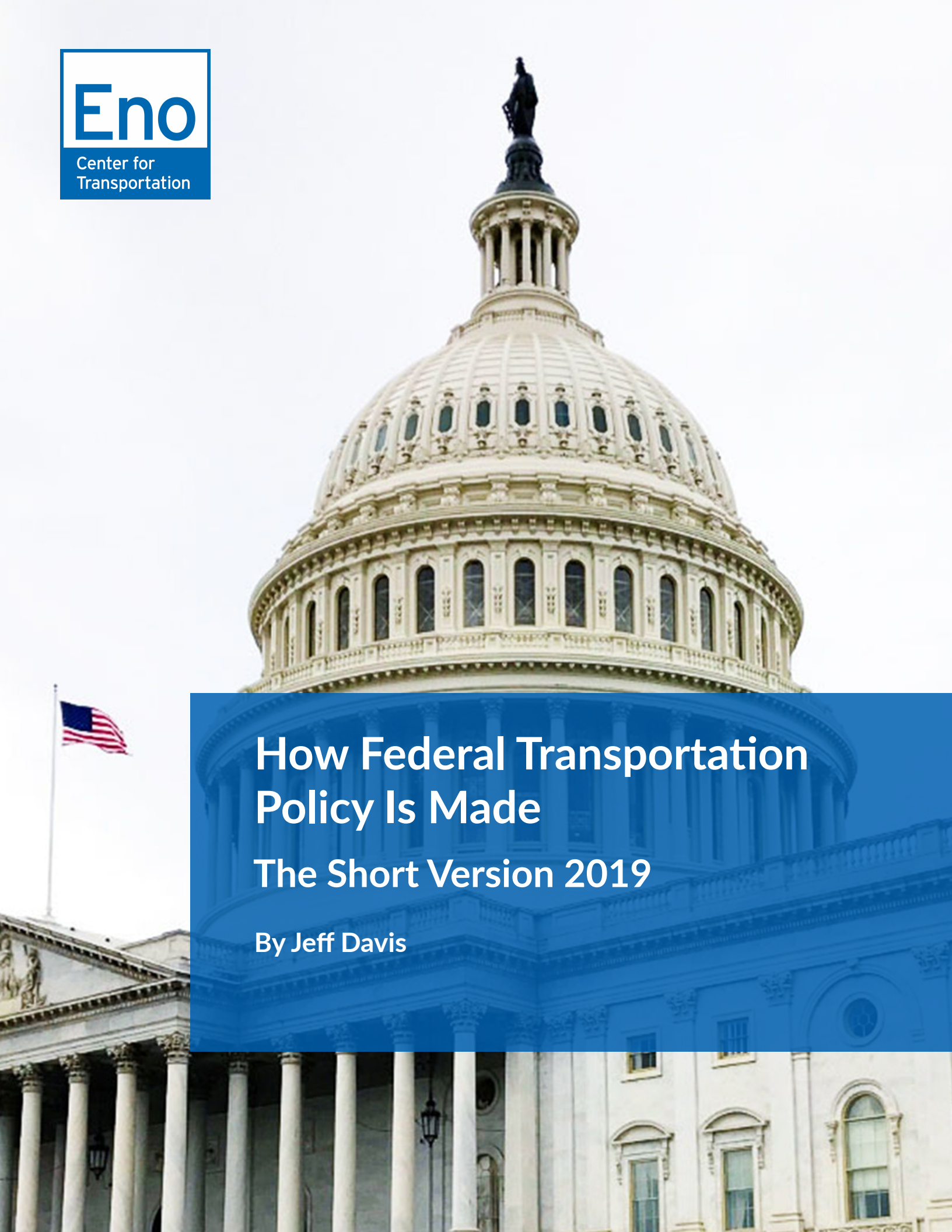


Eno
Center for Transportation

How Federal Transportation Policy Is Made

The Short Version 2019

By Jeff Davis

Introduction

The main focus of this document is to give each Eno Fellow a basic understanding of how federal transportation policy is made prior to attending the Eno Future Leaders Development Conference.

