

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.¹ This overlap not only results in necessary, dynamic tensions and conflicts, but also offers rich opportunities for collaboration and cooperation.

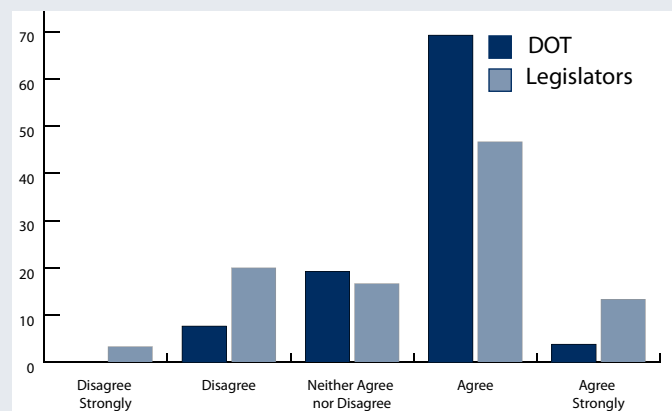
This report aims to provide a broad, 50-state review of the roles of, and the relationships between, state legislatures and DOTs. Although the emphasis is on transportation funding and finance, the report also examines other areas of transportation governance. This report is intended to benefit DOTs, 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

Key Survey Finding: 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. Note: See page 2 for a description of this survey's methodology and data limitations.

The legislature and DOT in my state work together effectively.



Data expressed in percentage of legislator or DOT respondents.

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

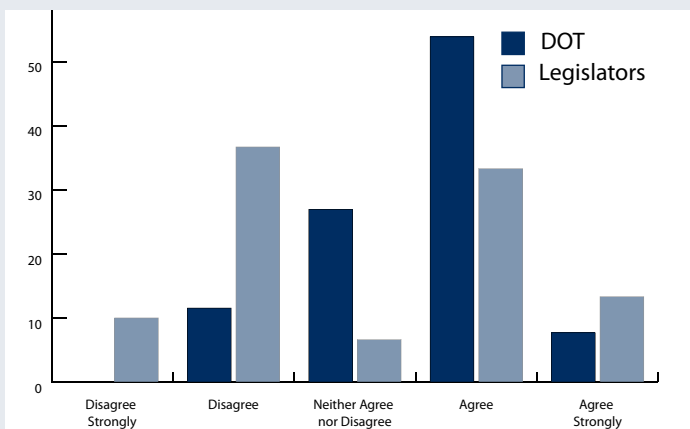
This report is based on original survey research; legal and legislative research; a literature review; and expert interviews, including a conference call with the National League of Cities and select constituents.

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.

Key Survey Finding: Only 12 percent of DOT officials surveyed—compared to nearly half of responding legislators—disagreed with a statement that the balance of power is appropriate between the DOT and the legislature in their state. Note: See text on this page for a description of this survey’s methodology and data limitations.

There is an appropriate balance of power in my state between the DOT and the legislature.



Data expressed in percentage of legislator or DOT respondents.

Survey 4 was a short set of questions distributed through the National Legislative Program Evaluation Society (NLPES) list-serve, 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.² 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).³

Table 1. NCSL Categorization of “Red,” “White” and “Blue” Legislatures

Type of Legislature	Characteristics	States
“Red” Legislatures	<ul style="list-style-type: none"> 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 	<p>Red California, Michigan, New York, Pennsylvania</p> <p>Red Light Illinois, Florida, Ohio, Massachusetts, New Jersey, Wisconsin</p>
“White” Legislatures	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> “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 	<p>Blue Georgia, Idaho, Indiana, Kansas, Maine, Mississippi, Nevada, New Mexico, Rhode Island, Vermont, West Virginia</p> <p>Blue Light Montana, New Hampshire, North Dakota, South Dakota, Utah, Wyoming</p>

Source: NCSL, 2009.

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.⁴

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

Federal	State	Regional Transportation Planning Organizations	Local Governments	Transit Agencies	Other
<ul style="list-style-type: none"> • Congress • U.S. Department of Transportation (U.S. DOT) • Six major federal land management agencies • Three primary environmental protection agencies 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Urban: 383 metropolitan planning organizations (MPOs), ranging from one to 26 per state • Rural: 180 regional [transportation] planning organizations (RTPOs or RPOs) 	<ul style="list-style-type: none"> • 3,043 counties • 19,431 municipalities • 16,504 townships • 767 highway special districts 	<ul style="list-style-type: none"> • 640 urban operating systems, including 600 public agencies • 2,000 rural operating systems 	<ul style="list-style-type: none"> • 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

Source: Intergovernmental Forum on Transportation Finance, 2008.

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.⁵ 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.

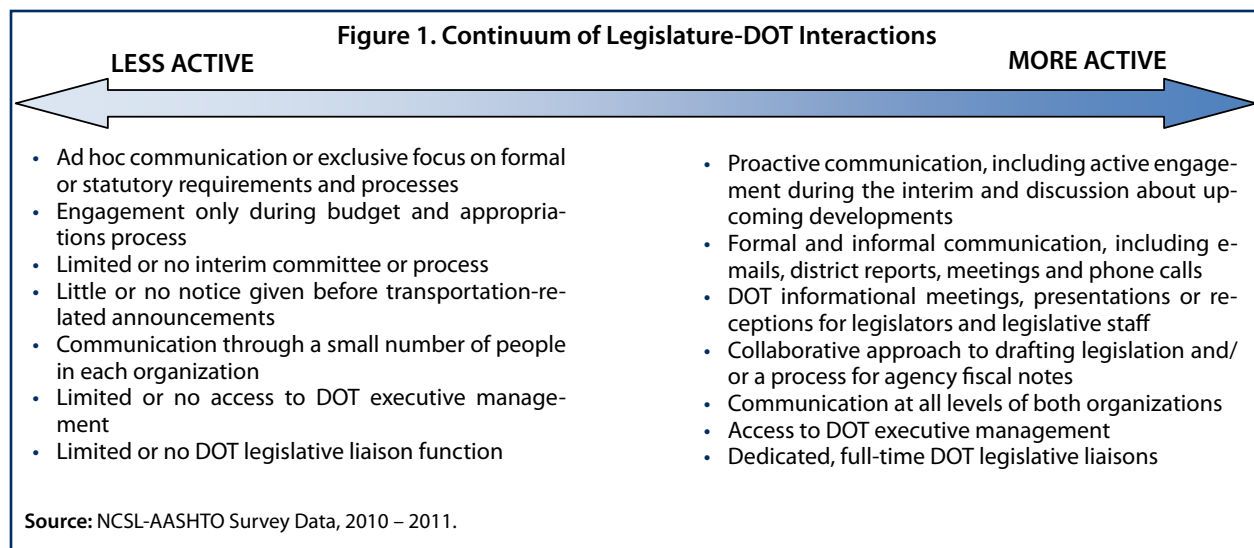
3. LEGISLATURE-DOT COMMUNICATION AND COLLABORATION

In their responses to the anonymous NCSL-AASHTO survey, legislators and DOT executives overwhelmingly agreed that maintaining regular, open, honest and transparent communication between the legislature and the DOT is one of the most vital elements of effective transportation governance (Table 3 contains a list of all recommendations). In practice, the ways in which legislatures and DOTs engage in communication and collaboration differ significantly across jurisdictions, including states with limited, ad hoc interactions; those with formal, structured engagements focused on reporting requirements and the budgeting process; and those with extensive, proactive, collaborative communication that extends beyond the legislative session and pervades all levels of both organizations (Figure 1). Most states have a combination of formal and informal mechanisms that are more active at certain times of year, particularly in relation to the annual or biennial budget and appropriations process. State-by-state descriptions of communication and collaboration are included in the State Profiles section of this report.

Table 3. General Recommendations from State Legislators and DOT Executives

What to Do	
State Legislators Say...	DOT Executives Say...
<ul style="list-style-type: none"> ✓ Engage in planned interactions and collaboration. ✓ Work side-by-side on transportation policy decisions. ✓ Have strong leaders in both organizations, including outstanding professionals in top DOT positions. ✓ Effectively communicate the potential impacts of legislative decisions. ✓ Work out new or complex issues before sessions. ✓ Have regular interactions among leadership on both sides. ✓ Be accurate and responsive with information. ✓ Keep legislators advised about issues in their districts. ✓ Use third parties and outside experts to bridge gaps. ✓ Facilitate responsible, informed budget decisions by providing long-range plans or detailed project lists. ✓ Understand the legislative process and oversight role. 	<ul style="list-style-type: none"> ✓ Always treat relationships as a top priority. ✓ Maintain open, frequent, honest communication. ✓ Balance the power. ✓ Use DOT legislative liaisons to help keep both groups involved with decision making. ✓ Take the politics out of planning by allowing for project prioritization based on legislatively set criteria. ✓ Involve local officials and the public in the process. ✓ Build trust and mutual respect. ✓ Collaborate with each other and with other stakeholders. ✓ Work together as allies. ✓ Understand each other's interests and roles. ✓ Keep the message simple and consistent. ✓ Understand statewide needs and project proposals.
What Not to Do	
State Legislators Say...	DOT Executives Say...
<ul style="list-style-type: none"> ✗ Don't slow down the process with your own agenda. ✗ Don't fail to respond to requests for information. ✗ Don't review transportation plans without discussing them with the legislature—this keeps important issues from being passed. ✗ Don't forget to communicate with the minority party. ✗ Don't keep important information from legislators. ✗ Don't focus on pet projects to the neglect of others. 	<ul style="list-style-type: none"> ✗ Don't make funding decisions based on considerations other than need. ✗ Don't dictate projects based on political priorities. ✗ Don't be swayed by public opinion over information and communication from the DOT. ✗ Don't expect the same or better level of service from the DOT as new mandates are added or resources cut. ✗ Don't micromanage.

Source: NCSL-AASHTO Survey Data, 2010 – 2011.



One recommendation from survey respondents for promoting effective interaction between legislatures and DOTs is to have a strong government relations office in the DOT that includes a state legislative liaison. At least 38 states and the District of Columbia employ dedicated legislative liaisons or governmental affairs offices that act as primary points of contact for legislators and legislative staff, provide requested information to the legislature, and sometimes lobby on behalf of the DOT (see page 11 for more about lobbying).

Most other states—including Hawaii, Montana, Nevada, New Hampshire, New York, North Dakota, South Dakota, Vermont and Wisconsin—incorporate some of the functions of a legislative liaison under another division or position, such as a communications or legal services office. Wisconsin also has a legislative committee within the DOT—chaired by the Executive Assistant, who has legislative liaison responsibilities—that meets regularly to discuss pending legislation. The DOTs in Alabama, Arkansas and New Mexico do not report having any dedicated legislative liaisons. New Mexico reports direct, frequent communication between multiple levels of the DOT and the legislature instead.

Key recommendations related specifically to communication and collaboration are listed in Table 4.

Table 4. Recommendations for Communication and Collaboration from State Legislators and DOT Executives

State Legislators Say...	DOT Executives Say...
<ul style="list-style-type: none"> ✓ You can never have too much communication between the DOT and legislators. ✓ Engage in planned interaction and collaboration. ✓ Produce briefings or updates to both chambers whenever either party indicates a need for clarity. ✓ Have frequent outreach meetings and regular meetings of leadership on both sides. ✓ Reach out with timely information to the full legislature—not just to the Transportation Committee. ✓ Communicate with the minority party, too. ✓ Effectively communicate the potential impacts of legislative decisions. ✓ Work out new or complex issues before sessions. ✓ Be accurate and responsive with information. ✓ Keep legislators advised about issues in their districts. ✓ Ask questions and listen before drawing conclusions. 	<ul style="list-style-type: none"> ✓ Communicate early and often, without fear. ✓ Be straightforward, on point, positive and accurate. ✓ Say “yes” when you can to legislative requests or concerns, but don’t sugar-coat a “no.” ✓ Participate in early discussions, legislative briefings and workshops, and one-on-one and small group meetings. ✓ Keep legislative committees informed. ✓ Use a DOT legislative liaison and legislative fiscal offices to build credibility and facilitate communication. ✓ Encourage dialogue between local legislators and district DOT staff. ✓ Establish positive relationships with both parties. ✓ Educate—keeping the effects of term limits in mind. ✓ Present problems as they arise—and give legislators time to digest bad news. ✓ Keep the message simple and consistent.

Source: NCSL-AASHTO Survey Data, 2010 – 2011.

4. TRANSPORTATION GOVERNANCE

Legislatures and DOTs have several areas of overlap—and therefore possibilities for both tension and collaboration—in state transportation governance. The legislature is responsible for overseeing executive activities generally, and both legislatures and DOTs exercise some authority in developing policies and programs, defining expectations and measuring performance, and, in some states, engaging in the transportation planning process. This chapter explores several ways in which state legislatures and DOTs share the complex task of governing the nation’s transportation system. The next chapter looks specifically at how they interact in relation to funding and financing decisions.

