The Donor-Donee State Issue in Highway Finance

(name redacted)
Specialist in Transportation Policy

June 13, 2011

Congressional Research Service
7-....
www.crs.gov
R41869

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

Few issues in federal highway finance have raised such heated debate as how closely each state's federal highway grants should match its highway users' payments to the Highway Trust Fund (HTF). This "donor-donee" state issue has been contentious during every reauthorization of federal surface transportation programs since 1982. It has again emerged during the congressional debate over reauthorization of the current highway funding program, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA; P.L. 109-59), which has been extended through December 31, 2011.

"Donor states" are states whose highway users are estimated to pay more to the highway account of the Highway Trust Fund than they receive. "Donee states" receive more than they pay.

Traditionally, the donor states, located mainly in the South and Midwest, have asserted that they have been subsidizing the repair and improvement of infrastructure in other parts of the country, especially in the Northeast. Donee state advocates have responded that some transportation needs are inherently federal rather than state, and that a national highway network cannot be based solely on state or regional boundaries. Although the argument continues, the facts on the ground have changed: Federal Highway Administration figures indicate that for FY2007-FY2009 all 50 states were donee states, because outlays from the Highway Trust Fund exceeded federal highway tax receipts in each year.

This report examines the donor-donee issue in the context of the effort to reauthorize federal surface transportation programs. The main questions facing Congress are the following:

- How can the donor-donee controversy be resolved amid efforts to reduce the federal deficit, given that the solution in the past was to give all states more money?
- How might the donor-donee issue be resolved if highway program spending were limited to the annual revenues flowing into the highway account of the HTF?
- How can the donor-donee issue be resolved if highway spending over the next several years is restricted to the SAFETEA baseline level?
- Has the "user pays" principle, under which highway infrastructure is funded by taxes paid by the highway users who benefit from it, been violated and, if so, what are the implications for the "equity" of the distribution of federal highway spending?

In recent years, Congress has provided three transfers from the general fund totaling $29.7 billion to shore up the highway account. These general fund transfers to the HTF are unrelated to highway taxes and thereby weaken the arguments for a guaranteed rate of return on each state's highway tax payments to the HTF. If highway user taxes were to be increased or the highway program budget cut to bring the revenues flowing into the HTF into alignment with the funding flowing out, the case for a guaranteed rate of return would be strengthened.

Contents

Tables

Appendixes

Contacts

Background and Issue Overview

Historically, transportation policy battle lines have often formed along regional rather than partisan alignments. The regional character of transportation policy is evident in the debate over what constitutes equitable distribution of federal highway aid among the states. For many years, "donor states" (mostly in the South, but also including some states in the Midwest and the West) have complained that they receive significantly less federal highway aid than their highway users pay into the highway account of the highway trust fund (HTF; unless otherwise indicated all references to the HTF are to the highway account).[1] On the other side of the debate, "donee states," those that receive more federal highway aid than they pay in federal highway taxes, have opposed any reduction in their existing shares of total federal highway aid.

The donor-donee issue has often been the most difficult issue to resolve during surface transportation reauthorization. Since 1982, Congress has included provisions in every surface transportation reauthorization act to address these distributional concerns by assuring that each state receives at least a specified proportion of its trust-fund contributions in highway grants.

The most recent multi-year authorization, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA; P.L. 109-59), expired September 30, 2009. A series of extension acts has extended SAFETEA, most recently through December 31, 2011. For an overview of reauthorization issues see CRS Report R41512, *Surface Transportation Program Reauthorization Issues for the 112th Congress*, coordinated by (name redacted)

How the Federal-Aid Highway Program Functions

Federal monies for highway projects are not provided to states up front. Rather, under the Federal-Aid Highway Program (FAHP)—a catch-all term encompassing most of the road programs financed under SAFETEA—amounts are "distributed" to the states by notifying them of the availability of federal funds. Once a project is approved and the work is started, the states submit vouchers to the Federal Highway Administration (FHWA) for reimbursement as costs are incurred.

Funds are allocated in one of two ways:

- The vast majority of highway grants are formula (apportioned) funds. The formula programs apportion funds to the various state departments of transportation (state DOTs) based on formulas set forth in legislation.[2]
- The discretionary programs are programs nominally under the control of the FHWA that were designed to provide funds to projects chosen on a competitive basis. Since FY2000 nearly all of this funding has been earmarked by Congress, except in FY2007 and FY2011.

[1] The highway trust fund, in effect, has two accounts, the highway account and the mass transit account. The focus of the donor-donee controversy is on the movement of funds to and from the highway account. "Highway account" is a term of convenience. In legislation it is usually referred to as the "Highway Trust Fund (other than the Mass Transit Account)."

[2] Apportioned programs are so called because each state gets "a portion" of the authorized amount by formula.

The distinction between formula and discretionary programs becomes especially significant in the process of creating equity programs, such as the current Equity Bonus Program (EB), which was designed to make sure that states receive federal highway grants equal to at least a specified share of their federal highway tax payments—a percentage referred to as the "rate of return." It is difficult to conceive of how discretionary programs could be constructed to guarantee a designated rate of return to every state and still remain discretionary. Also, the formula programs were originally created to fulfill policy needs, such as maintenance of the Interstate System or the repair and reconstruction of deficient highway bridges.

Some highway needs, such as roads on federal lands, border crossing infrastructure, trade corridors, and Interstate System maintenance, have inherently federal aspects that would likely not be addressed fully if the Federal-Aid Highway Program were predicated on a rate of return to all states. Even advocates of devolving the FAHP to the states have acknowledged the existence of some federal needs.[3] In addition, donor states themselves have in the past recognized the need for some states to get larger than normal shares of federal-aid funds. During the debate that preceded passage of the Intermodal Surface Transportation Act of 1991 (ISTEA; P.L. 102-240), for example, donor states agreed that large, sparsely populated states and some small states should receive larger shares.

To deal with these problems in a way that retains programmatic policy goals and at the same time achieves improvement in the uniformity of states' return on payments, Congress has decided to leave some programs outside of the equity programs, such as the Federal Lands Highways programs and the National Corridor Infrastructure Improvement Program. The programs included in the current Equity Bonus Program and subject to the program's guarantees and distribution requirements are collectively referred to as the "scope" of the program.[4] The major formula programs were always within the scope of the equity guarantee. Which other programs were included had changed under the various surface transportation authorization acts. Scope has a number of implications that are discussed in detail in **Appendix B**.

Measuring the States' Contributions

The highway account of the HTF is supported by revenue from a combination of fuel taxes (15.44 cents per gallon for gasoline, 21.44 cents per gallon for diesel and kerosene, and a variety of special fuels taxes, at differing rates) as well as a number of truck taxes including, a heavy-tire tax, a truck and trailer sales tax, and a heavy-vehicle use tax.[5] Revenues from the fuel taxes are also distributed to the Mass Transit Account (2.86 cents per gallon) and the Leaking Underground Storage Tank Trust Fund (0.1 cents per gallon).[6] All tire, truck and trailer, and heavy-vehicle use tax revenues go solely to the highway account.

---

[3] Devolution generally refers to the shifting of federal programmatic responsibility, as well as the fuel taxes that help support these responsibilities, to the state level.

[4] The term "scope" is also used to refer to the total funding amount of all the programs listed in Title 23 as being under the equity program's auspices as a percentage of the total contract authority in the highway title of the bill.

[5] The tire tax is on tires with rated capacity over 3,500 pounds. The heavy vehicle use tax is on trucks with a gross vehicle weight over 55,000 pounds.

[6] The Leaking Underground Storage Tank Trust Fund is administered by the Environmental Protection Agency and is not available for transportation purposes.

Because the federal taxes on fuel are collected at the first point of distribution (at the terminal "rack," usually at a refinery or a fuel tank farm) rather than at the retail level, most of the revenue is collected from a small number of corporations (often large oil companies or distributors that own fuel farms) located in a relatively small number of places. This means that the Treasury has no way of knowing how much fuel tax should be attributed to each state.

FHWA has a process to estimate each state's share of payments to the highway account.[7] In simplified form, the process is as follows:

- The Treasury Department provides FHWA with national revenue estimates for each kind of tax (gasoline, diesel, special fuels, and truck-related sales, etc.).
- FHWA then examines state fuel tax data to produce estimates of on-highway gallons of fuel taxed in each state (use is difficult to track as vehicles can gas up in one state and then travel in another).
- Each state's estimated on-highway gallons are divided by national total gallons. The resulting distribution is a representation of each state's share of national consumption, measured in gallons.
- The Treasury's estimates of total revenues received from highway users are then multiplied by the derived state shares of gallons to produce each state's estimated payments to the highway account of the HTF.
- The shares of the various truck-related taxes are extrapolated from estimates of diesel fuel use in each state.
- Gathering, compiling, reviewing and releasing the data usually takes more than a year from the end of each federal fiscal year. Consequently, the attribution estimates used to calculate the Equity Bonus are two years old.

A Brief History of the Donor-Donee Issue

The concern by states that federal spending might benefit other states' road infrastructure more than their own has a long history. In 1808, Secretary of the Treasury Albert Gallatin recommended that the federal government provide $20 million over a ten-year period for a national network of canals and roads. The plan, however, was never funded.[8] Among the factors that mitigated against the plan was the view of Southern states, which generally opposed federal

[7] For a detailed discussion of the estimation and attribution process, see *Attribution and Apportionment of Federal Highway Tax Revenues: Process Refinements*, by the Center for Transportation Analysis, Federal Highway Administration, Washington, 2002. 36 p. This report also includes FHWA's time-line for data improvements. These improvements were, in part, a response to a General Accounting Office report, *Highway Funding: Problems With Highway Trust Fund Information Can Affect State Highway Funds,* GAO/RCED/AIMD-00-148, June 2000, pp. 1-62. See also the Federation of Tax Administrators Motor Fuel Tax Section, http://www.taxadmin.org/fta/mf/.

