



“Oversight of the Federal Transit Administration’s Implementation of the Capital Investment Grant Program”

Testimony Presented to the Subcommittee on Highways and Transit
U.S. House of Representatives

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Subcommittee Chairman Norton and Ranking Member Davis, thank you for convening today’s hearing. I am Bob Alger, Chairman of the Board of The Lane Construction Corporation. I have spent 40 years in the construction industry – all with Lane. I am also proud to serve as the chairman of the American Road & Transportation Builders Association (ARTBA). I am pleased to provide this statement on the importance of the federal role in transit capital investment and the Capital Investment Grant (CIG) Program.

Established in 1902, ARTBA is the oldest national transportation construction-related association. ARTBA’s more than 8,000 members include public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country and world. The industry we represent generates more than \$500 billion annually in U.S. economic activity and sustains more than 4 million American jobs.

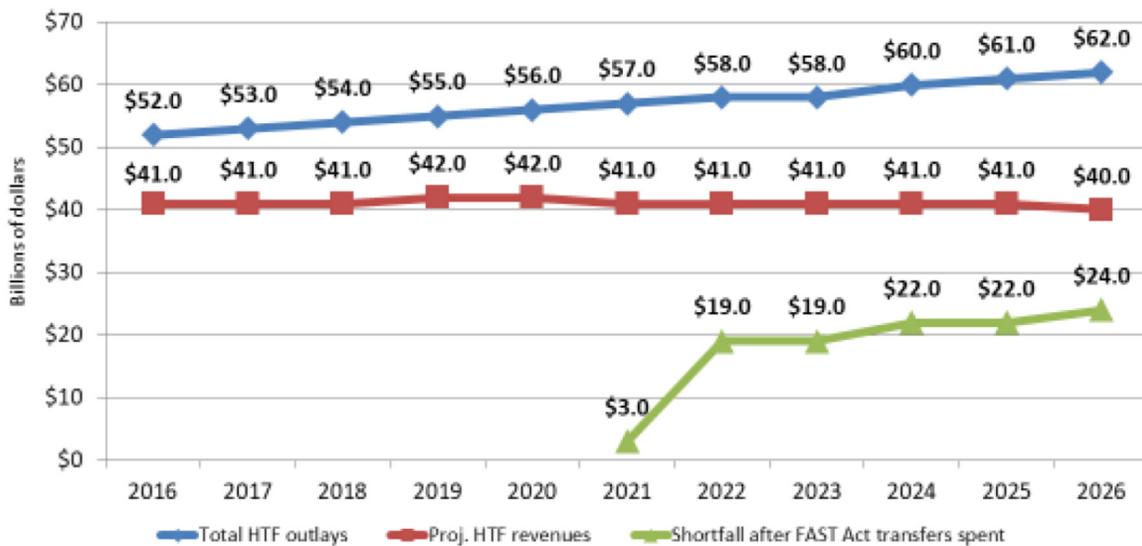
In 1977, ARTBA added “Transportation” to its name to more accurately reflect that our members build, operate and maintain more than highways and bridges. Ever since, ARTBA has continued to support federal investment in all modes of transportation construction, including light rail and bus rapid transit lanes.

Highway Trust Fund

In 1956, Congress created the Highway Trust Fund (HTF) to ensure that taxes levied on highway users, not general taxpayers, would be the source of funding for federal investments in highways. This includes the Interstate Highway System and other highways of importance to the national economy. In 1982, Congress and President Reagan expanded the HTF revenue stream and dedicated a portion of the resulting proceeds to support investment in mass transit improvements. Overall, for more than 50 years, revenues from highway user taxes - including the tax on gasoline and diesel fuels and taxes on heavy trucks - supported most federal spending on highways and public transportation without burdening the general fund. Due to a revenue base that has not kept pace with growing needs, however, the HTF has been plagued by repeated revenue shortfall crises since 2008. Over the last 11 years, Congress has utilized \$140 billion in General Fund transfers and budget gimmicks to supplement federal gas and diesel tax revenue streams that have not been adjusted in 25 years.