The topics included in this document are considered the foundation that will be built upon during the conference.

Glossary

Overview

The concept of federal government "transportation policy" is largely a post-WWII phenomenon. An influential 1948 report from the Brookings Institution summarized:

> The nation's transportation system, composed of railroad, highway, pipeline, water, and air facilities, is the product of a unique joint undertaking. Private enterprise has supplied much of the inventive genius, the production technology, and the managerial drive that has given direction and impetus to the development of the newer forms of transportation. And, until recently, the private investor has furnished the bulk of the capital required to finance experimentation, the launching of new enterprises, and their subsequent expansion. Public enterprise, on the other hand, has supplied a substantial part of the basic facilities over which private equipment has operated, and has participated in a number of other ways in the transport revolution. The federal government has gradually assumed major and controlling responsibility for both the regulation of all transport agencies and for the programming and financing of airports, airways, waterways, highways, and ocean shipping. In fact, the federal role in transportation has grown in scope and magnitude to a point where federal policy exerts a dominant influence on the future role of transportation in the national economy.

Federal policy decisions before WWII were mode-based and were a mixture of proactive and reactive. Federal public works policy was largely proactive, starting with the First Congress's nationalization of lighthouses (the first man-made transportation infrastructure in the U.S.). Henry Clay's "internal improvements" in the 1820s brought direct federal involvement in river and harbor improvements and indirect financial subsidies, through land grants, for canals. Further land grants were made to spur railroad development, culminating in the Pacific Railroad Act of 1862.

The success of the transportation modes resulting from proactive federal public works policy resulted in reactive federal transportation regulation policy. The steamboat industry took over traffic on those improved rivers and harbors and grew so popular that an epidemic of catastrophic boiler explosions resulted in the Steamboat Act of 1852 regulating boat safety. The success of the railroad industry led to complaints of excessive rates charged by monopolistic railroads, which (after state regulation of interstate railroad rates was held unconstitutional by the Supreme Court in 1886) led to the Interstate Commerce Act of 1887, regulating railroad rates and service. Complaints by rail labor unions led to the Railroad Safety Appliance Act, the first railroad safety regulation, in 1893.

Overview

Federal policies often fed on themselves. Federal Post Office policy (remember that the Post Office was an integral part of the federal government, with the Postmaster General as a Cabinet member, until 1971) played a major role in transportation development. The advent of mail delivery to rural homes in 1896, and the first carriage of freight by mail (Parcel Post) in 1913, helped induce demand for better roads that led to the first program federal aid to states for road improvement in 1916. The companies hired by the Post Office in 1926 to fly Air Mail and given lucrative monopoly routes became United, American, Delta, Eastern, Northwest, TWA, and other airlines which later (at Post Office encouragement) began carrying passengers as well.

Starting in the Truman Administration, federal policymakers began to think of "transportation" as a more holistic concept that included the regulation of transportation economics and safety, the promotion of the development of transportation industry, and the provision of the public works upon which transportation operated. This move to unify transportation as a concept culminated in the creation of a Cabinet-level U.S. Department of Transportation in 1967 with responsibility for public works provision, safety regulation, and promotional activity across all modes of transportation.

Economic regulation of transportation remained lodged in several independent, quasi-judicial regulatory commissions. But it was the unification of transportation as a concept that eventually allowed Congress to pass three separate laws completely deregulating the economics of aviation and of trucking, and partially deregulating railroad economics, over the 1978-1980 period.

The most important thing to remember about federal policy is that it is governed by Isaac Newton's First Law of Motion – policies already in existence tend to stay in existence, and proposed changes in policy tend to remain proposals. Change is difficult. A large variety of actors influence federal transportation policy.

The President

The President is the head of the executive branch and influences transportation policy in a variety of ways. The President has four Constitutional levers of power:

1

Veto

The ability to sign or veto legislation and thereby determine if it needs a simple majority vote or a two-thirds vote of Congress to become law, which in a narrowly-divided two-party system can have a drastic effect on the content of the legislation.

