

**Policy Resolution PPR-8-19**

**Title: AASHTO Reauthorization Policy Theme 5: Reduce Program Burdens**

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Whereas, States are responsible for administering the Federal-aid Highway Program established under the foundation of a national program that is a *federally-assisted State* program according to Title 23 Section 145;

Whereas, Regulations are intended to provide consistency and direction in the administration of the Federal-aid Highway Program;

Whereas, Current federal surface transportation programs remain subject to significant requirements and processes—established over time—that can exert unnecessary burdens on transportation agencies;

Whereas, Many regulations have been promulgated without direct ties to federal statute, and these incremental changes, when taken together, amount to significant increases in time, cost, and complexity to the delivery of transportation projects across the country;

Whereas, There is a well-recognized need to reduce and simplify regulations and other requirements with the goal of reducing cost, increasing efficiency, and expediting the process to deliver needed transportation projects to the American public;

Whereas, The numerous planning, programming, performance-management, asset-management, and investment documents in the areas of highways, transit, freight, rail, safety, and others have a wide variety of durations, update cycles, and requirements that have become overly complex, duplicative, and confusing to the state DOTs, leading to reduced efficiency and efficacy in the decision making process;

Whereas, Performance management regulations have created a data-intensive environment where state DOTs are required to collect, store, analyze, and report significantly more data and information than ever before, and the cost associated with these data collection efforts are significantly greater than estimated by the Federal Highway Administration (FHWA);

Whereas, Fiscal constraint requirements imposed by the FHWA impede the ability of state DOTs to develop and deliver transportation projects by requiring that National Environmental Policy Act (NEPA) approvals only be made on projects coming from a fiscally constrained Statewide Transportation Improvement Program (STIP) or metropolitan Transportation Improvement Program (TIP), even though it is impractical to estimate cost and include a project in a fiscally-constrained STIP or TIP until the NEPA process is complete, as the NEPA process helps define the project;

Whereas, The timing of the fiscal constraint determination can be especially challenging for large public-private partnership (P3) projects and other innovative-finance projects, where funding and financing plans are not (and cannot be) resolved until after the NEPA process is complete;

Whereas, State DOTs are committed to implementing a transportation performance management program but are concerned the established minimum condition levels for certain asset classes could force a state DOT to implement a “worst first” approach to managing their assets;

Whereas, The inconsistent and impractical application of the Buy America Act to surface transportation projects across the country has led to delays, increased costs, and increased administrative burdens on both state governments and private entities such as utility companies;

Whereas, There are numerous federal approvals required in the standard Stewardship and Oversight Agreement that are not called for or allowable by statute, such as a state's standard specifications, pavement design policy, value engineering policy and procedures, liquidated damage rates, and quality assurance program;

Whereas, The FAST Act legislated exemptions for overweight emergency vehicles and overweight heavy-duty tow and recovery vehicles on our highway system that will waste money on unnecessary highway signs, increase the standard legal loading on these bridges resulting in reduced longevity, and confuse the traveling public, when the existing system of states' permit authority could designate appropriate routes, reduce costs for state and local governments, protect bridges, and continue to facilitate prompt movement of emergency and tow vehicles when necessary;

Whereas, Formal adoption by the US Departments of Justice and Transportation of the Public Rights-of-Way Accessibility Guidelines (PROWAG) is needed to address accessibility for people with disabilities within the unique conditions and constraints of the public right-of-way, as without formal adoption, states are being forced through litigation to implement suboptimal accessibility solutions that were adopted previously for vertical construction, known as the ADA Accessibility Guidelines (ADAAG);

Whereas, The current annual schedule for federal compliance reviews of states' bridge and tunnel inspection programs does not allow sufficient time to implement corrective actions before the next year's audit period commences, resulting in redundant reviews and a lack of opportunity for meaningful improvement before the next review takes place;

Whereas, Federal rules in 23 CFR 750.707(d)(3) and (d)(5) create expensive, time-consuming processes for relocating or providing just compensation for removal of "nonconforming" billboards, when a minor modification to the regulation could significantly reduce time and cost without adverse impacts to the scenic environment;

Whereas, The antiquated Bonus Act of 1958 is incongruent with the Highway Beautification Act (HBA) in many aspects, causes problems for state DOTs in their regulation and control of outdoor advertising signs along the Interstate, and costs federal dollars to relocate or compensate for loss along sections of roadway that are no longer state highways; and

Whereas, The courts are requiring states to waste precious transportation dollars demonstrating conformity to air quality standards that have been superseded by more stringent updates to the National Ambient Air Quality Standards (NAAQS); now, therefore, be it

