Transportation Governance and Finance: a 50-State Review of State Legislatures and Departments of Transportation (A Joint Project of the National Conference of State Legislatures and The AASHTO Center for Excellence in Project Finance, 2011.)

Executive Summary

In recent years, states have faced challenges in providing a safe, reliable, effective and efficient transportation network. These challenges are characterized by an aging system and growing transportation needs, coupled with declining abilities to pay for needed maintenance and capacity expansion. How each state meets these challenges is necessarily shaped by its distinctive approach to governing and paying for its transportation system, within a unique balance of power among its branches of government. Yet, until now, little nationwide, comparative information has been available about how state government entities work together in practice to address transportation governance and finance.

From 2010 to 2011, the National Conference of State Legislatures (NCSL) and the American Association of State Highway and Transportation Officials (AASHTO) partnered to produce an unprecedented, 50-state review of transportation governance and finance, based largely on in-depth, original survey research. The project focused on transportation finance and on the roles of, and relationships between, those state government entities that are most active in transportation issues: state legislatures and, under the authority of governors, state departments of transportation (DOTs). The resulting groundbreaking report is intended to benefit DOTs and legislatures 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 often are complex intergovernmental arrangements.

The report provides an overview of state transportation governance and finance as well as detailed profiles and other information for each state, the District of Columbia and Puerto Rico.

Participants in Transportation Governance and Finance

A complex network of public and private organizations finances, plans, builds and operates the U.S. transportation system. Every U.S. jurisdiction has an elected legislative body that is broadly responsible for policies, programs and, to some extent, appropriations and program oversight, and an agency or department within the executive branch that is responsible for highway functions under the authority of a governor or other lead executive. The organizational structures and functions of these entities, however, vary widely across jurisdictions.

Legislatures vary from those with year-round sessions, full-time legislators and large staffs (such as those in California, Michigan, New York and Pennsylvania) to those with limited or biennial sessions, part-time legislators and smaller staffs (such as those in Georgia, Idaho, Indiana, Kansas, Maine, Mississippi, Nevada, New Mexico, Rhode Island, Vermont and West Virginia). A legislature's overall characteristics and capacity will affect, but not necessarily dictate, the extent of its 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.

State DOTs vary by organizational structure, modes served, balance between state and local roles, and general roles and responsibilities. They also vary by the practical division of roles and responsibilities between the governor and the DOT. In some states—including Michigan and Oklahoma—governors have chosen to delegate much of the responsibility to the DOTs. In others—such as Nevada, North Carolina, Oregon and Pennsylvania—the governor's office is more actively involved in transportation policy and budgeting.

Other major stakeholders in transportation governance and finance include federal entities; state transportation commissions and boards; state-level non-highway modal agencies; tolling and turnpike agencies; airport and port authorities; tribal, regional, metropolitan and local entities; and voters, interest groups and the general public.

Legislature-DOT Communication and Collaboration

In anonymous survey responses, legislators and DOT executives overwhelmingly agreed that maintaining regular, open, honest and transparent communication is one of the most vital elements of effective transportation governance, and that intergovernmental relationships should be made a priority. In practice, engagement between legislatures and DOTs differ significantly across jurisdictions, including states with limited, ad hoc interactions; those with formal, structured engagements focused on reporting requirements and the budget process; and those with extensive, proactive, collaborative communication that extends beyond the legislative session and pervades all levels of both organizations. Most states have a combination of formal and informal mechanisms that are more active at certain times of year, particularly in relation to budgeting and appropriations.

One recommendation from survey respondents for promoting effective interactions is to have a strong DOT government relations office that includes a state legislative liaison. At least 38 states and the District of Columbia have such offices or liaisons 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.

Most other states 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 that meets regularly to discuss pending legislation. New Mexico is one of three states that have no such entity; the state reports direct, frequent communication between multiple levels of each organization instead.

Transportation Governance

The separation of powers between legislatures and DOTs necessarily results in many areas of overlap—and therefore possible tensions and opportunities for collaboration—in state transportation governance. Several ways in which state legislatures and DOTs share the complex task of governing the nation's transportation system are outlined below.

Legislation

Legislatures must authorize the activities of the executive branch through legislation, and they also enact many laws that affect state DOTs and the nation's transportation system. This power generally is balanced on the executive side by governors' veto authority.

