

**Issue Paper B:
Montana Transportation Funding and Prioritization**

MONTANA TRANSPORTATION CHOICES

Transportation Choices
to Enhance Community Character, Public Safety, Economic Vitality and Natural
Landscapes in Montana

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A Policy Review
Prepared for The Montana Smart Growth Coalition
and the
Western Montana Alliance for Sustainable Transportation

By
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Acknowledgments

Steering Committee ..

This project was organized and funded through WestMAST, in conjunction with the Montana Smart Growth Coalition. Work on the project was guided by a steering committee that devoted significant time and support for this effort.

The Steering Committee was chaired by Mayre Flowers with Citizens For A Better Flathead (Kalispell), who also serves as head of the Montana Smart Growth Coalition Transportation Committee.

Committee members included Tim Davis with the Montana Smart Growth Coalition (Helena), Jim Olsen with the Highway 93 Citizens Coalition for Responsible Growth (Hamilton), Thompson Smith and Harold Young with Flathead Resource Organization (St. Ignatius), Deb Kmon Davidson with American Wildlands (Bozeman), Mark Haggerty with the Greater Yellowstone Coalition (Bozeman), Anne Hedges with Montana Environmental Information Center (Helena), and Marga Lincoln with AREO (Helena).

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About the MSGC

The Montana Smart Growth Coalition (MSGC) is a network of organizations and individuals from across the state who share a commitment to just, affordable and sustainable communities. The Coalition advocates for sensible policy, both locally and statewide, regarding land use, transportation, housing, sustainable agriculture, conservation of habitat, cultural diversity, economic equity and the environment.

The MSGC includes forty member groups, representing a broad-based membership, including farming, ranching, affordable housing, local planning, and conservation organizations.

WestMAST (see below) members are now a part of the MSGC and provide key leadership on its transportation committee.

About WestMAST.....

The Western Montana Alliance for Sustainable Transportation (WestMAST) is comprised of a coalition of organizations along US Hwy. 93 and is committed to achieving progressive transportation reform in Montana

WestMAST's long efforts in this area contributed toward the ultimate precedent setting agreement between Tribal, Federal, and State officials on the reconstruction of US Highway 93 through the Flathead Indian Reservation, which resulted in a limited highway size, a thorough integration of landscape architect concepts into the road's design, and perhaps the most extensive investment in wildlife crossings of any comparable highway in the nation.

WestMAST also saw recent successes in the development and implementation of an advisory group model used in the Bitterroot for greater citizen participation in transportation planning.

Steering committee members include Citizens For A Better Flathead, Flathead Resource Organization, and Highway 93 Citizen's Coalition for Responsible Growth.

Technical Work

Technical work on this project was conducted by Charlier Associates, Inc. of Boulder, Colorado. Jim Charlier managed the project and prepared this report. Charlier Associates is nationally recognized for their work and for special awareness of, and sensitivity to, the unique transportation issues facing western mountain communities.

Introduction and Purpose

This Issue Paper is one of three reports commissioned as part of the Montana Transportation Choices study. The results of all three issue papers are contained in a Project Summary published under separate cover and available from the Montana Smart Growth Coalition and the Western Montana Alliance for Sustainable Transportation.

The three interrelated topics covered in Issue Papers include:

- Issue Paper A: Land Use and the Montana State Highway System
- Issue Paper B: Montana Transportation Funding and Prioritization
- Issue Paper C: Community-Based, Context Sensitive Transportation Planning and Design

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Background

Montana's state transportation program represents a major force shaping the state's cities, towns, and countryside as well as a major influence on the state's economy and quality of life.

Montana Department of Transportation (MDT) currently spends almost \$500 million annually, about half of which is federal funding. This money is invested primarily in the construction, reconstruction, repair and maintenance of state highways and bridges.

Beginning in the early 1970s, states began converting their "road departments" into "departments of transportation" as part of a move to broaden statewide transportation efforts into full multimodal programs. This process was somewhat accelerated in urban states due to the inherently multimodal nature of urban transportation needs. The conversion to multimodal programs has moved more slowly in rural states where roads continue to be the highest priority.

Federal laws governing use of federal funds have evolved significantly since 1990. The last two federal surface transportation program authorizations (ISTEA and TEA-21) have introduced sweeping changes in the structure of highway programs and in the use of "surface transportation program" funds for multimodal purposes. These changes also increased the role of public involvement in transportation decision-making, and strengthened requirements for consideration of environmental and land use factors in state transportation planning.

Issues

1. Allocation of state funds among highway, transit, transportation demand management and non-motorized programs.
2. Allocation of federal funds among highway, transit, transportation demand management and non-motorized programs.
3. Planning for, and funding of bicycle, pedestrian and other non-motorized vehicle elements of state highway corridors.
4. Prioritization of highway program funds among routine maintenance, rehabilitation and repair, and new construction.

Allocation of State Funds Among Modes

Most of Montana’s state transportation funding is dedicated by law to use on highways, roads, streets and bridges. This dedication, found in the Montana State Constitution, is similar to provisions found in state constitutions and statutes across the country.

The limitation is tied to the source of the state funds – taxes on motor fuel and vehicle license fees. When state road funding programs were originally created early in the last century, the concept of dedicated funding was controversial. Opponents to “road user tax” funds felt that the people should have authority each year to consider how taxes were assessed and the resulting funds spent. Road user (“get out of the mud”) advocates, however, felt that successful road construction programs would require secure, predictable sources of funding, not subject to diversion to spending priorities for other state programs.

ARTICLE VIII Montana State Constitution

REVENUE AND FINANCE

Section 6. Highway revenue non-diversion. (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

- (a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.
- (b) Payment of county, city, and town obligations on streets, roads, and bridges.
- (c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

The road advocates won and dedicated road funds were established in most of the states. The compromise that allowed the programs to be established was that there should be a rock-solid dedication of user fee revenues to roads so that the money would not be siphoned off for other state programs, out of sight and control of voters. Thus, the original intent of restrictions on use of road user funds was not aimed at other travel modes – that was not an issue during an era when the public role in transportation was limited to roads. However, the limitation now has implications for multimodal programs that were not anticipated when these laws were originally passed.

*The limitation of
state
transportation
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has far-reaching*

The limitation of state transportation funding to roads has far-reaching consequences. Most importantly, the result is that affected state DOTs are not able to spend state funds on public transit. This basically takes these states out of the transit planning and transit development business.

Any federal transit money that flows to rural states is generally passed through to local and regional transit agencies. This also increases the matching fund burden for local governments, since states without transit funding cannot help match the federal funds that pass through. In today's funding environment, when federal funds for capital may be prioritized (at the federal level) by "overmatching" (matching more than the 20% minimum required for most programs), this limits ability of local and regional agencies to compete for federal funding.

Montana partially addressed this issue in 2001 through Senate Bill 448, which created a state funding program (TransADE) for disabled and elderly transit services. Funded by a 25¢ fee on registered vehicles, the program will provide about \$315,000 annually for operating assistance to various providers of specialized services for elderly and handicapped people in Montana. The money will not be available, however, to support fixed route transit services in Montana's cities.

Urban public transit systems currently operate in Great Falls, Billings, Missoula, Butte and Kalispell. These agencies are supported primarily by local funding through their city governments. They also qualify for federal transit funding (discussed in the next section). The lack of state funding for urban transit services in Montana slows the rate at which those systems can grow and handicaps them in their efforts to compete for federal transit funding.

Best Practices Colorado

After several years of statewide effort, the Colorado Legislature in 2002 established state funding for public transportation in Colorado.

A provision of the legislation requires that at least ten percent of all Senate Bill 1 funds (state sales tax revenues dedicated to transportation) must be spent on transit. Previously, ten percent of Senate Bill 1 funds were *allowed* to be spent on transit, but none ever were. Estimates vary on the timing and availability of SB1 funds.

Recent projections by the Colorado Department of Transportation indicate that \$25.5 million will be available for transit in 2006 with a total of \$675 million available over 15 years.

“at least ten percent of such revenues shall be expended for transit purposes or for transit related capital

The funding provisions of Colorado’s 2002 transportation bill are complex. In layman's terms, the bill first calls for the funding of committed projects in the state's six transportation regions. Funds from several sources that remain are then rolled into the strategic transportation project investment program to be spent by the Department of Transportation.

The new law mandates: "no more than ninety percent of such revenues shall be expended for highway purposes or highway-related capital improvements, including, but not limited to, high occupancy vehicle lanes, park-and-ride facilities, and transportation management systems and at least ten percent of such revenues shall be expended for transit purposes or for transit related capital improvements." Funds will not flow into the strategic transportation project investment program until 2005 or later when a committed list of projects has been completed. Funding then will be available for "strategic projects," which will include transit grants.

This legislation is significant nationally because it represents one of the first instances of a rural (mostly) western state providing direct state funding to public transit. While the state’s largest transit system – RTD – will receive funds from this source, the principal beneficiaries will be the state’s numerous transit providers serving smaller cities and mountain communities.

Best Practices Florida

Funding for transit in Florida comes from the "Public Transit Block Grant Program." This money is allocated by statute from the proceeds of state fuel taxes – a program that has been in place since 1990. In 2002, Florida committed funds totaling \$64 million in this program. Funding will increase to \$71 million in 2007.

Projects that are eligible for federal transit program 5307 are eligible for the Florida Public Transit Block Grant Program. (The Section 5307 Program supports transit in cities with populations of over 50,000.) The program is used solely for capital investments.

Florida is a large, substantially urban state with numerous large transit systems serving such metropolitan areas as Miami, Ft. Lauderdale, Orlando, Tampa and Jacksonville. The Block Grant Program helps local transit providers match large federal grants, and can also be used to accelerate funding of projects ahead of the time they would receive federal capital assistance.

Best Practices New Jersey

The New Jersey Transportation Trust Fund is one of the largest state transportation program funds in the U.S. New Jersey’s TTF produces a little over a billion dollars annually (from a variety of sources including state fuel taxes, vehicle license fees, etc.). The money is divided between the New Jersey Department of Transportation and New Jersey Transit. Over the next three years, about 56% of the fund will be appropriated to NJ DOT and about 44% to NJ Transit. (NJ Transit is the state’s public transportation corporation. It provides bus, rail and light rail services throughout a large area encompassing parts of New Jersey, New York and Philadelphia.)

The New Jersey TTF is unencumbered by any dedication or restriction to highway uses. A significant portion of the fund is invested in public transit. Because the state is heavily urban and part of a regional air quality problem, its transportation program development process is complex. The state’s three MPOs are all over 200,000 in population and, pursuant to ISTEA (the 1991 federal surface transportation law), have been required to develop Congestion Management Plans, which guide transportation project identification and prioritization. Each MPO’s plan must also go through a “conformity analysis” showing the plan is in conformance with the State Implementation Plan for attainment of Clean Air Act standards.

TABLE 1. DISTRIBUTION OF NEW JERSEY TRANSPORTATION FUNDS

N J DOT	FY 03-05	N J Transit	FY 03-05
Federal Funds	\$ 2,340.9	Federal Funds	\$ 1,481.7
Transportation Trust Fund	1,810.0	Transportation Trust Fund	1,420.5
Bridge Bond Discretionary	0.8	Match Funds	19.4
GARVEE	50.0	JARC	10.5
Other	71.4	Other	354.3
TOTAL N J DOT	\$ 4,273.1	TOTAL N J Transit	\$ 3,286.4

Much of the state transportation program is allocated directly to the state’s three MPOs (North Jersey Transportation Planning Authority, Delaware Valley Regional Planning Commission, and South Jersey Transportation Planning Organization). Only about 16% of the state’s total (state and federal) transportation funding over the next three years will be spent in “statewide” program categories. About 83% is allocated to MPOs for project identification and prioritization.

