April 19, 2021

The Honorable Thomas Carper
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Chairman Carper, Ranking Member Capito, and Members of the Committee:

I am an economist, transportation policy analyst, and senior fellow with the Cato Institute. On April 14, this committee heard testimony from several witnesses on the long-term solvency of the Highway Trust Fund. Most of those witnesses talked about substituting mileage-based user fees for gasoline taxes as a source of revenues for the fund. While I support mileage-based user fees, the source of revenues does not get to the heart of why the Trust Fund has been threatened with insolvency in recent years.

When Congress created the Highway Trust Fund in 1956, it modeled it after a *fiduciary trust*. A fiduciary trust has a *settlor* who creates the trust; a *trustee* or trustees who manage the trust; a *beneficiary* or beneficiaries who benefit from the trust; and a *corpus* that provides the value of or revenues to the trust. In this case, Congress was the settlor, the state highway departments were the trustees, highway users were the beneficiaries, and highway user fees were the corpus.

Congress was wise to make user fees the corpus and highway users the beneficiaries as user fees have numerous advantages over tax dollars when funding transportation.

- User fees provide valuable signals to both users and providers about the costs and values of various routes and types of highways.
- Limiting the corpus to user fees gives the trustees incentives to be efficient and disincentives to plan grandiose projects that have little value.
- Infrastructure that is funded by user fees is better maintained than infrastructure funded out of tax dollars because the trustees know that their revenue streams depend on providing a sound user experience. Most of our "crumbling infrastructure" is infrastructure funded out of tax dollars rather than user fees.
- User fees are more equitable and socially just because users only have to pay for what they use and not for what someone else uses.

Gasoline taxes have historically been the predominant user fee because in the pre-electronic age they were less expensive to collect than tolls. The advent of electronic collection methods has highlighted several drawbacks to using gasoline excise taxes as a user fee.

- Unlike most other taxes, excise taxes do not automatically adjust for inflation.
- Fuel taxes also fail to adjust for the increasing fuel-efficiency of the nation's motor vehicle fleet.
- Fuel taxes are mostly collected by the federal and state governments, yet cities and counties own 75 percent of the roads in this country and rely on property taxes or other general funds to maintain those roads.
- Finally, fuel taxes do nothing to relieve traffic congestion.

All of these problems can be fixed by replacing fuel taxes with mileage-based user fees. But none of these problems relate to why the Highway Trust Fund has been threatened with insolvency in recent years, and without addressing that real issue, simply replacing fuel taxes with mileage-based user fees will not make the Trust Fund solvent.

The real problem is that past sessions of Congress have repeatedly violated the “trust” in trust fund. These violations began in 1973 when Congress allowed cities to cancel planned interstate freeways and use the Trust Fund monies that would have been spent on those freeways for transit capital improvements instead.

Much of the funds from cancelled freeways went to the construction of new light-rail lines. Light rail is an obsolete technology whose only “virtue” is that it is expensive enough to consume all of the federal dollars that would have gone to freeway construction so that opponents of those freeways would not be accused of “losing” federal dollars for their cities. In other words, cities like Portland built light rail not because it was efficient but because it was expensive. In the same amount of space, buses can move more people per hour, faster, more safely, and to more destinations for far less money than light rail.

Congress systematized this violation of trust towards the beneficiaries of the Highway Trust Fund in 1982 when it allocated a share of highway user fees to public transit. Transit had rapidly declined after World War II, but in 1982, the transit industry was optimistic that, with a little government support, it could once again become a key part of urban transportation systems. Thanks to the 1970s gasoline crises, the number of transit trips taken by the average urban resident had grown by 20 percent between 1972 and 1980.

This optimism proved unfounded, however. Despite hundreds of billions of dollars of subsidies, the average urban resident took 28 percent fewer transit trips in 2019 than in 1980. This decline is partly due to the transit subsidies, which have made transit agencies more beholden to political interests than to transit rider needs; with more than three out of four of their dollars coming from taxes rather than transit fares, transit agencies are more interested in pleasing special-interest groups than in increasing transit ridership.

The 1982 transportation reauthorization bill also contained the first surface transportation earmarks. Transportation earmarks did not increase the amount of money going to any particular state; instead, they merely reallocated how funds going to the states would be spent.

