BUDGET BULLETIN
A WEEKLY BULLETIN PRODUCED WHEN THE SENATE IS IN SESSION.
COMMITTEE ON THE BUDGET Republican Staff
Judd Gregg, Ranking Member
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INFORMED BUDGETEER

RECURRING BAD DREAM OF HIGHWAY BILL TURNING INTO ANNUAL NIGHTMARE

- According to the nearly identical summer estimates of the Office of Management and Budget (OMB's Mid-Session Review) and the Congressional Budget Office (CBO's Summer Update), the Highway Trust Fund (HTF) will experience a "shortfall" in 2009 of about $3.6 billion.
- A projected shortfall occurs when the balance of the trust fund at the beginning of 2009, plus the estimated tax receipts to be deposited in the fund during 2009, minus the outlays (based on authorized spending levels) projected to flow out of the fund during 2009, equals a negative number.
- Despite this relatively "small" projected shortfall, the House passed a bill (H.R. 6532) in July that would appropriate **$8.017** billion (significantly larger than the size of the shortfall!) from the general fund of the Treasury and transfer it to the HTF. At the time, the Statement of Administration Policy claimed the President's senior advisors would recommend a veto of the bill.
- Last Friday, the Department of Transportation surprised everyone by saying a shortfall could occur as soon as this month, reversed course, and asked Congress to pass the bill transferring the $8 billion. Currently, H.R. 6532 awaits action in the Senate, including the opportunity to offer amendments that make sure that such transfers do not escape budget discipline as they currently do.
- How is H.R. 6532 a sign that the bad dream of a once-every-five-years highway reauthorization bill is turning into an annual nightmare?

So Many Hands on the Wheel…Whom Do You Charge (or "Score") When There Is An "Accident"?

- In putting together this periodic bill, the Senate Finance and the House Ways and Means Committees decide the appropriate levels of taxes that should be levied on gasoline and other highway-related activities. These committees dictate the amounts that are deposited into the HTF for bookkeeping purposes to keep faith with the policy that only the users of highways should pay for all of the costs of highways.
- For setting levels of resources for highways, mass transit, and safety programs, the House Committee on Transportation and Infrastructure (for all three programs) and the Senate Committees on Environment and Public Works (for highways), Banking and Urban Affairs (for mass transit), and Commerce, Science, and Transportation (for safety) authorize contract authority for the HTF, which is classified as mandatory budget authority.
- Only after the highway bill is enacted do the Appropriations Committees set annual "obligation limitations" that result in discretionary outlays – actual checks issued by the Treasury to pay for the purposes of these programs. The outlays are subtracted from the balances of the HTF.
- It is little wonder that this uber-complicated process makes the heads of staff and most members explode, keeps budgeteers fully employed trying to explain it to them, and brings smiles to the faces of the relevant committees and their constituent lobbying groups who exploit the confusion to get what they want.

TEA-21 and RABA

- Flash back to 10 years ago – 1998. Congress was debating the Transportation Equity Act for the 21st Century (TEA-21), the highway reauthorization bill. At the time, there was a perception that not all highway taxes were being spent on highways, or at least not being spent fast enough since the HTF had a balance of $16 billion.
- Proponents of unfettered spending on highways advocated taking all highway spending "off-budget," using the rationale that the only way to make sure that all HTF taxes could be spent on HTF activities would be to take the spending outside the usual budgetary process.
- Wiser heads prevailed, however: in exchange for keeping the cash flows of the HTF within the federal budget, TEA-21 established two separate spending caps for highways and transit so that all the projected revenues would be spent on the authorized spending levels (these caps ceased having force and effect at the end of 2002 when statutory caps on discretionary spending under the Budget Enforcement Act expired).
- TEA-21, however, did provide a wrinkle to this rule (called Revenue-Aligned Budget Authority – RABA). If revenues failed to materialize as projected, spending automatically would be adjusted downwards. But if revenues outpaced projections, then Congress would be able to spend the found money without waiting until the next reauthorization.
- No one could have outlined this deal better than House T&I Chairman Bud Shuster (*Congressional Record*, May 22, 1998):

> *Should there be more revenue going into the trust fund, that money will be available to be spent. Should there be less revenue going into the trust fund, then we will have to reduce the expenditures. It is fair, it is equitable, and it is keeping faith with the American people*.

- So what happened after Congress sealed the deal in TEA-21? In 2000, 2001, and 2002, the RABA mechanism allowed spending from the HTF to increase by $1.5 billion, $3.1 billion, and $4.5 billion, respectively, because actual and revised projections of revenues exceeded the level of revenues that initially had been projected in 1998. Then with the economic slowdown, revenues fell off, requiring an $8.6 billion reduction in spending authority in 2003 compared to the 2002 level.
- But while Congress eagerly spent (in appropriation bills) the $9.1 billion in increased RABA adjustments from 2000 - 2002, Congress prevented the negative RABA adjustment from taking effect in 2003. This meant that the HTF was **allowed to spend money that it was never actually going to collect.** As a result, the HTF spent $8.6 billion of its balances a lot faster than the initial spending levels in TEA-21 had anticipated. Observant budgeteers will note that **if,**

in 2003, Congress had not reneged on TEA-21's deal of RABA, there would be no projected shortfall for 2009.

