

**Before the  
OFFICE OF THE SECRETARY OF TRANSPORTATION  
Washington, D.C. 20590**

In the Matter of )  
)  
)  
Advancing a Surface Transportation ) Docket No. OST-2025-0468  
Proposal That Focuses on America's )  
Most Fundamental Infrastructure Needs ) 90 Fed. Reg. 34,338  
)

**COMMENTS OF REASON FOUNDATION**

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## Introduction

On behalf of Reason Foundation, we respectfully submit these comments in response to the Office of the Secretary’s (“OST”) request for information on advancing a surface transportation proposal that focuses on America’s most fundamental infrastructure needs.<sup>1</sup>

Reason Foundation is a national 501(c)(3) public policy research and education organization with expertise across a range of policy areas, including transportation.<sup>2</sup> Since 1978, Reason Foundation has led the development and implementation of innovative solutions to complex transportation problems—emphasizing the roles of markets and choice in delivering durable transportation improvements. Our approach is aligned with the Department of Transportation’s four major policy themes that it aims to advance in a forthcoming surface transportation reauthorization proposal: enhancing safety, accelerating project delivery, increasing opportunity, and strengthening partnerships.<sup>3</sup>

Our policy proposals are divided into topic areas. Each proposal contains either legislative reform principles or recommended legislative text.

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<sup>1</sup> Advancing a Surface Transportation Proposal That Focuses on America’s Most Fundamental Infrastructure Needs, *Request for Information*, Office of the Secretary of Transportation, Docket No. OST-2025-0468, 90 Fed. Reg. 34,338 (July 21, 2025) [hereinafter RFI].

<sup>2</sup> See About Reason Foundation, <https://reason.org/about-reason-foundation/> (last visited July 21, 2025).

<sup>3</sup> RFI, *supra* note 1.

## I. A Fiscally Responsible Surface Transportation Reauthorization Bill

The U.S. government's fiscal situation is going from bad to worse. Rising concerns about the federal government's fiscal solvency are likely to have a negative impact on transportation programs that depend on general fund support.

Congress faces the need to reauthorize federal surface transportation programs in 2026, and a top priority should be increasing the long-term resilience of these programs by insulating them from the federal government's worsening fiscal problems. If Congress wanted to put transportation investment on a sound longer-term basis—meaning no more unfunded programs based on irresponsible federal borrowing—what kind of measures could they consider?

One idea that already has some congressional supporters is to abolish discretionary grant programs in favor of going forward only with formula funding. These discretionary grants are essentially executive branch earmarks. Just as congressional earmarks should be banned, so should executive branch earmarks. Short of abolition, more modest reforms of federal discretionary grant programs are discussed later in this memo.

A second key change would be to make the federal Highway Trust Fund self-supporting, as it was until 2008. That means formula funding would be limited to the revenue from federal user taxes. The Congressional Budget Office in January estimated that this change would require increased revenue of \$40 billion *per year* or reduced spending of the same annual amount. Highway users should be paying for the highways they use, rather than having the true cost disguised by federal borrowing.

Those are relatively modest changes, but state DOTs and legislatures will undoubtedly be concerned because they have gotten used to the funding levels provided by recent surface transportation reauthorizations based on that irresponsible federal borrowing. This is why Congress should also give states opportunities for greater transportation investment.

One option would be to expand financing mechanisms for large-scale public-private partnerships (P3s). For greenfield projects (e.g., replacing major bridges), removing the cap on qualified private activity bonds and expanding TIFIA loans would have minimal effects on the federal budget but could foster increased state and local use of P3s. Recommended reforms to both of these federal financing programs are discussed in greater detail later in this memo.

Another program change could be to liberalize the never-used Interstate System Reconstruction and Rehabilitation Pilot Program (ISRPP) by opening it up to all 50 states and allowing them to use toll financing to rebuild any or all of their Interstates needing reconstruction. Gradually shifting Interstates from federal funding to toll financing would enable gradually shrinking federal and state fuel tax revenues to be reserved for non-Interstates.

As is explained later in this memo, liberalizing ISRRPP could lead to the first large-scale shift from fuel taxes to road usage charges (RUCs). The Interstates and other limited-access highways handle about one-third of all U.S. vehicle-miles of travel, so converting them to per-mile toll charges could be the first large-scale transition away from fuel tax dependence. Per-mile tolls cost far less to collect than any projected large-scale RUC system now being considered. With the future of the planned national RUC pilot project mired in uncertainty, the Interstate tolling alternative could be a feasible replacement, as individual states opt into it.

An underlying reality too often forgotten is that states own virtually all of this country's highways. The federal Highway Trust Fund was created in 1956 for the sole purpose of building the Interstate highways. It was never intended to be an ongoing federal-aid program for highways and transit. It gradually morphed into that after most of the Interstates were built.

A fiscally responsible 2026 surface transportation bill could also convey a message to state legislatures and their DOTs: The federal government can no longer afford ever-expanding borrowing to support projects that states and metropolitan areas could finance themselves as infrastructure owner-operators. If there really is a federal fiscal collapse within the next 10 years, states and metro areas need to start planning now for how they will cope when the "free" federal money runs out.

Unlike the federal government, states must balance their budgets each year. Relying more on their own financing capabilities to issue both revenue bonds and general obligation bonds—and with increased use of long-term P3s where feasible—states should be able to phase in state responsibility for their highways.

As for mass transit, California has long provided a model via its self-help counties. Every county that includes one or more large metro area has long embraced dedicated transit sales taxes, usually approved by voters for several decades at a time. This approach localizes the funding, instead of requiring rural residents to help pay for urban transit systems that they will never use.

The coming end of free federal money for highways and transit is in sight, though few have begun to realize this. The 2026 reauthorization should be crafted with this impending change in mind.

**Recommended reform principles:**

- Eliminate, or at least minimize, discretionary grant programs supported by the general fund.
- Align Highway Trust Fund outlays with expected user-tax receipts.
- Increase flexibility for states to finance their own infrastructure improvements.

