The Antiplanner

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Restoring Trust to the Highway Trust Fund

In what some considered to be a backroom deal, the New Jersey Turnpike Authority agreed last month to give more than $500 million a year in toll revenues to New Jersey Transit, up from $164 million a year in the previous five years. The decision was a surprise to the public, as it was made with no preliminary discussion under an agenda item innocuously listed as "State Public Transportation Projects Funding Agreement."

This decision to use highway user fees to prop up a transit agency known for its bad management, including "nepotism, cronyism and incompetence," further erodes the trust highway users have in the people managing state and local transportation resources. This trust is important partly because roads are mostly funded by a variety of excise taxes that don't automatically adjust for inflation. Increasing the taxes is more politically difficult if users don't believe that the funds will go for the facilities they thought they were paying for.

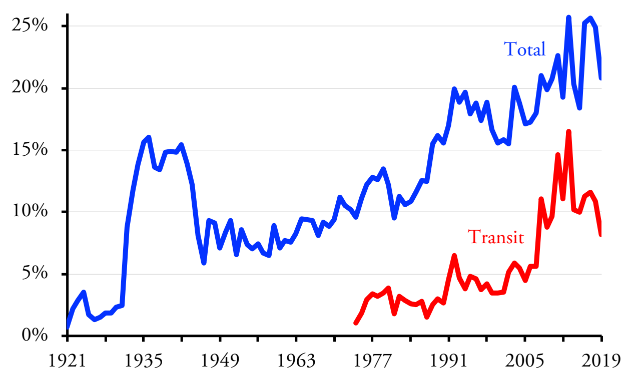
Legally, a *fiduciary trust* has a trustee who is obligated to manage trust resources for a beneficiary. Once the trust is created, the settlor—the person or entity who set it up—is usually not allowed to change the terms or beneficiaries of the trust. Although the Highway Trust Fund is called a trust, it is not a true fiduciary trust because it doesn't follow these strict rules. However, the nation's transportation systems would serve the public better if highways and other infrastructure were managed as true fiduciary trusts.

State Highway Trust Funds

When Oregon began charging a gasoline tax and dedicating the funds to roads in 1919, it set a precedent that was quickly followed by other states. By 1931, all 48 states were collecting gas taxes, and all but 2.4 percent of state fuel taxes, vehicle registration fees, and tolls went to roads. The Depression led some states to pilfer as much as 16 percent of highway user fees to fund other programs, but after World War II this declined to around 7 percent in the 1950s.

In 1965, Congress began giving state and local governments incentives to take over private transit companies in the form of capital grants. Transit agencies still had to pay for operating costs, and some states began diverting highway user fees to transit. Prompted by transit spending, total 1971 diversions exceeded 10 percent for the first time since 1944. By 1992, 20 percent of user fees were going to non-highway programs, with a third of that for transit.

State Highway User Fees Not Spent on Highways



With the exception of a blip during the Depression, the share of state highway fees diverted to non-highway uses has grown fairly steadily over the last century, which has also steadily eroded public trust in the fee system. The share going for transit isn't known before 1974. Source: Federal Highway Administration Highway Statistics*, table DF-200 for 1995 and before and tables DF for individual years since then.*

Diversions leaped from 19 percent in 2012 to above 25 percent for the first time in 2013, with nearly two-thirds going for transit. This was mainly due to a one-time transfer of highway funds to transit in Texas. Diversions dropped to 20 percent in 2014 but reached 25 percent again in 2016 through 2018, though they fell to 21 percent in 2019.

In 1970, 24 states spent all their highway user fees on roads. By 1995, it was down to four and in 2019 just two were left. Some of the worst offenders were Florida, Oklahoma, Tennessee, and Texas, which transferred a significant share of fuel taxes and vehicle registration fees to education; Connecticut, Maryland, New Jersey, New York, and Rhode Island, which spent a lot of user fees on transit; and California and Washington, which spent a large share

Diversions from Highway Fees and Non-User Fees Spent on Highways in 2019 (millions of dollars)

State	Diversions	Non-User Fees	Net Subsidy
Alabama	13	95	82
Alaska	0	425	425
Arizona	206	952	746
Arkansas	56	386	330
California	2,219	1,392	-827
Colorado	35	268	233
Connecticut	597	610	13
Delaware	58	440	382
Dist. of Col.	126	54	-71
Florida	1,509	2,021	512
Georgia	191	833	642
Hawaii	21	2	-19
Idaho	47	78	32
Illinois	805	736	-69
Indiana	1	244	243
Iowa	26	109	83
Kansas	370	622	252
Kentucky	213	249	36
Louisiana	109	84	-25
Maine	55	91	37
Maryland	1,600	787	-813
Massachusetts	542	351	-191
Michigan	308	751	443
Minnesota	416	722	306
Mississippi	48	66	17
Missouri	3	433	430
Montana	233	65	-168
Nebraska	14	435	420
Nevada	0	172	171
New Hampshire	10	46	36
New Jersey	1,149	2,042	893
New Mexico	179	406	227
New York	1,025	4,196	3,172
North Carolina	381	1,246	866
North Dakota	26	8	-17
Ohio	42	995	953
Oklahoma	730	1,053	323
Oregon	94	113	19
Pennsylvania	1,614	1,720	105
Rhode Island	125	210	85
South Carolina	87	183	95
South Dakota	10	169	160
Tennessee	323	84	-239
Texas	6,481	8,189	1,708
Utah	37	757	720
Vermont	79	79	0
Virginia	492	2,330	1,838
Washington	540	984	444
West Virginia	3	224	221
Wisconsin	235	259	24
Wyoming	51	96	45
Total	23,533	38,863	15,329

