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The Unreliability of Federal Financing

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Summary

Despite tremendous efforts to improve the equity of the federal-aid highway program and contrary to the general perception that we're getting a 90% return on our federal gas tax payments, when all SAFETEA-LU highway program funds are taken into consideration, Texas' minimum guaranteed rate of return under the bill is estimated at only 83% over the life of the bill (2005-2009). The equity of transit funding is even worse: we estimate a 51% rate of return for Texas. Therefore, for every dollar Texans contribute to the federal Highway Trust Fund, Texas gets back only 8¢ in federal transit program funds and only 70¢ in federal highway program funds. The remaining Texas federal motor fuels tax dollar is sent to other states (8¢ transit and 14¢ highway).

The conventional wisdom is that all federal highway program funds are used for construction. In reality, federal law directs most of the available funds to non-construction purposes. When we subtract the funding that Congress directs toward non-construction purposes in SAFETEA-LU, Texas is left with only 30¢ of every Texas federal dollar to address our true highway capacity expansion needs. For highways and transit programs combined, SAFETEA-LU directs an estimated $13.3 billion in Highway Trust Fund dollars attributable to Texas away from the state's mobility needs.

The first federal-aid highway discretionary program was created in 1970. By 1998, the number of discretionary programs had increased to 11. SAFETEA-LU authorizes a total of 59 discretionary highway programs, most of which were fully earmarked by Congress before the USDOT had any chance to determine where the funds would go. Despite the transfer in discretionary authority from the executive to the legislative branch of government, Texas' collective rate of return on these programs and Congressional demo projects under TEA 21 was only 58¢.

There are nearly 5700 "demo projects" in SAFETEA-LU. By comparison, there were only 2 demo projects in the 1956 act creating the modern federal-aid highway program. Earmarks serve to disrupt the state and local transportation planning and funding process, often causing delays in progress on higher priority projects and programs needed to address identified mobility needs.

By the time Congress agreed on the final SAFETEA-LU legislation, several major changes had been made to the underlying TEA 21 programs. As a result, while the state's overall federal highway program funding increased, the portion flowing into the state's mobility categories was less than

projected. A comparison of pre-SAFETEA-LU vs. post-SAFETEA-LU authorizations revealed that the state's forecast for mobility dollars for FYs 2004-2016 (13 years) was approximately $2.47 billion less than expected. State transportation planners are adjusting the programming allocations within the state based on the act's actual funding structure. This has caused some confusion and uncertainty about the availability of funds for mobility purposes.

Over the past four years, Congress has enacted a series of rescissions affecting the federal-aid highway program. In total, these rescissions resulted in a nearly $400 million reduction in Texas' available federal highway funds. The majority of our federal-aid highway dollars come to us in the major mobility and highway infrastructure programs. Rescissions therefore affect the heart of what we are working to accomplish with federal-aid funds. This $400 million impact means that a significant portion of the state's mobility needs are being delayed.

Unless new revenue sources are identified to bolster the declining buying power of motor fuels tax revenues, the Highway Trust Fund will not be able to sustain future investments in the nation's highways and transit systems. Various studies predict that the Highway Trust Fund will run out of money in 2010, once the current SAFETEA-LU authorization runs its course.

While Texas will continue to look to the federal government to make future investments in the Texas transportation infrastructure, it is unlikely that Congress alone will ever deliver adequate federal funding to fairly address Texas' transportation challenge. Texas must take new approaches in order to solve this challenge, and we are doing so.

Introduction

The federal-aid highway program has a long history, dating back to 1917. State departments of transportation were created in response to the availability of federal-aid funds to improve the highway system across the nation. The state-federal partnership that delivers the nation's transportation infrastructure is essential to achieving our national, state, and regional mobility goals, and the federal-aid funds the state receives for highway and transit projects and programs are essential for meeting our transportation mobility needs. However, federal funding is increasingly unreliable, due to regular changes to the federal-aid program and changes to the flow of funds from those programs. This makes the future viability of the Highway Trust Fund as the primary source of federal highway and transit program funding very uncertain. Likewise, the federal share of total transportation funding is shrinking, causing states and locals to turn to other, more reliable sources of funding to meet their transportation needs.