However, a significant portion (about 40%) of the TTF funding from state sources is allocated to NJ DOT's "statewide" transportation program, which is made up largely of projects on state highways between cities and in rural areas. The use of these funds on highway capacity projects has been controversial. This and other issues led to the passage of the state's "Fix It First" law, which is discussed below.

Overall, New Jersey represents one of the nation's most completely multimodal transportation programs. The state's high degree of urbanization requires a large public transit program. In addition to the transit set-asides, multimodal transportation programs have been established and are funded regularly. These include non-motorized programs as well as a "transportation innovation" program which leverages and distributes funds to help communities develop and implement innovative community-based transportation systems.

Bottom Line Allocation of State Funds Among Modes

Montana is a rural state with small cities and limited public transit service. As such, it is not surprising that the state's transportation program is oriented primarily toward highways and bridges. In this respect, Montana is in a similar situation to its sister states in the West. However, the lack of significant state funding for public transit is a handicap for those cities with established transit systems as well as for those cities that might soon need to develop transit services.

As Montana's urban areas continue to grow, they will need to develop balanced multimodal transportation systems with integrated motor vehicle, public transit, bicycle and pedestrian networks. While these are primarily local needs, the state has a major stake in the health and welfare of its urban population. The availability of state funds to leverage local and federal funds could, even at modest funding levels, make a significant difference in mobility and quality of life in Montana's cities and towns.

Pursuing revision of the state's constitution to remove the restriction on expenditure of the state's highway user revenues would be controversial and challenging. A better idea might be to work with broader transportation interests (including highway advocates) to establish additional funding for transportation. A portion of this could be set aside for multimodal programs. (Obviously, the source could not be taxes on motor fuel and vehicle license fees.) Colorado's 10% set aside for public transit came about as a result of the coordinated efforts of a statewide coalition of highway, environmental, growth management and public transit advocates. Something similar could be attempted in Montana.

Allocation of Federal Funds Among Modes

The Issue

Federal transportation funds represent a significant component of every state's transportation program and Montana is no exception. Federal funds made up 55% of Montana's FY 2001 program – a percentage that is near the national average.

How Montana spends this money is obviously important to its citizens. The use of federal transportation funding is also governed by detailed guidance and requirements contained in the federal surface transportation authorization legislation that is passed by Congress every five years (or so). The surface transportation legislation provides structure to the federal program and sets levels within which annual appropriations are made.

Major federal highway program funding categories now include:

- National Highway System (NHS)
 - Surface Transportation Program (STP)
 - Interstate Maintenance (IM)
 - Bridge Replacement & Rehabilitation
 - Congestion Mitigation & Air Quality Improvement (CMAQ)
 - Metropolitan Planning
 - Highway Safety
 - Recreational Trails
 - High Priority Projects (ear marks)
 - Minimum Guarantee
- (The "enhancement program" is not a separate funding category, but rather represents a funding capability equal to 10%

The surface transportation law passed in 1991 – the Intermodal Surface Transportation Efficiency Act (ISTEA) – introduced sweeping changes in the way federal surface transportation funds are allocated among, and invested by, the states.

ISTEA was designed to develop a "National Intermodal Transportation System that is economically efficient and environmentally sound, provides the foundation for the nation to compete in the global economy, and will move people and goods in an energy-efficient manner."

*ISTEA
fundamentally
transformed the
50-year old
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federal
government and
states and
localities in the*

ISTEA introduced a number of new elements, including:

- Consolidation of highway funds into a Surface Transportation Program (STP);
- Creation of the Congestion Mitigation and Air Quality (CMAQ) program;
- Elimination of the Interstate Highway Program, replacing it with the National Highway System (NHS) including Interstate routes and major state arterials;
- “Flexible funding” – the authority for states to shift funding out of the STP and CMAQ programs to transit and other multimodal transportation needs;
- Establishment of the “enhancement” program as a percentage of other categories, paving the way for the first significant federal investments in bicycling and walking needs;
- Broadening and deepening of the requirements for responsible transportation planning to incorporate environmental, community character, land use, and other considerations;
- Empowering citizens to become part of the transportation planning and prioritization process; and,
- Strengthening of the local self-determination powers of the nation’s larger urban areas by giving the Metropolitan Planning Organizations (MPOs) expanded powers.

STP funds can be used to purchase buses or rail cars, build or improve rail systems, pay for transit planning, research and development, fund car/vanpools and construct bicycle and pedestrian facilities. Up to 80% of a state’s STP funds may be transferred to other highway programs or “flexed” to transit programs.

CMAQ funds can be used for transit construction projects that will increase transit ridership (reducing auto emissions). CMAQ can pay for planning and operating costs associated with new projects and systems that improve air quality, including bicycle

TEA-21 represented a significant financial gain for Montana, due to “minimum guarantee” funding provisions that were included to

The \$155 billion ISTEA legislation, which authorized federal highway funding for fiscal years 1992 through 1997, fundamentally transformed the 50-year old relationship between the federal government and states and localities in the funding of transportation.

ISTEA's successor, the “Transportation Equity Act for the 21st Century” (TEA-21) expanded on the key provisions of its predecessor and increased funding for highways, highway safety, and transit for fiscal years 1998 through 2003 to \$218 billion.

TEA-21 further strengthened MPO powers, solidified the flex funds and enhancement programs, and (of significance to Montana) instituted a minimum funding guarantee based on a percentage of funds paid into the federal transportation fund.

Table 2 shows how Montana compares with other states in its use of federal transportation funding. States are grouped in three categories – rural western states, western states with larger cities, and urban eastern states. This provides a look at Montana’s neighbors along with larger, more urban states.

TABLE 2. USE OF FEDERAL TRANSPORTATION FUNDS (SOURCE: STPP)

	% of Federal Funds to Alternative Modes in '98 & '99	Federal Funds Obligation Rate ('92 – '99)		
		Enhancements ¹	CMAQ ²	NHS ³
Montana	2.98 %	78.03 %	71.43 %	110.05 %
Idaho	4.25 %	55.69 %	61.04 %	104.20 %
Wyoming	3.26 %	99.50 %	66.96 %	88.58 %
South Dakota	3.59 %	63.94 %	100.12 %	87.22 %
North Dakota	3.98 %	75.63 %	90.43 %	87.97 %
Washington	20.34 %	60.30 %	79.31 %	100.58 %
Oregon	24.82 %	62.34 %	76.33 %	108.77 %
Colorado	20.66 %	77.33 %	58.77 %	93.85 %
Florida	18.11 %	99.94 %	77.06 %	99.03 %
New Jersey	36.62 %	82.88 %	88.68 %	88.44 %

¹ Funds for bicycle, pedestrian, and other non-roadway purposes.

² Funds for air quality improvement.

³ National Highway System funds for highways and bridges.

An important issue in this respect is how Montana allocates its federal spending authority. Congressional appropriations (which are referred to as obligation authority) generally are lower than the program levels contained in the authorization bills. Under the law, states may shift obligation authority among programs, as long as they are within with authorization levels and certain related requirements. This authority, combined with the flex funds provisions, makes understanding any given state's use of federal funds complex and confusing. Table 2 helps by examining how Montana has used its federal transportation funding compared with other states.

- Percent of Federal Funds Allocated to “Alternative Modes” in Federal Fiscal Years 1998 and 1999. This includes transit, biking and walking facilities, as well as travel demand management programs. These were the first TEA-21 years. Montana has the lowest percentage of the western states and, as should be expected, is much lower than the urban states.
- Percent of Flexible Funds Used for Alternative Modes Federal Fiscal Years 92 - 99. During the early years of ISTEA, Montana did not shift (“flex”) funds into transit or other non-highway programs. However, the state has begun allocating a small amount – about \$300,000 annually – of its STP funds to rural transit providers with capital needs.
- Federal Funds Obligation Rate – Federal Fiscal Years 92 - 99.
 - Enhancements. Montana's use of its obligating authority for the enhancement program is in the same general range as the other rural western states. During these years, Montana was not emphasizing the enhancements program as much as it could have. It is important recognize that the CTEP (Community Transportation Enhancement Program) funding levels are to some degree discretionary. The amount of money available in any given year is set by MDT within the federally-defined potential funding levels.
 - CMAQ. Montana's use of Congestion Mitigation and Air Quality funding has been within the range of variation among the various states – rural and urban. Again, this is to some degree a decision made by MDT in its program development process.
 - NHS. During these years, Montana emphasized its major highway corridors by shifting budget authority to NHS projects. In this respect the state was higher than any other state in the table.

*During the years
1992 – 1999,
Montana
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highway
construction
program in
obligating federal*

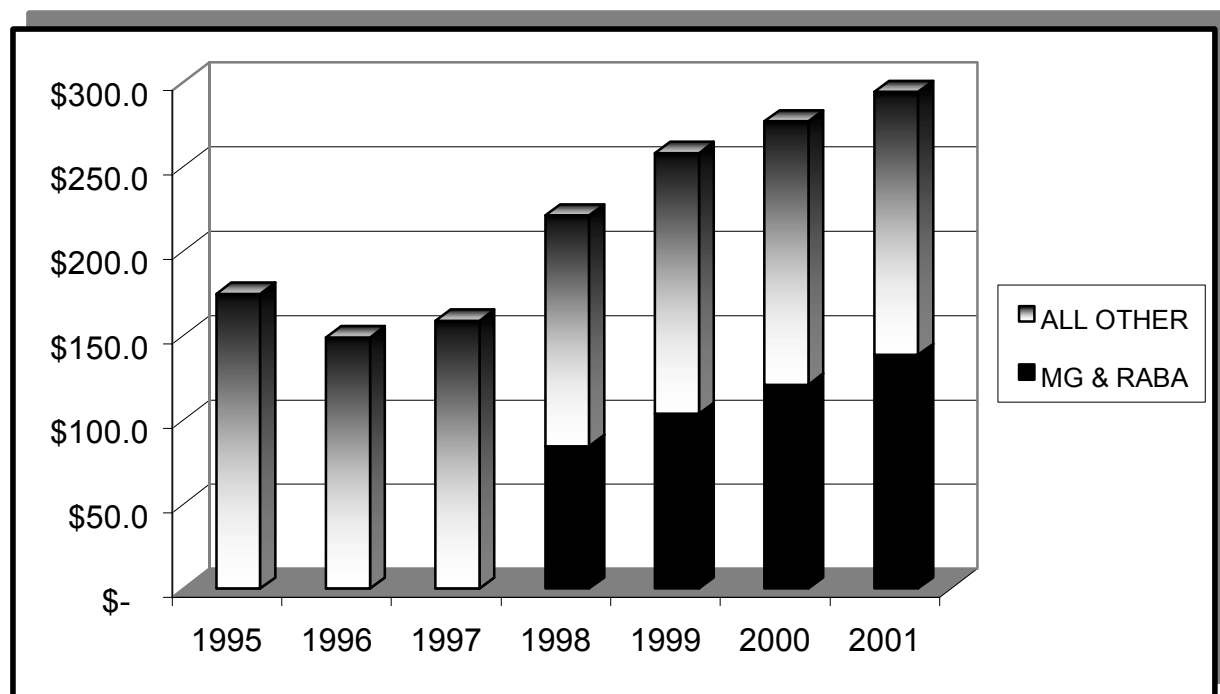
However, this 1992 - 1999 data does not reveal trends unfolding since passage of TEA-21. Table 2 and the above descriptions are based on analysis published by the Surface Transportation Policy Project in 2000.

