regulate coal ash; a proposed Gulf Coast Restoration Trust Fund; a proposed Harbor Maintenance Trust Fund guarantee; and the environmental streamlining provisions of Title III of H.R. 7. The House adopted the bill (H.R. 4348, the Surface Transportation Extension Act of 2012, Part II) on April 18, 2012, by a vote of 293-127.

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[123] Sen. Jim DeMint, "Consideration of the Moving Ahead For Progress In The 21st Century Act," remarks in the Senate, *Congressional Record*, vol. 158, part No. 41 (March 13, 2012), p. S1595.

[124] Sen. Barbara Boxer, "Consideration of the Moving Ahead For Progress In The 21st Century Act," remarks in the Senate, *Congressional Record*, vol. 158, part No. 41 (March 13, 2012), p. S1595.

[125] U.S. Senate, "Moving Ahead For Progress In The 21st Century Act—Consideration of Amendment 1756," Rollcall Vote no. 36, *Congressional Record*, vol. 158, part no. 41 (March 13, 2012), p. S1595.

[126] U.S. Congress, House Committee on Transportation and Infrastructure, *American Energy and Infrastructure Jobs Act of 2012*, report to accompany H.R. 7, 112th Cong., 2nd sess., February 13, 2012, H.Rept. 112-397 (Washington: GPO, 2012), pp. 225-228.

Conference Committee's Compromise Increases the States' Role

On April 24, 2012, the Senate agreed by unanimous consent to an amendment that struck the House-passed language from H.R. 4348 and substituted the language of MAP-21. This action enabled the House and Senate to send the measure to conference. During conference negotiations, the House reportedly agreed to drop provisions expediting the approval of the proposed Keystone XL oil pipeline project and language limiting the EPA's ability to regulate coal ash in exchange for Senate concessions concerning state flexibility in the use of transportation enhancement funds and expedited project review procedures.[127] The final conference agreement was approved by the House and Senate on June 29, 2012, and signed into law (P.L. 112-141; MAP-21) by President Obama on July 6, 2012.

MAP-21 reauthorized federal highway and mass transit programs through the end of FY2014 (27 months) and authorized to be appropriated $105.2 billion for these programs in FY2013 and FY2014 (about $118 billion including already appropriated funding for FY2012). It

- increases state flexibility in the use of federal highway assistance by reducing the number of federal highway "core" programs and reorganizing those that remain.[128] SAFETEA's seven "core" programs were reduced to four:
  - **National Highway Performance Program** (a new "core" program to improve the condition and performance of the National Highway System, it consolidates the existing National Highway System and Interstate Maintenance programs, and aspects of the Highway Bridge Program that relate to bridges in the federal-aid system. States are required to develop a risk-based asset management plan to improve or preserve the condition and performance of the system. States that do not meet minimum condition and performance standards established by the Secretary of Transportation, in consultation with state and local government officials, for interstate highways and bridges are required to spend a portion of their funds to address any shortfalls.);
  - **Surface Transportation Program** (expands the program to include aspects of the Highway Bridge Program that relate to bridges off of the federal-aid system and continues the program's broad eligibility of funding to improve the condition and performance of federal-aid highways and most bridges on most public roads. It continues to require sub-allocation to local governments based on population, but lowers that percentage to 50% from 62.5%. The lower percentage is offset by the removal of the 10% set-aside for transportation enhancement funding. It also continues the eligibility of mass transit projects.);
  - **Highway Safety Improvement Program** (continues the program's support for projects related to the safety of highway infrastructure. Retains a set-aside

[127] Russell Berman, "Boehner says leaders 'moving toward' deal on loans, highway bill," *The Hill*, June 26, 2012, at http://thehill.com/homenews/house/235039-boehner-house-senate-moving-closer-to-deal-on-loans-highway-bill; Daniel Newhauser and Meredith Shiner, "Boehner: Highway, Student Loans Likely to Move as One," *Roll Call*, June 27, 2012, at http://www.rollcall.com/news/boehner_highway_student_loans_likely_to_move_as_one-215745-1.html; and Jeff Plungis, "Congress Readies Transportation Plan With Focus on Roads," *Bloomberg*, June 28, 2012, at http://www.bloomberg.com/news/2012-06-27/u-s-highway-legislation-stresses-spending-on-roads-bridges.html.