SAFETEA-LU: What Happens to a Texas Federal Motor Fuels Tax Dollar

SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users), enacted in 2005, is the multiyear federal legislation that governs the flow of federal highway and transit funds to the states. Below is a description of the deductions and other restrictions placed on a dollar of federal gas tax sent from Texas to Washington, D.C., processed through SAFETEA-LU, and then returned.

Despite tremendous efforts to improve the equity of the federal-aid highway program and contrary to the general perception that we're getting a 90% return on our federal gas tax payments, when all SAFETEA-LU highway program funds are taken into consideration, Texas' minimum guaranteed rate of return under the bill is estimated at only 83% over the life of the bill (2005-2009). The equity of transit funding is even worse: we estimate a 51% rate of return for Texas. Therefore, for every dollar Texans contribute to the federal Highway Trust Fund, Texas gets back only 8¢ in federal transit program funds and only 70¢ in federal highway program funds. The remaining Texas federal motor fuels tax dollar is sent to other states (8¢ transit and 14¢ highway).

The conventional wisdom is that all federal highway program funds are used for construction. In reality, federal law directs most of the available funds to non-construction purposes. When we subtract the funding that Congress directs toward non-construction purposes in SAFETEA-LU, Texas is left with only 30¢ of every Texas federal dollar to address our true highway capacity expansion needs. For highways and transit programs combined, SAFETEA-LU directs an estimated $13.3 billion in Highway Trust Fund dollars attributable to Texas away from the state's mobility needs.

For every dollar that Texans contribute to the Highway Trust Fund, the state gets back only 8¢ in federal transit program funds and only 30¢ in federal highway program funds to use toward needed mobility expansion projects. The rest of the Texas federal motor fuels tax dollar is sent to other states (8¢ transit and 14¢ highway), or is directed toward non-mobility purposes by SAFETEA-LU (40¢).

In annual funding terms, an estimated $1.6 billion in federal highway funds apportioned to Texas under SAFETEA-LU each year are not available to address mobility construction needs. In addition, due to the proliferation of earmarked discretionary program and demo project funds and an inadequate equity formula, SAFETEA-LU shifts an average $600 million in annual highway funds attributable to Texas in D.C. to other states. Over the life of SAFETEA-LU (2005-2009), an estimated $11.2 billion in federal highway program funds attributed to Texas will be unavailable to address our highway mobility needs.

On the transit side of the ledger, our poor rate of return means that Texans contribute an average of $428 million a year in transit dollars to other states. Over the life of SAFETEA-LU, that's $2.1 billion in Texas dollars that won't be available to the state to meet its transit mobility needs.

For highways and transit programs combined, SAFETEA-LU shifts an estimated $13.3 billion in Highway Trust Fund dollars attributable to Texas away from the state's mobility needs.

Let's break down how Texas' contribution to the Highway Trust Fund is affected by SAFETEA-LU. First, Texas dollars are pooled with dollars from other states in the Highway and Mass Transit Accounts. Funds are then distributed by federal law from these two accounts to the states based on program formulas, allocations, and Congressional earmarks. So, for every $1 Texas sends in federal motor fuels tax to Washington:

> 0.5¢ goes to the Leaking Underground Storage Tank fund (LUST).
>
> 15.5¢ goes to the Mass Transit Account of the Highway Trust Fund. Texas is not guaranteed to receive any of these funds back; however, an estimate of our rate of return on these Transit Account contributions is approximately 51%. (Texas receives an average of $365 million in annual transit program allocations under SAFETEA-LU.)
>
> The remaining 84¢ goes to the Highway Account of the Highway Trust Fund.

Out of the 84¢ Texas contributes to the Highway Account, the state gets a guaranteed 70¢ back. (84¢ X 83% minimum guaranteed rate of return = 70¢.)

