

Federal Transportation Reform

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by Baruch Feigenbaum

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The federal law governing surface transportation policy is up for renewal in 2015, presenting an opportunity for the House and the Senate to create a more free-market-oriented transportation policy. Though Congress could adopt a short-term funding extension, it should consider permanent reforms to improve the efficiency of federal surface transportation spending, and reallocate responsibilities between the federal government, and state and local authorities. Seven recommendations for such reforms are outlined below.



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Executive Summary

- **Grant user-friendly tolling flexibility for highways.** Expanding the Interstate System Reconstruction and Rehabilitation Pilot Program to include all interstate highways in all 50 states would help cover most of the unfunded \$1 trillion of interstate reconstruction costs.
- **Count all high occupancy toll lanes as fixed guideway miles.** A zero-added cost to taxpayers that improves infrastructure spending efficiency and encourages increased infrastructure development.
- **Eliminate Transportation Investments Generating Economic Recovery (TIGER) grants.** The cessation of TIGER grants could save taxpayers up to \$6.5 billion over the next 10 years.
- **Analyze the ability of Metropolitan Planning Organizations' (MPOs) long-range transportation plans to reduce congestion.** Traffic congestion in America's 101 urbanized areas costs motorists \$121 billion per year in wasted time and fuel.
- **Eliminate federal aid funded by gas taxes for all nonhighway uses.** Taxpayers could save \$16 billion per year by eliminating funds diverted to nonhighway projects.
- **Amend the Clean Air Act of 1990 in two ways.** Assuming the analysis local governments perform to show they conform to Clean Air Act requirements costs \$20,000 per certification, this change would save nearly \$8 million that could be better spent on effective transportation planning.
- **Simplify Department of Transportation (DOT) regulations regarding transportation planning.** Removing wasteful and inefficient transportation planning could save taxpayers about \$500 million a year.

These recommendations would bring federal requirements in line with the declining federal role in local transportation issues. It is critical that the

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federal government eliminate wasteful programs and provide states tools to stretch limited resources further. Instead of passing a major tax increase or making haphazard cuts, policymakers should implement these recommendations to preserve the users-pay/users-benefit principle and encourage state innovation.

U.S. government policy is based on the principle of federalism, under which the federal and state governments share legislative responsibilities. In transportation, the federal government funds the interstate movement of passengers and goods with federal aid highways, aviation, inland waterways and ports. Traditionally, other transportation modes have been funded by state and local governments.

Over the last 30 years, an increasing percentage of federal highway funds have been diverted to transit, bicycling, walking, smart growth, transportation museums, weed removal and other nonfederal transportation purposes. While these programs have value, they also reduce the funding available for federal aid to highways, jeopardizing interstate commerce. Eliminating federal funding for all nonhighway uses will return the federal highway program to users-pay/users-benefit system that spends limited resources on the most critical infrastructure.

About the Author

Baruch Feigenbaum is an adjunct fellow with the NCPA and assistant director of transportation policy at the Reason Foundation. Feigenbaum has a diverse background researching and implementing transportation and environmental issues including public-private partnerships, highways, transit, high-speed rail, ports, intelligent transportation systems, land use and local policymaking. Prior to joining Reason, Feigenbaum handled transportation issues on Capitol Hill for Representative Lynn Westmoreland. He earned his Master in City and Regional Planning degree with a concentration in transportation from the Georgia Institute of Technology. Feigenbaum holds a Bachelor of Science degree in Public Policy from Georgia State University.

Introduction

The federal law governing surface transportation policy is up for renewal in 2015, presenting an opportunity for the House and the Senate to create a more free-market-oriented transportation policy.

The recommendations outlined below would bring federal requirements in line with the declining federal role in local transportation issues. It is critical that the federal government eliminate wasteful programs and provide states tools to stretch limited resources further. Instead of passing a major tax increase or making haphazard cuts, policymakers should implement these recommendations to preserve the users-pay/users-benefit principle and encourage state innovation.

Federal surface transportation programs are financed largely by gas and diesel taxes deposited in the Highway Trust Fund, supplemented with general funding. The trust fund's current authorization expires at the end of July 2015, at the same time it is projected to run out of money. Spending in 2015 is expected to exceed revenues by a projected \$13 billion. Indeed, the trust fund consistently spends more on highway and transit projects than it receives in fuel tax revenues and is expected to run a cumulative deficit of \$180 billion over the next 10 years if current trends continue.¹

Though Congress could adopt a short-term funding extension, it should consider permanent reforms to improve the efficiency of federal surface transportation spending, and reallocate responsibilities between the federal government,

and state and local authorities. Seven recommendations for such reforms are outlined below.