The Fixing America’s Surface Transportation (FAST) Act surface transportation authorization law enacted in December 2015 expires on September 30, 2020, less than 15 months from today. Projections from the Congressional Budget Office (CBO) show the HTF’s Highway and Transit Accounts remaining stable into FY 2021. However, the Mass Transit Account is forecast to be near zero by the end of that year. The Highway Account will be approaching zero as well. As the chart below shows, without additional user fee revenues or more General Fund transfers, HTF supported programs will face draconian cuts in funding beginning in 2021. To pay for another five-year surface transportation law at current spending levels with modest inflationary adjustments and the \$5 billion liquidity cushion the accounts require for cash management purposes, the HTF will need \$79 billion, according to CBO projections.

The Highway Trust Fund Revenue Crisis Will Return



Source: Congressional Budget Office Highway Trust Fund baseline, April 2018
Total may not add up due to rounding.

While the CIG program is traditionally supported with general revenue dollars through the annual appropriations process, continued uncertainty or disruption to HTF program funding will adversely impact all federal surface transportation programs, including CIG. As an example, during the lead up to the FAST Act, such uncertainty about future federal investment and HTF solvency caused seven states in 2015 to delay roughly \$1.6 billion in planned transportation projects.

Rather than repeat these past dysfunctions, the call from bipartisan congressional leaders and President Trump for a robust infrastructure initiative must be seized upon to fix the HTF revenue shortfall once and for all. There are a host of traditional and innovative user-based revenue solutions – it is time for one (or more) to move forward. Among the approaches ARTBA urges you to consider are:

- Raise the federal gasoline and diesel tax rates. The fuels tax remains the most transparent, efficient and effective mechanism to generate revenue for surface transportation improvements. The experience of 30 states that have increased their motor fuels tax rates since 2013 confirms these user fee increases have broad public support and minimal political consequences.

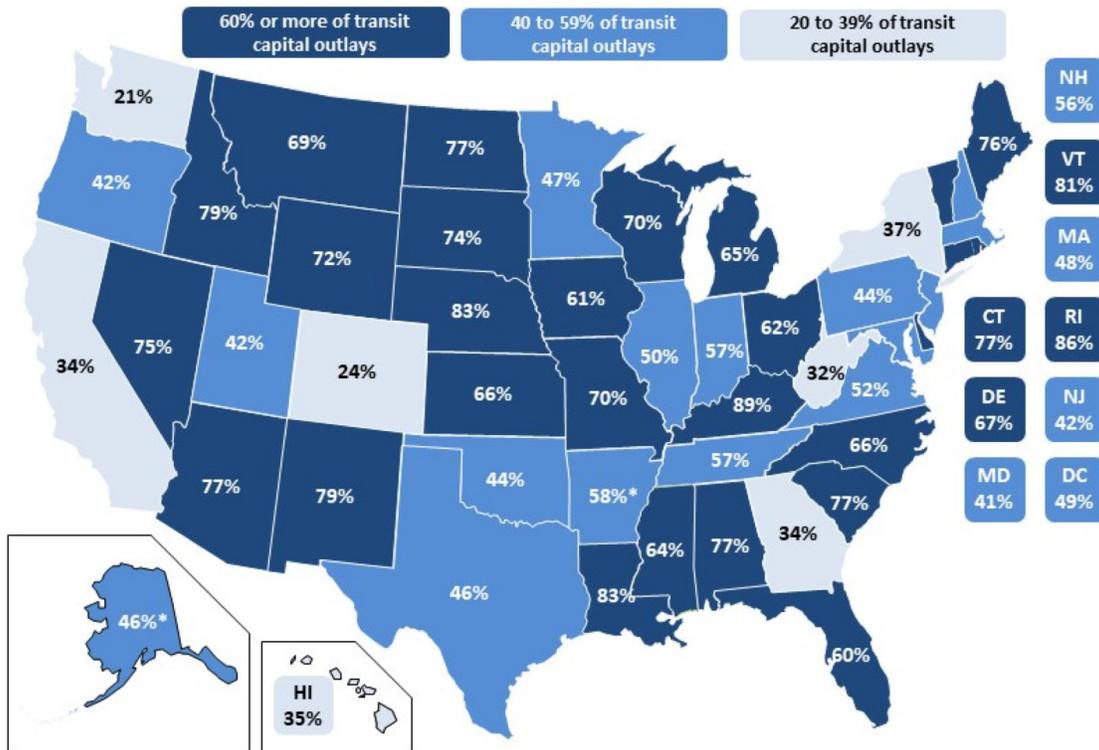
- Capture value from supply chain movements. The movement of freight throughout the nation is the embodiment of the federal government’s constitutional responsibility to regulate and promote interstate commerce. To support the nation’s aviation infrastructure system, a 6.25 percent Air Cargo Tax has been imposed since 1972 as a cost for moving goods via air transportation. This same concept could be applied to surface transportation infrastructure through either a commercial truck air cargo tax companion or a mileage tax.
- Initiate a one-time federal excise tax on electric vehicle batteries, or some other comparable mechanism that would be exclusively applied to alternative fuel vehicles. Fully electric motor vehicles exact the same wear and tear on the nation’s roads as those powered by gas, without contributing one penny to the HTF. This provision would create parity in the financial support all roadway users provide for the infrastructure system on which their vehicles rely—regardless of what powers their vehicles.