Legislation

One main power of the legislative branch is to enact the laws of the state. Legislatures must authorize the activities of the executive branch through legislation, and they also pass many laws that affect state DOTs and the nation’s transportation system. Relevant laws include those that concern DOT establishment, leadership and organizational structure; legislative oversight mechanisms; performance goals and reporting requirements; revenue sources—including bonds and taxes—and allowable use of these revenues; procurement and financing methods; transportation planning processes; and budget and appropriations bills. The legislature also may choose to enact statutory sunset provisions that cause DOT programs or authorizations to expire after a certain period of time. Arizona, California, Missouri, North Dakota, Texas and Utah, for example, have sunset provisions on certain DOT design-build authorizations.⁸

Generally, the legislature’s lawmaking power is balanced by constitutionally granting veto authority to the chief officer of the executive branch, the governor. Governors in all states are authorized to veto entire bills; many states also allow the governor to use partial veto methods, including line item or amendatory vetoes.⁹ In some cases, an executive agency such as a DOT may request that the governor exercise this power if the agency has concerns about a particular piece of legislation. Many states also have other means by which DOTs can participate more actively in the legislative process. These include drafting and presenting legislation; lobbying; and providing fiscal notes or policy analyses for proposed bills.

Drafting and Presenting Legislation

In many states, DOTs can draft, introduce or request transportation-related legislation. DOTs in California, Connecticut, Idaho, Indiana, Maine, Maryland, Massachusetts, Michigan, Montana, Nebraska, Nevada, New York, South Dakota, Tennessee, Utah, Virginia, Washington and the District of Columbia can introduce legislation either through the office of the governor or other lead executive or at that executive’s discretion, or by a direct request to a legislator or legislative committee (see State Profiles). Hawaii, North Dakota, Oklahoma, Vermont and West Virginia report their DOTs can draft or present bills for legislative consideration.

In Wyoming, the process of drafting transportation-related legislation is collaborative. The DOT executive team generally is given a full day to present its concerns and issues at each of the three meetings of the Joint Transportation, Highways and Military Affairs Committee during the interim between legislative sessions. Be-

tween those meetings, legislative attorneys work directly with the DOT to draft legislation for the committee to consider. Typically, DOT personnel can comment and suggest revisions to legislative drafts before the drafts are presented to the committee. The DOT also is given the opportunity to suggest topics for the committee to consider and study during the interim.

Lobbying

DOTs track and monitor transportation-related bills, testify at legislative hearings, provide requested information to legislators and legislative staff, or develop recommendations concerning proposed legislation. In some states, the DOT formally presents its position on legislative measures through the work of one or more registered lobbyists. Florida, Georgia, Iowa and Missouri report lobbying the legislature (see State Profiles); in other states—including Louisiana and Texas—however, the DOT does not engage in lobbying. In Texas, state agency employees are prohibited from influencing legislation, but the Texas Transportation Commission has been statutorily granted the authority to provide recommendations to the governor and the legislature on DOT operations and efficiencies.¹⁰

Fiscal Notes and Policy Analyses

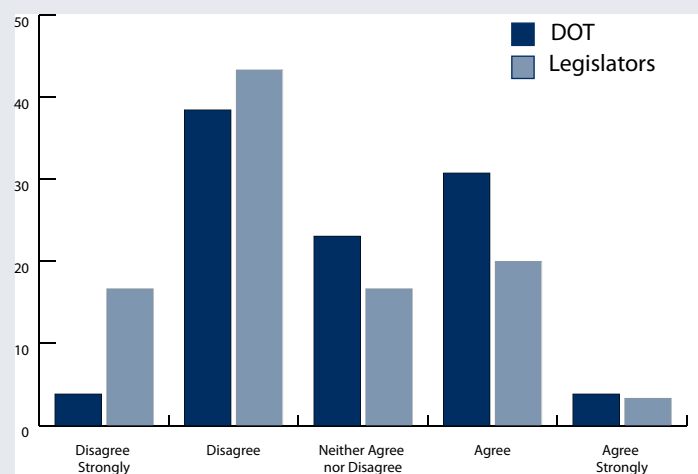
All state legislatures have a process by which some or all proposed bills are accompanied by detailed descriptions of their fiscal implications; in some states, all bills must have this information, and in others, it is provided rarely or only upon request. In almost all states, fiscal notes are prepared by a legislative fiscal office, sometimes—as in Missouri, Oregon and Texas—informed by data or fiscal impact statements solicited from affected agencies such as DOTs (see State Profiles). In Alaska, Minnesota, North Dakota, West Virginia and Wisconsin, however, DOTs and other executive departments that ultimately would administer proposed programs or be affected by enacted legislation are asked to prepare fiscal notes themselves.¹¹ These notes are intended to convey objective fiscal data, not the DOT’s position on a bill. In addition, DOTs in Virginia and Wisconsin provide analyses that outline the policy implications of proposed legislation; the Virginia DOT prepares legislative impact statements that include fiscal analyses and policy implications of proposed legislation. These activities can add significantly to an agency’s workload, but also offer another opportunity for legislative-executive communication and collaboration in the area of transportation governance.

Legislative Oversight

Legislative oversight refers to the review and evaluation of selected executive branch programs and activities. According to the Ohio Legislative Service Commission, “The legislative branch conducts oversight activities because it not only enacts new

Key Survey Finding: Fewer than half of DOT officials surveyed—compared to 60 percent of legislators—disagreed with a statement that the legislative process introduces unnecessary bureaucracy or delay into transportation-related activities in their state. Note: See page 2 for a description of this survey’s methodology and data limitations.

The legislative process in my state introduces unnecessary bureaucracy or delay into transportation-related activities.



Data expressed in percentage of legislator or DOT respondents.

programs for the state, but also has a duty to ensure that existing programs are implemented and administered efficiently, effectively and in a manner consistent with legislative intent.”¹² During the past three decades, legislatures have assumed more active oversight of executive branch operations.¹³

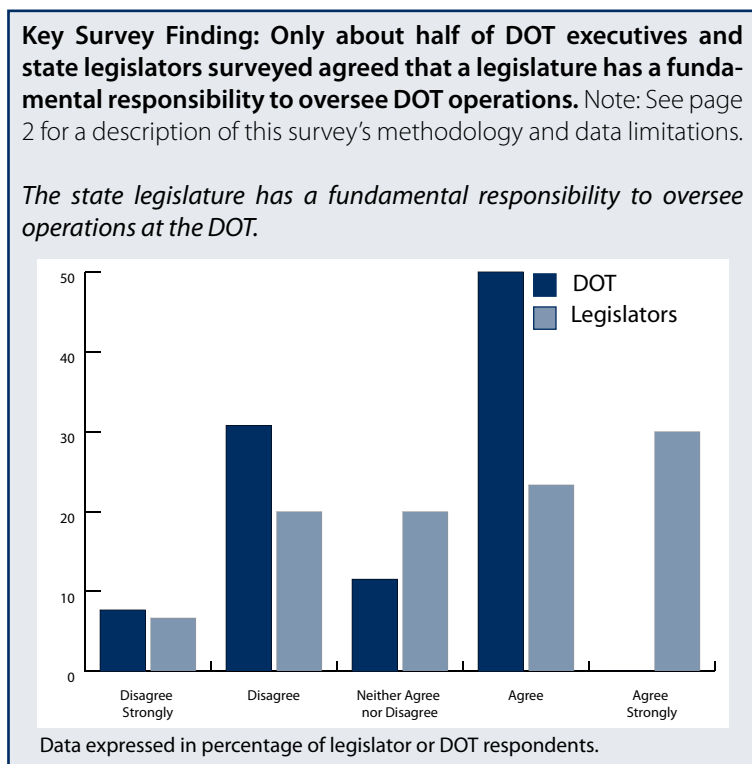
Oversight takes place through many mechanisms described in the remainder of this chapter, including the work of certain select and standing committees; legislative approval of leadership appointments; review of administrative rules and regulations; adoption of performance goals and measures; evaluation of programs, agencies and activities; and reporting requirements. Most states use a blend of most or all of these tools. Typically, the budget and appropriations process—discussed in the next chapter—also includes oversight activities, and in many cases is seen as the main mechanism for legislative oversight of the DOT. As several survey respondents remarked, knowledge and investment on the part of both DOTs and legislatures are necessary to ensure that oversight tools are effective and meaningful in practice.

The literature on separation of powers typically considers oversight of executive entities to be one of the key roles of the legislative branch. According to NCSL, “Legislative oversight is a fundamental check and balance. As states have assumed greater responsibilities for government programs and services, the importance of legislative oversight has increased.”¹⁴ Nevertheless, only about half of DOT executives as well as state legislators who responded to the NCSL-AASHTO survey agreed that a legislature has a fundamental responsibility to oversee DOT operations. More than 40 percent of legislators, however, thought the DOT should be subject to additional independent oversight and accountability, while no DOT officials did (see Key Survey Findings on this and the following page). “More active legislative involvement, however,” cautions NCSL, “may increase frictions [between the legislative and] the executive branch.”¹⁵

Committee Oversight

Forty-seven states and the District of Columbia reported ongoing oversight of their DOTs by one or more legislative committees or commissions in their responses to the NCSL-AASHTO survey, making it one of the most common forms of legislative oversight of DOTs. Standing committees that address transportation-related topics, special oversight committees, interim committees, task forces or commissions, and fiscal committees or subcommittees all may carry out some oversight functions. These entities may consist entirely of legislators or they may include legislators among others; many are supported either by committee-specific or legislative agency staff members. (Appendix E contains a list of legislative committees that addressed transportation issues as of April 2011.)

In many states, several committees share



oversight responsibilities for a DOT. Tennessee’s DOT, for example, is overseen by seven committees: Senate and House Transportation Committees for general oversight; Senate and House Finance, Ways and Means committees on budget and expenditure issues; Senate and House Government Operations Committees on rules and regulations; and the joint Fiscal Review Committee for contracts.

Standing Committees and Interim Charges

Most often, standing committees that cover transportation-related issues are responsible for continuous review of the DOT. Standing committees or subcommittees also may be charged by legislative leadership to examine and review a specific topic during the interim, in preparation for the next legislative session. For example, a study on federal highway appropriations and state matching requirements was assigned to the North Dakota Transportation Committee during the 2005–2006 interim. In some cases, requests for interim studies may come from individual legislators.

Special Oversight Committees

The most direct and formal oversight functions are performed by special or select committees that are created to review narrowly defined issues or to specifically provide oversight of a given agency. The use of such oversight committees has increased in recent years. Louisiana, Missouri, North Carolina and Vermont have special committees dedicated to transportation oversight (see Appendix E).

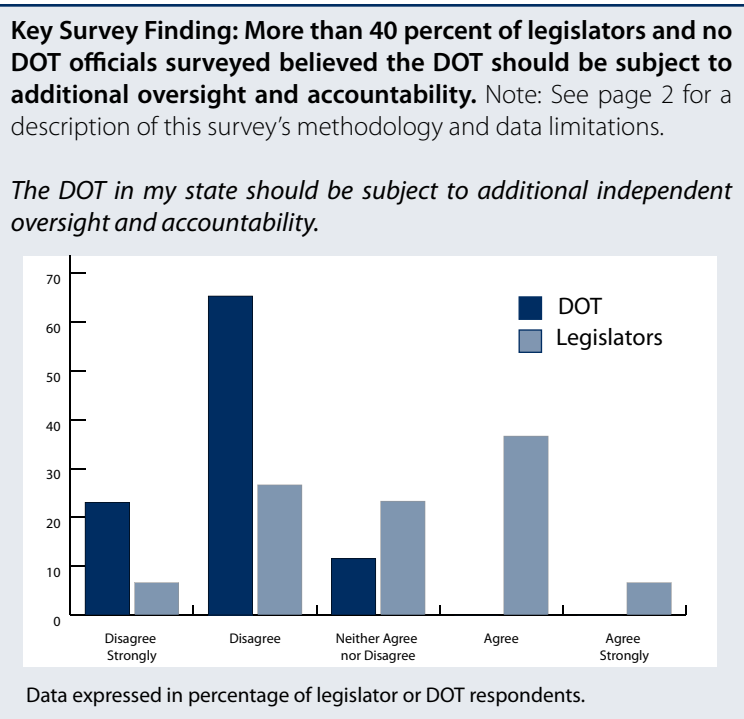
Interim Committees

In some states, committees that operate solely during the interim between legislative sessions have significant oversight authority. Kentucky, for example, has no standardized, ongoing oversight of its DOT through a permanent oversight committee; during the interim, however, the legislature has both an Interim Joint Committee on Transportation and a Budget Review Subcommittee on Transportation of the Appropriations Committee, each of which holds monthly meetings in which DOT activities are discussed and examined. In Nevada, the Interim Finance Committee reviews executive branch fiscal and programmatic operations during each interim and considers modifications to the DOT’s biennial work program when necessary.

