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Elections impact on federal transportation policy, rethinking ports and waterways funding, emission-reducing highways

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The Election's Likely Impact on Federal Transportation Policy

The November election did more than change the Republican/Democrat balance in Congress. It also led to fairly dramatic changes in where key leaders come from—changes that can be expected to lead to increased support for core highway programs and less support for transit, high-speed rail, and the Administration's "livability and sustainability" agenda. As demographer and economic geographer Joel Kotkin wrote last week on NewGeorgraphy.com:

> Power is shifting within state delegations. Before the elections, California's most influential House members hailed from coastal districts. In contrast, Rep. Kevin McCarthy, the new majority whip, represents Bakersfield, an oil-rich, largely agricultural area known as "little Texas"—a far cry from the urbanity of Pelosi's San Francisco. This change in geography also suggests a change in the balance of power. The old Congress owed its allegiance largely to the "social-industrial" complex around Washington, Wall Street, public-sector unions, large universities, and the emergent highly subsidized alternative energy industry. In contrast, the new House leaders largely represent districts tied to more traditional energy development, manufacturing, and agriculture.

Jeff Davis, in the Nov. 18th issue of *Transportation Weekly*, pointed out that "The median Democratic district [in 2011] will have a population density eleven times larger than the median Republican district" —compared with only four times greater in the expiring Congress. That means House Republicans will have far fewer districts whose transportation needs are a good match for mass transit. Transportation analyst Tom Rubin reviewed the membership list of the new House Transportation & Infrastructure (T&I) Committee, to check for GOP members representing the 10 largest urbanized areas: there are none.

While these are still early days in terms of a transportation reauthorization bill, there are many straws in the wind. Last fall, before the elections, the conservative Republican Study Committee in the House released a plan that, among other things, would cut back all non-entitlement spending to 2008 (i.e., pre-stimulus) levels; among its impacts would be to eliminate nearly all high-speed rail (HSR) funding. Advocates of a $4 billion Livable Communities Act that would provide grants for smart-growth land-use plans now despair of getting it through the Senate, let alone the House. New T& I chairman John Mica (R, FL) has said he will revisit all pending HSR grants and reallocate unspent money to “where it makes sense.” GOP House members from both California and Wisconsin have introduced bills to take back unspent HSR funds and redirect the money to deficit reduction.

Putting all these pieces together, Kenneth Orski of *Innovation NewsBriefs* addressed the annual meeting of the National Conference of State Legislatures last month in Phoenix. Orski suggested the twin themes of the new Congress will be to reduce the scope of federal programs and to cut discretionary federal spending. What this might mean for a reauthorization bill, he said, could be the following:

- Reducing or eliminating non-core activities such as “transportation enhancements” and “livability” programs;
- Eliminating “executive earmarks” such as TIGER grants;
- Compensating for the lack of new federal money by empowering states to leverage existing funds via expanded scope for TIFIA, Private Activity Bonds, and public-private partnerships; and
- Curtailing the HSR program and reallocating unspent stimulus funds either to the Trust Fund or to deficit reduction.

I find that a plausible list, and have one key addition. As part of refocusing the Highway Trust Fund on core programs, it’s quite possible Congress would narrow its scope to just the Interstates and National Highway System, leaving the rest of the highways as state responsibilities. That partial devolution would mean costly federal regulations such as Davis-Bacon and Buy American would apply only to the core federal programs, enabling states to build and maintain other highways at lower cost.

This is a profoundly different reinvention of the federal program than many were writing about several years ago. But it would be no less of a revolution.

No More Earmarks?

The timing could not have been better. Last week, just as the new Congress was starting to function, *USA Today* published a major, front-page story headlined “Earmarks to Nowhere.” Based on an investigative journalism project by Cezary Podkul at Columbia University’s journalism school, it finally brought the light of day to a heretofore little-known aspect of transportation earmarks. Podkul’s research determined that about $13 billion of such earmarks remain unspent for one reason or another. It may be that the project was very low on the state DOT’s priority list and the state chose not to come up with the remainder (often the large majority) of the project’s cost. Or, there might be some error in the language designating the project—but such errors can only be corrected by the member of Congress who originated the earmark, and in some cases the member is no longer in office. The research project estimated that one out of every three highway dollars earmarked since 1991 remains unspent.

So in addition to the ban on new earmarks that will apply in the House for the next two years (and for Senate Republicans, as well), there is a case for corrective legislation that would free up the orphan earmark money for each state’s allocation of Highway Trust Fund monies.

