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Legislative Schedules
Week of August 31, 2009

The House and Senate are in recess for the August District Work Period. They will return to Washington after Labor Day, in September.

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The History of Transportation Trust Funds, Pt. 1I

The last issue of TW contained part one of this article examining the history and purpose of federal transportation trust funds. It examined the policy goals served by trust fund structure, gave a brief survey of trust fund accounts in the federal budget going back to the 1830s, and detailed how the original Eisenhower Administration plan for financing the Interstate highway system through the issuance of bonds, and the Democratic alternative for raising taxes to pay for Interstate construction in the absence of a trust fund structure, were both defeated in Congress in the summer of 1955. Part two of the article follows and describes the creation of the Highway Trust Fund in 1956, the creation and early history of the Airport and Airway Trust Fund, and the ultimately successful efforts to give mass transit its own dedicated revenue stream within the federal budget. Part three will examine the creation of the Inland Waterway and Harbor Maintenance Trust Funds and the efforts in the 1980s and 1990s to take various transportation trust funds "off-budget."

Linking tax receipts to program spending – the Highway Revenue Act of 1956. After the House overwhelmingly voted (123 yes, 292 nays) to reject the Fallon (D-MD) bill authorizing funding and raising taxes for construction of an Interstate highway system in July 1955, Congress quickly adjourned for the year (back then, the August recess lasted until January of the following year) and gave all interested parties a chance to regroup.

In essence, Democrats rejected the President's proposal to finance the Interstate system by issuing bonds, while Republicans (and some Democrats) rejected the package of tax increases proposed in the Democratic bill that came up for a final vote. There was a great deal of public opposition to the taxes proposed by the Public Works Committee (that panel, in a highly unusual move, had been given the authority by Speaker Rayburn to write its own taxes rather than ask the Ways and Means Committee for revenues). The opposition centered on the trucking lobby,

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New Deficit Forecasts May Dominate Future Legislative Debates

Last week, both the White House and the Congressional Budget Office both released their mid-session reviews of the status of the federal budget and the economy, and both documents were filled with disturbing news.

The CBO report estimates that if no changes are made in current tax law or laws governing mandatory spending programs, the total federal deficit will be $1.59 trillion in fiscal 2009, $1.38 trillion in FY 2010, and $921 billion in FY 2011, before dipping to $684 billion in FY 2013 and steadily rising to $834 billion in FY 2019. All told, the ten-year period from 2010-2019 would add a total of $7.14 trillion in cumulative deficits to the national debt.

The comparable numbers from the White House are not completely comparable, since the Office of Management and Budget insists on continuing to treat Fannie Mae and Freddie Mac as off-budget entities even though the federal government now owns 80 percent of each and makes most of the decisions. But in any case, the White House pushes two separate fore-

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which felt the tax scheme of the Fallon bill singled out trucks. The truckers were joined by the powerful Teamsters union (whose president, Dave Beck, had actually been a member of the Clay Commission which recommended the bonding proposal in the first place).

Washington journalist and future legend Theodore H. White quoted the head of the American Trucking Association as saying after the vote, "Yes, we had considerable influence in killing the Fallon bill. But don't confuse the Fallon bill with the highway program. We're not such stupid idiots as to be opposed to a road program we need as much as anyone else. We were about the first group to support the highway program from the beginning. We supported it before both Senate and House, we agreed to accept increased taxes to pay for it – we'll pay our fair share, the same tax rate on fuel, tires and equipment everyone else pays."[1]

The object, then, was to find a way to finance the system that more stakeholders thought was fair, and to reassure stakeholders and legislators that the receipts of these increased taxes would be dedicated towards highways. Within the Eisenhower Administration, there were several attempts to regroup and put forward a revised highway proposal after the failure of the Fallon bill. (To get original source material on all this, one would have to spend a week or so at the Eisenhower Library in Abilene, Kansas, so this author is accepting the judgment of scholar Mark H. Rose who summarizes these papers extensively in chapter 7 of his book *Interstate: Express Highway Politics, 1939-1989.*)

Rose said that at a September Cabinet meeting another interagency group was appointed to work with the state Governors and attempt to come up with a revised plan, but that the principal players still could not agree. Accordingly, "Following a January 31 meeting with congressional leaders, Eisenhower's aides were told to 'yield to Democratic insistence on financing' and to 'cooperate in the development of an appropriate tax proposal.'"[2]

Key legislators on Capitol Hill were not waiting around for the Eisenhower Administration. On February 6, 1956, Rep. Hale Boggs (D-LA), the eighth-ranking Democrat on the Ways and Means Committee, took leadership on the issue by introducing a bill he had been working on for months. (His press statement on introduction of the bill said that "It is understood that the President, after a conference with the Honorable Joseph W. Martin, Jr. (Repub., Mass.), House Republican leader, has decided to abandon his plan for issuing bonds as a means of financing the highway program, and that the President now approves and supports the proposed pay-as-you-go method of financing, to which Mr. Martin has pledged bipartisan support."[3])

The Boggs bill (H.R. 9075, 84th Congress) only dealt with taxes, not with spending – the Speaker had realized that the legislation would move through the chamber better if the traditional committee jurisdictions were respected. (Fallon at that time had just introduced a separate bill, H.R. 8836, containing highway authorizations basically identical to the failed 1955 legislation.) Boggs's bill shifted the burden of the increased taxes so that it did not fall so heavily on the trucking industry – the taxes on heavy truck tires, in particular, were drastically reduced, and the increased tax on diesel fuel was reduced to the same level as the increased tax on gasoline. However, the taxes under the Boggs bill would simply be deposited into the general fund of the Treasury, not segregated in any way.

THE FALLON-BOGGS BILL (H.R. 10660, 84TH CONGRESS)
As Reported In, and Considered By, the House

The House bill created a Highway Trust Fund but anticipated that the Trust Fund woulud have to borrow money from the general fund, at interest, for most of the later years of the program (called "repayable advances" in the bill) and that the taxes would extend one year beyond the last program outlays in order to balance the books.

Fiscal Year	HTF Est. Receipts	HTF Est. Outlays	HTF Surplus/ (Deficit)	HTF Interest Earned	HTF End-of-FY Balance
1957	1,480	1,025	455	5	460
1958	1,986	1,480	506	16	982
1959	2,063	1,993	70	23	1,075
1960	2,107	2,475	(368)	20	727
1961	2,186	2,700	(514)	11	224
1962	2,245	3,025	(780)	(4)	(560)
1963	2,317	3,050	(733)	(21)	(1,314)
1964	2,384	3,075	(691)	(37)	(2,042)
1965	2,452	3,100	(648)	(53)	(2,743)
1966	2,523	3,125	(602)	(68)	(3,413)
1967	2,591	3,250	(659)	(84)	(4,156)
1968	2,655	3,075	(420)	(98)	(4,674)
1969	2,719	2,700	19	(105)	(4,760)
1970	2,778	2,025	753	(99)	(4,106)
1971	2,830	1,296	1,534	(75)	(2,647)
1972	3,182	505	2,677	(30)	-
Total	**38,498**	**37,899**	**599**	**(599)**	

During the Ways and Means hearings on the Boggs bill, the Treasury Secretary, George Humphrey (who Rose describes as being a somewhat independent actor within the Eisenhower Cabinet, disagreeing in particular on the highway plan with Eisenhower's in-house economic advisers) was asked about whether he supported earmarking the increased taxes directly for highways. Humphrey responded "I would not recommend earmarking. I am talking about handling this the same way as we handle the trust funds…There is a provision for the estimating of amounts and the crediting of accounts. And I would handle these the same way we do trust funds."[4]

Later on in the hearings, the mayor of Cincinnati, Ohio, Charles Taft, told the panel that "The money raised should certainly be put in a trust fund readily identifiable, and not mixed up in budget balancing. We are required to do it in Ohio, and find no difficulty in practice. We do it in our budget every year. All gasoline and license taxes are put

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The History of Transportation Trust Funds, Pt. I1—Continued

into a trust fund and can only be used for roads and immediately related purposes."[5] And later on in the hearings, a representative of the National Good Roads Association strongly echoed Taft's call for a federal highway trust fund.

By the time Ways and Means reported the bill unanimously on March 19, 1956, the panel had added an amendment depositing all federal gasoline, diesel, and tread rubber taxes and the increased share of taxes on tires and on truck and trailer sales into a new Highway Trust Fund. The committee report made clear that "…the trust fund is expected to be self-sustaining over the 16-year period. In any case, however, your committee provides in the section on the highway trust fund that it is the declared policy of Congress to bring about a balance of total receipts and total expenditures of the trust fund for the entire period involved and it is stated that if it hereafter appears that this balance will not be obtained, Congress is to enact legislation in order to bring about such a balance."[6]

The Republican members of the committee, in supplemental views filed with the report, claimed credit for the new trust fund structure: "We recommended, and the committee accepted, the establishment of a highway trust fund. The existence of this fund will insure that receipts from the taxes levied of finance this program will not be diverted to other purposes. Moreover, it will make it easier for the Congress as well as the public to determine to what extend the costs are being met on a pay-as-we-build basis. The highway program should be financed without resort to budgetary deficits."[7]

However, just because the trust fund was to be self-sustaining "over the 16-year period" under the Ways and Means bill did not mean that deficits could not build up in the interim. As the table shows, the Ways and Means plan would have resulted in the trust fund borrowing large sums from the general fund, at interest, from 1962-1971 before eventually paying off the completed Interstate system. The net cost of interest paid to the general fund over the life of the trust fund was estimated to be about $600 million, a far cry from the $11.5 billion to be paid to private investors under the Clay Commission plan.

It took the Public Works Committee a little bit longer to rework the apportionment formulas for the spending half of the legislation in order to garner more votes, but the two bills were eventually combined into one bill (H.R. 10660, 84th Congress), which came before the House for debate on April 26, 1956. Boggs told the chamber that "For a great many years now, highway users have complained, and I think with some justification since the conclusion of World War II and the Korean conflict, that vast revenues were being collected from them but were not being used for purposes of building highways. This bill recognizes that complaint and it establishes the highway trust fund which dedicates most of these funds to highway construction and for that purpose only…I discovered that virtually every highway user group – from the American Automobile Association to the various trucking organizations – has for years recommended that the Federal excise taxes levied upon highway users be dedicated and set aside for the purpose of financing the improvement and extension of the Federal highway system. This recommendation is premised upon the intense feeling of highway groups that it is only fair to utilize the Federal excise taxes on gasoline, diesel fuel, lubricating oil, passenger automobiles, trucks, buses and trailers, automobile parts and accessories, and tires and tubes, for the purpose of constructing roads."[8]

Later in the floor debate, Ways and Means member Robert Kean (R-NJ) got up to make four points. The first two – that the trust fund will assure legislators that the new taxes would be dedicated towards roads alone, and that it would provide visibility to allow future increase or decrease in the taxes as needed to fund the Interstate – were later borne out. But his next point was not prescient: "Third. All of these taxes are easy ones to collect. Historically we find that easy-to-collect taxes have been left on the books long after the purpose for which they were levied had ended. We want to get rid of these taxes after the roads are built and this trust fund procedure should make it much easier to eliminate them then."[9] He came back around with his fourth point, however, stating that politicians might try to use the taxes to balance the overall federal budget if the taxes were not segregated from the rest of the budget by a (then) off-budget trust fund.

During amendment debate the following day, no amendments were offered relating to the Trust Fund, and the bill passed by the near-unanimous margin of 388 to 19 – no mean feat, since a bill spending the exact same amount of money and raising roughly the same amount in new taxes had garnered 265 fewer "yes" votes the previous year. What changed from 1955 to 1956? A redistribution of the tax burden so it did not hit truckers quite so hard, some changes in the apportionment formulas benefitting urban areas, and the establishment of a new Highway Trust Fund to segregate the new taxes from the rest of the budget and ensure their dedication to the purposes of the underlying legislation without fear of diversion.

