



MAP-21 Reauthorization Recommendations

Summary

- Highway and transit programs should be authorized for six years to bring predictability to program funding, allowing states and transit agencies to implement long-term capital investment programs. Long-term authorization avoids disruptions in program administration that increases the cost of construction and provides contractors with a degree of market certainty which encourages investments in equipment, technology and employee training.
- The authorization should maintain a strong federal leadership role in transportation policy and funding. Freight movement and national interconnectivity are important components in US economic vitality. The federal-state partnership that built the Interstate Highway System has been an effective and efficient method for providing a national surface transportation system and should be continued.
- The Highway Trust Fund, supported by user fees deposited in a dedicated funding account, has been a successful model for making national investment in transportation infrastructure and should be maintained. The HTF does not have sufficient income to support current funding levels, much less future funding needs, and therefore increased revenue must be provided.
- The user fee has not kept pace with inflation or growing transportation needs and therefore must be increased. New methods for collecting the user fee should be considered to provide a more equitable allocation of the fee to reflect actual system use.
- Existing supplemental financing methods, such as TIFIA, private activity bonds, and state infrastructure banks should be enhanced. Provisions to allow for additional and supplemental funding and financing methods should be developed, including: greater use of tolling; expanded use of loans, loan guarantees and other forms of credit assistance; initiatives to support P3s; and other supplemental financing sources.

AGC's Recommendations for Transportation Reauthorization:

As Congress and the Administration begin the process of reauthorization of the Federal-aid highway program, AGC recommends the following:

Continue Federal Role in Transportation: The fundamental question facing national policy makers is what the federal role should be in supporting the constructing and maintaining of our nation's transportation system.

AGC believes a strong, efficient and well functioning transportation system is vital to the country's defense, national economy and quality of life, and therefore a strong federal role remains a priority.

The role of the federal government in transportation is articulated in the Constitution (Article 1 Section 8 gives Congress authority to "establish Post Offices and Post Roads.") It was included because at that time it was recognized that interstate commerce was an important element in our nation's future and that only the federal government could regulate and optimize interstate commerce. The Federal-Aid Road Act of 1916 established the successful federal-state partnership model that evolved into today's federal-aid highway and transit programs.

There continues to be a need for a federal role in transportation for the following reasons:

- Transportation and, in particular, the movement of freight continues to be the fundamental link in the national economy.
- Because state priorities are not always the same as national priorities, the federal government needs to be the ultimate arbiter on interstate commerce issues.
- Many transportation facilities cross state borders and a well-functioning interconnected system would be undermined by downsizing the federal program.
- Transportation research would likely be undermined with a diminished federal program.

Although there has been much debate over devolving federal transportation programs, Congress has consistently recognized the need for a federal leadership role in transportation. In MAP-21 Congress recognized that the efficient, economic movement of freight is important in maintaining a strong US economy.

To achieve national goals of improving mobility and safety, protecting the environment and ensuring security of vital transportation and infrastructure assets Congress has provided states additional flexibility over their transportation programs, while maintaining a reduced federal presence through program oversight and the imposition of federal guidelines to ensure that all levels of government work together to achieve the aforementioned goals.

Financing Supplements:

Public Private Partnerships (P3s): P3s or any other type of innovative financing tool must be viewed as just that – a financing tool. There is no replacement for direct federal funding, and the number one priority in reauthorization should be to ensure there are long-term sustainable funding sources in place for our federal surface transportation programs. Projects need to be technically feasible, publicly supported and financeable. Any P3 project requires a reliable revenue stream for the project to be viable. As our members like to say, no amount of magic makes an un-financeable project financeable. P3s are not a panacea. Private finance may help close a funding gap, and P3 project delivery is likely to deliver more project for a given dollar of revenue, but P3s do not eliminate all risks or possibilities for conflict or claims. The same challenges that face a publicly funded project can also occur on a P3. Efficient allocation of risk is important to creating P3 value. Good state-enabling legislation, expertise among state administrators, federal administrators (including advisors) and a track record of success will help build support for P3 development. Facilitate the use of P3 model contract documents similar to what is being developed by FHWA as directed by MAP-21 for collecting and disseminating best practices.

