Published on *The National Law Review* https://natlawreview.com

Congress Must Deal With the Highway Trust Fund

Article By:

Jack L. Schenendorf

When **Congress** returns this week from the July 4th recess, it will once again find itself grappling with legislation to replenish the **Highway Trust Fund**, which is fast running out of money. Congress must act by the end of July to keep the Trust Fund solvent. If it doesn't, the **U.S. Department of Transportation** will have no choice but to ration available funds to the fifty states starting in August. If this happens, many highway and transit projects of national, regional, and local significance will be delayed, postponed, or cancelled.

The federal Highway Trust Fund is in trouble. It simply cannot support the current levels of highway and transit funding, much less the higher levels that are needed to modernize the Nation's national transportation network so that American businesses can compete in today's highly-competitive global marketplace. According to the Congressional Budget Office, it will take an additional $8.1 billion to allow the Trust Fund to meet its obligations until the end of calendar year 2014. And in the longer term, it will take an additional $15 to $18 billion *per year* over current Trust Fund revenues just to maintain existing funding levels. What this means, for example, is that a six-year bill to reauthorize MAP-21, which expires on September 30, 2014, at current funding levels, would require an additional $90 to $ 100 billion in revenues.

The fiscal problems facing the Highway Trust Fund are not new. The federal gas and diesel taxes, which are the revenue source for the Trust Fund, have not been updated in over 20 years — despite the desperate need for highway and transit improvements. As a result, the purchasing power of the gas tax is approximately 63 percent of what it was in 1993, and continues to decline. Moreover, an increase in vehicle fuel efficiency has contributed to shrinking revenue for the Fund. In recent years, Congress and the Bush and Obama Administrations have avoided taking serious action to fix the Trust Fund, which would require enactment of new or increased user fees dedicated to the Trust Fund. Instead, they have opted to bail out the Trust Fund with general fund transfers. They have opted for quick fixes, for temporary patches.

And it looks like another temporary patch is in the works. The Senate Finance Committee and the House Ways and Means Committee are both poised to recommend a short term extension of the highway and transit programs until the end of 2014 or early into 2015. And both committees are poised to again use a general fund transfer to replenish the Trust Fund during this period. The general fund transfer would be offset by mostly unrelated revenue increases or spending cuts. The only point of contention at this point seems to be deciding on an acceptable mix of offsets. This approach means that that consideration of a long-term reauthorization of MAP-21 or long-term funding solutions would once again be deferred, this time until after the November elections–either to late 2014 in the lame duck session of Congress or to early 2015.

Instead of a short-term patch, the Administration has put forward its own solution. It is urging Congress to pass its Grow America Act, which is a four-year, $302 billion plan that would, among other things, give highway funding a much-needed boost of about 22 percent above 2014 levels. The Administration would pay for its proposal by supplementing current revenues with $150 billion in "transition revenue" generated by tax reform. In reality, this is also a temporary patch; it would not create a long-term, stable funding mechanism for the Highway Trust Fund. But it would have the significant advantage of providing increased highway and transit funding for a four-year period. President Obama is pushing his proposal hard. According to press accounts, he openly mocked Congress last week for failing to fix the looming shortfall in the federal Highway Trust Fund. In a speech in front of the Key Bridge, which connects Washington, DC, to Arlington, VA, he said, "I haven't heard a good reason for why they haven't acted. It's not like they're busy with other stuff."

But the reality is that enactment of the Administration's proposal in the next few weeks is not remotely feasible. Although both Senate Democrats and House Republicans generally support the idea of corporate tax reform, the two sides haven't agreed on the details and many aspects of it are controversial. Moreover, the Administration has not provided the details of who would actually be paying the tab for its one-time windfall of $150 billion. Under these circumstances, there simply is no chance of congressional action on tax reform in the next three weeks. The proposals currently being considered by the House and Senate are the only realistic options given the need for quick action.

For those looking for a long-term, sustainable fix for the Highway Trust Fund, there has been at least one bright light in this debate. A couple of weeks ago Senator Murphy (D-Conn.) and Senator Corker (R-Tenn.) unveiled their bipartisan proposal to shore up the Highway Trust Fund by increasing the federal gasoline and diesel taxes by six cents in each of the next two years for a total of 12 cents. The plan would also index the gas tax to inflation, using the Consumer Price Index, to ensure that it remains viable into the future. The proposal would provide enough additional revenues to offset current MAP-21 spending levels over the next 10 years and replace all of the buying power the federal gas tax has lost since it was last raised in 1993. It would create a long-term, stable funding mechanism for the Highway Trust Fund. Senator Murphy summed up their rationale for making the proposal as follows: "We are sick and tired of Congress talking about fixing our transportation funding shortfall and avoiding specifics simply because the solutions are politically uncomfortable. Money is not going to fall off trees or sprout out of the ground to fill the funding gap." Senator Corker went on to say: "I know that we won't pass this in the next month. Our goal is to build support for this in the next six months."

Could Congress pass something like the Murphy-Corker proposal in the lame duck session after November's election? Well, there certainly is a precedent for it. In the lame duck session in 1982, Congress increased the gas and diesel fuel taxes. When President Reagan signed the bill, he said, "When we first built our highways, we paid for them with a gas tax, a highway user fee that charged those of us who benefited most from the system. It was a fair concept then, and it is today. But that levy has not been increased in more than 23 years. And it no longer covers expenses. The money for today's improvements will come from increasing the gas tax, or the highway user fee, by the equivalent of a nickel a gallon — about $30 a year for most motorists…..Today, as this bill becomes law, America ends a period of decline in her vast and world-famous transportation system. Because of the prompt and bipartisan action of Congress, we can now ensure for our children a special part of their heritage — a network of highways and mass transit that has enabled our commerce to thrive, our country to grow, and our people to roam freely and easily to every corner of our land." Many are hoping that Congress and President Obama will be able to echo these sentiments in the not too distant future. Time will tell.

© 2025 Covington & Burling LLP

National Law Review, Volume IV, Number 188

Source URL:https://natlawreview.com/article/congress-must-deal-highway-trust-fund