The DOTs in Texas and Wyoming meet regularly with interim committees to address issues and, in Wyoming, to develop legislation. Indiana’s permanent interim study committee—the Joint Study Committee on Mass Transit and Transportation Alternatives—was established in statute; it is composed of the members of the House and Senate transportation committees.¹⁶ Strong interim committees and processes may be especially important in states that have long interims between legislative sessions.

Task Forces or Commissions

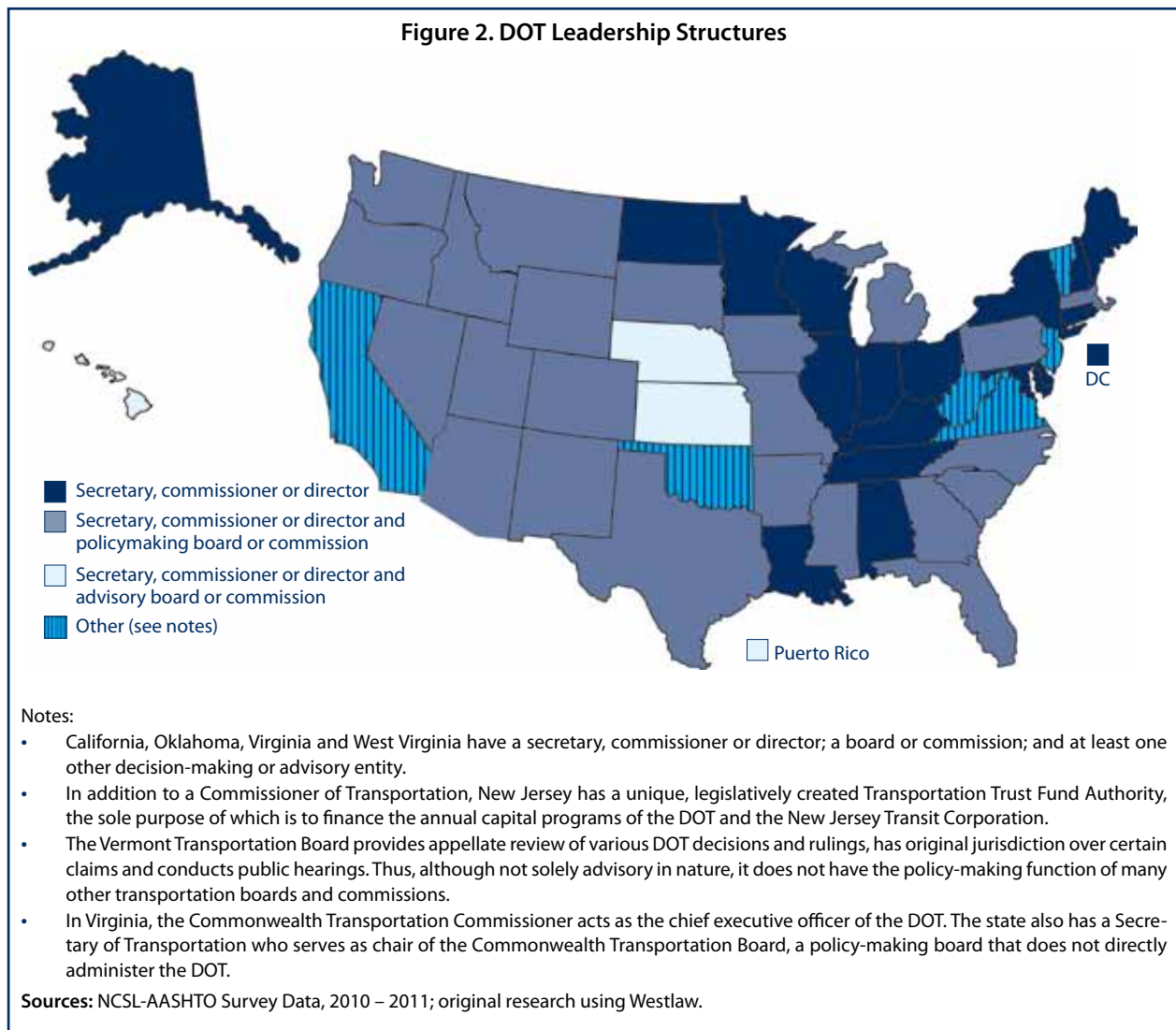
A legislature also may create commissions or task forces to provide additional oversight or carry out discrete tasks. For example, the Arkansas Blue Ribbon Committee on Highway Finance, for example, was created by Act 374 of 2009 to involve the public in determining adequate financing of the present and future needs of state



highways, county roads and city streets in the state; define an equitable and adequate system to properly finance transportation improvements; and propose and recommend legislation in 2011. The Texas House Select Committee on Transportation Funding was established in 2010 to examine and make recommendations about state transportation funding prior to the 2011 session. The ongoing Virginia Joint Commission on Transportation Accountability exists to ascertain that sums appropriated have been or are being expended by transportation agencies for the purposes for which they were made, and to evaluate the effectiveness of transportation programs in accomplishing legislative intent.

DOT Leadership Appointments

In most states, legislatures participate in appointing DOT leadership (defined here as both executives within a DOT and other transportation leaders within the executive branch that influence a DOT’s activities). Leadership structures for DOTs vary, but most fall into one of four categories: those that are led by a secretary, commissioner or director; those that have one of these officials and a policy-making board or commission, either within the DOT (e.g., Kansas) or as a separate entity (e.g., Washington); those that have one of these officials and an advisory board or commission; and those that use another model (Figure 2; see also State Profiles and Appendix D).



Of these DOT leaders, the majority are appointed by an executive entity—typically the governor—with approval of the Senate. Selection of certain leaders in Mississippi and Utah is performed by a commission or board with Senate approval; New Mexico’s secretary of transportation is appointed by the governor with the approval of both the Senate and the Transportation Commission.

Some DOT leaders, however, are appointed by the executive branch alone. At least some appointments in Alabama, Hawaii, Indiana, Kansas, Kentucky, Massachusetts, Nevada, New Hampshire, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee and Wyoming are made by the governor with no legislative approval required. In New Hampshire, approval is required instead from an elected executive agency. Arkansas, Georgia, Idaho, Nevada, Oklahoma and Texas have leaders who are appointed solely by a commission or board.

At the other end of the spectrum are DOT leaders who are directly appointed or elected by legislators, including in California, Georgia and South Carolina. Pennsylvania provides an unusual example: Four legislative leaders serve on the Transportation Commission by virtue of their office. This commission reportedly provides greater oversight of the DOT than any legislative body in the state and creates a venue for an unusually direct interaction between the legislature and the DOT in the area of transportation governance.

Mississippi’s unique three-member Transportation Commission is elected by the people and does not report to the governor. This is the only selection process of DOT leadership in the nation that involves neither the legislature nor the executive branch. The commission appoints the DOT executive director, however, with the advice and consent of the Senate.

Legislatures also may provide statutory guidelines for the appointment process and appointee requirements. Many states set statutory requirements pertaining to citizenship, residency, taxpayer status, party affiliation, geographic representation, experience, education or specific credentials. Colorado law encourages the governor to consider including at least one commissioner who is a person with a disability, has a family member with a disability, or is a member of an advocacy group for people with disabilities. Montana requires the governor to select one commissioner who has specific knowledge of Indian culture and tribal transportation needs, after consultation with the Montana members of the Montana-Wyoming tribal leaders council. Several states also have statutory prohibitions concerning conflicts of interest.

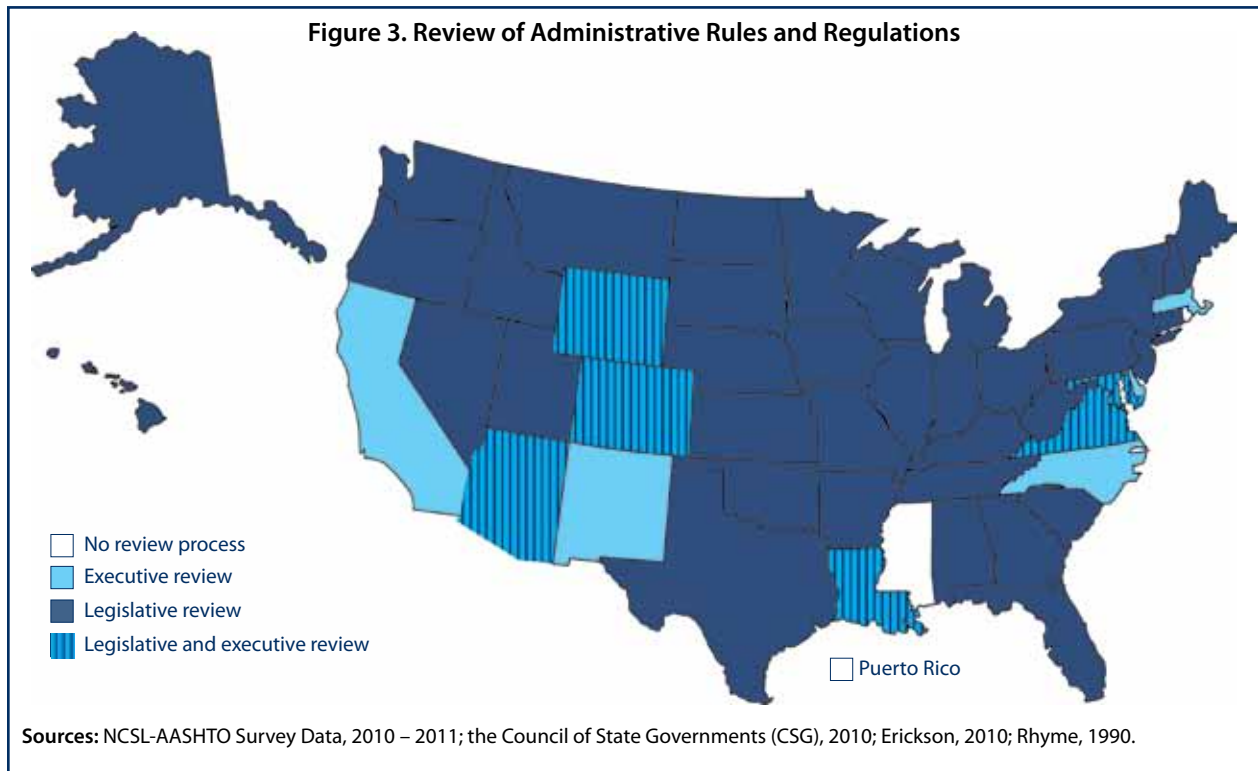
Legislatures also sometimes share the authority to remove DOT leaders. Although most serve at the pleasure of the governor or other appointing executive entity, at least Arkansas, California, Maine, New Mexico and Ohio provide for some involvement by the legislature in a removal process.

Review of Administrative Rules and Regulations

Legislative review of administrative rules and regulations provides another mechanism for oversight of DOTs. According to NCSL, an administrative rule “... is typically a regulation, standard or policy issued by an executive agency to implement statutory provisions administered by the agency. In many states, the number of regulations promulgated by executive agencies exceeds the number of statutes enacted by the legislature.”¹⁷ Legislatures have delegated the responsibility to executive agencies to promulgate administrative rules, but in most cases retain authority to review and approve those rules so as to ensure that they comply with statutory authority and legislative intent.

Forty-three states now have some form of legislative review of administrative rules (Figure 3), although legislative review is optional in Virginia. Mississippi, Rhode Island and Puerto Rico have no review process, while California, Delaware, Massachusetts, New Mexico and North Carolina have review by the executive branch

only. At least six states—Arizona, Colorado, Louisiana, Maryland, Virginia and Wyoming—have review by both the legislative and executive branches. North Carolina’s rules are reviewed by an executive entity, the Rules Review Commission, members of which are appointed by the legislature.



In most states with legislative review of administrative rules, the legislature or a designated legislative committee has the power to suspend or supersede a rule. In Utah, all rules expire annually unless reauthorized by the legislature (see State Profiles). Several states limit the legislative review committee to a mainly advisory role, with the power to make recommendations but not to enforce changes. These states are Alaska, Arizona, Arkansas, Florida, Hawaii, Indiana, Kansas, Maryland, Minnesota, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Texas, Washington, West Virginia and Wyoming. In several of these states, a committee can object to or temporarily suspend a rule, but only a resolution or bill passed by the full legislature can veto one. In Vermont, if the Joint Legislative Committee on Rules votes to oppose a rule, it does not prohibit the rule’s adoption but, rather, assigns the burden of proof in any legal challenge to the executive agency.¹⁸

Performance Goals

“The broad effort frequently referred to as performance management,” states NCSL, “is occurring at all levels of government. The hallmarks of performance management include establishing strategic plans, setting agency goals and objectives, identifying ways to meet them, and measuring how well they are accomplished over time.”¹⁹ As part of this effort, state DOTs nationwide now have goals and objectives against which their performance is measured.

