Congressional Research Service
Informing the legislative debate since 1914

Surface Transportation Devolution: Shifting Responsibility to States and Localities

Updated May 15, 2025

Congressional Research Service
https://crsreports.congress.gov
R44811

CRS REPORT
Prepared for Members and
Committees of Congress

Congressional Research Service
Informing the legislative debate since 1914

SUMMARY

R44811

May 15, 2025

William J. Mallett
Specialist in
Transportation Policy

Surface Transportation Devolution: Shifting Responsibility to States and Localities

Surface transportation "devolution" refers to shifting most current federal responsibility for building and maintaining highways and public transportation systems from the federal government to states and localities. Devolution legislation has been introduced in many Congresses since the mid-1990s, supported by Members who regard the federal government as being overinvolved in surface transportation. Under such proposals, the federal taxes that now support surface transportation programs, mostly fuels taxes, would be reduced in line with the shift of responsibility to states and local governments. These governments could then raise their own taxes to pay for highway and public transportation projects as they see fit. A small program, funded by much-reduced motor fuel taxes, would typically remain in place at the federal level to maintain roads on federal lands, fund highway safety efforts, and support other programs Congress decides not to devolve.

Beyond the basic small government argument, advocates of devolution generally assert that it would lower costs and accelerate construction of highway and public transportation projects by freeing them from a wide variety of federal regulations. This would likely include some environmental review requirements, which are often addressed as part of the National Environmental Policy Act of 1969 (NEPA) process, as well as nondiscrimination and Buy America requirements.

In the past, devolution advocates also argued that the system for distributing highway and public transportation funding was unfair because it gave some states more money relative to their residents' motor fuel tax payments than other states. Supplementing highway user tax revenue in the Highway Trust Fund (HTF) with transfers from the General Fund of the U.S. Treasury (General Fund) has dampened this argument. Some discontent remains about the fairness of the formula used to distribute highway funding and the use of highway user taxes for public transportation projects.

Opponents of devolution question whether it would save money and worry that it could interfere with national goals established by Congress, such as maintaining important interstate freight corridors and adhering to uniform national construction standards. There is also a concern that less affluent parts of the nation could have trouble paying for the roads, bridges, and public transportation they need to support personal mobility, economic development, and national connectivity.

Significant issues Congress could face if it were to consider devolution include the following:

- Devolution would involve substantial upfront costs for the HTF, approximately $125 billion, to pay for outstanding highway and transit obligations and budget authority available for obligation. Even if the federal government handed responsibility for funding new highway and public transportation projects to the states, it might need to retain federal motor fuels taxes or some other revenue source until it had repaid the states for projects in progress as of the date devolution took effect.
- Replacing the reduced federal taxes on a cent-for-cent basis would not provide enough revenue to fund the current level of spending on surface transportation. Congress has been supplementing highway user taxes dedicated to the HTF with money from the General Fund as well as annual and supplemental appropriations from the General Fund. Nearly all states would have to increase their taxes by an amount larger than the reduction in federal taxes, unless they chose to reduce spending.
- Devolution would likely increase the use of tax-exempt bonds by the states, reducing federal revenue beyond the amount of forgone highway taxes.

Contents

Figures

Contacts

Introduction

Surface transportation "devolution" refers to shifting most current federal responsibility for building and maintaining highways and public transportation facilities from the federal government to states and localities. Devolution would involve reducing the highway user taxes, such as taxes on gasoline and diesel that provide most of the federal funding distributed to state departments of transportation and local transit authorities. State and local governments would then have the option of making up for the reduction in federal funding by raising their own highway user taxes or providing funds from other sources, as they saw fit. The federal government could maintain a much smaller program to meet limited purposes, such as building and maintaining roads on federal and Indian lands, conducting research, and providing funds for repairs after disasters. This program could be paid for either by appropriations from the General Fund of the U.S. Treasury (General Fund) or by retaining federal highway user taxes at lower rates.

Devolution would reduce the scope of many of the requirements that are attached to the use of federal funds. Federal regulation and oversight of project construction, domestic sourcing of construction materials, prevailing wage requirements, federal construction standards, and some federal environmental regulation would no longer apply to surface transportation projects funded exclusively with state and local resources. Advocates of devolution contend that elimination of these requirements would reduce the cost of constructing transportation projects and speed their completion. Opponents argue that devolution would interfere with national goals established by Congress, such as maintaining interstate freight corridors and adhering to uniform national construction standards.

Arguments for devolution of surface transportation programs have emerged periodically since the Reagan Administration.[1] In 1987, devolution was recommended in a detailed report by the Advisory Commission on Intergovernmental Relations.[2] However, Congress gave the states greater flexibility over the expenditure of federal highway funds in 1991 in the Intermodal Surface Transportation Efficiency Act (ISTEA; P.L. 102-240), addressing one of the factors leading to calls for devolution. In addition, financial and policy concerns have deterred consideration of devolution proposals.

How the Surface Transportation Program Operates

Highway construction has involved a federal-state partnership since passage of the Federal Aid Road Act of 1916 (39 Stat. 355).[3] The highway program has had three basic attributes: a required state match of federal funds, a designated network of roads eligible for federal funding, and the distribution of funds to the states predominantly by formula, a process known as apportionment.[4] The Federal Aid Highway and Highway Revenue Acts of 1956 (70 Stat. 374, 387), which authorized the construction of the Interstate System, increased federal involvement in highway

[1] Memorandum from Drew Lewis, Secretary of Transportation, to Ed Meese, Senior Policy Advisor, "Preliminary Draft on User Fees," February 18, 1982.

[2] Advisory Commission on Intergovernmental Relations (ACIR), *Devolving Selected Federal-Aid Highway Programs and Revenue Bases: A Critical Appraisal*, A-108, Washington, DC, September 1987, pp. 1-50, http://www.library.unt.edu/gpo/acir/Reports/policy/a-108.pdf.

[3] For a wide-ranging review and analysis of federalism issues, see CRS Report R40431, *Federalism Issues in Surface Transportation Policy: A Historical Perspective*, by Robert Jay Dilger.