[8] U.S. Senate, Report of the Secretary of the Treasury [Albert Gallatin], on the Subject of Public Roads and Canals; Made in Pursuance of a Resolution of the Senate, of March 2, 1807, (Washington, C.R. Weightman, reprinted by Sentry Press, 1968), p. 65-75. Secretary Gallatin estimated budget surplus at $5.5 million and suggested that an annual $2 million peacetime appropriation would not be burdensome. However, following the imposition of trade restrictions under the embargo of 1807, revenues fell from $17 million in 1808 to $7.7 million in 1809 and recovered only slightly in 1810. Spending during the War of 1812 nearly tripled the public debt (*Historical Statistics of the United States Colonial Times to 1970*, Washington, Bureau of the Census, 1975, p. 1104).

grants for roads and canals, that spending would benefit other regions more than the South. The New England states, which had relatively good roads, opposed federal funding for roads because they expected the money would be spent for roads outside New England. Anticipating these regional concerns, of the $20 million recommended in the report, Gallatin proposed that only $16.6 million be designated for the network of roads and canals. The remaining $3.4 million was to provide benefits to those "eastern and perhaps southern states" which "are less immediately interested in those inland communications" provided for in the plan. Even with this incentive, the Gallatin plan failed to gain sufficient support to be passed. This could be thought of as forerunner of the modern minimum guarantees within the context of the donor-donee debate.[9]

Donor-donee arguments emerged again during debate on the Federal Aid Road Act of 1916 (39 Stat. 355), which established the first federal aid for roads on a programmatic basis. An opponent of the legislation, Senator Lippitt of Rhode Island, presented a table to his Senate colleagues showing the share of highway spending each state would receive out of each $25 million of road aid provided, in comparison to that state's share of every $25 million in federal income and corporate taxes paid. His table indicated that 12 states (except for California, all located in the Northeast and upper Midwest) would receive smaller shares of road aid than they contributed in taxes. According to his table, three states, Massachusetts, New York, and Pennsylvania, would together contribute more than 50% of the tax revenue but receive only between 11% and 12% of road spending. Senator Lippitt's table, however, did not forestall passage of the bill.[10]

Forty years later, the Highway Revenue Act of 1956 (70 Stat. 387) established the HTF. The impetus was the construction of the Interstate System (IS). Because the timing of construction would vary greatly from state to state, the construction of the Interstate System did not lend itself well to arguments in support of an equal rate of return on each year's highway tax payments. The act did, in creating the HTF, make it possible to attribute the flows of revenues from each state's highway users to the fund.

Although the argument regarding a fair return on tax payments did not disappear entirely after the passage of the Federal Aid Road Act of 1916, it did not surface as a major issue until after the first publication of Table FE-221 in the 1972 edition of the FHWA's annual *Highway Statistics.*[11] The table's publication provided a statistical source that supported concerns about the state "fair share" issue that persist to this day. Table FE-221, "Comparison of Estimated State Payments into and Receipts from the Highway Trust Fund, and Federal-Aid Apportionments: Fiscal Years 1957-1972," presented in side-by-side format each state's payments to and receipts from the HTF and the ratio of aggregate payments to receipts for the fiscal years since the creation of the trust fund (in nominal dollars).[12] The receipt of federal aid for each dollar paid to the highway trust fund,

---

[9] Ibid, p.68-69. Sectional jealousy was only one reason for the rejection of the canal and road plan. Other reasons included the view that retiring the national debt was more important and the view by some that the plan exceeded the authority of the federal government under the Constitution.

[10] "Federal Money for Local Roads," *Good Roads Magazine*, vol. 11, June 3, 1916, pp. 231-232. The Federal Aid Road Act of 1916 was passed to support nonurban roads. Senator Lippitt's table, contrary to his intention, may actually have encouraged support for the bill since it made it clear that the majority of states would be net beneficiaries.

[11] Department of Transportation, Federal Highway Administration., Office of Highway Policy Information, *Highway Statistics Series*, Washington, DC, http://www.fhwa.dot.gov/policy/ohpi/hss/hsspubs.cfm.

[12] Because the table did not adjust for inflation, the aggregate ratios are of limited value, since the value of each dollar provided during the early years of the time range was substantially higher than the value of the inflated dollars in the later years.

from FY1957 through 1972, varied greatly from state to state. Alaska appeared to fare best and North Carolina worst at $8.34 and $0.52, respectively.

During the 1970s, significant construction was still underway on the Interstate Highway System, and the amount of work continued to vary significantly from state to state. By the early 1980s, the Interstate System was nearing completion. At the same time, a general perception that U.S. roads and bridges had deteriorated coincided with growing support for increased spending on transportation infrastructure, in part, as an economic stimulus measure. The Surface Transportation Assistance Act of 1982 (P.L. 97-424) included the first attempt to mitigate the dissatisfaction of donor states by providing that each state would receive a minimum core program allocation of 85% of its estimated highway tax payments to the highway account of the HTF. Since the 1982 act, all surface transportation reauthorization bills have included equity programs. For a detailed legislative history of these changes, see **Appendix A**.

The debate over equity among donor and donee states has had a role in the shifting balance of control of and responsibility for highway spending between the federal government and the states. Some critics also see the donor-donee debate as one symptom of a loss of focus in the federal highway program. Under the 1956 Act the Interstate System was envisioned as being completed in the early 1970s, and the tax rates were to revert to their pre-FY1957 levels in FY1973. This was never allowed to happen. Instead, money was shifted to non-Interstate highway programs and eligibility criteria were expanded. For example, the federal matching share for non-Interstate projects increased from 50% to 70% of project cost in 1970, to 75% in 1978, and to 80% in 1992. As the federal financial commitment increased, the states successfully pressed for increased flexibility to move federal funds among the various federal highway programs and to transit. Another effect was earmarking, which emerged as a major force in ISTEA and has continued through SAFETEA. Earmarking allowed Members of Congress to directly control the spending of the growing HTF revenues and also to preempt or override project decisions made at the state level or by the federal Department of Transportation. The donor-donee fight is thus a symptom of the tension between the policy goal of concentrating spending on projects that have national or multi-state benefits and the political urge to spread funding as widely as possible.

The Donor-Donee State Arguments

The donor state argument is that for the sake of equity each state should receive federal highway funding roughly equal to the fees and taxes that the state's highway users pay into the HTF. Equity advocates tend to view highway account as if it were a sealed system in which the overall inflow and outflow are equal each year. In such a system, simply having each state's percentage of total national spending equal the state's percent of the total nation-wide payments to the HTF would achieve equity.

Donor state advocates generally contend that they have been subsidizing the repair and improvement of donee state infrastructure, especially of the older highway infrastructure in the Northeast. Most also argue that they are more road dependent and do not benefit from federal transit spending to the same degree as some donee states. Southern and certain Western donor states also point out that they are fast growth areas, relative to most donee states, and that consequently their needs are as great or greater. Finally, they assert that since completion of the Interstate Highway System there is no valid rationale for any donor-donee disparity.[13]

Donee states argue that fairness should not be separated from need. They assert that the age of their highway infrastructures (especially those in Northeastern states), the high cost of working on heavily congested urban roads, as well as the limited financial resources of large, sparsely populated western states justify those states' donee status. They also argue that some needs are inherently federal, such as a national highway network, and that these needs cannot be funded solely according to state or regional boundaries. Furthermore, donee states argue that Midwestern and Southern donor states often spend less local and state money, relative to the federal funding they receive, on highways than donee states, and chide these donor states for pleading for federal funds when they are unwilling to ante up their own state and local resources.

It is worth noting that the Federal-Aid Highway Program is the only federal program that considers rate-of-return criteria. Objections to viewing federal highway spending in the conceptual framework of donor and donee states are often based on the fact that some highway program donor states are donee states in terms of federal tax and spending flows overall, or with respect to specific federal spending such as defense or human service programs.[14] Emphasis on each state's rate of return on highway tax revenues may constrain the federal government's ability to address changing national needs, and it also complicates efforts to make freight-related road improvements that may benefit surrounding states or the nation as a whole far more than the state in which the project will be carried out.

General Fund Transfers and the "User Pays" Principle

Over the course of the first 50 years of the HTF's existence, significant amounts of money have been transferred to it from the Treasury's general fund.[15] Although much of the transferred funding reflected federal interest payments on the HTF's unexpended balances (such transfers ended in 1998), the interest was paid by revenues provided by the general taxpayers, and not directly by highway user fees. Some other funds have been transferred to the HTF for a variety of reasons, including those compensating the HTF for lower ethanol tax rates. Over a 16 month period from 2008 to 2010, Congress approved appropriations of $29.7 billion of Treasury general fund revenues to the HTF's highway account. [16] This amount was roughly equal to 35% of the Federal Highway Administration budget for FY2009 and FY2010 combined.

---

[13] Among donor state advocates are supporters of a reduced federal role who argue that the unequal return on payments to the HTF is a symptom of an excessive federal involvement in road policy. Some devolution advocates would be in this group. See the discussions of devolution and the federal role, later in this report.

[14] Herman B. Leonard and Jay H. Walder, *The Federal Budget and the States: Fiscal Year 1999* (Cambridge, MA, Taubman Center for State and Local Government, 2000), 125 p. See also, Curtis S. Dubay, *Federal Tax Burdens and Expenditures by State: Which States Gain the Most from Federal Fiscal Operations?*, Tax Foundation, 2006.

[15] From 1956 through FY2009 the $705 billion in tax and fee payments into the fund is roughly 88% of the total $804 billion (nominal dollars) apportioned or allocated from the HTF. Complicating this issue further, some highway tax revenues have been directed to the general fund. For example, in the early years of the HTF the already existing 10% excise tax on new automobiles continued to be credited to the general fund. Also, from FY1990 through FY1996 a portion of fuel taxes was directed to the general fund for purposes of deficit reduction. These revenues had nothing to do with the HTF, however.

[16] P.L. 110-318, enacted September 15, 2008, provided $8.017 billion. P.L. 111-46, enacted August 7, 2009, provided $7 billion. P.L. 111-147, enacted March 18, 2010, provided $14.7 billion to the highway account and $4.8 billion to the mass transit account.