One of the primary implications of the passage in 1998 of TEA-21 was a major increase in highway program funding to Montana. This increase is attributable to two provisions of TEA-21 – one providing for a “minimum guarantee” of funding and the other providing for distribution of spending authority in excess of the amounts anticipated at the time the law was written (MG and RABA in Figure 1).

Both of these provisions brought significant amounts of increased highway funding to rural western states, including especially Montana. As Figure 1 below shows, Montana’s annual federal highway authorization levels increased from about \$150 to \$170 million during the last years of ISTEA to nearly \$300 million in fiscal year 2001.

Provisions governing TEA-21 funding allow Montana to apply all of this additional funding to highway construction programs. Further, these funds are largely exempted from the calculation of the 10% enhancement set-aside requirement.

FIGURE 1. MONTANA’S FEDERAL FUNDING LEVELS (SOURCE: HIGHWAY STATISTICS)



The following paragraphs are paraphrased from Federal Highway Administration program guidance documents.

“Federal-aid highway funds for individual programs are apportioned by formula using factors relevant to the particular program. After those computations are made, additional funds are distributed to ensure that each State receives an amount based on equity.

“Minimum Guarantee.. This provision is called the Minimum Guarantee and ensures that each State will have a guaranteed return on its contributions to the Highway Account of the Highway Trust Fund. An open-ended authorization is provided, ensuring that there will be sufficient funds to meet the objectives of the Guarantee.

“Specific share. For each State, the TEA-21 specifies a certain share of the aggregate funding for the following programs: Interstate Maintenance (IM), National Highway System (NHS), Bridge, Congestion Mitigation and Air Quality (CMAQ) Improvement, Surface Transportation Program (STP), Metropolitan Planning, High Priority Projects, Appalachian Development Highway System, Recreational Trails, and the Minimum Guarantee funding itself.

Adjustments are made to states’ shares to guarantee a 90.5 return. The shares will be adjusted each year to ensure that each State’s share of apportionments for the specified programs is at least 90.5 percent of its percentage share of contributions to the Highway Account based on the latest data available. The shares of States falling below that minimum return will be increased and the shares of the remaining States will be decreased. Each State must receive at least \$1 million per year under the Minimum Guarantee program.

“Administration of funds. Of the Minimum Guarantee Funds made available, \$2.8 billion is administered as though it were STP funding except that the STP provisions requiring set-aside of funds for safety and transportation enhancements and sub-State allocation of funds do not apply. Within each State, the remainder of the funds (the amount above \$2.8 billion) is divided among certain programs—IM, NHS, Bridge, CMAQ, and STP—based on the share the State received for each program under the program formula.

“Guaranteed spending levels. In a major change to Federal budget rules, highway (including most safety programs) and transit programs are guaranteed a minimum level of spending under TEA-21. Prior to enactment of TEA-21, funding for surface transportation programs was one item among many on a list of priorities for Federal program spending in the budget. Under the new budget rules, highway guaranteed amounts are keyed to actual Highway Trust Fund (HTF) Highway Account receipts and can only be used to support projects eligible under Federal highway and highway safety programs.

“Authorizations and spending. The amount guaranteed for surface transportation, is estimated to be \$198 billion. In essence, the guaranteed amount is a floor; it defines the least amount of the authorizations that may be spent. The full authorizations for the highway (including highway safety) and transit programs in TEA-21 total almost \$218 billion. In the remainder of the brochure, as well as in the authorization table on pages 44-49, the funding levels shown are the authorized amounts, not the guaranteed amounts.

“There are two ways that highway and highway safety spending levels can be increased. First, the guaranteed spending level is adjusted each year. To the extent that the HTF Highway Account receipts projected for the coming fiscal year exceed the estimate for that year stated in TEA-21, the obligation limitation and the authorizations will automatically increase. The difference between the authorization level and the obligation limitation would remain constant. A downward adjustment of the obligation limitation and authorizations could also occur, but this is improbable given the conservative receipt estimates used to set the guaranteed spending levels in TEA-21.

“Second, the Congress, through the annual budget process, could choose to raise spending by dedicating a part of the general budget allocation for other Federal programs to highways and highway safety. This action would decrease the difference between authorized amounts and the obligation limitation.

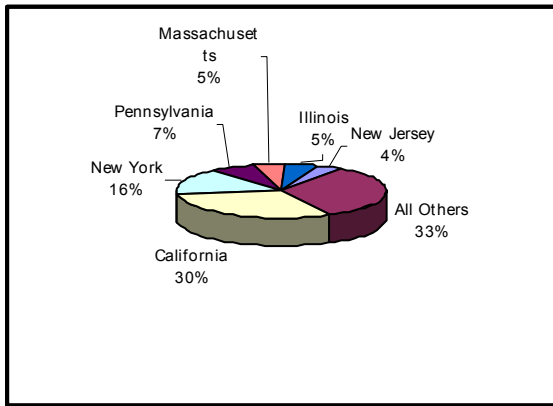
“Highway obligation limitations. In addition to defining the floor for highway spending TEA-21 specifies how the highway obligation limitation will operate. The obligation limitation is the mechanism for limiting highway spending each year. Under TEA-21, the highway obligation limitation applies to all programs within the overall Federal-aid highway program except (1) Emergency Relief, (2) a part of the new Minimum Guarantee program, and (3) remaining balances from the repealed Minimum Allocation program and demonstration projects authorized in previous legislation. A portion of each year’s limitation is reserved, or set aside, for administrative expenses and certain allocated programs, with the balance of the limitation being distributed to the States.

“A new feature in this Act is that the limitation set aside each year for certain programs—High Priority (demonstration) projects authorized in TEA-21, the Appalachian Development Highway System, the Woodrow Wilson Memorial Bridge, and an additional portion of the Minimum Guarantee program—does not expire if not used by the end of the fiscal year, but instead is carried over into future years. In addition, limitation set aside for research and technology programs may also be carried over, but only for 3 years.”

Best Practices Overview

The capability of states to “flex funds” has been seen as one of the most important ISTEA provisions. This capability, reauthorized in TEA-21, theoretically allowed the transfer of more than \$50 billion to transit programs from federal highway funds over the past decade.

FIGURE 2.
STATE SHARE OF FUNDS FLEXED



However, only about 12% or so of this authority has actually been exercised, and much of that occurred in just six states, shown in Figure 1. Two states – California and New York – accounted for nearly half of the total funds flexed.

Montana, like most of its sister states in the West, has made limited use of its flex fund capability. As shown in Table 3, the state had exercised less than 2% of its flex capability through 1999.

Over the past several years, research has gone into determining how the flex funds provisions of ISTEA are working and why some states use this authority and others do not. This research provides insights into the situation in Montana.

TABLE 3. FLEX FUND IMPLEMENTATION

FY 92 - 99	% of Available Funds “Flexed” to Transit	Rank Among All States
Montana	1.27 %	37
Idaho	3.75 %	28
Wyoming	0.00 %	46*
South Dakota	0.00 %	46*
North Dakota	0.00 %	46*
Washington	15.89 %	10
Oregon	33.91 %	4
Colorado	3.58 %	29
Florida	4.75 %	22
New Jersey	17.40 %	9
* Tied for last		

The primary flex funds opportunity is the ability to shift STP and CMAQ funding out of the highway category into transit. This is most often done at the project level to provide funding for a specific transit project. However, there are some instances around the country where funds are being flexed to transit “off the top” for use on transit projects to be identified by the recipient agency. In fact, Montana’s shifting of \$300,000 per year to rural transit assistance is one example of this.

One reason rural states like Montana do not flex significant transportation funds into transit is the absence of large, well-funded transit agencies. All of the states with large flexed budgets are states with major transit agencies capable of identifying and advancing significant transit capital projects.

Another reason for limited flexing is the absence of large MPOs. In urban states with urbanized areas of over 200,000 population, a significant percentage of

the state's federal funding is distributed directly to the MPOs for prioritization and programming. Studies have shown that local governments are far more likely to shift highway funds into transit than are state officials. In states like California, New York and New Jersey, the state directly controls a relatively small portion of the overall federal transportation program. In states like Montana, Idaho and the Dakotas, the states control most of the federal transportation funding.

Finally, in many states – including Montana – there is no significant, dedicated statewide source of matching funds for transit, as there is for highways. This puts transit projects at a significant disadvantage. When these states decide to spend STP or CMAQ program funds on road projects, the source of matching funds is already identified and in hand – the state's transportation fund. If, however, they wish to flex funds to transit projects, those same matching funds could not be used due to the constitutional provision and the lack of statutory authority. In such a case, the project sponsor would have to come up with its own match funds (usually 20% of the project cost).

Best Practices Off-The-Top Allocation to Transit – Orlando, Florida

The Central Florida Regional Transit Authority (dba LYNX) provides transit services throughout a metropolitan region of nearly 1.5 million people, including three counties and several cities. LYNX currently operates a bus fleet carrying about 60,000 passengers daily. While the region has worked to initiate a starter rail line, politics has interceded at key points to prevent this from moving forward.

Beginning in the mid-1990s, the Orlando area MPO has allocated 20% of the region's STP funds to LYNX for special transit capital projects annually. This was increased to 28% of the STP program in 2002. (Because Orlando is not a clean air non-attainment city in a state that has non-attainment areas, the region receives no CMAQ allocation.) The transfer amounts to about \$3 million annually.

LYNX has a voting seat on the MPO board, which has helped support the continuation of this flex fund transfer. However, the transfer has also been a way for the region to increase transit funding in lieu of a local dedicated source of funds to sustain the transit agency.

This transfer enables the transit agency to use its regular transit capital funding for bus procurement and other routine needs. Because the transfer is intended to be a continuing commitment, the agency has been able to undertake several multi-year capital projects that

might otherwise have been impossible, including a new downtown transit center and a new maintenance facility.

Best Practices Transit Projects – Portland, Oregon

Regional transit service in the Portland region is provided by Tri-Met, the “Tri-County Metropolitan Transportation District of Oregon.” Carrying over 250,000 daily passengers, Tri-Met is widely recognized as one of the nation’s leading transit agencies. It operates an extensive bus system as well as a growing light rail transit network.

The Portland metropolitan area is also served by the only regional land planning and growth management agency in the U.S. with actual regulatory authority – METRO. METRO is responsible for setting and enforcing the urban growth boundaries required under Oregon law, and for a wide range of other services and regulations.

The Tri-Met transit network represents the backbone of planning and land development in the Portland area. The light rail transit (LRT) lines, in particular, have over the past ten years provided a major organizing influence on both commercial and residential development patterns. The predominant development pattern – both for redevelopment and for new development – in the Portland metro area today is mixed-use development in pedestrian-oriented transit villages around existing and planned LRT stations.

The Oregon state transportation project programming process passes STP and CMAQ monies through to the MPOs for assignment to projects. The Portland area has chosen to flex nearly half of its STP funds and significant portions of its CMAQ funds into transit, based on projects in the Portland regional Transportation Improvement Program (TIP). This requires a process of project identification, funding allocation, negotiation and politics, resulting in a TIP with flex funds assigned for specific local and regional projects and for certain ongoing transit programs.

While this is not a pure “off-the-top” allocation system, it is also not entirely a project-based programming process. The most accurate description might be that STP and CMAQ funds are flexed in Portland through a complex negotiation that sets flex allocation levels, a portion of which is assigned to specific projects, and a portion of which is not. The flex funds program has been of tremendous importance to Tri-Met, which has received over \$20 million per year in flexed funds for transit capital.

ODOT also flexes about \$5 million of statewide STP off-the-top annually to support elderly and disabled public transit providers around the state. The funds are used for purchasing new vehicles,

improving passenger shelters, and upgrading communication equipment for trip-making.

Best Practices..... California Transit Funding

TEA-21 provides over \$3 billion in annual federal funding over a six year period (federal fiscal years 1998 through 2003) to California's state department of transportation (Caltrans), metropolitan regions, and local governments.