In most states, the responsibility to develop performance goals and measure DOT progress toward them rests with the executive branch, in accordance with existing law. Performance reports may be submitted to the legislature, which can respond in the form of further reporting requirements, legislation or directives. Some

DOTs—those in Missouri, North Dakota, Texas, Virginia and the District of Columbia among them—make at least some performance data publicly available. The DOTs in Missouri and Texas, for example, each offer an online “Tracker” that measures progress on key performance indicators. The Texas DOT also hosts an online “Project Tracker” that gives progress and budget data for all DOT projects in the state.²⁰ The information thus is easily accessible to the legislature, the general public and other interested parties.

In some states, a legislative directive has encouraged or required a move toward DOT performance management. In 2007, for example, the Nevada legislature directed the Transportation Board of Directors to adopt a plan for measuring DOT performance, including separate sets of performance measurements for each division and for the department as a whole.²¹ In 2000, Maryland legislatively created the DOT’s Advisory Committee on Transportation Goals, Benchmarks and Indicators to advise the DOT on developing long-term performance goals and intermediate benchmarks,²² and in 2010, the Minnesota legislature required the DOT to “identify performance targets or indicators for measuring progress and achievement of transportation system goals, objectives, or policies” in the statewide multimodal transportation plan.²³ In 2005, Washington enacted a law to require all state agencies, within available funds, to develop and implement a quality management, accountability and performance system, and to have that system independently assessed at least once every three years; in 2009, the legislature delayed this requirement until 2012.²⁴

Florida, Hawaii, Illinois, Iowa, Kansas, New Mexico, Texas, Washington and the District of Columbia report a more active legislative role in the development or approval of specific DOT performance goals. In Hawaii, Iowa, Washington and the District of Columbia, the executive branch typically has set most goals; the legislature establishes others on a case-by-case basis. In Florida and Illinois, the DOT sets its goals subject to legislative review and approval. In Kansas and New Mexico, development of goals is a cooperative exercise between the legislature and the executive branch, driven by the secretary of transportation in Kansas and the legislature in New Mexico. In Texas, the state Transportation Commission approves and oversees DOT goals in the strategic plan, then the legislature sets forth key performance measures and targets in the state General Appropriations Act.

As of 2008, 22 state legislatures reported using performance information for executive agencies at some point in the budget process, but performance budgeting—directly linking results to legislative decisions—was rare. A number of states required measures to be used to develop agency budget requests, and some also included the information in agency budgets or appropriations bills.²⁵ In their NCSL-AASHTO survey responses, Arizona, Florida, Georgia, Idaho, Kansas, Louisiana, Maryland, New York, Oklahoma, Oregon, Pennsylvania, Utah, Wisconsin and Wyoming reported the use of DOT performance data in the budget and appropriations process. In Utah’s annual appropriations process, the legislature assesses first whether goals have been met before determining funding levels; in Montana, the Legislative Financing Committee now is developing ways to consider performance goals in the budgeting process for all agencies, including the DOT.

Program Evaluation and Sunset Reviews

Most legislatures have enhanced their capacity for oversight of the executive branch and participation in performance management by creating special legislative offices to carry out program evaluation and performance audit activities. Currently, 48 states have specialized legislative program evaluation offices charged with carrying out research and oversight studies of executive agencies; only Ohio and Oregon do not.²⁶ Texas has three such offices: the Legislative Budget Board, the Sunset Advisory Commission and the State Auditor’s Office. In addition, Washington had a legislatively created, separate transportation audit unit from 2003 to 2006, the Transportation Performance Audit Board.²⁷

Legislative program evaluation offices vary widely in size and responsibilities, but typically are bipartisan research units that are intended to act as independent, impartial sources of information about executive agencies and to provide recommendations to improve their operations.²⁸ They generally review the effectiveness, efficiency and legality of state executive agencies, as well as the extent to which those agencies are following legislative intent. Their evaluations can greatly affect transportation governance and DOT operations. For example, the South Carolina Legislative Audit Council published a highly publicized audit of the DOT in 2006. This audit resulted in a restructuring of the DOT that placed it in the governor's cabinet, created a legislative oversight committee and allowed for periodic audits.²⁹

Some legislative program evaluation offices also conduct sunset reviews. Such reviews evaluate the functions of a state entity to assess whether it should continue to exist. In a true sunset process, an entity is automatically abolished unless the legislature or responsible legislative committee chooses to affirmatively continue it. Most states with sunset provisions in state law focus the process on smaller boards, commissions and regulatory agencies rather than on large executive departments. Arizona, Florida, Louisiana, Tennessee and Texas, however, perform regular sunset reviews of the DOT.³⁰ In Arizona and Florida,³¹ the process occurs every 10 years, in Louisiana every five years, in Tennessee every eight years and in Texas every 12 years. In most cases, when the sunset process is applied to large, ongoing executive departments, it is used primarily to add another layer of accountability for those entities rather than to seriously consider their discontinuation. In 2009, however, the Texas DOT was reviewed, but the bill to continue it was not enacted. Instead, a special session was called in which the DOT was granted an extension until another, limited-scope review in 2011. Unless continued, the Texas DOT will now expire on Sept. 1, 2011.³²

Legislatures also sometimes review non-legislative program evaluations or performance audits—such as those performed by an executive branch state auditor—in addition to performing their own. In California, for example, when a non-legislative program review is released, the legislature often holds an oversight hearing to understand the findings of the report. In Washington, the legislature must consider performance audits conducted by the state auditor and submit an annual report detailing legislative implementation of the auditor's recommendations.³³ Twenty-six states³⁴ reported legislative review of non-legislative evaluations as a mechanism for oversight of their DOTs.

Reporting Requirements

Forty-five states and the District of Columbia identified reporting requirements in their survey responses as a mechanism for legislative oversight of their DOTs. Legislatures commonly require in statute that a DOT submit certain reports to the full legislature or a legislative committee. Often, these reports must be concurrently submitted to an executive oversight authority such as the governor or transportation commission. Commonly required reports include reviews of expenditures and obligations; descriptions of agency objectives and strategies; details of planned, ongoing or future projects; updates on certain mandated processes; fiscal forecasts; reports on new or controversial initiatives, such as public-private partnerships or design-build contracting; reviews of progress on performance goals; and reports on other agency activities. Some reporting requirements may be instituted due to lack of information about or past concern with a program. In other cases, DOT reports to the legislature are required only for a limited time in order to facilitate legislative oversight of a particular task or activity. For example, the Massachusetts DOT—newly created in 2009—has many current reporting requirements to the legislature, some of which will end when the transition to the new organization is complete.

Other Tools that Support Legislative Oversight

Other tools that support legislative oversight, as reported by NCSL-AASHTO survey respondents, include legislative requests for information from the DOT, as well as use of other independent sources of transportation-related data. Legislative research staff, universities, diverse interest groups, NCSL and legislative fiscal offices can provide meaningful information that may help the legislature oversee the DOT and transportation system performance. The Ohio Legislative Service Commission, for example, continuously monitors DOT revenues and expenditures and reports on significant developments in a monthly newsletter to legislators and legislative staff; this gives the legislature another window into the DOT's financial activities.

Resources for DOT Compliance with Legislative Oversight Requirements

State DOTs devote significant resources to complying with legislative oversight requirements. DOTs must draft and submit numerous reports, participate in legislative hearings, respond to requests for information, and engage in the budget and appropriations process as required. Generally, few or no resources are provided to DOTs specifically to help them meet these requirements. Numerous exceptions to this general rule exist, however. In New Hampshire, New Jersey, New Mexico, Oregon, Vermont, Washington and Wisconsin, resources for compliance requirements have been included in the DOT budget or ongoing appropriations, while in Hawaii and Minnesota, required reports or other legislative mandates in some cases have received separate appropriations.

In addition, most DOTs have other resources at their disposal to aid compliance. In many cases, DOT legislative liaisons and legal staff can assist with legislative oversight requirements, as can legislatures' fiscal and legislative analysis offices. Further, in some states such as Texas, the DOT benefits from transportation research programs at state universities that can help to provide transportation-related analytical data.

5. TRANSPORTATION FUNDING AND FINANCE

Transportation funding decisions are becoming increasingly critical as system needs continue to overwhelm the available resources. Governments face the insolvency of the federal Highway Trust Fund, the declining value of the fuel tax and delayed federal surface transportation authorization, making current resources insufficient to meet the demands of aging infrastructure, growing populations, evolving technologies and changing travel patterns.

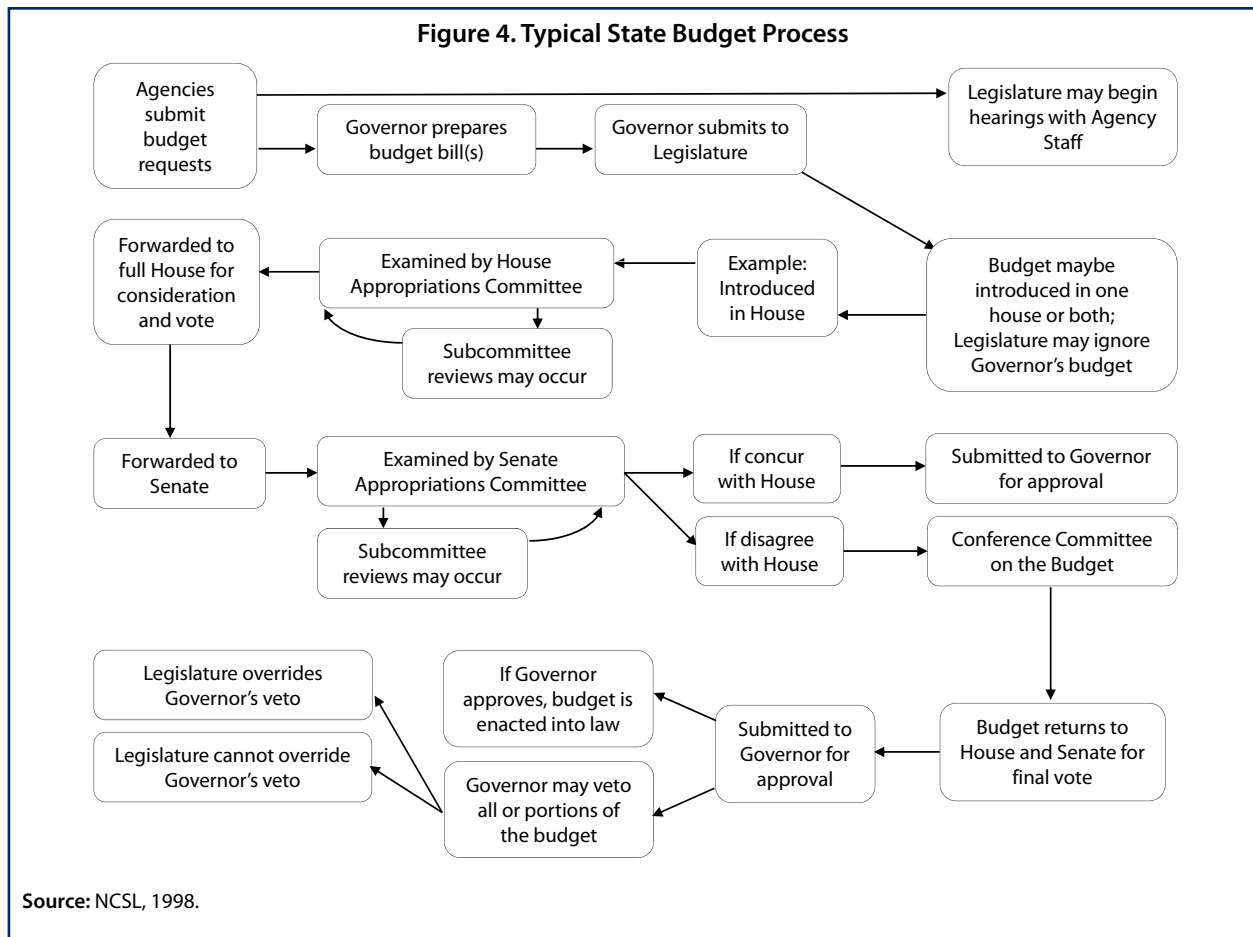
Each state must address the transportation funding crisis within its unique balance of governmental powers. Overlap and tension between the executive branch and the legislature are nowhere more apparent than in the power of the purse, and each state has a distinctive, dynamic approach to funding and finance issues. In transportation, both legislatures and DOTs (the latter under the direction of governors) have key roles in budgeting and appropriations, selecting investment priorities, and deciding whether to use diverse or innovative financing approaches. This chapter reviews shared responsibilities and interactions between the legislative and executive branches in transportation funding and finance, including in the planning process.

