

1 **POLICY: SURFACE TRANSPORTATION FEDERALISM**
2 **COMMITTEE: TRANSPORTATION**
3 **TYPE: DRAFT POLICY DIRECTIVE**
4 **STATUS: REQUIRES RE-APPROVAL; APPROVED AT 2011**
5 **LEGISLATIVE SUMMIT**
6

7 The National Conference of State Legislatures (NCSL) calls on Congress to work closely with
8 states to develop a shared, long-term vision for financing and funding surface transportation
9 systems that will enhance the nation’s prosperity and the quality of life of all Americans.

10 The federal government plays a vital role in supporting a national surface transportation system
11 that meets national defense needs, addresses fairly and equally the mobility needs of all
12 Americans and facilitates interstate commerce. NCSL supports the continuation and preservation
13 of a federal-aid surface transportation program. The federal program should direct spending to
14 national priorities while allowing for state and insular area flexibility in local and regional
15 variations. It is also essential that the federal-aid surface transportation program incorporate
16 requirements and foster goals of other national policies that impact transportation decision-
17 making.

18
19 Recent federal reauthorizations have recognized the unique contributions of each transportation
20 mode to the productivity of the states and the nation, and to the ability of this nation to compete
21 globally in the emerging and existing international economies. These laws contemplate an
22 integrated transportation system for the movement of both goods and people, with increased
23 emphasis on adopting technologies that improve productivity. NCSL urges Congress to provide
24 states enhanced programming flexibility to meet a multitude of national goals. States should have
25 maximum flexibility in deciding how to generate and leverage transportation revenues and how
26 to use state and federal dollars. The ability of states to maintain flexibility in decision making
27 and comply with environmental and other mandates is dependent upon regulatory flexibility as
28 well as adequate and reliable funding.

29
30 **National Vision**

31 The surface transportation system in the United States needs a new vision to guide it beyond the
32 Interstate Highway era into the 21st century and the needs and challenges that lie
33 ahead. Congress should look at surface transportation anew, authorizing a new program that
34 better meets current and future needs for interstate mobility.

35

36 Congress must clearly articulate this new national vision for surface transportation. In doing so,
37 Congress should consider the following as federal objectives:

- 38 • Interstate commerce and freight mobility,
- 39 • Interstate movement of people,
- 40 • National defense and homeland security,
- 41 • Safety,
- 42 • Environmental and air quality preservation and improvements,
- 43 • Research and innovation, and
- 44 • Economic productivity.

45

46 Congress should focus federal programs and funds on these interstate goals. In doing so,
47 Congress should heed the Tenth Amendment and not intervene in or interfere with state-specific
48 transportation priorities.

49

50 **Funding and Financing**

51 A federal trust fund, financed by user fees, should be retained as the primary method of funding
52 federal-aid surface transportation programs. It must provide states a sustained, reliable source of
53 transportation funding. It is critical that the Highway Trust Fund (HTF) retain spending firewalls
54 that ensure that user fees will be deposited in the HTF to be used on surface transportation and
55 will not be subject to non-transportation federal discretionary spending. NCSL supports states
56 having maximum flexibility in the use of funds they receive from the HTF. Additional surface
57 transportation financing and investment priorities include the following.

- 58 • User fees previously collected and diverted from the HTF must be reclaimed.
- 59 • Transit agencies, including commuter rail operations, should be exempt from federal fuel or
60 energy taxes.

- 61 • Unobligated revenues should not be allowed to accumulate in the HTF. Moreover, federal
62 highway spending should not be artificially reduced so that HTF revenues will accumulate
63 unspent, thereby appearing to lower the federal deficit.
- 64 • Annual appropriations should equal authorized spending levels. Obligation ceilings should be
65 set and maintained to reflect gross receipts, plus interest earned.
- 66 • Any federal user fee or container fee assessed for transportation security or infrastructure
67 should provide for state flexibility in project selection and may include private sector input
68 when programming projects funded by a security or infrastructure user fee or container fee.
- 69 • User fees designated for deposit in the HTF should be made available for flexible
70 transportation usage by states. States should have flexibility in the use of funds for intercity
71 passenger rail service, including Amtrak. The federal match should encourage state efforts in
72 specific programs of national significance, but not discourage flexibility in state or insular
73 area transference of categorical funds. Despite separate federal authorizing legislation for
74 Amtrak, Congress must ensure that surface transportation authorizing legislation
75 acknowledges and fully supports the role of passenger rail for ensuring interstate
76 mobility. States that invest in or otherwise support passenger rail services to complement
77 highway mobility options should be rewarded and encouraged.
- 78 • Any examination undertaken on the advisability and feasibility of establishing a federal
79 capital budgeting program should preserve the ability of states to set surface transportation
80 infrastructure priorities.
- 81 • Federal formulas designed to distribute discretionary highway funds should consider all state,
82 insular area, and local efforts to fund highways and not be limited to fuel taxes raised.
- 83 • An increase in federal highway transportation funding is needed in the short-term to provide
84 sufficient funding for the next authorization to meet the new vision and until a new, more
85 stable long-term funding mechanism for surface transportation can be put in place. Any fees
86 or taxes imposed on carbon-based fuels used by vehicles should be recognized as a
87 traditional source for transportation funding and should remain dedicated to the Highway
88 Trust Fund. Congress must migrate the Highway Trust Fund from a gas tax to a new national
89 funding stream. In order to accomplish this, Congress must examine innovative ways that
90 capture all system users. Congress should encourage pilot programs in states for