California has generally flexed about a third of the total funds technically eligible for flexing – by far the leader nationally. From 1992 through 1999, California flexed over \$1.2 billion, primarily in the STP and CMAQ programs.

This aggressive transferring of highway funds to transit is partly due to the development of specific large transit projects in the state's major metropolitan areas. For example, in the late 1990s the Los Angeles County Metropolitan Transportation Authority shifted millions of dollars to help fund Segment 3 of the Authority's Red Line subway project.

However, California's use of flex funds is also due to the way the state distributes federal transportation funds for programming. Most of the state's federal funds are distributed directly to the MPOs, most of which are actively involved in developing major transit networks, including rail systems in San Diego, Los Angeles, San Jose, the Bay Area, and Sacramento. Another major factor is the availability of significant local, regional and state funding for multimodal transportation programs, including transit. This equips local governments and transit agencies with the necessary matching funds to make use of flexed federal funds.

In California, federal transportation funding is combined with state and local dollars and emerges as a complex array of programs. Caltrans is still an important player statewide, but as a result of ISTEA and several state laws passed in recent years, California's 43 regional transportation planning agencies and 58 counties now play a much more significant role than before.

At the regional level, Regional Transportation Planning Agencies (RTPAs) have much of the responsibility for programming federal transportation dollars under TEA-21. These are the most critical agencies for local officials and advocates to tap into for federal as well as state funding. At the county level, Congestion Management Agencies (CMAs) and/or Local Transportation Commissions are also sometimes responsible for drafting local transportation plans and nominating projects for funding.

Bottom Line Allocation of Federal Funds Among Modes

Recent federal legislation – ISTEA and TEA-21 – have given states considerable flexibility to deploy a portion of their annual federal highway funds on transit (and other mode) projects. This offers a potentially powerful way to solve transit capital needs, especially for states like Montana that receive only very limited direct transit capital assistance from the federal transit program.

With a few exceptions, however, states have been slow to take advantage of this flexibility. The most important factors determining how aggressively states pursue the flex fund capabilities provided in ISTEA and TEA-21 appear to be:

- Whether there are significant sources of local, regional and state transportation funds (eligible for transit) available to provide matching funds;
- Whether there are large transit agencies present in the state with the capability, mandate and funding to pursue long-term capital expansion programs; and,
- The extent to which the state is urbanized, with a significant part of the population represented by MPOs with semi-independent authority to prioritize and program projects.

TABLE 4. MONTANA’S THREE MPOS

Principal City	MPO Agency
Billings	Yellowstone County Board of Planning
Great Falls	Great Falls City-County Planning Board
Missoula	Missoula Office of Community Development

Montana has three MPOs – Billings, Missoula and Great Falls. The state’s other urban areas – Helena, Bozeman, Kalispell, etc. – have not reached the population (50,000) that triggers MPO designation.

Census data indicates that no additional cities in Montana will reach MPO status within the next decade, and none of the current MPO areas will reach 200,000 population

(triggering designation as a transportation management area with increased autonomy). For the foreseeable future, most transportation funding decisions in Montana will be made by MDT, and use of flexible funding to support urban transit capital development will continue to be limited.

Finally, TEA-21 introduced provisions (minimum guarantee and budget adjustment) that substantially increase the amount of federal

highway funding available to states for use on highway projects. Montana appears to be applying these funds to the statewide highway program – specifically to National Highway System projects.

Providing For Non-Motorized Travel In State Highway Corridors

Walking and bicycling have become front page issues throughout North America, including in our rural western states. Bicycle and pedestrian program coordinators have been established in all state DOTs and local planning and public works programs in most cities. “Safe-to-schools” programs have heightened awareness on the part of parents throughout the country concerning the status of our sidewalks and the lack of safe bicycling facilities.

Passage of the American With Disabilities Act in 1990 focused attention on widespread problems in our cities with sidewalks, stairs, building entrances, curbs at crosswalks and other barriers and issues. This in turn has required state and local transportation agencies to begin addressing long standing deficiencies in the pedestrian system.

Both ISTEA and TEA-21 emphasized bicycling and walking. This has been reinforced by the past two administrations in Washington. In 1999, a letter from the FHWA administrator provided guidance to the states on this subject. Excerpts from this letter include:

*FHWA
guidance
. 1999*

This memorandum transmits the Federal Highway Administration's (FHWA) Guidance on the Bicycle and Pedestrian Provisions of the Federal-aid Program and reaffirms our strong commitment to improving conditions for bicycling and walking. The nonmotorized modes are an integral part of the mission of FHWA and a critical element of the local, regional, and national transportation system

Bicycle and pedestrian projects and programs are eligible for but not guaranteed funding from almost all of the major Federal-aid funding programs. We expect every transportation agency to make accommodation for bicycling and walking a routine part of their planning, design, construction, operations and maintenance activities. TEA-21 continues the call for the mainstreaming of bicycle and pedestrian projects into the planning, design, and operation of our Nation's transportation system

Under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Federal spending on bicycle and pedestrian improvements increased from \$4 million annually to an average of \$160 million annually. Nevertheless, the level of commitment to addressing the needs of bicyclists and pedestrians varies greatly from State to State. The attached guidance explains how bicycle and pedestrian improvements can be routinely included in federally funded transportation projects and programs

I would ask each division office to pass along this guidance to the State DOT and to meet with them to discuss ways of expediting the implementation of bicycle and pedestrian projects. With the guidance as a basis for action, States can then decide the most appropriate ways of mainstreaming the inclusion of bicycle and pedestrian projects and programs.

FHWA
guidance
. 1999

Bicycling and walking contribute to many of the goals for our transportation system. Increasing bicycling and walking offers the potential for cleaner air, healthier people, reduced congestion, more livable communities, and more efficient use of precious road space and resources. That is why funds in programs such as Congestion Mitigation and Air Quality Improvement, Transportation Enhancements, and the National Highway System, are eligible to be used for bicycling and walking improvements that will encourage use of the two modes

We also have a responsibility to improve the safety of bicycling and walking as the two modes represent more than 14 percent of the 41,000 traffic fatalities the nation endures each year. Pedestrian and bicycle safety is one of FHWA's top priorities and this is reflected in our 1999 Safety Action Plan. As the attached guidance details, TEA-21 has opened up the Hazard Elimination Program to a broader array of bicycle, pedestrian, and traffic calming projects that will improve dangerous locations. The legislation also continues funding for critical safety education and enforcement activities under the leadership of the National Highway Traffic Safety Administration. If we are successful in improving the real and perceived safety of bicyclists and pedestrians, we will also increase use.

The Federal-aid Program, as amended by TEA-21, offers an extraordinary range of opportunities to improve conditions for bicycling and walking. Initiatives such as the Transportation and Community and System Preservation Pilot Program and the Access to Jobs program offer exciting new avenues to explore.

Bicycling and walking ought to be accommodated, as an element of good planning, design, and operation, in all new transportation projects unless there are substantial safety or cost reasons for not doing so.. We can no longer afford to treat the two modes as an afterthought or luxury.

The TEA-21 makes a great deal possible. However, in the area of bicycling and walking in particular, we must work hard to ensure good intentions and fine policies translate quickly and directly into better conditions for bicycling and walking.

Under the heading "Mainstreaming nonmotorized transportation" FHWA provided further, more detailed guidance, drawing from specific provisions of the federal surface transportation law:

"Bicyclists and pedestrians shall be given due consideration in the comprehensive transportation plans developed by each metropolitan planning organization and State." (Section 1202(a) of TEA-21)

"Bicycle transportation facilities and pedestrian walkways shall be considered, where appropriate, in conjunction with all new construction and reconstruction and transportation facilities, except where bicycle and pedestrian use are not permitted." (Section 1202(a) of TEA-21)

"Transportation plans and projects shall provide due consideration for safety and contiguous routes for bicyclists and pedestrians." (Section 1202(a) of TEA-21)

The Issue.....

One of the reasons Montana is credited as one of the “last best places” is its walking and bicycling environment. The scenic landscape, featuring rivers and forests with a mountain backdrop makes Montana an ideal place to bicycle – both for recreational and for utilitarian travel. With small, relatively compact cities and towns and gridded street networks, Montana is also an ideal place to walk.

However, as the state grows, these assets cannot be taken for granted. In particular, the construction of new and wider roads, streets and highways creates barriers to walking and bicycling, in contradiction of the federal policies listed on the previous page. Further, the development of roadway projects that do not include bicycling and walking facilities results in large areas that are no longer negotiable by nonmotorized travelers – especially in the state’s suburban and city-fringe areas.

Citizens within Montana have worked locally, regionally and at the state level to make improvements in the walking and bicycling environment, and to extend and expand nonmotorized facilities. The state, through MDT, has been part of this effort. For example, MDT reports allocations to the state’s Community Transportation Enhancements (CTEP) program as shown in Table 5.

TABLE 5. CTEP

Fiscal Year	CTEP Program
1998	\$ 3,625,207
1999	4,430,656
2000	4,839,739
2001	5,147,818
2002	5,409,725

These funding levels were set by the Montana Transportation Commission, and were allocated among the 56 counties, 49 cities and 7 tribal governments using a formula based on population. Project selection is then made by these agencies. MDT reports that over \$25 million in bicycle and pedestrian projects have been funded in the ISTEA and TEA-21 era. These projects have represented welcome additions to the affected communities.

However, the state has taken a conservative position on what kinds of monies will be used for this purpose. This relates in particular to the amount of federal funding made available for bicycle and pedestrian projects. Under TEA-21, many of the major federal highway funding categories are technically eligible for use on bicycle and pedestrian projects – including the National Highway System, STP, CMAQ and other categories – above and beyond the minimum enhancement set-aside of 10% of STP.

However, Montana’s annual bicycle and pedestrian funding remains down at levels determined through a conservative reading of the minimum enhancement set-aside requirement, apparently not including minimum guarantee and RABA (revenue aligned budget authority) funds.

Further, MDT has taken the position that bicycle and pedestrian needs may not always be met as part of the base funding of highway projects. In other words, when highway projects are built, sidewalks, bike lanes, and multi-use paths – even though needed – may not always be funded out of the monies being utilized to fund the highway elements of these projects. Instead, in some cases, local governments will be required to use part of their allocation of CTEP monies to ensure these facilities are provided.

In a letter dated October 9, 2002, the MDT explained its policy as follows:

MDT
policy

MDT regularly includes features such as sidewalks, wide shoulders for bicyclists, and similar design elements in highway projects where these features are justified based on existing and projected use, public input, and the scope and funding for the project. There are many examples of these projects in communities across Montana. These practices are consistent with 23 USC and the policy commitments of TranPlan 21, Montana's federally mandated statewide transportation plan, and the Americans with Disabilities Act.

However, as is the case at all levels of government, MDT is constantly faced with the challenge of having more needs than funding. MDT addresses this challenge in many ways including an emphasis on preservation of the existing highway system over capacity expansion and by seeking partnering opportunities involving other sources of funding.

Cost-sharing or partnering to fund projects in a fiscally constrained environment is a common practice nationally and has worked well in Montana. It is not uncommon for a major project to include funding from several sources. The North Reserve Project in Missoula, for example, could not have been built without funding from multiple federal, state, private, and local sources. Although the funding for North Reserve and a few other Montana highway projects have included Community Transportation Enhancement Program (CTEP) funds, that decision was made entirely by local officials who took advantage of the unique nature of Montana's enhancement program.