State Budget and Appropriations Processes

A key power of the legislative branch is over budgeting and appropriations. Few if any bills on which the legislature acts are as vital as those that authorize the expenditure of public funds for specific purposes of state government. State budget processes require continuous executive-legislative interaction to maintain balance of power; this balance, however, differs from state to state.

The executive and legislative branches generally participate in different stages of the budgeting process (Figure 4). Typically, the governor formulates a budget proposal based on executive agency requests and submits it to the legislature; this tends to give the executive branch the power to set the terms of the discussion. In some states, however—including Arizona, Colorado, New Mexico, Oklahoma and Texas—the legislature produces a comprehensive budget as an alternative to the governor’s proposal. In other states such as Arkansas and South Carolina, both branches contribute significantly to the budget proposal. The legislature reviews and then adopts the budget as one or more appropriations bills. The enacted budget is returned to the governor, who may veto the budget in its entirety or in part. The legislature then may vote to override gubernatorial vetoes. After the budget becomes law, executing it is generally an administrative function, and overseeing it is a legislative one.³⁵

DOTs and other executive agencies participate in the budgeting process first by submitting budget requests to the office of the governor for consideration and incorporation into the executive budget request. In all but eight states and Puerto Rico, executive agencies also submit budget requests directly to a legislative committee or office.³⁶ DOTs may be given more or less discretion at this stage of the process. In some cases—Colorado, for example—a transportation commission or other body must approve the DOT budget proposal. DOTs also interact directly with the legislature by appearing at budget hearings that involve substantial interaction between legislators and agency representatives. These hearings allow legislative appropriations committees to learn about executive program objectives and budget requests. They also afford agencies an opportunity to present their achievements and defend their programs to both the legislature and the public.



The budget process not only provides for a review of past appropriations and an examination of budget requests, but also serves as a key legislative oversight activity—especially in states where the legislature approves program- or project-specific appropriations. In many cases, state law requires the DOT to provide reports to the legislature to inform the process (see Reporting Requirements on page 18). Some legislatures base funding levels at least partly on performance data or other information received from DOT officials in budget hearings. Further, states may establish future performance goals and objectives as well as new reporting requirements in the budget bill. In some cases, funds may be withheld contingent upon submission of a specified report or DOT action. In many states, the appropriation process is therefore seen as the main mechanism for legislative oversight of the DOT. One survey respondent warned, however, that a focus on the year-to-year budget process can detract from a legislature’s capacity for broader, long-term DOT oversight.

In practice, although some legislatures can significantly influence DOT spending levels, others have only a limited ability to do so. In many states, federal transportation funding flows directly to the DOT, with little or no legislative involvement (see Federal Transportation Funding, starting on page 22). In addition, state funds for transportation often are provided through dedicated funds or revenues that allow little room for budgeting flexibility (see State Transportation Funding, starting on page 24). States also may have specific limits on legislative power. In Maryland, for example, the legislature can reduce but not add appropriations for specific projects in the governor’s budget; expenditures can be added only through a supplementary appropriations bill if matched with new revenues (see State Profiles). Across the board, expenditures that derive from bonding typically are dealt with separately from the overall budget and are not subject to the same types of controls.

Many other differences exist among the states in terms of interactions between the legislature and the executive branch in the appropriations process. States vary in their budgeting approaches and assumptions, the amount of time agencies have to prepare proposals and other entities have to review them, the entity that writes the appropriation bill that is introduced in the legislature, procedures for making supplemental appropriations when the legislature is not in session, control over federal funds, and gubernatorial veto authority, among others. These variations—detailed in NCSL’s Budget Procedures online resources³⁷—further contribute to each state’s unique separation of governmental powers concerning state budgets and expenditures.

Federal, State and Local Transportation Funding

Responsibilities for funding and delivering services on the nation’s transportation network are shared by federal, state and local governments. State and local governments own, operate and maintain most of the infrastructure and also provide most of the funding for surface transportation systems; federal funding accounts for approximately 20 percent of both transit and highway funding.³⁸ State legislatures and DOTs participate in allocating federal funds to state transportation programs, generating and determining the use of state transportation revenues, and distributing transportation funds to local governments through local aid.

Federal Transportation Funding

The federal government provides funding to states for surface transportation projects mainly through the federal-aid highway and transit programs (Table 5). These programs are established by federal surface transportation authorization legislation—now the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), passed in 2005. Federal highway and transit programs are funded by the federal fuel tax, federal heavy vehicle use tax, and federal motor carrier excise taxes, which are collected in the federal Highway Trust Fund (HTF) and the Mass Transit Account within the HTF. Although the federal government provides the funding for these programs, state, local and tribal governments maintain control over project selection and implementation. Most projects also require a 20 percent non-federal match; some federal-aid highway programs require a smaller match. In addition, federal grant programs, congressional earmarks and one-time expenditures such as the American Recovery and Reinvestment Act of 2009 can provide additional federal funding to states for transportation projects.

Some state legislatures have minimal involvement with federal transportation funds. Many states—including Arizona, Colorado, Connecticut, Iowa, Kansas, Maryland, Massachusetts, Missouri, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Washington and Wyoming—and the District of Columbia allow at least some federal funds to flow directly to the state DOT without legislative appropriation. In Illinois, Minnesota and South Dakota, federal funds are reviewed and reflected in budget documents but do not require legislative action in order to be spent.

In other states, however, the legislature has a more substantial role in allocating federal funds to the DOT. Most states report that they allocate federal funds to the DOT through legislative appropriations at the agency, program, category or project-specific level. Notable examples of legislative involvement include the following:

- Alabama, Delaware, Florida, Kentucky and Louisiana allocate federal funds to the DOT through legislative approval of a transportation plan, budget or work program that details use of these funds. In Florida, legislative provisions occasionally direct how federal funding may be used; Kentucky’s budget guides expenditures.
- In California, federal transportation funds flow directly to the DOT, but a budget appropriation provides the authority to spend the funds. Appropriation authority is given in the budget under broad categories.

Table 5. Federal-Aid Highway and Transit Programs

Federal-Aid Highway Programs	Federal-Aid Transit Programs
<p>Major Formula Programs</p> <ul style="list-style-type: none"> • National Highway System (NHS) Program • Interstate Maintenance (IM) Program • Bridge Program • Surface Transportation Program (STP) • Congestion Mitigation and Air Quality Improvement (CMAQ) Program • Highway Safety Improvement Program <p>Targeted Infrastructure Programs</p> <ul style="list-style-type: none"> • Federal Lands Highways • Other Geographic Locations (including the Appalachian Development Highway System Program, the Delta Region Transportation Development Program, and others) • Specific Purposes and Needs (including the Projects of National and Regional Significance program) <p>Special Programs</p> <ul style="list-style-type: none"> • Special Highway Assistance Programs • Other Programs (including innovative financing, multimodal coordination, studies, research and pilot programs) 	<p>Urban and Rural Area Programs</p> <ul style="list-style-type: none"> • Urbanized Area Formula Program • Non-Urbanized Area Formula Program <p>Capital Programs</p> <ul style="list-style-type: none"> • Bus and Bus Facilities Grants • Fixed Guideway Modernization (also known as Rail Modernization or “Rail Mod”) • New Starts <p>Special Programs</p> <ul style="list-style-type: none"> • Formula Program for Elderly Persons and Persons with Disabilities • New Freedom Program • Alternative Transportation on Federal Lands • Job Access and Reverse Commute Program (JARC) • Clean Fuels Formula Program
Shared Programs	
<p>Programs that Allow Flexing of Highway Funds into Transit Programs</p> <ul style="list-style-type: none"> • National Highway System (NHS) Program • Interstate Maintenance (IM) Program • Bridge Program • Surface Transportation Program (STP)* • Congestion Mitigation and Air Quality Improvement (CMAQ) Program* <p>Support Programs</p> <ul style="list-style-type: none"> • Planning • Research and Technical Assistance • Training 	

*These programs provide the most funding for transit programs through the flex process.

Sources: Intergovernmental Forum on Transportation Finance, 2008; various U.S. Department of Transportation Web sites.

- The Hawaii DOT is authorized to expend federal funds through legislative appropriations. A budget proviso, however, allows the DOT to increase federal appropriation ceilings when the legislature is not in session, thus allowing expenditure of federal funds beyond those authorized under legislative appropriations. This, in effect, permits direct transfer of federal funds to the DOT. All actions to raise appropriation ceilings must be reported to the legislature with details of why the appropriation was not sought during the normal legislative budgeting cycle.
- In Maine and Michigan, any funding received from the federal government must be allocated or appropriated to specific programs by the legislature before it can be spent.
- In Missouri and Pennsylvania, highway funds flow directly to the DOT without legislative involvement, but funds for other modes sometimes require appropriation.
- In New Jersey, federal funds must be appropriated by law or approved by the Joint Budget Oversight Committee and the state treasurer before being spent.

- In Oregon, federal formula funds for transportation flow directly to the DOT with no state legislative appropriation. The DOT, however, is subject to an expenditure limit on those funds that is set biennially by the legislature. Legislative approval also is required for the DOT to apply for federal grants that are not allocated by formula.³⁹
- In Washington, if federal funding is received for operating purposes and is outside current appropriation authority, the DOT must seek approval through the governor’s budget office using the unanticipated receipts process, which includes feedback from legislative staff.
- In Wisconsin, if the amount of federal highway funds received differs from the estimate provided in the legislative appropriation by more than 5 percent, the legislature’s Joint Committee on Finance must approve an adjustment to the appropriation.

State legislatures also may require additional approvals before a DOT can spend certain federal funds. The Ohio legislature, for example, amended state law to require supermajority approval by the state legislative Controlling Board before the DOT or other entity could spend capital funds—including federal grant funds—for development of passenger rail.⁴⁰

State Transportation Funding

States provide nearly half of all surface transportation funding.⁴¹ The main source of highway funds in about half the states is the state motor vehicle fuel tax, which in seven states is indexed to the consumer price index, average wholesale price or another index (see Table 6 and State Profiles). The rest of the states rely on federal funds, motor vehicle and motor carrier taxes, or bond proceeds (for more about debt financing, see the section on Innovative Finance starting on page 31).⁴² States also provide about 20 percent of the funding for transit systems nationwide, largely from general funds, fuel taxes, the general sales tax and other sources.⁴³ Other revenues for surface transportation are drawn from additional sales taxes on gasoline or diesel, sales taxes on vehicles or rental cars, registration and other fees, vehicle or truck weight fees, and tolls, among others (see Table 6). States also help fund aviation, ports and other elements of the transportation network.