Recommendation: Grant user-friendly tolling flexibility for highways. America's Interstate highways are reaching the end of their 50-year design life, and will all need to be reconstructed over the next several decades. Many corridors — especially primary truck routes — will need additional lanes. The estimated cost of reconstruction and prudent widening is nearly \$1 trillion — and there is no funding source for it. Urban Interstates experience chronic congestion that is not being systematically addressed.

The United States has a three-state highway tolling pilot program. Expanding the Interstate System Reconstruction and Rehabilitation Pilot Program to all 50 states and allowing participating states to use it to reconstruct all Interstate highways in their states, not just one, would allow other states to rebuild their Interstates through tolling. Providing stronger protections so the tolls are pure user fees applied only to the capital and operating costs of rebuilt Interstates ensures the support of highway users. These protections should include: (a) a statutory limitation on the use of the toll revenues to the rural and urban Interstates only; (b) beginning tolling only after an Interstate segment has been rebuilt; (c) requiring all tolling to be electronic and interoperable nationwide; and (d) granting state fuel tax rebates to Interstate toll-payers for the miles driven on newly tolled and rebuilt Interstates.

The current three-state pilot program allows a state to hold onto

its slot without using it, precluding other states from going forward. By limiting toll-financed reconstruction to a single corridor, it creates geographic inequity among highway users and precludes a responsible state transportation department from offering a 20-year plan under which all of its Interstates will be reconstructed using toll financing. The highway user protections are critically important, given the well-justified skepticism of highway user groups based on a history of some states using toll road revenues for other transportation purposes and even "economic development." All highway user groups endorse the users-pay/users-benefit principle. However, they will only support toll-financed reconstruction if the tolls are guaranteed to be pure user fees, not a combination of user fees and general transportation taxes.

Since there is no identified source of funding for the \$1 trillion cost of Interstate reconstruction, a major benefit of this change is to provide a funding source to states that comply with the user-friendly provisions. Since a per-mile toll is a mileage-based user fee, if all 50 states opted in, that would convert 25 percent of all vehicle-miles traveled to mileage-based user fees, an important first step toward replacing per-gallon fuel taxes. If the toll rates were limited to covering the capital and operating costs of the rebuilt system, highway users would pay somewhat more than they do now to use the Interstates, but would receive much better services.

Recommendation: Count all high occupancy toll lanes as fixed guideway miles. Federal transit policy recognizes a high occupancy

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vehicle (HOV) lane converted to a variably tolled high occupancy toll (HOT) lane provides buses with a “virtually exclusive guideway,” since variable pricing permits buses and cars to travel uncongested even during peak periods. Such HOT lane miles are counted toward a metro area’s total of “fixed guideway miles” for funding purposes, if used by transit buses.² But the Federal Transit Administration withholds this designation for HOT lanes added as new capacity, even though such lanes function identically to those converted from HOV lanes. Region-wide bus rapid transit (BRT)/express bus service will be fostered by creating seamless HOT networks. But a large fraction of such networks will be new capacity, since most freeways do not have HOV lanes to convert.

Changing the policy will require two modifications. First, revise the definition of “fixed guideway miles”

to include all HOT lanes, whether HOV conversions or new capacity. This would acknowledge the functional identity of priced lanes as virtual fixed guideways, regardless of how they came about. Second, permit transit agencies to use New Starts³ and Small Starts⁴ grant funds to pay for a portion of new-capacity HOT lanes, based on the projected share of passenger miles of travel that will be generated by bus service on the new-capacity HOT lane.

This change would provide travel options and improve express bus service in the United States. Very few state transportation departments or transit agencies can afford to develop bus-only lanes on freeways, since the vast majority of their capacity would be unused even during peak periods. HOV lanes are frequently over-used, providing little or no time-saving advantage for express

