National Transportation Policy Commission Sees Major Role for Tolling and Pricing

By Edward J. Regan

Recognizing that transportation policy in the United States was moving toward a crossroads, with the future adequacy of transportation finance increasingly in doubt, the most recent national transportation reauthorization bill, SAFETEA-LU, mandated the establishment of two special commissions:

- National Surface Transportation Policy and Revenue Study Commission; and
- National Surface Transportation Infrastructure Financing Commission.

The Financing Commission is scheduled to deliver its recommendations and report in spring 2009. The Policy Commission, after two years of research, field hearings, and debate, released its report in January 2008 amid much fanfare. This article provides a brief overview of the Policy Commission's findings, with particular focus on the significant role the Commission sees for tolling and pricing in the future of U.S. transportation.

The Policy Commission's work is intended to provide transportation policy and finance recommendations to Congress as it debates the next six-year transportation bill in 2009. The report, titled *Transportation for Tomorrow*, includes several major policy recommendations that, if adopted, could significantly reshape the way the country builds, operates, maintains, and finances its transportation system.

The report has not, however, been without its critics. The Commission was chaired by the U.S. secretary of transportation, Mary Peters, who, along with two other Commission members, was among the paper's dissenters. The report includes a 10-page "minority view" explaining the reasons the three commissioners disagree with the report's findings. This dissenting view, among other issues, strongly recommends the increased use of (and fewer restrictions on) tolls and congestion pricing, the increased use of public–private partnerships, and a greater emphasis on transportation performance.

A Closer Look at Toll and Pricing Provisions

Both the Policy Commission's main report and the minority opinion see tolls and pricing as playing a major role in transportation finance and operations. The main report calls for relaxing certain restrictions on tolling but would make relatively few changes to the current limitations on interstate route tolling. "The Commission recommends that Congress remove certain barriers to tolling and pricing," the report says. "States and local governments should be given the flexibility to toll and/or implement congestion pricing."

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A key finding of the Commission, not disputed by the minority view, was that funding for all modes of transportation must be significantly increased in the future. The report also recognized the growing risks of relying on the motor fuel tax as the primary source of transportation funding and stressed that new sources of revenue must be introduced, especially over the long term.

The Commission notes that while tolls represent only about 5 percent of total transportation revenue in the U.S., new toll- financed facilities have accounted for almost 40 percent of new capacity in recent years. The group's projections for the total amount of funding needed after 2035 assume widespread use of congestion pricing, which will, in the Commission's view, reduce needed capacity expansion by 30 percent. In other words, without tolling and pricing, funding requirements would be much higher than those anticipated in the report!

The report includes two key recommendations regarding tolling in the near term:

- Flexibility should be given to use tolls to fund *new capacity* (emphasis added) on the Interstate Highway System, as well as to price the new capacity to manage its performance; and
- Flexibility should be given to implement congestion pricing on the Interstate Highway System, on both new and existing capacity, in metropolitan areas with populations greater than 1 million.

While adding some additional flexibility, the Commission's recommendations fall short in two critical respects. First, the reconstruction of our nation's aging interstate highways will absorb a huge proportion of transportation dollars in the future. Some states believe this may consume as much as 80 percent or more of total state transportation expenditures, and so the true need for tolling on interstates will be for reconstruction, not just capacity expansion. Hence, the Commission's limitation of "new capacity" could be a problem. Second, limiting congestion pricing to urban areas of more than 1 million could leave out many smaller regions that have congestion problems.

The new interstate route tolling flexibility would also come with some specific limitations:

- Revenue cannot be used for nontransportation purposes and must be used within the same corridor in which it is collected (this may limit the ability to pool toll revenues for new toll systems throughout an urban region);
- The use of tolls should be consistent with freight and overall urban mobility;

- The use of toll revenue should be transparent;
- Adequate facilities for the trucking industry must be provided;
- Rates should be set to avoid discrimination against interstate travelers or other groups;
- Tolls should be collected with automated technologies that do not interfere with traffic flows; and
- Decisions to toll facilities (or increase tolls) should explicitly consider the potential diversion of motor carriers (presumably trucks) onto local roads.

The Commission also recommends that Congress promote the development and use of a nationwide, uniform system of electronic tolling. Over the longer term, the group anticipates the replacement of tollbooths on most if not all toll roads.