Table 6. State-by-State Revenue Sources for Roads, Bridges, Rail and Transit

State/ Jurisdiction	Fuel Taxes	Sales Taxes on Gasoline or Diesel	Motor Vehicle or Rental Car Sales Taxes	Vehicle Registration, License or Title Fees	Vehicle or Truck Weight Fees	Traffic Camera Fees	Tolls	General Funds	Interest Income	Other
Alabama	•			•	•			•		Vehicle inspection fees; advertising revenue; impact fees; misc. revenues
Alaska	•		•	•	•		•	•	•	Licenses, permits or fees
Arizona	•		•	•	•			SP	•	State lottery/gaming; transportation excise tax in Maricopa County; impact fees; board funding obligations
Arkansas	•		•	•	•			•	•	Ad valorem tax; impact fees

State/ Jurisdiction	Fuel Taxes	Sales Taxes on Gasoline or Diesel	Motor Vehicle or Rental Car Sales Taxes	Vehicle Registration, License or Title Fees	Vehicle or Truck Weight Fees	Traffic Camera Fees	Tolls	General Funds	Interest Income	Other
California	•	SP			•	SP	SP		•	Locally imple- mented sales tax; impact fees (local level only)
Colorado	•			•	•	•	•	SP	•	Sales tax; state lottery/gaming; congestion pric- ing; impact fees
Connecticut	•	•	•	•	•			•	•	Vehicle inspec- tion fees; oil company taxes
Delaware	•			•		•	•	•	•	Fares
Florida	V/I		•	•		•	•		•	Documentary stamp revenue; congestion pric- ing; impact fees
Georgia	•	•			•	•	•	•	•	Impact fees
Hawaii	•	•	•	•	•					Vehicle inspec- tion fees; impact fees
Idaho	•		•	•						Impact fees
Illinois	•			•	•	•	SP	•	•	Licenses, permits or fees; logo signing; impact fees
Indiana	•	•		•			•			Sales tax; situs tax; rail service funds; railroad property tax; In- diana Toll Road lease proceeds; impact fees
Iowa	V/I		•	•		SP			•	Use tax on mo- bile homes and other vehicles; casino taxes; licenses, permits or fees
Kansas	•			•	•		•	•		Sales tax; compensating use tax
Kentucky	V/I		•	•	•			•	•	Licenses, permits or fees; weight-distance tax
Louisiana	•			•	•	•	•	•	•	Licenses, per- mits or fees
Maine	V/I		•	•	•		•		•	Off-road fuel tax; licenses, permits or fees; fines; impact fees

State/ Jurisdiction	Fuel Taxes	Sales Taxes on Gasoline or Diesel	Motor Vehicle or Rental Car Sales Taxes	Vehicle Registration, License or Title Fees	Vehicle or Truck Weight Fees	Traffic Camera Fees	Tolls	General Funds	Interest Income	Other
Maryland	•		•	•	•	SP	•		•	Licenses, permits or fees; sales tax; corporate income tax; fares and operating revenues; congestion pricing (Maryland Transportation Authority only); container fees
Massachusetts	•			•		•	•	•		Sale of excess land; advertising revenue; sales tax; service city and town payments; fares and operating revenues
Michigan	•	•		•			SP			Sales tax on auto-related products (includes gasoline and diesel)
Minnesota	•		SP	•	•			•	•	Licenses, permits or fees; fines; congestion pricing
Mississippi	•			•	•				•	Contractors' tax; lubricating oil tax; locomotive fuel tax
Missouri	•		SP	•	•	SP		•	•	Rail regulation fees
Montana	•		•	•	•				•	Impact fees
Nebraska	V/I		•	•				•	•	Licenses, permits or fees; investment income; train-mile tax for grade separation projects
Nevada	•		•	•	•	•		•	•	Ad valorem taxes; recovery surcharge fees
New Hampshire	•			•	•		•	•	•	Surcharge on registration fees (2011 sunset)
New Jersey	•	•	•	•	•	•	•	•	•	Sales tax; petroleum products tax; contractual contributions; state lottery/gaming
New Mexico	•	•	•	•	•	•			•	Impact fees; weight-distance tax

State/ Jurisdiction	Fuel Taxes	Sales Taxes on Gasoline or Diesel	Motor Vehicle or Rental Car Sales Taxes	Vehicle Registration, License or Title Fees	Vehicle or Truck Weight Fees	Traffic Camera Fees	Tolls	General Funds	Interest Income	Other
New York	•	•	•	•	•	•	SP	SP		Oil company taxes; regional payroll tax; weight-distance tax
North Carolina	V/I		•	•	•	•	SP		•	
North Dakota	•		•	•	•			•	•	Net obligated balance
Ohio	•			•	SP	•	SP	•	•	Right-of-way; logo signing; service concessions (turnpike only); tax on fuel sold at turnpike gas stations (turnpike only); loan repayments; loan servicing fees; private contributions; licenses, permits or fees
Oklahoma	•			•			•	•		
Oregon	•			•	•	•		•	•	State lottery/gaming; tobacco tax revenue; the mass transit tax; safety inspection and rail regulation fees; licenses, permits or fees; weight-distance tax; vehicle-miles traveled fees (pilot project); container fees; impact fees
Pennsylvania	V/I	•	•	•		•	SP	•	•	Sales tax; state lottery/gaming; tire tax; impact fees
Rhode Island	•			•		•	•	•		Impact fees
South Carolina	•			•			•	•		Impact fees
South Dakota	•	•	•	•	•			•	•	Licenses, permits or fees; Railroad Board fund
Tennessee	•	•		•	•					

State/ Jurisdiction	Fuel Taxes	Sales Taxes on Gasoline or Diesel	Motor Vehicle or Rental Car Sales Taxes	Vehicle Registration, License or Title Fees	Vehicle or Truck Weight Fees	Traffic Camera Fees	Tolls	General Funds	Interest Income	Other
Texas	•			•	•	SP	•	•	•	Sales tax on lubricants; vehicle inspection fees; licenses, permits or fees; impact fees
Utah	•		•	•	•		•	•	•	Sales tax; impact fees
Vermont	•	•	•	•	•			SP	•	Impact fees
Virginia	•	•	•	•	SP	SP	•	•	•	Sales tax; congestion pricing; impact fees
Washington	•		•	•	•	SP	•		•	Licenses, permits or fees; sale of DOT property and other business-related revenues; congestion variable tolling; photo tolling (beginning 2011); impact fees (local level only)
West Virginia	•	•	•	•			•	•		Highway litter control fund; impact fees
Wisconsin	•		•	•	•			SP	•	Licenses, permits or fees; taxes on other modes
Wyoming	•			•	•			•	•	State-distributed mineral royalties and mineral severance taxes; container fees
District of Columbia	•							•	•	Rights-of-way; master equipment lease/ short-term borrowing; public space revenue; parking meter revenues
Puerto Rico	•	•		•			•		•	Excise taxes on petroleum products; impact fees

Key:

SP - See State Profiles for clarification or more information

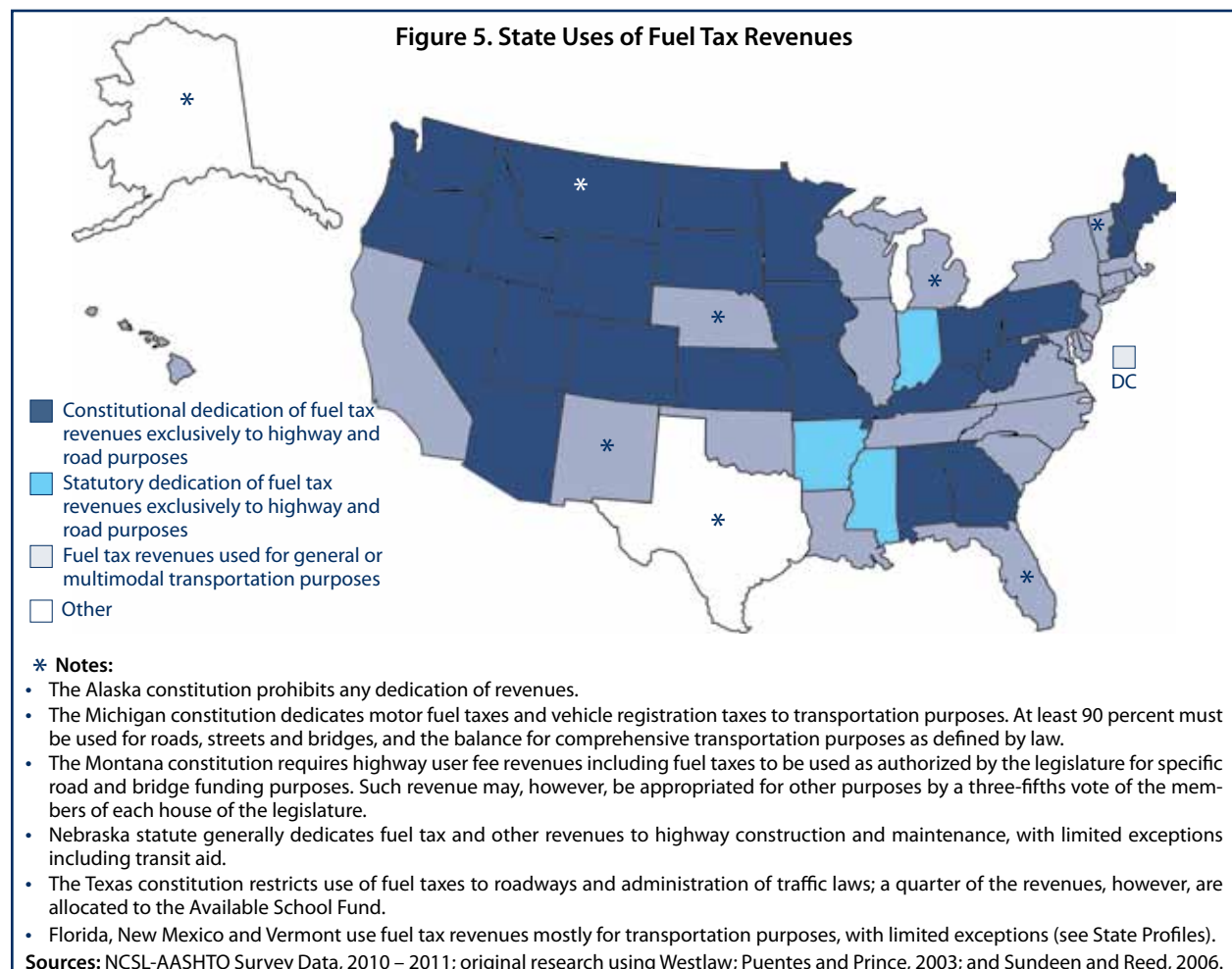
V/I - Variable or indexed fuel tax rate

Note: This chart includes all state-level revenue sources for roads, bridges, rail and transit, not just those revenues that are administered by DOTs.

Sources: NCSL-AASHTO Survey Data, 2010 – 2011, supplemented by AASHTO, 2010; Dierkers and Mattingly, 2009; FHWA, 2011; and Puentes and Prince, 2003.

State legislatures have significant power over determining state revenue sources by enacting laws that address taxation, fee schedules and appropriations. Legislatures also tend to have more influence over the allocation and appropriation of state funds compared to federal funds, given the legislature’s general powers over state taxation and expenditures. Only Colorado, Hawaii, Missouri, Pennsylvania, Wyoming and the District of Columbia reported that any state funds flowed directly from a revenue source to the DOT without being subject to legislative appropriation. Even in states such as Michigan where distribution of state transportation funds is determined by statutory formula, the legislature still appropriates the funds. Almost all legislatures appropriate state transportation funds either at the agency, program, category or project-specific level or through approval of a DOT transportation plan.

The real power of legislatures—or DOTs—to allocate state funds, however, is bounded by constitutional and statutory restrictions on the use of transportation revenues. For example, 23 states now have provisions in the constitution—and three in statute—that restrict use of state fuel tax revenues exclusively to highway and road purposes (Figure 5). Most other states restrict or dedicate use of fuel tax receipts and other transportation-related revenues to general or multimodal transportation purposes, with a few limited exceptions. Texas is unique in that it allocates one-fourth of its gas tax revenues to schools. Only Alaska constitutionally prohibits dedicating state revenues, unless federally required or dedicated prior to statehood.⁴⁴ Other common provisions that limit use of transportation-related revenues are those that restrict their use to the same modes from which they were



collected; for example, by dedicating use of aviation fuel tax proceeds to airport projects (see State Profiles). In all states except Alaska, transportation-related revenues are deposited into funds that often are subject to additional requirements. Thus, many states restrict both transportation-related revenues and the funds to which they are deposited. This provides protection for transportation revenues and programs but also can constrain funding and finance decisions of both the executive branch and the legislature. At least 19 states and the District of Columbia deposit transportation revenues into a trust fund for highways, mass transit, aviation or transportation generally;⁴⁵ otherwise, states—except Alaska—use designated accounts that are not called trust funds for these purposes. Maryland and Wisconsin place all transportation revenues from all modes into one consolidated, dedicated multimodal fund. At least 35 states⁴⁶ report constitutional or statutory provisions that direct the use of transportation funds or accounts.

Constitutional or statutory restrictions on the use of state transportation funds and revenue can include explicit prohibitions on the diversion or transfer of this money to other purposes. States with such restrictions include California, Delaware, New Hampshire, Pennsylvania, Tennessee and Wisconsin. In 2010, California's Proposition 22 strengthened the state's prohibitions on diversions and transfers of transportation funds and revenues by eliminating the state's authority to borrow state fuel tax revenues for cash flow or budget-balancing purposes. In contrast, the Montana constitution outlines a process to appropriate restricted highway funds for other purposes, by three-fifths vote of the members of each house of the legislature.⁴⁷ Virginia law allows diversion by the legislature or the governor in the budget bill if language is inserted that sets out a plan for repayment of the diverted funds within three years.⁴⁸

Dedications, restrictions and prohibitions on the transfer of funds are not always effective. Arizona, Florida, Kentucky, Minnesota, New Jersey, North Carolina and Wisconsin report recent legislative diversions of transportation funds to other purposes, notwithstanding existing constitutional or statutory restrictions. In New Jersey, the annual appropriation act has precedence over any other dedication language found in general statute, but not over the constitution; the legislature has chosen not to fully appropriate statutorily dedicated transportation revenues eight times since 1985.

