

Federal Transportation Funds
Effectiveness and Transparency Report

FINAL REPORT

Washington State Legislature
Joint Transportation Committee
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EXECUTIVE SUMMARY

The 2012 Supplemental Transportation budget (Engrossed Substitute House Bill 2190, Section 204 (8)) directed the Joint Transportation Committee to review the process by which federal transportation funds are determined to be available and programmed on projects.

The budget proviso requiring this study was enacted, in part, as a reaction to significant changes in federal funds proposed by the Washington State Department of Transportation (WSDOT) in February 2012. However, it also reflects a long-standing and continuing interest in improving transparency.

Findings: WSDOT has been effective at ensuring that Washington State maximizes its use of federal funds. WSDOT can improve the transparency of its processes and by doing so could help strengthen external decisions on programming transportation funds, including federal funds. WSDOT's internal prioritization processes are consistent with policy guidance, however increased communication could promote more data-driven decisions by the Legislature. Finally, legislative earmarks of appropriations of federal funds for new or small local projects creates a risk that federal funds will be lost, due to tight deadlines and considerable requirements imposed by the federal government. WSDOT advises that the use of state funds for such projects would provide greater flexibility.

Process: Four meetings were held on the federal aid highway program, addressing federal funding basics, the role of the FHWA, federal planning requirements, and programming and prioritization processes at WSDOT. In attendance was staff with federal funds responsibilities at WSDOT, Federal Highways Administration, the Office of Financial Management, and the Legislature. In addition, representatives from the Association of Washington Cities, Washington State Association of Counties, and the Puget Sound Regional Council attended at least one meeting each.

Background: The background information provided during the meetings is summarized in the body of this report and covers federal authorization, apportionment, obligation authority, and planning requirements; WSDOT's multiple jurisdictional requirements; transportation revenue forecasting; project prioritization; and federal grant and loan processes. All materials are posted on the JTC website at:
<http://www.leg.wa.gov/JTC/Pages/FederalFundsProject.aspx>

Recommendations:

- i. JTC should facilitate the convening of a regular federal funds forum, including WSDOT, OFM, and legislative staff, for information-sharing about federal funds availability, programming, and other relevant developments.
- ii. WSDOT consultation with OFM and the Legislature on federal funds-related issues should consistently include staff as well as elected officials.

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- iii. No recommendation is made regarding current process of predicting the availability of federal funds.
- iv. WSDOT should consult and update both OFM and the Legislature regarding how they are planning to use any new funds coming available through savings or redistribution from other states. Improved external communications on project prioritization more generally could help meet this objective.
- v. WSDOT should seek timely input from OFM and the Legislature when applying for federal grants or loans that will drive policy changes.

INTRODUCTION

The 2012 Supplemental Transportation budget directed the Joint Transportation Committee to review the process by which federal transportation funds are determined to be available and programmed on projects.

Engrossed Substitute House Bill 2190, Section 204 (8) reads as follows:

"(8)(a) The joint transportation committee shall convene a study group to evaluate the effectiveness, transparency, and priorities by which the department of transportation expends federal transportation funds. The study group must include representatives from the department of transportation, the office of financial management, and local representatives of the federal highway administration. The study group shall make recommendations on how to:

- (i) Make the process for programming federal funds more transparent;*
- (ii) Evaluate assumptions used to predict the availability of federal funds in future biennia and how those funds will be programmed between different federal funding programs;*
- (iii) Develop a process for linking statewide priorities to distributing federal funds from project savings and the redistribution of federal funds from other states; and*
- (iv) Develop a process for incorporating stakeholder feedback when developing federal grant and loan applications."*

The budget proviso requiring this study was enacted, in part, as a reaction to significant changes in federal funds proposed by WSDOT in February 2012. The enacted 2012 Supplemental Transportation Budget adopted WSDOT's proposal and increased federal funds appropriations to WSDOT's highway improvement program by \$340 million for the 2011-13 biennium, a 75% increase.

While the WSDOT proposal was adopted in the enacted 2012 Supplemental Transportation Budget, the timing of the proposal limited the ability of the Legislature to evaluate whether there were other options for programming the increased federal funds. The budget proviso directing this study reflects a long-standing and continuing interest in improving transparency and the consequent strength of legislative decisions.