TIFIA: The Transportation Infrastructure Financing and Innovative Act (TIFIA) program has been successful in providing loans, loans guarantees and other credit assistance. The program was increased from \$122 million per year under SAFETEA-LU to \$1.75 billion over two years in MAP-21. A significant number of loan applications have been submitted. This program should be allowed to continue at at least a \$1 billion annual authorization. Other changes need to be made to ensure the success of TIFIA, including:

- TIFIA approval should move along concurrently with the NEPA review. DOT should direct more personnel to the TIFIA review team.
- DOT should develop educational tools and technical advisors to help assist states that lack the experience in applying for TIFIA credit assistance.
- There must be full transparency in the project selection process to encourage states to continue to make applications.
- There should be a one-to-one correspondence effort made to make project approvals and project starts get underway in a single construction season.
- TIFIA should be available to help establish an investment grade rating for projects that are close to meeting that rating but ultimately unable to do so on their own.
- TIFIA loans should be approved for 49 percent of the projects costs as was authorized in MAP-21.

Private Activity Bonds (PABs): SAFETEA-LU established a separate cap of \$15 billion for private activity bonds to assist in financing transportation projects. PAB financing has moved projects forward and supplemented financing on PPPs. The cap is now being reached and consideration should be given to increasing the cap size.

TRIP Bonds: Transportation and Regional Infrastructure Project (TRIP) bonds legislation would allow states to issue up to a total of \$50 billion – \$1 billion per state – in bonds for transportation infrastructure projects over a six-year period. In lieu of interest, the bondholders would annually receive federal tax credits that could be applied against federal income tax liabilities. The state would be required to establish a trust fund where revenue would be collected and invested to cover the future repayment of the principal amount to bondholders at bond maturity.

Additional Policy Positions:

Buy America: MAP-21 expanded Buy America requirements on Federal-aid highway projects by defining application of these requirements to an entire project, not just the portion that receives federal funds. Unanticipated consequences have resulted in Buy America requirements to be extended to the relocation of utilities associated with the project, causing significant cost increases and delays.

- Limits on the application of Buy America requirements need to be considered.
- Buy America should be defined to not apply to materials that are ancillary to a Federal-aid project.
- Many products incorporated into federal-aid highway projects contain a variety of elements, some of which are made of steel. To clarify which products are covered by Buy America requirements it is recommended that it only apply to products that consists of at least 90% steel

and iron content when it is delivered to the job site for installation. Miscellaneous incidental steel and iron components, subcomponents and hardware necessary in highway and bridge construction such as clamps, fittings, nails, bolts, washers and other similar incidental products should not be subject to Buy America.

Work Zone Safety: Provisions were included in SAFETEA-LU and MAP-21 to increase the use of positive barrier to protect highway construction workers. These provisions were included because there continues to be a significant number of deaths and injuries to construction workers on highway improvement projects by third-party intrusions from motor vehicles into the work area. Cost should not be a factor in deciding when positive barrier is included as part of the construction specifications. FHWA has not issued rules implementing the MAP-21 requirements and are currently undertaking a cost/benefit analysis on implementation of this requirement. Positive barrier should be specified under certain very-specific circumstances, while granting state DOT the discretion to demonstrate through an engineering study that installation of the barrier is not plausible.

DBE: The Disadvantaged Business Enterprise (DBE) program has been operating since 1985. The DOT Office of the Inspector General questioned the effectiveness of the program and made recommendations for its improvement. Congress should reexamine the program operation in light of the OIG recommendations.

- Specifically, the OIG said that State DOTs are focused on certifying firms for the program rather than on how successful these firms are once they've entered the program. DOT has limited success in achieving its program objective to develop DBEs to succeed in the marketplace. Due to the competitive advantages a successful DBE gains from the program, there is little incentive for firms to grow beyond the DBE program.
- DOT has had limited success in achieving its program objective to develop DBE firms to succeed in the marketplace, OIG found that less than 20 percent of certified DBEs actually participate on federally assisted contracts.
- It is recommended that DOT be directed to look at qualifications and business development potential as criteria for inclusion in the DBE program.

