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"Transportation for Tomorrow" : The Long-awaited Report of the National Transportation Policy & Revenue Commission Offers a Mix of the Old and the New

In a previous NewsBrief (Vol 19, no. 1) we talked about two distinctive points of view that have emerged in the unfolding debate about the future of the surface transportation program. We called their proponents "Conservatives" and "Innovators." (Some of our readers preferred the terms "Traditionalists" and "Progressives.") The former are inclined to favor continuity and only marginal adjustments in the existing program, the latter believe the current program needs a fundamental overhaul. The National Surface Transportation Policy and Revenue Study Commission ("Policy/Revenue Commission" for short) falls somewhere in between. Its soon-to-be released report (Tuesday, January 15) contains an intriguing mixture of the old and the new. On the one hand, the Commission wants to retain a strong federal role in the surface transportation program and maintain the 60-year old federal fuel tax as the principal mechanism for financing future infrastructure investments. At the same time, however, it calls for a "New Beginning," suggests a performance-based approach and reforms to accelerate project delivery, recommends consolidation of transportation user fees in a new Surface Transportation Trust Fund, and proposes a radical overhaul of the federal program structure.

Below is a short summary of the Commission's recommendations and our comments. Our brief overview is not intended to replace a more thorough examination of the report which runs well over 100 pages. Those who wish to read the report in greater detail will be able to access it on the Commission's website www.transportationfortomorrow.org starting Tuesday, January 15. Our aim in presenting this short preview is twofold: (1) to provide a somewhat more in-depth coverage of the Commission's report than will be found in the pages of the daily press and in the wire services reports; and (2) to provide our readers with a fair and balanced view of the Commissions' recommendations — a view that reflects not only the "official" majority Commission position, but also the views of the three dissenting commissioners and our own independent judgment.

Capital Investment Needs

The Commission estimates that the nation will need to invest at least $225 billion annually over the next 50 years to upgrade the existing surface transportation systems (highways, transit and passenger rail) to a state of good repair. This would represent almost a tripling of the annual rate of $85 billion we are spending on all modes today. For highways, the investment estimate ranges from $185 billion/year to $276 billion/year (compared to $68 billion /year spent today). For transit the corresponding estimates are $26 billion/year to $46 billion/year (compared to $13 billion/year today). Spending for intercity rail is set at $5 billion/year. The Commission recommends that the federal government should continue to contribute 40 percent of the total funding requirements, in line with the federal share in recent years.

Few people would dispute the fact that the nation has seriously underinvested in its transportation infrastructure and that the system needs a massive boost in capital to upgrade its performance. However, reasonable persons can and do differ on the magnitude of the financial resources required. Secretary Mary Peters, joined by Commissioners Maria Cino and Rick Geddes, contend in a supplementary statement that the Commission overstates the nation's investment needs "by a substantial measure." Moreover, they say that the Commission's premise that the Federal government should bear a 40 percent share of national infrastructure capital costs is, in itself, challengable; it is not based on analysis but rather reflects a decision reached through the political process. Given the rising level of entitlements and the competing defense, social and other national priorities, we doubt that the Commission's funding goals are achievable. However, we want to be careful not to imply that the differences of opinion on this and other issues raised in the Commission's report are partisan in nature. Rather, the disagreements reflect different perspectives among the Commissioners on issues of public policy such as the balance of federal vs. state responsibilities, the nature of federal government involvement and the role of the market in managing the surface transportation system. Similar differences of opinion exist within the transportation community at large. Bringing new voice to the debate besides the established stakeholders will ensure that the debate is fair and balanced.

Revenue Sources (Program Funding)

What is likely to attract the most prominent media attention is a set of proposals concerning revenue generation. The Commission recommends: (1) a federal fuel tax increase of 25 to 40 cents per gallon over the next five years, after which the tax should be indexed to inflation; (2) extending the user fee principle to other modes, notably a "federal ticket tax" on transit trips and intercity rail passenger trips, to supplement revenues from the federal fuel tax and the General Fund; and (3) dedicated funding for freight-related improvements, possibly in the form of a share of customs duties and a "freight fee" such as a container charge. All user fees would flow into a new Surface Transportation Trust Fund, renamed to emphasize the multimodal nature of the future program.