SAFETEA-LU

- While the HTF was spending money faster than it could collect new revenues, it was time for Congress to do another highway authorization bill (the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, SAFETEA-LU). The challenge that highway advocates set for themselves in SAFETEA-LU was how to spend more money than TEA-21 without increasing the amounts that highway users have to pay (i.e., without increasing the gasoline tax).

- As recounted in a previous bad dream that the *Budget Bulletin* had, the highway robbers settled on two tools to enable the increased spending.

- One tool was to transfer billions of dollars from the general fund to the HTF. Despite claiming, ad nauseam, that the general fund would be "made whole" by offsets of new revenues collected from non-highway sources, members of the Finance Committee never made good on their promises (***see box to the right for quotes***)

- Instead, the balances of HTF were magically increased in the American Jobs Creation Act (AJCA) of 2004, nine months before SAFETEA-LU was enacted. Regarding this bill, CBO reported: "As a result of [AJCA], revenues dedicated to the Highway Trust Fund will be higher by an estimated $31.5 billion over the 2005-2014 period, and general fund revenues will be correspondingly lower".

- The second tool employed by SAFETEA-LU to increase spending was the rally cry of "spend down the balances!" SAFETEA-LU changed the Byrd test for the HTF. In place since 1956, the Byrd test (named for Sen. Harry Byrd of Virginia) is supposed to provide a warning signal that would result in reductions in future obligations if balances in the HTF are not sufficient to make good on the obligations that the HTF had already made.

- It was the clear, stated intent of SAFETEA-LU's authors to work down the balances of the HTF as close to zero as possible. To facilitate that, SAFETEA-LU made the Byrd test irrelevant so that the test would no longer signal that a problem loomed and would not result in a reduction relative to SAFETEA-LU's spending plan. So now that the HTF is expected to be broke, you can hear Pee-Wee Herman say, "Ah! I meant to do that!"

- SAFETEA-LU (in combination with AJCA) has already transferred and spent, on average, more than $3 billion per year from the general fund to the HTF, but now that seems to be not enough. Apparently another $3.6 billion is needed for 2009. So what is the justification for the fact that H.R. 6532 would appropriate $8.017 billion from the general fund to the HTF? Proponents cloak this raid on the general fund by claiming they are "restoring" money "taken from" the HTF in TEA-21. **But the reality is: no money was taken from the highway program when it received a 40 percent increase in TEA-21.**

One example of such promises occurred on February 12, 2004 during debate on the highway bill. Senator Conrad stated:

> Mr. President, during the Finance Committee consideration of the tax title of this bill, there was significant debate on the provision in the bill that would shift a portion of corporate estimated tax payments from 2010 into 2009. This provision raises $11.4 billion in the year 2009, but loses $11.4 billion in the year 2010. The Chairman included this provision in his bill in response to concerns raised by me and the Chairman of the Budget Committee that the highway spending is not fully paid for over six years. I appreciate his sensitivity to my concerns. I believe that the spending in this bill, which occurs over six years, should be fully paid for over the same six year period. However, I do not believe that the shift in corporate estimated tax payments in the most appropriate way to achieve the goal of fully funding this bill over six years. The provision proposed by the Chairman shifts a hole in general revenues from one year into another. . . In lieu of me offering an amendment during the Finance Committee mark up to replace the shift in corporate estimated tax payments with different revenue offsets, the Chairman and the Ranking Member of the Committee made a commitment to work with me to find new offsets before the highway bill is voted off the Senate floor.

And he continued on February 26, 2004:

> Let me now turn to the second issue, that of making sure this legislation is fully paid for within the six-year period for which programs are authorized in the highway bill. During Finance Committee consideration of the tax title of the SAFETEA bill, I was joined by the chairman of the Budget Committee, Senator Nickles, in insisting that the bill should be properly paid for over 6 years with no gimmicks. We filed an amendment to accomplish this, but I agreed to withhold from offering it in return for a commitment from the chairman and ranking member of the Finance Committee to work with me to find appropriate offsets before the SAFETEA bill was voted off the Senate floor. . . . I believe it is critical that this commitment be honored and that the . . .outlays be offset within the next 6 years.