[128] MAP-21 eliminated SAFETEA's Equity Bonus program, and all formula factors for individual highway programs. Instead, MAP-21 distributes highway funds to states based on each state's share of total highway funds distributed in FY2012. It ensures that every state is guaranteed a minimum return of 95% of its payments into the Highway Trust Fund.

for rail grade crossings and requires states to meet safety performance targets over time and spend a portion of their funds to address any shortfalls.);

- **Congestion Mitigation and Air Quality Program** (continues the program's support for surface transportation projects and other related efforts that contribute to air quality improvements and provide congestion relief. An exception to the prohibition on the use of CMAQ funding for the construction of single-occupancy vehicle lanes was provided if the project consists of a high occupancy vehicle facility available to single occupant vehicles only at other than peak travel times.).

- provides states greater flexibility in the use of federal highway assistance by eliminating 60 federal highway programs, a two-thirds reduction. This is accomplished mostly by shifting program eligibility to the core programs. Nearly all discretionary grant programs nominally under the control of Federal Highway Administration are eliminated. While many existing highway programs are discontinued as separate entities, states are authorized, but not required, to spend their federal highway funds for many of the same purposes.
- provides states greater flexibility in the use of mass transit assistance by reducing the number of discretionary programs through consolidation, conversion to a formula grant, or elimination. For example, the New Freedom Program was merged into the Elderly and Disabled Program; the competitive Bus and Bus Facilities program was converted to a formula grant, with each state and territory receiving a fixed amount and the remainder distributed according to population and specified bus service factors; and the Job Access and Reverse Commute program was eliminated, but job access and reverse commute projects remain eligible for funding under the urbanized area and rural formula programs.
- replaces the dedicated funding for the Transportation Enhancements, Safe Routes to Schools, and Recreational Trails programs with a Transportation Alternatives program. States are required to set-aside approximately 2% of their funding for eligible activities, which are expanded to include a shortened list of eligible transportation enhancement projects (i.e., some controversial activities, such as for the establishment of transportation museums, were removed from the list), recreational trails projects, safe routes to school projects, and planning and construction of roads largely in the right-of-way of former interstate system routes or other divided highways.[129] Half of the set-aside funds must be sub-allocated to local governments, Metropolitan Planning Organizations, transit and natural resources agencies, school districts, or other such entities in proportion to

[129] The following activities are eligible transportation enhancement activities: (1) construction, planning, and design of on-road and off-road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990; (2) construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs; (3) conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users; (4) construction of turnouts, overlooks, and viewing areas; (5) community improvement activities, including inventory, control, or removal of outdoor advertising; historic preservation and rehabilitation of historic transportation facilities; vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control; and archaeological activities relating to impacts from implementation of a transportation project eligible under this title; and (6) any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff.

their relative share of the total state population. Also, states are permitted to transfer up to 50% of the amount of Transportation Alternatives funding that is not sub-allocated within the state to other federal highway and safety programs, and, under specified circumstances, states may transfer unobligated Transportation Alternatives funding to the CMAQ program.[130]

- makes several changes to the project delivery approval process in an effort to reduce the anticipated average project delivery time for highway and mass transit construction projects. Among other provisions, contracting agencies are allowed to issue two-phase contracts for pre-construction and construction services, and the Secretary of the Transportation is directed to establish a demonstration program to streamline the relocation process by permitting a lump-sum payment for acquisition and relocation if elected by the displaced occupant. To encourage the use of innovative technologies and practices, the federal share of project costs may be increased to 100% for projects that use innovative project delivery methods, capped at 10% of allowable apportionments.[131] In addition, the list of activities that qualify for categorical exclusions, an approval process that is faster and simpler than the standard environmental review process, is expanded to include, among other activities, any project that receives less than $5 million in federal funds or has a total estimated cost of not more than $30 million that receives less than 15% of its funding from the federal government.[132] The Transportation Secretary is also directed to consult with highway and mass transit officials at all levels of government to make recommendations on new activities that qualify for categorical exclusions.
- increases funding, to $750 million in FY2013 and $1 billion in FY2014 from $122 million in FY2012, for the TIFIA loan program. It also increases TIFIA's maximum support, to 49% from 33%, of eligible project costs; enables TIFIA loans to be applied to related groups of projects, rather than a single project; and includes a 10% set-aside for projects located in rural areas (defined as areas with populations less than 250,000).

