



NATIONAL CONFERENCE *of* STATE LEGISLATURES

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TESTIMONY OF
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ON BEHALF OF THE
NATIONAL CONFERENCE OF STATE LEGISLATURES

REGARDING
SURFACE TRANSPORTATION REAUTHORIZATION: THE IMPORTANCE OF A
LONG-TERM REAUTHORIZATION

BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE
INFRASTRUCTURE, SAFETY AND SECURITY,
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION,
UNITED STATES SENATE

MAY 5, 2015

Chairman Fischer, Ranking Member Booker and distinguished members of the Senate Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security, my name is Curt Bramble, President Pro-Tem of the Utah Senate and President-elect of the National Conference of State Legislatures (NCSL). I appear before you today on behalf of NCSL, the bipartisan organization representing the 50 state legislatures and the legislatures of our nation's commonwealths, territories, possessions and the District of Columbia.

Madam Chairman, I would like to take this opportunity to thank you and the committee for your leadership on the important issue of surface transportation reauthorization, not just with today's hearing, but with the committee's hearing earlier this year on reauthorizing of highway safety programs. I would also note that it was an honor and pleasure to serve with you during your time as a state senator including the three years we both served together on NCSL's Executive Committee.

Infrastructure Priorities

Before I begin a more specific discussion on the importance of surface transportation reauthorization. I would like to highlight for the committee that transportation infrastructure and funding is one of NCSL's top nine priorities for the 114th Congress. NCSL maintains its strong support for infrastructure programs and will work to ensure that all funding and financing options remain available to states to continue the economic benefits that infrastructure programs provide. As part of this priority, NCSL has maintained a strong and detailed *Surface Transportation Federalism Policy Directive*, which was unanimously approved by our organization, showing wide bipartisan support. A copy of that policy directive is included as an appendage to my testimony and I ask that it be included as part of the record for today's hearing.

The Urgent Need for a Long-Term Reauthorization

As you know, on May 31, authorization for federal surface transportation programs will expire and the Highway Trust Fund is set to become insolvent shortly thereafter. NCSL urges Congress to ensure the continued solvency of the Highway Trust Fund (HTF), while committing to adopt a long-term agreement on surface transportation funding as part of a multi-year reauthorization of the Moving Ahead for Progress in the 21st Century Act (MAP-21). Although

the enactment of MAP-21 in 2012 put a brief end to the numerous short-term extensions that followed the expiration of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) in 2009, it unfortunately seems that Congress may return to this pattern. The uncertainty that pervades short-term extensions makes it extremely challenging for states to adequately plan and achieve their performance targets especially because many transportation infrastructure projects require a multi-year commitment. It is difficult for me to overstate the negative state impacts this uncertainty creates.

Like other cold weather states, Utah's highway construction is seasonally driven by the weather and temperatures, limiting construction activities during colder months. Bid lettings are scheduled at the "right time" to maximize competitive bids and take into account the capacity of contractors to prepare bids for multiple projects at any one time. Accordingly, projects are put out to bid throughout late fall, winter, and early spring to prepare for the annual summer construction season. Utah's goal is to have 100 percent of the program bid by May each year. Due to the uncertainty of federal funding and short-term extensions of MAP-21, Utah withheld one-third of our bid letting for the current year. Even if Congress extends authorization of MAP-21 beyond the current May 31 expiration, a portion of the 2015 construction program will be lost. While we could resume bidding activities later, it will be too late for larger paving projects. We anticipate 25 projects with a total value of \$65 million will be deferred to next year. These delays have a harmful impact on the state's broader economy.

Despite federal inaction, over the past two and half years, state legislators in more than a quarter of states, from Maryland and Virginia to Iowa and my home state of Utah, have stepped forward and invested billions of dollars to repair and upgrade our nation's surface transportation assets to ensure their continued safety and viability. However, the significant steps taken by many states should not be misconstrued. NCSL is a strong supporter of the federal government's role in a national surface transportation system. A system that facilitates interstate commerce, addresses fairly and equally the mobility needs of all Americans and meets our national defense needs. I would also stress that NCSL supports the continuation and preservation of a federal-aid surface transportation program that directs spending to national priorities while providing flexibility for states to address regional variations. The federal program should provide states maximum flexibility in deciding how to generate and leverage transportation revenues and how

to use state and federal dollars. The ability of states to maintain flexibility in decision making and comply with environmental and other mandates depends on regulatory flexibility as well as adequate and reliable federal funding.