When the bill reached the Senate, the Finance Committee made few changes to the revenue title of the legislation. The taxes stayed basically the same, except that the Senate panel exempted the first 26,000 pounds of truck weight from the new heavy truck use tax. And the debt-fearing Finance chairman Harry F. Byrd (D-VA) added a provision to the bill which bears his name to this day. The "Byrd test" as considered

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and passed by the Senate required the Secretary of Commerce to reduce Interstate apportionments to states on a pro rata basis any time the Secretary of the Treasury determined that the Highway Trust Fund would otherwise be forced to hit a cash deficit at the end of the upcoming fiscal year. Then, if tax receipts improved, the withheld contract authority could be restored to states in subsequent years as the Trust Fund was able to support the extra outlays. (The Senate Public Works Committee did make some changes in the year-by-year amounts of Interstate spending passed by the House but almost no change in the total amount.)

Floor debate on the Senate amendments to H.R. 10660 was almost entirely devoted to the issues of Davis-Bacon applicability and limitations on truck sizes and weights, and the taxes and the trust fund were scarcely mentioned. On May 29, 1956, the Senate passed the bill by voice vote.

The House-Senate conference committee dragged on for almost a month. Rose reports that "Negotiations between conferees were difficult; at one point they considered returning without a bill. On major items such as fund distribution, however, they compromised more or less. Between 1957 and 1959, Interstate money would be distributed according to the Senate formula: so much to each state based on land, population, and road mileage, just as always. For the remainder of the program, between 1960 and 1969, states would get their share of Interstate costs as a percentage of total Interstate costs."[10]

When the final conference report was submitted to Congress on June 26, it passed the House by voice vote and passed the Senate by a vote of 89 to 1. President Eisenhower signed H.R. 10660 into law as Public Law 627 (84th Congress) three days later. The Highway Trust Fund provisions were basically unchanged, including the Byrd Test for self-sufficiency.

THE SENATE VERSION OF H.R. 10660
As Reported In, and Considered By, the Senate

The Senate version of H.R. 10660 contained the "Byrd test" provision that would automatically reduce Interstate apportionments to keep the Trust Fund from running end-of-fiscal-year deficits. Although this table from the committee report does show deficits starting in 1961, the report points out that the bill's authorizations for non-Interstate highways did not extend past 1960 and that future authorization bills could amend non-Interstate authorization levels as necessary to avoid cuts.

Fiscal Year	HTF Est. Receipts	HTF Est. Outlays	HTF Surplus/ (Deficit)	HTF Interest Earned	HTF End-of-FY Balance
1957	1,465	1,050	415	5	420
1958	1,971	1,600	371	14	805
1959	2,048	2,050	(2)	18	821
1960	2,091	2,600	(509)	13	325
1961	2,170	2,800	(630)	-	(305)
1962	2,229	2,525	(296)	(10)	(611)
1963	2,299	2,325	(26)	(14)	(651)
1964	2,366	2,200	166	(13)	(498)
1965	2,433	2,100	333	(7)	(172)
1966	2,504	2,330	174	(2)	-
1967	2,571	2,571	-		-
1968	2,634	2,634	-		-
1969	2,698	2,698	-		-
1970	2,756	2,756	-		-
1971	2,808	2,808	-		-
1972	3,159	3,159	-		-
Total	**38,202**	**38,206**	**(4)**	**4**	

The early years of the Highway Trust Fund tested some of the assumptions voiced in Congress when the 1956 law was being considered – whether Congress would actually increase taxes when needed to support spending commitments, and whether or not the Byrd Test would be allowed to take effect. In response to a brief but sharp economic recession in 1958, Congress used the 1958 highway bill to add an extra $515 million for the regular highway program for FY 1959 and an extra $800 million for the Interstate system to be apportioned over FYs 1959-1961, without any corresponding tax increase. Accordingly, the law also contained a provision (section 9 of Public Law 85-381) prohibiting any reduction in Interstate apportionments under the Byrd Test for fiscal years 1959 and 1960.

According to the FHWA 1960 annual report, the extra spending "totaled $1.6 billion more than the Trust Fund could liquidate. Consequently, the outlook in the summer of 1959 was that a $500 million deficit would develop in the Trust Fund by June 30, 1960, accumulating to $1 billion by June 30, 1961, even if no Interstate apportionment were to be made for fiscal year 1961 and an apportionment of only $500 million were to be made for fiscal 1962. It would have been necessary during fiscal year 1960 to stop the letting of new contracts for both ABC and Interstate construction for about 9 months in order to bring the Trust Fund in balance with requirements at the earliest possible date."[11]

A shutdown of this magnitude was not palatable to the Eisenhower Administration or to Congress, and accordingly, an off-year highway authorization bill was rushed through. The 1959 act (Public Law 86-342) lowered the FY 1961 Interstate apportionment by $500 million and levied a "temporary" eighteen-month increase in the gasoline and diesel excise tax by one cent per gallon (from three cpg to four). (The quotation marks around "temporary" are to make it obvious that Congress, of course, has yet to let this temporary levy expire.) President Eisenhower, in fact, had requested a 1.5 cent per gallon increase.

This tax increase to keep the Trust Fund from defaulting sailed through the House and Senate due to Eisenhower's support and the obvious need to keep the construction programs functioning, but Eisenhower said when he signed the bill into law that the new taxes would not raise enough money to pay the

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bills unless he also implemented "cost controls" (the first obligation limitations), which he promptly did. But this was still not enough to prevent the first usage of the Byrd Test, and the FY 1961 Interstate apportionment was reduced by $200 million in October 1959.

After this initial hiccup, however, the Trust Fund functioned well for the next two decades – so well, in fact, that it spawned imitators and made promoters of other modes of transportation jealous.

Capital vs. operating costs – the Airport and Airway Trust Fund. The U.S. air traffic control system almost broke down in the late 1960s. The phenomenal success of the Boeing 707 in the early 1960s sent all major airlines on a buying spree to convert their propeller-driven fleets over to jets, which flew significantly higher and faster – and which required instrument flight rules (IFR) under the constant supervision of air traffic controllers, not visual flight rules (VFR) which only required interaction with air traffic controllers at takeoff and landing.

From 1964 to 1969, the number of IFR flights controlled by Federal Aviation Administration en route air traffic control centers almost doubled, from 11.1 million flights in 1964 to 20.9 million flights in 1969. In the 1969 transportation appropriations bill, Congress increased funding for new hire controllers substantially and also more than doubled funding for FAA facilities and equipment, from 1968's $54 million to $120 million, but much more remained to be done. President Nixon's 1970 budget proposal proposed significant funding increases and included placeholder language saying that the Administration was working on a new financing system to pay for a massive expansion of air traffic control facilities and employees and of grants to airports to handle the additional jets (which needed longer runways than propeller planes).

Nixon FY 1970 Budget Request for Major FAA Accounts
(Dollar amounts in thousands)

	FY 1968 Actual	FY 1969 Pending	FY 1970 Proposed
Operations	617,228	705,001	772,000
Facilities & Equipment	54,000	120,000	134,000
Research & Development	27,000	27,000	47,500
Airport Grants	66,000	70,000	305,000
Total, Major Accounts	**764,228**	**922,001**	**1,258,500**
Annual Increase		***+20.6%***	***+36.5%***

On June 16, 1969, Nixon submitted his plan to Congress (House Document 91-130). He proposed spending an average of $250 million per year on air traffic control facilities and equipment for each of the next ten years and also spending an average of $250 million per year for ten years on 50-50 matching grants for airport expansion (thereby leveraging a total of $5 billion for airport construction activities). Nixon also proposed a sweeping change in the way in which the FAA was financed:

> At present, the Treasury obtains revenues, generally regarded as airways user charges, from airline passengers who pay a five per cent tax on the tickets they buy, and from the operators of aircraft who pay a tax at the effective rate of two dollars a gallon on aviation gasoline. The revenues obtained from these taxes are not applied directly to airways expenditures. They are either earmarked for other purposes or go into the general fund of the Treasury.
>
> I propose that there be established a revised and expanded schedule of taxes as follows, the revenues from which would be placed in a Designated Account in the Treasury to be used only to defray costs incurred in the airport and airway programs:
>
> -A tax of eight percent on airline tickets for most domestic flights
> -A tax of $3 on passenger tickets for most international flights, beginning in the United States
> -A tax of five percent on air freight waybills
> -A tax of nine cents a gallon on all fuels used by general aviation.[12]

The choice of the phrase "Designated Account in the Treasury" rather than "trust fund" was intentional. After the August recess, the Ways and Means Committee held hearings on the Administration's proposed bill, and the first substantive question asked of Transportation Secretary John Volpe was "I worry about creating a designated account rather than a trust fund account. Can you give me the rationale for creating a designated account, and explain how it differs from establishing a trust account as we did in the highway situation?"

Volpe responded by bobbing and weaving: "I suppose that in one way we could say it is a case of semantics and yet there is a little more to it than that. I have been told that from the legal point of view funds in this designated account would be just as 'sacred," if we want to use that term, as funds in the highway trust fund from the standpoint of assuring their use solely for the purposes for which the account or fund is established. One difference, however, is that all of the revenues placed in the highway trust fund come from user charges…on the other hand, if you require that user charges completely pay the bill [for aviation programs] particularly on an overnight basis, or within a year or two there would have to be a very, very sharp increase in the user charges that we propose…The only major difference that I detect insofar as actual figures go is that the interest in the highway trust fund, which comes entirely from user charges, redounds to the benefit of the highway trust fund, whereas in the case of the designated account for airport/airways, because some general funds are used and in the early years a substantial amount of general revenues, the interest does not accrue because there will be a deficit for most of the years of the program."[13]

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Ways and Means ranking minority member John Byrnes (R-WI) made clear that the payment of interest from the general fund to a trust fund was necessary to provide incentive to the Appropriations Committees to spend trust fund moneys rather than let balances build up: "A designated account would not draw interest. Doesn't that make it even more tempting to defer some of these expenditures, because these funds could then be used for general governmental operations without the payment of interest?"[14]

Volpe responded that "…as distinguished from the highway trust fund you have within this total commitment the basic maintenance and operation of an airway system. This is a recurring matter and something which I think would be less vulnerable to executive level as well as congressional action because of the very nature of the fact that we recognize this system has just got to be operated, it has to be maintained, and from that point of view it isn't like not having 5 miles of road that you might like to have in 1973, but instead you have it in 1975. Here you can't defer the operation of this system from1973 to 1975 without disasters."[15]

This is a very important issue that will become crucial later on in the narrative – the Nixon Administration made the obvious point early on to Congress that operating costs would always crowd out capital investment if they were drawn from the same pot of money and if total resources were constrained.

As the table at the bottom of this page makes clear, it was the Nixon Administration's original intention that the general fund of the Treasury provide a sizeable share of FAA expenses in the early years of the Designated Account (but through one annual federal appropriation from the General Fund to the Account, not by splitting any existing FAA account into part general fund, part Designated Account) until, by 1980 or 1981, aviation taxes and fees provided the entire cost of the civilian usage of the airport and airway systems (leaving an annual general fund contribution only for military usage of civilian airspace).