While ARTBA believes these options are the most viable in the short-term, we are open to any user-based, recurring revenue solutions that would support increased federal highway and public transportation investment.

Federal Investment and Transit Capital Outlays

Federal investment accounts for an average of 40 percent of all transit agency capital outlays, according to data from the Federal Transit Administration’s National Transit Database. This includes spending on guideways, stations, maintenance facilities, passenger vehicles and other fare collection and communication equipment and systems.

Federal funds account for 40% of transit capital outlays nationwide

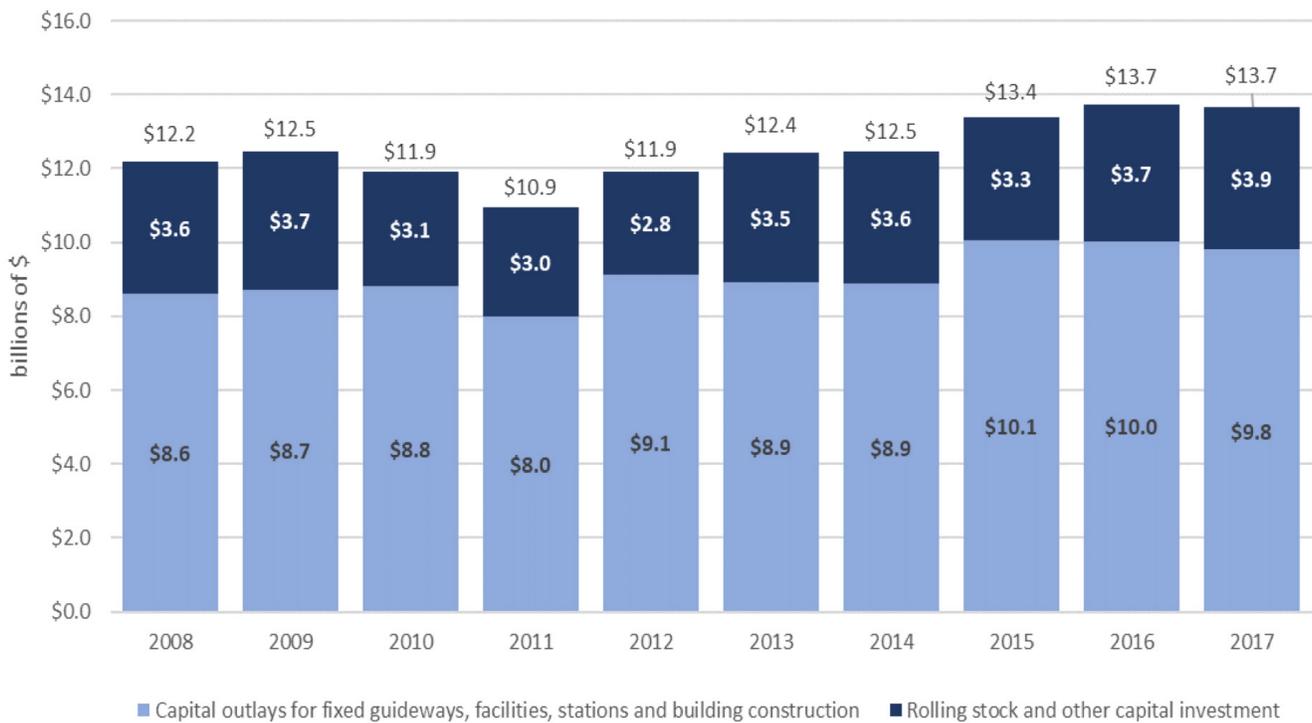


Source: ARTBA analysis of FTA’s National Transit Data for 2013 to 2017. Table TS1.3 capital spending time series data.