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[130] Under SAFETEA, states could transfer up to 25% of (1) the amount of its Transportation Enhancement set-aside, less (2) the amount of the state's set-aside for Transportation Enhancement funding for FY1997. See 23 U.S.C §126(b). MAP-21's Transportation Alternatives program is not exempt from the state's general 50% transferability clause, see P.L. 112-141, MAP-21, §1509. Transferability of Federal-Aid Highway Funds. As the Federal Highway Administration explained, "…To enhance flexibility, a state may transfer up to 50% of any apportionment to another formula program, except no transfers are permitted of Metropolitan Planning funds or funds sub-allocated to areas based on population (STP and TA)." See U.S. Department of Transportation, Federal Highway Administration, "Moving Ahead for Progress in the 21st Century Act (MAP-21): A Summary of Highway Provisions," Washington, DC, July 17, 2012, at http://www.fhwa.dot.gov/map21/summaryinfo.cfm.

[131] See P.L. 112-141, MAP-21, §1304. Innovative Project Delivery Methods. Examples of innovative project delivery methods provided in the law include …(i) prefabricated bridge elements and systems and other technologies to reduce bridge construction time; (ii) innovative construction equipment, materials, or techniques, including the use of in-place recycling technology and digital 3-dimensional modeling technologies; (iii) innovative contracting methods, including the design-build and the construction manager-general contractor contracting methods; (iv) intelligent compaction equipment; or (v) contractual provisions that offer a contractor an incentive payment for early completion of the project, program, or activity, subject to the condition that the incentives are accounted for in the financial plan of the project, when applicable.

[132] MAP-21 directs the Secretary of Transportation to designate any project that receives less than $5 million in federal funds or has a total estimated cost of not more than $30 million which receives less than 15% of its funding from the federal government "as an action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations, and section 771.117(c) of title 23, Code of Federal Regulations," effective not any later than 180 days following enactment. See P.L. 112-141, MAP-21, §1317. Categorical Exclusion for Projects of Limited Federal Assistance.

- increases the use of national performance measures by requiring Metropolitan Planning Organizations (MPOs), in coordination with state officials and providers of mass transportation, to establish a performance-based approach to planning that supports seven national goals: reducing traffic fatalities and serious injuries on all public roads; maintaining the highway infrastructure system in a state of good repair; reducing congestion on the National Highway System; improving the efficiency of the surface transportation system; improving the national freight network; protecting and enhancing the natural environment; and reducing project delivery delays. MPOs are required to establish targets for highway condition and performance, and track progress in meeting those targets. MPOs are also required, within two years of enactment, to include representation by officials of public agencies that administer or operate public transportation systems.
- removes the requirement for an agreement to be executed with the Department of Transportation for each new tolling project under the "mainstream" tolling programs (but not for pilot programs), codifies the substantive requirements, and, by complying with the requirements the approval process becomes self-executing. Among other changes, it also provides states authority to toll new Interstate highways and additional capacity (lanes) on established Interstate highways, which was previously only allowed on a limited basis under the Interstate System Construction Toll Pilot Program (which is scheduled to sunset in 2015) and the (15 project) Express Lanes Demonstration Program (which was not reauthorized and expired on June 30, 2012), but only if the number of toll-free lanes after construction is not less than the number of toll-free lanes as before construction.[133] HOV lanes may also be converted to a toll facility under specified circumstances and all toll facilities on the federal–aid highway system

