Transportation Governance and Finance

A 50-State Review of State Legislatures and Departments of Transportation

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# Contents

List of Tables and Figures ......................................................... iv
Acknowledgments ................................................................. v
Acronyms ............................................................................... vi
Note on Usage .................................................................... vi
Executive Summary ............................................................ vii

1. Introduction ........................................................................ 1

2. Participants in Transportation Governance and Finance .......... 4

3. Legislature-DOT Communication and Collaboration ................. 8

4. Transportation Governance ................................................ 10
   Legislation ......................................................................... 10
      Drafting and Presenting Legislation ................................ 10
      Lobbying ..................................................................... 11
      Fiscal Notes and Policy Analyses ................................ 11
   Legislative Oversight ....................................................... 11
      Committee Oversight ............................................... 12
      DOT Leadership Appointments ................................ 14
   Review of Administrative Rules and Regulations ................ 15
   Performance Goals ........................................................ 16
   Program Evaluation and Sunset Reviews ......................... 17
   Reporting Requirements ............................................... 18
   Other Tools that Support Legislative Oversight ................ 19
      Resources to Support DOT Compliance with Legislative
      Oversight Requirements ........................................ 19

5. Transportation Funding and Finance .................................... 20
   State Budget and Appropriations Processes ..................... 20
   Federal, State and Local Transportation Funding .............. 22
      Federal Transportation Funding ............................... 22
      State Transportation Funding .................................. 24
      Local Transportation Funding .................................. 30
   Innovative Finance ......................................................... 31
   Transportation Planning .................................................. 35
   Other Legislative and Executive Interactions in Transportation
   Funding and Finance ................................................... 38
      Retention of Surplus or Excess Funds ....................... 38
      Controlling DOT Costs ......................................... 38
   State Profiles .................................................................. 39
## Appendices

A. NCSL-AASHTO Joint Project Oversight Committee Members ........................................... 165
B. NCSL-AASHTO Survey Instruments .................................................................................. 167
C. NCSL-AASHTO Survey Respondents ................................................................................ 181
D. Appointments of DOT Leadership .................................................................................... 185
E. Legislative Committees that Addressed Transportation Issues as of April 2011 .................. 199

## Notes ........................................................................................................................................ 205

## Selected Bibliography ............................................................................................................ 209

## List of Tables and Figures

### Tables

1. NCSL Categorization of “Red,” “White” and “Blue” Legislatures ......................................... 4
2. Major Stakeholders in Transportation Governance and Finance .......................................... 6
3. General Recommendations from State Legislators and DOT Executives ............................ 8
4. Recommendations for Communication and Collaboration from State Legislators and DOT Executives ................................................................. 9
5. Federal-Aid Highway and Transit Programs .......................................................................... 23
6. State-by-State Revenue Sources for Roads, Bridges, Rail and Transit ............................... 24
7. Transportation Finance Mechanisms .................................................................................... 31
8. State-By-State Transportation Finance Mechanisms ............................................................ 32

### Figures

1. Continuum of Legislature-DOT Interactions ....................................................................... 9
2. DOT Leadership Structures .................................................................................................. 14
3. Review of Administrative Rules and Regulations .................................................................. 16
4. Typical State Budget Process ............................................................................................... 21
5. State Uses of Fuel Tax Revenues .......................................................................................... 29
6. PPP Enabling Statutes and Legislative Approval Requirements ............................................. 34
7. Participants in the Transportation Planning Process ............................................................. 36
ACRONYMS

AAR  Association of American Railroads
AASHTO  American Association of State Highway and Transportation Officials
ASLCS  American Society of Legislative Clerks and Secretaries
BAB(s)  Build America Bond(s)
CLEAR  Council on Licensure, Enforcement and Regulation
CSG  The Council of State Governments
CY  calendar year
DOT(s)  department(s) of transportation
FAA  Federal Aviation Administration
FHWA  Federal Highway Administration
FTA  Federal Transit Administration
FY  fiscal year
GARVEE  grant anticipation revenue vehicle
HTF  Highway Trust Fund
LRP  long-range plan
MPO(s)  metropolitan planning organization(s)
NASAO  National Association of State Aviation Officials
NCSL  National Conference of State Legislatures
NGA  National Governors Association
NLPESE  National Legislative Program Evaluation Society
PAB(s)  private activity bond(s)
PPP(s) or P3(s)  public-private partnership(s)
R(T)PO(s)  regional (transportation) planning organization(s)
SAFETEA-LU  Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SIB(s)  state infrastructure bank(s)
STIP  Statewide Transportation Improvement Program
TIFIA  Transportation Infrastructure Finance and Innovation Act
TIGER  Transportation Investment Generating Economic Recovery
U.S. DOT  U.S. Department of Transportation