Before Texas' 70¢ in federal highway program funds can be used toward a mobility construction project, the following deductions are made:

Begin with 70¢ ($2.9 billion average annual SAFETEA-LU highway program apportionment).

Subtract Transportation Enhancements (1.6¢ or $333 million during 2005-2009) = 68.4¢ ($2.83 billion average annual funding remaining)

Subtract Federally funded Maintenance (11.5¢ or $2.4 billion 2005-2009) = 56.9¢ ($2.3 billion average annual funding remaining)

Subtract Federally funded Safety (2.6¢ or $532 million 2005-2009) = 54.3¢ ($2.25 billion average annual funding remaining)

Subtract CMAQ (2.9¢ or $603 million 2005-2009) = 51.3¢ ($2.1 billion average annual funding remaining)

Subtract Demonstration Projects (2.7¢ or $556 million 2005-2006) = 48.7¢ ($2.0 billion average annual funding remaining)

Subtract Border Infrastructure (0.8¢ or $174 million 2005-2009) = 47.8¢ ($1.98 billion average annual funding remaining)

Subtract Recreational Trails (0.1¢ or $13 million 2005-2009) = 47.7¢ ($1.98 billion average annual funding remaining)

Subtract Federally funded Bridge Replacement & Rehabilitation (4.43¢ or $917 million 2005-2009) = 43.3¢ ($1.79 billion average annual funding remaining)

Subtract Federally funded Metropolitan Planning (0.4¢ or $89 million 2005-2009) = 42.9¢ ($1.78 billion average annual funding remaining)

Subtract Federally funded Environmental & Planning Costs – Plans, Specifications & Estimates (5.6¢ or $1.2 billion 2005-2009) = 37.3¢ ($1.55 billion average annual funding remaining)

Subtract Federally funded ROW Costs (7¢ or $1.4 billion 2005-2009) = 30.3¢ ($1.25 billion average annual funding remaining)

Unreliability in Federal Transportation Funding

The federal-aid transportation programs are subject to administrative and legislative processes that increasingly affect their reliability as a predictable funding source for states and localities. The US Department of Transportation and the United States Congress have primary influence on the availability and flexibility of federal transportation funds. These powers control and shape the federal-aid highway and transit programs through the following activities: reauthorization of programs and funding mechanisms; creation, administration, and funding of discretionary programs; and the annual budget and appropriations process. In each case, the Administration and Congress influence if, when, and how states and localities access federal transportation funds. In addition, the changing nature of federal transportation funding sources brings its own degree of uncertainty about the viability of continued federal funding. The result is a less predictable and more unreliable federal-aid highway and transit funding process.

Reauthorization of Federal-aid Programs

The federal government collects federal motor fuels taxes through the states. Those federal revenues are pooled in the Highway Trust Fund and are dedicated by statute for the federal-aid highway and transit programs. Highway Trust Fund dollars are distributed to the states primarily according to the federal-aid highway and transit program formulas and through discretionary allocations. Federal-aid program formulas are the most stable and reliable mechanism for distributing these funds and states and localities rely on that predictability in making transportation planning decisions. However, the reliability of those program formulas is challenged every six years or so, when Congress takes on the reauthorization of the programs, making changes to the program structure, composition, eligibilities, and funding mechanisms. With each reauthorization, state and local transportation officials have to adjust their programming and processes to ensure they fit within the federal process. Congress uses these authorization acts to incorporate new policies and priorities into the federal transportation program, sometimes resulting in dramatic changes to the program's focus and complexity. Often, the Congress fails to provide sufficient funding to implement these requirements effectively. As a result, states have to use innovations in programming and other funding sources to meet growing federal requirements while fulfilling their mission in providing needed transportation services.

Key Issues in Reauthorization

States appreciate multi-year authorizations because they provide a sense of stability and predictability in the federal funding stream and program structure – at least during the term of the authorization act. The alternative – annual or biennial authorizations – would not allow states to do the long range planning necessary for effective delivery of transportation projects and programs. However, each reauthorization does bring uncertainty about the program, particularly in terms of funding, program structure, and policy requirements.