[133] Under SAFETEA, "…federal participation is allowed in the following five types of toll activities. Initial construction (except on the Interstate System) of toll highways, bridges, and tunnels, including the approaches to these facilities; reconstructing, resurfacing, restoring, and rehabilitating of any existing toll facility; reconstruction or replacement of free bridges or tunnels and conversion to toll facilities; reconstruction of a free Federal-aid highway (except on the Interstate system) and conversion to a toll facility; and preliminary studies to determine the feasibility of the above toll construction activities." See U.S. Department of Transportation, Federal Highway Administration, "Toll Roads in the United States: History and Current Policy," Washington, DC, at http://www.fhwa.dot.gov/policyinformation/tollpage/history.cfm. Under MAP-21, tolling is allowed for "... (A) initial construction of a toll highway, bridge, or tunnel or approach to the highway, bridge, or tunnel; (B) initial construction of one or more lanes or other improvements that increase capacity of a highway, bridge, or tunnel (other than a highway on the Interstate System) and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free lanes, excluding auxiliary lanes, after the construction is not less than the number of toll-free lanes, excluding auxiliary lanes, before the construction; (C) initial construction of 1 or more lanes or other improvements that increase the capacity of a highway, bridge, or tunnel on the Interstate System and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after such construction is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before such construction; (D) reconstruction, resurfacing, restoration, rehabilitation, or replacement of a toll highway, bridge, or tunnel or approach to the highway, bridge, or tunnel; (E) reconstruction or replacement of a toll-free bridge or tunnel and conversion of the bridge or tunnel to a toll facility; (F) reconstruction of a toll-free Federal-aid highway (other than a highway on the Interstate System) and conversion of the highway to a toll facility; (G) reconstruction, restoration, or rehabilitation of a highway on the Interstate System if the number of toll free non-HOV lanes, excluding auxiliary lanes, after reconstruction, restoration, or rehabilitation is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before reconstruction, restoration, or rehabilitation; (H) conversion of a high occupancy vehicle lane on a highway, bridge, or tunnel to a toll facility; and (I) preliminary studies to determine the feasibility of a toll facility for which Federal participation is authorized under this paragraph." See P.L. 112-141, MAP-21, §1512. Tolling.

are required to implement technologies or business practices that provide for the interoperability of electronic toll collection programs by October 1, 2016.

FAST: Continuing the Expansion of State Flexibilities

As mentioned previously, MAP-21's authorization was extended five times prior to the enactment of P.L. 114-94, the Fixing America's Surface Transportation (FAST) Act.[134] Congressional debate throughout the reauthorization process focused on funding issues, but, as discussed below, the House and Senate also adopted numerous provisions that were designed to build upon previous reauthorizations' emphasis on expanding state decisionmaking authority.

The Senate passed H.R. 22, the Developing a Reliable and Innovative Vision for the Economy Act (DRIVE Act) on July 30, 2015. The House passed the bill in different form (substituted with language from H.R. 3763, the Surface Transportation Reauthorization and Reform Act of 2015 [STRRA], with amendments), on November 5, 2015. The conference agreement for H.R. 22 (renamed the Fixing America's Surface Transportation [FAST] Act), was filed on December 1, 2015, passed by the House and Senate on December 3, 2015, and signed by President Obama on December 4, 2015.

Both the House- and Senate-passed versions of H.R. 22 would have reauthorized these programs for six years (FY2016-FY2021), provided only three years of full funding for the HTF (requiring Congress to find new revenues and spending offsets starting in FY2019), created a new discretionary program for major projects (STRRA's Nationally Significant Freight and Highway Projects Program would be funded at a higher level, averaging $740 million annually, compared with the DRIVE Act's Assistance for Major Projects program, which would average $525 million annually), and reduced funding for the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program (from $1 billion annually under MAP-21 to $200 million annually under STRAA and $300 million annually under the DRIVE Act).[135]

Of particular interest to state and local government officials, the Senate's DRIVE Act would have

- expanded eligibility for TIFIA loans (e.g., to include state infrastructure banks, transit-oriented development, environmental mitigation, projects located in rural areas; smaller projects, and projects administered by local governments and public authorities);
- provided states greater flexibility in approving small highway improvement projects in rural areas;[136]
- removed limitations on the conversion of HOV facilities on the Interstate System;
- removed the 80% federal cost share limitation for toll roads;

[134] For additional information and analysis concerning surface transportation funding issues, see CRS Report R42877, *Funding and Financing Highways and Public Transportation*, by Robert S. Kirk and William J. Mallett; and CRS Insight IN10406, *FAST Act (H.R. 22): Highlights of the Surface Transportation Bill Signed by the President*, by Robert S. Kirk.

[135] For additional information and analysis, see CRS Insight IN10379, *House Transportation Bill Would Hold Spending Below Senate Bill*, by Robert S. Kirk. For additional information and analysis concerning surface transportation funding issues generally, see CRS Report R42877, *Funding and Financing Highways and Public Transportation*, by Robert S. Kirk and William J. Mallett.

[136] Eligible projects in rural areas must receive less than $5 million in federal funds; or have a total estimated cost of not more than $30 million and federal funds comprising less than 15% of the total estimated project cost.