Over the last five years, more than 2,630 transit agencies serving residents in every state and in Washington, D.C. have used federal funds to support capital outlays and purchases. This includes major heavy and commuter rail systems in New York, Boston, Los Angeles, San Francisco, Chicago and Washington, D.C., as well as local agencies such as the Transit Authority of Omaha and the Thunder Bay Transportation Authority in Michigan.

These transit agencies are operated by cities, counties, local governments, Native American tribes and state authorities. They include independent public agencies and even private groups, like universities. The services they provide connect people and communities.

Capital Investment in Heavy, Commuter and Light Rail Transit Systems



Source: FTA National Transit Database

Federal investment accounts for over 80 percent of transit capital outlays in Kentucky, Rhode Island, Louisiana, Nebraska and Vermont. It represents over 40 percent of transit capital spending in 43 states and Washington, D.C.

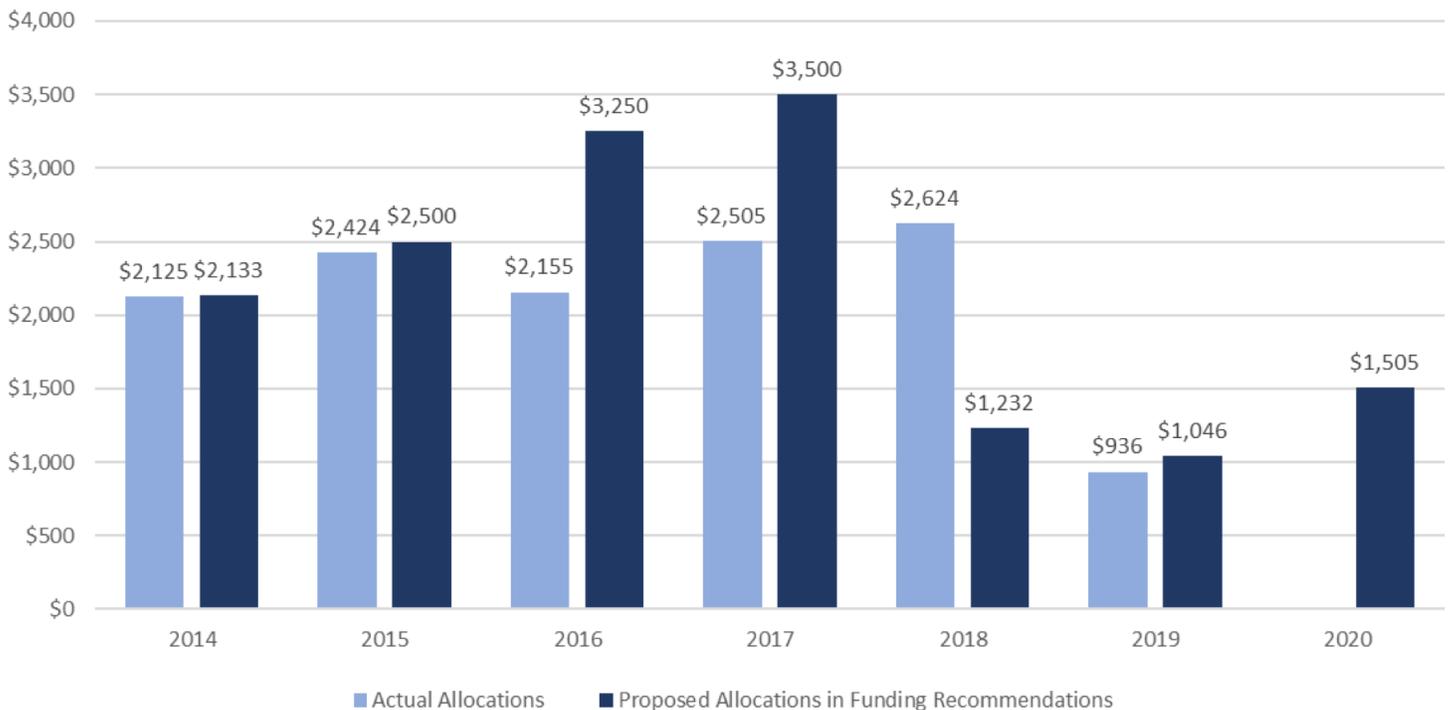
The federal role in public transportation is a vital contributor to the capital outlays made by the transit agencies that provide rail services in major metropolitan areas. Nearly 50 transit agencies invested a total of \$13.7 billion in 2017 on capital outlays related to heavy rail, commuter and light rail services. Nearly half of that total—\$6.8 billion—was to improve and expand guideway systems. Another \$3 billion (22 percent) was invested in other construction activities—station upgrades and expansions, administrative buildings and maintenance facilities.

