

Background

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“Turn Back” Transportation to the States

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Abstract: *Wasteful, inequitable, and bristling with burdensome regulations, the Federal Highway Program is in dire need of reform. Although Members of Congress have attempted to enact changes in the past, the influence of many lobbyists and influential constituencies continues to thwart the process. By maintaining this predictable money morass, Congress and the President are ignoring the needs of the motorists who pay the taxes to fund the program—as well as the needs of an economy that depends on cost-effective mobility. Yet some legislators remain committed to reform and have proposed that Congress “turn back” some or all of the federal highway program to the states, where it once was lodged. Arguing that the program was created to build the interstate highway system—a goal that was met in the early 1980s—turnback advocates believe it is time to declare victory and shift the resources back to the states.*

Congress is attempting to enact a highway reauthorization bill, the legislation that will guide federal surface transportation programs for the next five or six years. The past legislation expired two and a half years ago but has been extended repeatedly for short periods of time, the latest of which ends in March. As is often the case, the conflict within Congress, and between Congress and the President, is over money: how much to spend, how much to tax, and where and how to spend it.

Out of this melee for money will emerge a new transportation bill that will reflect the influence of

Talking Points

- The Federal Highway Program is in dire need of reform.
- One reform proposal that could substantially change this program is to “turn back” the federal highway program to the states.
- Congress and the President are ignoring the needs of the motorists who pay the taxes to fund the program—as well as the needs of an economy that depends on cost-effective mobility.
- The highway problem completed its original goal in the 1980s, and now, with no compelling and clear objective to guide the program, successive Congresses are diverting the trust fund’s resources to other purposes.
- The pervasive regional spending inequities embodied in the federal program are unfair and need to be reformed.
- With momentum moving in turnback’s favor, recent proposals will keep the pressure on for a program of greater state responsibility and discretion.

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many lobbyists and influential constituencies—euphemistically referred to as stakeholders—rather than the needs of the motorists or truckers who pay the taxes to fund the program, as well as the requirements of an economy that depends on cost-effective mobility.

With the latest dispute still unresolved, Congress and the President should try to escape this predictable money morass and instead craft a plan that benefits the motorists, bus operators, and truckers who pay the federal fuel tax that fills the trust fund and finances the system. To accomplish this, any new legislation should:

- Be limited to programs that enhance mobility and safety;
- Add capacity where needed on modes that people want to use;
- Relieve congestion;
- Upgrade existing infrastructure; and
- Devolve the resources and decision making to the states, which know their priorities better than Washington does.

The government could accomplish these goals with a simple, efficient, and attractive option: Return the federal highway programs to the states, where much of the responsibility had been lodged until the Federal Aid Highway Act was enacted in 1956.

Conflict and Deficiencies Inherent in a National Program

While these debates over spending totals consume much of the conversation about transportation policy—as well as create much of the conflict—the spending totals themselves often do little to meet transportation objectives or improve mobility. Transportation spending totals are determined largely by the overall macroeconomic budgetary goals of either holding the line on budget

deficits (2005) or stimulating the economy (2012) while preventing any increase in taxes, including the federal fuel tax that finances the trust fund. It is all about the money, not performance, and the traveling public suffers accordingly.

Program Deficiency: Regional Inequity

Chief among the ongoing sources of friction have been the pervasive regional spending inequities embodied in the federal program and maintained in all of its subsequent reauthorizations. Because of the current law's flawed allocation formulas, about half of the states (called donors and located mostly in the South and Great Lakes region) pay proportionately more into the trust fund than they get back, and *vice versa* for the other half (called donees and located mostly in the Northeast).

On a share-by-share basis, some donor states such as Texas, Florida, and South Carolina get less than an 85 percent share of the highway money they pay in, while New York, Connecticut, and Massachusetts get more than 100 percent. As bad as this disparity is, the allocation of federal transit spending is even more inequitable.¹ Many highway donor states are also transit donor states, receiving much less for transit projects than they paid into the transit account, while many of the highway donee states are also transit donees.

In response to growing complaints from donor states about the pervasive unfairness of the program, Congress has proposed a number of half-hearted efforts to accommodate the donor states. The current goal in draft legislation (S. 1813) is to achieve at least a 95 percent return, but that still leaves hundreds of millions of dollars on the table for the perennially shortchanged donor states.² The equity issue has since become more complicated as a consequence of the three general-fund bailouts of the trust fund, but the degree of inequity has not disappeared.

1. For an analysis of the federal transit program, see 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), Chapter 6.
2. Moving Ahead for Progress in the 21st Century Act, S. 1813, 112th Cong., 1st. Sess., sponsored by Senator Barbara Boxer (D-CA) and cosponsored by Senators James Inhofe (R-OK), Max Baucus (D-MT), and David Vitter (R-LA), at <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:s.1813>: (February 1, 2012).

Program Deficiency: Leaks and Diversions from the Trust Fund

For the first several decades of the federal highway program's existence, virtually all of its energy and resources were devoted to the task it was created to fulfill: building a 42,000-mile high-speed, limited-access interstate highway system from coast to coast and border to border, connecting all of the major cities in between. That task was largely completed by the early 1980s, and with no compelling and clear objective to guide the highway program in the aftermath of this accomplishment, successive Congresses began the process of diverting the trust fund's resources to other purposes.