[4] The Infrastructure Investment and Jobs Act (P.L. 117-58) authorizes several competitive funding programs. Eligible applicants for these funds often include local governments.

planning and construction. The act raised federal highway taxes and channeled the receipts into a new Highway Trust Fund (HTF), removing highway funding from the normal appropriations process. Congress subsequently created many separate programs to require that states spend shares of their federal funding for specific purposes. State departments of transportation (state DOTs) largely determine which projects are funded, let the contracts, and oversee project development and construction.[5]

The federal government has routinely provided funding for public transportation since 1964, with funding through the HTF since 1982. Unlike the federal-state relationship in the federal-aid highway program, the federal public transportation program generally involves a relationship between the federal government and local transit authorities.[6]

Until FY2018, almost all spending on the federal-aid highway program and about 80% of spending on public transportation were funded from the HTF, which has two accounts: the highway account and the mass transit account. The appropriations acts for FY2018 through FY2025 provided additional General Fund money for several programs that in the past received federal money only from the HTF.[7] The most recent surface transportation authorization, the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58)—which authorized funding from the HTF for FY2022-FY2026—also provided multiyear advance appropriations from the General Fund for several highway and public transportation programs.

The primary revenue sources for the HTF are an 18.3-cent-per-gallon federal tax on gasoline and a 24.3-cent-per-gallon federal tax on diesel fuel. Although the HTF has other sources of revenue, such as a heavy truck tax and a truck tire tax, and is also credited with interest paid on the fund balances held by the U.S. Treasury, fuel taxes have in recent years provided roughly 85% of the amounts paid into the fund by highway users. The mass transit account receives 2.86 cents per gallon of fuel taxes, with the remainder of the tax revenue credited to the highway account.

In most years since FY2001, there has been a gap between the dedicated tax revenues flowing into the HTF and the cost of surface transportation spending from the HTF that Congress has authorized. Congress has filled these gaps with a series of transfers, largely from the General Fund. These transfers have shifted a total of $275 billion to the HTF. The most recent $118 billion of these transfers were authorized in the IIJA.

Opposition to raising the federal fuels tax rates has left the rates unchanged since 1993. The taxes had lost more than half of their purchasing power through 2024.[8] **Figure 1** shows the trust fund's financial outlook in nominal dollars. The gap between tax revenues coming into the HTF and outlays from the fund is projected to widen. The General Fund transfers authorized under the IIJA can fill this gap through FY2027.[9] Thereafter, Congress may consider options ranging from reducing federal spending for surface transportation to finding additional resources for highway and public transportation programs, or a combination of both.

[5] CRS Report R48472, *The Highway Trust Fund's Highway Account*, by Ali E. Lohman.

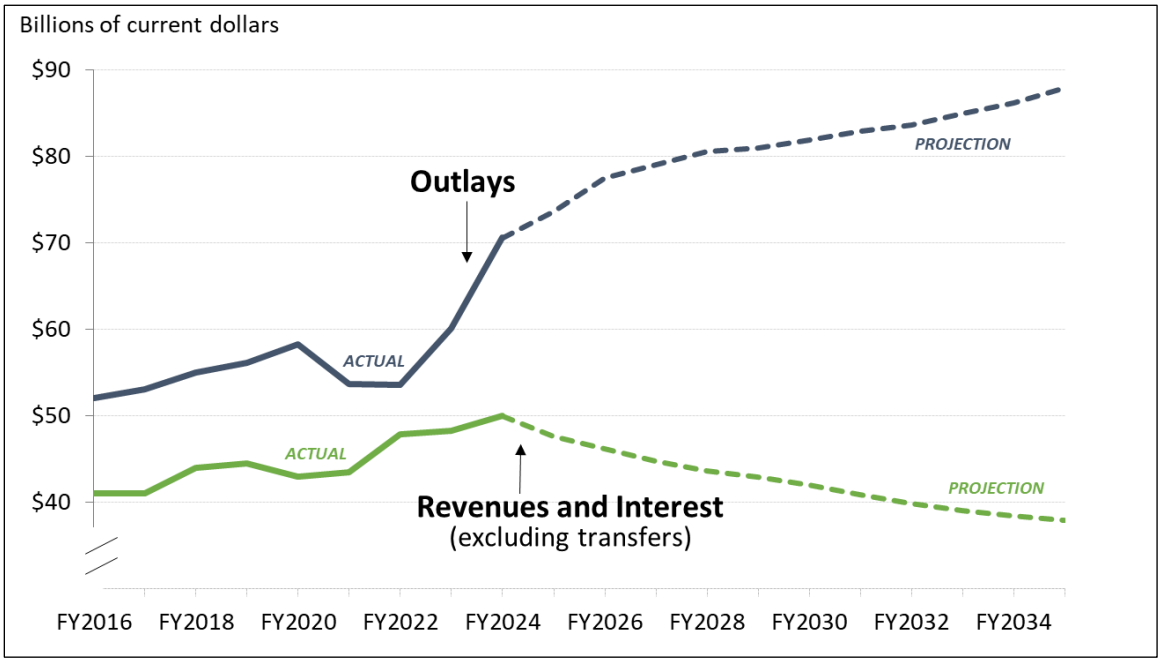
[6] CRS Report R42706, *Federal Public Transportation Program: In Brief*, by William J. Mallett.

[7] P.L. 115-141, P.L. 116-6, P.L. 116-94, P.L. 116-260, P.L. 117-103, P.L. 117-328, P.L. 118-42, and P.L. 119-4.

[8] CRS based on Bureau of Economic Analysis, Implicit GDP Price Deflator, February 27, 2025, https://www.bea.gov/data/gdp/gross-domestic-product.

[9] Congressional Budget Office, "Highway Trust Fund Accounts, Baseline Projections," January 2025, https://www.cbo.gov/data/baseline-projections-selected-programs.

Figure 1. HTF Revenue and Outlays, FY2016-FY2035 (Projected)



Source: Congressional Budget Office, "Highway Trust Fund Accounts, Baseline Projections," January 2025 and earlier reports, https://www.cbo.gov/data/baseline-projections-selected-programs.