The pattern of revenue flow from the taxpayers to the general fund is unrelated to highway user taxes and charges. For example, some long-term HTF donee states, such as New York, Massachusetts, and Connecticut, are donor states when it comes to general fund expenditures.[17] The larger the general fund contribution to the HTF, the harder it is to argue that states should get a return based on their highway users' payments to the highway account.[18]

The Trust Fund Sufficiency Dilemma

Congress faces difficult policy choices in resolving the seemingly contradictory goals of meeting donor state demands for a higher rate of return and protecting the highway funding of donee states at a time when the revenue base of the highway account is insufficient to fund both goals at the same time. Legislatively, part of the problem is that a bill that simply reduces the shares of donee states to increase the shares of donor states might have difficulty passing Congress. To provide an equitable rate-of-return structure to overcome this obstacle, reauthorization bills have, in past practice, included "hold harmless" provisions that maintained certain base shares. This process of bringing donor state shares up to the guaranteed percentage return has required increasing the overall federal highway program size, usually by a large amount (since donee state funding could not be reduced). Achieving a sense of equity in this way is very expensive. The Equity Bonus program (EB) under SAFETEA, in fact, was the largest highway program ($41 billion over the five year life of the bill). Finding sufficient funds to support an equity distribution mechanism is likely to be a major difficulty in reauthorization.

In a broader sense, the debate over equity remedies has implications for a number of transportation issues. A guaranteed rate of return that exceeds 95% could leave little room for addressing additional transportation needs that are viewed as uniquely federal, such as the Federal Lands Highway Program or the Interstate Maintenance Program. Further, as the minimum guarantee approaches 100%, the federal government would essentially be collecting HTF revenues only to return them to the states with no redistribution. This could place the rationale for a federal role in highway finance in question.

[17] See linked table in Puentes, Robert and Tomer Adie, *The Other Highway Funding Crisis*, Brookings Institution, Washington, DC, August 2, 2010. Available at http://www.brookings.edu/opinions/2009/0717_transportation_puentes.aspx?p=1. See also, Prante, Gerald and Andrew Chamberlain, *Putting Taxes on the Map: Federal Tax Burdens by City, County, Congressional District and State*, Tax Foundation, Special Report no. 150, Washington, DC, March 2007, p. 8, http://www.taxfoundation.org/publications/show/2278.html.

[18] See U.S. Government Accountability Office, *Highway Trust Fund: Nearly All States Received More Funding Than They Contributed in Highway Taxes Since 2005*, GAO-10-780, June 2010, pp. 21-24, http://www.gao.gov/new.items/d10780.pdf. The GAO report suggests that the link has been broken.

Proposed HTF Sufficiency Solutions

Few issues are as closely linked to the financial condition of the HTF as the donor-donee issue. The revenues flowing into the highway account of the HTF are insufficient to even fund the SAFETEA obligations baseline ($41.6 billion in FY2012). The current insufficiency of the HTF may make it infeasible to resolve the donor-donee issue by providing large amounts of money to all states but relatively more to the donor states. Even with the infusion of $29.7 billion into the highway account since late FY2008, the FY2012 end of year balance is projected by CBO to approach the $4billion to $5 billion minimum balance needed to assure the flow of funds to the states.19

There are generally five proposed ways for dealing with the HTF sufficiency problem. Each of them affects the challenges faced by policymakers in seeking to resolve the donor-donee issue satisfactorily for enough Members of Congress that a multiyear reauthorization bill can pass. Options Congress may consider are:

- eliminating the HTF and funding all surface transportation programs from general fund revenues;
- continuing general fund transfers to the HTF;
- raising highway taxes or fees;
- reducing federal spending on surface transportation programs;
- or expanding the role of tolling and alternative financing (including encouraging private sector participation).

The first four of these general policy responses have policy implications for rate of return-based equity programs. Eliminating the HTF might end the donor-donee debate outright. Supporting the federal aid program with significant general fund transfers would weaken the case for an equity program. Aligning trust fund revenues with spending, whether by raising highway taxes and charges or by living within the highway account's means would align tax payments with spending and strengthen the argument for a rate of return guarantee.

Which States Are Donors?

The donor-donee debate revolves around the use, and some would say misuse, of statistics. One method of determining a state's status as a donor or donee is based on dollars; if the state's highway users are estimated to have paid more into the highway account in a given year than the state's apportionment and allocation of federal highway funding, it would be considered a donor state. The other method considers not dollars but rather shares; if a state's proportion of all revenue flowing into the highway account is less than its proportion of nationwide apportionments and allocations from the account, then the state would be considered a donor state even if it receives more dollars than its highway users paid in. This share-in/share-out method eliminates the impact of the spending down of the account's unexpended balances on the determination of donor-donee status[20] and also treats general fund revenues transferred to the highway account the same as revenues generated from highway taxes. The share-in/share-out calculation makes the donor-donee controversy self-perpetuating: there will always be donor states unless the distribution of every cent of federal spending is based on 100% rate of return on state payments to the highway account.

These two methods can lead to significant differences in reported donor or donee status. For example, in FY2007,[21] Arizona's dollar-in/dollar-out ratio was 1.03, making it, by that measure, a

[19] Congressional Budget Office, *Highway Trust Fund Projections: CBO March FY2011 Baseline 2009-2021*, Washington, DC, March 18, 2011, p. 1.

[20] Ronald D. Utt, *Highway Trust Fund Inequities Will Get Worse in Future Years*, Heritage Foundation, Web Memo no. 2100, October 9, 2008, http://www.heritage.org/research/smartgrowth/wm2100.cfm.

[21] FY2007 is the only year for which FHWA included a column in FE-221 setting forth the ratio based on the share-in/share-out calculation.

donee state. On the other hand, in that same year Arizona's payments to the highway account were 2.127% of the national total whereas its allocations from the fund were 1.823% of the national total. Dividing its percentage of total nationwide allocations (1.823) by its percentage of nationwide payments into the fund (2.127) yields a ratio of 0.86, making it, by that measure, a donor state.

In that same year, using the dollar-in/dollar-out method there were no states that did not have more money made available to them than their highway users paid to the HTF. Using the share-in/share-out method for the year, however, produces 27 states that were below the 1.0 ratio and could claim to be donor states.

Table 1 below, reproduces FHWA's Donor-Donee statistics for the SAFETEA years, FY2005 through FY2009, using the dollar in-dollar out method. These figures are compiled from the FE-221 tables in FHWA's annual *Highway Statistics*, which provides a consistent source for this information since 1972.[22] Although the cumulative ratios since 1956 are widely cited in debate over transportation policy, these ratios are of limited value, as FHWA compiles them by adding up annual figures over time with no adjustment for inflation.

[22] Office of Highway Information Policy, *FE-221-B Federal Highway Trust Fund Highway Account Receipts Attributable to the States and Federal-Aid Apportionments and Allocations From the Highway Account: Fiscal Years 2004-2009*, Federal Highway Administration, Washington, DC, April 2010, http://www.fhwa.dot.gov/policyinformation/statistics/2009/fe221b.cfm. Rate of return is not a formal term used by the FHWA but is a term of convenience used in discussing donor-donee issues.

Table 1. Comparison of Federal Highway Trust Fund Highway Account Receipts Attributable to the States and Federal-Aid Apportionments and Allocations from the Highway Account: FY2005-FY2009

(Thousands of Dollars)

	2005			2006			2007			2008			2009			Cumulated Since 7-1-56 (Nominal $ Ratio)
	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	
Alabama	611,616	734,045	1.20	660,130	759,399	1.15	669,085	817,468	1.22	623,894	793,186	1.27	581,234	807,311	1.39	1.14
Alaska	66,299	490,381	7.40	119,894	500,687	4.18	120,946	541,251	4.48	103,595	501,320	4.84	103,630	546,134	5.27	6.11
Arizona	677,256	646,849	0.96	707,320	637,429	0.90	730,358	762,180	1.04	662,118	781,411	1.18	614,193	810,072	1.32	1.07
Arkansas	419,840	475,228	1.13	425,049	519,376	1.22	429,903	541,826	1.26	387,250	549,917	1.42	371,790	588,035	1.58	1.09
California	3,138,792	3,595,604	1.15	3,376,775	3,275,505	0.97	3,427,820	4,232,975	1.23	3,180,213	4,071,785	1.28	3,002,113	4,044,914	1.35	1.02
Colorado	483,016	480,020	0.99	503,241	477,191	0.95	514,417	554,380	1.08	476,782	583,649	1.22	463,396	567,233	1.22	1.16
Connecticut	310,855	517,568	1.66	339,201	525,833	1.55	336,280	530,357	1.58	312,941	551,458	1.76	297,887	529,350	1.78	1.68
Delaware	86,043	166,919	1.94	89,414	174,120	1.95	90,308	176,331	1.95	84,859	175,528	2.07	80,469	183,613	2.28	1.68
Dist. of Col.	29,699	147,480	4.97	28,484	151,403	5.32	26,649	159,815	6.00	24,338	157,379	6.47	22,218	154,940	6.97	4.33
Florida	1,811,267	2,641,354	1.46	1,839,725	1,697,774	0.92	1,892,355	2,003,500	1.06	1,697,353	1,765,811	1.04	1,582,256	2,062,167	1.30	0.99
Georgia	1,245,916	1,265,172	1.02	1,324,981	1,222,512	0.92	1,272,232	1,343,422	1.06	1,142,137	1,445,524	1.27	1,053,399	1,357,856	1.29	0.97
Hawaii	81,213	172,208	2.12	83,576	178,588	2.14	89,917	216,929	2.41	83,459	177,019	2.12	80,449	178,174	2.21	2.99
Idaho	173,972	273,846	1.57	174,310	283,011	1.62	182,978	295,283	1.61	168,981	301,181	1.78	158,319	307,341	1.94	1.66
Illinois	1,218,478	1,128,004	0.93	1,270,327	1,313,194	1.03	1,289,747	1,579,222	1.22	1,171,228	1,506,996	1.29	1,115,772	1,517,770	1.36	1.09
Indiana	903,927	842,625	0.93	929,679	859,827	0.92	938,306	988,156	1.05	829,270	996,927	1.20	792,309	1,024,116	1.29	0.93
Iowa	405,634	406,524	1.00	429,483	444,570	1.04	447,431	475,913	1.06	403,321	491,400	1.22	397,331	546,532	1.38	1.13
Kansas	339,384	399,749	1.18	336,280	402,237	1.20	337,977	407,799	1.21	319,141	408,824	1.28	316,196	414,543	1.31	1.13
Kentucky	623,583	626,933	1.01	618,546	646,811	1.05	625,407	700,301	1.12	559,710	707,323	1.26	530,594	747,102	1.41	1.06
Louisiana	556,445	584,091	1.05	570,683	623,880	1.09	653,890	756,201	1.16	515,642	715,446	1.39	498,731	866,315	1.74	1.26
Maine	167,989	187,007	1.11	169,306	201,444	1.19	173,845	202,084	1.16	152,349	201,990	1.33	146,340	208,246	1.42	1.14
Maryland	589,052	591,099	1.00	586,076	584,873	1.00	596,125	661,588	1.11	556,367	644,238	1.16	535,926	646,306	1.21	1.25
Massachusetts	580,043	638,021	1.10	558,798	647,276	1.16	557,986	654,592	1.17	540,595	639,622	1.18	514,464	637,623	1.24	1.41
Michigan	1,056,042	1,069,950	1.01	1,042,640	1,097,464	1.05	1,033,241	1,171,364	1.13	940,101	1,138,389	1.21	891,339	1,145,080	1.28	0.96

