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How to Fix Roads and Bridges without Increasing the Fuel Tax: Reform Federal Highway Policy and Use the Savings for Roads

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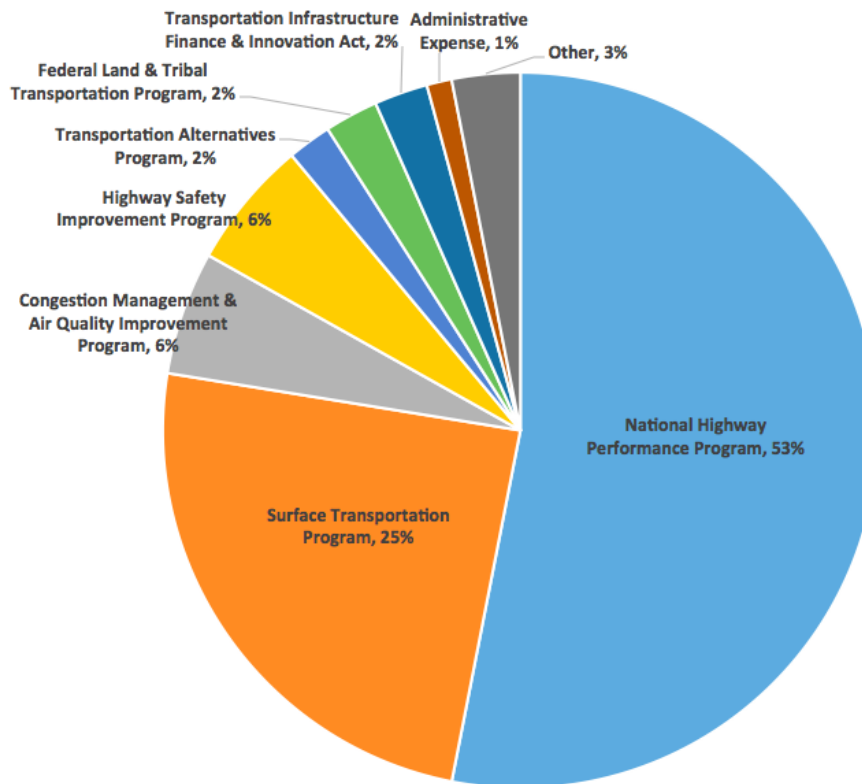
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As gas prices have fallen throughout the country, in some states dipping below \$2 per gallon, proposals to raise the tax on gasoline have become more politically palatable. Members of Congress from both sides of the aisle have proposed raising the tax to increase funding for America's aging infrastructure.¹ Before resorting to raising the tax burden on the American public, Congress should explore ways it can free up more money for transportation development by reducing the regulatory burden on federally funded highway projects.

America's roadways are primarily funded through the federal fuel tax, which, since 1993, has been set at 18.4 cents per gallon for gasoline and 24.4 cents per gallon for diesel fuel.² Federal fuel tax dollars go into the Highway Trust Fund for the construction and maintenance of America's highways. The Highway Trust Fund was created as a pay-as-you-go fund in 1956, meaning that Congress could not spend more than it collected in revenue from user fees.³ This is no longer the case, as Congress has recently used revenue from the general fund to avoid running a deficit in the trust fund.⁴ In 2014 the trust fund nearly dried up before Congress passed an \$11 billion stopgap measure.⁵ Since 2008, policymakers have diverted an estimated \$70 billion in general funds to the Highway Trust Fund.⁶

Before resorting to an increase in the federal gas tax, policymakers should review the regulations for federal transportation projects. They should pare down requirements that raise the cost of building and maintaining roads while offering questionable benefits. Regulations like the Davis-Bacon Act of 1931 (Davis-Bacon) increase the cost of labor for federal infrastructure projects. Environmental regulations such as the National Environmental Policy Act of 1969 (NEPA) create complicated requirements that result in delays that drive up the costs of federal infrastructure projects.

Figure 1. Federal Highway Administration Spending by Categories



Source: Federal Highway Administration, "FHWA FY 2014 Budget Estimates," April 11, 2013, <http://www.dot.gov/mission/budget/fhwa-fy-2014-budget-estimates>.