But we now know in hindsight that the commitment was never fulfilled, as demonstrated when Senator Grassley discussed the transfers from the general fund to the HTF that were never offset (October 10, 2004 debate on ACJA):

> I would hope no one comes whining to me as chairman of the Senate Finance Committee next year that we do not have enough money to fund the highway bill, especially when you have an opportunity--right here today--handed to you on a silver platter to put $24 billion into the highway trust fund, more money for your States. And you ought to consider that not a silver platter, you ought to see that as some sort of a golden platter, a golden opportunity.

BE SURE TO READ ON TO PART 2 OF THIS BULLETIN IN ISSUE 8B

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RECURRING BAD DREAM OF HIGHWAY BILL TURNING INTO ANNUAL NIGHTMARE (*CONTINUED*)

Reneging on TEA-21, Again!

- Much of the debate in TEA-21 was over the size of the balances, how they accrued because of interest credited to the HTF, and why the balances hadn't been spent faster.

- Highway proponents argued that appropriators were not spending resources in the HTF fast enough, allowing balances to accumulate. On the other hand, the Government Accountability Office (GAO) issued a report that determined that if all highway spending that had been paid out of the general fund since the inception of the HTF in 1956 had been paid out of the HTF instead, the HTF would not have had a balance. Instead, it would have had a deficit of $153 billion (see previous *Bulletin* for discussion).

- The TEA-21 antagonists finally reached agreement (aka "a deal is a deal") by conferring special, protected status on spending from the HTF and by increasing spending on highways by almost 40 percent ($60 billion) over the previous highway bill. This was done is in exchange for ending the argument over the correct size of the HTF balances, which were simply cut in half to $8 billion – a level deemed sufficient (along with future gasoline taxes to be deposited into the HTF) to allow the HTF to make good on the obligations that were authorized in TEA-21. The following box reprints exactly what TEA-21 said about the HTF balances:

SEC. 9004. MODIFICATIONS TO HIGHWAY TRUST FUND.

(a) DETERMINATION OF TRUST FUND BALANCES AFTER SEPTEMBER 30, 1998.—

(1) IN GENERAL.—Section 9503 (relating to Highway Trust Fund) is amended by adding at the end the following new subsection:

''(f) DETERMINATION OF TRUST FUND BALANCES AFTER SEPTEMBER 30, 1998.—**For purposes of determining the balances of the Highway Trust Fund and the Mass Transit Account after September 30, 1998**—

''(1) the opening balance of the Highway Trust Fund (other than the Mass Transit Account) on October 1, 1998, shall be $8,000,000,000, and

''(2) no interest accruing after September 30, 1998, on any obligation held by such Fund shall be credited to such Fund. The Secretary shall cancel obligations held by the Highway Trust Fund to reflect the reduction in the balance under this subsection.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on October 1, 1998.

- Yet during the debate on H.R. 6532, the current chairman of the House T&I committee invented the following colorful version of what TEA-21 did:

> As part of the agreement worked out by then chairman of our committee, Bud Shuster, with House Republican leadership, the Speaker, the Appropriations Committee, the Budget Committee, and on our side with the Clinton administration, we agreed to give up $29 billion of surplus in the highway trust fund . . . .Eight billion dollars was transferred to make the deficit look smaller. . . I'm so pleased that the Ways and Means Committee has chosen to act and replace funds that were raised out of the gas tax, intended to be only spent on transportation infrastructure, but transferred to the general fund and spent on who knows what.

- It is not unusual for highway advocates to resort to fiction to justify their appetites, but this version of events is way out of line with reality.

How Does the Budget, the General Fund, and HTF Really Work?

- No one "gave up $29 billion in surplus" when the balance of the HTF was reduced by only $8.017 billion in 1998. And the $8 billion was not really "transferred" to the general fund, and resetting the HTF balance did not make the deficit look smaller.

- TEA-21 simply instructed that there be a strike and replace of the number representing the balance of the HTF. When this change in the HTF was implemented, the general fund balance did not go up by a corresponding $8.017 billion, the general fund did not have "more" money to spend on "who knows what," and the federal deficit did not go down.

- CBO explained how to understand the effect of the balances in the HTF in a 1998 letter:

> The cash balance of the [HTF] plays no part in calculating the deficit...because it is neither a receipt or an expenditure. It is simply a summary of previous budgetary transactions – the prior deposits into the fund less the prior spending out of the fund. Eliminating or reducing the cash balance without changing federal spending or revenues...would have no effect on the...deficit.

- To summarize, for a program that is supposed to be paid for totally by its users, the federal highway program has had a long history of augmenting HTF resources by making claims on the general fund, either through direct appropriation or by transfers to the HTF.

- According to the GAO report, from 1957 to 1996, the general fund paid for $39 billion in highway costs, but at least those spending demands had to compete against all other spending demands on the general fund (although sparing the HTF from paying for these costs allowed its balances to become artificially inflated).