## II. Give States a New Option for Converting from Per-Gallon Taxes to Per-Mile Charges

Most state DOTs understand the need to shift from per-gallon fuel taxes to per-mile charges dedicated to highway funding. But progress toward this goal has been very slow. Seventeen states have carried out pilot projects, but none have enacted a permanent program that applies to all vehicles. And Congress's plan for a national pilot program is three years behind schedule and will not have any results useful for the 2026 reauthorization.

Very real problems have held back progress, despite some lessons learned from state pilot projects. First, there are still serious concerns about privacy—about being “tracked” on every trip one makes. Motorists and taxpayers are also concerned that a new per-mile charge would be in addition to their current federal and state fuel taxes—“double taxation.” And many experts on potential technology for per-mile user fees for all types of roads have concerns about collection costs that may be 10 to 20 times more than the cost of collecting fuel taxes.

One alternative that could help start this needed transition is the following. Instead of starting with one kind of vehicle (such as electric cars), states could start with a type of *roadway*. The Interstate highways (some of which are already tolled) would be relatively easy to convert to per-mile charges.

Consider the privacy concern about all journeys being “tracked” and reported to the government. Interstates (and other “limited-access” highways) have only a small number of entry and exit points. A trip on an Interstate would be charged from the on-ramp to the off-ramp, revealing no details about where the trip originated or terminated. Motorists on today's turnpikes express no concerns about the electronic tolling that charges them from entry to exit.

The concern about double taxation is very real, and this has been a long-standing concern of the trucking industry in particular, when they must pay tolls and fuel taxes on the same tolled highway. The solution would be for a state that opted for per-mile charging to provide fuel-tax refunds for the miles traversed on its converted Interstates.

As for technology, today's electronic tolling with pre-paid accounts has a cost of collection as low as 5% of the revenue for cars (and less than that for trucks). That compares with 2% to 3% cost of collection for fuel taxes. But 5% is much less than the 10-20% estimated for large-scale systems by per-mile-charging experts today.

Starting the transition to per-mile charges with the Interstates and other limited-access highways would offer several additional benefits. Were all states to make this transition, about one-third of all vehicle miles of travel would be shifted from fuel taxes to per-mile charges. And by providing refunds of fuel taxes for the miles driven on converted highways, states would demonstrate that there would be no double taxation involved.

To implement this change, Congress could modify an existing federal statute that has never been used: the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP). This program allows only three states to each convert one Interstate highway to tolling. Such a conversion is currently politically unviable, because singling out only one Interstate to have tolls would lead to protests from users of that one corridor (as happened when North Carolina proposed using ISRRPP for I-95). Instead, ISRRPP would be opened to all 50 states and all of each state's Interstates.

To prevent "double taxation," the legislation would require participating states to provide fuel tax rebates to motorists and truckers for all miles traveled on the converted highways. Calculating those rebates would be a simple function of the per-mile charging software. Similar rebates are being provided today on two U.S. toll roads: the Massachusetts Turnpike and the New York Thruway.

To participate in this new program, a state transportation department would apply to the Federal Highway Administration. The two parties would negotiate and sign an agreement to comply with the terms of the legislation.

**Recommended reform text:**

- (a) Interstate System Reconstruction and Rehabilitation Pilot Program Reform.--Section 1216(b) of the Transportation Equity Act for the 21st Century (Public Law 105-178) [23 USC 129 note] is amended--
- (1) by striking paragraphs (2), (6), and (7);
  - (2) by redesignating paragraphs (3) through (10) as paragraphs (2) through (7), respectively;
  - (3) in paragraph (2)--
    - (A) in clause (iv) of subparagraph (D) by striking "privatizing the maintenance and operational aspects of the facility, while" and inserting "making use of a long-term public-private partnership to design, reconstruct, finance, operate and maintain, with the State";
  - (4) in paragraph (3)--
    - (A) by striking "paragraph (2)" and inserting "paragraph (3)";
    - (B) in subparagraph (E) by inserting "or private company" after "public toll agency" and striking "and" at the end;

(C) in subparagraph (F) by striking the period at the end and inserting “; and”; and

(D) by inserting subparagraph (G) as follows:

“(G) the State has in effect a law that authorizes claims for reimbursement for State tax on fuel consumed on the proposed toll facility.”.

(5) in paragraph (4)--

(A) by retitling paragraph (4) as “Limitations on tolling and use of revenues; audits”;

(B) by redesignating subparagraphs (A) and (B) as subparagraphs (E) and (F), respectively;

(C) by inserting subparagraphs (A) through (D) as follows:

“(A) the toll facility will use an electronic toll collection system as the method for collecting tolls from vehicle operators for the use of the facility;

“(B) tolls will be imposed on a per-mile basis for all vehicle operators engaged in interstate or intrastate travel;

“(C) tolls will be imposed in a manner that does not discriminate between interstate and intrastate travel;

“(D) the toll facility will be opened to traffic prior to imposing or collecting any tolls for the use of the facility;”.

(D) in subparagraph (E)--

(i) in clause (ii) by striking “and” at the end;

(ii) in clause (iii) by inserting “; and” at the end;

(iii) by inserting clause (iv) as follows:

“(iv) if the public authority certifies annually that the tolled facility is being adequately maintained, a toll-free highway designated as a route on the Interstate System.”; and

(E) in subparagraph (F) by striking "subparagraph (A)" and inserting "subparagraph (E)".

(6) in paragraph (6) by striking "10 years" and inserting "20 years".

### III. Expanding Private Activity Bonds for Major Transportation Projects

Surface transportation Private Activity Bonds (PABs) are tax-exempt bonds first authorized by Congress in 2005 as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Their purpose is to create a level financial playing field for highway and transit projects developed under long-term public-private partnership (P3) agreements. Traditional state and local government-financed transportation projects routinely use tax-exempt municipal bonds, which have lower interest rates than the taxable bonds historically available for privately financed projects. Thus, tax-exempt PABs enable the financing costs for P3 projects to be nearly the same as for traditional government-financed projects.

