

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **5 Ways Congress May Try to Fix the Highway Trust Fund.**

Better mileage and slower growth in miles traveled have combined to produce less revenue than Congress voted to spend

For nearly half a century, taxes on gas and diesel fuel funded what Congress spent from the Highway Trust Fund on roads, bridges and, after a 1982 compromise, mass transit.

For the past decade, however, better mileage for cars and trucks and slower growth in the number of miles Americans traveled combined to produce less revenue than Congress voted to spend.

The current five-year transportation law, which expires in September 2020, covered that shortfall by transferring \$70 billion from the general fund. To spend similar amounts from 2021 through 2025, Congress would have to find an extra \$17 billion to \$23 billion a year, or \$94 billion over five years, according to the Congressional Research Service.

And that's to maintain a spending level that is inadequate, according to business and transportation advocates, many lawmakers and, at times, President Donald Trump.

The American Society of Civil Engineers' national infrastructure report card in 2016 said there was a \$1.1 trillion shortfall over the coming decade between total needs for surface transportation and estimated funding available. When other public works such as water and sewer systems, the electrical grid and airports are included, the shortfall exceeds \$2 trillion.

The House Ways and Means Committee will discuss the need for "immediate action" on "crumbling infrastructure" on Wednesday. Rep. Earl Blumenauer, D-Ore., said Tuesday the House tentatively has set aside floor time in "the late spring" to take up a still-undefined infrastructure package.

Here's a look at some of the ways to cover a funding shortfall that Congress is considering.

### **Gas and diesel taxes**

Last raised in 1993, the federal gas tax is 18.3 cents a gallon, and the diesel tax is 24.3 cents a gallon. If those rates had been indexed to inflation, in 2017 they would have been 31.7 cents for gas and 42.1 cents for diesel, according to the CRS.

In 2015, the Congressional Budget Office said a 1-cent increase in fuel tax rates would generate about \$1.7 billion a year, but that would drop to \$1.5 billion within 10 years.

That indicates that a 10-cent increase in the gas tax, indexed to inflation, would come close to plugging the first year's shortfall, but it would not accommodate any major increase in spending.

As the traditional funding source, fuel taxes are the most discussed option for closing the trust fund shortfall. They are also the easiest to implement and have the lowest administrative costs. But any tax increase, even one sold as a user fee, comes with political danger, especially in a politically polarized environment a year ahead of a presidential election.

Supporters have been arguing that Democratic and Republican state legislators and governors in more than two dozen states have raised their gas taxes without being punished by voters. Newly elected Michigan Gov. Gretchen Whitmer, a Democrat who ran on a promise to “fix the damn roads,” announced in her budget speech Tuesday she wants to raise the state gas tax by 45 cents a gallon.

Blumenauer said that as a national funding model, the gas tax would not be reliable in 10 or 15 years. “But in the short term, the fuel tax, I anticipate, will be what we hear people feel most comfortable with,” he said.

The U.S. Chamber of Commerce has endorsed a 25-cent increase over five years. The American Trucking Associations has endorsed a 20-cent increase over four years. Representatives of both groups will testify Wednesday.

### **Miles-traveled tax**

Taxing miles traveled would require plug-in electric cars that do not fill up at the pump — which comprised 1.1 percent of vehicle sales in 2017 — and hybrids that use less fuel to contribute more toward their wear and tear on roads and bridges.

But such taxes are only in the experimental stage in some states, and taking them national would incur new administrative and enforcement costs, which CRS said could range from 5 percent to 13 percent of collections.

The system would also have to address privacy concerns, since putting a global positioning tracker in a vehicle to measure how far it travels would also tell the government where it went and when. And there would have to be a way for motorists who do not have credit cards or bank accounts to pay.

House Transportation and Infrastructure Chairman Peter A. DeFazio, D-Ore., has said he would prefer the next transportation bill to create a national pilot program, and that the tax be designed to charge less for using lightly traveled rural roads and more for adding to rush-hour congestion.

### **Tolls and private financing**

While the number of miles of roads with tolls grew by 1,280, to a total of 6,001, from 1990 through 2017, toll revenue as a share of total transportation spending has remained steady at about 5 percent to 7 percent for more than 50 years, according to the CRS.

“While there may be many existing roads on which tolling would be financially feasible, the vast majority of mileage on the federal-aid system probably has too little traffic to make toll collection economically viable,” the research service said.

Future upgrades or replacements could be made to federal projects by allowing private companies to collect tolls to recoup construction costs through public-private partnerships, often called P3s. But local officials may resist new tolls on bridges that were previously free, for example, and such projects would need enough guaranteed traffic to make the private investment feasible.

“Private-sector financing generated through P3s might best be seen as a supplement to traditional public-sector financing rather than a substitute,” CRS wrote.

Other proposals have included “asset recycling,” which is the sale of existing public works to private operators to use the revenue to build new projects; and developing national “infrastructure banks” that could lend money for projects and use repayments from states or other borrowers to fund new

projects.

## **Roll back tax cuts**

Senate Democrats in 2018 released an infrastructure plan that included a proposal to roll back parts of the Republican-crafted 2017 tax overhaul. Specifically, it called for raising the top individual tax rate back to 39.6 percent from 37 percent for couples with more than \$600,000 in income and individuals with more than \$500,000; increasing the Alternative Minimum Tax, the estate tax, taxes on the income of hedge fund operators, and raising the top corporate tax rate to 25 percent from 21 percent.

The proposal has little chance of being signed by Trump as he goes into his 2020 re-election bid, however. And the president of the U.S. Chamber of Commerce, Thomas Donohue, said last month that while he would work to support any member of Congress who ends up in danger of losing re-election for voting for a gas tax increase, he would fight any effort to roll back the 2017 tax law's provisions.

Blumenauer, a member of the Ways and Means Committee, indicated it is not a route the House is preparing to take.

"Of all the ways that we could have to fund the rebuilding and renewing of America, I think that is fraught with peril," Blumenauer said. "You're stepping on toes, you have little landmines, you have conflicting priorities, and you don't need to do it, because there are paths forward that do not involve a food fight."

## **Spend less**

The Highway Trust Fund was set up to be a temporary program to fund the construction of the interstate highway system. And while Trump said during the 2016 campaign that he wanted to fund a \$1 trillion infrastructure program, some in his party have said the federal government could pull back.

Some lawmakers argue that the highway fund should be dedicated solely to roads and bridges and that Congress should end setting aside for transit the first 2.86 cents of the 18.3-cent gas tax. Mass transit has expanded since the dedication, however, and systems in both red and blue states rely on it, though the biggest systems tend to be in states with Democratic senators.

Marc Scribner of the Competitive Enterprise Institute, who will testify at Wednesday's Ways and Means hearing, said Congress should focus transportation spending on areas intended by the Constitution, particularly interstate routes used for commerce and shipping.

"As important as the New York City subway system is, I don't think it's a nationally significant project," he said.

## **Roll Call**

by Herb Jackson

Posted Mar 6, 2019 12:20 PM