The Case for Devolution

Advocates of devolution have generally made the following case since the 1980s:[10]

- The federal government is overinvolved in the planning and construction of highways. The states have a better understanding of their own highway needs, and federal involvement should be limited to highways that have a clear national purpose.
- Public transportation is inherently local and should be a local or state responsibility with no federal involvement.
- Some states receive more federal surface transportation funding, relative to the highway user taxes paid by their motorists, than other states. Devolution would eliminate this discrepancy by giving each state control of its motorists' tax payments.
- The preservation and reconstruction of the Interstate Highway System, federal lands highways, and, perhaps, existing federal programs supporting transportation research and highway safety are valid federal responsibilities and should remain with the federal government.

[10] David Ditch et al., *Paying for Surface Transportation Infrastructure: Four Wrong Routes, Four Good Paths*, The Heritage Foundation, Backgrounder no. 3422, July 17, 2019, https://www.heritage.org/transportation/report/paying-surface-transportation-infrastructure-four-wrong-routes-four-good; and Randall Pozdena, "Devolution of Transportation: Reducing Big-Government Involvement in Transportation Decision-Making," in eds. John D. Bitzan and James H. Peoples, *Transportation Policy and Economic Regulation: Essays in Honor of Theodore Keeler* (Elsevier, 2018), pp. 207-250.

- Eliminating federal funding for most surface transportation projects would reduce regulatory burdens on states and localities, leading to efficiencies and cost reductions.

The Case Against Devolution

Critics of devolution have typically made the following assertions:[11]

- National interests are too great to be addressed without a strong federal role. All states benefit from a broad, properly functioning national highway network. This network could be in jeopardy with less federal support, as state capital project funding may prove less reliable than federal funding.
- Devolution would make it more difficult for states or groups of states to concentrate funds for large projects of regional or national significance because local interests will override national needs.
- Some parts of the nation are less well off than others and would have trouble paying for the roads, bridges, and public transportation they need to support economic development and national connectivity.
- Public transportation is important for national economic competitiveness and connects local areas to interstate and international transportation networks. Some public transportation systems operate across state lines.
- Regulations tied to federal funding of highways and public transportation help ensure implementation of national goals such as highway and transit safety, clean air and water, and civil rights, and may save money by leveling the playing field among contractors and encouraging national competition for bids.
- Devolution would require major funding transfers to pay for the transition.

[11] "Industry, Key Lawmakers Push Back Against 'Devolution' of Highway Trust Fund," *AASHTO Journal*, March 20, 2015, https://www.tsp2.org/2015/03/23/industry-key-lawmakers-push-back-against-devolution-of-highway-trust-fund/; "Senate EPW Hearing Denounces Devolution, Congressional Inaction," *Eno Transportation Weekly*, February 26, 2015, p. 5.

Selected Legislation Addressing Devolution*

Transportation Empowerment Act of 1996 (Representative Kasich and Senator Mack, sponsors, H.R. 3840/S. 1971, 104th Congress). The bill adhered to recommendations of the Advisory Council on Intergovernmental Relations, limiting the federal role to Interstate maintenance, federal lands highways, national security highways, emergency relief, and an Infrastructure Special Assistance Fund. The responsibilities for other programs were to be taken over by the states. A four-year phase-out of 12 cents of the 18.4-cent-per-gallon federal gasoline tax was to mirror the declining federal role. The bills were never reported out of committee. However, the Kasich/Mack devolution proposal was voted on in Congress as part of the amendment process of surface transportation reauthorization legislation.[12]

Transportation Empowerment Act of 2002 (Senator Inhofe, sponsor, S. 2861,107th Congress). This was a modified version of the 1996 bill that included funding for transportation research and a share table for the apportionment of Interstate Maintenance funds to the states. Similar versions were introduced each Congress through the 112th Congress.[13]

Highway Fairness and Reform Act of 2009 (Senator Hutchison, sponsor, S. 903, 111th Congress). This bill would have allowed a state to opt out of the Federal-Aid Highway Program and instead receive a federal transfer equal to the state's payments to the highway account of the Highway Trust Fund (HTF), less the state's prorated share of funding for the National Highway Traffic Safety Administration and the Federal Motor Carrier Administration, as determined by the U.S. Department of Transportation. The mass transit account was not made available for opt out.

State Transportation Flexibility Act of 2011 (Representative Lankford and Senator Coburn, sponsors, H.R. 1585/S. 1446, 112th Congress). This bill would have allowed states to opt out of both the federal highway and public transportation programs. Amounts equal to a state's payments to the HTF would have been transferred back to the state.[14]

Transportation Empowerment Act of 2013 (Representative Tom Graves and Senator Lee, sponsors, H.R. 3486/S. 1702, 113th Congress). This bill would have modified the Kasich/Mack/Inhofe proposals to adjust for the programmatic changes made in the Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141). The bill would have funded the federal lands programs, highway research and development, the Emergency Relief Program, and administrative expenses. The National Highway System would have been designated the Federal-aid System. No funds were to be provided for other discretionary programs. The National Highway Traffic Safety Administration, the Federal Motor Carrier Safety Administration, and the Federal Transit Administration would not have been funded. The bill would have eliminated all the nonfuel highway taxes at the end of FY2016. It would have continued existing motor fuels tax rates through FY2019 and then reduced the rates to 3.7 cents per gallon for gasoline and 5.0 cents per gallon for diesel. All proceeds would have been deposited in the highway account of the HTF, and mass transit account balances would have been transferred to the highway account. The bill would have gradually reduced apportioned funding of the formula highway programs via a declining "core financing rate." As the revenues apportioned to the programs declined each year under the declining core financing rate, the remaining "excess" tax receipts would have increased from year to year and been rebated to the states at the beginning of each year (FY2016 through FY2018). The bill did not make clear how the receipts were to be distributed before they were collected.