Besides causing delays, regulations force the government to hire additional federal employees to make sure requirements are met. Key regulations that apply to federal transportation projects or affect the allocation of funds by the Federal Highway Administration (FHWA), including their estimated costs, are described below, along with alternatives for reducing the regulatory burden on highway projects.

REGULATION OF HOW STATES SPEND HIGHWAY MONEY

The FHWA allocates its share of the Highway Trust Fund to 12 different program categories. Figure 1 shows the major program categories. Detailed regulations affect how money from each program category can be spent.

The FHWA has developed a set of procedures that must be used on every highway project it funds. According to one estimate, complying with federal rules raises overhead costs to approximately 25 percent of project costs, while overhead costs represent only about 5 percent of project costs for locally funded roads that do not have to comply with federal rules.⁷ These costs could be reduced considerably if the federal government gave each state a grant and allowed that state to decide how to spend the money, subject to an audit process to ensure that certain minimum standards are met, such as making sure the money is spent on highways.⁸

Another regulation that raises highway costs is the Buy America program. This program requires that iron, steel, and manufactured products used for highways must be made in the United States unless using domestically produced materials would raise costs by more than 25 percent.⁹ Although many highway materials,

such as concrete and asphalt, are not internationally traded, eliminating this requirement can still reduce some costs, particularly for bridges, which use a considerable amount of steel.

ENVIRONMENTAL REGULATIONS

Federal transportation projects must comply with 65 different environmental regulations.¹⁰ These regulations are intended to reduce the impact of federal transportation projects on environmental quality, human health, historical and archeological sites, land and water use, noise, and air quality.¹¹ Each regulation increases the cost of the US highway system by requiring agencies to check off the required boxes before they can move forward with a highway construction project.

Compliance with NEPA regulations is complicated and involves a detailed documentation procedure. If planners do not know whether a project will have significant environmental effects, an environmental assessment (EA) must be prepared. If the EA finds that a project will have a significant effect on the environment, the Federal Highway Administration must create an environmental impact statement to document the expected effects and any reasonable alternative actions.¹²

Because they have to meet so many different requirements, many created by NEPA, major highway construction projects take as long as 10 to 15 years to complete. For example, California's Transportation Corridor Agencies have spent the last 15 years attempting to comply with the federal environmental review process for a toll road under construction.¹³ Since NEPA became law, the average time required to complete an environmental impact statement for a federal infrastructure project has increased from two years to more than eight years.¹⁴

The Obama administration recognized the burdensome nature of the NEPA process when it exempted 179,000 stimulus projects from environmental review. The goal, according to secretary of energy Steven Chu, was to "get the money out and spent as quickly as possible."¹⁵ While the NEPA process likely offers some benefits, these recent exemptions have not led to an environmental catastrophe and strongly suggest that federal projects can be completed in a timelier manner if some regulatory burdens are reduced.

Since NEPA was passed, numerous environmental regulations have been passed at the federal, state, and local

levels, making the NEPA process redundant for many projects. Diane Katz and Craig Manson lay out several recommendations for reforming NEPA. The first is to narrow NEPA reviews to focus on issues not covered by other environmental regulations. Katz and Manson also recommend mandating time limits for agency decisions about changes that may be required in a project and limiting the number of alternatives studied. In addition, they recommend permitting agencies to incorporate existing analyses as functional equivalents rather than beginning anew when case facts are similar between projects. The authors also recommend establishing a lead agency to limit jurisdictional overlap.¹⁶ These reforms provide practical suggestions for streamlining the NEPA process so that taxpayer dollars can be spent more efficiently on federal highway projects.

THE HIGHWAY SAFETY IMPROVEMENT PROGRAM

An additional category of regulation attempts to ensure that America's roadways are safe for the public. The Highway Safety Improvement Program (HSIP) was expanded in 2012 as part of the Moving Ahead for Progress in the 21st Century Act. The HSIP's goal is to provide funds to help state and local governments achieve a significant reduction in traffic fatalities and serious injuries on all public roads.¹⁷

It is not clear why the federal government needs to provide grants to the states for safety improvements to occur, since each state has an incentive to make its roads safer. By accepting these grants, states must agree to follow spending priorities set in Washington. If states spend their own money, each state could use its own criteria to decide how to improve safety instead of adhering to the HSIP's rules, which require setting aside money for programs that are often not states' top safety priorities.¹⁸

The Railway-Highway crossings program illustrates the impact of federal priorities on HSIP spending. The safety improvement program requires that states prioritize spending to enhance safety at railway-highway grade crossings, with \$220 million set aside each year for that purpose.¹⁹ Without special permission from the secretary of the Department of Transportation, states cannot use that money for other purposes, even if that money could bring stronger safety gains if applied to another area. Even if HSIP grants increase the total spending on safety programs, they likely lead to greater

funding for lower-priority projects while higher-priority safety improvements are not funded.

