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RSC Policy Brief: Highway Opt-Out Bills

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Since the last long-term authorization for highway, transit, and safety programs was passed in 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), outlays have exceeded revenues every year. While the trust fund had a surplus of almost $11 billion in FY2005 ($20 billion in FY 2000), this turned into a deficit by the end of FY2008. As a result, Congress has bailed out the Highway Trust Fund (HTF) three times since FY2008. The first HTF bailout occurred in 2008 with the enactment of H.R. 6532. This legislation transferred $8.017 billion in general revenues to the HTF. In 2009, Congress passed another bailout for $7 billion (H.R. 3357) and then a third one in 2010 (H.R. 2847) of $20 billion for a grand total of $35 billion over a period of three years. The HTF has been on GAO's "High-Risk" list since 2007. With the recent enactment of H.R 2887, HTF remains vulnerable to another Treasury bailout, as spending levels remain the same.

Many conservatives argue that the states should be given more flexibility in spending transportation dollars and that most (if not all) of the highways program should be devolved to the states. According to Ron Utt of the Heritage Foundation, given the financial difficulties confronting the Highway Trust Fund, an opt-out plan has a number of benefits that a traditional turn back (or devolution) plan may not have. Under an opt-out program, a state would forgo its annual spending allocation from the Highway Trust Fund—with its many mandates, regulations, and dozens of specific spending allocations—and instead choose to receive its share of the federal fuel taxes collected within its borders. Representatives Scott Garrett and James Lankford have both drafted bills that empower the states to decide how they want to disperse their highway dollars and get rid of the government red tape that's squeezing our national budget.

Surface Transportation and Taxation Equity Act
H.R. 1737

Sponsor: Rep. Scott Garrett (R-NJ)

Summary: The Surface Transportation and Taxation Equity (STATE Act) would empower the states by giving them the opportunity to generate more revenue, keep their funds from entering federal coffers, and determine their own transportation priorities free from federal mandates, all without additional cost to the taxpayer. The STATE Act accomplishes this by amending the tax code to allow a state that increases its state fuel tax to decrease its federal tax by an equal amount. The STATE Act leaves a minimum of two cents in the federal program to fund projects that are national in scope. In order to "opt out" of the federal program, a state must enter into an agreement with the Secretary of Transportation to provide for the proper maintenance of that portion of the interstate highway system within such state.

Procedure for Opting Out:

1. A state enacts a law through the legislative process that increases the state's gas tax, which causes the federal gas to be lowered by the same amount.

State Transportation Flexibility Act
H.R. 1585

Sponsor: Rep. James Lankford (R-OK)

Summary: The State Transportation Flexibility Act would give states the option to keep the funds they would otherwise be forced to contribute to the federal-aid highway program and the Mass Transit Account (MTA). By opting out, states would have the ability to manage their highway tax revenues dedicated for federal highway funding or mass transit accounts as they see fit. If a state chooses to opt-out of these programs, they would be able to collect, remit, and manage their own excise tax dollars, providing them the flexibility to fund their infrastructure priorities. In order for a state to opt-out, the governor must provide a plan to the Secretary of Transportation detailing the state's intended uses for its funds.

Procedure for Opting Out :

1. The governor of the state must notify the Secretary of Transportation at least 90 days before the start of the upcoming fiscal year that the state intends to opt out;

2. The state enters into an agreement with the Secretary of Transportation to properly maintain the portions of the Interstate Highway System that exist in the opt-out state as prescribed by the Secretary.

The purposes of this Act are to:
(1) return primary transportation program responsibility and taxing authority to the states,
(2) free states' transportation dollars from federal micromanagement, earmarking, and budgetary pressures,
(3) enable decisions regarding which infrastructure projects will be built, how they will be financed, and how they will be regulated to be made by persons best able to make those decisions,
(4) eliminate the current system in which a federal gasoline tax is sent to Washington and through a cumbersome Department of Transportation bureaucracy,
(5) prohibit the federal government from forcing unwanted mandates on states by threatening to withhold transportation money, and
(6) achieve measurable congestion mitigation and infrastructure preservation and safety in a cost effective way, subject to available resources.

2. The governor must agree to maintain the interstate system in accordance with its current interstate program;
3. The governor must submit a plan to the Secretary describing:
   a. the purposes, projects, and uses of the highway funding;
   b. which programmatic requirements of Title 23 the state elects to continue;
   c. the purposes, projects, and uses of the mass transit funding; and
   d. which programmatic requirements of Title 49 title the state elects to continue.
4. The governor must agree to obligate or expend amounts received under the program exclusively for transportation projects (defined as projects listed in 23 USC 133(b)). No other federal limitations apply to these funds;
5. The governor must agree to obligate or expend amounts received under the program exclusively for transportation projects covered under the MTA. No other federal limitations apply to these funds;
6. The amount transferred would be equal to the dollar amount that is attributable to highway users in the state. Additionally, states opting out would receive a similar percentage of any general fund transfers to the Highway Trust Fund;
7. The governor must agree to report annually to the Secretary on the use of amounts received under the program and to make the report available to the public; and
8. The governor must certify within 30 days of enactment that funding returned to the state is being used for transportation projects and list the amount for each project.

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