Though most states divert highway user fees and all supplement them with general funds, some are more guilty than others. Source: Highway Statistics 2019 *tables SDF and SF-1.*

of vehicle registration fees on transit and other non-highway activities.

As if to make up for the diversions of highway user fees to non-highway projects, every state also spends some general funds on highways or dedicates a portion of sales or other taxes to those highways. In some cases, this doesn't make up for the diversions: in 2019, California diverted more than $2.2 billion in highway fees to other programs but spent less than $1.4 billion in general funds on highways. Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Montana, North Dakota, Tennessee, Vermont, and the District of Columbia also failed to make up for diversions.

The other states, however, spent more out of general funds than they diverted. The worst was Virginia, which diverted less than half a billion to non-highway programs but spent more than $2.3 billion in non-user fees on roads. When all states are considered together, non-user fees minus diversions represented a net subsidy to roads of about $15 billion, which was less than 9 percent of the total amount states had to spend on roads.

The Federal Highway Trust Fund

The federal government began collecting gas taxes in 1932, but Congress did not dedicate them to roads until it created the Highway Trust Fund in 1956. At that time, it was very specific about how the gas taxes and other highway user fees collected to pay for the system would be used. The money was distributed to the states based on formulas that took into account each state's population, land area, and road mileage. The money would be spent only as it came in: neither the federal nor state governments would be allowed to borrow in anticipation of future federal highway revenues. Implicit was the assumption that highway user fees would be spent only on highways.

The original highway bill proposed by the Bureau of Public Roads in 1955 included highways between cities but not into cities. Big city mayors demanded their share of the funds, so the Bureau of Public Roads hastily added about 4,000 miles of roads through cities. By 1970, those roads that were demanded by city officials had become controversial based on claims that they divided neighborhoods and seemed to be especially targeted at poor, black neighborhoods.

In 1973, Congress agreed to allow cities to cancel freeways but keep the federal dollars to spend on transit capital improvements. The mayor of Portland came up with the idea of using the money to build light rail, not because light rail was efficient but because it was expensive and therefore a good way of using the federal highway dollars while still employing the engineering and construction firms that would have built the highways. Buffalo, Sacramento, San Jose, and several other cities followed Portland's model.

In 1982, the Interstate Highway System was still not finished and the oldest parts of the system were beginning to wear out. To hasten completion and fund maintenance and rehabilitation, Congress decided to double the gas tax from 4 to 8 cents a gallon. To placate urban interests, Congress added one more cent to the gas tax to be spent on public transit. The 1982 bill was also the first to include earmarks—ten of them.

The Interstate Highway System was declared completed in 1992 (though there have been a few additions since then). Despite this, Congress increased the gas tax by another 5 cents (one of which went to transit) in 1990 and four more cents (a fifth of which went to transit) in 1993.

Now awash with money, Congress went wild. First, it created a National Highway System that was four times bigger than the Interstate Highway System and allowed states to spend federal highway funds on those roads. Second, it decided that, in addition to the share of gas taxes dedicated to transit, another 10 percent should be "flexible," meaning states could spend it on either highways or transit. Third, earmarks drastically increased, first in the hundreds and later in the thousands in each bill reauthorizing the gas tax for another six years.

Blue lines are interstates; red lines are other roads on the National Highway System as defined by the Department of Transportation in 1995.

Earmarks allowed members of Congress to take credit for projects that might not have been otherwise funded. But earmarks were not given to states on top of the funds allocated by formulas; instead, they came out of the formula funds. Ironically, Congress had directed the states to spend millions of dollars on long-range transportation planning in order to ensure that federal funds would be effectively spent. Earmarks essentially required states to spend money on projects that the transportation plans had deemed to be lower priority, thus at once overturning the results of the Congressionally mandated transportation plans and reducing the effectiveness of federal spending.

Earmarks became particularly controversial in 2005 when the chair of the House Transportation Committee, Don Young (AK-R), included an earmark for a so-called Bridge to Nowhere near Ketchikan. That earmark was removed from the final bill, but more than 7,000 other earmarks remained, allowing for an average of 15 earmarks for each congressional district. Many of these earmarks had nothing to do with highways; they included national park visitor centers; money for museums; and all sorts of other projects that state transportation plans never would have considered.