	2005			2006			2007			2008			2009			Cumulated Since 7-1-56 (Nominal $ Ratio)
	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	
Minnesota	592,531	517,455	0.87	615,227	613,788	1.00	619,223	733,286	1.18	561,344	1,026,476	1.83	552,642	722,409	1.31	1.21
Mississippi	448,611	459,877	1.03	444,328	524,837	1.18	459,783	537,044	1.17	412,099	516,493	1.25	406,217	582,867	1.43	1.16
Missouri	819,186	855,725	1.04	827,700	932,855	1.13	834,704	979,126	1.17	763,212	1,001,497	1.31	733,362	1,024,129	1.40	1.01
Montana	147,699	359,752	2.44	153,906	394,626	2.56	159,788	415,349	2.60	141,690	414,912	2.93	135,549	422,905	3.12	2.45
Nebraska	256,765	277,085	1.08	257,528	286,140	1.11	255,743	299,915	1.17	236,488	310,088	1.31	228,707	310,762	1.36	1.13
Nevada	271,368	254,658	0.94	288,552	296,796	1.03	309,455	321,892	1.04	273,745	373,545	1.36	253,257	372,323	1.47	1.28
New Hampshire	146,174	173,256	1.19	139,570	177,460	1.27	140,113	178,129	1.27	135,345	177,103	1.31	131,463	181,712	1.38	1.30
New Jersey	967,602	927,625	0.96	950,270	923,427	0.97	970,022	1,044,152	1.08	910,174	1,089,938	1.20	869,133	1,064,125	1.22	1.01
New Mexico	301,487	352,043	1.17	304,666	363,530	1.19	319,277	389,821	1.22	280,178	383,330	1.37	258,463	407,937	1.58	1.29
New York	1,302,716	1,740,884	1.34	1,323,492	1,743,338	1.32	1,323,710	1,786,606	1.35	1,223,182	1,768,110	1.45	1,197,729	1,890,156	1.58	1.28
North Carolina	1,017,630	1,048,362	1.03	1,016,722	995,131	0.98	1,029,771	1,111,941	1.08	946,919	1,103,383	1.17	963,067	1,134,886	1.18	0.94
North Dakota	102,571	266,395	2.60	107,620	256,043	2.38	106,486	252,257	2.37	98,218	250,074	2.55	102,883	316,462	3.08	2.19
Ohio	1,306,588	1,378,238	1.05	1,317,878	1,317,322	1.00	1,305,925	1,536,682	1.18	1,179,086	1,427,029	1.21	1,141,913	1,437,003	1.26	0.97
Oklahoma	451,577	581,431	1.29	525,055	656,622	1.25	527,227	677,902	1.29	493,590	675,241	1.37	503,774	709,984	1.41	0.98
Oregon	400,152	439,837	1.10	410,792	499,892	1.22	417,223	544,644	1.31	377,759	519,695	1.38	361,433	562,651	1.56	1.20
Pennsylvania	1,286,563	1,718,421	1.34	1,302,050	1,714,617	1.32	1,302,706	1,723,126	1.32	1,174,199	1,737,192	1.48	1,138,449	1,705,253	1.50	1.23
Rhode Island	76,617	205,570	2.68	81,237	233,651	2.88	80,372	241,579	3.01	75,643	228,913	3.03	74,714	237,437	3.18	2.40
South Carolina	604,039	579,424	0.96	596,456	584,319	0.98	618,251	650,292	1.05	565,074	673,927	1.19	553,868	671,243	1.21	0.95
South Dakota	117,426	260,099	2.22	123,133	286,677	2.33	123,810	297,765	2.41	116,437	292,126	2.51	113,553	304,016	2.68	2.18
Tennessee	803,806	803,128	1.00	818,963	812,408	0.99	814,712	924,124	1.13	740,664	908,894	1.23	712,182	918,904	1.29	1.01
Texas	2,969,797	2,845,903	0.96	2,952,274	2,799,178	0.95	3,146,962	3,216,831	1.02	2,921,406	3,120,314	1.07	2,892,159	3,442,894	1.19	0.92
Utah	281,495	283,399	1.01	286,014	305,832	1.07	309,411	319,569	1.03	288,438	324,267	1.12	271,627	348,593	1.28	1.31
Vermont	74,204	170,545	2.30	72,054	221,360	3.07	73,705	221,461	3.00	68,165	211,951	3.11	64,613	217,196	3.36	2.26
Virginia	966,040	946,685	0.98	960,353	964,475	1.00	972,624	1,102,630	1.13	906,546	1,068,458	1.18	855,401	1,091,429	1.28	1.10
Washington	615,641	646,725	1.05	618,937	696,338	1.13	631,808	759,593	1.20	588,698	811,562	1.38	559,635	853,686	1.53	1.34

	2005			2006			2007			2008			2009			Cumulated Since 7-1-56 (Nominal $ Ratio)
	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	Payments into the Fund[a]	Appor. & Alloc. from the Fund[b]	Ratio[c]	
West Virginia	226,339	450,226	1.99	225,074	459,876	2.04	225,201	449,142	1.99	201,315	475,101	2.36	188,142	475,998	2.53	1.99
Wisconsin	615,569	701,399	1.14	612,349	720,529	1.18	623,858	765,287	1.23	574,955	778,407	1.35	562,897	833,388	1.48	1.05
Wyoming	160,954	256,953	1.60	167,308	253,320	1.51	169,018	272,733	1.61	151,489	264,569	1.75	149,212	282,567	1.89	1.73
Total	32,907,508	37,581,777	1.14	33,683,426	37,258,791	1.11	34,308,091	41,525,815	1.21	31,341,702	41,238,918	1.32	30,126,399	42,413,688	1.41	1.14
American Samoa	0	23,990	0	—	14,139	—	—	15,180	—	—	4,882	—	—	28,383	—	—
Guam	0	26,753	0	—	26,990	—	—	24,387	—	—	21,742	—	—	81,699	—	—
N. Marianas	0	5,645	0	—	12,728	—	—	11,672	—	—	6,462	—	—	22,461	—	—
Puerto Rico	0	98,662	0	—	114,806	—	—	201,031	—	—	12,726	—	—	258,093	—	—
Virgin Islands	0	21,398	0	—	34,581	—	—	31,196	—	—	19,719	—	—	63,867	—	—
Grand Total	32,907,508	37,758,225	1.15	33,683,426	37,462,035	1.11	34,308,091	41,809,281	1.22	31,341,702	41,304,449	1.32	30,126,399	42,868,191	1.39	1.14

Source: Federal Highway Administration, Office of Highway Policy Information.

Notes (CRS): Fiscal years 2005 through 2009 were years when apportionments and allocations exceeded highway account revenues, resulting in ratios that exceeded 1.0. Near the end of FY2008 the highway account balances were near zero. P.L. 110-318, enacted September 15, 2008, provided $8.017 billion of general fund monies for the highway account. P.L. 111-46, enacted August 7, 2009, provided an additional $7 billion. Declining revenues and the general fund infusions led to large increases in the rates-of-return for FY2008 and FY2009. The Surface Transportation Extension Act of 2010 (P.L. 111-147) provided an additional $14.7 billion for the highway account.

a. Payments into the Fund include only the net highway user tax receipts and fines and penalties deposited in the highway account of the HTF (general fund transfers, mentioned above, are not counted). Excluded are motor fuel tax amounts transferred to: the mass transit account of the HTF; the Leaking Underground Storage Tank Trust Fund; and amounts representing motor-boat use of gasoline, which are transferred to the Aquatic Resources Trust Fund and the Land and Water Conservation Fund. Total HTF receipts are reported by the U.S. Treasury. Payments to the HTF attributable to highway users in each state are FHWA estimates.

b. Includes all funds apportioned or allocated from the HTF except where FHWA does not directly allocate the funds to the states.

c. Ratio of apportionments and allocations to payments. The annual figures used to calculate the cumulated ratio since July 1, 1956 ratio were not adjusted for inflation.

Some states move back and forth across the donor-donee divide from year to year. HTF revenues are sensitive to the condition of the economy and can have a significant impact in the pattern of payments to the HTF. Some of the results can seem counterintuitive. For example, a donor state may become a donee state because an economic downturn reduces expenditures on fuel and sales of trucks and heavy tires, such that the state is generating fewer transportation tax revenues for the HTF. Another factor that can influence donor-donee status is shifts in fuel use. Gasoline and diesel fuel have different tax rates and, because of this, shifts in use due to a change in the vehicle mix can influence the amount of revenue produced in a state.