Note on Usage

The terms “legislature” and “DOT” are used generically in the synthesis portion of this report to identify the government branch or entity being discussed. Thus, “legislature” is consistently written in lower-case throughout, to refer to state legislative branches in general rather than to any specific state legislative body. Capitalized, proper names for the legislatures and DOTs in each state are identified and used in the State Profiles section.
1. Introduction

A safe, reliable, effective and efficient transportation network that moves both people and freight using diverse modes is vital to our society’s well-being. In the United States, state governments are primarily responsible for owning, developing financing mechanisms for, and operating transportation assets. In recent years, states have faced challenges in meeting these responsibilities. These challenges are characterized by an aging system and growing transportation needs, coupled with declining abilities to pay for needed maintenance and capacity expansion. The ways in which states approach transportation governance and finance therefore must play a key role in meeting these challenges, ensuring a functioning transportation system that will continue to serve the nation’s needs.

Each state has a distinctive approach to governing and paying for its transportation system that is shaped by the unique balance of power among its executive, legislative and judicial branches of government. The most active players are the legislature and, under the authority of the governor, those executive agencies or departments of transportation (DOTs) in which reside the official transportation responsibilities for each state. In concept, the branches are intended to function without intermingling of authority. In practice, however, a certain overlap of powers and responsibilities must exist due to the complexity and interrelatedness of governmental activities. This overlap not only results in necessary, dynamic tensions and conflicts, but also offers rich opportunities for collaboration and cooperation.

This report aims to provide a broad, 50-state review of the roles of, and the relationships between, state legislatures and DOTs. Although the emphasis is on transportation funding and finance, the report also examines other areas of transportation governance. This report is intended to benefit DOTs, legislators and legislative staff by offering a rich diversity of approaches to consider as they seek to address their states’ transportation challenges and effectively serve the public good within what are often complex intergovernmental arrangements.

The NCSL-AASHTO Project and Joint Project Oversight Committee

Both the National Conference of State Legislatures (NCSL) and the American Association of State Highway and Transportation Officials (AASHTO) have tracked the trends in transportation governance and finance for many years. From 2010 to 2011, NCSL and the AASHTO...
Center for Excellence in Project Finance partnered to collaboratively produce this resource.

To contribute an informed, on-the-ground, state-level perspective, NCSL and AASHTO also formed a joint task force to serve as an oversight committee for this project (Appendix A contains a list of members). The NCSL-AASHTO Joint Project Oversight Committee (also known as the NCSL-AASHTO Task Force)—composed of members of the NCSL Transportation Standing Committee and the AASHTO Standing Committee on Finance and Administration—worked for more than a year to ensure the usefulness of this report.

**Methodology**

This report is based on original survey research; legal and legislative research; a literature review; and expert interviews, including a conference call with the National League of Cities and select constituents.

The methodology included four surveys (Appendix B contains the full text of the survey instruments). Surveys 1 and 2 were distributed to DOT personnel and legislative staff members in the 50 states, the District of Columbia and Puerto Rico to gather factual information about transportation finance and governance in each jurisdiction. After extensive, targeted follow-up by NCSL staff, responses to Survey 1 (on transportation funding and finance) were received from all 50 states, the District of Columbia and Puerto Rico. Responses to Survey 2 (on executive-legislative roles) were received from all 50 states and the District of Columbia.

Survey 3 allowed state legislators and DOT executives to anonymously share their experiences and thoughts about interactions between the DOT and the legislature in their respective states. After follow-up from NCSL and AASHTO staff, 30 legislators and 26 DOT officials responded. Key findings from this survey are incorporated throughout the report to provide added perspective on how DOT-legislative interactions are perceived in practice. Although the small sample size limits the ability to draw conclusions from—or engage in broader interpretation of—the results of this survey, the data are at least suggestive of underlying trends and opinions and may be worthy of further examination.

Survey 4 was a short set of questions distributed through the National Legislative Program Evaluation Society (NLPES) listserv, asking for information about legislative program evaluations and audits of state DOTs. Eight states—Connecticut, Florida, Pennsylvania, South Carolina, Tennessee, Washington, Wisconsin and West Virginia—responded to this survey.
The resulting data from all four surveys and in-depth supplemental research is summarized in this synthesis and detailed in the state profiles that follow. An earlier draft was sent to several stakeholder groups—including all survey respondents—for review and fact-checking. Substantive feedback was received from 34 states, which was used to improve the report's accuracy. (Appendix C contains a list of organizations that responded to surveys 1, 2 and 4, including those that offered substantive reviews of the earlier draft of the findings.)
2. PARTICIPANTS IN TRANSPORTATION GOVERNANCE AND FINANCE

Each state’s distinctive approach to transportation governance and finance relies on its balance of governmental powers that, in turn, is heavily influenced by the organizational structures and functions of its legislative and executive entities. These structures and functions vary widely across jurisdictions. This report focuses on the most active participants in state-level transportation governance and finance: state legislatures and, under the authority of governors, state departments of transportation.