Transit capital investments for heavy, commuter and light rail services are supported through several different FTA programs, including Urbanized Area Formula Grants, State of Good Repair Grants and Capital Investment Grants.

The FTA discretionary Capital Investment Grants program includes support for the New Starts, Core Capacity and Small Starts programs. U.S. DOT awarded an average of \$2.4 billion in annual Capital Investment Grants between FY 2014 and 2018, supporting an average of 28 projects each year.

As part of the FY 2019 and FY 2020 budgets, U.S. DOT has requested funds to support 10 projects each year. The funding request for FY 2019 was just over \$1 billion, of which \$936 million has already been allocated. The U.S. DOT funding request for FY 2020 is \$795 million.

Proposed and Actual U.S. DOT Capital Investment Grants Program Allocations



Source: Data compiled from U.S. DOT Annual Report on Funding Recommendations and U.S. DOT reports on grant allocations. Proposed funding recommendations include funds for accelerated project delivery and development as well as one percent for oversight activities .

The Cost of Delay

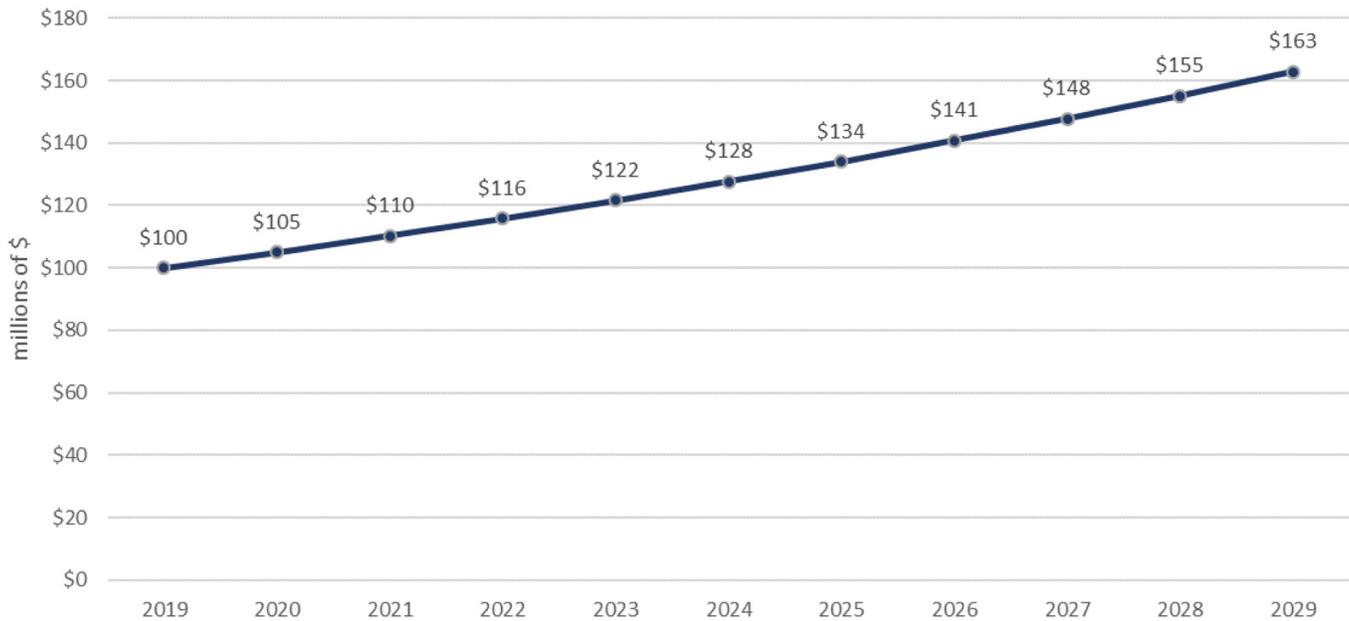
The cost of delaying heavy, commuter and light rail transit projects can be significant and add up over time. Put simply: the longer improvements wait, the more they cost.

