Amendment 1598 — The State Transportation Flexibility Act

Congress Has Been a Poor Steward of Highway Gasoline Tax Revenue

- Despite record-spending, GAO recently concluded that "Large increases in federal expenditures for transportation in recent years have not commensurately improved system performance."

- Since the last transportation authorization bill (SAFETEA-LU), outlays have exceeded revenues every year. While the trust fund had an excess of almost $11 billion in FY2005 ($20 billion in FY 2000), it ran out by the end of FY 08.

- As a result, Congress has bailed out the HTF three times since FY08 for a total of $35 billion.[1]

- MAP-21 continues Federal surface transportation funding down this destructive path of continual bailouts, leaving the HTF account at the brink of bankruptcy immediately upon expiration of the 2 year bill and on pace for a nearly $80 billion deficit by 2022

- The Highway Trust Fund (HTF) has been on GAO's "High-Risk" list since 2007.

Bike Trails, Earmarks, and Other Wasteful Spending

- While it used to be that only highway projects were funded with gas taxes, Congress has continued to expand the type of projects eligible for HTF revenues.

- GAO found from 2004 to 2008, the HTF spent $78 billion on projects that were not related to the maintenance and construction of highways and bridges, including:
  - $2 billion for 5,500 bike and pedestrian projects;

[1] In 2008, Congress passed the first HTF bailout of $8.017 billion from the Treasury to the HTF (P.L. 110-318). In 2009, Congress passed another for $7 billion (H.R. 3357) and then a third one in 2010 (H.R. 2847) of $20 billion.

- $850 million for "scenic beautification" and landscaping projects;
- $224 million on Projects to rehabilitate and operate historic transportation buildings, structures, and facilities;
- $28 million to establish 55 transportation museums;
- $121 million for Ferryboats and Ferry Terminal Facilities; and
- $18 million for motorcyclist safety grants; which helped fund a "cruisin' without bruisin" brochure reminding bikers to "Obey traffic lights, signs … and lane markings."[2]

- MAP-21 continues to unfairly mandated that a like portion of 10% of all Surface Transportation funds are spent on "enhancements" and other non-essential transportation projects, which include bike paths, landscaping projects, and archeological excavations. Squirrel sanctuaries, Chinatown entrance gates and roadside decorative rocks are funded while one in every 4 bridges in America is structurally deficient or functionally obsolete.

- Until this year, Congress has continued to increase spending for transportation earmarks. The 1982 highway bill included 10 demonstration projects totaling $386 million. The 2005 highway bill included over 5,634 earmarked projects totaling $21.6 billion.

- The DOT Inspector General found that 15.49% of all FHWA funds were earmarked in FY06 ($5.675 billion). The Federal Transit Administration (FTA) also had 28 percent of its FTA funds earmarked (for $2.406 billion).[3] Even without including authorized earmarks, this total over the five-year span of the last reauthorization bill would cover the cost of all three HTF bailouts.

---

[2] http://coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=80b3458b-b6e2-470a-be24-bb82b93d10c2

[3] http://www.oig.dot.gov/sites/dot/files/pdfdocs/Congressial_Earmarks-_AV-2007-66----508_Compliant.pdf

Congress Burdens States with Political Mandates

- In addition to costly transportation mandates and federal administrative costs, other federal laws hamper state transportation projects. These laws have led to billions in additional costs and delays. In fact, GAO found in 2008, that 39 of 51 states (including D.C.) avoided using federal funds for certain projects because of such mandates tied to federal funding.

- Davis-Bacon mandates require prevailing wages for any projects funded with federal dollars that is greater than $2,000. According to CRS, the threshold of $2,000 has not been adjusted for inflation since it was first established in 1935.

- CBO did a study in 1983 that estimated Davis-Bacon increased costs by 3.7 percent,[4] and GAO found an increase of 3.4 percent in 1979 and recommended, "Congress should repeal the Davis-Bacon Act and rescind the weekly payroll reporting requirement of the Copeland Anti-Kickback Act because of: (1) significant increased costs to the federal government; (2) the impact of excessive wage determination rates on inflating construction costs and disturbing local wage scales; and (3) the fact that contractors tend to pay prevailing rates, which is the intent of the act, when determinations are too low."[5]

- According to the Heritage Foundation, the Davis –Bacon Act increases the cost of federally funded construction projects by 9.9 percent. Repealing Davis–Bacon restrictions would allow the government to build more infrastructure and create 100,000 more construction-related jobs at the same cost to taxpayers (or save the federal government $9 billion on annual construction costs).[6]

- Federal law also requires significant environmental compliance activities. According to a study done for the American Association of State Highway and Transportation Officials (AASHTO), the environmental compliance costs average between 10 and 20%,

[4] http://www.cbo.gov/ftpdocs/50xx/doc5030/doc12-entire.pdf
[5] http://www.gao.gov/products/HRD-79-18
[6] http://www.heritage.org/Research/Reports/2010/01/Davis-Bacon-Act-Extensions-The-Heritage-Foundation-2010-Labor-Boot-Camp

without including staff time, hearings, or escalation costs resulting from project delays.[7]

- An overview of such studies by the Federal Highway Administration (FHWA) pegged increased costs between 8 and 10 percent. FHWA also found because of environmental requirements, of all sampled projects "13% took 10 or more years to complete NEPA; 19% were completed in 7 - 10 years; 16% were completed in 3 years or less. The majority of the projects (51%) took 4 - 6 years to complete. For the total of 37 projects [surveyed], the average amount of time elapsed … was found to be 67 months, or 5-1/2 years, while the median value was found to be 5 years."

- These and other mandates unnecessarily drive up costs and delay construction while our nation's infrastructure is deteriorating and transportation funding is scarce.

Congress Should Grant States the Opportunity to Manage Their Gas Tax Revenue

- With CBO estimating an annual HTF cash-flow deficit between hovering around $10 billion through 2022, Congress has to reduce current obligations. This amendment would at least stretch transportation dollars further by granting states the freedom to manage their Highway Tax Revenues for highway and mass transit projects without federal interference. It does not increase any federal funding.

- Revenues returned to the states would not be treated as federal funds and would not trigger numerous federal mandates that currently hamper state transportation projects.

- States would only be required to maintain the interstate system in accordance with the current standards and to submit an annual report to the Secretary of Transportation on the use of amounts received under the program.

---

[7] http://onlinepubs.trb.org/onlinepubs/archive/NotesDocs/20-24%2854%29_B_%20FR.pdf

- While Map-21 consolidates existing SAFETEA-LU programs by 2/3rds, Congress still provides state and local government with 1000 pages of instructions on how best Congress thinks they should spend their gas tax dollars. Flexibility should be provided on the state's, not on Congress's terms.

- To maximize efficiency, Congress must give state and local governments the choice of what their most pressing transportation needs are, and allow them to prioritize accordingly.

- This amendment respects states' rights and is endorsed by the Governors of Oklahoma, Utah, Mississippi, and Arizona. It is also supported by The Council for Citizens Against Government Waste, Americans For Prosperity, National Taxpayers Union, American Legislative Exchange Council, and the Oklahoma, Ohio, and Georgia Departments of Transportation.