Tolling and Pricing

Significantly, the Commission believes that increased tolling and pricing must be part of the overall solution. To this end, it recommends that (1) tolls should be allowed to be used as a mechanism to fund new capacity on the Interstate System; and (2) congestion pricing should be allowed on both new and existing facilities of the Interstate System – but only in metropolitan areas of over one million in population. The Commission also believes that "demand management in the form of pricing will be necessary as part of the solution to addressing congestion in major metropolitan areas." The Commission places certain conditions on tolling and pricing on the Interstate System, notably a requirement that toll revenue should be used only for transportation improvements within the corridor and that tolls should be collected electronically so as not to impede traffic flow.

We commend the Commission for recognizing the importance that tolling and pricing can play in a future surface transportation program. Pricing can not only generate additional resources, it also can help guide resource allocation. However, we also are mindful that you cannot manage your way out of the funding shortfall through pricing alone. As for the Commission's proposal for a fuel tax increase, we believe it faces a problematical future. Just two months ago, Rep. Jim Oberstar (D-MN) tried to propose a 5-cent/gallon federal fuel tax increase to fund his proposed bridge reconstruction program only to be

rebuffed by Congressional leadership and by rank-and-file Democrats and Republicans alike. Whether the next Congress, many of whose members will have campaigned on a pledge of "no new taxes," would be disposed to vote for a cumulative gas tax increase of 40 cents--- even as the price of crude oil and fuel at the pump continue to escalate and reach record levels--- remains in doubt.

But even assuming Congress goes along with the Commission's recommendation, that action alone would go only part way toward solving the funding shortfall. The Commission's estimates are predicated on the assumption that the federal government should continue funding 40 percent of the total national cost of surface transportation infrastructure. That would leave the other 60 percent of the cost to be funded by the states and localities. Many observers question whether state and local governments could collectively come up with their share of the funds — requiring an average increase of 37.5 to 60 cents/gallon or its equivalent over the next five years. Indeed, evidence points in the opposite direction. Most states lack the political will to raise taxes for transportation— whether it be fuel, property or sales taxes. Texas, Minnesota, Washington State and Iowa are only the latest jurisdictions to have decided against tax increases to fund highway programs.

Long Term Revenue Options

The Commission believes that the fuel tax will continue to be a principal revenue source for highways and transit programs for the next 15 to 20 years. However, beyond 2025, the report says, "uncertainties concerning the ability of the fuel tax to serve as the financial basis...are great enough that Federal and State transportation agencies should plan on moving to an alternative revenue source." To this end, the Commission recommends that the next surface transportation authorization legislation require a major national study to develop specific mechanisms and strategies for transitioning to an alternative revenue source, most likely a mileage-based (VMT) fee.

Again, we commend the Commission for recognizing the reality that the fuel tax is not sustainable in the long run. However, the Commission's view of the expected longevity of the fuel tax is not shared by everyone. Secretary Peters, joined by Commissioners Cino and Geddes, contend that this time frame is far too conservative both from a technological and administrative perspective: "We believe that within a decade, the vast majority of metropolitan areas in the U.S. could finance their transportation systems through direct user charges instead of indirect taxes," their statement says. Our conversations with members of the Transportation Infrastructure Financing Commission and other observers tend to support this point of view. A fuel tax-based system may become unsustainable much earlier than the Commission has assumed because more rapid than expected changes in automotive technology, a shift to non-petroleum fuels, interruptions in oil supply, and other yet unforeseen factors may affect the level of fuel consumption and fuel tax generation.

Program Restructure

In an imaginative move, the Commission proposes to revamp the existing federal program by consolidating the 108 existing programs (by the Commission's count) into 10 functional programs representing areas of federal interest. They include, among others, a "National Asset Management Program" (i.e. a program focused on the maintenance, preservation and rehabilitation of existing transportation facilities); and programs in Freight Transportation, Congestion Relief, Safety, Small Cities and Rural Area, Intercity Passenger Rail, Environmental Stewardship and Transportation Research.