DAVIS-BACON ACT AND THE COST OF LABOR

The Davis-Bacon Act of 1931 set a price floor for the wages of workers on most federally funded construction projects based on the “prevailing wages” of workers in that area.²⁰ In practice, this means paying higher union wages, since the level of prevailing wages is often determined based on union wage data.²¹ James Sherk found that Davis-Bacon regulations increase the cost of federally funded construction projects by 9.9 percent.²² Although some would argue that this represents a benefit for local workers who are employed by federal projects, in reality Davis-Bacon leads to higher costs that must be borne by US taxpayers. Federal regulations like Davis-Bacon also distort the market for labor in areas where federal projects are located. Because these kinds of regulation make labor more expensive, contractors may respond by using more capital and less labor. As a result, it might be more difficult for construction workers to find jobs. In this case Davis-Bacon would actually be hurting the very people it was intended to help.

The Congressional Budget Office estimates that repealing Davis-Bacon would save \$13 billion in discretionary spending from 2015 through 2023.²³ This suggests that annual savings to the FHWA could be more than \$700 million per year.²⁴

HOW MUCH COULD BE SAVED BY ELIMINATING CERTAIN FEDERAL REGULATIONS?

Gabriel Roth presents estimates of the costs of federal regulations from several experts who have been involved in managing or overseeing highway construction or maintenance projects.²⁵ Ralph Stanley, the entrepreneur who conceived and launched the Dulles Greenway, a privately constructed toll road in Northern Virginia, estimates that federal regulations increase project costs by 20 percent.²⁶ Reducing these regulatory costs could save more than \$8 billion per year.²⁷ Roth mentions two other estimates—one that federal funding raises administrative and research costs by about 10 percent of construction costs, the other that federal regulations increase costs by 30 percent.²⁸

In addition to 20 percent savings in the cost of administering highway projects, reducing or eliminating

programs that spend trust fund money for purposes other than highway construction and maintenance could save additional costs. Up to \$2.4 billion could be saved by reducing or eliminating federal spending on the HSIP. Even if the federal government gives states smaller grants but allows them more discretion to choose the most important safety improvements, savings can be substantial while improving highway safety.

CONCLUSIONS

Recent large transfers from the general fund to the Highway Trust Fund mean that revenues from the federal fuel tax have been paying a declining share of highway costs. This is part of the impetus behind calls for an increase in the fuel tax. But the federal government could eliminate a substantial portion of the shortfall in the Highway Trust Fund through a few reforms. If the FHWA reformed highway policy by giving grants directly to the states, eliminating Davis-Bacon, and reducing programs that require trust fund money to be allocated for purposes other than highway construction or maintenance, total savings could be as much as \$10 billion or more.²⁹ The government could also simplify the NEPA process, eliminate other costly regulations, and devolve safety regulation to the states. If these measures are not sufficient to eliminate the deficit, other revenue sources, such as congestion tolls or having states pay for more costs, might also be considered before resorting to an increase in the federal fuel tax.