Prior to the advent of PABs, transportation P3 projects were few and far between. The early projects relied on bank debt, at typical bank loan interest rates. Only three such projects were financed between 1995 and 2007. Between 2005 (when PABs were authorized) and 2023, there were 14 highway P3 projects financed by revenue and 12 highway and transit P3 projects financed based on availability payments. PAB-supported P3 projects have been implemented in 13 states, from California to Virginia.

The original PABs legislation included a cap of \$15 billion worth of such bonds. By 2020, as more states began implementing P3 surface transportation projects, the cap was on the verge of being reached. In the Infrastructure Investment and Jobs Act (IIJA) of 2021, Congress increased the cap to \$30 billion. Since then, the demand for P3 projects has increased dramatically. There are at least \$31 billion of P3 project construction costs expected to reach the financing stage over the next several years. Yet, as of June 1, 2025, DOT's Build America Bureau estimated that the remaining PABs capacity was only \$500 million.

Congress could increase the surface transportation PAB cap again in the forthcoming reauthorization, but the better option would be eliminating the cap altogether. When the original legislation was enacted in 2005, PABs were seen as an experiment, and it took 16 years before the original \$15 billion cap was reached. But in only four years, the added \$15 billion is already close to being allocated. Surface transportation PABs are no longer an experiment and should now be mainstreamed as a proven tool for financing transportation P3s.

Removing the cap on PABs was first suggested by the bipartisan Special Panel on Public-Private Partnerships convened by the House Transportation and Infrastructure Committee in 2014. That panel also suggested that transportation PABs be extended to projects at airports and seaports. These proposals were endorsed as part of the Trump administration's first-term infrastructure plan, "Legislative Outline for Rebuilding Infrastructure in America," released in February 2018.

It is important to understand that transportation PABs are non-recourse bonds. They are obligations of the P3 entity: neither federal nor state taxpayers are at risk if the bonds run

into trouble. Equity investors and bond-buyers alike understand this point, and they have no basis for expecting a federal or state bailout in the event of revenue shortfalls.

Both the U.S. Treasury and Congress's Joint Committee on Taxation (JCT) often express concern about expanding the scope for tax-exempt bonds. Their concern is that projects that get financed via PABs would likely otherwise be financed via taxable bonds, so the Treasury would be losing revenue from such taxable bonds. But evidence suggests this assumption is incorrect. The very slow progress of transportation P3 projects between 1995 and 2007 suggests that the private sector rejected the alternative of using taxable bonds. The few large surface transportation projects that took place during those 12 years were evidently financed by state and local governments using traditional tax-exempt municipal bonds—which are not subject to any volume cap.

Contrary to the assumptions of the Treasury and JCT, eliminating the PABs volume cap and expanding eligibility could increase federal tax revenue. The \$62.5 billion invested in transportation P3 projects through 2023 via infrastructure developers and infrastructure investment funds is expected to lead to profits for these entities, resulting in their paying federal corporate income taxes. These projects are designed, built, financed, operated, and maintained by companies from this new industry, with project terms ranging from 35 to 70 years. There is every expectation that this new industry will be an ongoing source of federal corporate income tax revenue.

**Recommended reform text:**

(a) Section 142(a)(15) of the Internal Revenue Code of 1986 is amended by striking "qualified highway or surface freight transfer facilities" and inserting "qualified transportation facilities".

(b) Section 142(m) of the Internal Revenue Code of 1986 is amended as follows:

"(m) Qualified transportation facilities

(1) In general

For purposes of subsection (a)(15), the term "qualified transportation facilities" means—

(A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this subsection),

(B) any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and

which receives Federal assistance under title 23, United States Code (as so in effect),

(C) any facility for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, United States Code (as so in effect).

(D) any airport project which receives Federal assistance under title 49, United States Code (as so in effect), or

(E) any port infrastructure project which receives Federal assistance under title 46, United States Code (as so in effect).

(2) Allocation by Secretary of Transportation

Financing for qualified transportation facilities provided under this subsection shall be allocated by the Secretary of Transportation in such manner as the Secretary determines appropriate.

(3) Expenditure of proceeds

An issue shall not be treated as an issue described in subsection (a)(15) unless at least 95 percent of the net proceeds of the issue is expended for qualified transportation facilities within the 5-year period beginning on the date of issuance. If at least 95 percent of such net proceeds is not expended within such 5-year period, an issue shall be treated as continuing to meet the requirements of this paragraph if the issuer uses all unspent proceeds of the issue to redeem bonds of the issue within 90 days after the end of such 5-year period. The Secretary, at the request of the issuer, may extend such 5-year period if the issuer establishes that any failure to meet such period is due to circumstances beyond the control of the issuer.

(4) Exception for current refunding bonds

Paragraph (2) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a) (15) if--

- (A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,
- (B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and
- (C) the refunded bond is redeemed not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b) (2) (A).".

## IV. Reforming the TIFIA Loan Program

The Transportation Infrastructure Finance and Innovation Act (TIFIA) was created by Congress in the 1998 TEA-21 reauthorization. The purpose was to deal with capital market gaps for promising surface transportation (highway and transit) projects. Applicants could apply for construction-related loans for new projects limited to 33% of the project budget. To qualify, projects had to receive two investment-grade ratings. As of 2022, TIFIA loans had helped to finance 98 projects in 22 states.

These limitations were key to the projects' success and the program's very low loss rate. An external review conducted for the U.S. Department of Transportation, *TIFIA at 25*, found that through 2022, the average *initial* ratings of financed projects were BBB+ and the average of the portfolio in 2022 had increased to A-.