The remainder of the Ways and Means hearings made it obvious that the members of the committee felt much more comfortable with an interest-earning trust fund account than with a "designated account," and when the panel reported its revenue title for the airport and airways bill in October 1969, its bill language established an "Airport and Airway Trust Fund." The committee report said that "The Trust Fund is created in order to insure that the air user taxes are expended only for the expansion, improvement and maintenance of the air transportation system. To maintain effective control over the funding of the system, it is provided that any general fund appropriations necessary to supplement the user taxes are also to be paid into the Trust Fund. Expenditures from the Trust Fund are to be made only after Congress appropriates the funds. Limitations are placed on the airport and airway purposes for which the Trust Fund monies (user taxes and general fund revenues) may be expended…In the case of airports, such monies may be expended for the purposes authorized in the provision of this bill respecting airports and for terminating operations under the Federal Airport Act. Later amendments would have to be considered together with appropriate changes in the Trust Fund. In the case of the airway system, the bill specifies the purposes for which trust fund monies may be expended. Such funds may be used for construction and

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THE NIXON ADMINISTRATION'S AVIATION FINANCING PLAN, JUNE 1969

(Dollars in millions)

Est. Tax Receipts	**1970**	**1971**	**1972**	**1973**	**1974**	**1975**	**1976**	**1977**	**1978**	**1979**	**10-Year**
Ticket tax	460.0	507.2	560.0	616.8	679.2	747.2	820.8	901.6	988.8	1,083.2	7,364.8
Cargo tax	29.0	33.0	38.0	44.0	50.0	60.0	70.5	83.0	98.5	116.5	622.5
Fuel tax	54.9	58.5	62.1	66.6	70.2	74.7	72.0	86.4	92.7	99.0	737.1
Int'l head tax	24.7	27.1	29.9	33.1	36.5	40.1	44.1	48.5	53.4	58.7	396.1
Total Receipts	**568.6**	**625.8**	**690.0**	**760.5**	**835.9**	**922.0**	**1,007.4**	**1,119.5**	**1,233.4**	**1,357.4**	**9,120.5**
Est. FAA Outlays											
Operations	671.0	778.0	853.0	906.0	950.0	994.0	1,038.0	1,082.0	1,126.0	1,170.0	9,568.0
F&E	162.0	224.0	311.0	261.0	208.0	189.0	217.0	240.0	240.0	240.0	2,292.0
R&D	51.0	51.0	48.0	48.0	48.0	47.0	47.0	47.0	47.0	47.0	481.0
AIP	145.0	188.0	237.0	253.0	269.0	269.0	270.0	270.0	270.0	270.0	2,441.0
Total Outlays	**1,029.0**	**1,241.0**	**1,449.0**	**1,468.0**	**1,475.0**	**1,499.0**	**1,572.0**	**1,639.0**	**1,683.0**	**1,727.0**	**14,782.0**
Est. Military Usage	178.0	210.0	242.0	243.0	241.0	246.0	260.0	273.0	283.0	291.0	2,467.0
"Civil share deficit"	282.4	405.2	517.0	464.5	398.1	331.0	304.6	246.5	166.6	78.6	3,194.5
Total GF Approp.	**460.4**	**615.2**	**759.0**	**707.5**	**639.1**	**577.0**	**564.6**	**519.5**	**449.6**	**369.6**	**5,661.5**
GF % of FAA Total	***44.7%***	***49.6%***	***52.4%***	***48.2%***	***43.3%***	***38.5%***	***35.9%***	***31.7%***	***26.7%***	***21.4%***	***38.3%***

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maintenance of the system but not for development of airplanes, such as the proposed development of a supersonic transport. Appropriations for purposes authorized by the Federal Aviation Act which are not described in the trust fund provisions of this bill will be provided for out of the general fund."[16]

The provisions of the bill (H.R. 14465, 91st Congress) creating a trust fund account were so noncontroversial that they were scarcely mentioned in the floor debate, and the bill passed the House easily.

Early the next year, the Senate considered its own version of H.R. 14465, and the Finance Committee did not change the substance of the trust fund provision, only the timing of their implementation (necessitated by the delays in enacting the bill). On the floor, again, the trust fund provisions prompted little debate, except for some very on-point comments from noted budget-cutter William Proxmire (D-WI): "Mr. President, when we shield a program behind a trust fund, we give it an inside track in the competition for money. More importantly, we deny to ourselves the ability to weigh all our programs and reorder national priorities consistent with our national needs. Trust fund financing ties up Federal revenue and makes it extremely difficult to shift funds to where they are needed the most. Another serious problem with trust fund financing is that the program it finances tends to become immune from the requirements of fiscal policy. Because of overall conditions in our economy, it does become necessary from time to time to cut back on Federal spending. Programs financed through trust funds tend to become exempt from this process on the grounds that the revenues are earmarked for a specific purpose and that they cannot be reduced. This means that the burden of adjustment falls more heavily on the programs which do not enjoy trust fund financing such as housing. If we increase the number of programs with trust fund financing, we increase still more the burden which the nontrust fund programs must carry."[17]

Finance Committee chairman Russell Long (D-LA) responded that "…this bill is based on the assumption that people are willing to pay an additional tax, provided that they know what they are paying for and provided that they get what they are paying for. In this instance, they know where the airways are and they know what they are paying for. On that basis, the House of Representatives was willing to vote for this additional tax. I have heard the argument and agree that there is much to be said for appropriating money separately. However, there is also much to be said for the view that people should have as good airports and highways as they are willing to pay for and to have modern highways as they are willing to pay for."[18]

In House-Senate conference, the trust fund-related provisions of the bill changed very little, as did the taxes (except for disputes over the proper level of user fees levied on general aviation, a dispute which has never since faded). The spending side of the bill, however, was in great flux. When the conference report on the bill was debated in the Senate, Sen. Norris Cotton (R-NH) notified the chamber that the Nixon Administration had sounded an alarm: "As passed by the House the bill would have established a three-year program; as passed by the Senate a 10-year program. The committee of conference resolved the differences by striking a compromise 5-year program but essentially adopting the enumeration of the Senate version. On this point the Secretary of Transportation, by letter of March 17, 1970, to the distinguished chairman of our Committee on Commerce, expressed some reservations concerning the appearance in this section of establishing priorities for the use of the newly created trust fund moneys. For example, the Secretary expressed some concern that he might be required to spend the first $250 million for airport development; the second, for airways facilities before he, the Secretary, could make expenditures in other vital areas. The net effect would be a limitation on the flexibility of the Secretary's use of trust fund receipts."[19]

But despite these doubts, the conference report passed the Senate by voice vote and passed the House the following day by a vote of 362-3. President Nixon signed the bill into law on May 21, 1970 as Public Law 91-258. As enacted, section 208 of the bill established the Airport and Airway Trust Fund, and subsection (f) specified that Trust Fund moneys would only be available to pay for expenses under title I of the bill (airports), plus "planning, research and development, construction, or operation and maintenance of – (i) air traffic control, (ii) air navigation, (iii) communications, or (iv) supporting services, for the airway system" or "for those portions of the administrative expenses of the Department of Transportation" attributable to the same. Title I of the law prescribed authorizations for FAA facilities and equipment at "not less than $250,000,000" per year and set targets for airport grants at $280 million per year.

When it came time to implement the new law, the Nixon Administration disappointed the law's authors. The White House transmitted a supplemental budget request on November 16, 1970 (House Document 91-408) containing appropriations language to get the Trust Fund going but which also underfunded airport grants, giving a total of $170 million in obligations rather than the $280 million authorized by the law. The Appropriations Committees generally went along with the Administration, but things were complicated since the supplemental for FY 1971 actually got enacted into law before the regular Department of Transportation appropriations bill for FY 1971 (that bill was held up over funding for the supersonic jet plane and never actually became law – Congress passed several continuing

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resolutions for DOT only and amended the CR four months before the fiscal year ended to kill the SST and extend the CR through the end of the fiscal year).

When the new Congress reconvened in January 1971, Nixon submitted a budget that again funded airports well below the $280 million level recommended by the authorization law (only $205 million). The House and Senate Commerce Committees, who wrote the prior year's airport law, were generally incensed. At the same time, the Administration reduced the amount it wanted appropriated from the general fund to the Trust Fund in FY 1972 down to $293 million, far less than was originally conceived when the 1970 AATF Act was passed, and leaving the Trust Fund with a zero balance at the end of the year. The net effect, as perceived by airports and their legislative advocates, was that the Administration was cutting capital programs and putting that money towards operational costs (as Secretary Volpe had hinted during the 1969 hearings).

NIXON VS. AIRPORT FUNDING

	1971	1972	Total
F&E - Authorized	250.0	250.0	500.0
F&E - Nixon	238.0	250.0	488.0
R&D - Authorized	50.0	50.0	100.0
R&D - Nixon	62.4	72.8	135.2
Airports - Authorized	280.0	280.0	560.0
Airports - Nixon	170.0	205.0	375.0
Planning - Authorized	15.0	15.0	30.0
Planning - Nixon	10.0	15.0	25.0

This was made easier for the White House by the fact that two different sets of committees wrote two different parts of the bill. The Commerce Committees wrote section 14 of the bill, which authorizes the expenditure of money, but the tax-writing panels wrote section 208 of the bill which governed how Trust Fund moneys could be spent. Because the language in section 14 was not quite the same as section 208, the Nixon Administration could exploit the ambiguity to its own purposes.

Congress quickly held hearings, at which Rep. John D. Dingell, Jr. (D-MI) said that "The reason we set up a trust fund, quite frankly, was because we didn't trust FAA and the Department of Transportation to administer the laws we had been putting out of this committee. So we called it a trust fund because we didn't trust you folks. And you proved that we shouldn't and can't and don't."[20]

The Nixon White House, as if to prove it could not be trusted to use trust fund moneys for the purposes delineated by Congress, sent a message to Capitol Hill on March 18, 1971 proposing "special revenue sharing for transportation" – in essence, combining airport grants, mass transit subsidies, and all highway and highway safety spending except the Interstate system be consolidated into one large pot of money, from which highway and airport money would be given out under a combined formula based on population and other factors.[21] This proposal went exactly nowhere.

Even though in the hearings the Administration, sensing the Congressional irritation, reversed course and promised to raise the obligation level for airports administratively to the authorized $280 million level, the damage was done. Even as the Appropriations Committees developed FY 1972 appropriations legislation that would largely go along with the Administration request, the Commerce Committees developed their own legislation that would perhaps go too far in fixing the problem. But the appropriations bill had to move through Congress first. As the bill was on the House floor on July 14, 1971, Commerce member (and Budget Committee chairman, and future Secretary of Transportation) Brock Adams (D-WA) offered an amendment to increase the general fund contribution to the Trust Fund from $283 million to $531 million and increase airport grants to the authorized $280 million level. Transportation Appropriations subcommittee chairman John McFall (D-CA) did not oppose the amendment but noted that the Commerce Committee's freestanding bill was coming to the floor later and said that "I would point out again to the Members of the House that this is a policy decision which they will have an opportunity to act on later. I hope it will be determined in a consistent way so that the Committee on Appropriations will know exactly what the members of this House want to do with the airports and airways trust fund."[22] The FY 1972 appropriations bill was signed into law on August 10, 1971 and funded all non-safety FAA operations out of the Trust Fund but incorporated the higher general fund share and full funding for airport grants included in the Adams amendment.

In response, the House Commerce panel reported and brought to the floor in September a bill (H.R. 7072, 92nd Congress) which prohibited any Trust Fund moneys from being appropriated for FAA operational expenses except for R&D and for the administrative expenses of the airport grant and F&E programs. Although a few members spoke critically of the bill (Rep. Byrnes from Ways and Means said "…the present bill goes too far in precluding the use of trust fund receipts for operations and maintenance, not only in the near future but indefinitely, even though the basic commitment of Congress to the construction of airway and airport facilities is met. For that reason, I believe the bill goes too far, and I want to alert the Congress that we will have to deal with this issue again."[23]), no member offered any amendments to the bill, which passed by voice vote. The Senate passed a very similar bill in October by voice vote, and both chambers cleared a conference report that looked very much like the original House bill before Thanksgiving (also by voice vote). While the Administration opposed the bill, Nixon aides realized that a veto would be unsustainable, and the bill became law on November 27, 1971.