This hearing represents an important and needed step towards a long-term reauthorization. It is an opportunity to recognize and review MAP-21's successes as well as those policy areas in need of an update, so that all parties, including state legislatures, can work together to ensure a safe and reliable surface transportation system throughout the country.

Freight and Interstate Commerce

One critical responsibility of the federal government, within the arc of surface transportation investments, is to ensure the safe and timely movement of goods across the nation. Robust state-federal consultation can help to evaluate freight flows and collaboratively plan the routes and development necessary to maintain and expand the highway freight corridors. As such, NCSL believes that Congress should look to engage and invest with states to ensure effective and efficient movement of freight.

In fact, in my state of Utah, our Department of Transportation Director Carlos Braceras stated that, "Nearly a quarter of the traffic on Utah's interstate system is commercial freight vehicles." These vehicles carry goods from out-of-state producers to and through Utah. Just as out-of-state businesses depend on a reliable, effective, well-maintained, and safe transportation system in Utah, the businesses located in Utah also rely on effective transportation infrastructure in the national system.

National Highway and Transportation Safety Administration (NHTSA)

MAP-21 consolidated various grant programs from SAFETEA-LU, including impaired driving and motorcycle grants, along with the new graduated driver and distracted driving grants, into the new Section 405 National Priority Safety program. There are concerns that the qualifications for these new grants are so high it is proving difficult for states to participate.

In particular, although 18 states have ignition interlock laws for all offenders, only four states have qualified for the federal grant program because of issues surrounding rare exemptions

for medical and work issues. Additionally, of the nearly 40 states that applied only one qualified for the distracted driving grant program due to the overly rigorous definitions and criteria being imposed on states. While every state has implemented some form of a three-stage graduated licensing system, no state qualified for this grant program in either FY 2013 or FY 2014.ⁱ The three-stage graduated licensing system has been credited as a primary driver of the significant reduction seen in teen driving deaths.

While NCSL supports the expansion of federal safety programs to incorporate emerging safety issues, those efforts must respect state sovereignty and recognize the unique transportation demands of each state. NCSL opposes the use of federal sanctions or redirection penalties to enforce those standards.

Performance Management

One of the largest transformations within MAP-21 was the introduction of a national performance program so as to ensure that investments are correctly targeted as well as increase the accountability and transparency of these investments. The U.S. Department of Transportation (USDOT) continues its process of implementing these national level performance measures required in MAP-21. It is important that these efforts recognize and build off of the extensive work states have done with regard to performance management. As many states, including Utah, already make use of certain performance measures on a regular basis, we urge the department and Congress to avoid creating additional reporting mandates or implementing lowest-common denominator performance measures that run counter to good asset management practices.

As an example, Utah's Transportation Commission has established a Funds Exchange Program that allows local governments to exchange their federal transportation funds for state transportation funds on certain types of projects at a rate of \$0.85 state funds per \$1.00 federal funds. Local governments jump at the opportunity to buy the flexibility provided to them in this transaction.

In Utah, as with all of our sister states, the success of our communities—both large and small—is critical. As such, we have developed what we refer to as a Unified Plan, in which all of our Metropolitan Planning Organizations (MPOs), cities, counties, and transit authorities have

come together to develop a unified plan of projects that will address the goals of the state and individual communities for the next 30 years. We speak with one voice toward an agreed-upon set of goals.

These examples highlight why the federal government should build upon the work states have done as well as demonstrate why it would be a mistake for the federal government to mandate the use of federal performance measures for making important investment decisions when other, more complete measures would provide more accurate information.

Project Streamlining

The federal government has a role to play in ensuring that national environmental policy aligns with national transportation policy, while assuring efficient and cost-effective approaches to both goals. The findings of an August 2011 Congressional Research Service (CRS) report noted that major highway projects can take 10 to 15 years to plan and build.ⁱⁱ NCSL favorably views efforts included in MAP-21 to streamline regulatory review processes so that construction projects can again be realized on-time and on-budget. NCSL encourages Congress to allow and enhance states' programmatic permitting as well as provide incentives to states to achieve environmental quality standards through transportation projects.

In Utah, we have assumed assignment of Categorical Exclusion documents since 2008 with great success, and we are currently in the process of securing full National Environmental Policy Act (NEPA) delegation. Earlier this year, the Utah legislature approved a bill authorizing Utah Department of Transportation (UDOT) to fully assume federal responsibilities for NEPA. UDOT believes that we will secure full NEPA assignment by the end of the year.