The impact of the general fund transfers that began in late FY2008 has, however, dwarfed the impacts of any of these statistical changes. SAFETEA was written intentionally to draw down the unexpended balance of the highway account. Because the HTF was paying out more than was flowing in for these years, most states' ratios exceeded 1.0. For FY2007 and FY2008 all 50 states had ratios above 1.0 (received more than they were estimated to have paid in) so there were, on a dollar-in/dollar-out basis no donor states. For FY2009 general fund transfers had a significant effect on rates of return. Not only did all 50 states fall into the donee category, but the national ratio was 1.41 (the federal government was paying out $1.41 for every dollar it collected in highway user fees for the Highway Account, not counting ARRA stimulus funding).

However, even if the highway account were self-sufficient, a 100% return on payments to all states would not be possible. The highway account must cover FHWA administrative as well as spending for programs such as the Federal Lands Highways Program, for which needs are not evenly distributed among the states. In recognition of these needs, during the last two reauthorizations donor state advocates have pressed for a guaranteed rate-of-return ratio of 0.95 rather than 1.0.

Table 2. Number of Donor States

(Calculated for donor states defined as under 1.0 and 0.95 rate-of-return ratios)

Year(s)	Rate of Return Under 1.0	Rate of Return Under 0.95
FY2005	10	4
FY2006	11	4
FY2007	0	0
FY2008	0	0
FY2009	0	0

Source: CRS from data provided by the Federal Highway Administration, Office of Highway Policy Information.

The variety of possible ways to determine a state's status as a donor or donee—the Government Accountability Office (GAO) has offered at least four[23]—has made it possible for those concerned with highway funding to cite whichever statistics best serve their purposes. In some cases, advocates selectively combine data from different years or in other ways modify the rate of return to derive figures and projections that show a particular state to be disadvantaged.[24] Rate of

[23] GAO, *Highway Trust Fund: Nearly all States Received More*, GAO-10-780, June 2010, pp. 8-17, http://www.gao.gov/new.items/d10780.pdf.

[24] Coalition for Donor State Equity, *What is Each State's Historic and Current Rate of Return?,* Washington, 2010, (continued...)

return figures that differ significantly from those produced by FHWA in its table FE-221 should be viewed cautiously.

Elevating the Donors and Protecting the Donees: the Equity Bonus Program

Since 1982, Congress has approved a series of measures to ensure that each state receives at least a specified share of federal highway spending. The current equity mechanism is the Equity Bonus (EB) Program (P.L. 109-59, section 1104; U.S. Code, Title 23, section 105). The EB Program functions as an overlay on top of the major programs authorized in SAFETEA. The formula for each individual program determines the initial apportionment amounts provided to each state, and then the equity bonus funding is added to these levels to bring donor states up to their guaranteed rate-of-return. The EB is funded on a "such sums as necessary" basis, and contains a number of complex requirements.[25]

The State Percentage Guarantee

Under the EB Program, FHWA was directed to allocate sufficient funds to ensure that each state received a minimum return of 90.5% for FY2005-2006, 91.5% for FY2007, and 92% for FY2008-2009 on its estimated payments to the highway account. This percentage calculation is based on a subset of programs within the federal-aid highway program, including the Interstate Maintenance Program, the National Highway System, the Surface Transportation Program, the Congestion Mitigation and Air Quality Improvement Program, the Highway Bridge Program, Recreational Trails, Appalachian Development Highway System, High Priority Projects, metropolitan planning, the Coordinated Border Infrastructure Program, the Safe Routes to School Program, the Highway Safety Improvement Program, and the Rail-Highway Grade Crossing Program.

Together, these programs and the money apportioned to them are referred to as the "scope" of the EB. Spending within these programs is sometimes referred to as being "below-the- line," while spending outside the scope is referred to as "above-the-line." Since the EB percentage guarantee is only applied to funding within the scope of the EB program, the guarantee is a partial one. For example, the 92% guarantee for FY2008 and FY2009 was against just over 90% of the total SAFETEA authorization for these years, not against the full authorization.

There was no EB calculation for either FY2010 or FY2011. The distribution to the states was based on extending authorizations based on FY2009 funding amounts.

(...continued)

available at http://www.donorequity.org/.

[25] See also, GAO, *Highway Trust Fund*, pp. 18-19, http://www.gao.gov/new.items/d10780.pdf.

Hold Harmless

The EB program includes a number of "hold harmless" provisions ensuring that certain states will receive the greater of the annual percent return described above or their percentage share of total apportionments and High Priority Projects over the six-year life of the previous surface transportation reauthorization act, the Transportation Equity Act for the 21st Century (TEA-21; P.L. 105-178). These provisions include certain eligibility thresholds based on state population, population density, highway fatality rates, median household income, and state fuel tax rates. In SAFETEA, the District of Columbia and the following 26 states qualify for funding as hold harmless states under these criteria: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Vermont, Utah, West Virginia, Wisconsin, and Wyoming.

The Minimum Combined Allocation

The EB program guarantees that each state will receive an annual minimum percentage increase over its TEA-21 average apportionments and High Priority Projects. The annual guaranteed funding over TEA21 levels are as follows: 117% for FY2005, 118% for FY2006, 119% for FY2007, 120% for FY2008, and 121% for FY2009.

Calculation of the FY2009 Equity Bonus Apportionment

Based on these provisions, a series of calculations is used to determine the EB apportionments needed to bring each state's total apportionment into compliance with the provisions of the EB program. The EB calculation process (using FY2009) is a nine step process.[26] The calculation is discussed in some detail because some options for resolving the donor-donee issue involve altering this calculation or are affected by the way it works.

Step 1: Each state's guaranteed minimum program share of the amounts within the scope of the EB program is determined by estimating total national highway account contributions for FY2007 and calculating each state's percent share of the total. As each state is guaranteed a 92% share of its contributions, each state's contribution share percentage is multiplied by 92%. This creates each state's "minimum share" ratio.

Step 2: The dollar floor is determined by multiplying each state's average annual TEA-21 apportionments and High Priority Project amounts by 121%. This establishes a dollar amount for each state below which its apportionments and High Priority Projects funding for FY2009 may not fall.

Step 3: The amounts needed to raise each of the 50 states and the District of Columbia to their required dollar floor levels (calculated in step 2) are determined.

Steps 4-7: The total amount of funding needed to bring all states' apportionments plus High Priority Projects into compliance with the EB are estimated and tested until the amount is reached

[26] *Equity Bonus Apportionment—FY2009*, Federal Highway Administration, Washington, FHWA, 2008. 11 p. Sets forth in tabular format the step by step determination of the Equity Bonus and its distribution.

that brings all states up to their minimum share (determined in step 1). In FY2009 there were four iterations before the total was identified. For FY2009 the total program size needed to bring all states up to their required share was $38,816,775,489.

Step 8: The EB distribution is determined by calculating the difference for each state's share of the overall program level required ($38,816,775,489) and the initial apportionments and High Priority Projects from step 3 ($29,222,721,563). The overall difference for FY2009 was $9,594,053,923, which represents the size of the total EB distribution and came to roughly 25% of total apportionments for the year.

Step 9: The EB distribution is broken down into three categories: $639 million that is exempt from the year's obligation limitation; $2 billion subject to special no-year limitation; and the $6.95 billion remainder that is subject to formula limitation (i.e. are distributed to the six core formula programs).

Distribution of EB Funding

The distribution of Equity Bonus Program funds to the states is accomplished by increasing the amounts apportioned to the core formula programs. Each year,

- the first $2.639 billion is apportioned to the Surface Transportation Program (STP);
- the next $2 million of the Equity Bonus are special no-year obligation funds (differing from the normal one-year obligation limitation) and are distributed to the states proportionally to their share of the overall Equity Bonus;
- the rest of the distribution is to each of the core formula programs based on the ratio of each program's apportionment to the total apportionment of all six programs for each state.

How the Donor-Donee Issue in SAFETEA Reauthorization Might Be Resolved

In TEA-21 and SAFETEA, the donor-donee conflict was resolved with large amounts of funding ($35 billion and $41 billion, respectively). Without agreement on raising existing highway taxes or imposing new taxes or charges, the "more money" solution would require a large general fund contribution. Given constrained budgetary environment, it seems more likely that reauthorization bills will seek to limit spending to the amounts flowing into the highway account or to some percentage of SAFETEA baseline spending.[27]

In a constrained budgetary environment, authorizers have little choice but to begin with the overall authorization expected to be available and to work down through the underlying programs and formulas in a way that can resolve the donor-donee conflict without breaking through the

[27] The term SAFETEA baseline is used to refer to projections made by the Congressional Budget Office based on the continuation of current law. See, CBO, Highway Trust Fund Projections: CBO March FY2011 Baseline 2010-2011, March 18, 2011.

predetermined total program size. Within that anticipated budgetary constraint, there are a number of options that could mitigate some of the difficulties that authorizers face in producing a surface transportation reauthorization bill that sufficiently addresses the donor-donee debate. These options range from what may be seen as fine-tuning of the existing EB program to program elimination.

Pass a Bill with No Equity Provision

Congress could decide to forgo an equity provision altogether and allow the program formulas to determine the distribution of highway funds to the states. This would be more likely if the SAFETEA baseline is extended, because the projected obligations exceed projected revenues by approximately $10 billion annually. If general fund revenues are used to fill the gap, then the case for a rate-of-return guarantee made by donor states is significantly weakened. If the reauthorization limits spending to the amounts flowing into the highway account, there may be greater pressure for equity adjustments because payments will then equal spending and donor states can be expected to be adamant about receiving their shares.

Emphasize Performance

The current Federal-Aid Highway Program has been criticized for failing to link each state's funding with its performance in areas such as the cost-effectiveness of its highway construction efforts or the benefit/cost ratio of its projects. Increasing the emphasis on performance, however, is at odds with ensuring each state a certain amount or share of highway funding.[28] The use of contributions to the HTF in program formulas and the EB funding distribution itself, which is not connected to programmatic goals and neutralizes some policy-based penalties, all weaken the link between funding and performance. Congress may have difficulty increasing the role of performance measures in the distribution of funds while at the same time assuring each state's rate of return on its annual contributions to the HTF.