In many states, DOTs also can participate actively in the legislative process.
For example, DOTs can draft, introduce or request transportation-related legislation in at least 22 states and the District of Columbia; in Wyoming, the process of drafting transportation-related legislation is fully collaborative.

In Florida, Georgia, Iowa and Missouri, DOT lobbyists formally present DOT positions on legislative measures, but in some other states—including Louisiana and Texas—the DOT does not lobby the legislature. In Texas, however, although state agency employees may not influence legislation, the Texas Transportation Commission has statutory authority to provide recommendations to the governor and the Legislature on DOT operations and efficiencies.
In addition, some state DOTs provide information about the implications of proposed transportation-related legislation. All state legislatures have a process by which some or all proposed bills are accompanied by details of their fiscal implications, although the frequency of providing this information varies. In almost all states, these fiscal notes are prepared by a legislative fiscal office, sometimes—as in Missouri, Oregon and Texas—informed by data or impact statements solicited from affected agencies such as DOTs. In Alaska, Minnesota, North Dakota, West Virginia and Wisconsin, however, DOTs and other executive departments prepare fiscal notes.

DOTs in Virginia and Wisconsin also provide analyses of policy implications. These activities can add to an agency's workload, but also offer another opportunity for legislative-executive communication and collaboration.

DOTs also track and monitor transportation-related bills, testify at legislative hearings, provide requested information to legislators and legislative staff, or make recommendations concerning proposed legislation.

Legislative Oversight

Legislative oversight refers to the review and evaluation of selected executive branch programs and activities. During the past three decades, legislatures have assumed more active oversight of executive branch operations. Nevertheless, only about half of DOT executives as well as state legislators who responded to an 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.

Oversight takes place through many mechanisms described below; most states use a blend of most or all of these tools. Typically, the budget and appropriations process also includes oversight activities, and in many cases is seen as the main forum for legislative oversight of the DOT. Several survey respondents remarked that knowledge and investment on the part of both DOTs and legislatures are necessary to ensure that oversight tools are effective and meaningful in practice.

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 many states, several committees share oversight responsibilities for a DOT. Tennessee's DOT, for example, is overseen by seven legislative committees.

DOT Leadership Appointments
In most states, legislatures participate in appointing DOT executives or other transportation leaders within the executive branch that influence a DOT's activities. In most cases, these leaders are appointed by the governor with approval of the Senate. At least some appointments in 19 states, however, are made by the executive branch with no legislative approval required.
In contrast, some DOT leaders in California, Georgia and South Carolina are directly selected by legislators. In Pennsylvania, legislative leaders serve on the Transportation Commission by virtue of their office, creating an unusually direct interaction between the legislature and the DOT in transportation governance. Mississippi's unique three-member Transportation Commission is elected by the people and is the only selection process of DOT leadership in the nation that involves neither the legislature nor the executive branch. Legislatures also may set statutory guidelines for appointments or share the authority to remove DOT leaders.

Review of Administrative Rules and Regulations
Although legislatures have generally delegated the responsibility to executive agencies to promulgate administrative rules and regulations, in 43 states they retain authority to review such rules to ensure their compliance with statutory authority and legislative intent. In more than half of these states, the legislature or a designated committee has the power to suspend or supersede a rule; in the rest, the review committee's role is mainly advisory. Mississippi, Rhode Island and Puerto Rico have no review process, while California, Delaware, Massachusetts, New Mexico and North Carolina have executive branch review only.

Performance Goals
State DOTs nationwide now have goals and objectives against which their performance is measured. In most states, the executive branch develops performance goals and measures DOT progress toward them, in accordance with existing law. In Maryland, Minnesota, Nevada and Washington, a legislative directive has encouraged or required a move toward DOT performance management. The legislatures in at least eight states and the District of Columbia more actively develop or approve specific DOT performance goals.

In addition, as of 2008, 22 legislatures reported using performance information for executive agencies at some point in the budget process. In Utah, the legislature assesses first whether goals have been met before determining funding levels; in Montana, a legislative committee is developing ways to consider performance goals in the budgeting process for all agencies, including the DOT.