Process

To accomplish the goals of the proviso, four meetings were held during the summer and fall of 2012. The first three meetings were widely attended, including staff with federal funds responsibilities in administration, forecasting, programming, budgeting, and planning. Staff represented WSDOT, FHWA, OFM, and the Legislature. In addition, representatives from the Association of Washington Cities, Washington State Association of Counties, and the Puget Sound Regional Council attended at least one meeting each.

The study group decided at its initial scoping meeting to focus on federal funds distributed by the Federal Highways Administration (FHWA) and spent on state highway projects. As a result, the study group did not address federal funds distributed to cities,

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counties, transit agencies and metropolitan planning organizations. The Governor's MAP-21 Steering Committee was convened during the study time period and addressed issues relating to how the state would share newly-authorized federal funds between jurisdictions.

The first three meetings of the JTC study group addressed fundamentals of federal fund authorization and obligation, the role of the FHWA, federal planning requirements, and an overview of programming and prioritization processes at WSDOT. A fourth meeting of budget analysts was convened to delve more deeply into programming and prioritization practices. The study group also addressed issues related to the new federal transportation authorization act, MAP-21 and WSDOT's challenges in managing federal funds.

Findings

Effectiveness. Throughout the course of the study group's meetings, there was general acknowledgement of WSDOT's ability to program all of the federal funds made available to Washington State. Over the seven years since the authorization of SAFETEA-LU, WSDOT has received and programmed \$272 million in funds from other states and federal programs, over and above the funds originally allocated to Washington.

Transparency. WSDOT can improve the transparency of its processes and by doing so could help strengthen external decisions on programming federal funds. This study group has begun a process of increasing transparency. An ongoing, regular commitment to greater communication would help to create greater support for some decisions and would strengthen federal funding options developed by OFM and legislative staff for their respective decision-makers.

Priorities. WSDOT's internal process to prioritize projects follows statutory policy guidance. There is no external involvement or reporting on the process, outcomes, and policy goals and priorities served by the projects identified. WSDOT misses an opportunity to better define the framework for any external decision-making on project investments. With improved information about how investments meet policy goals and solve priority transportation problems, the Legislature would be able to make decisions on a more data-driven basis.

BACKGROUND

Federal authorization, apportionment, obligation authority, and planning requirements

Congress historically provided authorization for transportation funding by means of six-year authorizing acts. The most recent authorization act, Moving Ahead for Progress in the 21st Century (MAP-21), is effective for only two years. Based on the authorization law, FHWA determines state apportionment amounts for each federal fiscal year (FFY), which are apportioned to states on October 1 of each year. Generally, a state must commit its apportionment within four years or it lapses.

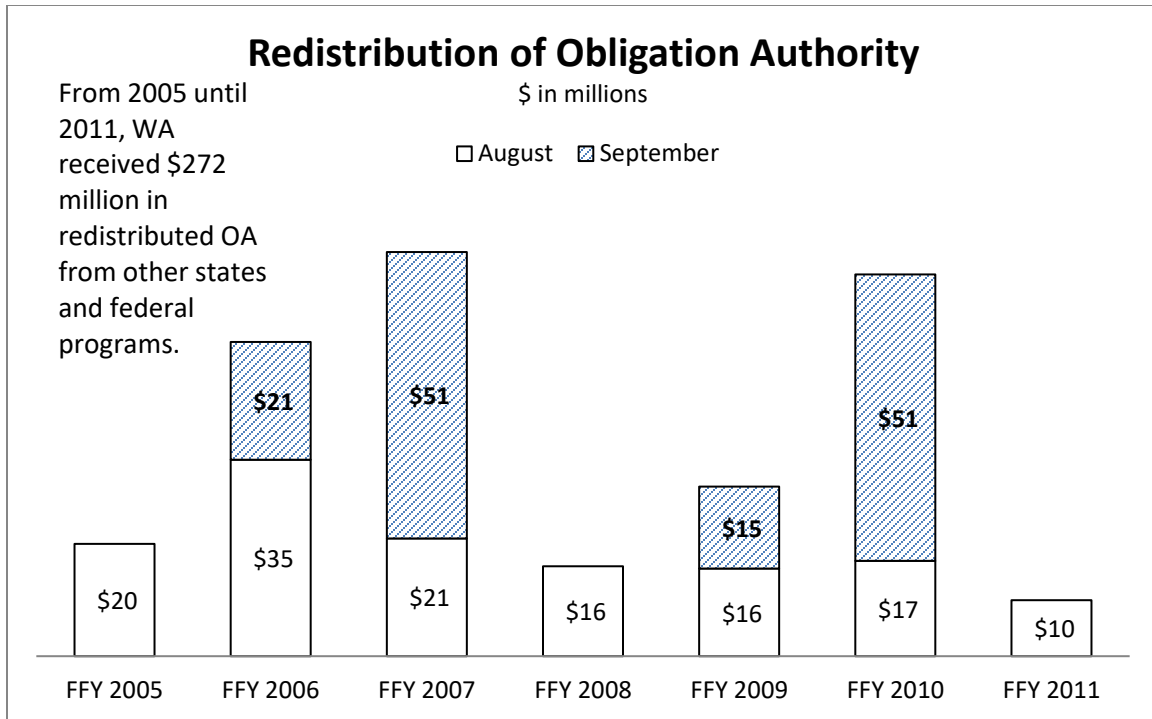
The Federal-Aid Highway Program (FAHP) is a federally-assisted, state-administered program. Many features of the FAHP are very different from Washington State's approach to funding transportation. In particular, the federal program is a reimbursement program. Funding is not provided up front; instead FHWA reimburses states after expenditures have been paid on approved projects. Additionally, the federal program is managed based on agreements or commitments with accompanying spending that often goes beyond the immediate or subsequent fiscal periods. Federal funds are available and programmed on a federal fiscal year period, beginning on October 1st of each year.