There is still a lot of grumbling among many House members, of both parties, about the earmarks ban. Critics point out that in some programs (not highways and transit), the large majority of all federal funding is traditionally earmarked: over 90% of the Corps of Engineers budget and 72% of the Bureau of Reclamation’s budget are earmarked. So how could vital projects like harbor dredging and flood control get funded without earmarking? I guess we will soon learn how!

The other common complaint is that if Congress refrains from earmarking highway and transit funds, the U.S. DOT will do so instead. There is arguably as strong a case against "administrative earmarks" (e.g., TIGER grants) as there is against legislative earmarks. But that problem is entirely the fault of Congress—and is therefore correctable by Congress. Most of the earmarks in the SAFETEA-LU reauthorization bill were in accounts for which any non-earmarked money reverted to DOT for the agency to allocate administratively. Congress needs to just say no.

Rethinking Ports and Waterways Funding

In the fiscally stressed era we are entering, it's not just the federal highway and transit programs that need rethinking. It's also the federal programs that help fund ports and waterways. There are two such programs, each partly funded by a form of user tax. Commercial inland waterway users pay a diesel fuel tax that covers part of the cost of locks and dams developed and maintained by the Corps of Engineers. And much harbor dredging is also done by the Corps, funded in part by the Harbor Maintenance Tax, which is a tax on the value of goods shipped through ports.

Both of these programs suffer from similar problems. Each has a trust fund, as do highways and airports. But just as used to happen with the latter trust funds, Congress appropriates less each year than the revenues that come in from the waterway and harbor user taxes. But because neither program is intended to cover the full cost of the infrastructure it nominally supports, funding at what the industries consider an adequate level also requires a lot of general fund money. That adds to the ever-present temptation for members of Congress to earmark funds. It also means that the particular waterway and port users who benefit from non-user-tax spending (from the general fund) are getting subsidized. And that artificially lowers the cost of that mode or that set of providers, distorting mode choices by shippers.

In recent years, the under-spending situation with the Inland Waterways Trust Fund got so bad that the trade group, the Waterways Council, last spring proposed an increase in their diesel fuel tax of 30 to 45%, in exchange for a serious commitment to a 20-year spending plan for waterways upgrades. Also helping motivate the group was a White House proposal that would triple the waterways fuel tax. That would significantly reduce the subsidy to waterways users, who by current law are only responsible for paying for 50% of the capital costs of waterways projects, with the other half plus all the operating and maintenance costs coming from the federal general fund. But the Waterways Council plan would apply the 50%-from-user-fees rule only to larger projects (over $100 million), so it's not clear that their plan would produce a net reduction in subsidy.

As for the nation's ports, they are competing vigorously to get high on the Corps' priority list for deepening their channels to handle the next generation of container ships. But it is not clear there is any rational way to decide which port is more deserving than others. The Corps' benefit/cost formula attempts to base the benefits portion on national benefits. But the co-director of the National Ports and Waterways Institute at the University of New Orleans, Asaf Ashar, points out a serious flaw. Given the multi-port itineraries of many cargo ships, it's not clear that deepening one port's channel produces national—as opposed to local—benefits. Ashar uses the ports of Charleston, SC and Savannah, GA as an example. Since the service areas of these ports overlap, deepening the channel of one to match that of the other confers little or no national benefits.

The President's deficit reduction commission addressed all the transportation trust funds, not just the Highway and Aviation ones. One of its overriding concerns was to dramatically reduce "discretionary" general fund spending, as part of a tough overall reform of what the federal government does and how it pays for it. So it proposed a major ($500 million per year) increase in the waterways diesel fuel tax, to recover all costs of building and maintaining waterways projects used by industry. Under the commission's proposal, spending from user-fee-supported trust funds would be exempt from caps on discretionary spending, which would increase pressure to make user fees high enough to fully support those programs.

As for the Harbor Maintenance Tax, Ashar thinks taxing the value of goods on a ship bears little relationship to the value being provided (dredging deep enough channels). He has proposed instead a channel user fee, levied by each port, based on the ship's draft (i.e., how deep it needs the channel to be). Under this system, the federal government would not be intervening in the competition among ports, leaving ports free to decide whether the local benefits of deeper channels warrant the costs a given fee structure would impose on those using the port.

All this is a world away from the vision put forth three years ago by the National Infrastructure Policy & Revenue Commission, of a hugely expanded federal surface transportation program, funded largely by highway users, making grants to all modes. We are now living in a fiscally constrained world, and less-centralized, mode-specific funding approaches are far more realistic.