The report also suggests encouraging the use of public–private partnerships (PPPs) for highways and other surface transport modes. "The Commission believes that public–private partnerships should play an important role in financing and managing our national surface transportation system," notes the report. "With respect to the interstate system, PPP arrangements that involve tolling or congestion pricing should be subject to the same limitations and conditions [as public agencies]." However, the Commission recommends that further conditions be set for PPP concessions on interstate routes, some of which include:

- Transparency in contract negotiations,
- Adequate facility maintenance and performance,

- No noncompete clauses,
- Caps on toll-rate increases,
- Revenue-sharing provisions, and
- Concessions should not exceed a "reasonable term."

The minority opinion took strong issue with the additional restrictions on tolling and pushed for even more flexibility for state and local governments. In addition, it emphasized the significance of the demand-management capability of pricing, and stressed the need to establish a better linkage between use of roadway capacity and payment.

Regardless of which position prevails, if the Policy Commission report is any indication, the new direction in transportation finance that emerges in 2009 is almost certain to embrace a greater level of tolling and pricing in one form or another—good news for the public- and private-sector toll industry in the U.S.

Commission Background

The Policy Commission consisted of 12 members, including, as previously mentioned, the secretary of the U.S. Department of Transportation (USDOT). Members were selected from the public and private sectors, representing federal, state, and local governments; the rail and trucking industries; academia; and the business community (see box). The group conducted its work over a period of about two years, submitting its report to Congress in January 2008.

The Policy Commission was authorized through Section 1909 of SAFETEA-LU, which noted, "It is in the national interest to preserve and enhance the surface transportation system to meet the needs of the United States for the 21st century." The group was charged with conducting a comprehensive study covering, among other items:

- The current condition and future needs of the surface transportation system;
- Short-term revenue sources;
- Long-term alternatives to the gas tax; and
- Revenue sources needed to adequately fund the system for at least 30 years.

The Commission was also tasked with developing a conceptual plan to ensure that the transportation system will function in the future, including possible changes in operational standards, federal policies, and legislation.

The Commission held several meetings and hearings in Washington, D.C., as well as field hearings in 10 cities around the country. The first of these was conducted in Dallas, immediately following the completion of the IBTTA Annual Meeting in September 2006.

During the field hearings, the commissioners heard testimony from

231 people, several of whom are quoted in the final report. Those providing testimony included this author; IBTTA's executive director, Patrick Jones; and several others representing different views of the toll industry.

A blue-ribbon panel of 77 experts was established to provide further technical assistance and reviews. More than 100 briefing papers were prepared at the request of the Commission on various topics. USDOT staff contributed much of the technical analysis used in the study.

A Bleak Funding Outlook

"Applying patches to our surface transportation system is no longer acceptable," notes the Policy Commission report. If action isn't taken, the Commission says, the nation's transport system will continue to deteriorate and congestion will continue to affect every mode of transportation. Excessive traffic delays will continue to waste public and private funds and transportation policies will remain in conflict with other national policy goals. "America's economic leadership in the world will be jeopardized when we cannot reliably and efficiently move our goods," notes the report.

Current capital investment in transportation nationally is about $86 billion per year for all surface modes. Yet the Commission projects that the average annual investment needs

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to be in the range of $241 billion to $286 billion in constant (2007) dollars through 2020, to meet the capacity expansion and reconstruction challenges of the next dozen years. This represents a threefold increase in today's funding levels, at a time when the purchasing power of the gas tax is diminishing due to inflation and increasing vehicle fuel efficiency.

The report suggests that the federal share of transportation funding should be maintained at about 40 percent of the total, a point highly contested in the minority opinion and opposing views expressed by various others since the report was released. The study points to an annual gap of $134 billion to $252 billion, notably larger than the $100 billion gap per year that has been forecast in other recent studies. Regardless of the figures used, there is general agreement that capital spending on transportation needs to be doubled or tripled, almost immediately, to meet the transportation needs of the 21st century. The report suggests that filling this gap entirely with the gas tax would require increases of $0.79 to $1.02 per gallon; the current federal gas tax is just $0.184 per gallon.

In one of the most talked-about provisions, the report recommends increasing the federal gas tax in a series of annual increases of $0.05 to $0.08 per year, a total increase of up to $0.40 per gallon by about 2013. Thereafter, the tax would be indexed to inflation in future years.

The minority view strongly contested this recommendation, not only the amount of increase, but also the continued reliance on the gas tax for two decades or more, which it claims is inconsistent with national energy policy. The dissenters question the wisdom of "propos[ing] to expand transportation capacity by increasing government taxation of a commodity

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whose consumption we seek to discourage." The minority view favors encouraging immediate use of increased tolling and road pricing, and the accelerated development of a permanent alternative to the gas tax.