Projects will cost more in the future as the price of materials, services and labor increases over time. According to FTA’s Capital Cost Database, which compiles as-built costs for 54 federally funded transit projects, average costs for delivering these projects increases an average of five percent annually.

This means projects that cost \$100 million in 2019 would cost \$163 million to build in 2029. This annual increase is more than twice the rate of general inflation, which is estimated to increase at an annual rate of 2.4 percent over the next ten years, according to the CBO.

Users of the system will also have to wait longer for the economic benefits from the increased access to services, job creation and other activities.

Projected Cost of a \$100 Million Rail Transit Construction Project Over Time



Source: Average annual increase of 5% a year in project costs based on FTA's 2016 version of the Capital Cost Database.

Case Study: LYNX Blue Line Project in Charlotte, NC

This project, constructed by The Lane Construction Corporation, involved the civil work for construction of the Blue Line Extension (BLE) Segment B/C in Charlotte, North Carolina. The Project extends from north of the Old Concord Road Station to Wallis Hall on the University of North Carolina - Charlotte campus. The work included grading, drainage, erosion control, bridges, arterial roadways, retaining walls, traffic control, traffic signal, water main and sanitary sewer installation and related works. The track work for Segment B/C was performed by a different contractor under a separate contract with the owner.

Anticipated Start Date:	4/15/14
Anticipated Substantial Completion Date:	1/19/17
Original Duration:	1,010 CD
Actual Start (NTP):	5/14/14
Actual Substantial Completion:	4/18/18
Actual Duration:	1,435 CD
Projected Cost:	\$119,051,742.33
	<i>(Includes Contingency Amount of \$8,236,168.07)</i>
Actual Cost:	\$147,311,459.90

The major obstacle this project faced was utility relocation delays that delayed the work. This resulted in a contract amendment for acceleration costs in the amount of \$21,750,000.00 and adjustments to the Contract Times

and Intermediate Contract Times. Another obstacle on this project was the dispute resolution process drafted by the owner. The process adopted was a hybrid between the owner's own claim/dispute resolution process and the North Carolina Department of Transportation's claim/dispute resolution process. The two processes did not completely align causing confusion and issues with timely resolution of disputes.

This example demonstrates that the cost of project delays extends beyond time value of money to include unforeseen issues. In essence, the market prices delay regardless of their cause.

Remove Unnecessary Regulatory Burdens from Transit Project Delivery

The transportation construction industry must directly navigate the regulatory process to deliver transportation improvements. As such, they have first-hand knowledge of the specific federal burdens that can and must be alleviated.

ARTBA recognizes regulations play a vital role in protecting the public interest in the transportation project review and approval process. They provide a sense of predictability and ensure a balance between meeting our nation's transportation needs and protecting vital natural resources. These goals, however, do not have to be in conflict. The most successful transportation streamlining provisions have been process-oriented and find a way to fulfill regulatory requirements in a smart and more efficient manner.

However, in recent years the rulemaking process has morphed in certain instances from something intended solely to protect the public interest into a tool for achieving diverse policy and political objectives, many of which are largely unrelated to improving our transportation infrastructure. Furthermore, this process has routinely ignored the affected interests, while often dismissing or undervaluing the project cost increases, delays and compromises in safety which can result.

According to a report by the U.S. Government Accountability Office prior to enactment of the Moving Ahead for American Progress in the 21st Century (MAP-21) surface transportation law, as many as 200 major steps were involved in developing a transportation project, from the identification of the project need to the start of construction. This process involves dozens of overlapping state and federal laws, including: the National Environmental Policy Act (NEPA); state NEPA equivalents; wetland permits; endangered species implementation; clean air conformity; and additional regulatory hurdles not related to the environmental review and approval process.