91 experimentation with approaches, methods and mechanisms. Any system should ensure the
92 privacy of users.

93 • Apart from the existing Highway Trust Fund flows for transit, NCSL discourages expansion
94 of federal-local funding streams without appropriate coordination with state legislatures as
95 these complicate state-local relationships, financial arrangements, and state match
96 expectations for transportation programs.

97 • Congress should continue to encourage and expand incentive-based programs, such as the
98 Urban Partnerships program, to spur local and regional transportation innovation in full
99 coordination with state authorities and to promote the use of tolling, congestion pricing,
100 public transit, telecommuting, real-time traffic and other advanced technologies (also known
101 as intelligent transportation systems), and other strategies in a comprehensive approach to
102 achieve interstate mobility goals through urban congestion reduction.

103 • All funding and financing options must be available to state legislatures for state and federal-
104 aid programs. All current federal restrictions on states' authority to toll should be removed so
105 that states can optimize resources for capacity expansion, operations and maintenance while
106 ensuring free flow of goods and people. Tolling, value-pricing and public-private
107 partnerships (PPPs) should remain state provinces and are not appropriate federal funding
108 and financing mechanisms.

109 • Federal guidelines should be designed to accommodate private sector support. The level of
110 private sector participation is best determined by state and local authorities, and private
111 participation should not be a prerequisite for receiving federal funds. Statutory or regulatory
112 barriers to state and locally-granted revenues should be removed. States should continue to
113 have flexibility in creating legislative and programmatic frameworks for public-private
114 partnerships (PPPs), and full authority to select and engage in PPP projects.

115 • Congress should not mandate or prescribe state use of toll revenues or tolling mechanisms,
116 though Congress may seek to incentivize states to avoid redirection of toll revenues to non-
117 transportation uses.

118 • Congress should continue Transportation Infrastructure Finance and Innovation Act (TIFIA),
119 Grant Anticipation Revenue Vehicles (GARVEE), private activity bond, and State
120 Infrastructure Bank (SIB) programs. Congress should expand credit-based and loan

121 guarantee programs to incentivize private sector investment—particularly for freight mobility
122 by rail, highway and waterway—in projects sponsored by the public sector.

- 123 • Congressional earmarks on transportation spending or for transportation projects should
124 represent additional funding, should be distributed from non-formula funds, and should not
125 redirect base funding. Earmarks should fit within a national objective as defined in the
126 surface transportation program's new vision and must appear in a state DOT's plan.

127

128 **Technology**

129 NCSL endorses the U.S. Department of Transportation's goal of deploying advanced
130 technologies known as intelligent transportation systems for consumers of passenger and freight
131 transportation across the nation. Intelligent Transportation Systems are advanced wireless
132 technologies that maximize the safety, mobility and environmental performance of the surface
133 transportation system. These services should be integrated, interoperable, intermodal and
134 voluntary.

135

136 NCSL recognizes that the private sector and the federal government should lead in the
137 development and bringing to market of reliable and affordable ITS. The federal government
138 should also set national standards for original equipment manufacturers to install the necessary
139 technology so that states can take full advantage of the efficiencies and safety benefits of
140 intelligent transportation systems. Congress should require the Secretary of Transportation to
141 initiate a rulemaking proceeding that new motor vehicles be equipped with platforms for
142 interoperable systems that enable vehicle-to-vehicle and vehicle-to-roadside communications for
143 the purposes of active safety and electronic tolling and tax collection and to provide a means of
144 accelerating the deployment of this equipment in existing vehicles.