Washington State's process, in contrast, is a budget process, laying out a prospective, two-year estimate of funds to be expended. Funds are appropriated for a state fiscal biennial period, beginning on July 1st of each odd-numbered year.

The role of FHWA is to review and approve state proposals, promulgate guidance and best practices for initiating and managing projects, provide oversight and guidance on projects and reimburse states for eligible expenses.

Obligation Authority (OA) is the total amount of apportioned funds that a state may obligate in a year. OA is set by the appropriations bills passed by Congress and reflects efforts to control costs incurred by the states. Obligation is when the FHWA agrees to pay its share of a project's eligible costs. This is accomplished by the approval of a federal aid agreement for each project. When states fail to commit all of their obligation authority, FHWA redistributes that uncommitted OA to other states each August and September.

WSDOT has been very successful in securing redistributed federal funding authority, which increases the amount of federal funds available for Washington State's transportation projects. From 2005 to 2011, Washington State received an additional \$272 million in redistributed federal funds from other states. These funds accounted for about 4.9% of the total \$5.6 billion in obligation authority received by Washington State for the same time period.



Amounts received in August of each year have been on the decline. However, during FFYs 2006, 2007, and 2010, WSDOT was also able to obligate substantial funds available in late September. Typically these funds are applied to existing projects that already have a federal aid agreement. In some cases, this frees up state gas tax dollars that may be spent on other projects. In some cases, the new federal funding has been used to support a project that the Legislature did not include in its budget. Typically, WSDOT then includes the project in the next year's budget proposal for consideration by the Governor and the Legislature.

Federal law also has specific requirements regarding planning and programming, which complicates the process of spending federal dollars. Beginning in the 1960s and 1970s, federal law mandated comprehensive planning and the formation of metropolitan planning organizations (MPOs). MPO membership includes representatives of the constituent local jurisdictions of a metropolitan area as well as the state DOT. Federal law requires metropolitan and statewide long range plans (20 year time frame) and transportation improvement programs at the metropolitan level (TIPs) and the state level (STIP). A project (state or local) must be in a TIP to be eligible for federal funds. The STIP is a catalogue of the metropolitan and local TIPs and it is approved by the Governor's designee, the Secretary of WSDOT. The current STIP primarily includes projects during the near-term two-year period. TIP amendments may be made monthly. During the study group's meeting, FHWA expressed an interest in programming projects for four years, to provide a longer term view of project implementation plans.

Multiple Jurisdictional Requirements

During the course of the study group meetings, a common refrain was heard, "Federal transportation funding is complicated." While much of the complication related to programming federal funds comes from elaborate federal rules, many of WSDOT's challenges relate to satisfying the layered requirements and processes of multiple jurisdictions. In addition to federal rules, the state Legislature imposes appropriations controls, the Governor's Office sets policy and imposes budgetary controls, and Metropolitan Planning Organizations implement planning processes prescribed by the federal government.