The Commission believes the gas tax will continue to serve the nation through at least 2025, but that a new program will need to be developed over the next several years to ultimately replace it. The group singles out mileage-based user fees, also known as vehicle miles traveled (VMT) fees, as the most promising option. But the main Commission report cites a number of challenges that will need to be overcome and sets a nominal 20-year horizon for transfer from the gas tax.

The report does offer detailed recommendations that the next authorization legislation include a

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requirement for a two-phase comprehensive study and test programs for the VMT fee concept, to allow the start of the conversion in future "reauthorizations." The minority view endorses the VMT fee concept even more strongly, and suggests it could be fully deployed in a shorter time period, such as 10 years. It also, as noted earlier, cites the critical need to establish a more direct linkage between road use and the payment mechanism, which it contends will help manage demand and also serve as a better barometer of when new roads or new capacity is needed.

The Commission report and the minority opinion generally reach the same ultimate conclusion: that the days of the gas tax are numbered and that we are very likely to ultimately move to some form of direct road-user charging for all vehicle travel in the U.S. This has enormous implications for existing and future toll facility finance and operations. First of all, it is likely that at some point in the next 10 to 25 years (depending on which timeline you believe) all vehicles will be equipped for some type of road-user charging. If designed properly, these devices will likely be able to be used for open road tolling, thereby eliminating the need for video tolling and billing. It will also lead to the elimination of the "double taxation" issue, since road-user charges collected on toll facilities would go to the toll operator and no additional tax would be assessed based on fuel consumed while driving on the toll road.

In a sense, all roads would be toll roads, and there would likely be widespread use of congestion pricing. This would improve the competitive position of existing toll facilities versus alternative routes. The only difference might be the per-mile rate charged for toll facility use. It would also lead to more toll facilities, from both the public and private sectors.

This idea has been discussed for some time, but the Policy Commission's significant attention to the matter moves road-user charging a big step closer to reality. It now seems that the question is not *if* we move off the gas tax, but *when*.

Suggested Policy Shifts

The Policy Commission proposed the establishment of a new compact with the American people that is based more on performance and less on parochial and wasteful spending. "The Commission concludes that the current federal transportation programs should *not* be 'reauthorized' in their current form," cites the report in underscoring the need for a major policy refocus. "We must begin anew."

Nonetheless, the report recommends a continued strong federal role in planning and managing transportation in the U.S. This is one area where the Commission has received criticism from various sources, including USDOT secretary Mary Peters. Some of the recommendations would seem to increase the federal role in U.S. transport, such as a suggestion regarding the formation of a new, permanent national surface transportation commission (NASTRAC) that would be charged with implementing a national strategic transportation plan and recommend appropriate authorization and revenue levels to Congress. The Commission also noted a compelling need to substantially reduce the time it takes to implement new projects by streamlining the environmental process.

"The new user-financed federal surface transportation program the Commission proposes would be performance-driven, outcome-based, generally mode-neutral, and refocused to pursue activities of genuine national interest," the report notes in laying out a proposed vision and structure. A significant consolidation and refocusing of federal transportation programs is suggested, reducing the current total of 108 programs to the following 10 major programs:

1. **Rebuilding America:** *A National Asset Management Program.* A plan to keep the nation's infrastructure in a state of good repair in the most efficient and cost-effective manner possible. It would require states and local agencies accepting federal funds to develop and implement a program of asset maintenance.
2. **Freight Transportation:** *A Program to Enhance U.S. Global Competitiveness.* Freight industry forecasts suggest that freight volumes will increase 70 percent by 2020. In light of this projection, the report supports the creation and funding of a national freight transportation program and the development of a national freight transportation plan.
3. **Congestion Relief:** *A Program for Improved Metropolitan Mobility.* Congestion in urban areas costs the U.S. economy as much as $200 billion per year. In response, the Commission recommends establishing a distinct program to fund projects to reduce congestion in areas with populations of 1 million or more. Under the plan, the USDOT would set national

mobility standards for metropolitan areas. The report recognizes "that road pricing has great potential to reduce congestion and improve system efficiency." It also stresses the importance of making major investments in public transportation in the attack on congestion.