2

Nominate

The ability to nominate a Secretary of Transportation and other key subordinate USDOT officers.

3

Fire

The ability to fire said Secretary and other key subordinate officers.

4

Give Orders

The ability, as head of the executive branch, to (within legal strictures) give orders to executive branch officials and expect to have them obeyed.

In carrying out those duties, where domestic policy is concerned, the White House has a Domestic Policy Council that is manned by White House policy staff and run by the Assistant to the President for Domestic Policy. (Daniel Patrick Moynihan was the first occupant of this role, in 1969.) The degree to which this staff matters varies from President to President.

Probably more important is the Office of Management and Budget (OMB). Not only is the "budget" part of the name important – OMB controls how much money each Department can ask Congress for each year, and also controls the release of that money to agencies after its appropriation, on the way back to the agencies – but the "management" part is also key. Every proposed policy, legislation, regulation, letter to Congress, and testimony to Congress made by a Cabinet Department must be approved by OMB before it can be move forward.

Likewise, OMB is in charge of coordinating Statements of Administration Policy on proposed bills in Congress, coordinating between Cabinet Departments, and also is in charge of the formal recommendations to the President on behalf of the entire Administration on whether or not he should sign individual bills into law.

The Department of Transportation

A U.S. Department of Transportation was created by Act of Congress in 1966 (although attempts were made as early as 1946) and took effect on April 1, 1967. By law (49 U.S.C. §301), the Secretary of Transportation shall:

1

Exercise Leadership in Transportation Matters

Under the direction of the President, exercise leadership in transportation matters, including those matters affecting national defense and those matters involving national or regional emergencies;

2

Develop Transportation Policies

Provide leadership in the development of transportation policies and programs, and make recommendations to the President and Congress for their consideration and implementation;

3

Coordinate Intermodal Policies

Coordinate Federal policy on intermodal transportation and initiate policies to promote efficient intermodal transportation in the United States;

4

Gather Information

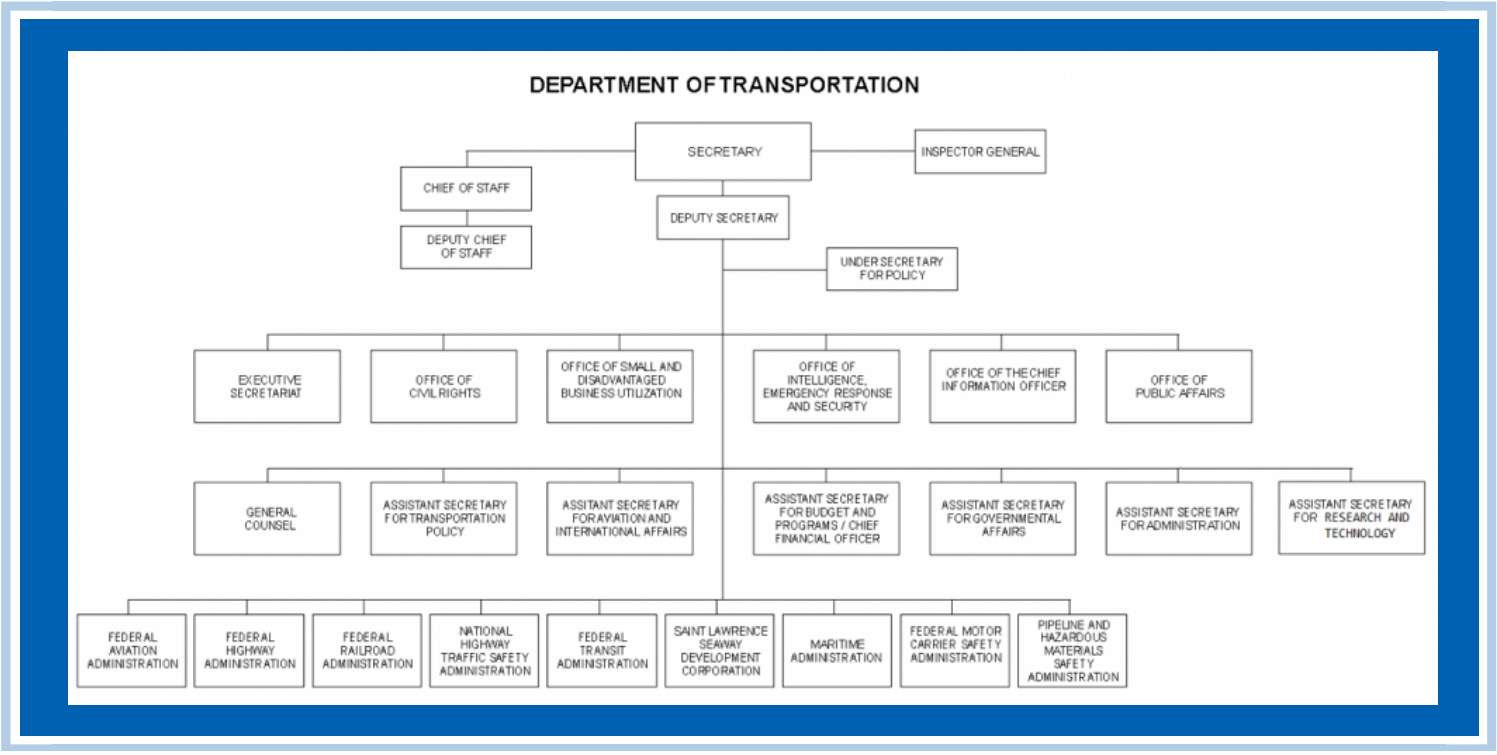
Promote and undertake the development, collection, and dissemination of technological, statistical, economic, and other information relevant to domestic and international transportation;