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A Congressional Budget Office study later said that "The ramifications of the 1971 amendment were far reaching. First, it significantly changed the nature of the trust fund. While the Congress had intended the new excise taxes to finance capital expansion of the airport and airway systems, it had also intended that private-sector users would pay for the federal services provided to them to the extend funds were available after capacity needs had been met. In effect, the trust fund was to have been a capital account except when excess funds were available; in those instances, the trust fund could be more of a user-pay system. This amendment broke the link between the excise tax payments and the coverage, if only partial, of the costs of all aviation services, and established the trust fund as a capital-only account. Second, it was the first indication that the new system of aviation funding would not fulfill its intended goal of freeing the aviation budget from the general budgetary constraints of the government."[24]

THE FIRST SIX YEARS OF THE AIRPORT AND AIRWAY TRUST FUND
(Dollar amounts in millions)

	1971	1972	1973	1974	1975	1976
Trust Fund Income:						
Aviation Tax Receipts	563	649	759	840	962	938
Transfers from General Fund	621	902	73	-	-	-
Net Interest	-	-	-	28	96	146
Total AATF Income	**1,184**	**1,551**	**832**	**868**	**1,058**	**1,084**
Trust Fund Outlays:						
Airport Grants-in-Aid	61	105	232	243	292	269
Facilities and Equipment	122	224	322	207	223	204
Research & Development	26	58	67	68	64	74
Operations (Trust Fund Share)	78	1,000	77	3	-	1
Other	-	1	1	-	-	-
Total AATF Outlays	**287**	**1,389**	**699**	**521**	**579**	**547**
AATF Surplus/Deficit	897	162	133	347	479	537
AATF End-of-Year Cash Balance	897	1,058	1,187	1,534	1,013	2,550
AATF EOY Uncommitted Bal.	(393)	(461)	(630)	(76)	912	1,688
GF Share of FAA Spending	1,259	233	1,150	1,334	1,432	1,586

Source: Congressional Budget Office, *The Status of the Airport and Airway Trust Fund*, Dec. 1988.

As the table shows, the outlays flowing out of the Trust Fund for the (slow-spending) capital programs over the next few years were nowhere near the tax receipts pouring in, and the inevitable result was large unexpended balances. (This was not the first, nor the last, time that Congress would overreact legislatively to Nixon Administration provocations.) In the start-up year of 1971, the Trust Fund supported only nineteen percent of total FAA spending. In 1972, that jumped to 86 percent, then after Congress took punitive action, the Trust Fund share dropped to 38 percent in 1973 and stayed that way thereafter in 1974-1976. Meanwhile, the unexpended balances in the Trust Fund (a bad policy indicator but the most visible one) rose to exceed one year's annual FAA outlays by 1976, and the uncommitted balance (a better policy measure) by 1976 was almost 80 percent of the total FAA budget.

Having uncommitted balances in the Trust Fund that exceed the annual general fund contribution to FAA operations became embarrassing, so when Congress was working on the 1976 FAA reauthorization bill, the House Public Works and Transportation Committee (which had gained jurisdiction over aviation after the committee reforms of 1974) moved to allow the Trust Fund to pay for maintenance of the air traffic control system (but with the annual amount that could be spent on maintenance capped at a certain dollar amount in each year of the bill). When the Senate considered its bill, that chamber's Commerce panel did not want to allow maintenance spending, but Sen. James Buckley (R-NY) (brother of William F., Jr.) offered an amendment on the Senate floor on March 25, 1976 that amended the Senate bill to mirror the House language in this regard, and the amendment passed by a relatively narrow vote of 46 to 32 (though the chairman and ranking member of both the full Commerce panel and its Aviation subcommittee voted no).[25]

The 1976 act became Public Law 94-353 on July 12, 1976, and section 6 of that law allowed Trust Fund money to be spent on ATC system maintenance, but limited to $250 million in FY 1977 and rising by $25 million per year for each of the next three fiscal years. But there was a catch – a "penalty clause" which, according to the conference report's explanatory statement, provided that "to the extent that funds which are authorized by this legislation to be obligated for airport development grants in any fiscal year are obligated by the Secretary in an amount less than the authorized obligation level, the amount which can be obligated or expended for maintenance costs of the airways system is proportionately reduced."[26]

CBO later said of the 1976 law that "This act, therefore, moved the trust fund away from a purely capital account to a hybrid system of partial user financing of total system costs."[27] But over the next

THE NEXT 6.25 YEARS OF THE AIRPORT AND AIRWAY TRUST FUND
(Dollar amounts in millions)

	TQ	1977	1978	1979	1980	1981	1982
Trust Fund Income:							
Aviation Tax Receipts	277	1,191	1,326	1,526	1,874	21	133
Transfers from General Fund	-	-	-	-	-	-	-
Net Interest	1	194	219	282	400	561	542
Total AATF Income	**278**	**1,385**	**1,545**	**1,808**	**2,274**	**582**	**675**
Trust Fund Outlays:							
Airport Grants-in-Aid	26	335	562	556	590	469	339
Facilities and Equipment	48	197	211	188	230	252	292
Research & Development	18	70	67	70	78	89	72
Operations (Trust Fund Share)	-	250	275	300	325	495	810
Other	-	-	-	-	-	-	-
Total AATF Outlays	**92**	**853**	**1,115**	**1,114**	**1,224**	**1,306**	**1,512**
AATF Surplus/Deficit	186	532	430	694	1,050	(724)	(837)
AATF End-of-Year Cash Balance	2,736	3,268	3,698	4,392	5,442	4,719	3,881
AATF EOY Uncommitted Bal.	1,434	1,801	2,284	2,794	3,803	3,014	2,088
GF Share of FAA Spending	390	1,516	1,663	1,736	1,913	1,853	1,380

Source: Congressional Budget Office, *The Status of the Airport and Airway Trust Fund*, Dec. 1988.

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four years, although the Appropriations Committees fully funded the maintenance costs at the maximum amount authorized by the 1976 law, the uncommitted balances in the Trust Fund continued to rise every year, until by the end of FY 1980, as the table shows, the uncommitted Trust Fund balance reached $3.8 billion – more than triple that year's Trust Fund outlays and $666 million more than that year's entire FAA budget (including the general fund contribution).

On September 30, 1980, the taxes levied by the Airport and Airway Revenue Act of 1970 were set to expire, as was the Trust Fund itself. Given the ongoing dispute about the true nature of the Trust Fund (capital, or operations?) and the continuing cries of aviation stakeholder groups that they were not getting their money's worth, Congress took the path of least resistance – they let the taxes expire, so the Trust Fund simply spent down its balances in 1981 and 1982.

(The aviation narrative will be continued in part three of this article dealing with the off-budget debate.)

Transit gets its own (eventually) – the Mass Transit Account. A federal role in funding canals and waterways dates back to the origins of the Republic. Occasional funding for roads and turnpikes dates back almost that far, with a permanent federal role established in 1921. And federal subsidies (mostly through credit) for railroads date back to the Civil War. But a federal role in urban mass transportation is very recent, because (in addition to transit being inherently local) transit was, by and large, a private sector enterprise – with little role for federal, state or local governmental funding – until a little over 50 years ago.

Urban transit systems were all originally private for-profit companies. To the extent that they were electrically operated streetcars, many systems were originally owned by the local electric utility. While a handful of cities, led by San Francisco, took over municipal ownership of the transit systems back in the pre-WWII heyday of transit, most systems remained private until much later. Ridership had begun to decline in the 1930s as private ownership of automobiles became more popular, but restrictions on domestic gasoline and rubber sales during the war forced a renewed popularity of transit (and rail) travel.

But once the war was over, the popularity of transit quickly plummeted. George Smerk summarized the many reasons in his book *The Federal Role in Urban Mass Transportation*:

> Transit patronage declined more rapidly than estimated immediately after the war for reasons that transit managers could not possibly have predicted. The move to the suburbs – expensive and difficult to serve with conventional transit service – occurred more quickly than foreseen. As the population surged outward to new and more remote locations, many transit properties did not really try to serve the more distant suburbs because it simply cost too much and the virtually universal flat fare did not make suburban expansion a profitable venture. The almost universal move in the U.S. to the forty-hour, five-day work week came on rapidly in the five years after the war. Before and during the Second World War, the typical transit-riding worker generally labored five and a half or six days a week, thus making six round trips by transit each work week; the forty-hour week reduced the number of round trips to five. Fewer work trips meant less efficient use of plant and equipment. Television kept people at home in the evening, first in the big cities and then, as it spread, to smaller places; the family trip on the bus downtown for a movie in the evening became a thing of the past. Shopping facilities moved with the population to the suburbs, and fewer people came downtown to shop; instead they got in the car and drove to the shopping center nearby. Fewer customers and less ridership at the off-peak hours were the products of these changes.[28]

DECLINING TRANSIT RIDERSHIP
(In millions of trips per year)

	1946	1950	1960
Electric streetcar	9,027	3,904	463
Motorbus	10,247	9,447	6,425
Trolley bus	1,354	1,686	654
Subway/El train	2,855	2,264	1,850
Total trips	**23,483**	**17,301**	**9,392**

Source: Brian J. Cudahy, Cash, Tokens and Transfers.

The table shows how drastically transit ridership dropped from 1946 to 1960. There was a significant increase in bus travel as streetcar service declined. This is too complicated an issue to address here, but suffice it to say that the shift may not have been completely based on the free market demands of transit riders. Interested parties should research the case of National City Lines, a transit company bankrolled by General Motors, Firestone, Standard Oil of California, Phillips Petroleum, and Mack Trucks. National and two financially intertwined sister companies bought out dozens of streetcar companies between 1938 and 1950, shut down the streetcar service, and replaced the cars with buses (manufactured and supplied, of course, by National's financial backers). The companies involved were later convicted of federal antitrust law violations but were only fined $5,000 apiece. (See the Seventh Circuit Court of Appeals decision affirming the verdict at 186 F. 2d 562. For a full-blown conspiracy theory based thereon, read the Senate Judiciary Committee's Antitrust and Monopoly Subcommittee hearings on the Industrial Reorganization Act from 1974 (part 4A, including the rebuttal filed by General Motors). Then go watch *Who Framed Roger Rabbit* on DVD.)

Transit also had to fight city planners in many places. The most famous urban planner in 20th century America, New York City's Robert Moses (subject of the classic Robert A. Caro biography *The Power Broker*), hated transit to the point that he built an entire system of parkways in New York City and intentionally put bridges over them with such low clearance that buses could not fit under them.[29]

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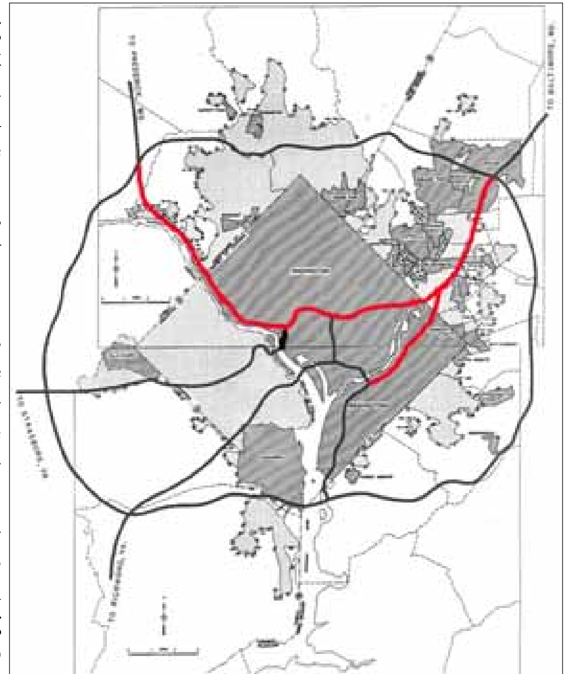

And Congress, perhaps inadvertently, made matters worse by passing the Transportation Act of 1958 (Public Law 85-625). Section 5 of that law amended the Interstate Commerce Act to make it much, much easier for railroads to abandon passenger rail service, and as the ink dried on the law, railroads began abandoning commuter rail service as unprofitable.