Legislative changes since MAP-21 in 2012 have gradually reduced the safeguards that have ensured the soundness of the TIFIA loan portfolio. First, the maximum loan amount was increased to 49% of project costs. More recently, new project categories were added: transit-oriented development (TOD), INFRA grant projects, state infrastructure banks, and a Rural Project Initiative that offers interest rates at one-half the Treasury rate. These new projects can all receive TIFIA loans at up to 49% of their proposed budgets.

In addition, the term of TIFIA loans can now be as long as 75 years (compared with 35 originally), and only one investment-grade rating is required. The scope of projects has recently been expanded even further to include projects at airports, seaports, and natural habitats affected by infrastructure. As of early 2025, the Build America Bureau has not approved any loans for state infrastructure banks or the Rural program, and only one for a TOD project.

Nevertheless, these changes could pose a risk to the credit quality of what has been a very successful program. As the program begins to resemble traditional competitive grant programs (which award, rather than loan, funds), sponsors of all kinds of projects may urge further expansions of TIFIA's scope. In response, those concerned about increasing federal spending may seek to abolish TIFIA, along with earmarks and competitive grant programs.

The alternative to this would be to enact reforms that return TIFIA to its original purpose: to provide gap funding for projects that support surface transportation improvements only. Among the policy changes that would strengthen TIFIA's credit quality are the following:

- Limit loans to the original 33% of a project's construction budget;
- Limit TIFIA loan terms to the original 35 years;
- Restore the requirement of two investment-grade ratings; and
- Eliminate the recent additions of TOD, INFRA, state infrastructure banks, Rural, and natural habitats.

Some recent applicants for TOD and passenger rail projects have applied for both TIFIA and Railroad Rehabilitation and Improvement Financing (RRIF) loans, with the most recent expression of interest coming from Amtrak, seeking a combined \$19 billion for its proposed Texas high-speed rail project. RRIF has historically been underused. With that separate program available for passenger rail projects, there is no good rationale for TIFIA to be investing in passenger rail projects. Further, while airport and seaport projects would likely not impair the credit quality of the TIFIA portfolio, both facility types can already issue both general obligation and revenue bonds, and generally to this more rapidly than obtaining a TIFIA loan.

In several recent years, Congress has reduced the TIFIA budget, apparently based on a perception of limited demand. Yet the projected demand for revenue-risk highway and bridge P3 projects over the next three to five years was estimated in the December 2024 issue of *Public Works Financing* as \$31 billion. Since projects of this kind average TIFIA loans for 17% of project cost, this category alone would account for more than \$5 billion in new TIFIA loans.

**Recommended reform text:**

(a) Project definition reforms.--Section 601(a)(12) of title 23, United States Code, is amended as follows:

“(12) Project.--The term ‘project’ means--

(A) any surface transportation project eligible for Federal assistance under this title or chapter 53 of title 49;

(B) a project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible.

(C) a project for publicly owned intermodal surface freight transfer facilities, other than seaports and airports, if the facilities are located on or adjacent to National Highway System routes or connections to the National Highway System.”.

(b) Creditworthiness reforms.--Section 602(a)(2) of title 23, United States Code, is amended as follows:

“(2) Creditworthiness.--

(A) In general.--To be eligible for assistance under the TIFIA program, a project shall satisfy applicable creditworthiness standards, which, at a minimum, shall include--

- (i) a rate covenant, if applicable;
- (ii) adequate coverage requirements to ensure repayment;
- (iii) an investment-grade credit rating from at least 2 rating agencies on debt senior to the Federal credit instrument; and
- (iv) an investment-grade rating from at least 2 rating agencies on the Federal credit instrument.

(B) Senior debt.--

Notwithstanding subparagraph (A), in the case in which the Federal credit instrument is senior debt, the Federal credit instrument shall be required to receive an investment-grade rating from at least 2 rating agencies."

(c) Maximum amount reforms.--Section 603(b)(2) of title 23, United States Code, is amended as follows:

"(2) Maximum amount.--

The amount of a secured loan under this section shall not exceed 33 percent of the reasonably anticipated eligible project costs."

(d) Maturity date reforms.--Section 603(b)(5) of title 23, United States Code, is amended as follows:

"(5) Maturity date.--The final maturity date of the secured loans shall be the lesser of--

- (A) 35 years after the date of substantial completion of the project; and
- (B) if the useful life of the capital asset being financed is of a lesser period, the useful life of the asset."

(e) Conforming amendments to generally applicable conditions.--Section 601 of title 23, United States Code, is amended by--

- (1) striking subparagraph (D) of paragraph (2) of subsection (a); and

- (2) striking paragraphs (16) and (19) of subsection (a) and redesignating paragraphs (17) through (22) as paragraphs (16) through (20), respectively.
- (f) Conforming amendments to exceptions to eligible project cost parameters.--Section 602(a)(5)(B) of title 23, United States Code, is amended by striking clauses (ii) and (iii) and redesignating clause (iv) as clause (ii).
- (g) Conforming amendments to project readiness.--Section 602(a)(10) of title 23, United States Code, is amended by striking subparagraph (B).
- (h) Conforming amendments to federal requirements.--Section 602(c)(1) of title 23, United States Code, is amended as follows:
- “(1) In general.--In addition to the requirements of this title for highway projects and the requirements of chapter 53 of title 49 for transit projects, the following provisions of law shall apply to funds made available under the TIFIA program and projects assisted with those funds:
- (A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).
- (B) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
- (C) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).”.
- (i) Conforming amendments to secured loan agreements.--Section 603(a)(1) of title 23, United States Code, is amended as follows:
- “(1) Agreements.--Subject to paragraphs (2) and (3), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used--
- (A) to finance eligible project costs of any project selected under section 602;
- (B) to refinance interim construction financing of eligible project costs of any project selected under section 602; and