In practice, it's not that simple. Yes, the Secretary has an Under Secretary for Policy, who then oversees an Assistant Secretary for Transportation Policy and an Assistant Secretary for Aviation and International Affairs. But most of the technical policy expertise is under the various modal administrations, each of which is headed by an Administrator who answers to the Secretary. (See graph on next page)

The Federal Highway Administration, the Federal Aviation Administration, the Federal Transit Administration, and the Maritime Administration each existed (sometimes under different names), beforethe creation of USDOT. (The Maritime Administration was not moved to USDOT until 1983.) All have their own cultures that have never fully merged with a DOT-wide sensibility. The FAA maintains a degree of independence from the Secretary because, by law, the Secretary cannot override the safety-related decisions of the FAA Administrator, and because air traffic control has been made a quasi-separate performance-based organization that runs itself to a degree. (And the FAA has its own separate headquarters building a mile and a half away from USDOT, which helps maintain a feeling of independence.)

The Department of Transportation

Moreover, Congress provides funding that flows directly to each modal administration without going through the Secretary's office, which can make it difficult for the Secretary to influence some of the fiscal decisions made at the modal level. And every Secretary since the first one has complained that they can't get their policy proposals cleared by OMB.



Funding

In the current fiscal year (2019), Congress has provided USDOT with $87.9 billion in funding. The bulk of the money comes from trust fund accounts financed largely with user tax payments or user fees (the Highway Trust Fund pays for the bulk of highway and transit spending, the Airport and Airway Trust Fund pays for the bulk of aviation spending, and various other trust fund or other special fund accounts pay for pipeline and harbor/seaway spending).

In Congress, the Appropriations Committees have complete control over general fund moneys. The transportation policy committees have varying degrees of control over trust fund moneys.