Examples of issues arising due to multiple jurisdictional requirements may include:

- When the Legislature earmarks appropriated federal funds for new or small projects, WSDOT may have difficulty meeting tight FHWA/MPO obligation and planning deadlines. This earmarking of federal funds to local projects may also change the relative shares of funds received by the state and local jurisdictions.
- Similarly, federal funds drive considerable requirements and local agencies may not have the capacity to comply. WSDOT reports that these situations increase the risk of losing federal funds and advises that state funds provide more flexibility.
- To manage the risk of losing federal funds due to the above reasons, WSDOT is considering programming more federal funds than are forecasted for Washington State. This approach, included in WSDOT's 2013-15 budget request, conveys the next highest priority work that WSDOT is proposing be delivered if federal fund capacity were to materialize during the biennium. This would ensure that if some projects cannot spend the funds due to tight timelines or other federal requirements, there would be other projects ready to move ahead.

Transportation Revenue Forecasting

The forecast of transportation revenues is prepared by the Transportation Revenue Forecast Council (TRFC), a group made up of technical staff of the Department of Licensing, WSDOT, and the Economic and Revenue Forecast Council. The TRFC forecasts transportation revenues quarterly, including federal funds. Typically, for each Federal Fiscal Year (FFY), the revenue forecast incorporates known apportionment levels for the periods covered by an authorization act or any recent Congressional continuing resolutions. Beyond these time periods, the TRFC uses conservative forecasts, reducing apportionment by 20 percent and generally setting obligation authority at 90 percent of apportionment, which approximates the state's contribution to the Highway Trust Fund.

This conservative approach was adopted in order to avoid committing federal funds which may not materialize. Because Congress has not identified a long-term solution to the solvency of the Highway Trust Fund and continues to rely on transfers from the general fund, there is a lack of certainty as to ultimate amounts of federal funds which will be available to the state. If WSDOT programs its federal funds assuming the entire

apportionment will be made available, projects funded by federal funds may have to be delayed or eliminated if Congress reduces the available obligation authority.

As a result of this conservative forecasting practice, federally-funded projects in Washington State have not been affected by Congressional reductions. Additionally, in cases where Congress acted to supplemental highway trust funds, Washington has been able to add projects.

On the other hand, in an era of low project bids and relatively low inflation, there is a risk associated with this practice. WSDOT must obligate its federal authority by certain deadlines. To the extent that too much federal funding must be obligated at the close of the FFY, WSDOT may risk not using all of the state's federal funding authority. In addition, because of the time pressure imposed by obligation deadlines, WSDOT may find it difficult to consult fully with executive and legislative policy makers and their staffs.

Project Prioritization

Statewide priorities and the translation of priorities into investment decisions are governed by two areas of statute. RCW 47.04.280 provides seven over-arching policy goals and objectives which must guide public investment in and operation of the state's transportation system. The Legislature has also provided policy guidance to WSDOT on how to prioritize scarce funds in chapter 47.05 RCW. In particular, the Legislature states its intent that investment decisions "have as their basis the rational selection of projects and services according to factual need and an evaluation of life cycle costs and benefits." Further, priority programming must be multi-modal and "incorporate a broad range of solutions that are identified in the statewide transportation plan as appropriate to address state highway system deficiencies." Neither of these sections of law is prescriptive and WSDOT is given broad authority for implementation.

Practically speaking, project prioritization is primarily a matter of following the legislatively-adopted ten-year capital plan for projects, which is in turn based on the proposals made by the Governor and WSDOT and reflects decisions made in previous biennia. This plan effectively commits most federal funds well in advance of the year of expenditure. Any available funds are first applied to solve funding issues in the existing capital plan. As a result, in any given year, only a limited amount of newly available federal funds may be available for new projects identified through WSDOT's internal project prioritization process. In some years, no new funds are considered available as the funding needs of existing priority projects absorb the available capacity.

Within the ten-year plan, WSDOT's internal project prioritization process is also used to choose specific projects within general project type allocations, known as "programmatic buckets." The funding in these buckets is principally used for preservation purposes. Examples include major electrical work, rest areas, unstable slopes, bridge seismic retrofit, and asphalt and chip seal roadway preservation.