The end result was a dramatic loss of service in many cities (especially smaller cities). Faced with declining ridership and no way to cut costs without diminishing ridership further, many private transit operators simply parked their streetcars or buses in the garage, locked the door, and walked away, liquidating their businesses (unless the city or county chose to take up the financial slack). One Congressional study mentioned that "…there were 261 fewer privately owned transit systems on December 31, 1971 than on the same date in 1959…One recent tabulation showed a net increase of 99 public systems during the 1960s to a 1971 total of 151."[30]

As all this was happening, cities were facing another transportation-related financial dilemma. As part of the grand deal to pass the 1956 highway bill, the apportionment formula for the Interstate system was based on shares of the cost to complete the system – meaning that expensive urban Interstate extensions brought more money to their states than did long stretches of cheap rural Interstate. In order to reassure urban legislators on the location of these urban Interstates, the Bureau of Public Roads published a book in September 1955 (called the *Yellow Book* because of its cover) which contained maps of major cities showing the path the projected Interstates would take.

However, many of these projected urban routes would prove to be controversial at best and wildly impractical at worst. The map above at right map shows just one example – the Interstates originally proposed for the Washington DC area in the *Yellow Book*. The Interstates that were never completed are highlighted in red. Of particular note is the proposed Interstate spur extending what is now Interstate 270 down into D.C. along the Clara Barton Parkway and MacArthur Boulevard through the Palisades and Georgetown then moving east until 270 intersected with Interstate 66 near Dupont Circle. (The best source for information on the early years of the urban Interstate program is a massive 108-page law review article from 1975 by Gary T. Schwartz, who was able to interview many Eisenhower Administration and Congressional principals before they died. He reached a shocking conclusion which bears repeating: "The truth is that in 1956 Eisenhower was operating under the incorrect assumption that the Interstate program had adopted the policy of bypassing urban areas. Ignorant of the fact that urban Interstates would intrude into inner cities, he was quite disturbed when his ignorance was finally dispelled. According to two reports, this did not happen until 1959, when he chanced to query urban planners who were showing him the freeway system planned for the District of Columbia; while a third report tells the story differently, it is to the same effect."[31])

Many cities (led again by San Francisco, beginning with the San Francisco Freeway Revolt of 1959) refused to allow their states to build the urban Interstates along their original (or even redrawn) paths, tying up millions of dollars in highway money in court challenges for years. But the success some cities had in rejecting the Interstate had a price, as these projects did represent millions of dollars of federal transportation assistance for the city that was now unavailable. Many cities preferred to spend the money they would have received for the unwanted Interstate projects on mass transit instead, but the law in the 1960s did not allow this. The cities also looked for other federal aid.

In the Housing Act of 1961, Congress did approve $25 million (out of a $4 billion urban renewal authorization) for urban mass transportation demonstration projects, required the inclusion of transit in urban planning, and authorized federal loan guarantees for transit providers in need of credit. As part of his April 5, 1962 transportation message to Congress, President Kennedy proposed spending $500 million over three years so "that long-range Federal financial aid and technical assistance be provided to help plan and develop the comprehensive and balanced urban transportation that is so vitally needed, not only to benefit local communities, but to assure more effective use of Federal funds available for other urban development and renewal programs."[32] However, this proposal was killed by the House Rules Committee and died at the end of that Congress.[33]

Sen. Harrison Williams (D-NJ) is now remembered principally as the only Senator to resign (or face immediate expulsion) over the Abscam scandal, for which he later spent three years in fed-

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eral prison. But had he not been videotaped accepting bribes, Williams would be principally remembered as the father of the federal mass transit program. In 1963, Williams was a freshman and only the sixth-ranking Democrat on the Senate Banking and Currency Committee, but he was obsessed with urban mass transportation, and the more senior Democrats on the panel let him take a leadership role on the issue. Williams had been the principal author of the transit provisions of the 1961 Act (which he was actually pushing at the behest of the American Municipal Association in 1960 under a mostly hostile Eisenhower Administration) and the Senate sponsor of the transit bill that died in 1962.

Williams introduced a modified version of the 1962 bill in January 1963 (as S. 6, 88th Congress) and it passed the Senate on a 52-41 vote on April 4, 1963. But the Speaker held up the bill in the House, fearing that it did not have enough votes to pass the chamber (since rural interests dominated the House in those days before *Baker v. Carr* mandated redistricting based on one man, one vote). Smerk reports that transit advocates in the House spent over a year lining up Republican votes and convincing the Speaker that they had enough support to pass the bill. Eventually the Speaker allowed the House committee amendments to the Senate bill to come up for a vote, and the package passed by a narrow 212 to 189 margin in June 1964.[34] The Senate soon accepted the House amendments, and the Urban Mass Transportation Act of 1964 became Public Law 88-364 on July 7, 1964.

Sections 3 and 4 of the 1964 law authorized a new federal grant program for "financing the acquisition, construction, reconstruction and improvement" of mass transit facilities and equipment. A total of $375 million was authorizes to be appropriated over three fiscal years (1965-1967). But these were simple authorizations left up the complete discretion of the Appropriations Committee. As the table shows, the appropriators rarely met the authorized funding target levels (the authorizations were extended and revised by subsequent legislation).

Initial Funding for Transit Grants

(By fiscal year - dollars in millions)

	Authorized	Appropriated
1965	75	60
1966	150	130
1967	150	130
1968	150	135
1969	150	175
1970	190	175
6-Year	**865**	**805**

Transit advocates had several frustrations. They needed more money – from whatever source they could get it. They needed more reliable money – funding that was not subject to the annual vicissitudes of the Appropriations Committees. And they looked longingly at the Highway Trust Fund, which had, throughout the 1960s, kept on delivering the promised levels of authorized funding without interference by the appropriators (subject to late-1960s presidential impoundment problems, but those were by no means confined to highways).

Once President Nixon was sworn in, transit advocates did not know quite what to expect. Volpe, his new Secretary of Transportation, gave some reassuring speeches early in 1969 that discussed the possibility of establishing a new trust fund for mass transit, perhaps financed by the excise tax on automobiles or some revenue source other than the taxes already used by the Highway Trust Fund.[35]

On August 7, 1969, President Nixon proposed a sweeping expansion of public transportation: "I propose that we provide $10 billion out of the general fund over a 12-year period to help in developing and improving public transportation in local communities. To establish this program, I am requesting contract authorization totaling $3.1 billion for the first five years starting with a first year authorization of $300 million and rising to $1 billion annually by 1975. Furthermore, I am asking for a renewal of this contract authorization every two years so that the outstanding contract authorization will never be for a shorter period than three years. Over the 12-year period, $9.5 billion is programmed for capital investments and $500 million for research and development."[36] However, Nixon's proposal was entirely financed from the general fund – there was no proposal for a transit trust fund.

Contract authority was (and is) the form of spending authority enjoyed by the highway program, and it was a way to bypass the Appropriations Committees and allow funding authorizations (pre-appropriation) to put the federal government on the hook for legally binding spending commitments that the appropriators are then forced to appropriate money to liquidate, lest the other party sue the federal government for its money and win.

After the August recess, Williams introduced (and the Senate Banking Committee approved) a bill (S. 3154, 91st Congress) that provided the $3.1 billion in contract authority requested by Nixon, with annual limitations on the amount of liquidating cash that could be appropriated (which, in turn, constrained how much of the contract authority could be obligated in each year). This bill passed the Senate in February 1970 by a vote of 83-4. The House accepted the Senate bill by a large 327 to 16 margin in September 1970 and it became Public Law 91-453 on October 15.

But even though cities received a huge transit funding boost from the 1970 Act, the ongoing disputes in many cities with urban Interstate construction was a continuing source of frustration which kept their attentions focused on the Highway Trust Fund. At the same time, the post- *Baker v. Carr* redistricting resulted in a much more urban-focused House of Representatives after 1968. An early victory came as part of the 1970 highway bill (Public Law 91-605). Section 111 of that law created a new program allowing state highway appor-

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tionments to be used "to finance the Federal share of the costs of projects for the construction of exclusive or preferential bus lanes, highway traffic control devices, bus passenger loading areas and facilities, including shelters, and fringe and transportation corridor parking facilities to serve bus and other public mass transportation passengers."

But this only addressed highway-related facilities in support of buses – not bus acquisition, and not the much more expensive rail transit projects. Transit advocates wanted to open up the Highway Trust Fund for these purposes, and formed an alliance with environmental groups to attempt to delegitimize the Trust Fund as providing an unfair advantage to highways against federal funding for other surface transportation modes. In this effort, transit advocates had the support of the Nixon Administration (see the above mention of the "special revenue sharing" that Nixon proposed in 1971).

In addition, the Highway Trust Fund looked like an incredibly rich potential source of transit funds because presidential impoundments of highway funding under both Presidents Johnson and Nixon had led to a huge buildup of unexpended balances in the Trust Fund.

With the exception of 1960 (when the Trust Fund's cash crisis necessitated special laws in 1959 and again in 1961), Congress enacted a highway bill in every even-numbered year from 1948 to 1970. Until 1972. That year, both houses of Congress passed highway bills, and a conference report on the Senate bill (S. 3939, 92nd Congress) was filed and was passed by the Senate. But House leaders never brought up the conference report before the expiration of the 92nd Congress for fear that urban legislators would withhold their votes since the conference report did not expand aid to public transportation. The expiration of the legislation at the end of the Congress meant that urgent action was needed in the new Congress starting in 1973 in order to keep certain state highway apportionments from lapsing.

The 93rd Congress swiftly approved a stand-alone highway apportionment measure, and when both chambers had finished working on a full highway bill a few months later, that measure (Public Law 93-87) contained two unprecedented provisions making (in one instance) Highway Trust Fund moneys available for mass transit capital expenditures. Section 121 of the law made the purchase of buses (in 1974 and 1975) and "construction, reconstruction and improvement of fixed rail facilities" (in 1976) eligible as projects on the federal-aid urban system and section 137 of the law allowed a state governor and city to jointly petition DOT to withdraw approval of unwanted urban Interstate segments – and if the state requested and DOT approved, the federal government could then provide financial aid to the state to construct a public transportation system in lieu of the withdrawn Interstate segment (up to the cost of the withdrawn segment), but with the replacement transit money being contract authority drawn from the general fund, not the Trust Fund.

Although these were both promising provisions, the urban system allowance for bus and rail expenses in the law never really took off. A 1977 GAO report found that "Three years later, local governments had used only about $74 million, or 3 percent, of the funds available [through the urban system] for mass transit projects, while they used about $1 billion for highway projects."[37] The report cited several reasons for this, including the higher local matching cost for transit projects and interim regulations from FHWA that required the transit projects go three reviews: state, FHWA and at the Urban Mass Transit Administration.

The Interstate withdrawal and substitution program was more successful. A 1979 Congressional Research Service study found that of $5.2 billion made available through the program by June 1979 for either transit or highway projects, $1.8 billion had been obligated ($1.68 billion for transit and $166 million for highways) while the rest was pending. The vast majority of that money ($1.0 billion) went to build the Washington DC Metrorail system.[38]

But at the same time that transit was given access to a small portion of the Highway Trust Fund's guaranteed contract authority, the transit program's own separate access to contract authority was taken away. The 1974 Budget Act, which took effect in 1975, prohibited the creation of any more contract authority unless drawn from a trust fund account which was at least 90 percent supported by excise taxes on the users of the services provided by the Trust Fund. In other words, the Highway Trust Fund and the Airport and Airway Trust Fund could continue to support contract authority, but the transit program (the contract authority for which was drawn on the general fund) would have to start doing without.