Program Evaluation and Sunset Reviews
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. Texas has three such offices. Washington had a legislatively created, separate transportation audit unit from 2003 to 2006, the Transportation Performance Audit Board. These offices generally review the effectiveness, efficiency and legality of state executive agencies, as well as the extent to which those agencies are following legislative intent.

Further, at least 26 legislatures review non-legislative program evaluations or performance audits—such as those performed by an executive branch state auditor—in addition to performing their own.

Some states also conduct sunset reviews, which evaluate the functions of a state entity to assess whether it should continue to exist. Arizona, Florida, Louisiana, Tennessee and Texas perform regular sunset reviews of the DOT; in Texas, the DOT will expire on Sept. 1, 2011, unless affirmatively continued by the Legislature.

Reporting Requirements

Forty-five states and the District of Columbia identified using reporting requirements to the full legislature or a legislative committee as a mechanism for legislative oversight of their DOTs. Common reporting requirements include reviews of expenditures, obligations, projects, performance or other agency activities. Some requirements may be instituted due to lack of information about or past concern with a program. Others may be required only for a limited time to facilitate oversight of a particular 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 include legislative requests for information from the DOT as well as use of other independent sources of transportation-related data such as legislative research staff, universities, diverse interest groups, NCSL and legislative fiscal offices.

Resources to Support DOT Compliance with Legislative Oversight Requirements

State DOTs devote significant resources to complying with legislative oversight requirements but, in general, few or no resources are provided specifically to help them meet these requirements. Exceptions include Hawaii, Minnesota, New Hampshire, New Jersey, New Mexico, Oregon, Vermont, Washington and Wisconsin, where resources for meeting these requirements have been included in the DOT budget or in ongoing or separate appropriations.

In addition, most DOTs have other resources at their disposal to aid compliance, including DOT legislative liaisons and legal staff, legislatures' fiscal and legislative analysis offices, and—in some states such as Texas— transportation research programs at state universities.

Transportation Funding and Finance

Transportation funding decisions are becoming increasingly critical as system needs continue to overwhelm 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.

State legislative and executive branches share responsibilities and interactions in transportation funding and finance, including in the planning process.

State Budget and Appropriations Processes

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. The budget process also serves as a key legislative oversight activity—especially in states where the legislature approves program- or project-specific appropriations.

The executive and legislative branches generally participate in different stages of the budgeting process. Typically, the governor formulates a budget proposal; in seven states, however, the legislature either produces a comprehensive alternative budget or contributes significantly to the budget proposal. DOTs and other executive agencies typically participate in the process first by submitting budget requests to the governor's office for consideration; in all but eight states and Puerto Rico, agencies also submit requests directly to a legislative committee or office. In some cases—Colorado, for example—a transportation commission or other body must approve the DOT budget proposal. DOTs also participate by appearing at budget hearings. In practice, although some legislatures can significantly influence DOT spending levels, others have only a limited ability to do so. In many states, legislatures have little or no influence over federal transportation funding; many states also have dedicated transportation funds or revenues that allow little room for budgeting flexibility. States also may have specific limits on legislative power.

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.

Federal Transportation Funding

Federal funding—provided by the federal-aid highway and transit programs, grant programs, congressional earmarks and one-time expenditures—accounts for approximately 20 percent of highway and transit funding nationwide. At least 15 states have minimal legislative involvement with federal transportation funds, allowing at least some 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 most states, however, the legislature has a more substantial role by appropriating federal funds or setting expenditure limits. Legislatures also may require additional approvals before a DOT can spend certain federal funds. Ohio law, for example, requires a form of legislative approval before the DOT or other entity can spend capital funds—including federal grant funds—for passenger rail development.

In all but eight states and

State Transportation Funding

States provide nearly half of all surface transportation funding. 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. States also provide about 20 percent of the funding for transit systems nationwide and help fund aviation, ports and other elements of the transportation network.

State legislatures exercise significant power over state revenue sources and appropriations. Only five states and the District of Columbia reported that any state funds flow directly from a revenue source to the DOT without legislative appropriation. The real power of legislatures—or DOTs—to allocate state funds, however, is bounded by restrictions on the use of transportation revenues. For example, 23 states have constitutional provisions—and three have statutory provisions—that restrict use of state fuel tax revenues exclusively to highway and road purposes. Most other states dedicate these and other transportation-related revenues to general or multimodal transportation purposes, with a few limited exceptions. In addition, 35 states reported they have provisions that direct use of the funds or accounts to which transportation revenues are deposited. At least six states also explicitly prohibit diversion or transfer of transportation revenues to other purposes.