Unlike enhancement programs in other states, CTEP, which MDT developed in cooperation with the Montana Association of Counties and the League of Cities and Towns, provides complete project selection authority to local and tribal officials. CTEP also allows these officials to select any type of project that is eligible under federal law. This flexibility and control gives local officials the ability to direct CTEP funds to a wide range of projects on any public right-of-way including state highways. It also provides them with another source of funding they can choose to direct to cooperative partnering efforts with MDT on major highway projects.

The issue for Montanans, then, is whether this is the policy they feel should be applied in determining how much money will be made available (and where) to fund bicycle and pedestrian needs.

Best Practices Oregon

Many states have progressive approaches to planning, funding and building bicycle and pedestrian facilities.

With respect to enhancement funds, some states (e.g., Colorado, Oregon and Florida, among others) take the position that enhancement monies may not be used to fund project elements that should be included in the basic highway project. Rather, these states preserve limited enhancement funds for use on projects that cannot be accomplished as part of regular highway improvements (normally those that are outside the highway right of way).

The state with the most comprehensive approach to bicycling and pedestrian needs is Oregon. The basic mandate has been in effect almost 30 years – since passage of the “Oregon Bike Bill” in 1973. The following paragraphs are excerpted from documents published by the Oregon Department of Transportation (ODOT), describing its bicycle policies and approaches.

In Oregon, most improvements for pedestrians and bicyclists are made as roads are first built, or rebuilt as part of a "modernization" project. This is the essence of ORS 366.514, the Oregon "Bike Bill," which requires the development of bikeways and walkways. The intent is to ensure that roads are built to accommodate bicycle and pedestrian travel, where warranted. It also enables road funds to be used for constructing bikeways and walkways along existing roads.

The main provisions of Oregon Bike Bill are:

- *It requires Oregon Department of Transportation (ODOT) and the cities and counties of Oregon to expend reasonable amounts of the highway fund to provide bikeways and walkways.*
- *It requires the inclusion of bikeways and walkways whenever highways, roads and streets are constructed, reconstructed or relocated, with three exemptions:

 - *where there is no need or probable use,*
 - *where safety would be jeopardized, or*
 - *where the cost is excessively disproportionate to the need or probable use.**

ODOT provides walking and bicycling facilities on its highway projects in several ways:

- *On rural highways, paved shoulders of sufficient width (4 feet or more) are provided where traffic volumes are moderate to high;*
- *On urban highways, sidewalks are provided, as well as crosswalks, islands and pedestrian signal heads at intersections; the shoulders are marked as bike lanes.*

Oregon policies

Funding for bicycle and pedestrian improvements in Oregon are funded through a variety of sources, including:

Pedestrian & Bicycle Facility Improvement Grant Program

Cities, counties and ODOT can cooperate to identify sections of urban highways, as well as local city streets and county roads, where improvements are needed for pedestrians and/or bicyclists. Projects in parks and other areas outside of a street right-of-way are not eligible.

Bicycle & Pedestrian Projects Within Highway Rights-Of-Way

Virtually all traditional transportation funding sources may be used to add walkways or bikeways to a road, street or highway – including state gas taxes and federal transportation funds. Although State Highway Fund monies provide the basic funding source for bikeways and walkways, local jurisdictions may also provide revenues from local sources such as:

Oregon
policies

- *General funds;*
- *Special bond levies;*
- *Transportation impact fees;*
- *System development charges;*
- *Local Improvement Districts (LID's); and*
- *Charges to adjacent property owners.*

Federal Safety Program Funds

If particular roadway conditions create an immediate hazard for bicycle and pedestrian travel, federal safety program funds can be used, including Hazard Elimination Program funds.

Bicycle & Pedestrian Projects Outside Highway Rights Of Way

*Paths through parks, on abandoned railway lines and other areas outside of street rights-of-way cannot be funded with state highway funds. There are several sources of federal funds that may be used, including the **CMAQ** funds and the Transportation Enhancements Program of the Transportation Equity Act for the 21st Century (TEA-21). These projects must still serve a transportation function, though projects that also serve recreational users are viewed favorably. Other local funding sources not dedicated to transportation may also be used, such as parks and recreation funding.*

The 1973 Oregon Bike Bill has been copied in many states, but still represents the state of the art, particularly as adapted to reflect new federal policies emerging in ISTEA and TEA-21. The state funds bicycling and pedestrian facilities using both federal and state transportation funds, and includes bicycle and pedestrian facilities as required elements of highway improvement projects eligible for federal and state highway funds.

Oregon's policy is that basic project elements required as part of highway projects – including full accommodation of safe bicycling and walking – are not eligible for funding with enhancement monies.

The Oregon Bike Bill is described in detail below. Sections in Italics are language quoted from the statute. Commentary is provided on each section, excerpted from the state bike plan. (This text is adapted and paraphrased from the Oregon Bike Plan.)

“(1) Out of the funds received by the department or by any county or city from the State Highway Fund reasonable amounts shall be expended as necessary to provide footpaths and bicycle trails, including curb cuts or ramps as part of the project.”

Oregon bike bill

The law requires that reasonable amounts of State Highway Funds be expended by the Department of Transportation, counties and cities to provide walkways and bikeways. Reasonable amounts are related to the need for bikeways and walkways; if there is a need, the governing jurisdiction shall expend a reasonable amount to construct the needed facilities.

When the bill was introduced in 1971, most road projects were funded through the highway fund. While the law itself refers to the highway fund, several drafters of the original bill have indicated that the intent was not to limit this requirement to the highway fund only, but rather to make this fund available for the construction of walkways and bikeways, to benefit all users of the highway.

“Footpaths and bicycle trails, including curb cuts or ramps as part of the project, shall be provided wherever a highway, road or street is being constructed, reconstructed or relocated.”

The law requires the Department of Transportation, counties and cities to provide walkways and bikeways on all roadway construction, reconstruction or relocation projects. The funding source or amount are not the determining factors; what is important is that pedestrian and bicycle facilities be provided as part of road improvements.

"Construction, reconstruction and relocation" refers to all projects where a roadway is built or upgraded. Walkways and bikeways don't necessarily have to be provided on projects such as signal or signing improvements, landscaping and other incidental work. Preservation overlays are also excluded if the only intent of the project is to preserve the riding surface in usable condition, without any widening or realignment. Projects where the entire depth of the roadway bed is replaced are usually considered reconstruction projects.

“Funds received from the State Highway Fund may also be expended to maintain footpaths and trails and to provide footpaths and trails along other highways, roads and streets and in parks and recreation areas.”

The law also allows highway funds to be used for maintenance and to provide walkways and bikeways independently of road construction. The Department, a city or a county may use its highway funds for projects whose primary purpose is to provide improvements for pedestrians and bicyclists.

Oregon
bike
bill

The 1980 Constitutional Amendment (Article IX, section 3a) now prohibits the expenditure of highway funds in parks and recreation areas. A subsequent Oregon Supreme Court opinion, **Rogers v. Lane County**, supports continued use of highway funds to construct and maintain walkways and bikeways within the highway right-of-way, but allows such use only when they are within the highway right-of-way.

“(2) Footpaths and trails are not required to be established under subsection (1) of this section:

(a) Where the establishment of such paths and trails would be contrary to public safety;

(b) If the cost of establishing such paths and trails would be excessively disproportionate to the need or probable use; or

(c) Where sparsity of population, other available ways or other factors indicate an absence of any need for such paths and trails.”

The law provides for reasonable exemptions. The determination that one or more exemption is met should be well-documented. The decision should allow opportunities for public review and input by interested parties. Exemptions (b) and (c) refer back to the need. The burden is on the governing jurisdiction to show the lack of need to provide facilities; the need is legislatively presumed but can be rebutted.

... contrary to public safety: this exemption applies where the safety of any group of highway users would be jeopardized by the inclusion of walkways or bikeways. In most instances, the addition of walkways and bikeways improves safety, both for motorists and non-motorized users, but there may be instances where the inclusion of a walkway or bikeway decreases safety, for example, sidewalks on a limited access freeway would be considered unsafe.

... cost is excessively disproportionate to need or probable use: this exemption applies if it can be shown that there is insufficient need *or probable use* to justify the cost. Probable use must extend to cover the anticipated life of the project, which can be twenty years or longer for roadway projects, fifty years or longer for bridge projects. It is not sufficient to claim that there is little or no current pedestrian or bicycle use. This is often due to the lack of appropriate facilities. The law does not provide guidelines for determining when costs are excessively disproportionate.

... sparsity of population ... indicates an absence of any need: This exemption most commonly applies to rural roads or highways where walkways and bikeways would get very little use.

... other available ways ... indicate an absence of any need: For this exemption to apply, it must be shown that the "other available ways" serve bicyclists and pedestrians as well as or better than would a facility provided on the road, street or highway in question. The "other available ways" must provide equal or greater access and mobility than the road, street or highway in question. An example sufficient to indicate other available ways would be providing sidewalks and bike lanes on a parallel or adjacent street rather than along a freeway. An example not sufficient would be choosing not to provide bike lanes and sidewalks on an arterial street and

encouraging use of local side streets that do not include bicycle and pedestrian facilities nor offer the equivalent direct route or access as the arterial street.

... other factors ... indicate an absence of any need: This exemption allows consideration of other factors that are particular to a project. A common example is the acceptability of cyclists sharing the roadway with automobiles on low volume, low traffic local streets. Again, the absence of any need must be found.

Oregon
bike
bill

“(3) The amount expended by the department or by a city or county as required or permitted by this section shall never in any one fiscal year be less than one percent of the total amount of the funds received from the highway fund. However:

(a) This subsection does not apply to a city in any year in which the one percent equals \$250 or less, or to a county in any year in which the one percent equals \$1500 or less.

(b) A city or county in lieu of expending the funds each year may credit the funds to a financial reserve or special fund in accordance with ORS 280.100, to be held for not more than 10 years, and to be expended for the purposes required or permitted by this section.

(c) For purposes of computing amounts expended during a fiscal year under this subsection, the department, a city or county may record the money as expended:

(A) On the date actual construction of the facility is commenced if the facility is constructed by the city, county or department itself; or

(B) On the date a contract for the construction of the facilities is entered with a private contractor or with any other governmental body.”

The law requires that in any given fiscal year, the amounts expended to provide walkways and bikeways must be a minimum of 1% of the state highway fund received by the Department, a city or county. The law does not establish a special fund ("bicycle fund"), nor does it limit the expenditures to 1%: section (1) requires that "reasonable amounts" be expended. 1% is only a minimum.

Cities and counties are not required to spend a minimum of 1% each year; they may credit this amount to a reserve fund and expend these amounts within a period not to exceed ten years. The 1% minimum requirement is independent from the requirement to provide bikeways and walkways as part of road construction.

A jurisdiction spending more than 1% of its funds on walkways and bikeways must still provide bikeways and walkways as part of all new construction projects, unless determined not to be otherwise required pursuant to section (2).

The 1% minimum requirement does not apply to cities receiving less than \$25,000 a year, or to counties receiving less than \$150,000 a year from the fund. However, bikeways and walkways must be provided wherever roads are constructed, as required in Section 1, subject to the exemptions in Section 2.

“(4) For the purposes of this chapter, the establishment of paths, trails and curb cuts or ramps and the expenditure of funds as authorized by this section are for highway, road and street purposes.”

This section is the legislature's statement of intent that these uses would qualify under the Constitution as highway uses. This is reinforced in the 1980 constitutional amendment (Article IX, section 3a) and by **Rogers v. Lane County**.

Oregon bike bill

“The department shall, when requested, provide technical assistance and advice to cities and counties in carrying out the purpose of this section. The division shall recommend construction standards for footpaths and bicycle trails. Curb cuts or ramps shall comply with the requirements of ORS 447.310. The division shall, in the manner prescribed for marking highways under ORS 810.200, provide a uniform system of signing footpaths and bicycle trails which shall apply to paths and trails under the jurisdiction of the department and cities and counties.”