Toll Concession Megaprojects in the Midwest

Major long-term toll concession projects are at various stages of consideration in Michigan, Illinois/Indiana, and Ohio as of the start of 2011. This account draws largely on recent articles posted at TollRoadsNews.com.

The election of a Republican governor (Rick Snyder) in Michigan seems to have rekindled interest in private-sector proposals for the new bridge across the Detroit River between Detroit and Windsor, Ontario—the Detroit River International Crossing (DRIC). Originally proposed as a toll concession project (prior to the credit crunch and recession), it was debated by Rs and Ds in the legislature, which failed to enact PPP enabling legislation. Post-recession traffic projections also looked less rosy than earlier ones done when Detroit and Windsor auto plants were doing far more business than they are today.

Nevertheless, *TollRoadsNews* reports that Michigan DOT actually received two toll concession proposals last spring, from heavyweight companies Cintra and Meridiam-AECOM. The Cintra proposal makes the case for a 50 to 75-year toll concession, with the company bearing the following risks: design, construction, technology, operations and maintenance, finance, and customer service. The project company would be fully responsible for financing the project, under a concession agreement with MDOT and Transport Canada. Meridiam-AECOM also proposes a toll concession, covering the bridge, the I-75 interchange, and the approach roads, but excluding the customs inspection plazas on either side of the river (which Cintra included). Meridiam-AECOM suggests as an alternative an availability-payment concession, under which the government would take the traffic and revenue risk. *TollRoadsNews* comments that a long-term funding obligation by Michigan would appear to be ruled out by Gov. Snyder's position that he favors building DRIC as long as taxpayers are not "on the hook." Capital cost for DRIC is estimated at $2.26 billion.

Meanwhile, following passage last year of PPP enabling legislation by both Indiana and Illinois, preliminary work is under way for the Illiana Expressway, a new toll road from I-65 south of Gary, Indiana to I-55 near Joliet, Illinois. It would offer a bypass of the urbanized area south of greater Chicago, as an alternative to heavily traveled I-80. The 60-mile highway is expected to cost about $2 billion. Illinois DOT has advertised for two consultant projects to do planning and permitting work for the project over the next two years. Proposals were due mid-December, with selections planned by the end of January.

Finally, Ohio's new governor, former congressman John Kasich, has told reporters that his administration will take a hard look at possible privatization of the Ohio Turnpike. This 241-mile highway was built as a toll road and was one of a number of eastern and Midwestern toll roads incorporated into the Interstate highway system, when that program was launched by Congress in 1956. It carries both I-80 and I-90 across the northern part of the state, and had operating revenues of $206 million in 2009. *TollRoadsNews* estimates its value, based on a current multiple of 25 times earnings before interest, depreciation, taxes, and amortization (EBITDA) at $2.3 to $2.5 billion.

Emission-Reducing Highways

Two fascinating little articles crossed my desk last summer, which I'm only now getting around to writing about. Both relate to ways to reduce the environmental footprint of highways.

The first idea comes from a research team at Eindhoven University of Technology in the Netherlands. They have developed a type of paving material that when mixed with asphalt or concrete removes from the air some of the nitrogen oxides emitted by passing vehicles. The material is titanium dioxide, which when activated by sunlight causes a chemical reaction that converts NOx from the air into nitrate, which is then rinsed away by rain. In a test of two paved areas of 1,000 sq. meters each, the measured NOx level above the treated pavement was 45% less than above the normal pavement. Science writer Nick Chambers (of EurekAlert!) points out that the nitrate could migrate into underground aquifers or into nearby lakes and streams, causing other problems. So this idea may not be ready for road-use.

The other article described a pilot program on carbon sequestration, carried out by FHWA and the DOTs of Minnesota and New Mexico. The agencies worked together to develop estimates of how much CO2 could be sequestered using native vegetation alongside highways in each state, as well as the amount of revenue that could be generated by selling carbon credits based on this. Based on data from Minnesota and other states, FHWA has estimated that 3.4 million acres of National Highway System (unpaved) land alongside highways may be available for sequestration using such vegetation, and that an upper-end estimate of sequestration is 425-680 million metric tons of carbon per year. More information is at www.environment.fhwa.dot.gov/strmlng/newsletters/may10nl.asp.

Upcoming Conferences

Note: I don't have space to list all the transportation conferences going on; below are those that I or a Reason colleague am participating in.