(Millions of dollars of FY 2019 budget authority)	General Fund	Trust Fund	Total USDOT
Office of the Secretary (BUILD grants)	900	0	900
Office of the Secretary (everything else)	166	315	481
Federal Aviation Administration	1,077	16,375	17,452
Federal Highway Administration	3,250	46,008	49,258
Federal Motor Carrier Safety Administration	0	667	667
Federal Railroad Administration	2,874	0	2,874
Federal Transit Administration	3,474	9,939	13,414
Maritime Administration	1,115	0	1,115
National Highway Traffic Safety Administration	204	1,104	1,308
Pipeline and Hazardous Materials Safety Administration	82	193	275
St. Lawrence Seaway Development Corporation	0	36	36
Office of Inspector General	93	0	93
TOTAL	13,235	74,637	87,872

Congress

For policy expertise, Congress can rely on three agencies of the legislative branch: the Government Accountability Office (GAO – established in 1921 as the federal auditing body but which also performs investigations and analyses at the request of Congress), the Congressional Research Service (CRS – a think tank within the Library of Congress established in 1947 to provide Congress with policy expertise) and the Congressional Budget Office (CBO – established in 1974 to help Congress analyze the fiscal impact of budgets and legislation).

Every Representative and Senator has a small staff of legislative assistants. If transportation is particularly important to a Member, there will be an assistant for whom transportation is their sole responsibility, but in most offices, each assistant has to share several different policy areas.

Most policy expertise in Congress resides in the professional staff of the standing committees, which are responsible for drafting legislation, organizing hearings at which outside input is received, and moving legislation through the House and Senate.

Historically, Congress creates committees as needed to address emerging areas of concern:

Inland Waterways

The House created a Committee on Roads and Canals as far back as 1815 and made it permanent in 1931, though it rarely dealt with roads. It was renamed the Committee on Railways and Canals in 1869. The Senate Roads and Canals Committee was created in 1820. Eventually those panels were absorbed by the Commerce Committees.

Railroads

The Senate and House created Committees on Pacific Railroads in 1863 and 1865, respectively, and created committees on railroads generally in 1869 (see above) and 1873, respectively. After the Commerce Committees started regulating railroads under the Interstate Commerce Act of 1877, these were later absorbed by the Commerce Committees.

Rivers and Harbors

River and harbor bills started under the Commerce Committee, but the House gave them their own committee in 1883

Highways

The House created a Committee on Roads in 1913. The Senate did not, so the 1916 law creating the federal-aid highway program was approved in that chamber by the Senate Committee on Post Office and Post Roads.

Transit

The federal role in mass transit did not emerge until the 1960s as an offshoot of federal urban development policy, which was an offshoot of federal public housing policy, which was in turn an offshoot of the federal role in housing policy in general. Since the first federal housing policy was home mortgage guarantees, mass transit policy started in the House and Senate banking committees.

Homeland Security

After 9/11 and the creation of a Department of Homeland Security, both chambers tried to rearrange some jurisdiction to accommodate the new Cabinet structure. The House was more successful than the Senate.

Congress

There were a number of times Congress reorganized the committee structure, highlighted below.

1946
The Great Consolidation

The Legislative Reorganization Act of 1946 drastically reduced the number of committees in the House and Senate (the Senate went from 33 committees to 15 and the House went from 48 committees to 19). And the House and Senate jurisdictions were made largely identical. At the time, the prevailing theory was the Robert Moses view that all public works were alike and interchangeable, so the various committees on roads, public buildings, rivers and harbor navigation improvements, and flood control levees and dams were combined into House and Senate Committees on Public Works. Jurisdiction over transportation, meanwhile (aviation, railroads, trucking, inland waterways) stayed in the Interstate and Foreign Commerce Committees (except that merchant marine transportation had its own committee in the House).

1974
The House Consolidates Further

As part of the post-Watergate reform movement, the House in 1974 decided to make its committees make more sense. Since a Department of Transportation had been created in 1966, transportation was in the forefront of people's minds, so the Public Works Committee was expanded into a Public Works and Transportation Committee and was given jurisdiction over transportation generally, and aviation specifically. But railroads were kept in the Commerce Committee.

