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Federal Highway Program: How Opting Out Would Help States

Ronald D. Utt, Ph.D.

Growing dissatisfaction with federal transportation policy and government's mismanagement of the highway trust fund have encouraged many in Congress and in state governments to seek ways to overhaul the system or to extract themselves from it. Since the mid-1990s, legislation has been introduced each year in Congress to phase out the federal highway program by shifting the existing federal taxing authority to states in a multi-year phaseout that would restore most surface transportation responsibility—and the revenues to fulfill it—to the states. Considered too extreme by some, including states that would benefit from it, this "turnback" legislation never gained much traction and has not been a serious contender to displace the increasingly dysfunctional federal program.

New Plans to Restore Transportation to the States. Recognizing that the all-or-nothing approach of the leading turnback proposals was a deterrent to widespread support, The Heritage Foundation in 2004 devised a hybrid proposal that would allow the existing program to continue as is but permit states to opt out of it if they decided that doing so would be to their benefit.[1] A version of the Heritage plan was proposed as a pilot project by the Bush Administration in 2008.[2] By opting out, the state—depending upon the plan—would collect or receive as a block grant all of the federal fuel tax revenues raised within its borders and would be entitled to spend them on transportation priorities of its own choosing.

This year, several pieces of opt-out legislation have been introduced. These include the State Highway Flexibility Act (H.R. 1585) introduced by Representative William Lankford (R–OK); the Highway Fairness and Reform Act (H.R. 632 and S. 252) introduced by Representative Jeff Flake (R–AZ) and Senator Kay Bailey Hutchison (R–TX); and the State Act (H.R. 1737) introduced by Representative Scott Garrett (R–NJ).

Dysfunctional Federal Program. Funded primarily by motorists and truckers who pay a series of user taxes, federal transportation policy has lost its focus over the past few decades. Spending has been diverted to a number of non-road purposes, earmarking has escalated, and pervasive regional inequities have created financial losers and winners.

As Heritage has noted elsewhere, less than two-thirds of federal surface transportation spending from the highway trust fund goes for general-purpose highways.[3] The other one-third funds costly and underutilized transit investments (transit receives 20 percent of federal funds but serves less than 2 percent of urban passengers); bike and hiking paths; metropolitan planning organizations; covered bridge restoration; historic train

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station conversions; cityscapes and flower planting; earmarks; U.S. Department of Transportation (USDOT) overhead; livability schemes; and low-valued university transportation research centers. Added to these deficiencies is the imbalance between the donee and donor states—the latter being concentrated in the South[4]—and numerous counterproductive regulations that undermine safety (CAFE standards); raise costs (Davis–Bacon); and impose delays on projects (NEPA).

How Opt-Out Would Work. Under an opt-out program, a state would forgo its annual authorization from the highway trust fund—with its many mandates, regulations, and dozens of specific spending allocations—and instead choose to receive its share of the federal fuel taxes collected within its borders. Depending on which bill became law, the state would either receive these revenues as a block grant from the USDOT equal to the federal fuel tax revenues collected in that state or directly collect, keep, and spend the 18.3 cents per gallon fuel tax once collected by the federal government in the state.

Freed from federally imposed one-size-fits-all policies, states could use the funds to finance their own transportation priorities, not those of the many influential lobbyists and trade associations that seek to gain at taxpayers' expense or those of the anti-road, anti-car activists who want to return America to a nostalgic vision of how they thought we lived in 1905. States and motorists could also escape Transportation Secretary Ray LaHood's peculiar "livability" agenda, which he claims "means being able to take your kids to school, go to work, see a doctor, drop by the grocery or post office, go out to dinner and a movie, and play with your kids in a park, all without having to get in your car."

Because the plan is voluntary, states that preferred to operate under presidential and congressional micromanagement and regulation and the whimsy of fashionable opinion could "opt in" and continue to serve their transportation needs in the warm embrace of Washington's bureaucracy. At the same time, states opting out would have to agree to maintain certain standards of performance, including safety and interstate maintenance, and would also be required to use these freed-up funds on surface transportation projects as opposed to other public purposes such as health care or education.

Overcoming Trust Fund Financial Problems. Given the financial difficulties confronting the highway trust fund, an opt-out plan has a number of benefits that a traditional turnback plan may not have. Under the most recent highway reauthorization bill (SAFETEA-LU) enacted in 2005, the trust fund has been spending more than it receives in user taxes each year, and in fiscal year 2008, it required the first of three infusions of cash from general revenues to cover authorized spending.

In FY 2009, the highway account of the trust fund received $30.1 billion in dedicated user taxes but "spent" $42.4 billion, leaving a gap of $12 billion to be covered by the U.S. Treasury. Even the traditional donor states received more than they paid in: That year, Texas motorists paid in $2.9 billion but received $3.4 billion in apportionments and allocations, while Florida paid in $1.6 billion and received $2.1 billion.

H.R. 1585, for example, addresses this deficiency by requiring that any general fund bailout be passed on to opt-out states in proportion to revenues raised within the state. But this might not be necessary:

1. Wendell Cox, Alan Pisarski, and Ronald D. Utt, *21st Century Highways: Innovative Solutions to America's Transportation Needs* (Washington, D.C.: The Heritage Foundation, 2005), p. 177.
2. United States Department of Transportation, *Refocus. Reform. Renew. A New Transportation Approach for America*, 2008, p. 49, at *http://knowledge.fhwa.dot.gov/tam/aashto.nsf/All+Documents/B9FA645AEA69A10D852574B70063D378/$FILE/reformproposal08.pdf* (July 6, 2011).
3. Ronald D. Utt, "Federal Highway Trust Fund: Recommit to Better Highways and Enhanced Mobility," Heritage Foundation *WebMemo* No. 2944, June 30, 2010, at *http://heritage.org/Research/Reports/2010/06/Federal-Highway-Trust-Fund-Recommit-to-Better-Highways-and-Enhanced-Mobility*.
4. See Ronald D. Utt, "Federal Highway Program Shortchanges More Than Half the States," Heritage Foundation *WebMemo* No. 3228, April 18, 2011, at *http://www.heritage.org/Research/Reports/2011/04/Federal-Highway-Program-Shortchanges-More-Than-Half-the-States*.

Discussions in both the House and Senate suggest that future levels of federal transportation spending will be limited to trust fund revenues, meaning a cut in transportation spending. Under those circumstances, an opt-out plan would be the preferred approach, as most states would want maximum flexibility to achieve the maximum benefit from the reduced federal funding.

*—**Ronald D. Utt, Ph.D.**, is Herbert and Joyce Morgan Senior Research Fellow in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation.*