- authorized the establishment of a toll credit marketplace pilot program that would have allowed up to 10 participating states to sell or transfer "toll credits" among one another;[137]
- required states (limited to three) participating in the Interstate System Reconstruction and Rehabilitation Pilot Program, which allows participating states to place tolls on existing Interstate highways under specified circumstances, to put the tolling project out to bid within one year of the state's acceptance into the program and under contract within two years; states already provided conditional approval have one year from enactment to put the tolling project out to bid and two to have the project under contract, otherwise the conditional approval will be canceled (use or lose provision);
- expanded upon MAP-21's project delivery reforms by (1) focusing on the use of "programmatic agreements" during project review to better delineate responsibilities, reduce duplication of effort, and establish clear expectations for review timeframes and processing options, (2) encouraging the expanded use of categorical exclusions (CEs) by directing the U.S. Department of Transportation to allow CEs to be implemented through a programmatic agreement, and (3) establishing review deadlines to reduce project review delays;
- provided additional funding for mass transit, particularly for the Bus and Bus Facilities Program;
- added public ports, intercity bus operators, and commuter vanpool providers as parties that Metropolitan Planning Organizations are required to give reasonable opportunity to comment on the area's transportation plan;
- consolidated nine existing Federal Motor Carrier Safety Administration (FMCSA) truck and bus safety grant programs into four and streamlined program requirements to reduce administrative costs and regulatory burdens on states; and
- eliminated the ability of states to transfer up to 50% of their Transportation Alternatives Program (TAP) to other highway programs (states would be required to sub-allocate 100% of their TAP apportionment to local areas based on population, rather than the 50% required under MAP-21).

Of particular interest to state and local government officials, the House's STRRA would have

- renamed and modified the Surface Transportation Program (STP), the second-largest source of highway funding, as a block grant. However, unlike some other block grant programs, the STP block grant program would not provide states with unrestricted lump sums of money;[138]

[137] "Section 120(j) of Title 23 permits states to substitute certain previous toll-financed investments for state matching funds on current federal-aid projects. This provision dates back to ISTEA and has since been modified by TEA-21 and SAFETEA-LU. It permits the nonfederal share of a project's cost to be met through a "soft match" of toll credits. The flexibility of state transportation finance programs is increased by allowing states to use toll revenues when other state highway funds are not available to meet nonfederal share matching requirements. Toll credits encourage states to increase capital investment in infrastructure and enable them to more effectively utilize existing resources. By using toll credits to substitute for the required nonfederal share on a new federal-aid project, the federal share can effectively be increased to 100%." See U.S. Department of Transportation, Federal Highway Administration, "Toll Credits," at http://www.fhwa.dot.gov/ipd/finance/tools_programs/federal_aid/matching_strategies/toll_credits.aspx.

[138] H.R. 22, the Surface Transportation Reauthorization and Reform Act of 2015, §1106. Surface transportation block grant program. The Surface Transportation Block Grant Program (STBGP) funds would be sub-allocated to local areas based on population in a graduated manner, increasing 1% per year from 51% of total STBGP dollars in 2016 to 55%

- created a pilot program to allow up to five states "conduct environmental reviews and make approvals for projects under state environmental laws and regulations instead of federal environmental laws and regulations," if substantially equivalent. States with an approved program, at the request of a local government, may exercise authority under the pilot program on behalf of up to 25 local governments for locally administered projects;[139]
- required GAO, within two years of enactment, to conduct an assessment of the "progress made under this Act, MAP-21 (P.L. 112-141), and SAFETEA-LU (P.L. 109-59) ... to accelerate the delivery of federal-aid highway and highway safety construction projects and public transportation capital projects by streamlining the environmental review and permitting process";[140]
- required states (limited to three) participating in the Interstate System Reconstruction and Rehabilitation Pilot Program, which allows participating states to place tolls on existing Interstate highways under specified circumstances, to submit a complete application to the Secretary of Transportation, complete the environmental review and permitting process for the pilot project, and execute a toll agreement with the Secretary of Transportation within three years after the date the application was provisionally approved, and provides the Secretary of Transportation authority to extend the provisional approval for not more than one additional year if the state meets specified requirements; states already provided conditional approval would have one year from enactment to meet the requirements set out above, otherwise the conditional approval would be canceled (use or lose provision) unless provided an extension by the Secretary of Transportation for not more than one additional year;[141]
- eliminated the seven-state set-aside High Density Bus program and transferred the funds to the nationwide Competitive Bus Grants program;[142]
- consolidated nine existing Federal Motor Carrier Safety Administration (FMCSA) truck and bus safety grant programs into four and streamlined program requirements to reduce administrative costs and regulatory burdens on states; and

by 2021. Under the DRIVE Act, 55% of STP funds would have been sub-allocated to local areas based on population in each of the six years, with states receiving the remaining 45%. The DRIVE Act also would have reduced the amount of STP funding states are required to sub-allocate to local areas based on population because it requires that funding set-aside for non-National Highway bridges be excluded from the calculation. As a result, the calculation would have become 55% of 85% of STP funding (46.75% of 100%) rather than 50% of 100% of STP funding under MAP-21.

