Governing and Paying for Transportation Infrastructure

Facilitated Discussion Roundtables

NCSL Legislative Summit, San Antonio
August 9, 2011
Welcome!

- As you come in, please gather into small groups of 6 to 8 participants, and find a place to sit together.

- An NCSL facilitator will join your small group once you are seated.

- And we'll get started in just a moment!
NCSL–AASHTO Project Overview

- **Project goal:** To fill a gap in the existing knowledge base about transportation governance and finance, especially interactions between state legislatures and state executive branch departments of transportation.

- **Methodology:** Based on survey data from states, D.C. and Puerto Rico, both about state facts and about leaders' opinions.

- **Project Team:** NCSL; American Association of State Highway and Transportation Officials (AASHTO); NCSL–AASHTO Task Force (28 legislative and DOT leaders from 19 states, plus 8 advisory members).

- **Final report (released June 2011):** Includes a nationwide synthesis of state approaches to transportation governance, funding and finance, plus individual profiles for each jurisdiction.
NCSL–AASHTO Project Overview

Topics:
- Communication and collaboration
- Governance and Oversight
  - Legislation and the legislative process
  - Legislative oversight
- Funding and Finance
  - Budget and appropriations processes
  - Federal, state and local transportation funding
  - Innovative finance
  - Transportation planning
  - Other legislative and executive interactions in transportation funding and finance
State legislators and DOT executives overwhelmingly agreed that regular, open, honest and transparent communication is one of the most important elements of effective transportation governance.

In practice, communication and collaboration differs significantly across jurisdictions.
38 states and D.C. use a dedicated DOT legislative liaison as a key element of legislative–DOT communication.
Seventy-three percent of DOT officials and 60 percent of legislators surveyed agreed or strongly agreed that the legislature and DOT work together effectively in their state.
Small Group Discussion: Communication and Collaboration

- Time for small group discussion
- See handouts at your table
- There will be a few moments to share with the larger group at the end of this discussion time
Key Findings: Governance and Oversight

- Separation of powers necessarily leads to areas of overlap and tension

Legislation

- Legislature's power to enact laws is balanced by executive veto authority, but also other executive involvement in the legislative process (which differs by state)
- DOTs in at least 22 states and D.C. can introduce legislation directly or through the governor's/mayor's office
- Wyo. has a fully collaborative, iterative process to draft transportation legislation
- Several state DOTs lobby the legislature; this is prohibited in at least La. and Texas
- In Alaska, Minn., N.D., W. Va. and Wis., DOTs prepare fiscal and/or policy notes for legislation that affects them
Key Findings: Governance and Oversight

- Legislative oversight of DOTs
  - Theoretically, a fundamental check and balance
  - However… Only about half of DOT executives and state legislators surveyed agreed that a legislature has a fundamental responsibility to oversee DOT operations.

- But more than 40 percent of legislators and no DOT officials surveyed think their state's DOT should be subject to additional independent oversight and accountability.
Key Findings: Governance and Oversight

- Legislative oversight mechanisms
  - Committee oversight
  - Transportation/DOT leadership appointments
  - Review of administrative rules and regulations
  - Performance goals
  - Program evaluation and sunset reviews
  - Reporting requirements
  - Legislative requests for information from DOTs
  - Independent sources of transportation information

- Resources to support DOT compliance
  - At least 9 state DOTs have received appropriations to help them meet legislative oversight mechanisms
Small Group Discussion: Governance and Oversight

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States face a well-documented transportation funding crisis:

- National recession
- State budget shortfalls
- Declining gas tax revenues
- Political reluctance to raise gas tax
- Years of underinvestment
- Aging infrastructure
- Growing transportation demand
- End of ARRA monies
- Uncertainty of the federal program
Key Findings: Funding and Finance

- **Budget and appropriations**
  - In all but 8 states and P.R., executive agencies submit budget requests to the governor and to a legislative body.
  - In practice, transportation budget flexibility is limited by state and federal restrictions on use of transportation-specific revenues.