Congress requires the states to write long-term transportation plans and short-term transportation improvement programs to ensure that federal funds are spent on state transportation projects as cost-effectively as possible. Earmarks overturned the results of those planning efforts, requiring that money be spent on projects that state transportation plans had concluded were inefficient and of low priority.

The number of earmarks in the six-year reauthorization acts grew from 10 in 1982 to more than 7,000 in 2005. Many of these earmarks had only the remotest relationship to transportation, instead funding museums, national park visitor centers, and painting a fish on the side of a jet airliner.

With the 2005 reauthorization bill, known as SAFETEA-LU, came another violation of trust. Up until that point, Congress had never appropriated more out of the Highway Trust Fund than was going into the fund from taxes on fuel, motor vehicles, and tires. In 2005, to ensure that all of the earmarks would be fully funded, SAFETEA-LU mandated that the full amounts authorized by the law (which were based on forecasts of revenues into the Trust Fund) be appropriated each year even if revenues to the trust fund were insufficient to cover those appropriations.

When the 2008 financial crisis hit, revenues fell below forecast levels, and starting that year Congress was forced to appropriate an average of $10 billion a year to the Trust Fund to keep it from running out of money. The 2015 FAST Act systematized this by transferring $70 billion—an average of $14 billion a year for the five-year reauthorization—to the Trust Fund.

Some people suggest that such appropriations out of general funds simply made the highway portion of the Highway Trust Fund whole after several decades of diversions of highway user fees to transit and other non-highway activities. In a larger sense, however, the transfer of general funds to the Highway Trust Fund is as much a violation of trust as is the transfer of highway user fees to transit. By making transportation agencies responsive to political criteria rather than user needs, such transfers weaken the links that user fees create between transportation providers and users.

According to *National Transportation Statistics*, published by the Bureau of Transportation Statistics, highways move more than 85 percent of all passenger-miles and nearly 40 percent of all ton-miles of freight in this country. Public transit moves only about 1 percent of passenger-miles and no freight; Amtrak moves 0.1 percent of passenger-miles and almost no freight. Yet President Biden's proposed American Jobs Plan allocates roughly equal amounts of money to highways, transit, and Amtrak, showing that, whatever the other virtues of this plan, political priorities can often be very different from actual user needs.

The most important step Congress must take to restore the long-term solvency of the Highway Trust Fund is to restore the trust in Trust Fund. That means ending the diversion of highway user fees to transit and other non-highway programs. It means no more earmarks. And it means ending the practice of spending more out of the Trust Fund than is going into the Trust Fund from user fees.

Given these changes, what should be the role of the federal government in transitioning from using fuel taxes as a primary source for highway funding to mileage-based user fees? The federal government had a distinct cost advantage over state and local governments in collecting fuel taxes since it could collect those taxes directly from oil refineries and importers rather than individual gasoline stations. No such advantage exists for mileage-based user fees. While Congress can and should continue to encourage the states to switch from fuel taxes to mileage-based user fees, there is no reason for Congress to impose a national mileage-based user fee.

The increased electrification of the nation's motor vehicle fleet will steadily weaken the value of a fuel tax as a highway user fee. Congress should therefore phase out the federal fuel tax and allow state and local governments to completely finance their highways, roads, and streets out of mileage-based user fees.

Some people argue that the federal government should continue to play a role in state highway finance so that the highways of thinly populated states, such as Alaska and Wyoming, can be subsidized by highway users of more densely populated states, such as California and New York. In fact, such cross-subsidies are no longer needed if they ever were needed. New highways are needed mainly in fast-growing regions and that growth means that the new roads should be able to pay for themselves out of user fees.

Heavy truck traffic over such roads as Interstate 90 in South Dakota and Interstate 80 in Wyoming will provide sufficient funds to keep those roads in well-maintained condition. Some little-used roads may need to be changed from pavement to gravel to reduce maintenance costs, but such roads would mainly be used by local traffic, not interstate traffic, and thus should be funded locally anyway.

In the short run, then, Congress should make the Highway Trust Fund solvent by ending earmarks and transfers out of and into that fund for or from non-highway programs. In the long run, Congress should plan to phase out the federal Highway Trust Fund and allow state and local governments to take over highway finance.

Yours truly,

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