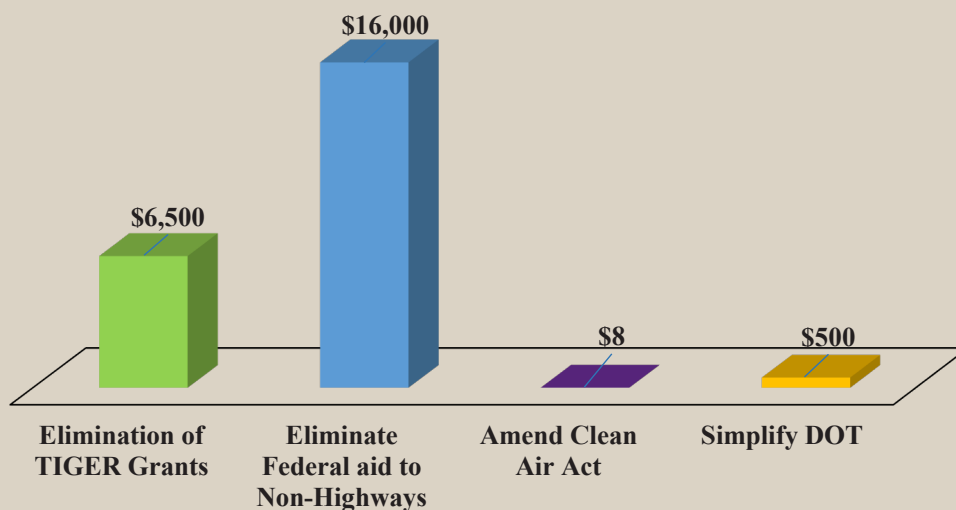
bus service. HOT lanes are a proven way to use all the capacity of a specialized lane, with buses and paying vehicles both benefiting from congestion management via variable pricing. Current FTA policy artificially distinguishes between HOT lanes based on how they came about, thereby discouraging creation of seamless networks that require construction of new lanes.

Under the second part of this policy, transit agencies could partner with a toll agency or state transportation department to jointly develop new HOT/BRT lanes, sharing in any net toll revenues (after covering capital/debt-service and operating costs) in proportion to the agency’s contribution to the capital costs of the project. Thus, in addition to helping create the network of virtually exclusive bus lanes, the transit agency would receive part of any net toll revenue as an additional ongoing revenue source.

This change would not cost taxpayers a dime, since it would merely create new options to encourage HOT/BRT lanes and networks. It would give transit agencies and highway agencies a new incentive to work together in creating HOT/BRT networks, a highly cost-effective way to increase transit infrastructure.

Recommendation: Eliminate the Transportation Investments Generating Economic Recovery (TIGER) grants. The TIGER program is an executive agency discretionary funding program that supports road, rail, transit and port projects. Begun in 2009 as part of the American Recovery and

Figure I
Potential Savings from Federal Transportation Reforms
 (in millions of dollars)



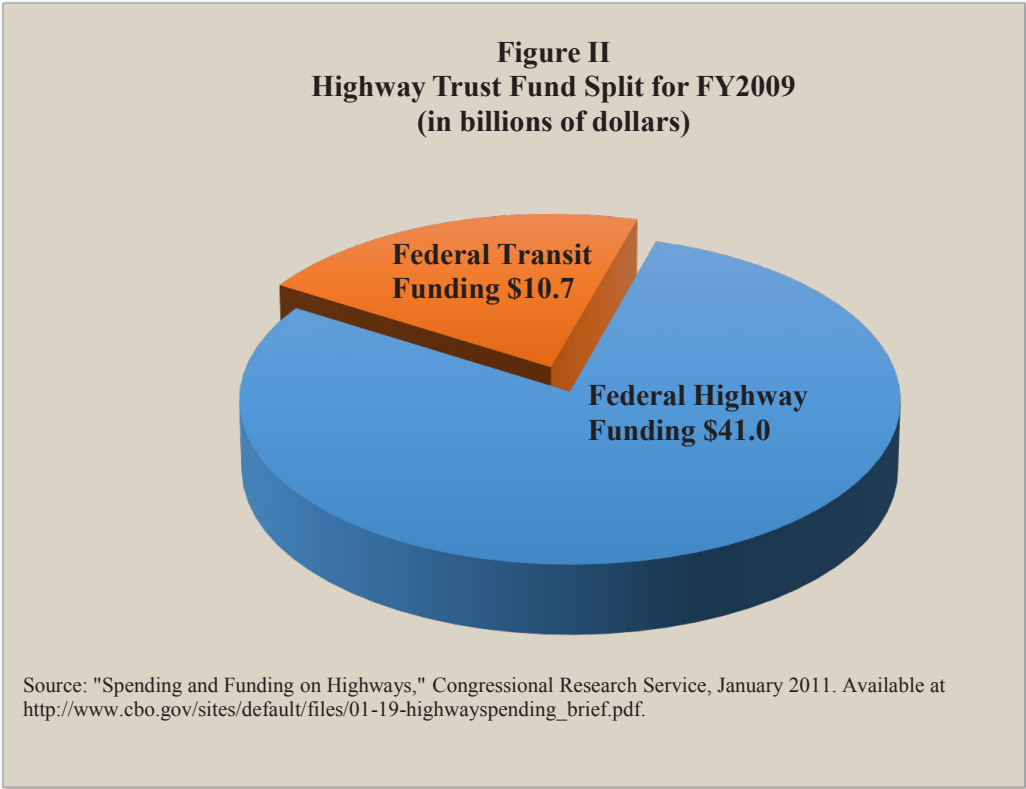
Source: Based on author's calculations.