- (C) to refinance long-term project obligations or Federal credit instruments, if the refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that--
  - (i) is selected under section 602; or
  - (ii) otherwise meets the requirements of section 602."
- (j) Conforming amendments to payment terms and limitations.--Section 603(b)(3)(A) of title 23, United States Code, is amended by striking "or" at the end of subclause (IV) and substituting "and," and striking subclause (V).
- (k) Conforming amendments to interest rate terms and limitations.--Section 603(b)(4) of title 23, United States Code, is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).
- (l) Conforming amendments to maximum federal involvement terms and limitations.--Section 603(b)(9) of title 23, United States Code, is amended by striking subparagraph (B).
- (m) Conforming amendments to funding.--Section 608(a) of title 23, United States Code, is amended by striking paragraph (3) and redesignating paragraphs (4) through (6) as paragraphs (3) through (5), respectively.
- (n) Conforming amendments to the state infrastructure bank program.--Section 610 of title 23, United States Code, is amended by--
  - (1) striking paragraphs (11) and (12) of subsection (a);
  - (2) striking paragraph (4) of subsection (d) and redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively;
  - (3) striking subparagraph (B) of paragraph (1) of subsection (e);
  - (4) striking subparagraph (B) of paragraph (3) of subsection (e); and
  - (5) striking paragraph (4) of subsection (g) and inserting paragraph (4) as follows:

"(4) ensure that any loan from the bank will bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible."

## V. Discretionary Grant Programs Need to Be Reformed

Historically, most federal transportation funding has been awarded through formula funding. Congressional authorizers crafted multi-year transportation bills that awarded funding based on criteria including population, highway lane miles, and bridges.

The biggest problems with discretionary grants emerged under the Infrastructure Investment and Jobs Act (IIJA). But the problems started during the Obama administration, whose grants were focused on local projects with a limited nexus to transportation. A Reason Foundation analysis evaluated the Transportation Investment Generating Economic Recovery (TIGER) I, TIGER II Capital, TIGER II Planning, and TIGER III grant programs at the U.S. Department of Transportation (USDOT). The analysis found:

- The metrics that USDOT used to evaluate the applications lacked quantitative components.
- Certain funding applications contained incorrect information that USDOT used in press releases to justify the funding of those applications.
- USDOT provided limited information to the public explaining the process.
- Grant funding was not determined by rigorous application of USDOT's own evaluation criteria: USDOT funded almost as many "Recommended" projects (25) as "Highly Recommended" projects (26). Meanwhile, only 23% of the 110 projects ranked "Highly Recommended" were funded. The TIGER Review Team offered no official written explanation for its selections. The Review Team offered notes in draft form and a memo, but these limited explanations only raised more questions because, in many cases, the projects selected were no deemed better than the projects that were not.
- A disproportionately large number of projects were funded in Democratic congressional districts. In TIGER I, TIGER II Capital, TIGER II Planning, and TIGER III, congressional districts represented by Democrats were awarded a higher percentage of grants than their overall proportional representation. In TIGER III, districts represented by Democrats received 69% of the funding despite Democrats holding only 47% of the total congressional seats.
- Many of the "transportation" projects awarded funding to environment or economic development causes with, at best, a tenuous connection to moving people and goods.
- Many of the projects were purely local in nature with no plausible national nexus, such as recreational trails or local transit lines.

In the IIJA, discretionary grant funding ballooned to \$200 billion that was spread over dozens of different programs, accounting for approximately one-fifth of total transportation funding. Similar to many of the grants awarded during the Obama administration, the project documentation of IIJA grant programs has been severely deficient. Details on why certain projects were awarded funding over other projects has not been provided. Local projects and those unrelated to transportation continue to receive funding. In the face of questionable and politicized grant awards, the Florida Department of Transportation took the unusual step of launching an advocacy campaign criticizing USDOT's discretionary grant programs: "Build Infrastructure, Not Political Agendas."

But an even bigger problem has emerged. Despite a nearly 10% increase in USDOT staff, the Biden administration was unable to process the grants in a timely manner. For instance, as of January 31, 2025, the National Infrastructure Investments grant program (currently known as BUILD; previously RAISE and TIGER) had only obligated 20.4% and outlaid just 2.4% of funds available under its \$10 billion in IIJA budget authority. USDOT claimed that the grants were slowed due to “accountability” factors. But an analysis of the program showed that much of the internal USDOT documentation was missing, which belies accountability justifications. Regardless, discretionary grants fail to serve a purpose if USDOT does not disburse the funds.

In summary, USDOT discretionary grant programs lack focus, have become overtly political, and cannot be executed in a timely manner. It’s time for Congress to reduce, consolidate, and refocus DOT discretionary grants. In doing so, Congress should codify in statute quantitative scoring weights that guide the selection of projects based on their performance to the following criteria: reducing congestion, improving mobility, improving safety, and facilitating interstate commerce.

**Recommended reform principles:**

- Reduce the number of discretionary grant programs to a maximum of one per mode of transportation.
- Focus on the core national transportation priorities of reducing congestion, improving mobility, improving safety, and facilitating interstate commerce.
- Establish quantitative project scoring criteria in statute to ensure the reformed discretionary grant programs consistently meet national transportation priorities.
- Fund transportation projects only. Federal transportation funding should not be used for environmental or community development projects. The federal government has other programs to fund those projects, if they are justified.
- Increase the quality and the quantity of documentation explaining the decision-making process. Review Team meetings should include officially recorded notes of all projects indicating the reasons for approval or rejection of each project. All notes should be posted online to the USDOT website.

## VI. Prioritizing Maintenance in Federal Transit Programs

In recent decades, approximately 20% of the funding in each surface transportation reauthorization bill has been allocated to mass transit. The federal government typically allows transit capital projects (such as those funded by the New Starts, Small Starts, and Core Capacity programs) and transit maintenance projects (State of Good Repair program) to be funded with 80% federal money and 20% local money.

Many of the mass transit systems across the country are in poor shape, in part because they direct money to costly new capital projects rather than needed maintenance. When Congress writes and passes the next surface transportation reauthorization bill it should encourage maintenance projects by lowering the maximum federal share for capital projects.