Project delays carry severe financial consequences. According to a 2016 report by the Texas A&M Transportation Institute, project delay is estimated to cost \$87,000 per month for small projects (e.g., reconstruction), \$420,000 per month for medium-sized projects (e.g., widening) and \$1.3 million per month for large projects. Both political parties recognized that the current system was simply too long and too expensive for delivering transportation projects that improve mobility and safety. As such, finding meaningful ways to expedite this process has been a congressional priority for more than 15 years.

Regulatory reform is an essential part of any effort to ensure the federal government, through the CIG program, utilizes resources in the most efficient manner possible. Reducing unnecessary delays in the project delivery process will allow allocated funds to have the maximum possible impact in delivering projects. With that in mind, ARTBA recommends the following enhancements to the project delivery process be considered by this committee as the FAST Act reauthorization process moves forward.

Emphasize Utilization of Existing Project Delivery Tools

The past four federal surface transportation reauthorization laws have included significant provisions to expedite the review and approval process for transportation improvement projects. While these efforts have intended to cut red tape while preserving environmental protections, the permitting process time horizon has not substantially improved. There are several reasons for this outcome, but one major cause is the lack of utilization and/or awareness of these reforms by project sponsors.

Examples of these tools include:

- The option for a state Department of Transportation (DOT) to request the U.S. DOT to impose a two-year time limit on completion of an Environmental Impact Statement (EIS) if the process has already taken at least two years (from the MAP-21 reauthorization law);
- Establishment of U.S. DOT as the lead agency for coordinated project reviews, although the department may not set a mandatory schedule for other agencies to follow (from MAP-21 and the FAST Act reauthorization laws); and
- A provision calling for planning documents to be used in the NEPA process “to the maximum extent practicable and appropriate,” rather than generating the same or similar material all over again (from the FAST Act reauthorization law).

Existing process reforms should be the new standard. Rather than the discretionary approach taken over the past 20 years, Congress should require their use. However, to preserve flexibility, states should be able to opt out of using reforms on a project if they provide U.S. DOT with a written explanation of their determination.

The more state and federal agencies use these reforms, the greater their impact will be. The default use of these reforms will better achieve Congress’ original intent in enacting them, provide a more accurate measure of their effectiveness, and help identify areas for further improvements in project delivery.

Require Shorter, More Concise NEPA Documents

The EIS is a resource for affected members of local communities to gain information about proposed projects. However, current EIS documents can be so long and complex that even many lawyers have difficulty understanding them, much less community members without any prior training in environmental law or consulting.

Congress should direct U.S. DOT to survey current initiatives at improving clarity in NEPA documents (including NEPA “plain language” efforts within the current administration and a similar department-wide initiative within U.S. DOT dating back more than 20 years) and set standards to reduce unnecessary length and complexity. Improved EIS documents would reduce delays in the NEPA process by clearly communicating the impacts of a proposed project and how to mitigate them.

Establish Clear Timelines for NEPA Reviews

Past reauthorization bills have set enforceable deadlines for permitting decisions. However, there remains no set legislative time limit for the completion of NEPA documents. When initiating a NEPA review, project planners have no sense of when the process is going to be completed. Statutorily requiring timelines would add predictability.

ty to the NEPA process and allow project planners to more accurately plan schedules for environmental review. The lead agency and project sponsor should determine a realistic time frame for the project early in the planning process, allowing for project-specific flexibility and external agencies to fulfill the obligations with a clear deadline for all involved parties.

Educate Project Participants on the Use of Dispute Resolution Boards

Timely decision-making and claims resolution are key factors in keeping transportation construction projects on schedule. Some states have used dispute resolution boards (DRBs) as part of their contract administration strategies. While procedures vary from state to state, generally these entities include expert members recommended by the project owner and contractor or industry. A DRB can be specific to a project, with the members carefully following its progress, meeting regularly and resolving issues as needed. To cite one example, the transportation department and industry in Florida highly recommend this approach.

Congress should direct U.S. DOT to educate state transportation agencies and the industry on the use of dispute resolution boards for appropriate projects.