Local Transportation Funding

Local governments—including counties, townships and municipalities⁴⁹—provide approximately 30 percent of total surface transportation funding and own 77 percent of the nation's roadway miles.⁵⁰ Both legislatures and DOTs participate in supporting local governments in their responsibilities for transportation infrastructure through local aid programs. Through these programs, states typically allocate a portion of state fuel tax proceeds or other state transportation revenues to local entities for transportation projects. States also suballocate federal funds to local entities.

The most common model, reported by 27 states,⁵¹ is to distribute funds primarily by statutory formulas based on equal distribution, population, road mileage or other criteria (see State Profiles). Nineteen other states⁵² report distributing funds using a blend of statutory formulas and state legislative appropriations; of these, 11 also provide grants or other funds at the discretion of the DOT or a transportation commission. These discretionary programs, particularly when combined with appropriations, can provide for substantial involvement of both the executive branch and the legislature in distributing funds to local entities.

- In New Jersey, local aid is allocated by the commissioner of transportation, pursuant to annual legislative appropriations and subject to statutory minimums. Aid is allocated based on statutory formulas, then the commissioner determines the priority for funding projects based on certain criteria.

- The New Mexico DOT distributes most local aid by statutory formula, but has discretion over some allocations to local governments in financial hardship.
- The South Carolina DOT allocates a portion of federal funds received each year to metropolitan planning organizations and councils of government; this allocation is not required by statute. The commission of the DOT determines the funding amount and has established the distribution formula. A portion of state motor fuel tax revenue also is distributed to counties according to a statutory formula.
- Washington distributes a portion of certain transportation revenues to cities and counties by statutory formula. In addition, the DOT awards certain public transportation grants to local entities through a regional mobility grant program—funded by the multimodal transportation account and subject to appropriation—for cost-effective projects that reduce delay and improve connectivity.

Innovative Finance

Table 7. Transportation Finance Mechanisms

State Bonding and Debt Instruments

- Revenue Bonds
- General Obligation Bonds
- Hybrid Bonds

Public-Private Partnerships

- Pass-Through Tolls/Shadow Tolling
- Availability Payments
- Design-Build-Finance-[Operate]-[Maintain] Delivery Models
- Build-[Own]-Operate-Transfer and Build-Transfer-Operate Delivery Models
- Long-Term Lease Concessions

Federal Debt Financing Tools

- Grant Anticipation Revenue Vehicles (GARVEEs)
- Private Activity Bonds (PABs)
- Build America Bonds (BABs)

Federal Credit Assistance Tools

- Transportation Infrastructure Finance and Innovation Act (TIFIA)
- State Infrastructure Banks (SIBs)
- Section 129 Loans

Federal-Aid Fund Management Tools

- Advance Construction (AC) and Partial Conversion of Advance Construction (PCAC)
- Federal-Aid Matching Strategies
 - Flexible Match
 - Tapered Match
 - Toll Credits (Soft Match)
 - Program Match
 - Third-Party Donations
 - Using Other Federal Funds as Match

Other Innovative Finance Mechanisms

- Non-Federal Bonding and Debt Instruments
- Value Capture Arrangements such as Tax Increment Financing (TIF)

Sources: AASHTO Center for Excellence in Project Finance, 2008; Federal Highway Administration (FHWA) Office of Innovative Program Delivery, 2010; and Rall, Reed and Farber, 2010.

A variety of factors have negatively affected the ability of traditional transportation revenues—federal-aid funds, state fuel taxes and other related taxes and fees—to provide needed transportation infrastructure and maintenance. In this environment, states are turning to a host of innovative finance mechanisms to help leverage traditional funding sources (Table 7 and Table 8; see also State Profiles).⁵³

Table 8. State-By-State Transportation Finance Mechanisms

State/ Jurisdiction	General Obligation or Revenue Bonds	GARVEE Bonds	Private Activity Bonds (PABs)	Build America Bonds (BABs)	TIFIA Fed- eral Credit Assistance	State Infra- structure Bank (SIB)	PPPs	Design- Build	Other
Alabama	•	•					SP	SP	
Alaska	•	•	SP	•		•	SP	SP	
Arizona	•	•				•	SP	SP	
Arkansas	•	•				•	SP	SP	
California	•	•		•	•	•	SP	SP	
Colorado	•	•	•	•	•	•	SP	SP	Creation of non- profit, quasi-public entities
Connecticut	•	•						SP	
Delaware	•	•		•		•	SP	SP	
Florida	•	SP		•	•	•	SP	SP	
Georgia	•	•		•		•	SP	SP	
Hawaii	•							SP	
Idaho	•	•						SP	
Illinois	•		•	•			SP	SP	
Indiana	•					•	SP		
Iowa	•					•			
Kansas	•			•		•		SP	Special tax dis- tricts
Kentucky	•	•		•				SP	
Louisiana	•			•	•		SP	SP	Creation of non- profit, quasi-public entities
Maine	•	•				•	SP	SP	
Maryland	•	SP		•	SP		SP	SP	
Massachu- setts	•	•					SP	SP	Creation of non- profit, quasi-public entities
Michigan	•	SP		•		•		SP	
Minnesota	•					•	SP	SP	
Mississippi	•	•	•	•			SP	SP	
Missouri	•	•		•		•	SP	SP	Creation of non- profit, quasi-public entities
Montana	•	•						SP	
Nebraska	•					•			
Nevada	•	SP			•		SP	SP	
New Hampshire	SP	SP		•				SP	
New Jersey	•	•		•			SP	SP	
New Mexico	•	•				•		SP	
New York	•				•	•	SP	SP	

State/ Jurisdiction	General Obligation or Revenue Bonds	GARVEE Bonds	Private Activity Bonds (PABs)	Build America Bonds (BABs)	TIFIA Fed- eral Credit Assistance	State Infra- structure Bank (SIB)	PPPs	Design- Build	Other
North Carolina	•	•			•	•	SP	SP	
North Dakota	•	•				•		SP	
Ohio	•	•		•		•		SP	
Oklahoma	•	•							
Oregon	•	•		•		•	SP	SP	
Pennsylvania	SP			•		•		SP	
Rhode Island	•	•			•	•	SP	SP	Creation of non-profit, quasi-public entities
South Carolina	•				•	•	SP	SP	
South Dakota				•		•			
Tennessee						•	SP	SP	
Texas	•	SP	•	•	•	•	SP	SP	Creation of non-profit, quasi-public entities; other
Utah	•			•		•	SP	SP	
Vermont	•					•		SP	
Virginia	•	•	•	•	•	•	SP	SP	Creation of non-profit, quasi-public entities
Washington	•	SP		•		•	SP	SP	State-funded rail bank
West Virginia	•	•					SP	SP	
Wisconsin	•			•		•	SP	SP	
Wyoming						•		SP	
District of Columbia	•	SP					SP	SP	
Puerto Rico	•	•			•	•	SP	SP	

Key:

SP - See State Profiles for clarification or more information.

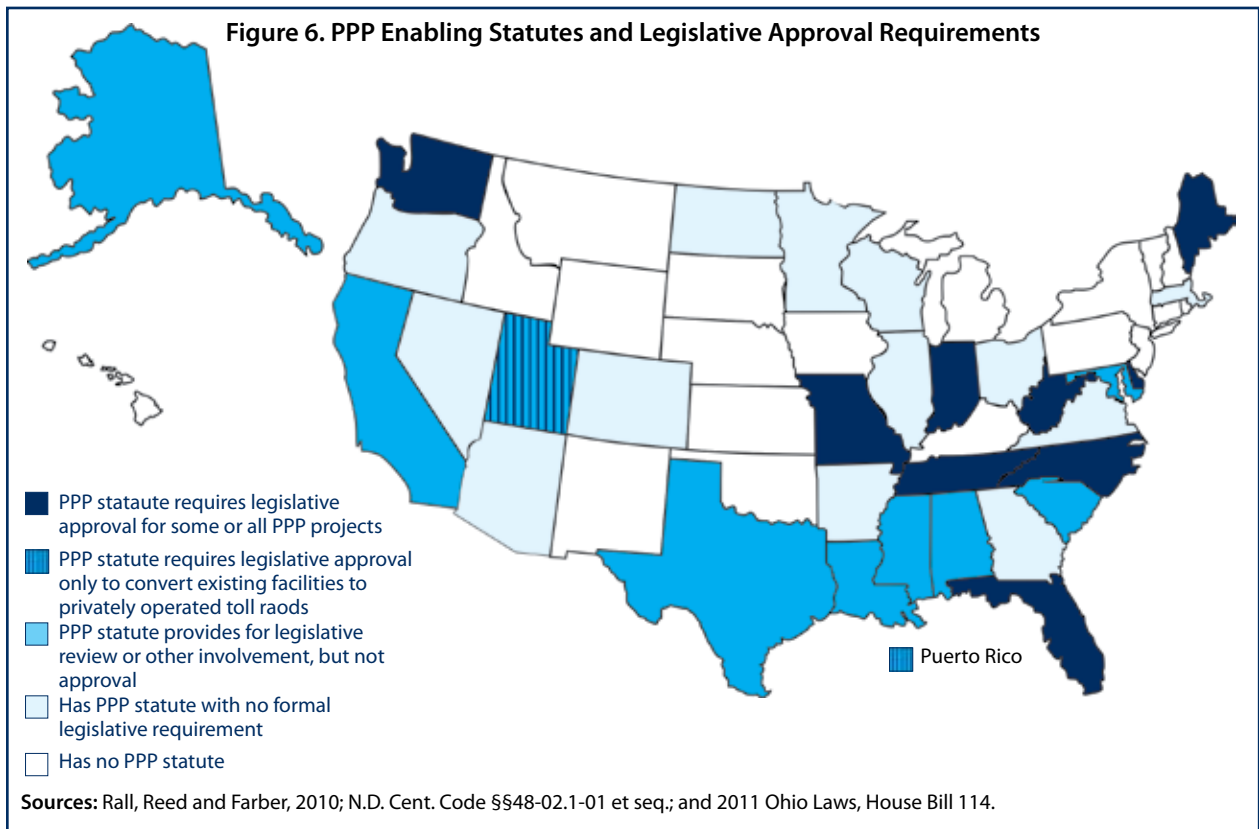
Sources: NCSL-AASHTO Survey Data, 2010 – 2011, supplemented by original research using Westlaw; AASHTO Center for Excellence in Project Finance, 2010; Dierkers and Mattingly, 2009; and Rall, Reed and Farber, 2010.

Some of these mechanisms—such as state infrastructure banks and debt financing instruments—require enactment of state authorizing legislation before a state agency such as a DOT can use them. Enabling legislation grants and defines the legal authority of an executive entity to use a given tool or program and also can address restrictions that exist in current law or policy. Debt financing mechanisms that are available to states and may require enabling legislation include general obligation, revenue, special tax and private activity bonds (PABs), among others. Most states rely on debt to finance projects; only Iowa, Montana, Nebraska and North Dakota reported relying solely on pay-as-you-go financing.⁵⁴ Other states—including Illinois, Maine, Oklahoma and Vermont—specifically noted legislative approval requirements for bonding or other financing (see State Profiles). Requiring enabling legislation before a DOT can use these options gives the legislature an ongoing role in—and additional means for oversight of—transportation finance.

Other innovative financing tools can entail ongoing involvement of both state legislatures and DOTs beyond passage of enabling statutes. One such mechanism is public-private partnerships (PPPs or P3s). According to a widely adopted definition from the U.S. Department of Transportation, PPPs are contractual agreements between public and private sector partners that allow more private sector participation than is traditional in infrastructure delivery; in some, the private sector also finances some or all of a project.⁵⁵ PPPs cover more than a dozen project delivery and finance models, ranging from minimal to substantial private sector involvement. The enhanced private role in public infrastructure that characterizes PPPs has made these agreements controversial, but they also are seen as an opportunity to help leverage increasingly limited public sector resources.

Both state legislatures and DOTs are involved in the PPP decision-making and implementation process. Legislatures are primarily responsible for deciding whether a state is to engage in PPPs and for enacting enabling statutes that permit them; as of April 2011, 31 states and Puerto Rico⁵⁶ had enacted such statutes. Executive agencies such as DOTs generally are responsible for implementing PPP programs and projects within statutory guidelines.

Laws in Delaware, Florida, Indiana, Maine, Missouri, North Carolina, Tennessee, Washington and West Virginia, however, give the legislature a more active and ongoing role by requiring some form of legislative approval for at least some PPP projects (Figure 6).⁵⁷ (In addition, Utah and Puerto Rico require legislative approval only to convert existing facilities to privately operated toll roads.) Legislative approval requirements vary widely. Some require approval by the full legislature and others—such as those in Delaware and Missouri—only by certain committees or committee chairs. They also differ in the projects for which approval is required, the procedures for acquiring approval and the stage of project development at which approval must be given.