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In recent years, significant federal funds have become available from savings on federally-funded projects and from redistributions of federal funds from other states. In the case of redistributions of federal funds in August and September, funds are always applied to a project with an existing federal aid highway agreement, due to the tight deadlines associated with obligating the funds before end of September each year. During September 2012, almost \$9 million in federal funds was redistributed to Washington State. The new funds were applied to the SR 99 Alaskan Way Viaduct replacement project.

In the case of project savings (both federal and state), WSDOT's practice has varied in recent biennia. WSDOT's 2011-13 biennial budget proposal (in fall of 2010) included about \$100 million in savings from low project bids, from all sources of funds, which the Governor and Legislature could choose to use elsewhere in the transportation budget. WSDOT developed a proposal for these savings which was shared before the legislative session and transmitted via the customary February 2011 update to the capital project list. In comparison, for the 2012 Supplemental Transportation Budget, WSDOT did not communicate that funds from low bids and changes in cash flow obligation were available until the details could be finalized for the February 2012 transmittal of the updated capital project list. By waiting until the February update, however, WSDOT did not take advantage of the opportunity to begin working earlier with other decision makers to gain understanding and acceptance of the proposal.

WSDOT follows an internal process to prioritize new projects as described in the steps below. There is no external reporting on the decisions, data considered, process and policy goals and priorities served by the projects identified. By making information on the prioritization process more accessible, WSDOT could better define the framework for any external decision-making made on project investments. With improved information about how investments meet policy goals and solve priority transportation problems, the Legislature would be able to make decisions on a more data-driven basis.

WSDOT Prioritization Process for new projects:

1. Subject matter experts at the state level identify problems or deficiencies in the state system.
2. In the fall of each year, the WSDOT Regions are asked to explore possible solutions.
3. The Regions develop a scope for each project, which takes into consideration possible environmental impacts, roadway design issues, and stakeholder concerns.
4. Based on the project scope, the regions develop a cost estimate or estimated range of costs.
5. The Regions determine the benefit the project will provide.
6. The Capital Projects Development and Management (CPDM) Office at headquarters compares the costs and benefits of this project with other projects of its type to determine its order of rank and priority. CPDM may request that regional staff develop alternatives which achieve a similar benefit for less cost.

7. Projects are selected for programming to meet a certain performance level at lowest cost.

Federal Grant and Loan Application Process

Grant and loan programs offer an opportunity for increased funding for state initiatives, but may drive future costs and may commit the state to specific policy consequences. In the example which follows, actions by WSDOT and King County to receive federal funds created pressure on the Legislature to impose tolls and to authorize property taxes for the operating costs of new transit service, and on the Transportation Commission to implement a new toll exemption policy.

The Urban Partnership grant application for the SR 520 Bridge, jointly applied for by WSDOT, King County and the Puget Sound Regional Council in 2007, resulted in Washington State receiving a total of \$155 million to implement the Lake Washington Congestion Management program. Notification of legislative leaders took place at the time of the award of the grant.

WSDOT's highway program used its share of the funds (\$86 million) to implement variable tolling on the SR 520 Bridge as well as active traffic management measures. With the acceptance of the funds, WSDOT committed to variably tolling the SR 520 Bridge even though the imposition of tolls on the bridge would not be enacted by the Legislature until 2009. In addition, the agreement with FHWA required toll exemptions for transit, which was inconsistent with existing tolling policy for the Tacoma Narrows Bridge.

King County used its share of the funds (\$41 million) for new buses and park and rides. No operating funds were provided by the federal grant. Subsequent actions were taken by the Legislature to provide King County with property tax authority to fund the additional transit operations in the corridor (see RCW 84.52.140).

As of 2012, federal grant and loan opportunities for state highway programs are on the decline. The new federal transportation authorization act, MAP-21 has eliminated most highway discretionary grant programs. WSDOT programs have also received funds from other areas of the federal government including the Federal Transit Administration, Office of Homeland Security, and Department of Energy.