Transportation Empowerment Act of 2015 (Representative DeSantis and Senator Lee, sponsors, H.R. 2716/S. 1541, 114th Congress). This bill would have devolved the programmatic structure much in the way that the 2013 bill would have. The bill language was modified in response to an FHWA analysis showing that the bill would have required about $50 billion in General Fund transfers to pay for outstanding federal obligations to the states.[15] In response, the bill would have delayed the core financing rate reductions until the third year after enactment and would not have eliminated the nonfuel highway taxes. Even so, the bill would likely have required General Fund transfers to pay outstanding obligations for highway projects completed by the states. The act would have retained federal motor fuels taxes, but at rates too low to cover reconstruction of the Interstate System.

Transportation Empowerment Act of 2018 (Senator Lee, sponsor, S. 3190, 115th Congress). This bill would have devolved the programmatic structure much in the way that the 2015 bill would have; in addition, S. 2803 it would have retained the National Highway Freight Program created by the Fixing America's Surface Transportation (FAST) Act (P.L. 114-94). The bill would have reduced taxes in the same way as the 2015 bill.

Transportation Empowerment Act of 2021 (Senator Lee, sponsor, S. 2803, 117th Congress). This bill would have devolved the programmatic structure much in the way the 2018 bill would have but with a focus on the Interstate Highway System. As in earlier bills, it would have eliminated the HTF's mass transit account. The bill also would have reduced the tax rates on fuels but by lesser amounts than the earlier bills and without delay. The bill also would have authorized the transfer of unobligated COVID-19 relief funds to the HTF. The bill would have let states assume the responsibilities of the Secretary for project designs, plans, specifications, estimates, contract awards, and inspections.

* To date, no surface transportation devolution legislation has passed either chamber of Congress.

What Might a Devolved Transportation System Look Like?

Surface transportation devolution proposals generally have certain characteristics in common: they would reduce or eliminate existing federal programs, reduce the federal taxes on motor fuels, and leave states and localities to provide replacement funding for transportation purposes if they wish to do so. Most devolution proposals would retain existing federal programs to maintain roads on federal lands, fund transportation research, and provide relief to rebuild roads and bridges damaged in natural disasters. Nearly all transportation devolution proposals would eliminate the federal public transportation program.

At the same time, devolution proposals have taken differing approaches to a number of important matters. Some would retain a federal role in preserving the Interstate Highway System and important bridges, while others would not. Some have retained the major highway formula grant programs, albeit on a far smaller scale, while others have proposed to eliminate those programs. The treatment of two federal safety agencies, the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration, has also been a point of contention; no proposal to date would have devolved those agencies' responsibilities to the states, but elimination of the Highway Trust Fund would leave Congress the choice of letting the programs expire or funding them from the General Fund.

Upfront Costs

Devolving the current federal highway and transit programs to the states would involve substantial upfront costs. Under the current programs, most surface transportation funding is authorized in multiyear authorization bills. Each year of highway funding is generally available for obligation for the current year and the three subsequent years (23 U.S.C. §118(b)), whereas public transportation funding is generally available until expended (49 U.S.C. §5338(e)). The Federal Highway Administration (FHWA) uses contract authority to legally obligate the federal government to pay its share of a project's cost prior to construction.[16] The state lets the contracts, oversees construction, pays the contractor, and submits vouchers to FHWA for reimbursement. As projects frequently take several years to complete, in any given year FHWA is making payments to the states based on commitments made several years earlier. These payments are made mostly from the current year's HTF receipts.[17] Public transportation funding works in a similar manner,

[12] The Kasich/Mack bill was offered as an amendment to what became the Transportation Equity Act for the 21st Century (TEA-21; P.L. 105-178). The amendment (H.Amdt. 551 to H.R. 2400) was defeated on April 1, 1998, in the House of Representatives, 98 yeas to 312 nays.

[13] During the MAP-21 reauthorization debate in 2012, Sen. DeMint submitted the Transportation Empowerment Act as an amendment (S.Amdt. 1587) to S. 1813 on February 14, 2012. It was not voted on. However, Sen. Coats again proposed the act as an amendment on March 8, 2012 (S.Amdt. 1756). The amendment was defeated on the floor of the Senate on March 13, 2012, by a vote of 30-67.

[14] Sen. Coburn submitted an amendment (S.Amdt. 1598), the State Transportation Flexibility Act, to S. 1813 on February 14, 2012. It was not incorporated into the final bill.

[15] FHWA as reported in *Eno Transportation Weekly*, January 14, 2015, pp. 1, 11-12.

[16] *Contract authority* is a type of budget authority that is available for obligation prior to an appropriation. Appropriators eventually must provide liquidating authority to pay the obligations from the HTF.

[17] "CBO Data Illustrates Future Cost of Past HTF Commitments," *Eno Transportation Weekly*, April 15, 2015, pp. 8-10.

with the sponsoring transit agency signing contracts for approved expenditures and the Federal Transit Administration (FTA) providing reimbursement as portions of the work are completed.

As a result of the funding process, there is an accumulation of outstanding HTF obligations for which the federal government is legally responsible. According to the U.S. Department of Transportation (DOT), at the end of January 2025, outstanding HTF obligations for funding made available by the IIJA totaled $74 billion ($61 billion for the highway account and $14 billion for the mass transit account). This is the amount of previously approved activities for which the federal government must pay when vouchers are submitted for repayment by the states or transit authorities. Additionally, some of the contract authority in the IIJA remains unobligated. At the end of January 2025, unobligated contract authority totaled $51 billion ($27 billion for the highway account and $24 billion for the mass transit account).[18] There may also be some unpaid obligations and unobligated budget authority from earlier authorization legislation.

Thus, even if the federal government hands responsibility for funding new highway and public transportation projects to the states, it might need to retain motor fuels taxes or some other revenue source to assure repayment of outstanding obligations. At the end of FY2024, the unexpended balances in the HTF amounted to $101 billion. Consequently, if no new obligations of HTF money were permitted beginning in FY2025, the remaining funding would have been enough to pay the remaining commitments. Because CBO forecasts that the trust fund balance will decline in the future under current law, devolution might require retaining some of the trust fund's dedicated taxes for a period of time until its obligations are paid.