To ensure that the money would be available for all of these precious earmarks, Young added a new provision to the law. Where previous reauthorization bills had specified that spending be no more than actual revenues, the 2005 law required that funds be spent at authorized levels (which were based on Department of Transportation projections of future gas tax revenues) even if gas taxes and other highway user fees failed to cover those costs. When the 2008 financial crisis hit, people drove less than projected and so revenues failed to cover costs. To keep the Highway Trust Fund from running out of money, Congress began supplementing gas taxes with an average of $10 billion in general funds (meaning deficit spending) per year.

This became so routine that, when Congress passed the 2015 transportation bill, it simply appropriated $50 billion to fund deficit spending over the next five years. This destroyed any connection between highway agencies and user fees; agencies acted like they were owed the money whether the user fees covered their costs or not. Due to the influx of Tea Party Republicans, the 2015 bill did not include any earmarks, but tea partiers were unable to stop the deficit spending.

Why User Fees Are Better Than Taxes

There at least five reasons why transportation facilities should be paid for out of user fees rather than taxes or deficit spending.

- First, transportation users are the chief beneficiaries of the facilities they use, and it is only fair and appropriate that they should be the ones to pay for those facilities. While transportation may produce some side benefits, just about everything produces side benefits, including housing, food, and entertainment. If we accept that things should be subsidized because of their side benefits, then producers of every good and service will have incentives to fabricate and exaggerate the side benefits they provide in order to be eligible for those subsidies.
- Second, user fees provide valuable signals to both users and producers about costs and values. A toll that varies with the amount of traffic signals to users that it costs more to provide the infrastructure needed to meet peak-period demand than to provide only the infrastructure needed to meet average demand. People's willingness to pay user fees for transportation signals to providers which transport modes and routes they should focus on. Subsidies to transportation weaken these signals and make transportation providers more beholden to politicians than to users.
- Third, funding transportation strictly out of user fees gives transportation providers incentives to be efficient and disincentives to propose grandiose megaprojects that have little value. Agencies that can simply turn

to higher taxes to make up for their inefficiencies or worthless projects have little incentive to fix those problems.

- Fourth, infrastructure that is paid for out of user fees tends to be better maintained than infrastructure that is paid for out of tax dollars. The nation's fabled crumbling infrastructure wouldn't be crumbling if it were all funded out of user fees: bridges and roads funded out of user fees tend to be in better condition than bridges and roads funded out of tax dollars. This extends to other modes as well. Urban transit, which gets less than 25 percent of its funding from fares, has a $176 billion maintenance backlog. Amtrak, which covers only about half its costs with fares, has at least a $52 billion maintenance backlog. Moreover, its fleet of passenger cars, which private railroads would normally have replaced about every 25 years, averaged nearly 33 years old in 2019, meaning many are in desperate need of replacement.
- Fifth, user fees are a more equitable and socially just way to pay for transportation. If subsidies are needed to help low-income people, they should be targeted to those people and not to general programs like light rail or intercity passenger trains which are mainly used by higher-income people.

At both the state and federal level, diversions of highway user fees to transit and other non-highway are a betrayal of highway users' trust. But the use of general funds on highways is just as much a betrayal because it makes highway agencies more responsive to political interests than to highway users.

North Carolina, for example, spends state highway funds on executive airports, Amtrak trains, and light rail, none of which particularly benefit highway users and all of which tend to be used mainly by higher income people. The success of political demands by the wealthy for such programs are a result of the weakening of the connection between user fees and agencies.

Restoring Trust to the Trust Funds

Gasoline taxes are an increasing ineffective user fee as they don't adjust for inflation or for more fuel-efficient or non-petroleum-powered vehicles. Mileage-based user fees are widely seen as the replacement for such gas taxes in the long run. But a major obstacle to the use of such fees is that highway users don't trust the government to use such fees for their benefit. Restoring peoples' trust in highway trust funds is an important step towards such a transition.

With the next transportation reauthorization, which is due by September 30 of this year, Congress has the opportunity to return to a user-fee-driven system and restore public faith in both the federal and state highway trust funds. For the federal fund, Congress should end both the diversions of user fees to transit and the deficit spending that is required when Congress spends more than is collected in user fees.

To improve the state trust funds, Congress should make user fees one of the factors in the formulae used to distribute federal funds. If a state collects highway user fees and spends them on roads, such spending would contribute to that state's share of federal funds. If a state collects highway user fees and spends them on anything but roads, that spending would not contribute to the state's share of federal funds.

Similarly, if the federal government gives money to transit agencies, the fares collected by those agencies would factor into how much each agency would receive. Such formulae would encourage both highway and transit agencies to use their funds as effectively as possible to attract more users. The result will be a better managed transportation system than the one we have today.

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