Additionally, the Commission proposes to create an independent National Surface Transportation Commission (NASTRAC) "to oversee development of a national strategic plan for transportation investment and to recommend appropriate revenue adjustments to the Congress to implement that plan." The Commission models its proposal on the Base Closure and Realignment Commission (popularly known as BRAC), which was created to de-politicize sensitive base-closing decisions. NASTRAC, in the Commission's view, would serve a similar function in the equally politically charged process of making federal transportation investment decisions and choosing how to pay for them. NASTRAC's funding level recommendations would only be subject to congressional veto by two-thirds vote of both houses within 60 days of their receipt by Congress. No amendments would be allowed. If Congress took no action, the recommendations would become law.

Consolidating the federal programs into a limited number of functional areas and abolishing the modal silo mentality is a commendable idea. Indeed, if approved by Congress, this reform could prove to be the Commission's most lasting contribution. However, handing over the responsibility for program development to an independent commission is likely to meet with a frosty reception. As Secretary Mary Peters and Commissioners Maria Cino and Rick Geddes point out, it is unlikely that Congress would be willing to cede control over transportation infrastructure investment to an autonomous body of unelected commissioners and agree to be bound by their decisions. Moreover, we are not convinced that the Commission has thought through the complex web of relationships and the potential for conflict that this arrangement could create between the U.S. DOT, the state DOTs and the NASTRAC. To the extent NASTRAC would get involved in a review of project-level decisions of state authorities and in geographic reallocation of resources, it would quickly find itself buffeted by political forces. To its credit, the Commission acknowledges that "creation of the NASTRAC is one of the most far-reaching of our recommended reforms." But, it argues, the current decision-making process, including congressional earmarking, "demand a bold departure from past practice." For our part, we think that NASTRAC is the reform most likely to end up on the congressional cutting floor.

Speeding Project Delivery

Responding to numerous complaints from local and state officials at the field hearings, the Commission has recommended a series of reforms to speed up the project development and approval process. They include simplifying the NEPA process, narrowing the number of alternatives to be analyzed; handling mitigation issues in an integrated rather than sequential way; and require greater coordination among federal agencies in reviewing project approvals. *These are all desirable, long-overdue reforms.*

Public-Private Partnerships

In recognition of the growing private sector role in infrastructure development, the Commission is recommending that Congress encourage the use of public-private partnerships "where States or local governments are willing to use them." Such arrangements, in the Commission's view, could play an important role in financing and managing our national transportation system and become an important tool in the arsenal of State and local government financing tools. However, to ensure that the public interest is protected, the Commission believes PPPs and concession arrangements involving Interstate System facilities should be subject to certain conditions. These should include, notably, a prohibition against non-compete provisions (but allowing for compensation of private operators for lost revenue); a cap on toll increases limited to

inflation adjustments; revenue sharing provisions; and limits on the length of concession agreements.

While we commend the Commission for recognizing the contribution that PPPs can bring to infrastructure investment, we find some of the proposed conditions onerous. Their effect would be to discourage private investors and severely limit the market for private toll concessions. We think that States are perfectly capable of protecting the public interest, and the proposed federal regulation of toll concession arrangements is an unnecessary intrusion on the power of states and local authorities to negotiate private contracts on terms that they deem in their best interest. As Secretary Peters and Commissioners Cino and Geddes observe, the conditions recommended by the Commission would subject innovative forms of project delivery and private toll operators to greater federal scrutiny than the scrutiny to which traditional procurement approaches and local public toll authorities are subject.

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As the Commission report rightfully concludes, its recommendations will require a sea-change in the way surface transportation is planned, funded and delivered. We commend the Commissioners for wrestling with these highly complex issues and producing a set of recommendations that will no doubt stimulate a lively debate in the months ahead. Whether the Commission's plan offers a compelling enough vision to energize the public, make people want to buy into it, and convince Congress that the nation's surface transportation program deserves a higher priority and greater resources, remains to be seen.