Federal Revenue Losses

Although devolution would reduce federal spending on transportation, the net savings to the federal government would be less than the amount of the spending reduction because many states extensively use tax-exempt bonds as part of their financing mechanisms. If states were to make up for the elimination of federal surface transportation funding by issuing more tax-exempt bonds, the U.S. Treasury would lose revenue.[19]

Replacing the Relinquished Federal Taxes

Virtually all surface transportation devolution proposals would reduce or phase out most of the federal motor fuels taxes (and in most cases also eliminate the other taxes on highway users) over several years. The presumption is that state governments would use this period to adjust their own taxes accordingly. This might involve states increasing their own taxes on gasoline and diesel or instituting or increasing other taxes, such as a vehicle miles traveled tax. For simplicity, this discussion focuses on fuels taxes.

There are reasons to believe that replacing federal motor fuels taxes with state fuels taxes on a cent-for-cent basis would not provide sufficient revenue to fund the current level of spending on highways and public transportation. One reason is that a large share of federal spending on surface transportation now comes from the General Fund, not from taxes dedicated to the Highway Trust Fund. On average, the states would need to raise their taxes on motor fuels by roughly 17 cents per gallon (in 2024 dollars) more than the amount of motor fuels taxes relinquished by the federal government to make up for the loss of money from the General Fund.

[18] U.S. Department of Transportation (DOT), "Infrastructure Investment and Jobs Act (IIJA) Funding Status Report," https://www.transportation.gov/mission/budget/infrastructure-investment-and-jobs-act-iija-funding-status-report.

[19] CRS Report R43308, *Infrastructure Finance and Debt to Support Surface Transportation Investment*, by William J. Mallett and Grant A. Driessen.

Adding this to the relinquished taxes would mean state legislatures would face, on average, passing increases of about 30 cents to 35 cents per gallon in their state taxes on gasoline and diesel fuel (in 2024 dollars).[20]

This issue could especially affect states that receive relatively large amounts of federal surface transportation funding, compared with the amount their motorists pay in federal fuel taxes. These states would have to increase their state fuel taxes more than the averages above to maintain current highway and public transportation spending. Among these are states with small populations, including several geographically large, sparsely populated western states. Alaska, for example, would likely have to increase its fuels taxes by roughly $1.70 per gallon (in 2024 dollars) to make up for the lost federal funds under devolution. Several other states, including Vermont, Rhode Island, and Montana, would likely have to enact replacement fuel taxes of roughly 55 cents to 75 cents per gallon (in 2024 dollars) more than the reduction in federal taxes to maintain current spending. Some states, such as Colorado, North Carolina, and Texas, would have to increase fuels taxes in the range of roughly 10-20 cents per gallon (in 2024 dollars) to replace the federal funds.[21]

Devolution would not require that replacement fuel taxes be enacted. State legislatures could decide to dedicate other taxes to surface transportation or rely on their general revenues to fund highways and public transportation. States could also pass the cost downward by requiring local governments to pick up some of the costs of the devolved programs. States might consider expanded use of tolling in lieu of higher taxes. Some might choose not to make up for the reduction in federal grants and instead spend less on transportation.

Institutional Changes

Devolution would lead to changes at DOT, principally at FHWA and FTA. In FY2024, FHWA had about 2,800 full-time equivalent employees, and FTA had about 780.[22] More than half of FHWA employees work in offices outside of the District of Columbia, many in division offices. There is at least one division office in each state.[23] The level of staffing at these offices might be greatly reduced depending on the degree to which project oversight responsibilities were reduced or eliminated. However, FHWA would continue to have responsibility for some programs and projects, as well as certain inspection and safety activities. The agency would need to determine whether district offices would be necessary to conduct these activities. The need for FTA's positions would depend on the extent to which Congress retains a federal role in public transportation.

Congress and the Administration would also face a determination of what, if any, role the federal government would have in transportation planning. Current federal law sets planning requirements that must be met at the state and regional levels to receive federal funds for

[20] Based on ultimate relinquished amount under the most recent devolution legislation (S. 2803, 117th Congress).

[21] CRS estimates based on FHWA estimates of highway apportionments and allocations in FY2022 and state motor fuel volume. FHWA, *Highway Statistics 2022*, tables FE-221B, MF-33GA, and MF-33SF. Because of the trend since FY2008 of transferring General Fund resources to the HTF to prevent funding shortfalls, nearly all states receive more federal funding than their highway users pay in highway taxes. For a table that predates the transfer era, see U.S. Government Accountability Office, *Restructured Federal Approach Needed for More Focused, Performance-Based and Sustainable Programs*, GAO-08-400, March 2008, pp. 77-78.

[22] DOT, *Budget Estimates, Fiscal Year 2025: Federal Highway Administration*, p. I-13, https://www.transportation.gov/sites/dot.gov/files/2024-03/FHWA-FY-2025_Budget_508.pdf; and DOT, *Budget Estimates, Fiscal Year 2025: Federal Transit Administration*, p. FTA-4, https://www.transportation.gov/sites/dot.gov/files/2024-03/FTA_FY2025-Budget-Estimates.pdf.

[23] Federal Highway Administration (FHWA), "Field Offices," https://highways.dot.gov/about/field-offices.

transportation and certain other activities. For example, each state must maintain a state transportation improvement plan, and federal funds may be used only for projects listed in the plan. Federal law requires the participation of many stakeholders in the planning process, public notification of certain actions, identification of state and regional goals, and development of short- and long-range state and metropolitan plans. Metropolitan planning organizations (MPOs) exist primarily because of federal planning requirements. Devolution legislation might need to address whether federal mandates for state and metropolitan planning would continue and, if so, how they might be changed in view of the diminished federal role in surface transportation.

The states would have to determine how they would respond to devolution of responsibility for public transportation. In most states, the bulk of public transportation activities is conducted by local governments or by special-purpose authorities established by the legislature, rather than directly by the state government. States might need to create new mechanisms for overseeing and funding public transportation if the federal government were to retreat from those roles.