One of the purposes of this Bicycle/Pedestrian Plan is to implement this section. ODOT develops standards and designs for bikeways and walkways. ODOT staff is available to assist cities and counties with technical problems, as well as with planning and policy issues.

“The department and cities and counties may restrict the use of footpaths and bicycle trails under their respective jurisdictions to pedestrians and non-motorized vehicles.”

Motor vehicles are generally excluded from using bike lanes, sidewalks and multi-use paths.

“(5) As used in this section, "bicycle trail" means a publicly owned and maintained lane or way designated and signed for use as a bicycle route.”

A "bicycle trail" is currently defined as a "bikeway."

The Oregon Court of Appeals upheld the intent of this statute in **Bicycle Transportation Alliance v. City of Portland** (9309-05777; CA A82770). The judge's summary was: "Read as a whole, ORS 366.514 requires that when an agency receives state highway funds and constructs, reconstructs or relocates highways, roads or streets, it must expend a reasonable amount of those funds, as necessary, on bicycle and pedestrian facilities. The statute also requires the agency to spend no less than one percent per fiscal year on such facilities, unless relieved of that obligation by one of the exceptions in subsection (2)."

The Oregon example shows what a progressive state bicycling and pedestrian policy could look like. Oregon's approach appears substantially in line with the policy guidance provided in ISTEA and TEA-21, as well as in Federal Highway Administration guidance.

Bottom Line Providing for Non-Motorized Travel

Questions for Montanans fall in three areas:

- Could, or should, Montana establish state funding sources for a bicycle and pedestrian program; or, alternatively, could some of the existing state highway funds be used for this purpose?
- Should Montana be using more of its federal highway funds to support development of bicycling and walking facilities along and across state highway corridors?
- Should Montana change its policy on funding of the bicycling and walking components of highway improvement projects to require they be funded out of the same source as the rest of the project?

As MDT has pointed out, “yes” answers to the second two questions could reduce the amount of money available for other purposes in the state transportation program.

Prioritization Of Highway Program Funds

Montana is currently receiving nearly \$300 million annually in federal highway funds. Another \$200 million per year or so is provided through state highway fund sources. Depending on the point of view, this money represents either a tremendous opportunity to develop the state's principal roadways, or a significant threat to desirable land development patterns and quality of life.

The difference between the two viewpoints may have much to do with how the money is actually spent. Is it used to take care of the roads we already have, or is it used to expand roadways in pursuit of new capacity and congestion relief?

How Montana chooses to prioritize its highway program represents another key part of the federal funds issue. Critics of the federal highway program have long pointed out that it encourages states to invest in new roads while at the same time deferring needed maintenance, repair and rehabilitation of existing road and bridge facilities.

ISTEA was intended to address this in part by eliminating the Interstate Highway Program, which had targeted huge amounts of money at extending routes and adding lane miles in pursuit of "completion" of the system. While the Interstate Completion Program was rolled into the NHS, a separate funding category for Interstate Maintenance (IM) was retained. (Montana receives about \$60 million annually in IM funding.)

None-the-less, this issue remains controversial throughout the country as states try to respond to local demands for increased highway capacity, and as a result pay too little attention to taking care of existing facilities.

Congressional staff has indicated this will be an area of emphasis in the upcoming rewrite of the surface transportation authorization (currently referred to as TEA-3).

Table 7 on the next page provides data from a report published by STPP in 2000 on the subject of comparative use of highway funds by the states.

TABLE 7. USE OF FEDERAL HIGHWAY FUNDS (SOURCE: STPP, 2000)

	Use of Federal Highway Funds for Maintenance		Safety Spending Per Capita '90 – '99
	1990 – 1991	1998 – 1999	
Rural Western States			
Montana	71.99 %	72.35 %	\$ 10.45
Idaho	43.54 %	62.12 %	\$ 1.44
Wyoming	58.88 %	81.03 %	\$ 4.67
South Dakota	79.98 %	84.87 %	\$ 5.46
North Dakota	58.85 %	90.90 %	\$ 6.69
Urban/Rural Western States			
Washington	49.00 %	63.91 %	\$13.43
Oregon	59.07 %	67.08 %	\$ 2.31
Colorado	32.03 %	42.45 %	\$ 1.71
Urban Eastern States			
Florida	58.27 %	53.66 %	\$3.71
New Jersey	46.83 %	64.27 %	\$ 1.78

Table 7 shows how Montana compares with other selected states on this dimension. It also provides an estimate of how much of its federal highway program is being invested in projects to improve traveler safety.

This data shows that, through the ISTEA years and the early TEA-21 years, Montana compared favorably in its use of federal funds for maintenance. One important factor not reflected in this data is the use of “minimum guarantee” monies that came to western states as a result of TEA-21. These monies were available for obligation beginning in 1999. It appears that Wyoming, South Dakota and North Dakota applied the new windfall money to maintenance. It appears that Montana did not.

From data presented in an earlier section, it appears that, in Montana, a significant portion of this new money may have gone into new construction, rather than into increased maintenance. This suggests much of the new money from TEA-21 (see p. 11) may have gone into new capacity projects in Montana. Montana’s spending for safety projects during the 1992 - 1999 time period is at the top of the list. This is a good showing, although it is in part due to the size of the

state's transportation program relative to Montana's small population, which affects any per capita measures of spending.

Best Practices New Jersey

For the past decade or so, the leading edge in this debate over how highway monies should be invested has gone under the banner, "fix it first," which generally means "take good care of the transportation facilities we have before building new miles of highways."

Measures have been introduced and passed in some states, and the current update process for the federal surface transportation law (TEA-3, the successor to TEA-21) is expected to address this topic as well. However, the most comprehensive program to be implemented at the state level has been New Jersey's 2000 "**Congestion Relief and Transportation Trust Fund Renewal Act.**" This law, introduced in the summer of 1999 and passed in 2000, is known colloquially as the New Jersey Fix It First Law.

Fix It First represented a major battle in the New Jersey legislature as anti-sprawl and pro-highway forces faced off in an often acrimonious debate. The discussion occurred in the first place in part because the state's Transportation Trust Fund, established in 1984, was expiring and required renewal to keep the state's transportation program funded.

Specific provisions in the legislation include:

- NJ DOT must submit a new capital project spending plan that emphasizes repair of existing roads and bridges, and reduction of traffic congestion.
- New highway construction projects may proceed only with explicit approval by the Legislature.
- NJ DOT must submit a yearly "report card" on progress towards specific mandates to fix one-half of the state's structurally deficient roads and to construct 1,000 mile bikeway network over the next five years.
- NJ Transit must purchase buses with reduced particulate emissions or non-diesel engines after 2007.
- A yearlong task force (aka "Congestion Buster Task Force") was created study highway congestion across the state with the aim of producing a plan to cap rush hour car trips at 1999 levels.

Key sections of the resulting statute are reprinted starting on the next page, with relevant provisions highlighted.

*Legislative
findings*

27:1B-21.15. Findings, declarations regarding the State's transportation system

2. The Legislature hereby finds and declares that:

a. A balanced and improved transit and goods movement and highway system is of key importance to our State's continued prosperity and to the quality of life of our citizens.

b. The State's citizens and businesses require a transportation system which provides adequate mobility to all of its citizens utilizing all modes.

c. The State should consider and utilize, where appropriate, transportation approaches and concepts to reduce congestion, enhance mobility, discourage sprawl, and assist in the redevelopment of our cities, enhance suburbs and town centers, and otherwise improve the quality of life of our citizens.

d. Stable and adequate dedicated funding is a prerequisite to the sensible planning of transportation projects, most of which are conceived, planned, designed and built over a span of several years.

e. Additional investment is needed to bring the public highway and bridge system into a state of good repair, to reduce the backlog of infrastructure repair jobs, to maximize rail freight capacity, to promote bicycle and pedestrian safety, and to promote cycling and walking trips by providing and financing appropriate infrastructure.

f. Ferries and ferry facilities, including those providing interstate service to points in New Jersey, are an increasingly important component of the State's intermodal transportation system and should be eligible for transportation assistance from the State.

g. The system of financing under the New Jersey Transportation Trust Fund Authority has provided a stable source of funds to keep our transportation system in good repair and to provide funding for important new projects which have enhanced that system.

h. The renewal and improvement of the system of financing under the New Jersey Transportation Trust Fund Authority and a significant increase in the funding of that system are necessary to achieve the aforementioned goals and can be achieved without the necessity of increasing taxes.

27:1B-21.16. Program to improve traffic signal operation

3. The Commissioner of Transportation (hereinafter, "the commissioner") shall establish and implement a program to employ the best available technology to improve traffic signal operation throughout the State so as to avoid unnecessary delays, reduce air pollution, and allow traffic to move sequentially through signals on roads and highways throughout the State without stopping, to the greatest extent practicable without endangering or limiting pedestrian travel.

27:1B-21.17. Reduction of single occupancy trips, report to Legislature

4. No later than March 31, 2001, the commissioner shall submit a report to the Legislature containing recommended incentives to businesses to encourage a reduction in single occupancy trips.

27:1B-21.18. Telecommuting, report to Legislature

5. No later than January 1, 2001, the Chief Executive Officer and Secretary of the New Jersey Commerce and Economic Growth Commission, in consultation with the commissioner and the State Treasurer, shall submit a report to the Legislature containing a program to identify sectors of the economy, or specific occupations, which are appropriate for telecommuting to increase telecommuting in the State.

27:1B-21.19. Context sensitive design

6. Many State highways run through fully developed cities and suburban towns. In addition, many small villages in rural areas have State highways which pass through built-up residential areas or village centers. The traffic on many of these State highways, particularly large truck and speeding traffic, prevents these residential areas, town centers and future town centers from functioning as intended. The commissioner shall study this issue and develop a departmental program which authorizes context sensitive design and examines the functional classifications of State highways running through developed cities and suburban towns. As used in this section, "context sensitive design" means a planning technique that embraces a collaborative, interdisciplinary process and recognizes the uniqueness of the community in planning transportation projects.

27:1B-21.20. Large trucks, report to Legislature

7. The commissioner shall report to the Legislature not later than January 1, 2001, on measures undertaken by the department and measures it recommends as necessary to improve the safety or to mitigate adverse impacts of large trucks which travel on New Jersey State and local roadways.

27:1B-21.21. LED lighting installation

8. The commissioner shall install light emitting diodes lighting ("LED lighting"), or lighting similar in energy and life cycle savings, in traffic signals on the State highway system from the amounts appropriated from the revenues and other funds of the New Jersey Transportation Trust Fund Authority. It is anticipated that this lighting will result in operational energy savings for State, county and municipal governments and provide congestion relief because the diodes have a 10-year life cycle as compared to the one year replacement cycle for regular light bulbs. The State shall develop a program to assist local governments to install LED lighting or lighting similar in energy and life cycle savings, in approved local traffic signals throughout the State. The commissioner may consult with the State's public utility companies for assistance where appropriate to implement this program.

Context
Sensitive

27:1B-21.26. Congestion Buster Task Force*Congestion
Buster
Task
Force*

13. a. There is created in the Department of Transportation a task force to be known as the "Congestion Buster Task Force" to study and make recommendations concerning the reduction of traffic congestion in the State.

The members of the task force shall be appointed by the commissioner in such number as the commissioner shall designate from the Department of Transportation, the New Jersey Transit Corporation, business organizations, Transportation Management Associations, the counties, and members of the public.

b. The task force shall organize as soon as may be practicable after the appointment of its members and shall select a chairperson from among the members. The members shall select a secretary, who need not be a member of the task force. The task force shall meet at the call of the chairperson.