*Resolved*, That AASHTO recommends continuing the progress made in the Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) Act and the FAST Act to reduce the layers of regulatory burden that have accumulated onto the state DOTs, with the goal of increasing the efficiency and effectiveness of every transportation dollar;

*Resolved*, That Congress should amend 42 USC 7506 to require conformity by transportation agencies only to the most recent standard for a given pollutant in the National Ambient Air Quality Standards (NAAQS) when a new standard is established (Issue PEP-4);

*Resolved*, That Congress should rescind the FAST Act provisions concerning emergency vehicles and heavy-duty tow vehicles (23 USC 127(m) and (r)) or at least allow states to accommodate these vehicles, through permitting and other methods (Issue PEG-6);

*Resolved*, That Congress should direct USDOT to implement a more practical application of the Buy America Act for transportation projects, including: reinstating a reasonable waiver process; implementing an exemption for utility companies that are required to relocate their facilities as part of a transportation project; implementing an exemption for research-related equipment and materials for transportation research projects; and ensuring timely consideration and consistent application of the law across the country to ensure that transportation projects are progressing without significant delays (Issue PEG-1);

*Resolved*, That states should be authorized to approve modifications to various state policies and procedures listed in the standard Stewardship and Oversight Agreement without preapproval by FHWA, subject to FHWA's ongoing oversight of the state's compliance with federal requirements, and reviews of these changes should be conducted no more frequently than every two years (Issue PEG-3);

*Resolved*, That Congress should also direct FHWA to: identify and implement ways to reduce the burden associated with the development of performance measures by providing additional financial resources to state DOTs beyond simple funding eligibility or flexibility; reduce the scope of data collection, analysis, and management required by state DOTs; and ensure that state DOTs are only held accountable for those assets within their control (Issue PM-2);

*Resolved*, That in order to better address the financial process difficulties caused by federal funding uncertainty in the fiscal constraint and financial planning provisions related to planning, programming, asset-, and performance-management, the description of when funding can be "reasonably expected to be available" should be defined broadly, and fiscal constraint and other financial requirements in planning and programming should be imposed for no longer than the STIP timeframe (Issue FF-10);

*Resolved*, That to allow adequate time to implement and evaluate current performance-based planning regulations included in 23 CFR § 450, Subpart B, Congress should make no changes or additions in the current and upcoming reauthorization cycles (Issue PL-3);

*Resolved*, That Congress should direct the Secretary of USDOT to review the effect that the minimum condition levels for both condition of interstate pavements and NHS bridges have had on the ability of state DOTs to implement an asset management approach;

*Resolved*, That Congress should authorize the adoption in regulation of the Public Rights of Way Accessibility Guidelines to ensure that transportation projects most appropriately accommodate people with disabilities (Issue PEG-7);

*Resolved*, That Congress should direct FHWA and the Federal Transit Administration (FTA) to update their joint environmental and planning regulations (23 CFR Part 771 and Part 450), and direct the US Environmental Protection Agency (EPA) to make corresponding changes to its transportation conformity regulations which would provide state DOTs with the flexibility to complete the NEPA process with approval conditioned on making an air quality conformity and fiscal constraint determination before proceeding to construction (Issue PL-2);

*Resolved*, That Congress should direct FHWA to remove fiscal constraint regulatory requirements that are not compelled by statute and reduce the burden associated with them through such methods as applying them to fewer decision points and shortening applicable time frames (Issue PL-2);

*Resolved*, That Congress should direct FHWA to place federally-required financial plans on a consistent four-year cycle with the STIP; to make consistent the duration, update cycle, and content of numerous planning documents required of state DOTs, and; to eliminate redundancy among and allow consolidation of these and other planning documents to reduce administrative burdens on the state DOTs (Issue PL-5);

*Resolved*, That Congress should establish a new pilot program that would require bus manufacturers to directly provide a single certification to the Federal Transit Administration demonstrating compliance with Buy America and Altoona Test requirements (Issue PEG-1);

*Resolved*, That FHWA's annual compliance reviews of states' bridge and tunnel inspection programs be extended to two years or more to allow time for the meaningful implementation of improvements and corrections recommended in the previous cycle (Issue PEG-8);

*Resolved*, That federal laws and regulations be amended to allow for the relocation of "nonconforming" billboards when impacted by a highway project to reduce the cost and time associated with compensating the permit holder or locating a new conforming location (Issue PEG-13); and

*Resolved*, That Congress should amend applicable laws related to the antiquated outdoor advertising control regulations of the Bonus Act of 1958, which causes problems for state DOTs in their regulation and control of outdoor advertising signs along the Interstate, effectively allowing states to exit the program without penalty (Issue PEG-14).