Within WSDOT, the CPDM office is seeking to establish a greater degree of centralized involvement in these applications in order to better evaluate impacts of new grants and loans on future capital and operating costs. WSDOT has allowed this process to be decentralized, with the exception of the Transportation Investment Generating Economic Recovery (TIGER) grant program established by the American Reinvestment and Recovery Act of 2009. In the case of the TIGER program, proposals are reviewed by a multi-jurisdictional team. This process enables a more consistent response to Congressional delegation inquiries about the priorities of Washington State. For other programs, the Chief Engineer has approved applications after reviewing the project's

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priority and match requirements, which is consistent with how WSDOT programs new projects using its programmatic appropriation authority.

General stakeholder involvement is at the discretion of the applying WSDOT program. Consultation by the Secretary with the Governor and legislative Transportation Committee Chairs has typically taken place around the time of the award being made and only for large grant and loan applications. Concurrent information may or may not be provided to the relevant staff.

RECOMMENDATIONS *(as stated in the study proviso)*

The general theme of the recommendations is that greater transparency is needed. Increased transparency will enhance the acceptance of project funding decisions. As was demonstrated by the series of study group meetings, understanding how federal funds are used requires an ongoing commitment on the part of the executive and legislative branches to share information and keep their colleagues up-to-date on existing and new federal funds proposals.

Recommendation Area (i)

Make the process for programming federal funds more transparent.

1. The JTC should facilitate the convening of a regular federal funds forum, including WSDOT, OFM, and legislative staff, for information sharing about federal funds availability, programming, and other relevant developments.

The object of the forum is to improve information for policy makers, by fostering a better understanding of federal funds policy options and WSDOT programming recommendations.

Three yearly meetings could be convened as follows:

- February or March to correspond with the WSDOT spring update.
- August to review changes that will be incorporated into WSDOT's budget proposal.
- November to discuss developments for the new Federal Fiscal Year.

For time considerations, the meeting agendas should focus on short-format status updates, briefings and breaking news. For issues requiring longer discussions, separate meetings could be convened. For example, a fall meeting might focus on high-level descriptions of how federal funds were programmed in the agency budget request and how new developments may drive changes in the Governor's budget proposal or any later updates. Other updates could include how WSDOT is participating in MAP-21 performance measure rulemakings, whether the agency is proceeding with obligating more federal funds than forecasted for the state, and new planning requirements from FHWA and associated effects on the timing of decisions.

2. WSDOT consultation with OFM and the Legislature on federal funds-related issues should consistently include staff as well as elected officials.

Currently, it is WSDOT's common practice to provide federal funds breaking news directly to elected officials. This practice is important for upholding a "no surprises" policy and for building support for initiatives. However, staff must also be up to date on these developments and typically their informational needs are more analytical in nature.

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Providing this type of information to staff should not wait for a federal funds forum meeting and should be shared in the same time frame as it was provided to the elected official.

Recommendation Area (ii)

Evaluate assumptions used to predict the availability of federal funds in future biennia and how those funds will be programmed between different federal funding programs.

3. No recommendation. WSDOT's current forecasting methods are conservative and have prevented federal budget cuts from impacting Washington state projects. Any changes to this approach would be a suitable agenda item in a federal funds forum meeting.

Recommendation Area (iii)

Develop a process for linking statewide priorities to distributing federal funds from project savings and the redistribution of federal funds from other states.

4. WSDOT should consult and update both OFM and the Legislature regarding how they are planning to use any new funds coming available through savings or redistribution from other states. Improved external communications on project prioritization more generally could help meet this objective.

By making information on the prioritized process more accessible, WSDOT could better define the framework for any external decisions made on project investments. With improved information about how investments meet policy goals and solve priority transportation problems, the Legislature would be able to make decisions on a more data-driven basis.

Recommendation Area (iv)

Develop a process for incorporating stakeholder feedback when developing federal grant and loan applications.

5. WSDOT should seek timely input from the OFM and the Legislature when applying for federal grants or loans.

WSDOT is seeking to establish a greater degree of centralized involvement in these applications in order to better evaluate operation and fiscal impacts of new the initiatives funded by grants and loans. As it does so, the agency should remember to include a role for external policy makers and budget writers.

OTHER RESOURCES

[2012-15 Statewide Transportation Improvement Program](#)

[Financing Federal-aid Highways, FHWA Primer](#)

[MAP-21 Overview, WSDOT 7-25-12](#)

[MAP-21 Steering Committee Materials](#)