Reinvestment Act (ARRA) — also known as “the Stimulus” — TIGER is supposed to award funding based on merit.⁵ Unlike most federal programs, which appropriate money based on a formula set by Congress, the TIGER program is administered and audited by the executive branch. Unfortunately, the executive branch’s administration of the TIGER program has failed to follow the rules and expectations of the program.

The program is supposed to achieve critical national objectives, yet more than 60 percent of the grants have supported local transit, pedestrian or bicycling projects.⁶ While such projects have a role in the economy, they are not national projects and should not be funded by the federal government. Several of the road, rail and port projects funded by TIGER are also local in nature.

Projects are supposed to be selected based on “rigorous” criteria, but the U.S. Department of Transportation (DOT) uses vague metrics, such as “livability.” The department defines livability as “Significantly enhance the creation of more convenient transportation options for the traveler,” which could mean almost anything project sponsors want it to mean.⁷

Furthermore, lower ranked projects are frequently funded while higher ranked projects are not. In the first round of TIGER grants, the agency funded almost as many “recommended” projects as “highly recommended” projects. In the fifth round of TIGER grants, DOT changed the ratings of some



projects from “not recommended” and “recommended” to “highly recommended” to justify funding them.

The program provides limited information to applicants and the public. Despite three requests from the Government Accountability Office (GAO) to provide better documentation of the review process and to release more information to taxpayers and to applicants who fail to win grants, DOT has failed to respond to requests for more information about the program.

Finally, the distribution of TIGER grants appears to be politically determined, with Democratic congressional districts receiving a disproportionate share. In the third round of grants, Democratic districts received 61 percent of the grants and 69 percent of the funding, despite comprising 49 percent of

the total number of congressional districts.⁸ Democratic districts were overrepresented as award winners in all six rounds of TIGER grants.

Because funds are allocated by Congress, eliminating TIGER should not cost taxpayers anything. Indeed, staff reductions could follow, freeing executive branch employees for other activities.

Recommendation: Eliminate federal aid funded by gas taxes for all nonhighway uses. The federal highway transportation program is structured as users-pay/users-benefit system with fuel taxes funding construction and maintenance of the Interstate and national highway system. Over the last 30 years, an increasing percentage of federal highway funds have been diverted to transit, bicycling, walking, smart growth, transportation museums, weed removal and other nonfederal

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transportation purposes. While these programs have value, they also reduce the funding available for federal aid to highways, jeopardizing interstate commerce. Eliminating federal funding for all nonhighway uses will return the federal highway program to users-pay/users-benefit system that spends limited resources on the most critical infrastructure.

U.S. government policy is based on the principle of federalism, under which the federal and state governments share legislative responsibilities. In transportation, the federal government funds the interstate movement of passengers and goods with federal aid highways, aviation, inland waterways and ports. Traditionally, other transportation modes have been funded by state and local governments. While transit and active transportation, such as bicycling and walking, are important in certain states and regions, such systems are not federal in nature and should not be federally funded.

Most local governments and some states provide substantial funding for transit. Federal funding makes up less than 30 percent of the revenue for even the most important transit agencies, such as the New York Metropolitan Transportation Authority.⁹ Funding these other transportation modes from federal aid amounts to a cross-subsidy from highway users:

- Under the Moving Ahead for Progress in the 21st Century (MAP-21) transportation act, transit receives approximately \$11 billion per year in federal funds.
- Additionally, approximately \$5 billion per year in highway funding is diverted to transit, bicycling, walking or nontransportation purposes.
- Thus, \$16 billion in additional highway funding per year, or about one-third of federal gasoline taxes, is devoted to nonhighway projects.