Environmental and Planning Reforms: MAP-21 made significant strides in reforming the structure and rules governing the delivery of transportation projects in this program. The next authorization bill should build on these initiatives to make further reforms in program administration. Some of the MAP-21 provisions also need to be further clarified.

- MAP-21 addressed many but not all of the issues related to the planning and environmental review process. However, there are improvements that can still be made to speed the process along. Including setting firm deadlines on environmental agency approvals and applying a "deemed approved" penalty for missed deadlines and setting clear limits on scope of project level NEPA analysis.

- Many of the MAP-21 streamlining provisions should be extended to railroad and airport runway construction. FRA and FAA should be given the authority to adopt the general Categorical Exclusions (CE) currently in the FHWA/FTA regulations to provide more consistency in environmental reviews for multimodal projects. Also, FRA and FAA should be directed to use existing multimodal Statewide and metropolitan transportation plan information, analysis and decisions.
- States should be given the authority to assume USDOT's responsibility for making Clean Air Act conformity determinations. While MAP-21 allowed states to accept responsibility for undertaking and completing the NEPA environmental review process it did not grant the authority for making Clean Air Act conformity determinations. States should be granted the authority to accept conformity responsibility whether or not it has decided to take on the NEPA review authority.
- Initiatives to use Corps of Engineers and EPA to use Clean Water Act authority to regulate roadside ditch maintenance should be prevented.
- To further encourage the use of innovative financing to fund transportation projects, States should have the authority to initiate the NEPA process before all of the funding for the individual project has been identified. Private funding, through P3s in particular will not become available in many circumstances until it is clear that a project will receive environmental clearance.

Bridge Program: One of the hallmarks of MAP-21 was the consolidation of numerous funding categories into just 4 primary ones. This gives states more flexibility in addressing their state needs. However, with two recent incidents of bridges failing (Washington and Wisconsin) and the high number of bridges categorized as structurally deficient, there have been key members of the House and Senate interested in targeted bridge funding. There is also concern that without being able to identify specific projects funded with federal dollars, there could be less support for the federal program. Congress should implement an incentive-based funding program specifically targeting bridges.

Freight Program: We need to build on the freight language in MAP-21. The federal role in the nation's transportation system should be to ensure the efficient movement of freight to enable and promote interstate commerce. Capacity at our nation's freight gateways—ports, rivers, airports, rail facilities, and border crossings—is struggling to meet the needs of our growing economy. Seamless integration of these systems to facilitate the movement of freight among modes will help ensure our economic prosperity

FHWA Oversight: FHWA has oversight and stewardship responsibilities for all FHWA-funded projects. States can be delegated the authority to manage oversight responsibilities with FHWA approval. Unless the State DOT/FHWA agreement differs, full FHWA involvement on projects will tend to be new construction or reconstruction projects on Interstate routes with an estimated value greater than \$1 million. Even with the state delegation, FHWA is not precluded from reviewing any Federal-aid highway project under state responsibility. FHWA conducts program-level oversight of all FHWA programs, regardless of which agency has project approval authority. Randomly selected projects administered by the state will be included in program reviews. Full project-level review requires FHWA participation in all

major decisions, from project initiation to design and construction, and to FHWA final acceptance and voucher payment.

- The threshold for states being delegated the authority to manage oversight responsibilities should be increased from \$1 million to \$5 million

Design-Build Preemption: State procurement laws should not be overridden to allow use of design-build or other alternative contracting procedures.

Owner-Controlled Insurance Programs: Under current law, federal-aid funds can be used to participate in Owner-Controlled Insurance Programs (OCIPS) on Federal-aid projects. Current law should remain in place – attempts to require states use OCIPs on Federal-aid projects should be avoided.

Coal Ash: Coal Ash has been extensively used as a mix in concrete, providing a beneficial and economic disposal of coal residuals. Preventing EPA from regulating coal ash as hazardous waste or in the alternative creating an indemnification for its use will protect past and future use.