- Then, SAFETEA-LU and AJCA permanently shifted more than $3 billion per year from the general fund to the HTF.

- Now, H.R. 6532 seeks to shift another $8 billion from the GF in 2009 alone. If enacted, **this transfer would increase the deficit by $8 billion**.

- Why? Because absent the transfer, the Department of Transportation says that, assuming obligations at the levels authorized by SAFETEA-LU, the effect of the projected cash shortfall in the HTF would be to slow down the processing of vouchers submitted by States for highway projects (July 8, 2008 letter from the Acting Administrator of the Federal Highway Administration to the heads of transportation departments in all 50 States). With the transfer, however, more outlays would go out to States in 2009, and the HTF would have more money to spend when it comes time to authorize further spending levels for the program.

- Those advocating a transfer from the general fund retort that CBO says that the transfer would not increase the deficit. But CBO never said any such thing. In fact, CBO has issued a letter that says the opposite:

  > Assuming that the obligation limitation authorized in SAFETEA-LU is enacted for fiscal year 2009 and that DOT would limit cash disbursements to the amount of cash in the Highway Account, CBO expects that, with an $8 billion transfer from the General Fund, spending from the Highway Account, including transfers to the transit account, would sum to about $40 billion in 2009 rather than about $36 billion, **leading to about a $4 billion increase in outlays and in the deficit for that year**. [emphasis added]

- Advocates of the transfer try to hide behind make CBO's cost estimate of the legislation that would accomplish the $8 billion transfer. The cost estimate simply says that the transfer would not increase "direct spending" ("Look Ma! No hands!!"). But go back to the beginning of this *Bulletin* that talks about all the unnecessarily complicated hands on the wheel of federal highway spending.

- For spending from the HTF to occur, three things have to be in place: revenues, spending levels, and HTF balance. Revenues have already been set and will not be changed. For spending, Congress appears unwilling to deviate from the level authorized in SAFETEA-LU. Balances of the HTF are insufficient to sustain this desired spending level, and so the outlays will not occur when program participants normally expect them too – ***this is what everyone is complaining about and why they want to do the transfer!!*** Everything else equal, if the transfer from the general fund is enacted, spending will be higher, which will make many people happy, but this can only occur by causing the federal deficit and debt to be higher by the same amount as the increased spending.

Untruths About the Effect of the Shortfall This Week/Month

- Some say we have to transfer $8 billion this week or else States will not be reimbursed for the federal share of highway spending that they have already incurred. NOT TRUE! DOT has stated that, effective September 8, the Federal Highway Administration will make weekly reimbursements, rather than the current twice daily reimbursements. These weekly reimbursements will be made on a pro-rata basis. For example, if the funds available in the highway account can cover 80 percent of the requests received, 80 percent of each reimbursement will be paid. After the HTF receives another deposit, the HTF will pay off the balance of unpaid requests from the previous week and then will make pro-rated reimbursements for the new requests received that week.

- Some say that States will have to shoulder the interest costs incurred from slowed down reimbursements from DOT. NOT TRUE! States will be held harmless as the federal government will pay interest on any late payments.

- Some say that the shortfall and resulting slowdown in reimbursing States will lose jobs. Doesn't have to be. Federal payments to States will slow down slightly, and States will be made whole with interest. The federal government will not require States to slow down obligations for highway projects. If highway projects slow down, that would be a result of States' decisions, not the federal government.

Beyond 2009

- Even if the transfer from the general fund is ultimately enacted for 2009, that still would not be the end of the nightmare: if the spending level in 2009 continued into 2010 and beyond, annual spending from the HTF would exceed annual revenues (not including the transit account of the trust fund) by $9 billion in 2010, $9 billion in 2011, $11 billion in 2012, $12 billion in 2013, and $12 billion in 2014 (according to CBO).

- Over the 2010-2014 period, a total of $53 billion would have to be taken from the general fund (to augment current-law HTF revenues) just to maintain HTF spending at the 2009 authorized level.

- Some argue that it is the fault of the current economic situation that there is a shortfall projected for the HTF. But as anyone can see from the size of the future shortfalls, the path for this outcome was set by several events that occurred way before the recent jump in gasoline prices:

  - ✓ Reneging on the downward RABA adjustment in 2003;
  - ✓ Emasculating the Byrd test's early warning that the HTF is running low on resources to pay outstanding obligations and its automatic correction feature; and
  - ✓ Purposefully planning to spend the HTF balance down to zero

- With gasoline prices hovering around $4 per gallon this summer, it is a pretty safe bet that Congress will not be enacting an increase in the gasoline tax to generate new real resources so that the HTF can just maintain the 2009 highway spending level for 2010 and thereafter.

- So you can be just as sure that the highway gang will instead be back demanding another payout from the general fund and will come up with another deal-breaking, flimsy story about how the general fund "owes" the HTF.