State Legislatures

Every U.S. jurisdiction has a legislative body—composed of elected representatives of legislative districts—that is broadly responsible for policies, programs and, to some extent, appropriations and program oversight. The jobs of the legislature have been alternatively typified by Alan Rosenthal as representing constituent interests, lawmaking and balancing the power of the executive branch. The legislative role also includes the often forgotten but vital function of convening stakeholders to develop ideas and aid the decision-making process. Each legislature, however, approaches these functions differently. NCSL groups the states’ legislatures into three major categories, ranging from states with year-round legislative sessions, full-time legislators and large legislative staffs to those with limited or biennial sessions, part-time legislators and smaller staffs (Table 1).

<table>
<thead>
<tr>
<th>Type of Legislature</th>
<th>Characteristics</th>
<th>States</th>
</tr>
</thead>
</table>
| **“Red” Legislatures** | - Legislators spend 80 percent or more of a full-time job doing legislative work  
- Compensation enough to make a living without outside sources of income  
- Largest legislative staffs  
- Tend to be in states with large populations | Red  
California, Michigan, New York, Pennsylvania  
**Red Light**  
Illinois, Florida, Ohio, Massachusetts, New Jersey, Wisconsin |
| **“White” Legislatures** | - Hybrids of red and blue models  
- Legislators spend more than two-thirds of a full-time job doing legislative work  
- Compensation higher than blue states, but not enough to make a living without outside sources of income  
- Intermediate-sized legislative staffs  
- Tend to be in states with medium-sized populations | Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Iowa, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Nebraska, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Virginia, Washington |
| **“Blue” Legislatures** | - “Traditional” or “citizen” legislatures  
- Legislators spend equivalent of half of a full-time job doing legislative work  
- Low compensation that requires outside sources of income to make a living  
- Relatively small legislative staffs  
- Tend to be in small population, rural states | Blue  
Georgia, Idaho, Indiana, Kansas, Maine, Mississippi, Nevada, New Mexico, Rhode Island, Vermont, West Virginia  
**Blue Light**  
Montana, New Hampshire, North Dakota, South Dakota, Utah, Wyoming |

A legislature’s overall characteristics and capacity will affect the manner in which it engages in policymaking, appropriations, and interactions with and oversight of the executive branch, but do not necessarily dictate the extent of the legislature’s involvement in transportation governance. Vermont, for example—a state that has a part-time legislature with limited staff and compensation—has high legislative involvement in transportation issues. In this state, the legislature reviews and approves the DOT transportation plan, reviews progress on all active projects, evaluates DOT performance, compares bids to cost estimates, and participates in developing formulas for project prioritization.

**State Executives: Governors and Departments of Transportation (DOTs)**

In theory, the executive branch is broadly responsible for carrying out the programs and policies that have been authorized and funded by the legislature. In addition, governors typically prepare state budgets, initiate legislative measures and have discretion to create programs and initiatives in some areas. Every U.S. state or territory has an agency or department within the executive branch that is responsible for highway functions, under the authority of the governor or other lead executive. The roles and responsibilities of these departments of transportation vary widely, however, by organizational structure, modes served, balance between state and local roles, and general roles and responsibilities.

**Organization and Modes Served**

Most state DOTs are organized by divisions or organizational units based on functional activities such as administration, finance, planning, engineering, operations or construction. Some, however, are organized to include distinct bureaus or divisions that serve non-highway modes such as rail, public transit, aviation, ferries and ports. In Delaware, New Jersey, Ohio, Rhode Island and Virginia, non-highway modes are handled by entities that are at least partially independent of the DOT.

**State-Local Balance**

Although all DOTs share responsibilities with regional and local entities to some extent, they also vary in terms of the balance between state and local roles. Michigan provides an example of a highly devolved transportation system: 616 separate local road agencies have jurisdiction over 92 percent of the states road miles. North Carolina, at the other end of the spectrum, has a highly centralized transportation system in which the state DOT builds and maintains secondary roads and there are no county road departments.

**Roles and Responsibilities**

DOTs are placed under the authority of the lead executive in each jurisdiction. In the states, governors therefore play a significant role in transportation governance and oversight. Governors typically prepare state budgets; can initiate, approve or veto legislative initiatives; can create some programs or initiatives without legislative approval; often (but not always) appoint and can remove the leadership of state executive agencies, including DOTs; and ordinarily have direct authority and oversight over these agencies.