Transit had time to adjust – there was still $3 billion in contract authority in the pipeline from prior transit authorizations, and after the Budget Act was enacted (but before it took effect), Congress passed the National Mass Transportation Assistance Act of 1974 (Public Law 93-503) which authorized an additional $11.85 billion in contract authority for the period 1975-1980, including (for the first time) flexibility to use some of the funds for operating subsidies. But it meant that after 1980, transit would either need its own trust fund (or get full access to the Highway Trust Fund) or else give up contract authority financing.

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The History of Transportation Trust Funds, Pt. I1—Continued

Supporters of transit tried several approaches. Some, led by Sen. Ted Kennedy (D-MA), thought it would be better to level the playing field between highways and transit by abolishing the Highway Trust Fund altogether. He introduced legislation doing just this in 1975 (S. 1300, 94th Congress) and offered it as an amendment to the 1976 and 1978 highway bills. During debate on his amendment in 1978, Kennedy said of the Highway Trust Fund, "This enormous amount of money should not be reserved to one mode of transportation or to transportation as a whole regardless of conditions. Rather, funding should be subject to the regular authorization and appropriations processes. If that process is good enough for our national defense, if it is good enough for our health expenditures, if it is good enough for our education programs, it should be good enough for highways."[39] (Kennedy's amendment failed, of course, garnering only 10 yea votes to 75 no votes in its 1978 iteration.)

Opponents of transportation trust funds gained a respected ally in this period. The newly established Congressional Budget Office's first director, Alice Rivlin, wanted to establish CBO as not just a bunch of number crunchers who only did scorekeeping and estimates – she wanted CBO to be a full-service think tank along the lines of the Brookings Institution, which from time to time would issue provocative analyses that would help frame Congressional debates. In March 1978, CBO issued a report entitled *Transportation Finance: Choices in a Period of Change* which actually recommended abolishing the highway and aviation trust funds:

> Abandonment of trust funds would provide more freedom than any other option to coordinate federal policies across all modes. A shift to general revenues for all transportation financing might not produce major changes in the system in the short run but, as a consensus emerged on the appropriate federal role for each mode, the added flexibility could help accelerate implementation of new policies and programs.
>
> Elimination of the trust funds offers the best opportunity for oversight, because the appropriations committees would have similar responsibility for each mode, rather than the differentiated and often limited role they now play…On balance, the no trust funds option is probably the most desirable, primarily because it both strengthens the policymaking role of the Congress and provides greater fiscal control.[40]

While this report did help frame the debate, it also gained CBO the lasting enmity of Congressional supporters of the highway program, who threatened CBO's budget and otherwise tried to denigrate the new agency.

And at the other end of Pennsylvania Avenue, neither Gerald Ford nor Jimmy Carter were strong supporters of the Highway Trust Fund. In 1975, Ford proposed to scale back the Highway Trust Fund so that it only supported Interstate highway spending (he also proposed cutting gas and diesel taxes back from four cents per gallon to three cents, with two cents going to the general fund and just one for the HTF). Congress completely ignored this in the 1976 highway law, which maintained the status quo (though it gave slightly more flexibility to localities when attempting to withdraw and substitute Interstate highway segments).

Carter likewise proposed consolidation of highway and transit programs, going so far as proposing to merge the Federal Highway Administration with the Urban Mass Transportation Administration as part of his proposal for the 1978 highway bill. (And although the transit community had high hopes for Carter going in, they were dashed by a handwritten memo Carter wrote to Transportation Secretary Brock Adams dated March 21, 1977, saying "I suspect that many of the rapid transit systems are grossly over-designed. We should insist on: a) off-street parking, b) one-way streets, c) special bus lanes, d) surface rail/bus as preferable alternatives to subways. In urban areas, no construction would be needed if a, b and c are required. J. Carter."[41])

In the Senate, Williams and the Banking Committee moved their own freestanding transit authorization legislation, which passed the Senate in June 1977. But the Carter Administration wanted to delay action on the bill, and in the House, the Public Works Committee (which was still primarily a highway-focused panel) had taken over jurisdiction over mass transit and wanted to consolidate that legislation with the forthcoming 1978 highway bill. As the 1978 bill was being developed, there was constant pressure from the White House to keep the price tag down, culminating in veto threats.

In addition to a lack of support from the White House, the transit lobby was also at a tactical disadvantage in 1978 for other reasons: "The transit industry did not wish to compete with the highway interests because of the danger of losing in any serious confrontation. The argument that had successfully led to the opening of the Highway Trust Fund to transit use in 1973 was no longer valid. Thanks to inflation, the unexpectedly rapid deterioration of the Interstate Highways, and a growing problem with highway bridges, there was not enough money in the trust fund or in its future expected revenues to handle the job of rehabilitating the nation's road system, much less to provide a significant source of money for transit."[42]

In the end, the 1978 law gave transit modest six percent per year increases in total funding authorization levels, but those levels were left up to the complete discretion of the appropriators. The law also switched the popular Interstate withdrawal and substitution program over to general fund support. The cost of the total four-year highway-transit bill had been cut from $66.5 billion in the original House bill to $53.8

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The History of Transportation Trust Funds, Pt. I1—Continued

billion in the final conference report, but that amount was still too much for the White House. Smerk reports that the crafty House Public Works chairman Jim Howard (D-NJ) talked to the Speaker immediately after a procedural vote on Carter's top priority, the energy bill, passed the House by one vote on October 13 and said that unless Carter promised to sign the highway-transit bill, Howard would switch his vote to "no" on final passage of the energy bill and try to get other Democrats to do the same.[43] Carter signed the highway bill into law.

FUNDING FOR MAJOR TRANSIT PROGRAMS, FY 1979-1982
(By fiscal year - dollars in millions)

	1979	1980	1981	1982
Discretionary - Authorized	1,375	1,410	1,515	1,600
Discretionary - Appropriated	1,250	1,280	2,190	1,479
Formula - Authorized	1,515	1,580	1,665	1,765
Formula - Appropriated	554	945	1,455	1,430
Interstate Transfer - Auth.	ssambn	ssambn	ssambn	ssambn
Interstate Transfer - Appr.	400	700	800	560

Over the next four years, the table shows that the Appropriations Committees often fell short on the authorized funding levels, leaving transit advocates frustrated and even more desperate for regular multi-year contract authority – which could only come through a trust fund account. Howard and his highway allies saw this coming, and in 1979 they introduced legislation (H.R. 5375 and later H.R. 6207, 96th Congress) that would establish a Public Transportation Trust Fund, to be funded with 25 percent of the proceeds of the windfall profit tax on domestic crude oil. While the tax portion of the bill made it a non-starter and the bill never made it out of committee, it did show the seriousness with which the Public Works members took the need for additional funding for transit.

Congress tried to pass a transit authorization bill (with continued general fund authorizations – no transit trust fund, no contract authority) during that Congress (see S. 2720 and H.R. 6417, 96th Congress), and the House passed the Senate bill with amendments in the 1980 lame-duck session, but the politics of the pending change of power led to a Senate filibuster and the bill did not become law.

Highways and transit advocates spent the first year of the Reagan Administration fighting off proposed budget cuts (the proposed cuts were particularly steep on the transit side, with Reagan proposing to cut Carter's proposed FY 1982 funding for transit capital grants by one-third and phase out operating assistance over the next three years). The Appropriations Committees (particularly in the House, which was still controlled by Democrats) fought off these proposals as best they could. But going into 1982, the deadline for reauthorizing surface transportation programs was looming, and the media were full of stories about "our deteriorating infrastructure" and the pressing financial needs of surface transportation, which could not be met by the increasingly constrained resources of the Highway Trust Fund.

Enter Drew Lewis, Reagan's first Secretary of Transportation. Scholar James A. Dunn, Jr. wrote in *Driving Forces: The Automobile, Its Enemies, and the Politics of Mobility* that:

> By the end of his first year in office, Secretary Lewis had been won over by the highway coalition. Not only were the funds needed for the highways, there was already widespread bipartisan congressional support for a gas tax increase. A few well-aimed compromises could solidify support from the main interst group stakeholders on the tax-paying side as well. The only problem was that President Reagan and his advisers did not agree with the idea. Secretary Lewis realized he would have to "sell" the tax increase to the White House.
>
> He began by solidifying the transit lobby's support. He promised to create a mass transit account in the highway trust fund that would receive 20 percent of the revenue from a five cent per gallon tax hike (the "transit penny"). This convinced many big city Democrats and liberals to support the measure despite their concern over the effects of the tax on the poor.[44]

For the first time, the highway lobby actively needed the transit lobby to do something other than go away and leave them alone – getting the votes to increase the unpopular gas tax by 120 percent in the face of a vocally hostile president would require a lot of vote wrangling, and the House Democratic Caucus was still dominated by urban legislators who preferred transit spending to highways.

Lewis worked with Howard to craft a bill spending the proceeds from an assumed five cent per gallon gas and diesel tax increase on highways and transit, and the Public Works and Transportation approved the bill (H.R. 6211, 97th Congress) and filed its report on May 17, 1982. The next day, however, President Reagan told Lewis he could not accept the fuel tax increase.[45] Reagan's opposition was unyielding, culminating at a press conference on September 28, 1982, when Reagan was asked "can you assure the American people that you'll flatly rule out any tax increases, revenue enhancers, or specifically an increase in the gasoline tax?" Reagan responded "Unless there's a palace coup and I'm overtaken or overthrown, no, I don't see the necessity for that."[46]

However, the results of the November 1982 elections were dismal for Republicans, and after the election, Reagan began to waver. After a Cabinet meeting on November 23, Reagan said that "I have decided that we should move forward now with a program to repair the Nation's major highways and bridges" which included the five cent gas tax increase, which Reagan called a "highway user fee." When asked by a reporter

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The History of Transportation Trust Funds, Pt. I1—Continued

"Has there been a palace coup? You said something about not raising taxes…" Reagan responded "That was in the context, that whole discussion, of our tax bill. And it's true that a tax on gas was one of those that had been proposed as an excise tax to help with that tax package that we presented in the midcourse correction of our program. And that's what I meant that, I'd-no—would not use that as a source, as there were several other excise taxes that we wouldn't use as a source just for general revenue. And that's what I meant at that time."[47]

Reagan made the hard sell in a radio address on November 27: "So, what we're proposing is to add the equivalent of 5 cents per gallon to the existing Federal highway user fee, the gas tax. That hasn't been increased for the last 23 years. The cost to the average motorist will be small, but the benefit to our transportation system will be immense… The program will not increase the Federal deficit or add to the taxes that you and I pay on April 15th. It'll be paid for by those of us who use the system, and it will cost the average car owner only about $30 a year. That's less than the cost of a couple of shock absorbers."[48]

On the House floor, when Ways and Means chairman Dan Rostenkowski (D-IL) offered his amendment to H.R. 6211 to add the revenue title with the five cent gas tax increase and the Mass Transit Account, the amendment prevailed by a 236 to 169 margin on a vote just after midnight on the morning of December 7. The bill itself passed by a vote of 262 to 143. In the Senate, a determined filibuster of the bill led to a cloture vote on December 13, two cloture votes on the 16th, another cloture vote on Sunday the 20th, and passage of the bill by a 56-34 vote on December 21. After an incredibly brief House-Senate conference, a conference report on H.R. 6211 was filed later that day. The House, facing dwindling numbers in the leadup to Christmas, passed the conference report that day by 180 to 87 (with 167 absentees). The Senate had one more cloture vote to kill the final filibuster and then passed the conference report by 54 to 33 on December 23. President Reagan signed the "Surface Transportation Assistance Act of 1982" into law on January 6, 1983 as Public Law 97-424.