The task force shall be entitled to call to its assistance and avail itself of the services of the employees of any State department, board, bureau, commission or agency, as it may require and as may be available for its purposes, and to employ stenographic and clerical assistance and incur traveling and other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

c. The task force shall conduct a study of highway traffic congestion in the State and develop a commuter options plan that would result in peak hour vehicle trips being "capped" at 1999 levels.

In developing the plan, the task force shall review relevant information and findings from other jurisdictions, both national and international. The plan shall include, but not be limited to, resources and incentives for public transportation, ridesharing, telecommuting and other travel reduction strategies. In making its recommendations for the plan, the task force shall include funding proposals, an implementation of the plan, and a method of evaluating progress toward the realization of the goal of the plan to cap peak hour vehicle trips at 1999 levels.

The task force shall also be charged with identifying the top 10 projects which can be quickly implemented to relieve congestion or improve safety.

d. The task force may meet and hold public hearings at such place or places as it shall designate and shall issue a final report containing its findings and recommendations, including any recommendations for legislation that it deems appropriate, no later than one year after the task force organizes, to the Governor, the President of the Senate and the Speaker of the General Assembly, and the members of the Senate Transportation Committee and the Assembly Transportation Committee, or the successor committees.

e. The task force shall dissolve one year following organization of the task force.

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27:1B-21.27. Park-and-ride facility expansion, report to Governor and Legislature

14. No later than July 1, 2001, the commissioner shall report to the Governor and the Legislature on steps which the commissioner recommends to provide for the establishment or expansion of park-and-ride facilities in areas of traffic congestion throughout the State and shall establish a goal of establishing or expanding at least two park-and-ride facilities in each of the successive 2001-2002, 2002-2003, 2003-2004 and 2004-2005 fiscal years. In the event that the department does not establish or expand at least two park-and-ride facilities in each of the preceding fiscal years, the commissioner shall report to the Governor and the Legislature the reasons for the failure to establish or expand such facilities.

27:1B-21.30. Highway route construction, restriction

25. No new State highway route shall be constructed using the revenues and other funds of the authority unless specifically authorized by joint resolution. Nothing in this section shall impair the commissioner's authority to modify, extend or widen existing State highway routes.

27:1B-21.31. Transportation Trust Fund Advisory Board

27. a. There is hereby established a Transportation Trust Fund Board to be comprised of seven members. The Governor shall appoint three public members and the President of the Senate and the Speaker of the General Assembly shall each appoint one public member. The commissioner or the commissioner's designee and the State Treasurer or the State Treasurer's designee shall serve as ex officio members of the board. All of the public members shall have some experience in the field of transportation or finance. Each public member shall serve for a term of three years and shall serve until the member's successor is appointed and has qualified. Of the public members first appointed pursuant to this act, one member appointed by the Governor shall serve one year, two members so appointed shall serve two years, and the remainder of the public members shall serve three years. The Governor shall designate one of the public members to serve as chairperson of the board. The board shall meet a minimum of four times each year. The department shall provide staff to support the board.

b. The purpose of the Advisory Board shall be to review the department's long range capital planning, master plan and Capital Investment Strategy, including the overall program and to make recommendations to the Governor and the Legislature concerning the department's capital investment strategies and the continuation of the funding of the State's transportation system under the New Jersey Transportation Trust Fund Authority.

27:1B-22. Master plan; annual reports

22. a. To the end that the transportation system of the State shall be planned in an orderly and efficient manner and that the Legislature shall be advised of the nature and extent of public highways, public transportation projects and other transportation projects contemplated to be financed under this act, the department shall submit a master plan, as provided in subsection (a) of section 5 of P.L. 1966, c.301 (C.27:1A-

5). Notwithstanding the provisions of that act, the plan shall be for a period of five years and shall be submitted to the Commission on Capital Budgeting and Planning, the Chairman of the Senate transportation Committee and the Chairman of the Assembly transportation and Communications Committee, or their successors, and the Legislative Budget and Finance Officer, and the metropolitan planning organizations, on or before March 1, 2001, and at five-year intervals thereafter. The master plan shall set the direction for the department's overall Capital Investment Strategy and subsequent annual transportation Capital Programs submitted to the Legislature for approval pursuant to this section.

b. The Department of Transportation, in conjunction with the New Jersey Transit Corporation, shall prepare a "Capital Investment Strategy" for at least a five-year period which shall contain, at a minimum, a statement of the goals of the department and the corporation in major selected policy areas and the means by which the goals are to be attained during that period, using quantitative measures where appropriate. The Capital Investment Strategy may be updated and submitted no later than March 1 of each year. The Capital Investment Strategy shall provide for a multi-modal, intermodal, seamless and technologically advanced transportation system. It shall recommend investment for major program categories, set overall goals for investment in the State's infrastructure, and develop program targets and performance measures. It may rely on infrastructure management systems as developed by the department to assess bridge conditions, pavement conditions, bridge, traffic and pedestrian safety, traffic congestion and public transit facilities. With respect to pavement conditions, the department shall set as a priority the utilization of efficient cost-effective materials and treatments as stated in section 9 of P.L.2000, c.73 (C.27:1B-21.22). In the event that there exist appropriate circumstances for the use of micro-surfacing and cold-in-place recycling, the department shall establish as a special priority the use of these materials and surface treatments. The goals of the Capital Investment Strategy shall include, but not be limited to, reduction of vehicular and pedestrian accidents, reduction in the backlog of projects, including one-half of the structurally deficient bridge repair projects and pavement deficiencies, and an increase in lane miles of bicycle paths, with a goal of constructing an additional 1,000 lane miles of bicycle paths in five years to reduce traffic congestion and for recreational uses. The construction of bicycle and pedestrian lanes, paths and facilities shall be subject to no stricter environmental requirements than are provided pursuant to federal law and regulations for such lanes, paths and facilities, notwithstanding the provisions to the contrary of State law and regulations, including State Executive Order No. 215 of 1989. With respect to the New Jersey Transit Corporation, the plan shall deal with the corporation's goals in the area of bus transportation present a strategy and a preliminary timetable for the replacement of the current diesel bus fleet with a fleet of buses which have reduced emission of air pollutants. The corporation shall consider the feasibility of buses with improved pollution controls and that reduce particulate emissions and buses powered by fuel other than conventional diesel fuel, such as compressed natural gas vehicles, hybrid vehicles, fuel cell vehicles, biodiesel vehicles, vehicles operated on ultra low sulfur fuel, vehicles operated on any other bus fuel approved by the United States Environmental Protection Agency, and the like. The corporation may consider as part of its strategy, cooperative efforts with bus manufacturers, and the solicitation of

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Clean buses

federal support, in developing a "clean bus" with air pollution controls superior to currently available technology. For the fiscal year beginning July 1, 2007 and each fiscal year thereafter, all buses purchased by the New Jersey Transit Corporation shall be buses with improved pollution controls and that reduce particulate emissions or buses powered by fuel other than conventional diesel fuel, such as compressed natural gas vehicles, hybrid vehicles, fuel cell vehicles, biodiesel vehicles, vehicles operated on ultra low sulfur fuel, vehicles operated on any other bus fuel approved by the United States Environmental Protection Agency, and the like. In the event that the corporation is not able to meet the bus purchase requirements set forth in this section with respect to any fiscal year, prior to the commencement of the fiscal year the board of the corporation shall by resolution submit a report to the Legislature detailing its inability to meet the requirements and the reasons therefore and shall submit the report to the Senate and General Assembly when both houses are in session, including therein a request to be exempted from the bus purchase requirements of this section with regard to the fiscal year in question. The President of the Senate and the Speaker of the General Assembly shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly. If a joint resolution approving the exemption is passed by the Legislature and signed by the Governor prior to the commencement of the fiscal year in question, the corporation shall be exempt from the requirements for that fiscal year.

The plan shall also detail the planned investment of capital funds for public transportation projects of companies other than the New Jersey Transit Corporation engaged in the business of providing motor bus transportation. The plan shall demonstrate that such investment adequately addresses the finding in section 2 of P.L.1979, c.150 (C.27:25-2) that in the provision of public transportation services it is desirable to encourage to the maximum extent feasible the participation of private enterprise.

Annual report

c. On or before March 1 of each year, the commissioner shall submit a report of general project categories and proposed projects thereunder to be financed in the ensuing fiscal year, including therewith a description of the projects, the county or counties within which they are to be located, a distinction between State and local projects, and the amount estimated to be expended on each project. This report shall be known as the "Annual Transportation Program" for the upcoming fiscal year. It shall include proposed projects of both the Department of Transportation and the New Jersey Transit Corporation. The program shall be consistent with, and reflective of, the goals and priorities of the Capital Investment Strategy and the program shall include an explanation which demonstrates how it is consistent with, and reflective of, the goals and priorities.

d. On or before March 1 of each year, the commissioner shall also submit a "Transportation Trust Fund Authority Financial Plan" designed to implement the financing of the proposed projects. The financial plan shall contain an enumeration of the bonds, notes or other obligations of the authority which the authority intends to issue, including the amounts thereof and the conditions therefor. The financial plan shall set forth a complete operating and financial statement covering the authority's proposed operations during the ensuing fiscal year, including amounts of income from

all sources, including but not limited to the proceeds of bonds, notes or other obligations to be issued, as well as interest earned. In addition, the plan shall contain proposed amounts to be appropriated and expended, as well as amounts for which the department anticipates to obligate during the ensuing fiscal year for any future expenditures.

e. The Capital Investment Strategy, the Annual Transportation Capital Program, and the Transportation Trust Fund Financial Plan shall be submitted to the Senate and General Assembly. Within 30 days of the receipt thereof, the Senate or the General Assembly may object in writing to the commissioner in regard to any project or projects in the Annual Transportation it disapproves or which it is of the opinion should be modified or added to or any additional or alternative projects considered or in regard to any element of the financial plan. The commissioner shall consider the objections and recommendations and resubmit the report within 10 days, containing therein any modifications based upon the commissioner's consideration of the objections or recommendations.

New Jersey Fix It First has not been without controversy. In fact, it appears the New Jersey DOT is more or less in open rebellion against the law, submitting work programs in each of the last three years that did not conform to the statute.

NJ DOT has taken the position that meeting the objectives for reducing the backlogs of bridge and pavement deficiencies cannot be done with the money available or within the mandated time frame. At the same time, NJ DOT has included in its work programs hundreds of lane miles of new roadway capacity.

The controversy continues, with the current governor (a champion of "smart growth") being questioned about his ability to "control his DOT." Recently, a ranking DOT spokesperson was quoted as saying "the DOT is almost entirely out of the highway business."

Groups monitoring implementation of the legislation report that the law has affected the New Jersey state transportation program, but has not brought about the comprehensive changes originally envisioned.

Bottom Line New Jersey "Fix It First"

The New Jersey experience with Fix It First provides a useful example, both of the potential for progressive legislation to be passed in the face of strong pro-highway advocacy, and of the potential for such legislation, once passed, to fail to fulfill its promise due to continued, concerted political and bureaucratic opposition.