Federal incentives and sanctions are used to encourage state actions for highway safety purposes. For example, states receive additional federal highway funds or forfeit funds to which they otherwise would be entitled if they fail to enforce a minimum drinking age of 21 years; if they do not set a blood alcohol level of 0.08 beyond which a driver is considered impaired; if they lack laws prohibiting open containers of alcoholic beverages in vehicles; or if they do not require use of safety belts. It is unclear how these incentives would be provided if states were no longer to receive federal highway funding. Devolution could reduce the federal safety role and leave states with greater discretion over safety policies. In the past, this has led to relaxation of safety regulations. For example, in the early 1970s Congress enacted funding penalties for states that did not require motorcyclists to wear helmets. By 1975, 49 states had such laws. In 1976 Congress repealed the funding penalties; many of the states then repealed their helmet laws. In January 2025, 18 states required all motorcycle riders to wear helmets, 3 had no law, and the rest required some riders (typically those under 21 or 18) to wear helmets.[24]

Reducing Federal Requirements

Congress has attached numerous requirements to the use of federal surface transportation funds. Advocates of devolution have argued that federal requirements, especially when taken as a whole, negatively impact the cost efficiency of the federal-aid programs.[25] An important consideration in devolving highway programs to the states is the extent to which these requirements would continue to apply.

Eliminating federal funding for highways and transit projects would not eliminate all requirements on state departments of transportation in regard to development and construction of those projects. A number of federal requirements would remain in effect.

Prevailing Wages

The Davis-Bacon Act (40 U.S.C. §§3141-3148) requires that companies with public works construction contracts with the federal government or the District of Columbia valued in excess

[24] IIHS, "Motorcycle Helmet Use Laws," January 2025, https://www.iihs.org/topics/motorcycles/motorcycle-helmet-laws-table.

[25] Ronald D. Utt, *"Turn Back" Transportation to the States*, Heritage Foundation, Backgrounder No. 2651, Washington, DC, February 6, 2012, pp. 1-4, http://www.heritage.org/transportation/report/turn-back-transportation-the-states.

of $2,000 pay locally prevailing wages and fringe benefits.[26] Prevailing wage rates are determined by the U.S. Secretary of Labor in consultation with the state highway departments and are often based on union wage scales. If devolution were to result in states building highway projects without federal funding, federal prevailing wage requirements would no longer apply. However, according to the Department of Labor, many states have prevailing wage requirements of their own.[27] These states would continue to require highway contractors to pay prevailing wages, as determined under state law. Whether this would result in lower highway construction costs is unclear; some studies find little connection between payment of prevailing wages and the cost of constructing highway projects due to the higher skill sets of workers attracted by higher pay and the increased use of machinery on high-wage job sites, which lead to more productive use of a smaller workforce.[28]

Brooks Act

The Brooks Act (40 U.S.C. §§1101-1104) requires the selection of contractors for engineering and design-related services to be based on the bidder's demonstrated competence and qualifications for the type of professional services required and the negotiation of fair and reasonable compensation.[29] Surface transportation projects would not be subject to these requirements if no federal funding were involved.

Project and Construction Standards

Currently, projects on the National Highway System (which includes the Interstate System and most state highways and totals 221,000 miles of the 1,037,000 highway miles eligible for federal aid)[30] must meet engineering standards developed under the auspices of the American Association of State Highway and Transportation Officials (AASHTO). Other roads must meet state standards.[31] All bridge projects using federal funds must meet the standards set forth in the AASHTO *Bridge Design Specifications*.[32] States are free to use whatever design standards they wish for projects that do not involve federal funds, and this would presumably apply to a much larger number of projects if the highway program were to be devolved to the states.

The change would be most significant for small county or township bridges that currently are eligible for federal "off-system" bridge funding. Rebuilding projects using such funds must meet federal bridge standards. Some local officials see compliance with these standards as excessively costly for bridges that handle relatively low volumes of traffic.

---

[26] CRS In Focus IF11927, *Federally Funded Construction and the Payment of Locally Prevailing Wages*, by Elizabeth Weber Handwerker and Jon O. Shimabukuro.

[27] U.S. Department of Labor, Wage and Hour Division, "Dollar Threshold Amount for Contract Coverage Under State Prevailing Wage Laws," January 1, 2023, https://www.dol.gov/whd/state/dollar.htm.

[28] Kevin Duncan, *Wage Differential Method: Promising Construction Cost Savings with the Repeal or Weakening of Prevailing Wage Laws that Cannot be Delivered*, Colorado State University-Pueblo, September 19, 2016, pp. 41-50, https://www.csupueblo.edu/hasan-school-of-business/_doc/kevin-duncan/wage-differential-method-critique-duncan-2016.pdf; and Kevin Duncan, "Do Federal Davis-Bacon and Disadvantaged Business Enterprise Regulations Affect Aggressive Bidding? Evidence From Highway Resurfacing Procurement Auctions," *Journal of Public Procurement*, vol. 15, issue 3 (March 2015), pp. 291-316.

[29] Brooks Act requirements for highway projects are found at 23 U.S.C. §112(b)(2) and for public transportation projects at 49 U.S.C. §5325(b).

[30] FHWA, *Public Road Length-2021: Miles by Functional System and Federal-Aid Highways, National Summary*, Table HM-18, January 26, 2024, https://www.fhwa.dot.gov/policyinformation/statistics/2022/hm18.cfm.

[31] 23 C.F.R. §625.3.

[32] FHWA, "Design Standards for Highways," 80 *Federal Register* 61302-61308, October 13, 2015.

Federally assisted major capital public transportation projects are subject to federal project management oversight. This includes a requirement for a project management plan approved by the Secretary of Transportation to include, among other things, "quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components … material testing policies and procedures … [and] criteria and procedures to be used for testing the operational system or its major components" (49 U.S.C. §5327).

Geographic Contractor Preferences

Under 23 U.S.C. §112, states must allow firms based anywhere in the United States to bid on highway construction contracts, and generally contracts must be awarded to the submitter of the lowest bid that meets the criteria in the request for bids. States are generally not allowed to limit bidding on federally funded projects to in-state companies or to companies based in a particular locality.[33] Public transportation projects are subject to similar requirements under 49 U.S.C. §5325(a). Devolution would greatly increase the number of road and bridge projects funded entirely with state and local funds. Depending on state law, the responsible agencies could be free to reserve such contracts to in-state or local companies, which might result in fewer bids and higher average bid costs.