TEAMFL and Florida Transportation Commission, Jan. 20-21, Orlando, FL, Hyatt Regency Orlando International Airport. Details at: www.teamfl.org. (Robert Poole taking part)

Transportation Research Board 90th Annual Meeting, Jan. 23-26, Washington, DC, multiple hotels. Details at: www.trb.org/AnnualMeeting2011/Public/AnnualMeeting2011.aspx. (Robert Poole and Adrian Moore speaking)

IBTTA Legislative Conference, March 7-8, Washington, DC, Holiday Inn Capitol. Details at: www.ibtta.org/Events/eventdetail3.cfm?ItemNumber=4789. (Robert Poole and Sam Staley speaking)

News Notes

Expert Review Panel on Seattle's Planned Eastside ML Corridor
Last fall I served as part of a five-member Expert Review Panel, reviewing the work of the Washington State DOT in planning for a $1.95 billion, 40-mile Managed Lanes corridor along I-405 and SR 167. The ERP's report is now online, and you can download it from: www.wsdot.wa.gov/Tolling/EastsideCorridor/Report.htm. You may also want to read the brief Appendix I, discussing how long-term toll concession agreements can shift key megaproject risks to the developer/operator.

New Reason Study Highlights Risks in Florida HSR Plan
A Reason Foundation policy study by Wendell Cox applies national and international experience with passenger rail megaprojects to estimate a range of possible cost over-runs that could expose Florida taxpayers to as much as several billion dollars in added costs. It also raises questions about the ridership projections, which—if overstated—could lead to demands for operating subsidies paid by Florida taxpayers. The report suggests provisions to include in a PPP deal in order to shift those risks to the developer/operator of the high speed rail system. (http://reason.org/studies/show/tampa-to-orlando-high-speed-rail-pl)

Intercity Bus Travel Sees Record Growth
For the third year in a row, intercity bus was the fastest-growing mode of intercity transportation, out-scoring airlines and passenger rail. The 6% growth led to the highest level of intercity bus travel in many years. The findings come from a report from the Chaddick School for Metropolitan Development at DePaul University, "The Intercity Bus: America's Fastest Growing Transportation Mode—2010 Update on Scheduled Bus Service," released in December 2010. It is online at www.bit.ly/ICBR2010

Yet Another Review of California HSR
The ballot measure law approved by California voters to authorize bonds for this project required creation of a Peer Review Group to advise the Legislature and the public on key issues related to the project. Its Nov. 18 report raises concerns similar to those raised in half a dozen other outside reviews, including a detailed Reason Foundation due diligence report in September 2008. The Peer Review Group points to the lack of a business model for the HSR program, the lack of attention to risk management and risk allocation, the huge funding gap, questions about ridership projections and the possibility of a revenue guarantee (currently prohibited by the ballot measure law), and concerns about right of way availability. (www.calhsr.com/wp-content/uploads/2010/12/Peer-review-report-November-2010.pdf)

Ultra-capacitors and Electric Vehicles
Lithium-ion batteries have serious limitations, despite being the best we have thus far for electric and plug-in hybrid vehicles. Ultra-capacitors can store energy to provide bursts of power for vehicle acceleration, which means both longer battery life and a smaller battery size, other things equal, since the battery itself doesn't have to work as hard. Several new reports on using ultra-capacitors for electric vehicles were released last month from the Institute of Transportation Studies at UC Davis. (www.its.ucdavis.edu)

Spotting Deficient Bridges
My favorite news publication, *The Economist*, included an excellent survey article recently on "smart structures," made so thanks to new technology that can detect structural problems better than visual inspection and, we hope, in plenty of time to do something about them. ("Superstructures," *The Economist Technology Quarterly*, Dec. 11, 2010). Incidentally, this country has been making steady progress reducing the extent of structurally deficient bridges. A state-by-state tabulation in the Nov. 10, 2010 issue of Better Roads shows that for Interstate and State bridges, *only* 6.5% *are structurally deficient* (with another 13.7% functionally obsolete, a very different category). The figures are somewhat worse for City/County/Township bridges, of which 14.0% are structurally deficient but only 10.9% functionally obsolete.

Corrected URLs from December Issue
Gremlins must have affected my keyboard last month, causing two of the URLs in the News Notes section to be rendered incorrectly. For the Public Policy Institute of California survey on attitudes to public spending, the correct URL is: www.ppic.org/main/publication.asp?i=951. And for the article from Access magazine on fixing broken sidewalks, the URL is www.uctc.net/access/36/access-36brokensidewalks.pdf. I apologize for the errors.