Transportation Infrastructure Finance and Innovation Act (TIFIA)

One program in particular from MAP-21 that I would like to discuss is the Transportation Infrastructure Financing and Innovation Act (TIFIA). As reported by the Government Accountability Office (GAO), demand for the program has been very high, with requests exceeding budgetary resources by a ratio of 10 to 1 since 2008.ⁱⁱⁱ With MAP-21 authorizing an expansion of TIFIA to \$1.75 billion over two years, from only \$122 million in FY 2012, states will be able to finance and complete major projects of national and regional significance. NCSL

supports this kind of expansion of credit-based and loan guarantee programs to incentivize private sector investment.

Beyond MAP-21

Finally, I'd like to quickly touch on the 800 pound gorilla – how to pay for these necessary investments? The Highway Trust Fund is estimated to become insolvent in a matter of months, while state gas taxes continue to show diminishing returns. The American Society of Civil Engineers has estimated America's surface transportation infrastructure faces a funding gap of about \$94 billion a year based on current spending levels.^{iv} NCSL believes the next long-term reauthorization should provide for a more sustainable funding mechanism for surface transportation that maintains a federal trust fund financed by user fees. We urge Congress to support state-level pilot programs to explore transportation funding alternatives to fuel taxes. Attached to my testimony is NCSL's *Solving America's Long-term Transportation Funding Crisis Policy Resolution*, which details our stance on Congressional support for state pilot programs.

In Utah, I recently helped lead efforts to pass House Bill 362, which made significant changes to the state's motor fuel tax structure and rate. The decision was not an easy one, nor was it taken lightly. In our very conservative state, raising taxes is not a regular occurrence. However, Utah legislators and Governor Herbert took the long view. Our motor fuel taxes had been the same per gallon amount (24.5 cents) since 1997 and had lost 49 percent of its buying power to inflation. Looking into the future, we realized we were facing a structural deficit in transportation. We had a static rate applied to a static base, which would not support our necessary long-term expenditures. Given the requirements of increased fuel efficiency, the growth in hybrid, electric and other alternative fuel vehicles and a static funding system that fails to adapt to demand, we needed a new approach. We recognized that continued economic expansion requires continued infrastructure investment.

In particular, we set a minimum base cost per gallon at the rack for purposes of calculating the tax. We then applied a 12 percent rate to that per gallon minimum. That results in a 5 cents per gallon increase—to 29.5 cents—at the pump. Once actual wholesale prices reach that minimum, the minimum will increase over time by the consumer price index, up to a maximum

of \$3.33 per gallon. This index will allow our per gallon tax to match inflation up to a ceiling of 40 cents per gallon – a 15.5 cent per gallon maximum increase.

We expect the changes in House Bill 362 will generate \$25 million more in revenue for part of fiscal year 2016 and \$75 million more in its first full year of implementation.

Although the major funding portion of the bill was similar to a sales tax, we also included provisions directing UDOT to study a road usage fee similar to a pilot program that Oregon is set to undertake in a few months. Additionally, multiple states have approved legislation aimed at attracting private sector support.

Madam Chairman, I thank you for this opportunity to testify before the subcommittee. The importance of a long-term surface transportation reauthorization cannot be understated. Along with states, the federal government plays a vital role in supporting our national surface transportation system. As state legislators have responsibility for state budgets, policy planning and oversight activities we stand ready to work with Congress as it continues to develop a long-term successor to MAP-21. I look forward to questions from members of the subcommittee.

Appendices:

NCSL Surface Transportation Federalism Policy Directive
NCSL Solving America’s Long-Term Transportation Funding Crisis Policy Resolution

ⁱ Governors Highway Safety Association. Surface Transportation Reauthorization – Behavioral Highway Safety Provisions. 2015
ⁱⁱ Congressional Research Service. “Accelerating Highway and Transit Project Delivery: Issues and Options for Congress.” August 3, 2011. Accessed from : <http://bit.ly/CRS080311>
ⁱⁱⁱ Government Accountability Office. “Financing Program Could Benefit from Increased Performance Focus and Better Communication.” June 21, 2012. Accessed from: <http://www.gao.gov/products/GAO-12-641>
^{iv} American Society of Civil Engineers. “2013 Report Card for America’s Infrastructure.” May 2013. <http://www.infrastructurereportcard.org/>