Nondiscrimination Requirements

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of race, color, religion, national origin, or sex. The equal employment opportunity protections of Title VII apply to employers and contractors whether or not they receive federal funds. Title VII would be unaffected by devolution.[34]

Title VI of the Civil Rights Act prohibits discrimination in federally funded programs or activities on the basis of race, color, or national origin.[35] Other statutes expand this protection to cover sex, age, and disability. FHWA division offices and FTA regional offices are responsible for ensuring that all funding recipients (state DOTs or transit agencies) have approved Title VI nondiscrimination plans and have effective programs to monitor their subrecipients' (e.g., local agencies') efforts to implement the nondiscrimination requirements. Title VI applies to all of a recipient's programs and activities, whether specific activities are federally funded or not.[36] Because state DOTs are likely to continue to receive some federal funds after devolution, even if not for highway or transit construction, all of their contracts, including those for construction and professional services, would remain subject to Title VI. This is likely true as well for public transportation agencies, virtually all of which are creations of a city or state.[37]

The Disadvantaged Business Enterprise program is designed to give businesses owned by people from socially and economically disadvantaged groups equal opportunity to compete for and obtain federally funded contracts and business development opportunities.[38] Each state DOT is

[33] FHWA, "Prohibition on Use of State Preferences," in *Contract Administration Core Curriculum Manual*, October 2014, pp. 20-21, https://www.fhwa.dot.gov/programadmin/contracts/cacc.pdf.

[34] 42 U.S.C. §2000.

[35] 23 C.F.R. §§200, 230, 633; and 49 C.F.R. §§21, 26, 27.

[36] Under the Civil Rights Restoration Act of 1987, the term "program or activity" is defined as "all of the operations."

[37] FHWA, *Civil Rights: Title VI of The Civil Rights Act of 1964 and Nondiscrimination Requirements*, https://www.fhwa.dot.gov/civilrights/programs/tvi.cfm.

[38] 49 C.F.R. §26. For more information, see CRS In Focus IF12055, *The U.S. DOT Disadvantaged Business Enterprise Program*, by R. Corinne Blackford.

required to establish an approved Disadvantaged Business Enterprise program that sets participation goals and monitors program activities. Although these requirements are based on federal project spending, the state programs would have to be maintained with respect to any projects for which states receive federal highway funds. However, the number of contracts affected by Disadvantaged Business Enterprise requirements might be much smaller after devolution.

U.S. DOT also has affirmative action requirements in the contractor compliance program.[39] These requirements apply only to federally funded contracts. A nondiscrimination provision is included in every federal financial assistance contract. Under devolution, the hiring requirement under the contractor compliance program would apply to fewer contracts for highway work.[40]

The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended, require civil rights protections for individuals with disabilities.[41] Public agencies, including state DOTs and transit agencies, must ensure that their facilities are accessible to and usable by persons with disabilities, regardless of whether federal funding is involved. For example, ADA requires the availability of paratransit for individuals with disabilities who are unable to use fixed-route transportation systems.[42] Devolution would not affect ADA's application.

Buy America Requirements

Buy America requirements apply to federally funded projects carried out by state and local governments, and thus have considerable impact on highway and public transit projects.[43] Devolution proposals would greatly reduce the number of projects that would be subject to Buy America. FHWA Buy America requirements apply to all contracts eligible for assistance within the scope of a project's National Environmental Policy Act of 1969 (NEPA) document, if at least one contract for the project is federally funded. Thus, even if states no longer receive formula grants for highway and bridge construction, Buy America would apply to a state-funded project if any other federal highway funds are to be used for any portion of the project.

Environmental Compliance

DOT approval of a project to receive federal highway or public transportation funds is conditioned on the project sponsor meeting applicable federal environmental requirements. There is a broad array of environmental statutes and other requirements that could apply to a project based on its potential to affect community, natural, and cultural resources. Many of these requirements are specified in the National Environmental Policy Act (NEPA; 42 U.S.C. §§4321 et seq.), which establishes a national policy with respect to environmental quality and the basic process for integrating environmental considerations into federal decisionmaking.[44] To comply

[39] 23 C.F.R. §230; 49 C.F.R. §21.

[40] DOT, *State Transportation Agency's (STA) Internal EEO Program*, Washington, DC, https://www.fhwa.dot.gov/civilrights/programs/shaieeo.cfm.

[41] 42 U.S.C. §126 et seq.; 29 U.S.C. §794 et seq.

[42] Federal Transit Administration, *Americans With Disabilities Act (ADA): Guidance*, Circular FTA C 4710.1, Washington, DC, November 4, 2015, pp. 8-1, 8-2, https://cms.fta.dot.gov/sites/fta.dot.gov/files/docs/Final_FTA_ADA_Circular_C_4710.1.pdf.

[43] CRS Report R44266, *Effects of Buy America on Transportation Infrastructure and U.S. Manufacturing*, by Michaela D. Platzer and William J. Mallett; and CRS In Focus IF11989, *Congress Expands Buy America Requirements in the Infrastructure Investment and Jobs Act (P.L. 117-58)*, by William J. Mallett.

[44] DOT's NEPA procedures are codified at 23 U.S.C. §139. DOT's NEPA regulations are found at 23 C.F.R. Part 771.

with NEPA, agencies must prepare an environmental document (i.e., environmental assessment or environmental impact statement) to disclose the effects of their actions unless the action is excluded.[45] Most surface transportation projects are categorically excluded from preparation of an environmental document.[46] Only a few, typically large complex projects, receive an environmental assessment or require an environmental impact statement.[47] Some states have assumed some or all of the responsibilities of the federal government for surface transportation projects under NEPA assignment.[48]

Although surface transportation projects would be subject to state requirements, such as the State of Washington's State Environmental Policy Act (SEPA), NEPA and a number of other federal environmental requirements may no longer apply under devolution. Many environmental requirements apply only to "federal" actions (e.g., a project funded in part by or entirely using federal program funds). Some requirements are specific to federally funded highways and public transportation projects.