1977
The Senate Tries and Fails

The Senate tried and failed to make a dent in its outdated committee jurisdictions in 1977. A Senate committee voted down proposals to move transit jurisdiction out of Banking or to move highways out of Public Works. Public Works was given a more environmental focus and became Environment and Public Works.

1995
The House Goes Even Further

In 1995, the House took away railroad jurisdiction and gave it to Public Works and Transportation, which was then renamed Transportation and Infrastructure (T&I). The House also abolished the Merchant Marine Committee and gave the non-defense side of the Maritime Administration, as well as the Coast Guard, to T&I.

Congress

Today, jurisdiction over transportation is assigned to a hodgepodge of different committees, particularly in the Senate:

Policy	House	Senate
Transportation, generally	Transportation & Infrastructure	Commerce, Science & Transportation
Aviation (FAA)	Transportation & Infrastructure	Commerce, Science & Transportation
Aviation security (TSA	Homeland Security	Commerce, Science & Transportation
Highway funding (FHWA	Transportation & Infrastructure	Environment & Public Works
Motor carrier safety (FMCSA)	Transportation & Infrastructure	Commerce, Science & Transportation
Vehicle safety (NHTSA)	Energy & Commerce	Commerce, Science & Transportation
Mass transit, generally	Transportation & Infrastructure	Banking, Housing & Urban Affairs
Mass transit (WMATA)	Oversight & Government Reform	Homeland Security & Govt. Affairs
Railroads (FRA and STB)	Transportation & Infrastructure	Commerce, Science & Transportation
Maritime (Coast Guard)	Transportation & Infrastructure	Commerce, Science & Transportation
Maritime (MARAD)	Transportation & Infrastructure	Commerce, Science & Transportation
Annual appropriations	Appropriations	Appropriations
Trust funds and taxes	Ways and Means	Finance

Federalism

The involvement of the federal government in transportation policy cannot be compared directly to most other nations because of the American system of reserved state sovereignty (Switzerland is the only OECD peer nation with reserved sovereignty at the canton level, and Canada, Australia and Germany have some autonomy at the provincial level as well.)

The federal authority to regulate transportation is confined to the grant of authority in the Constitution "to regulate Commerce with foreign Nations, and among the several States." The Constitutional grant of authority to "establish Post Offices and post Roads" was also important. Federal regulatory authority over transportation is confined to interstate commerce.

However, federal authority under the Spending Clause of the Constitution "to pay the Debts and provide for the General Welfare of the United States" is quite broad. During debate on the first good roads act in 1916, Congress could not agree whether or not it was constitutional for the federal government to build roads directly on state land – but they could agree that Congress had the power under the Spending Clause to give states money so states could improve roads themselves. This is why it's called the "Federal-aid highway program" not the "Federal highway program." And in areas where Congress lacks authority to regulate, it can still coerce behavior by attaching conditions to grants made under the spending clause (this is how the Federal Transit Administration is able to force states into mass transit safety standards even though they lack authority to regulate strictly local transportation – because if they don't comply with the safety standards, they don't get their grant money).

As a result, the only transportation infrastructure that is actually owned by the federal government is that which is directly involved in interstate and foreign commerce – dams and levees on rivers and inland waterways, air traffic control, lighthouses and other radio-based aids to navigation, the St. Lawrence Seaway – as well as the infrastructure on federally-owned lands. Other infrastructure – almost all highways and bridges, all mass transit systems, and all non-Amtrak railroads – is owned by state and local governments, or private entities."(See this excellent Congressional Budget Office report on how federal, state and local governments have divided spending responsibility for transportation infrastructure over the last 60 years.)

For this reason, the most powerful outside groups in transportation policy tend to be those that speak for the state and local governments who own the assets, perform the work, and have come to expect massive amounts of federal subsidies each year. The American Association of State Highway and Transportation Officials (AASHTO) is the organization of state DOTs. AASHTO technical knowledge and standard-making is often co-equal to that of the Federal Highway Administration. The American Public Transportation Association (APTA) represents the local government mass transit agencies. Both AASHTO and APTA have significant input into proposed changes in policy in their respective fields.