"Living Within the Trust Fund's Means"

The uncertainties of projecting total program size based on share has led to discussion of requiring highway programs to "live within the trust fund's means" by limiting the program size for each fiscal year to the total annual payments to the highway account. Under this paradigm, a rate-of-return guarantee could be superimposed over the entire highway program and the percentage of the program within the scope of the guarantee would likely be very high.[29] When the trust fund revenues were high this option would have looked good to the donor states. Donee states, however, would have objected because of their loss of share.

Given that current revenue projections are at least $9 billion to $10 billion annually below the SAFETEA baseline, satisfying either the donor or the donee states while spending no more than

[28] GAO, *Highway Trust Fund: Nearly All States Received More*, GAO-10-780, June 2010, pp. 21-23, http://www.gao.gov/new.items/d10780.pdf.

[29] "Editorial: Rethinking the Donor State vs. Donee State Highway Formula Fight," *Transportation Weekly*, vol. 12, no. 21 (May 11, 2011), pp. 10-14.

the amounts flowing into the trust fund from highway taxes could be difficult.[30] Making room for equity adjustments would mean lowering the individual program authorizations sufficiently to provide the money to then lift donor states up to an acceptable rate of return and to cover the costs of appeasing enough "hold harmless" states to pass the legislation.

Funding the FY2009 EB required 25% of apportionments for the year. Because of the much smaller bill size, a "living within the trust fund's means" bill would not be able to set aside such a large portion of the bill for an equity program. Consequently, if such a bill is to have an equity program, the cost to resolve donor-donee must be reduced.

Some of the methods, discussed in more detail below, could be used to lower the amount needed in a "within the trust fund means" equity program. One is to make rate of return the main formula factor in all the programs. This would reduce the amount of money needed to bring the donor states up to a guaranteed rate of return because the rate of return would already be embedded in each formula program. Another way would be to adjust the way the equity bonus is calculated, also discussed below.

Although these methods could reduce the cost of an equity program, some funding would be needed to appease donee states that could see a declining share and loss of their hold harmless protections.

There are a number of possible disadvantages to using total annual payments to the highway account to determine the total program size. As mentioned earlier, the data on contributions are not generally available until early in the second fiscal year after the contributions are made, so the program size would be set according to old data. This method would also, in effect, set a ceiling on each year's spending, eliminating the "such sums as may be necessary" authorization for the EB program. Also, if revenues to the highway account were to decline, as they did in FY2001, FY2008, and FY2009, Congress would be faced with the choice of drawing money from the general fund, drawing down the unexpended balance of the highway account, or allowing program spending to drop for the year.

Integrate the Guaranteed Rate of Return into All Federal-Aid Highway Programs

If Congress prefers to guarantee each state a certain percentage rate of return without major growth in the size of the highway program, it could eliminate all other formula criteria and weight all the large formula programs entirely by state rate of return. Congress would still authorize each program's dollar amount and retain each program's goals and requirements, but the apportionment of program funds to the states would be strictly determined by each state's percent share of contributions to the HTF. Funding for allocated (discretionary) programs could be kept within the scope of EB and could then also be divided among the states based on their shares of contributions to the HTF. Some revenues could be set aside to fund program administration, the Federal Lands Highways Program, Emergency Relief, and other small programs that do not lend themselves to a strict rate-of-return distribution.

[30] CBO's baseline projection for FY2012 obligations is $41.6 billion the projection for revenues and interest to the Highway Account for the same year are $32.3 billion. A working balance of $4 billion to $5 billion needs to be retained in the Highway Account. By some accounts as little as $27 billion could be available for FY2012.

This approach has advantages and disadvantages. One advantage is that it is adaptable to both the "live within the trust fund's means" and the SAFETEA baseline views of reauthorization. It would be simpler than the existing EB program. Congress could set the size of the various programs without having to consider the impact of the EB distributions on the programs. One of the advantages of this method of limiting the amount of needed equity program funding is that it can be used to weight any of the formula programs at any percentage up to 100%. If large amount of savings are needed the programs' rate-of-return formula factor can be set at the maximum 100%. If smaller amounts of savings are needed, the weighting of the rate-of-return formula factor could be set at a lower percentage.

Integrating the guaranteed rate of return into all highway programs might not, however, eliminate the need for some sort of equity program to garner the support of the existing "hold harmless" states, most of which are donee states. Also, infusions of general fund monies into the HTF could be an issue, as apportioning all funds based on estimated taxes paid into the highway account could raise objections from some high-income states that are disproportionate contributors to the general fund. In addition, such an option could limit the ability of the federal government to fund federal policy priorities. It is possible, for example, that states with relatively few deficient bridges could receive more bridge program funds than states with relatively more, or states with no air quality non-attainment areas could get more Congestion Mitigation and Air Quality Improvement funding than some states with non-attainment areas.

Phase In Increases in the Share Guarantee

This is perhaps the simplest cost-reduction option. SAFETEA phased in the increase in each state's guaranteed rate of return from 90.5% to 92% over the life of the authorization. Although phasing in future increases would save money compared to raising the rate of return guarantee immediately, it has drawbacks. First, the annual amounts saved would be small. Second, some of the large donor states would be unhappy with the phase-in proposal, believing equity delayed is equity denied.

Eliminate or Modify the "Hold Harmless" Provisions

The "hold harmless" provisions that protect certain donee states from losing share of total highway spending could be retained, modified, or eliminated. In a constrained budgetary environment these provisions could be especially problematic. It might be possible to make adjustments to the "hold harmless" levels to hold total spending equal to annual revenues. However, as there were 26 "hold harmless" states at the beginning of SAFETEA, and as most "hold harmless" states are donee states, some sort of equity spending for donee states may be needed to obtain sufficient support to pass a reauthorization bill.

Restrict the Program Scope of the EB

One way to reduce the cost of the EB is to reduce the number of programs covered by the guarantee (assuming that other attributes are held constant). The states' guaranteed percentage return on payments to the highway account could be applied to as small a number of the federal-aid highway programs as needed to stay within budget. In the past, donor states have usually supported as broad a scope as possible. Adjustments of scope during the authorization process can lead to unexpected consequences. In a SAFETEA baseline scenario that assumes transfers from the general fund to the highway trust fund, having a scope limited to the part of the highway budget funded by the HTF might make sense. Programs seen as being inherently federal, such as the Interstate Maintenance Program and Federal Lands Highways program could be considered for out-of-scope treatment.

Modify the EB Calculation

Under SAFETEA, the total size of the EB program is determined by an iterative process that increases program size until all states receive their guaranteed ratios. If a guarantee similar to the EB is included in reauthorization, one way of limiting the expense is to drop the last states from the iterative process. These states could be given dollar amounts equal to what they would have received anyway and the iterative process could be suspended. This approach could raise objections, however, as it would not protect the size of the overall highway program in the way the EB program does.

Devolution

A long-standing idea for relieving the donor-donee controversy that has resurfaced in the current reauthorization debate is to devolve most of the federal highway program role to the states.[31] The Transportation Empowerment Act (H.R. 3840 and S. 1971, 104th Congress), sponsored by former Representative John Kasich of Ohio and former Senator Connie Mack of Florida in 1996, would have limited the federal role to Interstate System maintenance, federal lands highways, National Security Highways, Emergency Relief, and a proposed Infrastructure Special Assistance Fund. Other programs would have been taken over by the states. A four-year phase out of 12 cents of the 18.4 cent-per-gallon federal gasoline tax would have corresponded with the declining federal role, leaving states the option raising their own gasoline taxes to replace federal grants. States would then have had the freedom to spend on their own roads and transit systems as they saw fit.[32] Reaction to this proposal was mixed, with some state-level officials wary of the political implications of pushing large replacement gas tax increases through their state legislatures and keeping those revenues dedicated to transportation.

More recently, in February 2011, Senator Kay Bailey Hutchison and Representative Jeff Flake introduced bills, S. 252/H.R. 632, the *Highway Fairness and Reform Act of 2011*, which would allow a state to elect to receive the equivalent of its state contribution to the Highway Account in lieu of participating in the Federal-Aid Highway Program.[33] The bills would require that general funds deposited in the HTF be treated as if they were taxes appropriated to the fund. Treating

[31] "Devolution," during the 1990s, generally referred to the shifting of federal programmatic responsibility and funding resources to the states. The relinquishing of a share of the federal tax on gasoline to finance programs returned to state responsibility was a 1987 recommendation of the Advisory Commission on Intergovernmental Relations in its report *Devolving Selected Federal-Aid Highway Programs and Revenue Bases: a Critical Appraisal,* A-108 (Washington, D.C.: U.S. GPO, 1987).

[32] Representative Jeff Flake introduced a bill with similar attributes, H.R. 3113, the Transportation Empowerment Act, on September 17, 2003. The bill was referred to the House Subcommittee on Highways, Transit, and Pipelines on September 18, 2003. There was no further action on the bill. On May 12, 2005, Rep. Flake reintroduced a version of the bill H.R. 2284. Senator Jim DeMint introduced S. 2823, the Transportation Empowerment Act, on April 7, 2008.

[33] Representative James Lankford also introduced an opt-out bill on April 15, 2011, the State Highway Flexibility Act, H.R. 1585.

general fund transfers as if they were highway tax revenues, however, may weaken the "equity" rationale of the devolution argument.[34]

Although no proposal to devolve the surface transportation programs has been enacted, restructuring the EB program so that each state receives close to 100% of its road users' payments in federal highway grants would tend to bolster the case for devolution, as the federal government's role becomes more like that of a tax collector for the states. The need for and efficiency of the federal government as middleman would come into question. At this time, however, there appears to be limited interest on the part of the states in any radical change in the federal role in the highway program. As is true with donor state complaints regarding a fair share, devolution arguments in regard to highway policy lose some of their appeal when the general fund is paying a significant portion of the Federal-Aid Highway Program's costs. As long as the general fund infusions prop up the HTF, the status quo will be attractive to most states.