While the diversions focused initially on non-road, transportation-related investments such as urban transit programs, non-transportation projects such as nature trails, museums, flower plantings, metropolitan planning organizations, bicycles, Appalachian regional development programs, parking lots, university research, thousands of earmarks, and historic renovation became eligible over time for financial support from the highway trust fund. As a consequence of this growing number of diversions, as much as 35 percent of federal fuel tax revenues paid by the motorists is spent on projects unrelated to general-purpose roads.

The magnitude of these leakages also undermines assertions by many in Congress and the road-building industry that road conditions and congestion can be improved if fuel taxes are increased to allow for more highway spending. To the extent that the existing leakages maintain their share of total trust fund resources—as they traditionally do—a substantial portion of any increase in fuel tax revenues will be diverted to spending programs that offer little or no benefit to general motorists or to improvements in capacity, safety, or congestion mitigation. Under the allocations mandated by existing law, an additional dollar raised in tax revenues would provide only an extra 65 cents for roads because 35 percent would be siphoned off for other purposes.

Program Deficiency: Regulatory Mandates

Over time, the highway program has been subject to a number of regulatory burdens. Many of these burdens are designed to assist select segments

of the workforce in achieving goals other than, and often in conflict with, enhanced mobility. These regulations have added substantially to project costs and/or project delays. Such regulations include the Davis–Bacon Act, Section 13(c) of the Urban Mass Transit Act, the National Environmental Policy Act (NEPA), small-business and minority contracting requirements, and Buy America provisions. Federal regulations also discourage and complicate the use of public–private partnerships; tolled express lanes; conversion of HOV (high occupancy vehicle) lanes to HOT (high occupancy toll) lanes; and general tolling of the interstate system even though these highways are owned by the states.

Threats to withhold federal transportation money have also been used to force states and regions to adopt regulations that foster other federal goals—a tactic used by the Clinton Administration in its attempts to force Atlanta to change its land-use policies. Currently, a state's failure to meet federal environmental standards could lead to a suspension of federal transportation funds.

Options for Reform

The federal transportation program has lost its way: It is less and less about transportation and mobility and, for the most part, has evolved into a costly spending program distributing financial rewards to a growing number of influential constituencies on a pay-to-play basis.

One reform proposal that could substantially change this is legislation to “turn back” the federal highway program to the states, where it once was lodged. Arguing that the program was created to build the interstate highway system—a goal that was met in the early 1980s—turnback advocates believe it is time to declare victory and shift the resources back to the states, recognizing that today's surface transportation problems are largely local or regional in nature and that a Washington-based, centrally planned, command-and-control program has little to offer in the way of solutions.

Also, as the record of the past few authorizations reveals, a Washington-based program is more vulnerable to a wheeling-and-dealing political process that has contributed to many of the existing diversions and regional inequities as elected officials

pander to influential constituencies at the expense of the taxpaying motorist.

Under the turnback proposals that have been introduced in Congress since 1997, the federal government would incrementally shift to the states, over a period of five or six years, both the highway responsibilities and the financial resources to fulfill them. Most proposals would accomplish this by reducing the federal gas tax by annual increments—say four cents per year—and allowing the state to add that amount to the gas tax that the state collects on its own. The total tax paid by the motorist stays the same, but the allocation of that revenue shifts to the states year by year until the collection of all 18.3 cents per dollar of the federal fuel tax is shifted to the states and all federal collections cease.³

Currently, the most direct legislation to implement turnback is the Transportation Empowerment Act, introduced in the Senate as S. 1164 by Senator Jim DeMint (R-SC) and in the House as H.R. 3264 by Representative Tom Graves (R-GA). Under the act, states would still be responsible for interstate maintenance and improvement, as they are today, but would now be free to do it in a way that best suits their interests, whether through tolls, partnerships, privatization, competitive contracting, or some combination of means.

Now free of the federal one-size-fits-all program, states could tailor their spending and investment strategies to their particular needs, not those of a Washington bureaucracy or the privileged constituencies appended to it like barnacles on an aging ship. States would also be free of the costly and time-consuming regulatory mandates that the federal program now imposes on their transportation programs.

Finally, as a consequence of these improvements and the more efficient use of resources that turn-

back would yield, transportation service for the traveling public would improve at a much lower cost than the attainment of that same measure of improvement would have required under the old system. At the same time, and once an improved economy restores fuel tax revenues to their long-run trend, donor states that lose money under the current system would be made whole, while donee states would no longer benefit from undeserved subsidies.

Keep the Pressure On

The first “turn back” bill was introduced in Congress in 1997 by Senator Connie Mack (R-FL) and Representative John Kasich (R-OH). It earned about two dozen co-sponsors and received the explicit endorsement of more than 20 states—mostly donors. Since then, some version of a turnback bill has been introduced in every Congress, and while none has come close to passing, the defects in the program that have led to ongoing interest in the bills have come under scrutiny and concern.

Subsequent reauthorization bills have attempted, with some modest success, to address the equity issue. More recently, however, the House and Senate versions of the next reauthorization bill propose to reverse the past trends toward an increasingly Washington-centric program significantly by giving the states more flexibility in deciding how the funds they receive from the federal trust fund can be spent. With momentum moving in turnback’s favor, the existence of these bills will keep the pressure on for a program of greater state responsibility and discretion.

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3. Some proposals leave a modest fuel tax of 2 cents per gallon to ensure the maintenance of the interstate system.