

EXPRESSWAY PROJECT DRIVES BIKEWAY FUNDING OFF THE ROADS BILL

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On July 30, the House Appropriations Committee cleared the proposed Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (H.Rpt. 108-243) for floor consideration by the House of Representatives. One line in this voluminous bill raised widespread controversy. Specifically, Section 114 of H.R. 2989 states: "None of the funds limited or made available in this Act shall be available to carry out 23 U.S.C. 133(d)(2)." This particular section of the U.S. Code provides that "10 percent of the funds apportioned to a State under section 104(b)(3) [i.e., federal transportation funding] for a fiscal year shall only be available for transportation enhancement activities."

Within the context of federally funded transportation projects, 23 U.S.C. 101(a)(35) defines "transportation enhancement activities" as "any of the following activities if such activity relates to surface transportation":

1. Provision of facilities for pedestrians and bicycles
2. Provision of safety and educational activities for pedestrians and bicyclists
3. Acquisition of scenic easements and scenic or historic sites
4. Scenic or historic highway programs (including the provision of tourist and welcome center facilities)
5. Landscaping and other scenic beautification
6. Historic preservation
7. Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals)
8. Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails)
9. Control and removal of outdoor advertising
10. Archaeological planning and research
11. Environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity
12. Establishment of transportation museums

In explaining its action, the House appropriations committee report cited the "Ineffective use of transportation funding" as the basis for prohibiting the existing 10% set aside for transportation enhancements under existing federal law. According to the committee report, spending "about \$600,000,000 per year" for "roadway landscaping, transportation museums, and renovation of historic places" were examples of such ineffective use of transportation funding. Further, the report expressed the Committee's concern that "transportation funding is being diverted to projects and activities that do not contribute directly to roadway construction or solving the growing problem of highway congestion."

The Committee believes that given the serious drop in estimated highway taxes, every penny of our Federal highway investment must go to its best and highest use. It is essential to focus the nation's limited transportation funding on critical transportation projects and not divert funds for projects that are 'nice to have,' but do not contribute in a meaningful way to solving our highway congestion

problems. Therefore, the Committee has included a provision (section 114) that discontinues the mandatory 10 percent set-aside from the surface transportation program (STP) for the transportation enhancement (TE) program.

The committee report noted, however, that “TE-type projects remain eligible under STP [Surface Transportation Program], and states can spend their limited resources on TE, consistent with their priorities, if they choose.”

The National Recreation and Park Association (NRPA) urged House members to support an amendment to strike Section 114 from H.R. 2989 and “reject any other amendments that might be offered to reduce or alter the funding for the Transportation Enhancements program.” According to NRPA, few if any pedestrian or bicycle trail projects will be approved in the future if transportation enhancement activities must compete for funding with highway construction projects.

As a result of the transportation enhancement program, NRPA found the amount spent on bike and pedestrian trails had increased almost one hundred fold compared to the days when such projects had to compete with highway construction projects. In particular, prior to the mandatory set aside for transportation enhancements authorized by ISTEA, NRPA noted that “only \$40 million in bike-ped trail projects were approved in the entire country” between 1974 and 1991. In contrast, from 1991 to 2003, NRPA found “over \$6 billion has been spent for 16,000 projects across the United States, \$3.3 billion on bike-ped trail projects alone.”

#### MAINTAIN MANDATORY FUNDING

In the House appropriations committee, a motion by John Olver (D-Ma.) to “maintain the Transportation Enhancement set-aside under the Surface Transportation Program and ensure that funds could only be used for that program” was rejected by a vote of 33 to 29. Olver is the ranking minority member of the House transportation appropriations subcommittee.

In the committee report to the full House, Rep. Olver was joined by the ranking minority member of the Appropriations Committee, David Obey (D-Wis.) in expressing the view that “[t]he future of the TE program is more appropriately left to the Authorizing Committee, as it debates the highway reauthorization,” rather than effectively repealing the TE program for Fiscal Year 2004 in an appropriations bill. Moreover, Olver and Obey noted that Section 114 in this appropriations bill was “contrary to the request of the Bush Administration which proposed to continue the TE programs in its highway reauthorization proposal.” The current authorizing legislation for federal transportation funding from 1998, the Transportation Equity Act for the 21st Century (TEA-21) expires on Sept. 30, 2003.

Olver and Obey recommended that “Section 114 of the Committee bill should be removed so that funding continues to be dedicated for these vital TE projects.” Absent such action, Olver and Obey were concerned that Section 114 of H.R. 2989 would deprive “thousands of communities” federal matching funds for “transportation enhancement projects such as bike and pedestrian trails, streetscape renovations and rail-to-trail conversions.” In so doing, according to Olver and Obey, H.R. 2989 would strip transportation enhancement projects of “the funding guarantee that was put in place a dozen years ago” under the “Intermodal Surface Transportation Infrastructure Act of 1991” (ISTEA). As

characterized by Olver and Obey, “the dedicated funding Congress provided to TE projects over the past twelve years” was designed to “help communities expand transportation choices.”

Congress, in both ISTEA and TEA-21 [Transportation Equity Act for the 21st Century] determined that a small portion--about 2%--of our \$31+ billion highway program should go to TE projects. TE funds can be used for safe bicycle and pedestrian facilities, the conversion to trails of abandoned railroad rights of way, renovating streetscapes, scenic routes, beautification, and other investments that increase recreation opportunity and access...

The American Association of State Highway and Transportation Officials (AASHTO) recently said in support of TE funding, “This program is popular with many States because it contributes to projects that add to the quality of life and directly affects projects in localities. To date over fifteen thousand projects which range from bike paths to historic bridges have been built at the community level. It is one of the most popular TEA-21 programs.”

