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Crossroads For The Highway Trust Fund

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The biggest news on federal surface transportation reauthorization is that Rep. John Mica (R, FL), chairman of the House Transportation & Infrastructure Committee, has been given the go-ahead by House GOP leadership to seek additional revenues for the Highway Trust Fund. Mica's draft bill, which I praised last month for its fiscally responsible approach, called for spending only as much over the next six years as federal highway user taxes bring in, which is estimated to support $230 billion over the six years from 2012 through 2017. While that is only slightly less than spending under the expired SAFETEA-LU, it is about 30% less than the spending levels of the last two years, which were boosted temporarily by several large infusions of general-fund stimulus money.

Mica's aim of seeking up to $15 billion a year in additional revenue for the Trust Fund was welcome news to all the groups urging increased highway spending—AASHTO, ARTBA, the U.S. Chamber, and highway contractors. But before advocates of public-private partnerships break out the champagne, I suggest we look before we leap.

A very knowledgeable source tells me the leading candidate being considered at this point is increased revenue from existing taxes on domestic oil and gas production, thanks to a series of deregulatory measures (such as approval of new pipelines, less restrictions on shale gas, etc.). Such changes would take years to have much impact on production, and hence it would be years before increased revenues from those production taxes would be available for the Trust Fund. More important, those existing taxes are not highway user taxes. They would apply to all uses of

oil and gas: petrochemicals, asphalt, jet fuel, bunker fuel, gas for home heating and cooking, gas for electricity production, etc.—in addition to costing highway users more at the pump.

This same limitation applies to just about anything Congress can come up with—except higher motor fuel taxes (already ruled out) or a new federal toll or mileage-based user fee, such as the proposed toll on all Interstate highway travel recently proposed by Jack Schenendorf in a policy paper for the Association of Equipment Manufacturers. While there is some merit in Schenendorf's proposal, it would amount to a large increase in federal highway user taxes, so it is probably no more likely to pass political muster than a straightforward increase in federal gasoline and diesel taxes.

I can hear my friends at AASHTO and ARTBA saying "So what? With the highway system needing greatly increased investment, isn't it the amount of spending that counts, not where it comes from?" And my reply to them is "Be careful what you wish for."

If Congress institutionalizes a large ongoing revenue stream that comes from non-highway users, it will essentially mean the end of the Highway Trust Fund. And that will have serious negative consequences for the future of infrastructure investment in this country. Under the Congressional Budget Act of 1974, which generally eliminated "backdoor" spending programs such as contract authority, user-tax-funded trust funds like the HTF are exempt—as long as at least 90% of their spending is based on taxes "related to the purpose for which such outlays are or will be made." A reauthorization bill that added $15 billion a year to the HTF from general oil and gas taxes would be only about 72% based on highway user taxes, failing the 90% test by a large margin.

In the new era of severe federal fiscal constraint, the best protection for infrastructure funding is user taxes that are dedicated by law to specific infrastructure. There are currently four federal transportation trust funds supported by user taxes—for highways, airports and airways, waterways, and harbor maintenance. Last year's Simpson-Bowles deficit reduction commission recommended increasing those user taxes to make those programs all self-supporting—precisely to insulate them from what will be ever-fiercer competition for general fund monies in the decades ahead. Jettisoning the Highway Trust Fund to get more short-term revenue would be penny-wise and pound-foolish, in my judgment.

In the Reason Foundation policy study I co-authored last year with Adrian Moore, "Restoring Trust in the Highway Trust Fund," we summarized the benefits of the users-pay/users-benefit approach: fairness, proportionality, self-limiting, predictable, and investment-directing. We explained how the users-pay/users-benefit principle has been watered down over the past two decades, and called for strengthening this principle, rather than abandoning it. (http://reason.org/studies/show/Highway-trust-fund-reform).

Instead of adding non-user-tax revenues to the HTF, a much better approach is to allow states to leverage and supplement their federal funding via beefed-up tolling and finance tools: remove the cap on Private Activity Bonds, mainstream the four federal tolling & pricing pilot programs,

and expand TIFIA. These measures will permit states to leverage federal funding to a degree that few people seem to appreciate. If Congress retains the current requirement that a TIFIA loan not exceed 33% of a project's cost (rather than the 50% the Senate bill calls for), the leveraging will be huge. $1 in TIFIA budget authority equals $10 in TIFIA loans = $30 in projects. Thus, the $1billion/year in TIFIA budget authority both houses now contemplate would generate up to $30 billion in projects, per year.

That's the fiscally responsible way to go. And by shifting most large projects to P3 types of procurement, it would make a large fraction of what the federal government helps to fund "performance-based" in a meaningful sense.