Conclusions

1. Most of Montana's state funding for transportation is dedicated by State Constitution to highways and bridges. This limitation of state funding to roads has far-reaching consequences. Most importantly, the result is that MDT cannot spend state funds on public transit (with one or two very limited exceptions). This takes Montana out of the transit planning and development business.
2. Urban public transit will be vital to the development of viable, livable and sustainable cities in Montana. Cities over 25,000 population and cities and towns with significant summer tourism should be planning for schedule, fixed route bus service augmented by demand response and special needs services. Public transit is a key structural element necessary to multimodal mobility, with special value for families, including the young and elderly, and for employers.
3. Urban transit systems currently operate in Great Falls, Billings, Missoula, Butte and Kalispell. These are supported primarily by local funding. They do qualify for federal transit assistance. However, the lack of state funding for urban transit services slows the rate at which those systems can grow and handicaps them in their efforts to compete for federal transit funding since they don't have access to state funds for matching federal grants.
4. Federal legislation has given states flexibility to utilize a portion of their federal highway funds on transit (and other mode) projects. This offers a way to help with transit capital needs, especially for states like Montana that receive limited direct federal transit capital assistance. However, the lack of significant state transportation funding for anything other than highways serves as a barrier to use of flexible funding authority. For this and other reasons, Montana has not made much use of the flex fund provisions.
5. Over the past decade, federal legislation and rules have emphasized walking and bicycling. The Federal Highway Administration has specifically directed states to place greater emphasis on these modes. This direction, however, has been widely ignored in rural states.

6. Montana has chosen not to allocate funds to its enhancement program beyond minimums required in federal law. Further, MDT's policy is that bicycle and pedestrian needs may not, in many instances, be met as part of the funding of highway projects. This means as highways are built, sidewalks, bike lanes and paths may not be funded out of the funds supporting the highway elements of these projects. Instead, local governments may be forced to apply their share of CTEP monies to ensure needed facilities are built.
7. While Montana has historically emphasized highway maintenance, this has changed with windfall monies from TEA-21. The surge in federal funds (an increase of about \$150 million annually to Montana) has been spent expanding highways. At the same time, Montana continues to shift budget (obligation authority) to its highway construction program.
8. Montana's 14 largest cities generate more in fuel taxes than they receive to build and maintain local roads. Yet, the wisest investment of highway funding would be in existing cities and towns, where it would sustain local economic vitality, support redevelopment and infill, and reduce the subsidization of low density rural and suburban development.
9. Modally-balanced transportation programs are most likely to emerge where there are MPOs (metropolitan planning organizations) able to set local priorities and less susceptible to pressures from state road building lobbies. The most progressive flexing of federal funds has occurred in states where MPOs play a major role in fund allocation and project prioritization. However, Congress has not extended this type of local control over transportation funding to rural areas. The result is that in states without large cities (including Montana), state DOTs continue to place financial emphasis on road-building, and are less likely to reflect local priorities and needs in project programming.
10. Accurate, timely information and data about the relationships discussed in this section are difficult to obtain. Most ordinary citizens would never be able to pull this kind of information together, and as a result, Montanans do not have ready access to information about how the State is utilizing its federal funds and flex funds authority. This issue is so complex, and data so unavailable, that citizens are essentially disenfranchised from active involvement in decision making about Montana's use of federal funds.

11. The design and layout of our infrastructure and places directly and significantly affects our ability to walk and bike, as well as our willingness to travel by means other than personal vehicle. This, in turn, directly and significantly affects the personal physical health and well-being of Montana's residents. Research by the Robert Wood Johnson Foundation shows that the health of children is particularly at risk, as inactivity due to auto-oriented development patterns is leading directly to an epidemic of obesity and Type II diabetes (previously rare in children), as well as other physical and learning disabilities.
12. At the same time, people indicate in surveys that being able to walk in their communities for short trips is an important feature that they associate with high "quality of life." They desire this feature and will pay higher prices for homes in neighborhoods and communities that provide it (according to the Urban Land Institute). The bottom line is that active living is a fundamental and important value that may outweigh other design considerations in urban development and transportation infrastructure.

Recommendations

The State of Montana should implement the following policies and approaches, either as agency policies or through legislation:

1. Montana's urban areas need balanced multimodal transportation systems with integrated motor vehicle, public transit, bicycle and pedestrian networks. State funds to leverage local and federal funds could, even at modest levels, make a significant difference in mobility and quality of life in Montana's cities and towns. A broad coalition of transportation interests (including highway advocates) should be established to pursue additional state funding for transportation. A portion of this should be set aside for multimodal programs and a "safe routes to school" program should be included.
2. Montana should establish performance objectives for its highway program. The objectives should apply to state and federal fund sources and should:
 - a. De-emphasize add-lanes and new roadway capacity projects;
 - b. Focus investment in existing cities and towns rather than rural areas;
 - c. Prioritize recapitalization and maintenance of existing roadways above funding for new capacity;
 - d. Emphasize congestion management strategies including intersection improvements and travel demand management.
 - e. Emphasize access management as a congestion management and system preservation strategy.
 - f. Provide for travel demand management programs as required elements in every major state highway corridor project.
3. Montana should revise its policy on enhancements funding. The updated policy (perhaps modeled on Oregon's policy) should state that the appropriate accommodation of walking and bicycling will be included in the design of every state highway project and will be funded through the funding source supporting the highway improvement. Enhancements (the CTEP program) should then become an additional source of funding for bike and pedestrian needs where highway expansion projects are otherwise not planned. This change should be coordinated with the State's cities and counties.

4. The State should establish a task force of local government representatives, MDT staff, and legislators to study the allocation of transportation trust funds between MDT and local governments, especially the major cities. The study should recommend a reallocation of state transportation funds to increase emphasis on urban transportation needs and end the over-expansion of rural state highways.
5. The State should implement an annual Transportation Funding Report. This report should detail Montana's response (both in its annually updated transportation program and in the projects initiated that year) to the flex funds authority, transportation enhancements set aside, and other key provisions of federal surface transportation funding. This Report should be written in a manner that enables ordinary citizens to read and understand it, and should explicitly:
 - a. Compare the potential flex funding available to Montana with the amount actually flexed;
 - b. Compare the maximum potential transportation enhancements program allocation with the amount actually allocated;
 - c. Show how monies coming to Montana pursuant to "Revenue Adjusted Budget Authority" and "Minimum Guarantee" funding are being allocated and spent in MDT's work program.
 - d. Show how the state's obligation authority is being allocated among programs and among modes;
 - e. Describe the allocation of highway program funds among new construction (add-lanes, intersection reconstruction, new centerline miles, etc.), resurfacing and rehabilitation, and routine maintenance; and,
 - f. Describe how funds originally allocated to reprogrammed projects were reallocated to other projects.
6. The State should work with its congressional delegation to include in the Surface Transportation Program reauthorization provisions creating rural planning organizations (RPOs) with a power over transportation programs similar to those currently extended to MPOs.

Glossary of Terms

American Association of State Highway and Transportation Officials (AASHTO)

AASHTO is a nonprofit, nonpartisan association representing highway and transportation departments in the 50 states, the District of Columbia and Puerto Rico. AASHTO represents all five transportation modes: air, highways, public transportation, rail and water. Its primary goal is to foster the development, operation and maintenance of an integrated national transportation system.

CTEP or Community Transportation Enhancement Program CTEP projects are transportation related activities designed to strengthen the cultural, aesthetic, and environmental aspects of Montana's transportation system. Mandated by federal legislation, CTEP is an important source of funding for bicycle and pedestrian projects.

Congestion Mitigation & Air Quality Improvement Program (CMAQ) A categorical Federal-aid funding program created with the ISTEA. Directs funding to projects that contribute to meeting National air quality standards. CMAQ funds generally may not be used for projects that result in the construction of new capacity available to SOVs (single-occupant vehicles).

Context Sensitive Design (CSD) A collaborative, interdisciplinary approach that involves all stakeholders to develop a transportation facility that fits its physical setting and preserves scenic, aesthetic, historic, and environmental resources, while maintaining safety and mobility. CSD is an approach that considers the total context within which a transportation improvement project will exist.

Federal Highway Administration (FHWA) An agency within the U.S. Department of Transportation with responsibility for federal participation in the development and management of highways, roads and streets. FHWA administers the federal-aid Highway Program, providing financial assistance to states to construct and improve highways, urban and rural roads, and bridges. FHWA also administers the Federal Lands Highway Program, including survey, design, and construction of forest highway system roads, parkways and park roads, Indian reservation roads, defense access roads, and other Federal lands roads.

ISTEA Intermodal Surface Transportation Efficiency Act. The 1990 federal legislation that completely revamped the federal surface transportation program, ushering in the modern era in transportation planning and investment. ISTEA restructured funding for transportation programs; authorized an increased role for regional planning commissions/MPOs in funding decisions; and required comprehensive regional and statewide long-term transportation plans.

MDT or Montana Department of Transportation The state transportation agency in Montana responsible for building, maintaining and operating the states highways, and also responsible for planning and investing in multimodal transportation systems.

Metropolitan Planning Organization (MPO) Regional policy body, required in urbanized areas with populations over 50,000, and designated by local officials and the governor of the state. Responsible in cooperation with the state and other transportation providers for carrying out the metropolitan transportation planning requirements of federal highway and transit legislation

Multimodal Transportation The full range of travel modes, including motor vehicles, public transit, walking and bicycling, and variations of these.

National Highway System (NHS) A high priority subset of highways (including all Interstate routes) carrying a federal route number, designated by the states with approval from the Federal Highway Administration. A separate NHS funding category provides federal money for projects on NHS routes.

Surface Transportation Program (STP) The primary category in which federal funding is made available to states. While primarily a legacy of consolidated highway programs, STP funds may be “flexed” across modes.

Transportation Equity Act for the 21st Century (TEA-21) This update to ISTEA made significant changes, including funding changes affecting Montana. Adopted in 1998, TEA-21 authorized federal funding for transportation investment for fiscal 1998-2003. About \$217 billion in funding was authorized, the largest amount in history, which is used for highway, transit, and other surface transportation programs.

Transit A general term applied in Montana to passenger bus and van services available for use by the public. Includes both demand response services and services operating on fixed routes with fixed schedules.

Transportation Personal mobility, access, circulation, and freight movement.

Bibliography

- [1] "Use of Flexible Funds for Transit Under ISTEA and TEA-21." TCRP Synthesis 42. Transportation Research Board, National Academy Press: Washington, D.C., 2002.
- [2] "Flexing to Transit." *Progress*. Surface Transportation Policy Program (STTP). Volume XIII, Number 2, October 2002.
- [3] Puentes, Robert. "Flexible Funding for Transit: Who Uses It?" The Brookings Institution, May 2000.
- [3] A significant amount of information was obtained from various STPP reports and bulletins which may be found at <http://www.transact.org/>
- [5] <http://www.antic.net/tools/legislation/july.asp>;
<http://www.antic.net/tools/legislation/pdfs/july00.pdf>
- [6] Various resources accessed at Montana Department of Transportation web site <http://www.mdt.state.mt.us/>
- [7] Various resources accessed at the State of Montana web site <http://www.state.mt.us/css/default.asp>
- [8] Extensive resources accessed through the U.S. DOT web site <http://www.dot.gov/>
- [9] Extensive resources accessed through the FHWA web site <http://www.fhwa.dot.gov/> including information on TEA-21 at <http://www.fhwa.dot.gov/tea21/index.htm> and data on highway program expenditures from the on-line version of the 1995 through 2001 Highway Statistics at <http://www.fhwa.dot.gov/ohim/ohimstat.htm>
- [10] Information about Oregon transportation programs at <http://www.odot.state.or.us/home/> including bicycle programs and the bike bill at <http://www.odot.state.or.us/techserv/bikewalk/>
- [11] Information about New Jersey Fix It First including a number of articles at the Tri-State Transportation Campaign site <http://www.tstc.org/> as well as the statutes and related information from the New Jersey legislative site at <http://www.njleg.state.nj.us/>
- [12] Information about California's transportation programs at <http://www.dot.ca.gov/> including information about the Caltrans traffic congestion relief program at <http://www.dot.ca.gov/tcrp/> and the Caltrans work program at <http://www.dot.ca.gov/hq/transprog/>