This argument against devolution may be particularly compelling in a reauthorization that continues the spending baseline enacted in SAFETEA. Because this scenario would probably require an annual general fund contribution in the neighborhood of $10 billion, states would be unlikely to go along with a devolution plan that does not distribute the general funds to states that wish to opt out of the federal program. On the other hand, under the "live within the trust fund's means" scenario, the smaller program size and the alignment of payments to spending might make more states feel that devolution would not reduce the resources they have available for highways. And if Congress were to opt for an increase in highway revenues, perhaps through an increase in fuel taxes large enough to make the Highway Account of the HTF self-sufficient again, the argument for resolving the donor-donee issue by devolving federal highway programs to the states might be revitalized.

Eliminate the Mass Transit Account

Prior to 1983 all the fuel taxes and most other fees were deposited in the HTF only for their use on highways. The Surface Transportation Assistance Act of 1982 (P.L. 94-224) created, within the Highway Trust Fund, a mass transit account with a dedicated funding source. Currently, the account receives 2.86 cents per gallon of gasoline and diesel fuel for the purpose of supporting public transit needs. Eliminating the mass transit account and allowing all highway fuel taxes to be used for highways could reduce the sufficiency problems of the highway account. The Congressional Budget Office's (CBO) March FY1011 projections indicate that the mass transit account will receive between $5.1 billion and $5.2 billion in revenues and interest annually during the next six years.

Eliminate the Highway Trust Fund

Yet another approach to resolving the donor-donee conflict would be to eliminate the trust fund structure for surface transportation finance. Highway taxes and charges could be deposited into the general fund, and Congress would provide funding through the normal authorization and appropriations process. This would remove the amount of money flowing into and out of the highway trust fund as an issue in highway funding, perhaps eliminating the donor-donee issue as

---

[34] "Editorial: Rethinking the Donor State vs. Donee State Highway Formula Fight," *Transportation Weekly*, vol. 12, no. 21 (May 11, 2011), p. 10.

an obstacle to reauthorization.[35] A restructuring of highway spending along these lines would not address the adequacy of federal spending for highway and mass transit purposes. It would raise significant internal issues within Congress. For example, the tax-writing committees would need to be involved in abolishing the highway trust fund, and the appropriations committees would probably assume a more influential role relative to the authorizing committees with respect to surface transportation bills.

Extend the FY2009 Funding Level

FY2010 and FY2011 were funded at the FY2009 level. Because of this there was no need to run an EB calculation. The donor-donee issue was resolved by leaving everything as it was in FY2009. The FY2009 funding level and its distribution to the states could be extended again. By flat-lining highway spending, such a bill might be looked upon favorably by Members who give priority to deficit reduction.

[35] Joshua Schank and Nikki Rudnick-Thorpe, *The End of the Highway Trust Fund? Long-Term Options for Funding Federal Surface Transportation*, Bipartisan Policy Center, Washington, DC, November 10, 2010, p. 11.

Appendix A. Legislative History

Surface Transportation Assistance Act of 1982 (STAA; FY1983-FY1986)

STAA (P.L. 94-424) authorized a significant increase in funding for the Federal-Aid Highway system for FY1983-FY1986 and included a provision designed to mitigate the dissatisfaction of donor states by providing that each state would receive a minimum allocation (also known as the minimum guarantee) from the core FHWA programs.[36] Specifically, the bill ordered the FHWA to allocate among the states sufficient funds to assure that each state's total apportionments from the core highway and safety programs (Interstate Highway Substitution, Primary, Secondary, Interstate, Urban, Bridge Replacement and Rehabilitation, hazard elimination, and rail-highway crossings, and section 203 of the Highway Safety Act of 1973) would not be less than 85% of the percentage of estimated tax payments each state paid into the highway account of the HTF. These "equity adjustment" allocations could be obligated to the core highway programs.

Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA; FY1987-FY1991)

STURAA (P.L. 100-17) authorized the Federal-Aid Highway Program for FY1987-1991, retaining the 85% minimum allocation, but altering the basis of its calculation. The act revised the calculation to include the allocated (sometimes referred to as discretionary) programs, with the exception of federal lands programs and safety programs. For FY1987 and FY1988 emergency relief funds and interstate construction discretionary funds were not included in the calculation. The act continued the minimum allocation provision established by STAA.

With the exception of the changes in the treatment of the minimum guarantees, the formulas for allocation of funds under STAA and STURAA remained the same. Minor changes were made in the criteria for awarding discretionary program grants. Emergency Relief and Federal Lands Highways grants continued to be distributed on a project-by-project and needs basis, respectively.

Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA; FY1992-FY1997)

ISTEA (P.L. 102-240) reauthorized surface transportation programs, including Federal-Aid Highway Programs, for FY1992-FY1997, making major changes in the overall program structure, program formulas, minimum allocation, and other provisions that could impact the state donor-donee ratios. To a great extent, the changes were an outgrowth of the fact that the remaining unfinished portions of the interstate system would be completed under ISTEA. The act also

[36] STAA also established the mass transit account of the HTF but did not make it subject to the minimum guarantee. The donor-donee discussion is limited to the highway account of the HTF and does not take into consideration federal mass transit funding which is also paid for by federal fuel taxes but is deposited into a separate account. Although, typically, donee states in the Northeast are more transit dependent, some highway donor states get significant federal transit funding, while some donee states, especially the large "pass-through" western states get relatively little.

enunciated a broader vision of the mission of federal highway programs to include air quality, alternative transportation, and historic preservation. ISTEA retained the three formula programs that provided funding for the Interstate system (Interstate Construction, Interstate Maintenance, and Interstate Highway Substitution) as well as the Bridge Replacement and Rehabilitation Program. The other formula programs, such as, the Primary System, Secondary System, Urban System, and Urban Transportation Planning, were replaced by the National Highway System Program, the Surface Transportation Program, and the Congestion Mitigation and Air Quality Program. The distribution criteria for projects under the discretionary programs remained the same except that the Interstate Construction Program (renamed the Interstate Discretionary Program) was changed to be at the discretion of the U.S. Department of Transportation (USDOT) and the Interstate 4R (for resurfacing, restoring, rehabilitation, and reconstructing lanes on the Interstate System) program funds were now a set-aside within the new National Highway System Program.

Equity Adjustment Provisions

ISTEA included five provisions, with separate funding, designed to assure a more equitable distribution of federal funds to the states.

The 90% Guarantees

The act raised the minimum allocation to 90% of estimated state contributions to the highway account of the HTF (although narrowing its calculation to the core formula programs, scenic byways, safety belt, and motorcycle safety grants).

The act also included a new minimum payments guarantee (of a broader scope than the minimum allocation discussed above) that assured that each state's apportionments (for the core formula programs) for the fiscal year and allocations (to the discretionary programs) from the previous year would be at least 90% of its estimated state contributions (i.e., calculated from all programs except special projects).

Donor State Bonus

For each fiscal year, donor states were identified by comparing projected contributions to the HTF with the apportionments to be received that year by each state. Under the donor state bonus, starting with the state with the lowest return, each state was brought up to the level of the state with the next highest level of return. This was repeated successively for each state until the ISTEA authorized program amount was exhausted.

Hold Harmless

This provision set a specific percentage that each state was to receive from the core formula highway programs plus Federal Lands Highway Programs, minimum allocation, donor state bonus, and Interstate Reimbursement. Each state received an addition to its regular apportionments to raise its total to the set percentage.

Reimbursement for Interstate Segments

ISTEA authorized $2 billion for FY1996 and FY1997 to reimburse each state for the costs to them of building segments of the Interstate System without federal assistance prior to or during the early days of the Interstate Construction Program.

Despite all of the above provisions significant gaps remained among states on their share return on contributions to the HTF. As reauthorization of ISTEA approached, dissatisfaction with the effectiveness of the equity provisions led to challenges to the ISTEA program paradigm.

Transportation Equity Act for the 21st Century (TEA-21; FY1998-FY2003)

The reauthorization debate that preceded passage of TEA-21 (P.L. 105-178) included a wide range of views on the donor-donee state issue and is worth reviewing because all the major underlying arguments that had emerged over time, reemerged during the TEA-21 debate. Significant characteristics of the debate included a greater, primarily regional role and virtually no role for party affiliation. Also in play were different philosophies of the appropriate role of the federal government vis-à-vis the states, differing views of whether the completion of the Interstate Highway system should trigger a reduction in federal involvement in highway construction, how national highway needs criteria can fit a return-on-the-tax-dollar view, and the influence of a large increase in gas tax revenue to the HTF on program structure.

Regional Conflict over Funding

Under ISTEA, southern and midwestern States made up most donor states while northeastern, Pacific coast, and large sparsely populated western states made up most of the donee states. In general, donee states were satisfied with the distribution under ISTEA and supported the "ISTEA works" legislation that, in general, adhered to the ISTEA funding formulas. Most of the donor states joined "STEP-21," a coalition whose centerpiece proposal was a guarantee that each state receive at least a 95% return on its estimated contribution to the highway account of the HTF. The dominance of regional differences over party affiliation was reflected on the Senate Committee on Environment and Public Works, where the Republican committee leadership supported the donee-friendly "ISTEA works" bill while a Republican colleague sponsored the Streamlined Transportation Efficiency Program for the 21st Century (STEP 21), which included the 95 cents on the dollar guarantee as well as program formula changes supported by donor states.

TEA-21 Equity Provision Changes

The equity changes that followed the debate and were included in TEA-21 were more limited than most would have expected early in the reauthorization debate. The main reason for this was the large increase (roughly 40%) in overall funding levels. Still there were equity provisions that were included in the hope that they would narrow the donor-donee divide.[37]

[37] P.L. 105-178, Sec. 1104. Also 23 U.S.C. Sec. 105.

