Transportation Governance and Finance

A 50-State Review of State Legislatures and DOTs

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Presentation Overview

- Summary of the findings of the NCSL–AASHTO research project on transportation governance and finance
- Progress summary and next steps
- Q&A (at the end of the session)
Project Review

- **Goal:** To fill a gap in the existing knowledge base about transportation governance by examining the relationships between state legislatures and state DOTs in depth.

- **Focus:** Primary focus is transportation funding and finance; other areas of transportation governance are also examined.

- **Topics:**
  - Communication and collaboration
  - Legislative process
  - Legislative oversight
  - Budget and appropriations processes
  - Federal, state and local transportation funding
  - Innovative finance
  - Transportation planning
  - Other legislative and executive interactions in transportation funding and finance
Project Review

Methodology

- Original survey research with legislators, legislative staff and DOT officials in each jurisdiction
- Responses received from:
  - 50 states, D.C. and Puerto Rico on Survey 1 (funding and finance)
  - 50 states and D.C. on Survey 2 (executive and legislative roles)
  - 30 legislators and 26 DOT leaders on Survey 3 (anonymous)
  - 8 states on Survey 4 (brief NLPES questionnaire on evaluation)
  - Substantive feedback received from 33 states during fact-checking process
- Legal and legislative research
- Literature review
- Targeted expert interviews
State legislators and DOT executives overwhelmingly agree 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.

Findings: Communication and Collaboration

- Ad hoc communication or exclusive focus on formal or statutory requirements and processes
- Engagement only during budget and appropriations process
- Limited or no interim committee or process
- Little or no notice given before transportation-related announcements
- Communication through a small number of persons in each organization
- Limited or no access to DOT executive management
- Limited or no DOT legislative liaison function

- Proactive communication, including active engagements during the interim and discussion about upcoming developments
- Formal and informal communications, including emails, district reports, meetings and phone calls
- DOT informational meetings, presentations or receptions for legislators and legislative staff
- Collaborative approach to drafting legislation and/or a process for agency fiscal notes
- Communication at all levels of both organizations
- Access to DOT executive management
- Dedicated, full-time DOT legislative liaisons
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.
Findings: Communication and Collaboration

- An overwhelming 96 percent of DOT executives surveyed believed that the DOT is open and transparent in how it shares information about its activities and decisions; fewer than 50 percent of responding state legislators agreed.
Separation of powers necessarily leads to areas of overlap and tension

Legislation

- Legislature's power to enact laws is balanced by executive veto authority and other executive involvement in the process
- DOTs in at least 17 states and D.C. can introduce legislation through the lead executive or by a request to the legislature
- Hi., N.D., Okla., Vt. And W. Va. DOTs can draft or present bills for legislative consideration
- Wyo. has a fully collaborative process to draft 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 must prepare fiscal notes for legislation that affects them
- Va. and Wis. DOTs also provide policy analyses
Findings: Governance

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

- 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 support compliance with legislative oversight mechanisms
Nearly 90 percent of DOT officials surveyed believed that the DOT acts in a way that is consistent with legislative intent, while only 57 percent of responding legislators agreed.
Findings: Funding and Finance

- **Budget and appropriations**
  - All but 8 states and P.R., executive agencies submit budget requests to the governor and also to a legislative body
  - In practice, transportation budget flexibility is limited

- **Federal funding**
  - Federal funding accounts for around 20 percent of highway and transit funding
  - At least 15 states and D.C. allow at least some federal funds to flow directly to the state DOT without state appropriation
  - In Ill., Minn. and S.D., funds are reviewed and reflected in state budget documents but can be spent without legislative action
  - Other states have more active legislative role by appropriating federal funds at the agency, program, category or project level, or by setting expenditure limits
Findings: Funding and Finance

State funding
- States provide about half of all surface transportation funding
- Legislatures exercise power over revenues and appropriations
- Only Colo., Hi., Mo., Penn., Wyo. and D.C. report allowing any state funds to flow directly to a DOT without appropriation
- Both revenues and funds can have restrictions (except Alaska!)
  - 26 states restrict fuel tax revenues to highways and roads only
  - At least 35 states direct use of transportation funds or accounts
  - Restrictions and prohibitions on diversion aren't always effective

Local aid
- 27 states distribute funds to local governments primarily by statutory formulas based on population, road mileage or other criteria
- 19 use a blend of legislative appropriations and formulas
  - Of those, 11 also provide discretionary grants
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, depending on the state

Public–private partnerships (PPPs or P3s)

- Allow more private sector participation than is traditional in infrastructure project delivery and finance
- Can leverage traditional funding but not create new revenue
- As of April 2011, 31 states and P.R. have PPP enabling statutes
Findings: Funding and Finance

- PPP Legislative Approval Requirements

Map showing states with different legislative approval requirements for PPP projects, including:
- States that require legislative approval for some or all PPP projects
- States that require legislative approval only to convert existing facilities to privately operated toll roads (Utah and Puerto Rico only)
- States that provide for legislative review or other involvement, but not approval
- States with PPP enabling legislation with no formal legislative requirements
- States with no PPP legislation
Findings: Funding and Finance

- Transportation planning
  - Wide range of legislative involvement in transportation planning
    - On one end, Neb. and Wyo. constitutionally prohibit the legislature from prioritizing road projects
    - On the other, at least 17 states require legislative review or approval of DOT plans, programs or major projects
    - Other kinds of legislative involvement:
      - 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.
Retention of surplus or excess funds
- In most states, unspent funds revert to a DOT–administered transportation fund
- In Alaska, Fla., Ill., Ky., N.J., Texas and Wash.: Funds lapse and DOT must seek new appropriation or expenditure authority
- In Calif., Minn., Neb., N.D. and Wis.: Funds are retained but must be re-appropriated

Legislative actions to control DOT costs
- Low bid requirements (many)
- Legislative approval of waivers of competitive selection (Ohio)
- Downsizing by statute (Va. 2009 Appropriation Act)
- Limits on use of revenues for administrative costs (Nev.)
- Specific reporting requirements (Vt.)
Progress Summary and Next Steps

- Currently in the final publication process

- To be published online and in print late April 2011
  - To include a synthesis of state legislative–DOT interactions plus individual profiles for each of the 50 states, the District of Columbia and Puerto Rico

- Webinar tentatively planned for mid-May 2011

- Looking for other opportunities to actively engage legislative and DOT constituents in this material ...
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