Allow for a De Minimis Waiver of “Buy America” Requirements

The Buy America law, dating to the early 1980’s, requires that steel or iron components “permanently incorporated” in federal-aid highway and transit projects be manufactured in the United States, subject to possible waivers and exemptions. Some interpretations of Buy America have required that contractors provide extensive documentation and certification for the smallest and least expensive project components. In these cases, the administrative costs and potential related delays can easily outweigh the slight economic benefits of employing domestic manufacturers. Codifying a waiver for these products would save on these compliance costs, while preserving and reaffirming the law’s coverage of core project materials and components, which ARTBA supports.

Congress should waive Buy America requirements for “commercially available off-the-shelf” (COTS) items permanently incorporated in federal-aid highway and transit projects. A COTS item has been defined as any item manufactured product incorporating steel or iron components (with some exceptions) that is:

1. Available and sold to the public in the retail and wholesale market;
2. Offered to a contracting agency, under a contract or subcontract at any tier, without modification, and in the same form in which it is sold in the retail or wholesale market; and
3. Broadly used in the construction industry.

This waiver should not be intended to preempt or compromise project specifications or quality standards relating to these items. Exempting COTS items from Buy America requirements will ensure the law protects domestic manufacturing interests while not causing project cost increases and delays relating to small, inexpensive components.

Additional Recommendations

In addition to regulatory reforms, we ask you to consider numerous programmatic changes to the CIG program, including:

- Transit capital grants programs should be limited to true capital investments – i.e. ones that have an amortized useful life. They should not be used to offset more routine transit system operating expenditures under the catch all of preventive maintenance. (For example, rolling stock has a 12-15-year life for a bus and a 30+ year life for a rail car. A bricks and mortar capital project should have a useful life of 25-40 years. Anything that does not meet such requirements should not be funded with federal capital grant dollars.)
- States and localities should be required to maintain a minimum level of effort to qualify for federal transit grants. Many transit systems depend solely on a combination of fare box revenue and federal assistance to operate their systems, with little or no state/local contribution. States and localities must do their fair share of funding their operating, maintenance, and capital needs before they turn to the federal government for funding.
- FTA must ensure that projects are completely scoped out and the involved state/locality has fully approved the project to reduce mid-project re-scopings and costly change orders which can add cost and extend schedules.
- FTA project approvals and milestones are handled differently in different parts of the country by FTA Regional Offices. Uniform, consistent and transparent approval processes must be applied across FTA regions -- and across DOT modes.
- FTA should be granted the same flexibility as FHWA by being allowed to extend “contract authority” to projects so they can proceed while routine approvals move forward.
- Capital funding comes from a variety of state and local sources in addition to the federal contribution. Unlike most highway projects that have an 80-90 percent federal share, in many cases, the CIG funding is a minority stake of the total project costs. Nonetheless, federal oversight is applied to the entire project, limiting flexibility in the construction of parts of a project not financed with federal funds. Only those phases of the project that are federally funded should be subject to federal oversight.
- Historically, transit projects have been allowed to use Federal Loan Programs such as TIFIA and RRIF as local match. Recent denial of such flexibility has delayed some critically important projects, which only increases their eventual cost and schedule. Since the loans are repaid with local dollars, they should be allowed to be counted as local match.

These program changes would help ensure a consistent national focus for CIG projects and maximize limited federal resources through improved efficiency and better leverage these dollars with state, local and private funds.

Conclusion

America’s transportation infrastructure, including its public transportation and roadway system, is in dire need of repair. It is clear that we must invest more capital in our transportation systems and that goal cannot be achieved without a permanent revenue solution to ensure the HTF can support this needed investment growth.

There has been a lot of talk about a federal infrastructure initiative since the 2016 presidential campaign. While this discussion is long overdue and much needed, there are two key things you need to know:

- An HTF solution must be the cornerstone of any such initiative. Otherwise we risk taking one step forward and two steps back.
- It is time to stop talking and start acting.

Thank you for the opportunity to be here today Chairman Norton and Ranking Member Davis. ARTBA and its members look forward to working with you and the rest of your colleagues on these ideas as the subcommittee develops and enacts a long-term Highway Trust Fund fix and implements policy changes that enable much-needed Capital Investment Programs as well as other highway, bridge and public transportation improvements to move forward on time and at budget.

The travelling American public deserves no less.