[139] U.S. Congress, House Committee on Transportation and Infrastructure, *Surface Transportation Reauthorization & Reform Act of 2015*, 114th Cong., 1st sess., October 20, 2015 (Washington: GPO, 2015), p. 5, at http://transportation.house.gov/strr-act/#top; and H.R. 22, §1313. Program for Eliminating Duplication of Environmental Reviews.

[140] U.S. Congress, House Committee on Transportation and Infrastructure, *Surface Transportation Reauthorization & Reform Act of 2015*, 114th Cong., 1st sess., October 20, 2015 (Washington: GPO, 2015), p. 5, at http://transportation.house.gov/strr-act/#top; and H.R. 22, §1314. Assessment of Progress on Accelerating Project Delivery.

[141] H.R. 22, §1401. Tolling; HOV Facilities; Interstate Reconstruction and Rehabilitation.

[142] H.Amdt. 804, Increase Support for Growing States. The seven high-density states are New York, New Jersey, Massachusetts, Connecticut, Maryland, Rhode Island, and Delaware.

- merged TAP into the STP block grant program and allowed 50% of TAP funding in urbanized areas to be used on any STP-eligible project.[143]

FAST reauthorizes MAP-21's programs for five years (FY2016-FY2020). It includes offsets to ensure the HTF's solvency through 2020 (e.g., by changing custom fees and passport rules for applicants who have delinquent taxes; contracting out some tax collection services to private companies; replacing the current 6% dividend the Federal Reserve pays to large banks (assets over $10 billion) with a floating rate tied to the 10-year Treasury note, which is expected to be less than 6%, or 6%, whichever is less; selling oil from the Strategic Petroleum Reserve; and transferring funds from a Federal Reserve capital account to the Treasury); creates a new discretionary program for major projects (a modified version of STRRA's Nationally Significant Freight and Highway Projects Program, with higher funding levels);[144] and reduces funding for the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program (from $1 billion annually under MAP-21 to $275 million in FY2016 and FY2017, $285 million in FY2018, and $300 million in FY 2019 and FY2020).

Of particular interest to state and local government officials, FAST

- expands eligibility for TIFIA loans (e.g., to include state infrastructure banks, transit-oriented development, projects located in rural areas, smaller projects, and projects administered by local governments and public authorities);
- removes limitations on the conversion of HOV facilities on the Interstate System;
- provides additional funding for mass transit, particularly for the Bus and Bus Facilities Program;
- adds public ports, intercity bus operators, and commuter vanpool providers as parties that Metropolitan Planning Organizations are required to give reasonable opportunity to comment on the area's transportation plan; and
- adds all of the above-listed STRRA provisions of interest to state and local government officials, except for the elimination of the seven-state set-aside High Density Bus program and the transfer of its funds to the nationwide Competitive Bus Grants program, which was not included in the conference agreement. Also, the recommended authorization of appropriations for the four consolidated truck and bus safety grant programs reflect a compromise from the differing appropriation amounts recommended in the House and Senate-passed bills.

Concluding Observations

Congress has debated the federal role in surface transportation policy since the nation's formation in 1789. A review of the historical record suggests that the debate over the federal role in surface transportation policy has been influenced by factors both internal and external to the institution. Internally, the background, personalities, and ideological preferences of congressional leaders such as Senator Harry Byrd, Senator Daniel Patrick Moynihan, and Representative E. G. "Bud" Shuster have had a profound impact on the development of federal-state-local government

[143] U.S. Congress, House Committee on Transportation and Infrastructure, *Surface Transportation Reauthorization & Reform Act of 2015*, 114th Cong., 1st sess., October 20, 2015 (Washington: GPO, 2015), p. 5, at http://transportation.house.gov/strr-act/#top; and H.R. 22, §1106. Surface Transportation Block Grant Program.