PPP legislative approval provisions have been heavily debated. On the one hand, they create a means for elected officials to review and be held accountable for PPP projects that may have a significant impact on the public interest. They also introduce political uncertainty into the PPP process, however, which can discourage private investors. Other options for legislative involvement in PPPs include provisions that require legislative review but not approval of PPP projects—now the model in eight states—and strong enabling legislation that addresses key policy issues in depth.⁵⁸

Grant anticipation revenue vehicles, or GARVEEs, are another innovative finance tool that can require ongoing involvement of the legislature through approval provisions in enabling statutes. A GARVEE is a federal debt financing instrument that enables a state, political subdivision or public authority to pledge future federal-aid highway apportionments to support costs related to bonds and other debt financing. Essentially, GARVEEs allow debt-related expenses to be paid with future federal-aid funds, thus accelerating project design and construction. Twenty-nine states and Puerto Rico have issued GARVEE debt; Florida, Nevada, New Hampshire, Texas, Washington and the District of Columbia had authorized but not yet issued GARVEEs as of 2009.⁵⁹

As with PPPs, in some states—including Idaho, Louisiana, Maine and Washington—the enabling statutes require further legislative approval or appropriation before GARVEE debt can be issued. In contrast, Colorado’s statute explicitly delegates this authority to the executive branch.⁶⁰ However, Colorado law authorizes GARVEE debt only up to a specified level and would require additional legislative approval for the DOT to exceed the cap; California also limits GARVEE issuance in statute.⁶¹

Transportation Planning

States determine their investment priorities for state and federal transportation dollars through structured planning processes that include project identification, selection, prioritization and approval. Both DOTs and legislatures can play a role in this important activity, and the balance of legislative and executive authority varies widely across states, as do the processes themselves.

In all states, DOTs generally take the lead in conducting transportation planning activities and ensuring compliance with federal and state requirements. To receive federal transportation funding, each state must organize its planning process to comply with federal laws, regulations and executive orders that require or influence many elements of the planning process (Table 9). The federal government requires each state to produce a statewide, intermodal long-range transportation plan (LRP). The plan provides a vision and a framework over a horizon of at least 20 years. Each state also must produce a State-

Table 9. Federal Laws that Influence the Transportation Planning Process	
Federal Surface Transportation Authorization Legislation	
•	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)
•	Transportation Equity Act for the 21 st Century (TEA-21)
•	Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)
Other Federal Laws	
•	Clean Air Act (CAA) and Clean Air Act Amendments of 1990 (CAAA)
•	Vision 100: The Century of Aviation Act (Vision 100)
•	Wendall H. Ford Investment and Reform Act for the 21 st Century (AIR-21)
•	National Environmental Policy Act (NEPA)
•	Americans with Disabilities Act (ADA)
•	Title VI of the Civil Rights Act of 1964
•	Environmental Justice Orders
	– Executive Order 1298
	– DOT Order on Environmental Justice to Address Environmental Justice in Minority Populations and Low-Income Populations (DOT Order 5610.2)
	– FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (DOT Order 6640.23)
•	23 U.S.C. §109(h)
•	The Uniform Relocation Assistance and Real Property Acquisition Policies of 1970
Source: Connecticut Department of Transportation, 2007.	

wide Transportation Improvement Program (STIP) that lists all projects a state expects to be funded with federal participation over a period of not less than four years. The process for these plans must include coordination with metropolitan planning areas and multi-state efforts; consideration of concerns of regional, local, tribal and federal land management entities (Figure 7); compliance with environmental standards; public involvement; and other requirements. States also must develop federally mandated environmental plans and reports, planning work programs, and highway safety plans and reports.⁶²

Figure 7. Participants in the Transportation Planning Process

General Policy, Planning Requirements and Funding	Cooperative State and Local Planning Efforts	Coordination with Other Entities
<ul style="list-style-type: none"> • Federal Highway Administration (FHWA) • Federal Transit Administration (FTA) • National Highway Traffic Safety Administration (NHTSA) • Federal Aviation Administration (FAA) 	<ul style="list-style-type: none"> • State DOT • Other state agencies • Partners in multi-state efforts • Transit operators • Metropolitan Planning Organizations (MPOs) • Regional [Transportation] Planning Organizations (RTPOs or RPOs) • Local governments • Local community organizations and agencies 	<ul style="list-style-type: none"> • Citizens • Affected public agencies • Representatives of public transportation employees • Freight shippers • Private providers of transportation • Representatives of public transportation users • Representatives of users of pedestrian walkways and bicycle facilities • Representatives of persons with disabilities • Federally recognized Indian tribes and the Secretary of the Interior • Other interested parties

Source: Adapted from Connecticut Department of Transportation, 2007.

Transportation planning processes are further defined at the state level. Thus, in addition to federal requirements, DOTs must meet state-specific mandates concerning transportation plans and capital programs. In many states, DOTs must prepare one or more state plans in addition to those that are federally required. In New Jersey, for example, the DOT must annually prepare and submit to the legislature a proposed transportation capital program for the ensuing fiscal year, and must also separately update the federally required STIP. DOTs also may be required by state law to prepare other mode-specific plans—for example, for rail, aviation, or bicycles and pedestrians.

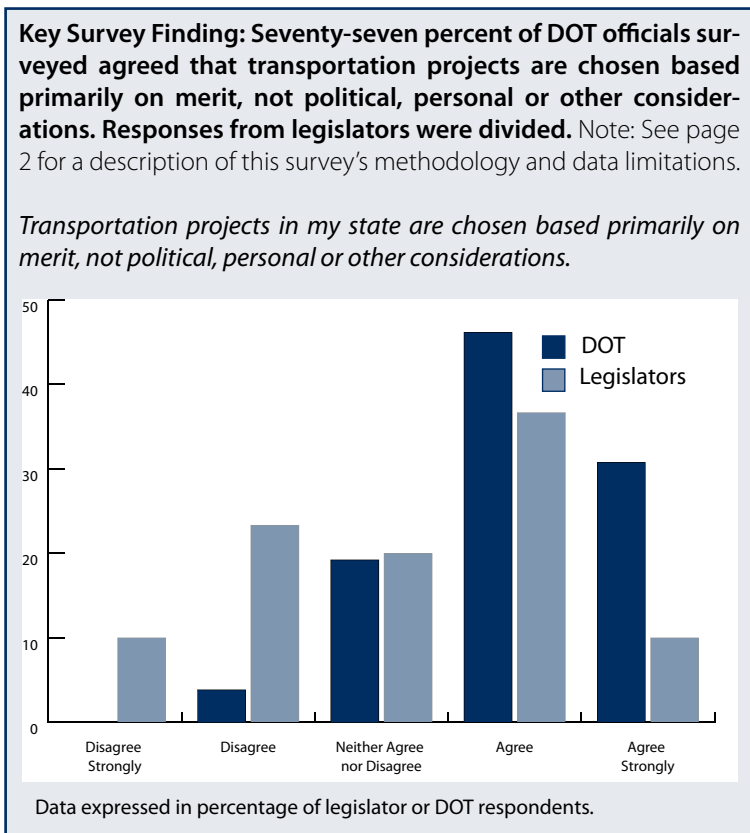
The extent of legislative involvement and authority in the process of selecting and approving projects differs greatly across states. At one end of the continuum are Nebraska and Wyoming, which constitutionally prohibit the legislature from prioritizing specific road projects.⁶³ At the other end are: Delaware, where legislators each determine the use of an annual authorization of the state’s Community Transportation Fund for transportation-related projects in their respective districts; Pennsylvania, where legislative leaders serve on the state Transportation Commission that approves all projects; and Wisconsin, where the legislature is required by statute to review and approve major highway projects.⁶⁴ In other states—including Alabama, Florida, Georgia, Hawaii, Illinois, Louisiana, Maryland, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Rhode Island, Tennessee and Vermont—the legislature actively reviews or approves DOT plans or programs, often as part of the budget process (see State Profiles).

Between these poles are many other ways in which legislatures are involved in transportation planning. Arizona, Connecticut, Florida, Kansas, Maryland, South Carolina, Texas, Utah and Vermont have set forth in statute general planning priorities or processes. The Kansas legislature also approves the state’s comprehensive transportation plan, which provides only general priorities rather than specific projects. Legislatures in Arizona, Colorado, Connecticut, Georgia, Idaho, Iowa, Massachusetts, Minnesota,⁶⁵ Montana,⁶⁶ Nevada, Tennessee, Oregon, Utah, Virginia, Washington and West Virginia have sometimes prioritized projects by enacting project-specific earmarks or bond bills, whereas those in Ohio, Oklahoma, Kansas and South Dakota have generally chosen not to legislate in this way. In California, Indiana, Missouri, Montana, North Dakota, South Carolina and South Dakota, there is generally little or no direct legislative role, beyond the opportunity for legislators to participate in hearings or meetings as members of the public. In these states, because funds flow directly to DOTs without legislative involvement or are appropriated at the agency or program level rather than to specific projects, the legislative role in project prioritization is further limited.

Other notable models for involving state legislatures in transportation planning include the following.

- In Louisiana, the legislature holds hearings around the state and reviews the proposed construction program. Committee feedback is used to modify proposed programs or to develop future ones. The legislature can delete but not add or substitute projects in the approval process.
- The Connecticut legislature created a Transportation Strategy Board in 2001. This board includes legislatively appointed members and proposes a transportation strategy for legislative approval every four years.
- In North Carolina and Oklahoma, the DOT selects highway projects, but the legislature directs funds to other modes such as transit and rail as part of the appropriation process.
- The Rhode Island legislature does not have an active role in prioritizing federally funded projects, but does when state capital funds are used.
- Legislators in some states, including Pennsylvania and Virginia, have been appointed to the boards of metropolitan planning organizations and so have participated in the planning process in that way.

A key theme in the NCSL-AASHTO survey data was the particular tension between legislatures and DOTs about what constitutes an appropriate level of legislative involvement or oversight in the critical task of transportation planning. State legislators and DOT officials identified a desire to have appropriate checks and balances in place to depoliticize the process and to prevent promotion of “pet projects” at the expense of the entire system. Despite these concerns, 77 percent of DOT



executives agreed that transportation projects are chosen based primarily on merit, not political, personal or other considerations; responses from legislators, however, were divided (see Key Survey Finding on the previous page).

Other Legislative and Executive Interactions in Transportation Funding and Finance

In most states, legislatures and DOTs also may experience tension or overlap in the areas of retention of surplus or excess funds and cost-controlling measures.

Retention of Surplus or Excess Funds⁶⁷

In most states, unspent transportation dollars revert to a DOT-administered dedicated transportation fund at the end of the fiscal year or biennium (see State Profiles). In some states, such as Virginia, these funds are retained by the DOT with no restrictions; in Hawaii, Utah and Vermont, at least some funds are retained, but must be used for the same purpose for which they were originally appropriated. In Oklahoma and Oregon, funds are retained, but the DOT is subject to an expenditure limit; and in Missouri and Oregon, certain funds are retained but others expire.

In some states, legislatures have assumed a more substantial role in managing excess transportation funds. In Alaska, Florida, Illinois, Kentucky, New Jersey, Texas and Washington, funds lapse and the DOT must seek new appropriations or expenditure authority from the legislature. Similarly, in California, Minnesota, Nebraska, North Dakota and Wisconsin, funds are retained in transportation funds but must be legislatively reappropriated before the DOT can spend the money. In Minnesota, specific language accompanying an appropriation is needed to grant carry-forward authority across biennia. In Vermont, revenues in excess of appropriations are credited to the Transportation Fund, although the annual transportation bill may provide for their expenditure on a contingent basis. In West Virginia, although surplus funds are retained in the State Road Fund at the end of the fiscal year, the DOT must request additional spending authority from the legislature to spend more than the amount appropriated for the next year. In all these cases, the legislature is actively involved in management and oversight of surplus DOT funds.

Controlling DOT Costs

Across jurisdictions, state legislatures have enacted provisions—beyond expenditure limits in budget and appropriations acts—that are intended to control DOT costs. NCSL-AASHTO survey respondents identified low bid requirements and other guidelines in state procurement codes or other statutes as the most common legislative controls on DOT costs.

Some legislatures also have taken further action. In Ohio, the legislative Controlling Board must approve waivers of competitive selection when the agency's non-competitively bid purchases or leases exceed certain amounts; the Controlling Board also must approve any requested increase in appropriation. Virginia's 2009 Appropriation Act directed downsizing the agency to no more than 7,500 employees and use of private contracts for at least 70 percent of annual expenditures. Nevada statute limits the use of highway fund revenues for administrative costs. In Vermont, the DOT must prepare reports detailing bids versus cost estimates for distribution to a legislative oversight committee.⁶⁸ These activities permit additional legislative controls and oversight over DOT costs.