The law established the Mass Transit Account within the Highway Trust Fund, to receive "one-ninth of the amounts appropriated to the Highway Trust Fund" from all motor fuels taxes and also contained a provision similar to the original Byrd test (called the "Rostenkowski test") which limited unfunded contract authority authorizations to be drawn from the Account to one year's estimated receipts. Since the Account at the time was only projected to take in about $1.1 billion per year in FY 1984-1986, this constrained the amount of contract authority that could be made available from the Account to this amount.[49] As the table shows, the 1982/1983 law authorized higher levels of support from the general fund than the Appropriations Committees were willing to provide.

FUNDING FOR MAJOR TRANSIT PROGRAMS, FY 1983-1986
(By fiscal year - dollars in millions)

	1983	1984	1985	1986
General Fund (Authorized)	1,230	3,221	3,440	3,550
General Fund (Appropriated)	2,961	2,767	2,782	2,416
Trust Fund (CA)	779	1,250	1,100	1,100

Nevertheless, access to a dedicated account within a trust fund was an important step for the transit program. Once the principle of dedicated taxes and contract authority was established, transit advocates could work together with highway advocates to increase taxes again down the road. Smerk wrote that "It is also quite clear that by linking transit and highways a strong coalition was formed; this is particularly true in the passage of the five-cent gasoline tax. The support of senators and representatives from areas in which transit was important was needed to pass the fuel tax, the benefits of which would sift down to places of all sizes in all of the states."[50]

But the changes in the Highway Trust Fund from the 1973 highway act up through the creation of the Mass Transit Account in 1982 also represented a shift away from the "benefit taxation" model of federal trust funds whereby user fees are levied on system users in proportions that are as close as feasible to the direct benefit that the users get out of the system. Adding transit to the Trust Fund was a strictly political enterprise – it was all about getting more votes in Congress. But it had to be justified from a policy perspective, so the public emphasis was on the indirect benefits that increased spending on transit would provide to motorists. This opened the way for more spending from the Highway Trust Fund whose benefits to motorists were less and less direct (culminating for funding for transportation-related museums through the transportation enhancement program in the 1998 highway bill – presumably making citizens think about the history of transportation provides some kind of indirect benefit to motorists).

Ironically, although the votes brought to the table by the transit lobby were the key to getting the biggest-ever increase in the "user fee" on drivers and truckers, the addition of mass transit to the Trust Fund made the gas and diesel taxes resemble true "user fees" much less.

-by Jeff Davis

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Deficit Numbers...

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casts that are different from the CBO "current law" baseline.

The first is a "current policy" baseline which is the current law plus the assumption of the enactment of a few policies for which clear super-majorities of Congressional support exist — further patching of the Alternative Minimum Tax to prevent a middle-class tax hike, the extension of most of the Bush 2001 and 2003 tax cuts for individuals, the prevention of a scheduled cut in Medicare reimbursement rates, an increase in Pell Grants, and a few odds and ends.

The table below takes the CBO current law baseline and adds the latest OMB-estimated cost of all of these "current policy" extensions. The result shows that under current law and these few Obama proposals that are the most likely for Congress to approve quickly, the deficit would balloon to $1.15 trillion in FY 2011 and would then never dip below $900 million, rising to $1.41 trillion in 2019 (about 6.7 percent of estimated GDP). This would add $11.43 trillion in debt over ten years, making the ten-year cost of the "current policy" fixes $4.3 trillion.

The White House also maintains that if the rest of the Obama Administration's 2010 budget agenda is enacted, that the deficits will stay in the $700-800 billion range over 2012-2018 before rising to $915 billion (4.0 percent of GDP) in 2019.

But that assumes several less-than-50-percent-likely propositions, such as: (a.) cap-and-trade passing and then bringing in $600 billion in fees; (b.) a health care plan lowering costs by a net $622 billion over ten years being enacted; (c.) the complete withdrawal of U.S. troops from Iraq by the end of 2010 and relatively quick victory in Afghanistan; and (d.) the phase-out of the tax deduction for charitable contributions by rich individuals.

What does all this mean for transportation? There are two ways to look at it — a general way that will affect all federal fiscal decisions, and a way specific to discretionary spending.

In a general sense, we may be regressing back to the politics of the Deficit-Obsessed Era, which dates roughly from the collapse of the bond market in February 1980 to the 1997 balanced budget agreement. Joseph White and Aaron Wildavsky wrote a book (*The Deficit and the Public Interest*) giving an in-depth summary of this era, but to paraphrase their conclusion, during this period, the federal deficit was like one of the issues we read about in histories of American politics of 100+ years ago, when only one or (at the most) two issues at a time seemed to matter — slavery, the tariff, free silver, immigration, prohibition.

For a politician in the 1850s, your position on slavery was what defined you, and most other issues were judged through that prism. In the 1890s, it was free silver. Not only did elections turn on these issues, but the issues were so large and all-consuming that political parties formed or regrouped around one side or the other. Persistent high deficits (above 3 to 4 percent of

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THE BAD NEWS: THE NEW FEDERAL DEFICIT FORECAST

(By fiscal year, in billions of dollars)

The Congressional Budget Office is required by law to assume that future tax collections and mandatory spending will take place exactly as called for by the law in effect on the day of the forecast and that future discretionary spending will take place at the rate of inflation. The Obama Administration is pushing a different definition, that of "current policy" instead of current law - assuming a few changes, primarily in the tax code, with which a sizeable majority of Congress has proven to be in agreement. CBO's numbers are not directly compatible with the Obama Administration's "current policy" definition but the following table tries to mix oranges and tangerines:

	Actual 2008	Est. 2009	Est. 2010	Est. 2011	Est. 2012	Est. 2013	Est. 2014	Est. 2015	Est. 2016	Est. 2017	Est. 2018	Est. 2019
CBO Baseline Deficit (Aug. 2009)	459	1,588	1,380	921	590	538	558	558	621	626	622	722
Plus Obama "Current Policy"*												
AMT Indexation	-	-	13	65	32	37	44	51	60	70	80	92
Extend Some Bush Tax Cuts	-	-	4	137	232	262	293	317	334	351	368	385
Prevent Medicare Payment Cut	-	-	12	22	28	37	39	41	39	33	29	33
Pell Grant Changes	-	-	1	7	11	11	11	11	11	11	11	11
Increased Debt Interest	-	-	-	4	15	32	49	68	90	114	139	167
Other	-	2	(7)	(7)	(5)	(4)	(3)	-	1	-	3	3
CBO Baseline Deficit (Aug. 2009) *Plus* Obama "Current Policy"........	**459**	**1,590**	**1,403**	**1,149**	**903**	**913**	**991**	**1,046**	**1,156**	**1,205**	**1,252**	**1,413**
CBO Forecast of Annual GDP	14,222	14,140	14,439	14,993	15,754	16,598	17,319	18,019	18,760	19,524	20,308	21,114
CBO Baseline Deficit as % of GDP	3.2%	11.2%	9.6%	6.1%	3.7%	3.2%	3.2%	3.1%	3.3%	3.2%	3.1%	3.4%
"Current Policy" as % of GDP*	**3.2%**	**11.2%**	**9.7%**	**7.7%**	**5.7%**	**5.5%**	**5.7%**	**5.8%**	**6.2%**	**6.2%**	**6.2%**	**6.7%**

*The adjustments for "current policy" changes are not from CBO - they are the new OMB estimates from table S-7 of the *Mid-Session Review*. OMB and CBO use different economic assumptions, so CBO would score the effects of the extension of these "current policy" choices somewhat differently. However, they are in the same ballpark (CBO did provide updated revenue comparisons for a few items through 2014 in a different document in August and they were almost identical to the OMB numbers) so the above provides the best guide currently available to how the extension of the AMT patch, most Bush tax cuts and the Pell grant change would affect future deficits.

Deficit Numbers...

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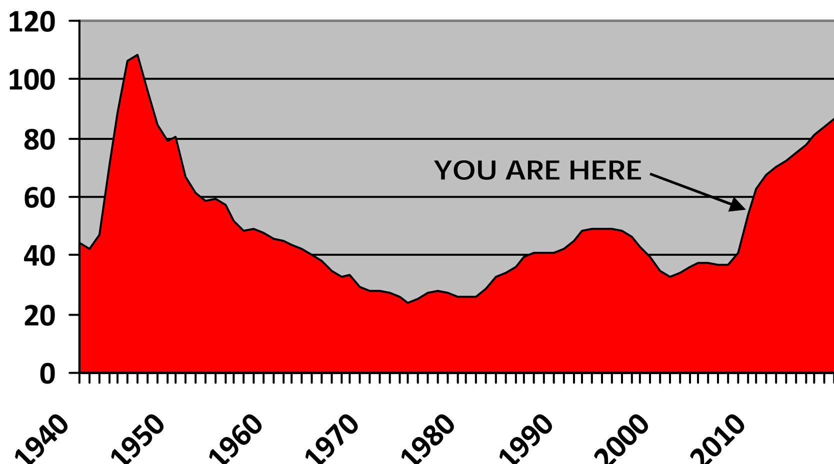
GDP per year) had that effect on politics in the 1980s and early 1990s and will likely have the same effect in the coming years.

Whenever any bill involving spending or taxes comes before Congress, the questions asked will not be "does this bill address a pressing need" or "will it function as advertised" but instead "will it make the deficit better or worse?"

And high deficits tend to bring large budget "summit" deals that make sweeping cuts in programs outside the regular authorization and appropriation processes through the budget reconciliation process, which could get going as early as next year.

Second, for discretionary spending (the category under which most transportation funding falls), the table below shows that even under CBO's deficit-laden current law baseline, new spending commitments for non-defense discretionary spending would only increase by about one percent per year or less over the next three years (2011-2013), due to inflation being so low.

FEDERAL DEBT HELD BY THE PUBLIC, AS % OF GDP



Shown using the CBO current law baseline *plus* the changes in law shown on the previous page from the Obama Administration's "current policy" baseline (permanent AMT fix, extension of Bush tax cuts for individuals, and Pell Grant reform, plus odds and ends).

Reducing the deficit below the CBO baseline will either require further cuts in non-defense discretionary spending (i.e. a flat freeze on total NDD BA), or additional cuts in mandatory programs or defense, or tax increases, or a likely combination thereof. The pressure to freeze or cut transportation appropriations, and all other domestic appropriations, in the 2011 and 2012 budget cycles will be incredibly intense, particularly for the FY 2011 cycle, which will take place during a volatile mid-term election year in which voters appear to be getting more and more upset with deficits.

White and Wildavsky bluntly concluded that "Persistent deficits are blamed on a lack of courage or good will. Wrong. Deficits persist because all choices are bad. Choices are hard because important values are helped or hurt by all alternatives."

THE WORSE NEWS: WHAT THE FORECAST ASSUMES ABOUT DISCRETIONARY SPENDING

(By fiscal year, in billions of dollars)

The spending numbers on the previous page reflect outlays from the Treasury, not budget authority (the permission to start new spending that will eventually become outlays). But the CBO update also includes its background assumptions underlying the above deficit totals for defense and non-defense discretionary budget authority, by year (excluding the FY 2009 Recovery Act stimulus spending).

	Actual 2008	Est. 2009	Est. 2010	Est. 2011	Est. 2012	Est. 2013	Est. 2014	Est. 2015	Est. 2016	Est. 2017	Est. 2018	Est. 2019
CBO Baseline Assumption of Budget Authority for Non-Defense Discretionary……	494	520	548	552	558	564	573	583	596	609	622	636
Increase over previous year	+9.8%	+5.3%	+5.4%	+0.7%	+1.1%	+1.1%	+1.6%	+1.7%	+2.2%	+2.2%	+2.1%	+2.3%

From a historical perspective, the annual projected increases for non-defense discretionary appropriations for 2011 and beyond are extremely low. A little background on the actual year-to-year increases in non-defense discretionary BA, including emergencies (from Table 8.9 in the Historical Tables from the President's Budget for FY 2010) is below. You can tell the spikes from the S&L bailout in 1990-1991, the IMF bailout in FY 1999, the reaction to 9/11 in FY 2001-2002 and the peak of Iraq war costs plus Katrina relief in 2005. And, you can see the dips when the GOP took over Congress and when spending dipped back to normal after Katrina.