Federal transportation funding is limited. With little bipartisan interest in increasing the gas tax or embracing an alternate funding mechanism, coupled with increasing vehicle fuel efficiency, federal gas taxes must be allocated as effectively as possible. Fuel tax diversions significantly reduce funding for highways.

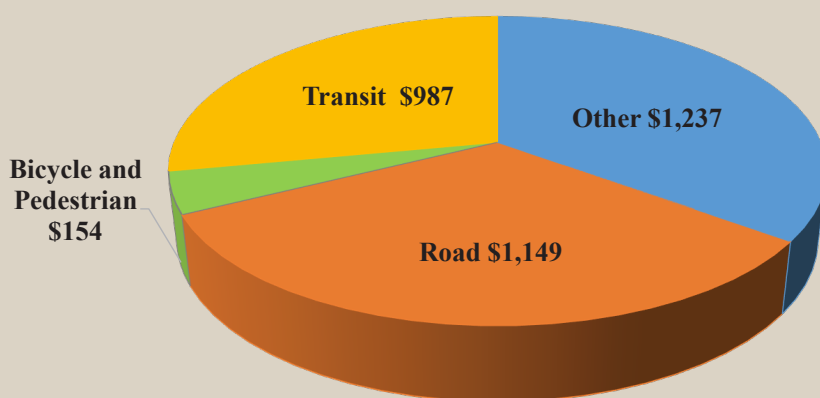
While transit is important in many communities, it should be funded by farebox revenue and supplemental local funding. Potential transit funding sources include local general tax revenue and value capture (the use of increases in land values resulting from highway and transit projects to finance infrastructure improvements).

This change could devote more revenue to highways, assuming all nonroadway funds are dedicated back to roadways.

Recommendation: Analyze the ability of Metropolitan Planning Organizations' (MPOs) long-range transportation plans to reduce congestion. Under federal law, MPOs are required to create Long Range Transportation Plans every four years (if deemed in nonattainment of air quality objectives) or every five years otherwise, outlining their planned transportation investments and their reasons for those investments.¹⁰ In metropolitan areas, the plans list improvements scheduled for funding over the next 20 years. Some plans forecast less congestion five years beyond the base year if the plan is implemented, compared to the no-build case.

The no-build case provides a baseline for establishing the environmental impacts of the alternatives, the financial condition of the transit operator and the cost-

Figure III
TIGER Grants Awarded by Project Type
(in millions of dollars)



Source: "About TIGER Grants," U.S. Department of Transportation, undated. Available at <http://www.dot.gov/tiger/about>.

effectiveness of the alternative. In nearly all cases, future congestion (with the plan) will be greater — often significantly greater — than in the baseline year (today). Yet that fact is seldom made clear to citizens and taxpayers.

Requiring Long Range Plans to directly compare congestion levels at the five-year horizon with congestion levels in the baseline year would allow citizens and taxpayers to judge whether or not the plan focuses enough effort on congestion reduction to improve the situation.

According to the latest *Urban Mobility Report* from the Texas A&M Transportation Institute, traffic congestion in America’s 101 urbanized areas costs motorists \$121 billion per year in wasted time and fuel.¹¹ Most MPOs’ Long Range Plans give lip service to reducing congestion, but very few actually target investments in such a way as to credibly project that 20 years of investment will yield less congestion than in the initial (baseline) year. If they make any comparison at all, most plans compare congestion after the plan’s implementation with the no-build alternative.

The models used to produce these plans do generate the information needed to compare horizon-year congestion with the baseline year, but this comparison is almost never included. Citizens and taxpayers are led to believe that because congestion is marginally better with the plan than congestion under the no-build alternative, the plan is the best that can be accomplished. Yet most plans could do far more to reduce congestion if they focused

their resources on the problem. The *Mobility Report* shows that urbanized areas with this focus can actually achieve significant reductions in congestion.¹²

“Congestion costs urban motorists \$121 billion a year in wasted time and fuel.”

This requirement could provide substantial mobility improvements at a very small cost. To the extent that it motivates MPOs to focus more resources on actual congestion reduction, there will be traffic flow improvements, time-savings, reduced fuel use and reduced emissions. The cost of this change in the planning process will be very low, since most MPOs already generate the needed information in their transportation modeling.

Recommendation: Amend the Clean Air Act of 1990 in two ways. First, eliminate the conformity requirement for regions meeting clean air standards. Second, review nonconforming regions every 10 years, after new census data has been released.