> *"The House and Senate Conferees used the revenue estimates in the President's FY 2006 Mid-Session Review - which were released last July - as the baseline for developing the final SAFETEA LU Conference Report. However, when the President's budget was released on February 6th it contained a $1.4 billion shift in the receipt estimates for FY 2005 and a $500 million shift in the estimates for FY 2006. These drastic changes in estimates - over just seven months -bring into question the reliability of the estimating process at the Department of the Treasury."* Thomas Petri, Chairman, House Subcommittee on Highways, Transit, and Pipelines, 2/15/2006

Funding: Solvency of the Highway Trust Fund

Federal motor fuels taxes collected from the states are the primary source of revenues funding the federal-aid highway and transit programs. As motor vehicles become more fuel-efficient, motorists are able to travel farther on the highway system using fewer gallons of fuel. Increased fuel efficiency directly impacts the revenues that support federal programs.

A large part of the TEA 21 reauthorization debate and the primary reason for the delay in enacting SAFETEA-LU, was the lack of an answer to the question asking how much federal funding could be committed to the federal-aid highway and transit programs. There is general agreement on the need for significantly larger federal investments in our surface transportation system. However, there is general disagreement on where to find the federal revenues to pay for that needed investment.

Some advocated for an increase in the federal motor fuels tax by as much as 20 cents per gallon. Congressional leaders balked at that solution, but, recognizing there would be no large infusion of traditional revenues, they amended the finance title of SAFETEA-LU to include a variety of small changes to federal tax law, resulting in some $11 billion in additional revenues deposited into the Highway Trust Fund. Combined with anticipated increases in motor-fuels-tax revenues from natural growth, SAFETEA-LU authorizes the complete draw-down of all available dollars in the Highway Trust Fund.

This leaves the Highway Trust Fund in a very precarious condition. Unless new revenue sources are identified to bolster the declining buying power of motor-fuels-tax revenues, the Highway Trust Fund will not be able to sustain future investments in the nation's highways and transit systems. Congress recognized the problem, thus SAFETEA-LU authorizes two special commissions to look into the issue and make recommendations to Congress on future revenue sources. The US Chamber of Commerce published the findings of its commissioned research on this issue last year in a report that concludes the Highway Trust Fund will run out of money in 2010, once the current SAFETEA-LU authorization runs its course. Furthermore, the Chamber report suggests that the gap between expected revenues and identified investments needed to maintain the existing system between 2005 and 2015 is $415 billion. An estimated $1 trillion in additional funds is needed to improve the transportation system[1].

Funding: The Rate-of-Return Debate

One of the major issues for Texas regarding federal-aid highway and transit program funding is whether Texas is receiving a fair share of the federal-aid program funds we contribute to through the federal motor-fuels-tax revenues collected in Texas and sent to the Highway Trust Fund. Texas is the second-most populous state in the nation and second-highest in federal motor-fuels-tax payments. Since the federal-aid highway program is completely funded from revenues deposited into the Highway Account, calculating a state's rate of return on its investment in that revenue source is pretty straightforward (as described below). The federal-aid transit program, however, is funded in part with General Fund dollars, so the rate-of-return calculation is not as direct.

Highway Program Rate of Return

Since the creation of the Fund in 1956, Texas has sent $43,728,781,000 to the Highway Account of the Highway Trust Fund. The national total from all states was $542,162,719,000. Over that same period (1957-2004), Texas has received $38,351,427,000 in federal-aid highway program apportionments (formula funds) and allocations (discretionary funds). The national total distributed to all states was $599,153,817,000. The approximately $57 billion difference between total contributions and total expenditures represents interest earned on the balances in the Fund over time. From 1957 to 2004, Texas contributed 8.1% of all funds deposited into the Highway Trust Fund's Highway Account and received 6.4% of the highway program distributions from that account[2]. That's a rate of return of only 79% over the past 47 years, making Texas the largest donor state in this calculation.[3]

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1 *Future Highway and Public Transportation Finance, Phase I: Current Outlook and Short-Term Solutions*, report prepared for the National Chamber Foundation

2 Source: FHWA, Highway Statistics 2004, Table FE-221

3 Note: The appropriate calculation of rate of return is to compare % contributions to % distributions. FHWA tables do not use this approach and do not normalize their charts to account for years when distributions exceed contributions.