State highway systems are in generally good condition. Reason Foundation's most recent Annual Highway Report found that of the nine categories focused on performance, the states made significant progress in six of them. In contrast, many rail transit systems are increasingly in poor condition. Major mass transit agencies are using federal funding for new capital projects that should not be priorities due to the major backlogs in maintenance and other system needs.

For example, the Washington Metropolitan Area Transit Authority built the Silver Line in largely low-density suburban Virginia and is studying a new \$40 billion line connecting National Harbor with Rosslyn. Meanwhile, its existing rail network has been plagued by collisions, derailments, and increased crime in recent years. Similarly, New York's Metropolitan Transportation Authority (MTA) has had a series of service breakdowns and faces major public safety problems. Many other major transit systems are encountering similar problems.

Unfortunately, many transit agencies prioritize capital projects over ongoing maintenance needs. Part of this problem is structural. Most of the mass transit agency boards across the United States are composed of political appointees, who often favor big new projects that enable ribbon-cuttings and photo opportunities. As a result, there is often a built-in bias towards building new rail projects over improving existing transit services. This dynamic helps explain why there have been more than 20 new light-rail lines added over the last 20 years, despite many of the rail projects failing to increase transit ridership.

Additionally, new rail expansions can sometimes mean cuts in bus service. When the Dallas Area Rapid Transit (DART) Authority and Houston Metro added new light-rail services, for example, they cut existing bus service. This resulted in fewer riders using public transit after adding rail service at great cost.

With reduced transit ridership due to the COVID-19 pandemic, this is not the time to add costly new capacity. As of January 2025, ridership on U.S. rail transit systems is at 78% of 2019 levels. Prior to the pandemic, many systems had seen ridership declines over the preceding decade. Rail transit ridership is increasingly unlikely to recover to 2019 levels

within the next decade, if ever. Remote work remains several multiples above transit's share of commuting and is likely to persist at high levels. Long-term trends in ride-hailing services and the future availability of automated vehicles are also likely to reduce transit ridership.

Given these circumstances, Congress should prioritize maintenance over capital expansion projects by capping funding for New Starts, Small Starts, and Core Capacity grants at a 50% maximum federal share. The maximum federal share for the State of Good Repair grants should remain at 80%.

**Recommended reform text:**

- (a) Section 5309(1)(1)(B) of title 49, United States Code, is amended--
- (1) in clause (i), by striking "80 percent" and inserting "50 percent";
  - (2) in clause (iii), by striking "80 percent" and inserting "50 percent"; and
  - (3) in clause (iv), by striking "80 percent" and inserting "50 percent".

## VII. Improving Public Transit Efficiency

Following the onset of the COVID-19 pandemic, public transit systems throughout the United States experienced an unprecedented ridership collapse as people stayed home and avoided crowded public spaces. While most disease mitigation measures have since been abandoned, the impact of the pandemic continues to be felt in various ways, including persistent changes in travel behavior. One consequence has been a muted transit ridership recovery, which stands at approximately three-quarters of the pre-pandemic ridership level in the United States. Depressed transit ridership has been met with unprecedented public subsidies, especially from the federal government. These two trends resulted in a steep decline in transit productivity.

This decline has alarmed policymakers. However, while conditions have substantially worsened in recent years, public transit productivity has trended downward since the end of World War II, largely due to increasing household incomes, growing private automobile ownership, and the dispersal of households and then workplaces into the suburbs. Between 1960 and 2019, the inflation-adjusted operating costs more than quintupled while ridership remained flat.

Following the onset of the COVID-19 pandemic, public transit ridership collapsed. As of 2024, nationwide ridership had only recovered to approximately 78.4% of 2019 levels. More recent estimates from May 2025 show transit ridership at 80.6% of 2019 levels. Much of this ridership decline can be explained by changes in work travel. Many transit systems were designed to facilitate journeys to and from work in central business districts, and working from home remains two to five times its pre-pandemic share of “commuting”—and four to eight times the share of mass transit commuting—depending on how it is measured.

Depressed ridership led Congress to authorize unprecedented federal subsidies for transit agencies. Supplemental COVID-19 appropriations during FYs 2020 and 2021 provided \$69.5 billion in emergency support for transit agencies, equivalent to nearly five years of pre-pandemic federal transit funding. The Infrastructure Investment and Jobs Act enacted in FY 2022 increased federal transit funding by 67% over the levels previously authorized by the Fixing America's Surface Transportation (FAST) Act of 2015 in nominal dollars.

This large increase in federal funding allowed transit agencies to continue to provide service close to pre-pandemic levels, with transit service provided between 2019 and 2023 falling by only 10.3% (in vehicle revenue miles) despite ridership declines of 29.3%. These dynamics had predictable effects on transit labor productivity, with productivity declines almost entirely driven by decreased ridership.

As historical experience with transit subsidies has shown, advancing transit efficiency is not a simple question of additional funding. Making better use of existing resources must be prioritized to avoid counterproductive subsidy policies that merely deepen and prolong transit's productivity crisis. Two strategies to advance transit productivity show particular promise:

- **Competitive contracting:** Under public-private partnerships, transit agencies can contract out transit service provision to private firms. The agency would serve as the coordinating and oversight entity, developing performance requirements and ensuring private partners adhere to those requirements embedded in their contracts. A 2017 study estimated that contracting out bus service in the United States could reduce operating costs by 30%.
- **Transit vehicle automation:** Urban rail transit is increasingly automated outside the United States. A 2023 study comparing rail lines in the United States and fully automated lines abroad estimated automation could potentially reduce U.S. operating costs by 46%. In addition to rail transit automation, numerous companies are developing automated road vehicles. One rubber-tire automated transit company that is developing two projects in California claims it can reduce operating costs by approximately 80% compared to average costs faced by conventional transit systems.

Unfortunately, both competitive contracting and automation face substantial deployment barriers in the United States. Section 13(c) of the Urban Mass Transportation Act of 1964 established transit worker labor protections. This provision was included to ensure collective bargaining agreements continued to be honored during the period when transit systems and their workforces were transitioning from heavily unionized private ownership to—at the time—sparsely unionized government ownership.