[144] The conference agreement would provide the Nationally Significant Freight and Highway Projects Program $800 million in FY2016, $850 million in FY2017, $900 million in FY2018, $950 million in FY2019, and $1 billion in FY2020.

relationships in surface transportation policy over time. The norms, customs, and traditions of the House and Senate have also had an influence. For example, the decentralized nature of decisionmaking in both the House and the Senate has compartmentalized decisions into more manageable pieces, but, arguably, has made it more difficult for Congress to develop broad-based policies that cut across committee jurisdictions or to enact proposals to consolidate programs or devolve programmatic authority to states as these actions might upset existing power relationships and require the consent of several committees and committee chairs. For example, in the House of Representatives, programmatic and funding distribution issues are under the jurisdiction of the Committee on Transportation and Infrastructure, but tax and Highway Trust Fund issues are under the jurisdiction of the Committee on Ways and Means. In the Senate, most programmatic and funding distribution issues are under the jurisdiction of the Committee on Environment and Public Works for highways and other aspects of Title 23, but are under the Committee on Banking, Housing, and Urban Affairs for transit. Tax and Highway Trust Fund issues are under the jurisdiction of the Committee on Finance. In the Senate, most safety issues are under the jurisdiction of either the Committee on Environment and Public Works or the Committee on Commerce, Science, and Transportation.

Externally, interest groups representing both the private and public sectors have historically been united in their advocacy of additional federal funding, but have been divided over how program funds should be allocated, both among states and among transportation modes. Congress has tended to arbitrate the differences among these varied interests by balancing the need to promote the national interest with the recognition that, for the most part, state and local government officials have proven over time to be relatively capable administrators of surface transportation programs. As a result, Congress has rejected efforts to devolve most federal programmatic authority to states. Instead, it has adopted policies that have expanded state programmatic flexibility while, at the same time, promote the national interest by requiring state and local governments to adhere to federal guidelines for managing the project development process and monitoring highway and bridge conditions, highway safety programs, traffic congestion mitigation programs, and transit facility and equipment maintenance programs, as well as intermodal transportation facilities and systems.

FAST, and its predecessor Map-21, continued this trend. For example, FAST provides states greater flexibility in the use of federal highway assistance by converting the Surface Transportation Program (STP) into a block grant; rolling the Transportation Alternatives Program into the STP and allowing 50% of local government transportation alternatives funding to be used on any STP-eligible project; and consolidating truck and bus safety grant programs. FAST also includes changes to the project delivery approval process in an effort to reduce the average project delivery time for highway and mass transit construction projects.

Presidents, perhaps reflecting their role in representing the national interest as a whole and, perhaps, at least in part, because several Presidents had formerly served as governors, have tended to be more supportive of program consolidation and devolution of programmatic authority in surface transportation policy than Congress. This has been especially the case when the President's ideology favored smaller government. Typically, presidential efforts to consolidate surface transportation programs have faced strong opposition from private sector interest groups worried that program consolidation will result in less funding for the consolidated programs over time, and from Members worried that consolidation could lead to less funding for specific programs that are important to them.

Perhaps the most difficult factor to account for in the development of federalism relationships in surface transportation policy over time has been the changing nature of American society and expectations concerning personal mobility. Once a rural society with relatively limited

expectations concerning personal mobility, America is now a primarily urban/suburban society where automobile ownership and the personal mobility that automobile ownership brings is not only a powerful social status symbol but also viewed as a necessity. Obtaining a drivers' license is now a major life-altering event, signifying for millions of American teenagers each year the transition from childhood to adulthood. Because the American bond with the automobile is strong, moving away from a primary focus on building and constructing highways towards a "more balanced" intermodal transportation approach has been made more difficult for policymakers at all levels of government. Moreover, given the public's relatively high expectations concerning personal mobility, Congress has been reluctant to devolve surface transportation programs to states, at least in part, because some Members worry that if states are provided additional authority and fail to meet public expectations, that they might be held accountable for that failure on election day. In their view, a more prudent, risk-adverse approach is to provide states additional programmatic flexibility, but retain a federal presence through both program oversight and the imposition of federal guidelines to ensure that states do not stray too far from national objectives.

It remains to be seen how all of these factors will play out in the future. One certainty is that Congress will continue to play the key role in determining the future of federalism relationships in surface transportation policy. Another is that those relationships will continue to evolve over time, adapting to changes in American society and in Congress.

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