4. **Saving Lives:** *A National Safe Mobility Program*. The report puts major new emphasis on safety, noting that more than 3.3 million Americans have lost their lives in highway accidents over the past 100 years. This new focus on safety mirrors a pattern seen in other countries around the world. The Commission recommends that the USDOT establish national safety standards, starting with a goal to cut fatalities in half by 2025.
5. **Connecting America:** *A National Access Program for Smaller Cities and Rural Areas*. This program focuses on providing improved access to small but growing urban areas and the rural heartland that is home to most of the nation's natural resources and food production.
6. **Intercity Passenger Rail:** *A Program to Serve High-Growth Corridors by Rail*. The Commission feels that intercity passenger rail is a critical missing link in the nation's surface transportation system. It calls for development of a new passenger rail program between cities within 500 miles of each other.
7. **Environmental Stewardship:** *A Transportation Investment Program to Support a Healthy Environment*. While including strong recommendations for streamlining the environmental process to shorten project delivery times, the Commission suggests that an environmental stewardship

program be established, funded at 7 percent of the total federal funding level.

8. **Energy Security:** A *Program to Accelerate the Development of Environmentally-Friendly Replacement Fuels*. The report shows that net fuel imports increased from about 30 percent of U.S. consumption in 1980 to about 65 percent in 2005. In also noting concerns about greenhouse gas emissions, the report states, "the federal government has a vital interest in supporting initiatives that cost-effectively reduce the nation's dependence on petroleum for transportation." While not specifically mentioned in the report, a significant reduction in motor fuel usage will inevitably accelerate the demise of the gas tax as the primary source of transportation funding.
9. **Federal Lands:** A *Program for Providing Public Access*. This program deals with access to the 650 million acres of land under government control, such as national parks and recreation areas.
10. **Research, Development and Technology:** A *Coherent Transportation Research Program for the Nation*. The Commission recommends that dedicated funds be provided for transportation research and technology development.

The Commission also suggests redefining the Highway Trust Fund as the Surface Transportation Trust Fund, theoretically resulting in broader opportunities for intermodal spending. The mix of highway and transit funding would be driven by capital cost needs rather than predefined allocations and formulas. This is likely to be one of the more contentious recommendations and has already been a focus of opposition.

"If this proposal were implemented," said Robert Poole, director of transportation studies at the Reason Foundation, in the February 2008 edition of *Surface Transportation Innovations*, "the gas taxes we depend on to ensure modernized and expanded highways would be available for waterway projects, freight rail projects, high-speed intercity rail, and urban transit projects in villages and burgs of virtually any size."

Minority View

As frequently noted above, a strong "minority view" was expressed by three of the Commission members: Chair Mary Peters and Commissioners Maria Cino and Rick Geddes. These three Commission members declined to sign the full report, although they did agree with several of its points.

The minority opinion agrees, for example, that congestion is a significant issue facing the nation's urban areas, but the minority view places even

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greater focus on the problem and the urgent need to better align the country's revenue collection system for transportation with actual system usage. The opinion cites congestion pricing as the "essential element in a proper alignment of supply and demand." It also emphasizes that public opinion favors the greater use of tolling and pricing in lieu of increases in traditional fuel taxes.

The minority view refers to the current system as "an ineffective tax" and asserts that the imbalance between supply and demand in America's cities, which causes our congestion problems, is "attributable to…indirect pricing mechanisms [on] surface transportation facilities [that] bear little or no relation to system costs."

The minority view is particularly strong in suggesting that moving to a VMT tax system can be accomplished much sooner than the Commission suggests, claiming it could be implemented within a decade. The opinion emphasizes that the new system needs to be capable of varying rates by time of day and congestion levels.

As might be expected and as noted earlier, the minority rejects the recommendation for a major increase in the gas tax (up to $0.40 per gallon), but less due to the amount of the increase than to the continued reliance on a motor fuel tax.

The dissenting commissioners also oppose what they call an unnecessarily large federal role in transportation, and suggest that the creation of the proposed independent NASTRAC commission would be impractical. It is somewhat unlikely that either Congress or the Executive Branch would agree to cede authority to such a commission, they feel.

The minority view also questions the need to restrict pricing and PPPs: "Instead of creating additional regulatory barriers as contemplated in the Commission's report, the federal government should send a clear signal that it is willing to reward state and local innovators. Federal programs and regulations should be restructured so as to reward, not stifle, a focus on efficiency and system performance."