The Clean Air Act of 1990 (CAA) requires each region currently in nonattainment with air quality standards to submit plans demonstrating that it will be in compliance in the future.¹³ For transportation, each region must show its Transportation Improvement Plan (TIP) “conforms” to the State Implementation Plan for air quality

improvement. In the DOT Rules (40 CFR 93), this means the region’s TIP projects will not, as a whole, increase future emissions above the no-build level or above budgeted emissions.¹⁴

The present rule requires even very small regions to conduct extensive air pollution forecasting if they were ever in nonattainment of air quality standards. But virtually all future reduction in regional air pollution will be caused by cleaner vehicles, not by local transportation actions. Recent reviews of the air quality plans of 48 regions found that *every* region predicted a 30 percent to 50 percent reduction in vehicle emissions over 20 years even as travel increased, and that the TIP would reduce emissions by only 0.25 percent to 0.5 percent — way too small to be significant.¹⁵ Further, the conformity rule requires reduction of emissions (measured in tons of pollutant) but the CAA standards are for concentrations (measured in parts per billion of airborne pollutants). Therefore, there is no direct connection between the rule’s emissions analysis and the CAA’s concentration requirements.

Very few regions have been cited for nonconforming plans, among the hundreds submitted. A 2003 GAO analysis found that only five of the more than 200 regions revised their plans based on conformity, and that frequent updating was administratively burdensome.¹⁶ No region has actually lost federal funds as a result of nonconformity. For major projects, environmental impact statement analysis already requires additional air quality analysis; this duplicate effort is burdensome. Indeed, the rule has

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become an administrative hurdle that is repeated later, does not improve local air quality and requires huge administrative effort to ensure certification for federal funds.

Amending the 1990 Clean Air act would significantly relieve the administrative burden — particularly the burden of more than 400 smaller regions. Assuming the conformity analysis costs \$20,000 per certification in administrative time and administration costs, this change would save nearly \$8 million that could be better spent on effective transportation planning. And air quality would not deteriorate as a result.

Recommendation: Simplify U.S. DOT regulations regarding transportation planning.¹⁷ Since 1964, federal laws and some amendments (23 USC 134 and 49 USC 5303) have required states and urbanized areas exceeding a population of 50,000 to carry out a short-term and long-range “continuing, cooperative and comprehensive multimodal transportation planning process” as a condition for federal aid.¹⁸ Sensible at the time, today’s “3C” process mandates a wide range of assessments, including air quality, environmental justice, congestion management, safety, maintenance, efficiency, freight, pedestrian-bike, economic growth and fuel consumption.

Though some requirements have been eased for smaller regions, recent regulations call for expanded time horizons and new “planning factors.” More rules for climate

change, international trade, active transportation and sustainability are likely. These requirements and frequent updates have a negative impact on smaller regions with fewer staff.

Instead, the burden of the planning process requirements should be rationalized:

- For regions with fewer than 200,000 people, eliminate all long-range transportation planning mandates and require 10-year TIP updates.
- For regions with a greater than 200,000 population, eliminate or reduce regulations for air quality monitoring and conformity, environmental justice, congestion management, economic impact, safety, fuel consumption and 40-year planning horizons.
- For the TIP, remove the option that projects come from a long-range transportation plan. Review other requirements for possible reduction or elimination.

“Rebuilding Interstate highways could cost \$1 trillion; but it can be done without higher taxes.”

Recent reviews of metropolitan transportation plans find many are dense documents replete with goals only marginally related to transportation. Frequent update

cycles mean “planning never stops.” Worse, they generally ignore rising congestion and infrastructure maintenance, and depend heavily on federal/state resources for implementation. But the federal role is declining as local, state and private roles increase. After completion, most plans are ignored and shelved until the next update. The cost of this wasted and inefficient planning is substantial — about \$500 million annually. In short, transportation planning has become a convenient catch-all for pushing other local goals, and a hurdle for self-certification and continued funding, not a sensible effort to establish future transportation visions.

Conclusion. The recommendations outlined above would bring federal requirements in line with the declining federal role in local transportation issues. It is critical that the federal government eliminate wasteful programs and provide states tools to stretch limited resources further. Instead of passing a major tax increase or making haphazard cuts, policymakers should implement these recommendations to preserve the users-pay/users-benefit principle and encourage state innovation.

References and sources can be found in the online version at www.ncpa.org/pub/st368.