Independent Review Questions Honolulu Heavy Rail

Last month saw the release of a 135-page report commissioned by outgoing Gov. Linda Lingle as a kind of reality check on the planned $5.35 billion, 21-mile heavy rail transit line for Honolulu. "Financial Plan Assessment, Feasibility, and Fiscal Implications of the Honolulu Rail Transit Project" was prepared by a team headed by Infrastructure Management Group. The IMG team estimated that the sales tax revenue on which the project's financial plan depends is likely to be 30% less than in the current financial plan, that the project is most likely to require $1.7 billion more in capital and operating subsidy from the city/county government than assumed in that plan, and that the debt required to finance the project will likely exceed the government's current borrowing guidelines. (http://hawaii.gov/dot/railtransit/documents/Executive%20Summary%20-%20Honolulu%20Rail%20Transit%20Financial%20Plan%20Assessment.pdf)

Good Article on Energy Policy

My old friend Steve Hayward, a resident scholar at the American Enterprise Institute in Washington, DC, has penned a thoughtful article on a better framework for U.S. energy policy in the years ahead. It's based on deliberations of "an informal working group of conservatives, centrists, and liberals" in DC. "Power Surge: A Pathway Towards Next Generation Energy" appeared in the Oct. 25, 2010 issue of *The Weekly Standard*, and is well worth a look. (www.weeklystandard.com/articles/power-surge_508823.html)

Quotable Quotes

"The lack of a clear financial plan is a critical concern. . . . [I]n a deteriorating budget climate . . . in which the likelihood of new large Federal funding programs appears small, there is an air of unreality about a plan that includes $17 to $19 billion in 'free' Federal funding from programs that do not yet exist. The same can be said of the expectation for large local or State funding for stations and area development when local governments are highly stressed and when the finances of the State are sufficiently weak that a sale of $9 billion in State General Obligation bonds might only be possible (if at all) at unusually high interest rates."
--California High Speed Rail Peer Review Group, "Detailed Comments from the Peer Review Group," Nov. 18, 2010.

"User fees send signals to both users and providers about the value of various kinds of transportation in various places. Fully functioning user fees would let people know that it costs more to provide capacity to meet peak-period demands than to meet average demand and would let transportation providers know how much people are willing to pay for that added capacity. Funding transportation out of taxes shortcuts such signals—which is, after all, why we have congestion, decrepit bridges, and transportation agencies that insist on high-cost solutions to mobility problems."
--Randal O'Toole, *Gridlock: Why We're Stuck in Traffic and What to Do About It*, Cato Institute, 2009, page 234.

"Ultimately the 'green jobs' strategy, effective as a campaign plank, represents a cruel delusion. Given the likely direction of the new GOP-dominated House of Representatives in Washington, massive federal subsidies for solar and wind industries, as well as such boondoggles as high-speed rail, are likely to be scaled back significantly. Without subsidies, federal loans, or draconian national regulations, many green-related ventures will cut—as opposed to add—jobs, as is already beginning to occur. . . . Tom Hayden, a '60s radical turned environmental zealot, admits that given the current national climate, the only way California can maintain [Gov. Jerry] Brown's 'green vision' will be to impose 'some combination of rate hikes and tax revenues.' Such an approach may help bail out green investors, but seems likely to drive even more businesses out of the state."
--Joel Kotkin, "California Suggests Suicide; Texas Asks: Can I Lend You a Knife?" *NewGeography*, Nov. 15, 2010 (www.newgeography.com/content/001878-california-suggests-suicide-texas-asks-can-I-lend-you-a-knife)

"Freight railroads are doing a lot to take trucks off the highways for the long haul. However, the vast majority

of trucks are used in short-haul or local delivery and are not subject to rail competition. Even if all the current projects to enhance long-haul freight rail service could magically be completed today, auto drivers would hardly notice that the railroads were hauling lots more freight. That's because the economy will keep growing, and the number of long-haul truck trailers will grow both on rail and on the highway."
--Don Phillips, "Railroads Lead the Way in America's Economic Revival," *Trains Magazine*, February 2011.

"It's on the practical side that the concepts of livability fail. The central failure inheres in what the Europeans call subsidiarity, which proposes that any necessary activity of an authority should be conducted by that level of government closest to the problem that can effectively address it. Having livability rise to become a central principle of federal transportation investment planning is an egregious failure in our historical system of decentralized government. If sidewalks and bike paths are federal, then *everything* is federal."
--Alan Pisarski, "Livability and All That," *NewGeography*, Nov. 12, 2010 (www.newgeography.com/content/001865-livability-and-all-that)

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