The Financing Commission

The "other commission" mandated by the new SAFETEA-LU, the National Surface Transportation Infrastructure Financing Commission, began its work much later than the Policy Commission and is scheduled to report its findings in the spring of 2009. It consists of

15 members, mostly from the private sector. Robert Atkinson, president of the Information Technology and Innovation Foundation, serves as commission chair.

This Commission will be focused almost totally on transportation funding and finance and is following a somewhat less formal meeting process. Rather than holding field hearings at remote locations, the Financing Commission has already issued an interim report intended to frame its challenge. The Commission is now soliciting input and comments from the transportation community and others in the public; comments should be submitted to commission staff director Jack Wells at Jack.Wells@dot.gov.

The Financing Commission's interim report, titled *The Path Forward: Funding and Financing Our Surface Transportation System*, is available at http://financecommission.dot.gov. The report provides a broad-based general overview of the situation. It states that current revenue is insufficient to maintain the national network and emphasizes that present funding mechanisms are not closely linked to system use. Among the report's preliminary observations are that the fuel tax is insufficient at current levels and that direct user charges should be explored in more depth.

The interim report specifically mentions tolls and congestion pricing as promising options, and the Commission will be investigating the role that technology can play in creating new financing options.

Road Map for a New Direction

The establishment of two important national commissions charged with helping to reshape transportation policy and finance in America reflects the growing concern about the current direction and outlook of transportation in the United States. Exactly how many of the commission recommendations will become reality is an open question, especially with a new administration taking office in 2009.

It is clear, however, that the Policy Commission with its final report has provided a road map for an important new direction that will no doubt frame the debate as the next national transportation bill is developed in 2009. Equally clear is that tolls and road pricing will play an enormously important role in the future of American transportation; the only uncertainties relate to the timing of the ultimate move off the gas tax and how long it will take for the last of the "restrictions" on the use of tolls to disappear.

The underlying fundamentals of the Policy Commission report, including a new focus on system performance and better alignment of revenue with system usage, promise to greatly benefit the increased use of tolling in the future. An increased reliance on public–private partnerships will just add to the movement.

While some holdover restrictions remain, the new direction forged by the Policy Commission bodes well for the toll industry, and the opinions expressed in the "minority view" reinforce this sentiment. It's going to be quite a ride, so fasten your seat belts!

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COMMISSION MEMBERS

National Surface Transportation Policy and Revenue Study Commission

The Policy Commission's 12 members are:

Mary Peters (chairperson), U.S. secretary of transportation

Jack Schenendorf (vice chair), of counsel, Covington & Burling

Frank Busalacchi, Wisconsin secretary of transportation

Maria Cino, former U.S. deputy secretary of transportation

Rick Geddes, director of undergraduate studies, Department of Policy Analysis and Management, Cornell University

Steve Heminger, executive director, Metropolitan Transportation Commission (Oakland, Calif.)

Frank McArdle, senior advisor, General Contractors Association of New York

Steve Odland, chairman and CEO, Office Depot

Patrick Quinn, co-chairman, U.S. Xpress Enterprises, Inc.

Matt Rose, CEO, Burlington Northern Santa Fe Railway

Tom Skancke, CEO, The Skancke Co.

Paul Weyrich, chairman and CEO, Free Congress Foundation

National Surface Transportation Infrastructure Financing Commission

The Financing Commission's 15 members are:

Robert D. Atkinson (chairman), president, Information Technology and Innovation Foundation

Martin L. Shultz (vice chairman), vice president, government affairs, Pinnacle West Capital Corp.

Donald F. Carmody, member, board of directors, Two Rivers Financial Group

Jeffrey C. Crowe, chairman of the board, Landstar System, Inc.

Mark Florian, managing director, Goldman, Sachs & Co.

Bryan Grote, principal, Mercator Advisors LLC

Bill Kennedy, Yellowstone County (Montana) commissioner

Mike Krusee, representative, District 52, Texas House of Representatives

Craig R. Lentzsch, vice chairman, American Bus Association, and a director of Coach America Holdings, Inc.

Dana Levenson, managing director and head of North American infrastructure, The Royal Bank of Scotland

Adrian Moore, vice president of research, Reason Foundation

Kathy Ruffalo-Farnsworth, government affairs consultant

Elliot Sander, executive director and CEO, (New York) Metropolitan Transportation Authority

Zack Scrivner, council member, Ward 7, Bakersfield City (California)

Geoffrey S. Yarema, partner in the law firm of Nossaman Guthner Knox & Elliott LLP