ENDNOTES

1. Alexander Bolton, "Senators Propose Raising the Gas Tax for the First Time Since 1993," *The Hill*, June 18, 2014, <http://thehill.com/homenews/senate/209769-murphy-and-corker-propose-raising-164-billion-through-higher-gas-tax>.
2. In addition to taxes on gasoline and diesel fuel, revenue from taxes on special fuels, truck tires, commercial truck and trailer sales, and heavy vehicle use are dedicated to the Highway Trust Fund. For brevity, these other sources are not listed separately but revenue from these other sources is considered part of fuel tax revenue.
3. Federal Highway Administration, "Busting the Trust: Unraveling the Highway Trust Fund, 1968-1978," June 2013, http://www.fhwa.dot.gov/highwayhistory/busting_the_trust.pdf.
4. Clifford Winston, "How the Private Sector Can Improve Public Transportation Infrastructure" (Papers, Brookings Institution, Washington, DC, July 29, 2014), 164.
5. Steve Bell, Shai Akabas, and Emil Frankel, "How to Fix the Highway Trust Fund," *The Hill*, August 12, 2014, <http://thehill.com/blogs/congress-blog/economy-budget/214861-how-to-fix-the-highway-trust-fund>.
6. Ibid.
7. These estimates came from an interview with Jay Schlosser, city engineer for Tehachapi, California. Costly federally mandated procedures substitute for more flexible approaches taken by state or local agencies to achieve similar goals, such as quality assurance.
8. Randal O'Toole, a senior fellow at the Cato Institute, has suggested this approach. Since money from some FHWA program areas can be used for public transit, grants could be flexible enough to allow states to spend a portion of the federal money they receive for transit.
9. Department of Transportation, "Buy America," March 4, 2015, <http://www.dot.gov/highlights/buyamerica>.
10. Winston, "How the Private Sector Can Improve Public Transportation Infrastructure," 166.
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15. Kristen Lombardi and John Solomon, "Obama Administration Gives Billions in Stimulus Money without Environmental Safeguards," *Washington Post*, November 28, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/28/AR2010112804379.html?sid=ST2010112903774>.
16. Diane Katz and Craig Manson, "The National Environmental Policy Act," in *Environmental Conservation: Eight Principles of the American Conservation Ethic* (Washington, DC: Heritage Foundation, 2012), <http://www.heritage.org/research/projects/environmental-conservation>.
17. Federal Highway Administration, "Highway Safety Improvement Program," January 3, 2014, <http://safety.fhwa.dot.gov/hsip/>.
18. The difference between federal rules and state priorities is discussed in Government Accountability Office, "Preliminary Observations on Efforts to Implement Changes in the Highway Safety Improvement Program Since SAFETEA-LU," July 2008, <http://www.gao.gov/assets/130/120752.pdf>.
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22. James Sherk, "Examining the Department of Labor's Implementation of the Davis-Bacon Act" (Testimony before the House Committee on Education and the Workforce, Heritage Foundation, April 14, 2011), <http://www.heritage.org/research/testimony/2011/04/examining-the-department-of-labors-implementation-of-the-davis-ba-con-act>.
23. Congressional Budget Office, "Choices for Deficit Reduction: An Update," December 2013, <https://www.cbo.gov/publication/44967>.
24. This is calculated by taking half of the \$13 billion savings and dividing it over nine years, since "about half of all federal or federally financed construction was funded through the Department of Transportation" according to Congressional Budget Office, "Repeal the Davis-Bacon Act," in *Options for Reducing the Deficit*.
25. Gabriel Roth, "Liberating the Roads: Reforming US Highway Policy" (Policy Analysis: No. 538, Cato Institute, Washington, DC, March 17, 2005), <http://www.cato.org/publications/policy-analysis/liberating-roads-reforming-us-highway-policy>.
26. Ralph Stanley, "Reducing the Federal Role in Highway Assistance" in *Mandate for Leadership III: Policy Strategies for the 1990s* (Washington, DC: Heritage Foundation, 1988).

27. This is 20 percent of annual highway spending and does not count the savings from reducing or eliminating specific programs such as the HSIP. Annual highway spending has been over \$40 billion per year in recent fiscal years according to FHWA. Federal Highway Administration, “Status of the Highway Trust Fund,” Table FE-1, <http://www.fhwa.dot.gov/highwaytrustfund/>.
28. The sources of these two estimates are private communications in 2004 with transportation economist John Semmons and Robert Farris, former commissioner of the Tennessee Department of Transportation and federal highway administrator, cited in footnotes 30 and 32 in Roth, “Liberating the Roads.”
29. As discussed above, grants to the states could save \$8 billion per year, reducing spending on the Highway Safety Improvement program could save up to \$2.4 billion, and repealing Davis-Bacon could save an additional \$700 million. Even if the HSIP were reduced but not eliminated, combined savings could be close to \$10 billion.

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