SURFACE TRANSPORTATION REAUTHORIZATION

Surface transportation policy has become less rational and more ideological in recent years. Environmentalists, ideologically motivated urban planners, and their political allies have succeeded in diverting resources from improving highways to mass transit, even as road congestion has dramatically increased—now imposing annually at least $160 billion in economic costs nationwide. The increased use of discretionary grants has further politicized the process and has enabled increased funding to high-cost, low-value projects. The current prohibition on states' tolling of their own Interstate segments restricts experimentation in revenue collection and financing that could usher in better funding and management practices. A rationalized federal role in surface transportation would allow the Department of Transportation to focus on narrow policy objectives, rather than trying to be everything to everyone, which has been the source of mission creep and inefficiency.

Congress should:

- Allow states to toll their own Interstate Highway segments.
- Streamline surface transportation programs by eliminating discretionary grant programs, such as Transportation Investment Generating Economic Recovery (TIGER) and New Starts.
- Examine motor vehicle safety standards to ensure that current rules are not unnecessarily restricting autonomous vehicle innovation.

The federal government spends over $50 billion annually on highways and mass transit, according to the Congressional Budget Office (CBO, "The Highway Trust Fund and the Treatment of Surface Transportation Programs in the Federal Budget," June 2014, http://www.cbo.gov/sites/default/files/45416-TransportationScoring.pdf). That spending largely takes the form of Highway Trust Fund grants to state and local governments. Funding sources are almost exclusively taxes on drivers, primarily the federal excise taxes on gasoline and diesel fuel. In recent years, Congress has set statutory outlays above receipts, leading to a series of general revenue bailouts of the Highway Trust Fund.

The most recent surface transportation reauthorization, the Moving Ahead for Progress in the 21st Century Act (MAP-21) of 2012, a $109 billion legislative package, has not improved the situation. MAP-21 relied on an $18.5 billion bailout of the ailing federal Highway Trust Fund and failed to address the core problem facing surface transportation programs—outlays exceed receipts (CBO, "Projections of Highway Trust Fund Accounts under CBO's August 2014 Baseline," Highway Trust Fund Accounts: Baseline Projections, August 27, 2014, http://www.cbo.gov/sites/default/files/cbofiles/attachments/43884-2014-08-HighwayTrustFund.pdf). In reality, MAP-21 merely kicked the can down the road to a time when existing problems will have worsened. In late July 2014, Congress passed the first extension of MAP-21, delaying meaningful action on reauthorization until at least May 2015.

To right the ship of surface transportation policy, Congress should recognize its own limitations and grant the states additional flexibility in meeting their highway needs. We suggest three reforms to include in that process.

First, Congress should repeal its prohibition on states' tolling of their own Interstate segments (currently codified at 23 USC § 129). Repeal can be accomplished by striking "(other than a highway on the Interstate System)" from 23 USC § 129(a)(1)(B) and 23 USC § 129(a)(1)(F), as well as 23 USC § 129(a)(1)(G) in its entirety. Congress may wish to add language requiring approval of the Secretary of Transportation to ensure that tolled Interstates are not used to impose barriers to commerce between the states.

Second, Congress should refocus its surface transportation programs away from discretionary grants and back toward traditional formula funding. Congress first authorized the Transportation Investment Generating Economic Recovery discretionary grant program in 2009 as part of the "stimulus" package. The purpose was to enable local governments to apply for competitive grants for surface transportation projects. However, recent analysis suggests that the program incentivizes the funding of wasteful projects and lacks accountability. The initial TIGER round authorized $1.5 billion in funding. Subsequent rounds have brought the total to over $4 billion, according to the Department of Transportation. Although small with regard to total surface transportation expenditures, TIGER grants are functionally little more than earmarks. As such, Congress should not reauthorize TIGER or any similar discretionary surface transportation grants program, such as New Starts, and should focus on rationalizing the core formula funding programs to best meet the nation's infrastructure needs.

Third, Congress should examine current motor vehicle safety standards, order the National Highway Traffic Safety Administration (NHTSA) to consider the relationships between existing rules and emerging technologies, such as road vehicle automation, and authorize funding for the agency to do so. For instance, NHTSA currently requires that side-view mirrors be installed on all highway vehicles (49 CFR § 571.111). Tesla Motors recently petitioned the agency to revise its mirror rule to allow it to install cameras as mirror replacements.

In addition, NHTSA recently issued an advance notice of proposed rulemaking on vehicle-to-vehicle (V2V) communications systems ("Advance Notice of Proposed Rulemaking in the Matter of Federal Motor Vehicle Safety Standards: Vehicle-to-Vehicle (V2V) Communications," Docket no. NHTSA-2014-0022, August 20, 2014). At present, those systems are aimed at providing audible and visual alerts, such as advanced collision warnings to drivers. However, if drivers are no longer responsible or able to manually control vehicles, as is the case with fully automated vehicles, mandating V2V warning systems would provide no benefits while increasing costs.

Congress should convene a series of hearings to discuss the future relevance of NHTSA's federal motor vehicle safety standards in an age of rapidly developing "smart car" technology. In addition, NHTSA should be required to examine current rules that may pose barriers to innovation and should produce a report of its findings to Congress.

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For Further Reading

Baruch Feigenbaum, "Evaluating and Improving TIGER Grants," Policy Brief No. 99, Reason Foundation, July 2012, http://reason.org/files/improving_transportation_tiger_grants.pdf.

Randal O'Toole, "'Paint Is Cheaper than Rails': Why Congress Should Abolish New Starts," Policy Analysis No. 727, Cato Institute, June 19, 2013, http://www.cato.org/publications/policy-analysis/paint-cheaper-rails-why-congress-should-abolish-new-starts.

Joshua L. Schank, "MAP-21: Incremental Bipartisanship at its Finest," *Eno Brief Newsletter*, July 2012, https://www.enotrans.org/eno-brief/map-21-incremental-bipartisanship-at-its-finest.

Marc Scribner, "Self-Driving Regulation: Pro-Market Policies Key to Automated Vehicle Innovation," *On Point* No. 192, Competitive Enterprise Institute, April 23, 2014, http://cei.org/sites/default/files/Marc%20Scribner%20-%20Self-Driving%20Regulation.pdf.