The practical division of active roles and responsibilities between the governor and the DOT, however, varies across states. In some states—including Michigan and Oklahoma—governors have chosen to delegate much of the responsibility to the DOTs. In others, the governor’s office is more actively involved in transportation policy and budgeting. In North Carolina, the governor recently enacted DOT reforms through an executive order (Executive Order No. 2, 2009); in some states, such as Oregon and Pennsylvania, the governor employs a
liaison who maintains active communication with the DOT on transportation issues. In Nevada, the governor acts as an ex officio member of the board of directors that oversees the DOT.

**Other Stakeholders**

A complex network of public and private organizations finances, plans, builds and operates the U.S. transportation system. Some of the other key stakeholders in state transportation governance and finance are described below and listed in Table 2.

### Table 2. Major Stakeholders in Transportation Governance and Finance

<table>
<thead>
<tr>
<th>Federal</th>
<th>State</th>
<th>Regional Transportation Planning Organizations</th>
<th>Local Governments</th>
<th>Transit Agencies</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Congress • U.S. Department of Transportation (U.S. DOT) • Six major federal land management agencies • Three primary environmental protection agencies</td>
<td>• Governors • Legislatures • Departments of transportation (DOTs) in states and other jurisdictions • State transportation commissions or boards • Other state agencies with related responsibilities, including non-highway modal agencies</td>
<td>• Urban: 383 metropolitan planning organizations (MPOs), ranging from one to 26 per state • Rural: 180 regional [transportation] planning organizations (RTPOs or RPOs)</td>
<td>• 3,043 counties • 19,431 municipalities • 16,504 townships • 767 highway special districts</td>
<td>• 640 urban operating systems, including 600 public agencies • 2,000 rural operating systems</td>
<td>• 85 bridge, tunnel and turnpike authorities • 561 federally recognized tribal governments • Private operators and owners of transportation assets • Regional and county toll authorities • Regional mobility authorities (8, Texas only) • Operators and users, and their representative interest groups • Voters • General public</td>
</tr>
</tbody>
</table>


**Federal Entities**

Fuel tax and other highway-user revenues collected by the federal government are placed in the federal Highway Trust Fund. Congress allocates these funds to states according to provisions in federal surface transportation legislation—currently the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), passed in 2005—and annual appropriations bills. Within the executive branch, the U.S. Department of Transportation (U.S. DOT) administers federal funding and programs. Currently, federal funding accounts for about 20 percent of total surface transportation funding in the United States. Congress and the U.S. DOT also deal with aviation, ports and other modes of transportation. Other federal stakeholders include land management agencies and environmental protection agencies.

**State Transportation Commissions and Boards**

Several state DOTs are governed or advised by a state transportation commission or board that exists either within the DOT (e.g., Kansas) or as a separate entity (e.g., Washington). Some are bodies with real decision-making authority; others are advisory only (see DOT Leadership Appointments on pages 14 and 15).
State-Level Non-Highway Modal Agencies

In Delaware, New Jersey, Ohio, Rhode Island and Virginia, non-highway modes are handled at the state level by entities that are at least partially independent of the DOT.6

Tolling and Turnpike Agencies

Many states have bridge, tunnel or turnpike authorities that are responsible for financing, planning, operating and maintaining certain tolled facilities. These entities often operate or are financed and budgeted independently of the DOT. In many cases, however, the DOT director serves on the authority board as an ex officio member, in some cases as its chair. Examples of this include the Kansas Turnpike Authority, the Turnpike Authority of Kentucky, the Maine Turnpike Authority, the Maryland Transportation Authority, the New Jersey Turnpike Authority, the Ohio Turnpike Commission, the Pennsylvania Turnpike Commission, the Rhode Island Turnpike and Bridge Authority and the West Virginia Parkways Authority. In other cases such as the Oklahoma Turnpike Authority, certain turnpike projects must be approved by the DOT.

Airport and Port Authorities

Several states have regional, interstate or state-level authorities that are responsible for airports or ports. As with tolling and turnpike authorities, in some of these cases—such as the Massachusetts Port Authority—the DOT director is an ex officio member of the board.

Tribal, Regional, Metropolitan and Local Entities

Other entities that have responsibilities for the transportation system include federally recognized tribal governments; metropolitan and regional planning organizations, sometimes known as councils of governments; counties, townships and municipalities; regional or county toll authorities; and local transit agencies. Texas also has “regional mobility authorities” that are political subdivisions formed by one or more counties to finance, acquire, design, construct, operate, maintain, expand or extend transportation projects. Local dollars account for close to 30 percent of highway funding and more than 60 percent of transit funding in the United States.7

Voters, Interest Groups and the General Public

The public typically is involved in transportation planning, finance and governance in several ways. Transportation planning processes involve citizens through public hearings and other opportunities for feedback. Certain tax and bond initiatives that support transportation projects must be approved by the voters and in Mississippi, the Transportation Commission is elected directly by the people. Innumerable interest groups represent diverse operators as well as freight and passenger transportation users.