Dedications, restrictions and prohibitions are not always effective, however. At least seven states reported recent legislative diversions of transportation funds to other uses, despite existing restrictions. In New Jersey, for example, the appropriation act has precedence over statutory dedications, but not over the constitution; the Legislature has chosen not to fully appropriate statutory transportation revenues eight times since 1985.

Local Transportation Funding

Local governments—including counties, townships and municipalities—provide approximately 30 percent of total surface transportation funding and own 77 percent of the nation's roadway miles. Both legislatures and DOTs participate in local aid programs that allocate a portion of state transportation revenues to local entities for transportation projects. At least 27 states distribute funds primarily by statutory formulas based on equal distribution, population, road mileage or other criteria.

Nineteen other states 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 a DOT or transportation commission. Discretionary programs, especially when combined with appropriations, can facilitate substantial involvement of both the executive branch and the legislature in local aid.

Innovative Finance

A variety of factors have negatively affected the ability of traditional transportation revenues to provide needed transportation infrastructure and maintenance. In this environment, states are turning to a host of innovative finance mechanisms—such as bonding and debt instruments; federal debt financing, credit assistance and fund management tools; and public-private partnerships—to help leverage traditional funding sources. Some of these tools require state authorizing legislation before a DOT can use them; this gives the legislature an ongoing role in—and additional oversight of—transportation finance.

In about half the states, state fuel tax revenues are restricted exclusively to highway and road purposes; most other states dedicate these and other transportation-related revenues to general or multimodal transportation purposes. Almost all states allocate transportation funds to local governments either primarily by statutory formulas or by a blend of statutory formulas and state legislative appropriations.

Some states also require further legislative approvals of the use of certain innovative financing tools. For example, of the 31 states and Puerto Rico that had enabling statutes for public-private partnerships (PPPs) as of April 2011, nine states required a form of legislative approval for at least some PPP projects; in addition, Utah and Puerto Rico required legislative approval to convert existing facilities to privately operated toll roads. Likewise, at least four states require further legislative approval or appropriation before grant anticipation revenue vehicle (GARVEE) debt can be issued. Colorado law explicitly delegates this authority to the executive branch, but authorizes GARVEE debt only up to a specified level and requires additional legislative approval for the DOT to exceed the cap; California also statutorily limits GARVEE issuance.

Transportation Planning

States determine their transportation investment priorities through structured planning processes. A key theme in the NCSL-AASHTO survey data was the tension between legislatures and DOTs about the appropriate level of legislative involvement or oversight in transportation planning. DOTs generally take the lead in conducting transportation planning activities and ensuring compliance with federal and state requirements, while legislative involvement and authority in planning varies greatly across states. At one end are Nebraska and Wyoming, which constitutionally prohibit the legislature from prioritizing specific road projects. At the other end are: Delaware, where legislators each determine the use of an annual authorization for transportation projects in their districts; Pennsylvania, where legislative leaders serve on the state Transportation Commission; and Wisconsin, where the Legislature is required by law to review and approve major highway projects. In at least 15 other states, the legislature actively reviews or approves DOT plans or programs, often as part of the budget process.

Retention of Surplus or Excess Funds

In most states, unspent transportation dollars revert to a DOT-administered transportation fund at the end of the fiscal year or biennium. In at least 14 states, legislatures are actively involved in management and oversight of these surplus funds, for example by requiring additional legislative appropriation or expenditure authority before a DOT can spend the money.

Controlling DOT Costs

Across jurisdictions, state legislatures have enacted provisions—beyond expenditure limits in budget and appropriations acts—intended to control DOT costs; the most common include low bid requirements or other statutory procurement guidelines. Some legislatures have taken further action. In Ohio, the legislative Controlling Board must approve waivers of competitive selection for purchases or leases over certain amounts, as well as requests for appropriation increases. Virginia's 2009 Appropriation Act downsized the DOT and directed 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.
These activities permit additional legislative controls and oversight over DOT