145

146 Congress should incentivize states to explore and deploy technology for intelligent infrastructure,
147 making it a high priority and performance measurement benchmark in the restructured federal
148 surface transportation program. Privacy protections must be developed and incorporated into all
149 policies and practices governing use of intelligent transportation systems and technologies. ITS
150 should not be mandated except for legitimate governmental purposes. Any information collected
151 with such technology should be governed by state laws.

152

153 The federal government should encourage states to cooperate with the private sector in the
154 development of real-time traffic information systems.

155

156 **Planning**

157 Congress must work with state legislators to establish in the next authorization a robust and
158 cooperative state-federal system to set system plans and priorities for federal
159 investment. Transportation program plans developed by entities other than those created by the
160 states must be coordinated with state legislatures to ensure that proposals fit into state
161 programmatic and funding plans.

162

163 The federal government is uniquely situated to identify and collect data of importance to the
164 development of, maintenance of, and planning for a national transportation system. Congress
165 should incentivize states to share data with the federal government and not use mandates to elicit
166 participation in data collection and analysis.

167

168 NCSL supports a negotiated rule-making led by U.S. Department of Transportation, or another
169 collaborative process congressionally mandated and facilitated by the Transportation Research
170 Board or American Association of State Highway and Transportation Officials (AASHTO), in
171 which NCSL and state legislatures are fully represented to determine the necessary level of and
172 standards for uniformity among states in data collection efforts.

173

174 **Performance Measures**

175 NCSL encourages the federal government to establish a cooperative process through which
176 performance measures can be crafted for gauging the success of programs. Federal funding
177 should not be directly linked to performance measures; instead, a pilot program should be
178 established in which states can voluntarily participate to gain incentives such as additional
179 funding or reduced regulatory burdens upon successful deployment and use of performance
180 measures. Performance measures should be framed as goals for which states may determine the
181 specific measures and benchmarks.

182

183 Federal monitoring and compliance standards should accurately reflect compliance effort and
184 unique state circumstances.

185

186 **Freight and Interstate Commerce**

187 Ensuring the safe and timely movement of goods across the nation is an appropriate federal
188 transportation priority. Robust state-federal consultation should evaluate freight flows and
189 collaboratively plan the routes and development necessary to maintain and expand the highway
190 freight corridors.

191

192 Rail capacity expansion should be coordinated with the states to ensure intermodal cooperation
193 and maximum public benefit.

194

195 The federal government should incentivize states to explore methods of separating highway
196 freight traffic from passenger traffic for the purposes of efficiently moving interstate commerce
197 and public safety.

198

199 Federal engagement with, and investment through, the states to ensure effective and efficient
200 movement of freight through ports or other commerce choke-points is appropriate.

201

202 **Environmental Issues**

203 The federal government has a role to play in ensuring that national environmental policy meshes
204 with national transportation policy while assuring efficient and cost-effective approaches to both
205 goals.

206 • Efforts to streamline regulatory review processes must continue so that construction projects
207 can again be realized on-time and on-budget. Congress should allow and enhance states'
208 programmatic permitting.

209 • Incentives to states to achieve environmental quality standards through transportation
210 projects should replace prescriptive federal regulation and punitive funding actions.

211

212 **Safety**

213 NCSL supports a continued federal role in helping to set national performance and safety
214 goals. Safety programs should be expanded to incorporate emerging safety issues while
215 respecting state sovereignty.
216 Federal transportation safety programs should promote comprehensive safety programs in the
217 states. NCSL opposes the use of federal sanctions or redirection penalties to enforce federal
218 safety standards. Federal mandates that are enforced through the use of "reprogramming"
219 sanctions should be repealed. Any existing federal compliance standards should reflect overall
220 state effort to promote safety.

221

222 **Research and Innovation**

223 NCSL acknowledges that federal leadership and investment in transportation related research
224 and innovation is needed and appropriate. In particular, NCSL supports federal research that
225 promotes fuel efficiency, alternative fuels, high-mileage vehicles, safety and
226 technology. Findings and best practices identified through federal research should be shared fully
227 with states in an unbiased, nonpartisan and scientific manner.

228

229 **Indian Programs**

230 Transportation is an important service program that provides the infrastructure upon which
231 American Indian tribes' initiatives can be achieved. NCSL recognizes the unique and extensive
232 transportation funding needs on Indian lands. In an effort to ensure that these needs are
233 adequately addressed, NCSL supports a direct planning relationship between Indian Nations and
234 state departments of transportation. NCSL further supports the continuation of the Federal Lands
235 Program and its work with Indian reservations.