Section 13(c) requires transit agencies that receive federal funding to certify employee “protective arrangements” with the Department of Labor. As a consequence, transit agencies are greatly constrained in enacting any operational change involving employees. Section 13(c) generally requires transit agencies to either incur substantial upfront costs to buy out affected employees or delay the realization of labor-saving benefits. Transit agencies largely dependent on annual government appropriations face a strong financial disincentive to adopt practices and technologies that would improve service and reduce growing operating subsidies.

Transit employee labor protections included as part of the Urban Mass Transportation Act of 1964 were designed to address the particular circumstances of the time, when just 2% of state and local government employees were authorized to collectively bargain. But this transition period has passed, and all affected employees have long since retired. Further, most states have authorized public-employee collective bargaining since the 1960s, with 63% of state and local employees being authorized to collectively bargain as of 2010.

Section 13(c) exists alongside federal, state, and local labor laws that apply to public-sector workers. Importantly, federal transit labor protections supplement rather than substitute for other general labor protections. As a result, Section 13(c) provides transit workers—and *only transit workers*—with special protections beyond those enjoyed by other government employees.

This has two important implications for policymakers. First, eliminating Section 13(c) special transit worker labor protections would merely level the playing field between transit

workers and other government employees. All other federal, state, and local labor policies that apply to government employees would continue to apply. Second, repealing Section 13(c) would not automatically usher in transit public-private partnerships or automation. Rather, it would remove an impediment to transit agencies seeking to negotiate more flexible labor contracts in the future.

**Recommended reform text:**

- (a) Section 5333 of Title 49, United States Code, is amended by striking subsection (b).

## VIII. Clearing a Bureaucratic Roadblock to Safer Driverless Trucking

Autonomous commercial motor vehicles have great potential to improve roadway safety and logistics efficiency in the United States. Developers have been successfully validating their technology on U.S. public roads for years and are now prepared to enter commercial service. However, outdated federal regulations will pose challenges. One in particular—the requirement that operators of commercial motor vehicles stopped on or on the side of highways place warning triangles or flares around their disabled vehicles—presents a unique barrier that Congress can quickly address.

The Department of Transportation has long required operators of commercial motor vehicles that are disabled in highway traffic lanes or shoulders to immediately exit their vehicles to place reflective warning triangles or flares in order to alert other motorists of the potential hazard. The requirement for the placement of roadway warning devices makes intuitive sense, despite the limited empirical safety evidence supporting it.

The warning device rule poses a unique challenge for driverless operations of automated commercial vehicles because it implicitly assumes an operator will be seated in the vehicle and able to immediately exit the cab to place warning devices. This rule was never intended to apply to driverless commercial motor vehicles, which had not yet been conceived when the warning device placement requirement was promulgated in 1972.

In January 2023, automated vehicle developers Aurora and Waymo petitioned the Federal Motor Carrier Safety Administration (FMCSA) for an exemption from the warning devices requirement. To ensure the broader safety intent was preserved, the petitioners proposed that driverless, autonomous commercial vehicles would, in lieu of the warning device placement requirement, be equipped with cab-mounted warning beacons.

The warning-beacon system Aurora and Waymo proposed would consist of at least one rearward-facing light mounted on each side of the cab and at least one forward-facing light mounted on the front of the cab. The warning beacons would be installed at some point between the upper edge of the sideview mirrors and top of the cab for both forward- and rearward-facing lights. The companies provided two studies showing that cab-mounted warning beacons would achieve a level of safety at least equivalent to the warning-device requirement.

In December 2024, the FMCSA denied the exemption petition, citing a lack of data on the safety equivalence of cab-mounted warning beacons. This justification was especially odd because the agency concedes it has never conducted any research on the effectiveness of its warning-device requirement in enhancing safety. The suggestion from FMCSA seems to be that there is no official safety baseline by which to compare alternatives to warning devices, which thereby renders the agency unable to consider alternatives—even those that offer superior safety. If true, this greatly undermines the supposed safety basis for the existence of this longstanding rule.

Setting aside the arbitrariness of FMCSA's warning-device rule, Congress can easily resolve this bureaucratic roadblock to safer driverless operations by requiring the agency to promulgate amendments to its regulations to explicitly exempt from the warning-device requirement commercial motor vehicles if those vehicles are equipped with cab-mounted warning beacons.

**Recommended reform text:**

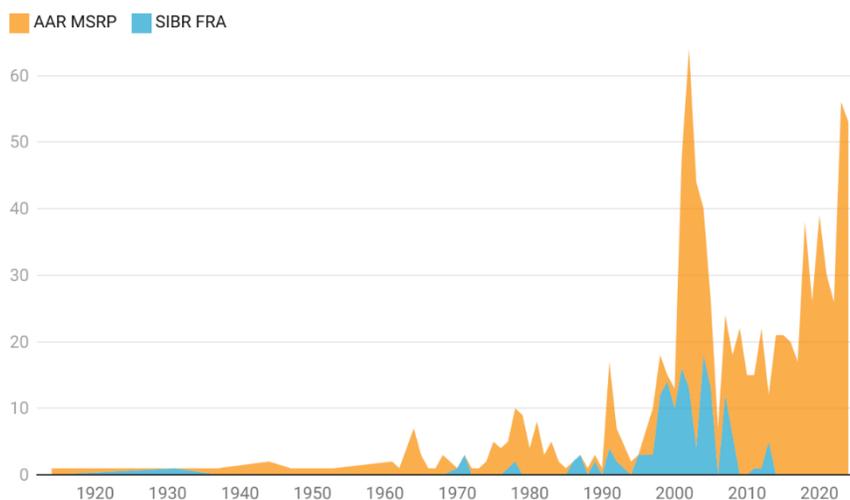
- (a) Not later than 15 days after the date of the enactment of this Act, the Secretary shall revise paragraph 392.22(b)(2) of title 49, Code of Federal Regulations (or successor regulations), to include the following:
  - (vii) Cab-mounted warning beacons. The placement of warning devices is not required when a commercial motor vehicle is equipped with cab-mounted warning beacons.