In a July 24, 2003 press release, Congressman Olver reiterated his support for “a federal transportation enhancement program that funds quality-of-life transportation projects, such as bike and pedestrian trails, rail trails, downtown streetscapes, scenic highways and tourism facilities.” When H.R. 2989 “goes to the House floor.” Olver vowed “fight hard to maintain current law which guarantees funding for enhancements.” According to Olver, “[t]he current language in the House bill” is “unsound and shortsighted,” representing “an effort to kill enhancements.” Olver noted further that “momentum is building to maintain the guarantee of funds for transportation enhancements.”

Ultimately, any transportation spending bill passed by the House would have to be approved by the Senate. Many of the categories of transportation enhancement activities referred to as “nice to have,” but viewed as expendable in the House committee report, particularly historic preservation and tourist facilities, were originally proposed by the Senate in the ISTEA and TEA-21 authorizing legislation. In light of such legislative history, the Senate might be expected to resist any House attempt to undermine funding for transportation enhancement activities.

## BRING HOME THE BACON

When he was Speaker of the House, the late "Tip" O'Neil is reputed to have said that "All politics is local." When it comes to federal funding for highway construction projects, even fiscal conservatives like Ernest J. Istook Jr., (R-Oklahoma), the author of Section 114, are not above “bringing home the bacon” for their local constituents. In 2003, Istook assumed the chairmanship of the House appropriations subcommittee with jurisdiction over funding for transportation, including transportation enhancements and surface transportation projects.

In July 2001, Istook’s campaign committee reported that Istook was committed “to get as much federal money as possible committed specifically to the [Crosstown Expressway] project” in Oklahoma City. Istook himself has characterized this single highway construction project as “an expensive undertaking,” costing approximately \$300 million, an amount which “would consume Oklahoma’s state highway budget for an entire year.”

To be constructed along four miles of an existing railroad corridor, the Oklahoma transportation department (Okladot) describes the Crosstown Expressway as “a 10 lane, at grade or slightly below grade facility with express lanes, easy access to downtown and the capacity to handle 70 mph traffic” estimated at 140 thousand vehicles per day. According to Okladot, “[a]dditional enhancement features are planned for inclusion that will benefit the community including a park, pedestrian bridge, and sound wall.”

According to Okladot, the pedestrian bridge will provide neighborhood access to a nearby historic train station. Critics of the project counter that the planned alignment of the highway will destroy the historic train’s station’s rail yard in a time when “other regional communities are saving and re-using their stations.” In response, Okladot claims “[t]he integrity of the Historic Train Station will be maintained... allowing the interstate and railroad to provide transportation services in the same corridor.”

Presumably, at an overall cost in excess of \$300 million for the entire project, these planned “enhancement features” would fall far short of the requisite 10 percent set aside for transportation enhancement activities mandated under 23 U.S.C. 104(b)(3). Moreover, the sound wall would not qualify as a “transportation enhancement activity” as defined under 23 U.S.C. 101(a)(35).

A May 28, 2003 press release by Istook described how Transportation Secretary Norman Mineta had accompanied Istook on a tour of “Oklahoma’s most critical transportation projects” including the “I-40 Crosstown Expressway in Oklahoma City.” Interestingly, when Mineta was a member of Congress, he sponsored the ISTEA legislation which created the mandatory set asides for transportation enhancement activities now opposed by Istook. As noted in the press release, Istook reiterated to Mineta on his visit to Oklahoma City that “securing the remaining \$250 million [for the Crosstown Expressway] is among his top priorities.”

Concurrent with his efforts as subcommittee chairman to strip mandatory set asides for transportation enhancements from the Fiscal Year 2004 spending bill, Istook announced in a July 11, 2003 press release that the proposed appropriations bill had \$13,266,000 earmarked for “Oklahoma’s largest project—the I-40 Crosstown Expressway.” Moreover, Istook said “additional funds can come from the extra undesignated \$50-million the state will get.” Further, Istook said, “there is a very good possibility that additional funds for I-40 will be allotted in the final House-Senate conference version of the bill.”

On July 30, 2003, in an article entitled “Bike trails' roadblock,” the Boston Globe described Istook as “a huge supporter of highways,” noting that “a quarter of his 2001-02 political contributions came from transportation and petroleum interests.” While “Istook originally wanted to kill outright the 10 percent rule for enhancements,” according to the Boston Globe, “Istook said he would leave the 10 percent up to the states” following “an outcry by rails-to-trails proponents.” Istook’s press secretary told the Boston Globe that “the cut was necessary during the national budget crunch and at a time when roads and bridges badly need repairing,” e.g., the existing I-40 Crosstown Expressway in Oklahoma City. In response, the Boston Globe reported that John Olver’s press secretary “dismissed that rationale,” saying that Istook “wants to pave the world with concrete’.”

CONGRESS GOT THE MESSAGE

Despite chairman Istook's opposition to mandatory funding in the 2004 spending bill, the above described minority views of Olver and Obey in the committee report ultimately prevailed. When Congress returned from its summer recess, the full House, by a vote of 327 to 90, passed a bipartisan amendment to provide \$820 million for Transportation Enhancements in the 2004 spending bill. In so doing, a number of representatives on both sides of the aisle spoke eloquently in support of transportation enhancements. This debate, however, will continue as the Senate considers the 2004 spending bill for transportation project. Moreover, the future of the existing 10% set aside for transportation enhancement activities is just one item to be considered by the Congress in a massive bill to reauthorize the existing legislation providing federal funding for transportation projects.