Outside Groups

Congress and the Administration also rely on outside groups for policy expertise:

Trade associations and lobbyists

Washington is home to a bewildering number of trade associations, the largest of which report data on their sectors and utilize the expertise of their membership to produce substantive policy proposals. They also employ in-house lobbyists and hire outside lobbyists to help promote their views. Some of these associations are industry-wide, including the Association of American Railroads (freight railroads), Airlines for America (airline industry), American Trucking Associations (large trucking companies), for example.

But there are many smaller associations. Just ask a basic question like "how should we build this road or bridge?"

- The American Society of Consulting Engineers and the American Council of Engineering Companies will give advice on how to design the project.
- The American Concrete Pavement Association, the National Asphalt Pavement Association, the Portland Cement Association, the National Ready Mix Concrete Association, the National Stone, Sand and Gravel Association, the Concrete Reinforcing Steel Institute, the American Iron & Steel Institute, the Precast/Prestressed Concrete Institute, and the National Steel Bridge Alliance will advise you on materials (sometimes contradicting each other).
- The Laborers' International Union of North America, the International Union of Operating Engineers, and the United Brotherhood of Carpenters & Joiners will tell you that you had better use organized labor on the project, preferably with a project labor agreement.
- The Association of Equipment Manufacturers and the Associated Equipment Distributors will tell you how to get the heavy equipment needed to build the project.

AASHTO, APTA, the big trade associations, the small trade associations, and organized labor generally agree on one big thing – increasing federal funding for transportation infrastructure helps all of them, under the "a rising tide lifts all boats" theory. This is the main reason why spending from the federal Highway Trust Fund increases each year even though the dedicated excise taxes that are deposited into the Trust Fund have not been increased in over 20 years.

Outside Groups

Trade associations and lobbyists

Individual entities have lobbyists as well. The largest corporations involved in transportation and infrastructure (Boeing, General Electric, UPS and FedEx, the individual airlines and railroads, 3M, Caterpillar) are many times larger than the smallest trade associations and have huge staffs of in-house lobbyists who are constantly in contact with the Administration and Capitol Hill. And the largest cities and states often have their own individual DC-based lobbyists, working closely with their respective Congressmen and Senators

TRB

The Transportation Research Board of the National Academies of Science, Engineering and Medicine (TRB) is a quasi-governmental clearinghouse for technical transportation research and some policy research as well. Founded 99 years ago as the Highway Research Board, it has over 200 standing committees that address all modes of transportation and perform peer-reviewed research.

Think tanks

There are several non-profit research foundations that provide institutional expertise and policy ideas on transportation. Some are broad-based across many issues but also discuss transportation (moving from left to right, roughly: Center for American Progress, Urban Institute, Brookings Institution, Bipartisan Policy Center, Hudson Institute, Competitive Enterprise Institute, and Heritage Foundation, with the Reason Foundation and the CATO Institute out there on the libertarian flank).

Other think tanks are focused on transportation specifically, usually with a particular ideological or modal focus (Transportation for America promotes the “smart growth” (anti-sprawl) agenda, MobilityLab focuses on demand management, etc.). And, of course, the Eno Center for Transportation focuses on all modes of transportation at all levels of government.

Links to More Information

- National Transportation Library of the Bureau of Transportation Statistics
- Recent Congressional Research Service reports on transportation
- Recent Congressional Budget Office reports on transportation
- Recent Government Accountability Act reports on transportation
- Recent Transportation Research Board reports
- Eno's Documentary History of the Creation of the Department of Transportation

ETW's Pre-1960s Attempts to Create a U.S. Department of Transportation:

- Part 1: Defining "Transportation" 1923-1942
- Part 2: the Federal Transportation Agency of 1946
- Part 3: the Hoover Commission Task Forces (Robert Moses vs. the Brookings Institution)

ETW's What's the Purpose of Mass Transit (Transportation, or Urban Development?)
Part 1, Part 2, Part 3, and Part 4

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