Minimum Guarantee

The TEA-21 minimum guarantee had three components:

Guaranteed Base Share

TEA-21 guaranteed each state a percentage share (set forth in a table in 23 U.S.C. 105) of the total program, defined as all the apportioned programs: Interstate Maintenance Program, National Highway System Program, Surface Transportation Program, Highway Bridge Replacement and Rehabilitation Program, Congestion Mitigation and Air Quality Program, Metropolitan Planning, Recreational Trails Program, Appalachian Development Highway System Program and Minimum Guarantee, as well as High Priority Projects.

Minimum 90.5% Share on Contributions

All states were guaranteed at least 90.5% return (up just 0.5% over ISTEA) on their share of tax contributions to the highway account of the HTF (based on the most recent year for which the data are available—generally from two fiscal years before). Using Ohio as an example, of total FY2001 highway account contributions, Ohio's percentage share contributions amounted to 3.7578%. Ohio was guaranteed 90.5% of its share of estimated FY2001 contributions and was thus guaranteed a minimum share of 3.4008% of the FY2003 apportionments (i.e., the core formula programs), plus High Priority Projects and the minimum guarantee itself. If the above base share was less than a 90.5% return to a state then the share was adjusted upward until the 90.5% share was reached. The money to raise shares to 90.5% was provided by "squeezing" down the percentages (but not the total amounts) of those states that were above the minimum.

Minimum State Payment

Each state was guaranteed that as part of the minimum guarantee it would receive at least $1 million in minimum guarantee funds.

It is important to keep in mind that the TEA-21 minimum guarantee was a compromise provision. It was constructed in such a way as to give money to all states in the process of bringing the donor states up to the 90.5% minimum guarantee.[38] Each state received the $1 million minimum. Then, the lowest percent share of any state or the District of Columbia (generally the District) was used to extrapolate the total program funding (as defined under minimum guarantee) needed for the District to retain its total program percentage. For example, using FY2003, because the District's program level percent share of 0.3860% was lower than the District's percentage of total apportionments (roughly 0.5%), high priority projects, and $1 million guarantee, and because no money could be taken back, the only way to achieve the District's 0.3860 % was to raise the national total. To achieve that percentage for the District, a total FY2003 program size of $27.76 billion was needed. The total minimum guarantee program funding needed to achieve this total was over $6 billion. Ironically, the degree of the District's donor status meant more money for all states (in absolute, not relative terms).

[38] TEA-21 authorizes such sums as may be necessary for FY1998-FY2003 for MG.

Minimum Guarantee Distribution

Each year, the first $2.8 billion of minimum guarantee funds were administered as STP funds (see STP discussion below) except that set-asides for Transportation Enhancements, Safety Construction, and certain population-based sub-state allocations did not benefit from this distribution. Any Minimum Guarantee funds above $2.8 million were distributed to the five core programs: STP, Interstate Maintenance; Highway Bridge Replacement and Rehabilitation Program; National Highway System; Congestion Mitigation and Air Quality Improvement. The distributions to the states were based on the ratio of each core program's apportionment to the total apportionment of all five programs for each state.[39]

Program Formula Changes

TEA-21 also included formula changes that were perceived as benefitting donor states.[40]

Interstate Maintenance Program

TEA-21 reduced the weight given each state's share of total Interstate Highway System lane miles and total state share of Interstate Highway System vehicle miles traveled to 1/3 each and created a third weighed category that provided the final 1/3 be distributed based on each state's percentage share of annual contributions to the HTF attributable to commercial vehicles. This final weighted third was expected to benefit donor states.

Surface Transportation Program

STP's apportionment formula under TEA-21 was weighted 35% to estimated state share of tax payments paid into the highway account of the HTF. This also was expected to benefit donor states. State share of total lane miles of Federal-aid highways (25%) and share of total vehicle miles traveled on Federal-aid highways (40%) were the other weighted attributes in the STP apportionment formula.

National Highway System Program

TEA-21's NHS apportionment formula was weighted at 30% of a state's share of diesel fuel used on highways. Some observers expected that this would also benefit donor states.

The Resolution of the TEA-21 Donor-Donee Debate

In the end, what many observers had predicted would be a major battle between donor and donee states was resolved relatively amicably.[41] This occurred despite the donor states only being able to achieve a 0.5% increase in the minimum guarantee percentage and formula changes. What alleviated the concerns of STEP-21 and other donor state advocates was the amount of money

[39] 23 U.S.C. 105 (c) (1).

[40] P.L. 105-178 Sec. 1103. Also 23 U.S.C. 104.

[41] See Earle, Geoff, Once and Future ISTEA, *Governing Magazine*, February 1998; *Congress Daily*, STEP-21 Coalition Claims Victory, National Journal: Congress Daily, October 3, 1997.

available during TEA-21's lifetime. By shifting, in 1997, revenues generated by the 4.3 cent deficit reduction gas tax to the HTF, Congress was able to provide large increases in highway funding for all states. The extra money made the donor-donee debate less urgent to the donor states. As the TEA-21 authorization neared its expiration (FY2003), however, the donor-donee state issue resurfaced.[42]

TEA-21 created a so-called "firewall" around the highway account to prevent highway account funds being used for non-highway purposes. It also required that spending from the highway account approximately equal the revenues flowing into the account on an annualized basis. To make sure that annual spending and revenues were roughly equal each year, the act provided for Revenue Aligned Budget Authority (RABA) to be distributed proportionally across all states to maintain a balance of spending and revenue flows. Although these changes did not affect the operation of the TEA-21 minimum guarantee they did have an overall impact on the availability of funds to support the minimum guarantee program, which was funded on a "such sums as necessary" basis.

[42] Brown, Jeffrey, *Donor States versus Donee States: The Geopolitical Struggle over Federal Highway Dollars*, Florida State University, Tallahassee, FL, 2003, 19 p. This paper provides a regression analysis of rate-of-return for FY1990, FY1995, and FY2000.

Appendix B. "Scope" Issues

An issue related to the federal role issue is whether a high rate of return percentage, such as 95%, coupled with a similarly broad program scope could constrain a federal programmatic response to federal needs as they arise. Some federal programs, such as the Federal Lands Highways programs, are accepted as being federal in nature and not lending themselves to equal distribution across 50 states. For some programs there is less of a consensus. Perhaps an option would be for Congress to redefine scope in a way that only programs that serve what are clearly federal purposes could be outside the scope of the EB. These programs could be designated in law as being inherently federal. Any other programs whether formula or discretionary would be retained within the scope of the EB. The EB debate would then be focused on a more clearly defined concept of scope. Doing this would require a broad consensus among both donor and donee state Members of Congress. Donor state advocates would probably be concerned that programs defined as being federal in nature could add up over time to the detriment of donor state rates of return. The issue is whether the need for equity is greater than needs that are inherently federal.

The Impact of Scope on Earmarking

Substantial earmarking of federal-aid highway funds is a relatively recent phenomenon. Until the late 1980s, earmarks amounted to about 1% of authorized federal-aid highway spending.[43] In SAFETEA, almost $22 billion or roughly 11% of the $199.5 billion total contract authority in Title I (the highway construction title) of the bill was earmarked.

The issue of earmarking within and outside the scope of the EB surfaced quickly as an issue after the passage of SAFETEA. These SAFETEA earmarks were broadly described as being either "below" or "above the line." It is important to keep in mind that the terms above and below the line, described in this report, are not legal or official budget terms and have no formal meaning to the FHWA, but are informal terms that emerged during the surface transportation reauthorization debate. Below the line refers to earmarks in programs that are subject to provisions of the EB program. These programs are listed in SAFETEA section 1104 (a)(2). Above the line refers to funded programs and activities that are not listed in section 1104 (a)(2) and therefore not subject to the EB.

"Below the Line" Programs

The only below the line earmark program in SAFETEA is the High Priority Project program (HPP). It is, however, by far the largest of the earmarked programs in the act. SAFETEA provided almost $15 billion under the HPP.

HPP earmarks allow Members of Congress to define their project priorities through the authorization process to their State DOTs.[44] HPP earmarks, however, do not add money to a state's total below the line funding (i.e., the total of core formula funds plus total HPP funds).

[43] *Transportation Weekly*, "In-Depth Analysis: Earmarked Highway Projects: Their History, Their Nature and Their Role in Highway Legislation," April 10, 2002, p. 3.

[44] Most of the rest of the federal-aid highway programs that are " below the line" are formula programs whose funding is administered by the states' departments of transportation.

This seemingly counterintuitive situation occurs because the below the line funding is subject to the EB Program. As has been mentioned earlier, under the EB, funds are distributed across the formula programs under a complex calculation that is designed to assure that all states get a certain minimum share of the below the line funding. Because the total funding under the line is fixed in the authorization bill, this leads to the situation where states that do not get many HPP earmarks tend to receive, in a relative sense, larger distributions from the EB program while states that get a high value of HPP earmarks tend to receive relatively smaller EB distributions (or no EB distribution). This means that the total amount received by a state under the line tends to be roughly the same whether or not they receive high or low dollar totals of HPP funds.

A further implication of this situation is that the more of a state's total below the line funding is derived from HPP funds the less funding is ultimately available to the state for the federal-aid highway core formula programs, upon which the state DOTs depend to fulfill their state transportation improvement plans.

"Above the Line" Programs

In SAFETEA the major earmarked programs above the line are the National Corridor Infrastructure Improvement Program ($1.9 billion), Projects of National and Regional Significance ($1.8 billion), and Transportation Improvements ($2.5 billion). The Highway Bridge Program set-aside and Interstate Maintenance Discretionary are takedowns prior to apportionment and are therefore also above the line.

In contrast to the below the line earmarks, these earmarks have no direct impact on the core formula programs' share of the below the line funding and are viewed as providing additional funding to the state DOTs.

Should policymakers decide to allow earmarking during the reauthorization process, the choice of which programs and of how much funding, should be above or below the line, could be an issue.

The Impact of Scope on Penalties

Money forgone due to penalties, such as the penalty for transferring Highway Bridge Program funds, that are, at least in theory, imposed prior to distribution of the EB tend to be replaced by EB funds. What the penalty takes away, the EB gives back.

Author Contact Information

(name redacted)
Specialist in Transportation Policy
[redacted]@crs.loc.gov, 7-....