1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
+6.4%	+1.9%	+6.4%	+12.7%	+11.0%	+8.6%	+6.3%	+1.4%	-4.7%	-1.1%	+3.9%	+5.0%

1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
+14.1%	-3.4%	+17.1%	+12.6%	+5.5%	+7.0%	+15.0%	-9.3%	+2.2%	+9.8%	+5.3%

The forecasts also make assumptions about defense discretionary spending, but those are greatly dependent on how quickly the U.S. can disengage from Iraq and Afghanistan and not get involved in other overseas deployments -- which is basically unknowable at this point. The bottom line: the annual rate of increase in non-defense discretionary spending in the baseline (a baseline which assumes trillion-dollar deficits in 2015 and each year thereafter if Congress keeps extending Bush tax cuts for individuals and AMT exemptions) is so low as to render the appropriations process unworkable, unless offset by cuts in mandatory entitlement spending and/or new tax increases.

CBO, White House Release New Highway Trust Fund Estimates

As part of their mid-year budget reviews mentioned in the preceding article, the Obama Administration and the Congressional Budget Office have released updated forecasts for the receipts and outlays of the Highway Trust Fund in the coming years.

CBO and Office of Management and Budget projections for cash outlays leaving the Trust Fund differ somewhat, but their estimates for the tax receipts to be gathered under current tax law in the coming years are very close through the end of fiscal 2011, before diverging thereafter (OMB assumes better economic growth in 2012-2014 than does CBO, apparently, which is not surprising).

In any event, both forecasts predict that if federal highway spending stays at the FY 2009 final level (plus annual inflation adjustments), Highway Account tax receipts will be about $10 billion per year less than outlays leaving the Account four and five years from now. (CBO assumes outlays will drop in the next two years because highway stimulus funding will crowd out regular highway funding—OMB does not belive this. This will necessitate either tax increases that will add at least $10 billion per year to the Account, or additional (and perpetual) general fund subsidies to follow the $15 billion that has already been transferred to the Trust Fund's Highway Account in the last twelve months.

At current spending levels, the Federal Highway Administration predicted last week that the Highway Account will need another bailout by the general fund before July 4, 2010 unless spending levels are lowered or taxes are increased.

The short-term problem is worse for the Highway Account but the long-term trend is worse for the Mass Transit Account. Under FY 2009 spending levels plus inflation, Highway Account outlays are estimated by both OMB and CBO to fluctuate between 120 and 130 percent of annual receipts for the next five years. (This counts "flex" transfers as outlays from the Highway Account and receipts to the Mass Transit Account).

In the Mass Transit Account, outlays are expected to be 133 percent of receipts in 2009 and climb to over 170 percent of outlays in FY 2014.

Both the House and Senate hope to write six-year surface transportation reauthorization bills — the chairman of the House committee wants to mark his bill up later this month, while the Senate wants to wait until 2010 or 2011. The OMB projections cut off after about five years, but they show that at least $55 billion in additional tax revenues or perpetual general fund bailouts would be needed to pay for the outlays from a five-year bill that maintained 2009 spending levels, so any spending increases above current levels would require billions more.

The Obama Administration is pushing Congress to enact an eighteen-month extension of surface transportation programs covering all of fiscal 2010 and the first half of fiscal 2011. If one merely divides the FY 2011 numbers from the projections in half, CBO says it would take at least $9 billion in additional taxes or general fund bailouts just to pay for a "clean" eighteen-month extension.

COMPARING THE ADMINISTRATION AND CBO HIGHWAY TRUST FUND FORECASTS

The following tables show the OMB/Treasury and CBO forecasts for the Highway Trust Fund under current tax law and with spending frozen at the enacted FY 2009 levels plus an annual inflation increase. There are two differences in assumptions between OMB/Treasury and CBO. First, OMB assumes that the flex transfer of funding from highways to transit will slow down after 2009 and end by 2013. Second, CBO assumes that the outlays from highway and transit funding in the stimulus act will "crowd out" Trust Fund outlays and slow them down somewhat over the next few years, particularly in FY 2010-2011, while OMB does not. The bottom line: though the OMB forecast does not cover 2015 (and so we cut CBO's off as well), the OMB forecast shows that around $65-70 billion in additional tax receipts will be needed over six years simply to pay for 2009 spending levels plus inflation, while the CBO numbers indicate that around $61-67 billion in additional tax receipts would be needed over that period.

August 2009 OMB/Treasury Highway Trust Fund Forecast

	2008	2009	2010	2011	2012	2013	2014
Highway Account							
B-O-Y Cash Balance	8.1	10.0	7.2	-3.7	-14.4	-24.2	-33.1
Receipts	31.3	30.8	31.2	32.4	33.7	35.2	35.6
General Fund Transfer	8.0	7.0	0.0	0.0	0.0	0.0	0.0
Outlays*	37.4	40.6	42.2	43.1	43.6	44.1	44.1
E-O-Y Cash Balance	**10.0**	**7.2**	**-3.7**	**-14.4**	**-24.2**	**-33.1**	**-41.6**
Mass Transit Account							
B-O-Y Cash Balance	7.3	6.8	4.3	0.7	-2.7	-5.9	-9.4
Receipts*	5.4	5.4	5.2	5.1	5.1	5.1	5.1
Outlays	6.0	7.8	8.8	8.5	8.3	8.6	8.7
E-O-Y Cash Balance	**6.8**	**4.3**	**0.7**	**-2.7**	**-5.9**	**-9.4**	**-12.9**
			Combined Five-Year Deficit:				**-54.5**

August 2009 CBO Highway Trust Fund Forecast

	2008	2009	2010	2011	2012	2013	2014
Highway Account							
B-O-Y Cash Balance	8.1	10.0	8.6	2.1	-4.4	-15.5	-26.4
Receipts	31.3	30.3	30.4	31.0	32.2	33.2	34.0
General Fund Transfer	8.0	7.0	0.0	0.0	0.0	0.0	0.0
Outlays*	37.4	38.9	36.9	37.6	43.4	44.1	45.7
E-O-Y Cash Balance	**10.0**	**8.6**	**2.1**	**-4.4**	**-15.5**	**-26.4**	**-37.9**
Mass Transit Account							
B-O-Y Cash Balance	7.3	6.8	5.1	2.6	0.2	-2.6	-6.1
Receipts*	5.4	5.2	5.4	5.5	5.7	5.9	6.0
Outlays	6.0	6.9	7.7	7.8	8.4	9.4	10.3
E-O-Y Cash Balance	**6.8**	**5.1**	**2.6**	**0.2**	**-2.6**	**-6.1**	**-10.4**
			Combined Five-Year Deficit:				**-48.3**

*The numbers in both tables incorporate "flex" transferring of cash from highways to transit — they are included in the outlay numbers under the Highway Account and in the receipt numbers in the Mass Transit Account.

NEW AND NOTABLE ON THE INTERNET

Congressional Budget Office

CBO's August update of its Budget and Economic Outlook document is online here:
http://www.cbo.gov/ftpdocs/105xx/doc10521/08-25-BudgetUpdate.pdf

And CBO's annual Spending and Revenue Options book (part 2, non-health-care) has just been released:
http://www.cbo.gov/ftpdocs/102xx/doc10294/08-06-BudgetOptions.pdf

Federal Highway Administration

FHWA has released its guidance document on how it intends to implement the $8.7 billion rescission of highway contract authority on September 30, 2009 — and boy, is it complicated. Read more here:
http://www.fhwa.dot.gov/legsregs/directives/notices/n4510711.htm

Office of Management and Budget

The OMB Mid-Session Review of the FY 2010 budget proposal is online here:
http://www.whitehouse.gov/omb/assets/fy2010_msr/10msr.pdf

U.S. Government Accountability Office

A new Comptroller General opinion determining that the Federal Highway Administration can count privately owned toll lanes as part of state lane-mileage in order to apportion federal highway funds can be found online here:
http://www.gao.gov/decisions/other/317634.htm

STATUS OF PENDING TRANSPORTATION-RELATED NOMINATIONS

Agency	Nominee	Position	Senate Committee	Latest Action
Department of Transportation	Chris Bertram	Assistant Secretary for Budget and Programs	Commerce, Science and Transportation	Nomination confirmed 8/7/09
Department of Transportation	Susan Kurland	Assistant Secretary for Aviation and Int'l Affairs	Commerce, Science and Transportation	Nomination confirmed 8/7/09
DOT-Federal Motor Carrier Safety Admin.	Anne Ferro	Administrator	Commerce, Science and Transportation	Nomination transmitted 7/16/09
DOT-National Highway Traffic Safety Admin.	Charles Hurley	Administrator	Commerce, Science and Transportation	Nomination reportedly will be withdrawn
National Transport. Safety Board	Christopher Hart	Member for a term expiring 12/31/2012	Commerce, Science and Transportation	Nomination confirmed 8/7/09
Surface Transportation Board	Daniel Elliott	Chairman	Commerce, Science and Transportation	Nomination confirmed 8/7/09
Department of the Army	Jo-Ellen Darcy	Assistant Secretary for Civil Works	Armed Services *and* Enviro. & Public Works	Nomination confirmed 8/7/09

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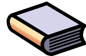

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Please send comments or corrections to: Mail@transportationweekly.com

THIS WEEK IN COMMITTEE

Congress is currently in recess for the August District Work Period and will not return until after September 8. No transportation-related committee meetings are planned.

Over the August recess, Transportation Weekly becomes Transportation Bi-Weekly, as very little of newsworthiness ever happens in Washington over the recess.

STATUS OF MAJOR TRANSPORTATION BILLS — 111th CONGRESS

BILL	HOUSE ACTION	SENATE ACTION	RESOLUTION
Economic Stimulus Appropriations & Tax Cuts	H.R. 1 conference report passed House 2/13/09 by 246-183-1	H.R. 1 conference report passed Senate 2/13/09 by a vote of 60-38	Public Law 111-5 2/17/09
FY 2010 Congressional budget resolution	H. Con. Res. 85 passed House 4/2/09 by vote of 233-196	S. Con. Res. 13 passed Senate 4/2/09 by vote of 55-43	Conference report (H. Rept. 111-89) agreed to 4/29/09
FY 2010 Transportation-HUD Appropriations	H.R. 3288 passed House 7/23/09 by a vote of 256-168	H.R. 3288 reported 8/5/09 S. Rept. 111-69	
FY 2010 Energy and Water Appropriations	H.R. 3183 passed House 7/17/09 by a vote of 320-97	H.R. 3183 passed Senate 7/29/09 by a vote of 85-9	
FY 2010 Homeland Security Appropriations	H.R. 2892 passed House 6/24/09 by a vote of 389-37	H.R. 2892 passed Senate amended 7/9/09 by a vote of 84-6	
Federal Aviation Admin. Reauthorization Bill	H.R. 915 passed House 5/22/09 by a vote of 277-136	S. 1451 ordered reported 7/21/09 by Senate Commerce Committee	
Surface Transportation Reauthorization Bill	Subcommittee marked up draft bill on 6/24/09		
Short-Term Extension of Surface Transportation Laws		S. 1498 reported 7/22/09 S. Rept. 111-59	
Water Resources Development Act			
FY 2010 Coast Guard Authorization		S. 1194 ordered reported 7/8/09 by Senate Commerce Committee	
Transportation Security Admin. Reauthorization	H.R. 2200 passed House 6/4/09 by a vote of 397-25		