- **Federal funding**
  - As of 2006, federal funds were the primary source of transportation funding in 17 states and D.C.
  - At least 15 states and D.C. allow at least some federal transportation funds to flow directly to the state DOT without state legislative appropriation.
  - Other states have more active legislative role by reviewing, appropriating or setting expenditure limits on federal funds.
Key Findings: Funding and Finance

- **State funding**
  - States provide about half of all surface transportation funding
  - Legislatures exercise more power over state revenues and appropriations
  - Only Colo., Hi., Mo., Penn., Wyo. and D.C. report allowing any state funds to flow directly to a DOT without state legislative appropriation

- **State revenue sources for roads, bridges, rail and transit**
  - **Fuel taxes** (all states + DC + PR; indexed in 6 states); primary source of funds in half the states
  - **Sales taxes on gasoline or diesel** (15 states + PR)
  - **Motor vehicle or rental car sales taxes** (29 states)
  - **Vehicle registration, license or title fees** (48 states + PR)
  - **Vehicle or truck weight fees** (37 states)
  - **Tolls** (24 states + PR, plus non-state turnpike or tolling entities)
  - **General funds** (34 states + DC, plus VTas occasional exception)
  - **Interest income** (37 states + DC + PR)
  - **Other** (40 states + DC + PR)
Key Findings: Funding and Finance

- **Restrictions on revenues**: 26 states restrict fuel tax revenues to highways and roads only
Key Findings: Funding and Finance

Legal Protections on Revenues and Funds

- Calif., Del., N.H., Pa., Tenn. and Wis. explicitly prohibit diversion or transfer of transportation dollars

- Dedications and prohibitions are not always effective! Ariz., Fla., Ky., Minn., N.J., N.C. and Wis. report legislative diversions of transportation funds despite existing restrictions

- Example: In N.J., the annual appropriation act has precedence over any other dedication language found in statute, but not over the constitution. The legislature has chosen not to fully appropriate the statutory revenues eight times since 1985.
Key Findings: Funding and Finance

- **Innovative finance**
  - Tools used to leverage traditional funding sources
  - Some—e.g. SIBs and debt financing instruments—require enabling legislation before a DOT can use them
  - PPPs and GARVEEs may or may not require additional legislative approval

- **Transportation finance mechanisms:**
  - General obligation or revenue bonds (47 states + DC + PR)
  - GARVEE bonds (33 states + DC + PR)
  - Private Activity Bonds (PABs) (6 states)
  - Build America Bonds (BABs) (25 states)
  - TIFIA federal credit assistance (12 states + PR)
  - State Infrastructure Banks (SIBs) (34 states + PR)
  - Public–private partnerships (PPPs) (authorized in 31 states + PR)
  - Design–build (authorized in 38 states + PR)
  - Only Ia., Mont., Neb. and N.D. reported relying on pay–as–you–go rather than using debt financing (but see Neb. LB 84)
Public–private partnerships (PPPs)

- Allow more private sector participation than is traditional in transportation projects, including financing
- Can leverage traditional funding but do not create new revenue -- still need to be paid for using tolls, fees or taxes
- 31 states and PR have enabling statutes as of July 2011; 9 states require legislative approval
Transportation planning

- Wide range of state legislative involvement in transportation planning, from constitutional prohibitions (Neb., Wyo.) to required legislative review or approval (17 states)

- Many other kinds of legislative involvement in planning:
  - Statutory requirements for planning priorities or processes
  - Approval of general priorities but not specific projects
  - Earmarks
  - Legislative hearings on transportation plans
  - Legislators serving on MPO boards
  - Legislative involvement only for specific modes
  - Informal legislative role only
Seventy-seven percent of DOT officials surveyed agreed that transportation projects are chosen based primarily on merit, not political, personal or other considerations. Responses from legislators were more divided.
Small Group Discussion: Funding and Finance

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- There will be a few moments to share with the larger group at the end of this discussion time, as well as a few minutes for Q&A and general wrap-up
Questions?
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* The report is available as a free PDF at http://www.ncsl.org/?tabid=19117