- **Requirements applicable only to "federal" actions.** In addition to NEPA, these include, but are not limited to, requirements established under the National Historic Preservation Act, the Farmland Protection Policy Act of 1981, the Native American Grave Protection and Repatriation Act, and executive orders intended to address adverse impacts on minority and low-income populations and to control impacts to wetlands and floodplains.
- **Requirements applicable explicitly to surface transportation projects.** These include standards, procedures, and conditions for federal-aid highway projects established under Title 23 of the *U.S. Code* and implemented largely in accordance with DOT regulations applicable to "Right-of-Way and Environment,"[49] such as requirements concerning highway beautification, noise abatement, the mitigation of impacts on wetlands and natural habitats, and the identification of environmental impacts (under NEPA and additional requirements in Title 23). They also include procedures for transportation projects related to the "Section 4(f)" prohibition on the use of federal funds for projects that adversely affect parks and recreation areas, wildlife and waterfowl refuges, and historic sites.[50]

[45] 42 U.S.C. §4336(a). Agencies are not required to prepare an environmental document if the proposed action is not a final agency action, is excluded pursuant to a categorical exclusion, conflicts with the requirements of another provisions of law, or is nondiscretionary.

[46] 42 U.S.C. §4336(1). Categorical exclusions are "categories of actions that a federal agency has determined normally does not significantly affect the quality of the human environment."

[47] Infrastructure Permitting Improvement Center, *Surface Transportation NEPA Process Improvements Report to Congress*, DOT, 2024, p. 19, https://www.transportation.gov/sites/dot.gov/files/2024-07/2024%20Report%20to%20Congress%20on%20Process%20Improvements%20for%20NEPA%20Projects.pdf.

[48] 23 U.S.C. §§326, 327.

[49] See 23 C.F.R. Subchapter H, Parts 710-777.

[50] "Section 4(f)" requirements apply to the use of publicly owned parks and recreation areas, wildlife and waterfowl refuges, and publicly or privately owned historic sites of national, state, or local significance. Section 4(f) of the Department of Transportation Act of 1966 (DOT Act) was originally set forth at 49 U.S.C. §1653(f) and applies to all DOT projects. A similar provision, found at 23 U.S.C. §138, applies specifically to federal-aid highways. In 1983, as part of a general recodification of the DOT Act, 49 U.S.C. §1653(f) was formally repealed and codified in 49 U.S.C. §303 with slightly different language. This provision no longer falls under a "Section 4(f)," but DOT has continued this reference, given that over the years, the whole body of provisions, policies, and case law has been collectively referenced as Section 4(f).

Devolution would not eliminate all environmental requirements that affect surface transportation projects. Some environmental standards established by the federal government could apply to any construction project, even if no federal funding is involved, based on its potential to affect certain resources protected under federal law. Devolution of the surface transportation program likely would not eliminate requirements established under the Endangered Species Act (ESA; P.L. 93-205, 16 U.S.C. §§1531-1544), the Migratory Bird Treaty Act, the Clean Air Act, the Clean Water Act, or the Rivers and Harbors Act.

For example, the ESA, administered by the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), is intended to conserve endangered or threatened species and the ecosystems on which they depend. Section 7 of the ESA requires federal agencies to ensure that actions they undertake, authorize, or fund are not likely to jeopardize threatened or endangered species or adversely modify their habitat.[51] If such actions might have adverse effects, FWS or NMFS, through a consultation process, must issue a favorable biological opinion to allow the project to move forward. Devolution of the surface transportation programs may mean that Section 7 would not be applicable to some selected highway and public transportation projects that do not have a federal nexus. Apart from funding, a federal nexus includes any project that requires or uses federal permits, licenses, contracts, rights-of-way, or leases.[52] If no federal nexus exists, the projects might be subject to Section 10 of the ESA, which involves a different process and an incidental take permit.[53] Some stakeholders might argue that the process under Section 10 could be more time-consuming than under Section 7 consultation. For example, there is a 135-day time limit for a Section 7 consultation, whereas there is no time limit for a Section 10 consultation.[54]

Another example of federal environmental law that would continue to apply with devolution is Section 404 of the Clean Water Act (33 U.S.C. §1344). Section 404 requires authorization from the U.S. Army Corps of Engineers (or states that have assumed administration of Section 404 permitting) for the discharge of dredged or fill material into waters of the United States, including wetlands.[55] If applicable, a Section 404 permit for a highway or public transportation project would be necessary whether or not federal funding is involved.

Under a devolved framework, some actions may still trigger NEPA's environmental review requirements. For example, decisions made in compliance with other statutes, such as the ESA or Clean Water Act, are considered major federal actions, and a federal agency may be required to prepare an environmental document to evaluate the potential effects of the action (i.e., decision to issue a permit).[56]

[51] 16 U.S.C. §1536(a)(2). CRS Report R46867, *Endangered Species Act (ESA) Section 7 Consultation and Infrastructure Projects*, by Erin H. Ward and Pervaze A. Sheikh.

[52] 50 C.F.R. §402.02.

[53] For more information, see CRS Report R46677, *The Endangered Species Act: Overview and Implementation*, by Pervaze A. Sheikh and Erin H. Ward.

[54] CRS Report R46677, *The Endangered Species Act: Overview and Implementation*, by Pervaze A. Sheikh and Erin H. Ward.

[55] CRS Report RL30030, *Clean Water Act: A Summary of the Law*, by Laura Gatz. Two states—Michigan and New Jersey—are authorized to administer Section 404 permits for some of their waters.

[56] 42 U.S.C. §4332(2)(C) requires that federal agencies prepare a detailed statement for major federal actions significantly affecting the quality of the human environment. Further, 42 U.S.C. §4336e(10) defines a *major federal action* as "an action that the agency carrying out such actions determines is subject to substantial federal control and responsibility."

Author Information

William J. Mallett
Specialist in Transportation Policy

Acknowledgments

Robert S. Kirk, retired CRS Specialist in Transportation Policy, wrote an earlier version of this report.

Disclaimer