## IX. Advancing Performance-based Rail Safety Regulation

New technologies are increasingly reshaping transportation systems. Various types of automation technologies can significantly improve transportation safety and efficiency. With respect to freight rail, the ability to adopt new technologies in the face of increasingly automated trucking is also a competitive imperative.

One problem is that freight rail safety regulations promulgated by the Federal Railroad Administration (FRA) are often overly prescriptive, which limits alternative means of compliance as technology and practices evolve. Related to this problem is that these regulatory requirements often reference outdated technical standards. Figure 1 below compares the standard edition years of nearly 750 specifications, recommended practices, and standards contained in the AAR Manual of Standards and Recommended Practices with the edition years of the standards incorporated by reference in FRA regulations. While this is not quite a like-for-like comparison, it shows a roughly 10-year lag between the latest railroad industry standards and those referenced in railroad safety regulations.

**Figure 1: AAR MSRP Standards versus FRA Standards Incorporated by Reference, by standard edition year**



Source: Association of American Railroads; National Institute of Standards and Technology

Most FRA regulations incorporating nongovernmental technical standards do not contain update trigger mechanisms (such as the one for FRA brake standards at 49 C.F.R. § 232.307), so any updates will require conventional rulemaking proceedings. This gives agencies more discretion over any potential regulatory changes and increases the length of time to complete a change. Given this cumbersome and uncertain process to address outdated standards already referenced in regulation, the persistent conformity gap between standards and regulations should not be surprising.

One simple example of the problem of overly prescriptive rail safety regulations is related to automated track inspection (ATI). The benefits of ATI include more reliable defect detection, more robust maintenance data analysis and planning, redeployment of visual inspectors to higher-need areas and for infrastructure that cannot be inspected by ATI equipment, reduced human exposure to safety hazards in the field, and reduced delays to trains in revenue service.

While it has long acknowledged the benefits of ATI, FRA in 2021 reversed course by denying multiple ATI waiver requests. BNSF Railway challenged FRA's decision to deny it an expanded ATI waiver in federal court, which ruled in March 2023 that regulators violated the Administrative Procedure Act's prohibition on "arbitrary and capricious" acts and ordered FRA to reconsider its decision. In June 2023, FRA again denied BNSF's ATI petition. BNSF challenged this second denial in the same federal court, which in June 2024 again ruled against FRA and ordered the agency to grant BNSF's ATI waiver petition.

A more complex example of the problem relates to automation of revenue-service rail vehicles that do not resemble conventional freight trains. In August 2023, two short-line railroads owned by Genesee & Wyoming (G&W)—the Georgia Central Railway and Heart of Georgia Railroad—submitted a petition to test new rail technology developed by Parallel Systems. The proposed pilot would take place on 160 miles of track between Pooler near the Port of Savannah to a large inland distribution hub in Cordele in central Georgia.

Parallel was founded in 2020 by two former SpaceX engineers and has developed battery-electric, self-propelled railcars designed to transport standard 40-foot shipping containers weighing up to 65,000 pounds at up to 25 miles per hour. Parallel's railcars can be operated individually or in platoon formation. When operated in a platoon, Parallel's railcars won't be mechanically coupled; instead, they are equipped with bumpers and will touch one another but remain individually powered and controlled. This allows them to reduce stopping distance by 90% compared to conventional freight trains. Perhaps most significantly to the broader economy, the technology is designed to serve local container markets traditionally dominated by trucks—breaking the so-called "500-mile rule" after which rail is competitive with trucks.

In January 2025, FRA granted the G&W/Parallel test petition. Testing was scheduled to begin in April. But to conduct this test under FRA approval, G&W needed to receive a waiver granting relief from 33 FRA regulations, including:

- Part 218 Operating Practices
- Part 229 Locomotive Safety Standards
- Part 231 Railroad Safety Appliance Standards
- Part 232 Brake System Safety Standards for Freight
- Part 236 Signal and Train Control Systems
- Parts 240 and 242 Engineer and Conductor Qualifications

If this test is successful, waivers would still be required to operate Parallel's rail vehicles. The next step for FRA would be to begin the lengthy process of updating the implicated regulations so that they can accommodate this new technology. While most of these requirements can be changed by FRA through rulemaking, the automatic coupler requirement is statutory (49 U.S.C. § 20302(a)(1)(A)). This means that for Parallel-style self-propelled railcars to be entered into mainstream commercial service, Congress will need to modernize its legacy coupler statute.

These are just two examples of the problems of overly prescriptive, outdated rules. New technologies will inevitably be invented and will run into the same policy barriers. To ensure that freight rail can remain a competitive mode of cargo transportation in the future, Congress should examine structural regulatory reforms to identify and modernize rail safety regulations in a performance-based manner.

**Recommended reform principles:**

Congress should consider the approach proposed by the RAILS Act (S.1451) in the 115<sup>th</sup> Congress. That bill included future-oriented provisions that could be adopted, such as:

- Requiring FRA to consider performance-based alternatives whenever proposing or adopting a rule;
- Streamlining the waiver petition process for innovative approaches to safety;
- Integrating the improved safety innovative waiver process with regulatory modernization; and
- Requiring FRA to conduct periodic comprehensive reviews of its rules, orders, and guidance documents to assess their effectiveness, consistency, and whether they reflect the current best technologies and practices.

In addition, Congress should modernize its legacy automatic coupler statute at 49 U.S.C. § 20302(a)(1)(A) to ensure that novel rail vehicles that do not rely on couplers are not subject to these requirements.

## Conclusion

Thank you for the opportunity to provide comments on policy proposals for the forthcoming surface transportation reauthorization. We are eager to discuss each of our ideas in greater detail and look forward to further participation.

Respectfully submitted,

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