As a fast-growing state, Texas needs all of the dollars it can get to meet its transportation mobility needs today and into the future. Working to bring back more of Texans' federal motor-fuels-tax dollars from Washington has been a top priority for the state. Texas' goal has been to receive no less than 95% of our contribution percentage distributed back to the state through the federal-aid highway programs. This goal recognizes the importance of every state contributing to the national system, but emphasizes the need to return the remainder to the contributing state to take care of essential transportation needs within that state.

TEA 21 Did Not Live Up to Its 90.5¢ Promise: Two key program factors influence whether we can achieve that goal: 1) how much of the federal highway program distributions are included in a guaranteed-rate-of-return calculation, and 2) how close to 100% of a state's contribution that guaranteed-rate-of-return calculation is. In the past twenty years, donor states like Texas have succeeded in including incrementally better minimum guaranteed-rate-of-return calculations in the various multi-year authorization bills enacted by Congress. The most significant of these was the Minimum Guarantee provision in TEA 21. TEA 21 provided that each state's share of distributions through the core highway formula programs—the National Highway System Program, Interstate Maintenance Program, Congestion Mitigation and Air Quality Improvement Program, Surface Transportation Program, and Bridge Program—and High Priority Project earmarks would equal no less than 90.5% of the state's share of contributions to the Highway Account of the Highway Trust Fund. However, not all of the federal-aid highway program distributions were covered by the TEA 21 90.5% Minimum Guarantee calculation. However, there were several discretionary highway programs outside the guaranteed rate of return. Therefore, only 93% of all federal-aid highway program distributions were covered by the 90.5% MG calculation under TEA 21.

Since Texas contributed to the funding source for all federal highway programs, we calculate our true rate of return based on 100% of those funds, even those not covered by the minimum guaranteed-rate-of-return provision. As a result, our true rate of return under TEA 21, once all discretionary program funds are considered in the calculation, turned out to be not 90.5% but 88%. If Texas had received a 95% return on its contributions during the TEA 21 period (1998-2003), we would have received an additional $1.1 billion to meet our highway program needs. Even a true 90.5% return would have garnered us an additional $393 million.

SAFETEA-LU Only Guarantees An 83% ROR: In the current law, SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users), the minimum guaranteed return in the highway program is defined as an Equity Bonus. It guarantees that, 1) every state will receive a minimum increase (17% for 2005, 18% for 2006, 19% for 2007, 20% for 2008, and 21% for 2009) relative to the average dollar amount of apportionments under TEA 21, and 2) every state will receive a minimum rate of return on contributions to the Highway Account of the Highway Trust Fund (90.5% for 2005 and 2006, 91% for 2007, 91.5% for 2008, and 92% for 2009). The programs included in the Equity Bonus calculation are the highway formula programs—NHS, IM, CMAQ, STP, Bridge, new Highway Safety Improvement program, Border Infrastructure, Metropolitan Planning, recreational trails, and Safe Routes to Schools—and the High Priority Projects (demos) category. In total, 90.2% of all highway program funds are included in the EB calculation. The remaining 9.8% of highway funds are not subject to these provisions and are outside any guaranteed return or minimum share. Because most of these other funds were earmarked in SAFETEA-LU by the Congress, there is little funding left to the discretion of USDOT or the appropriations committee. When all SAFETEA-LU highway program funds are taken into consideration, Texas' minimum guaranteed rate of return under the bill is estimated at only 83% over the life of the bill (2005-2009).

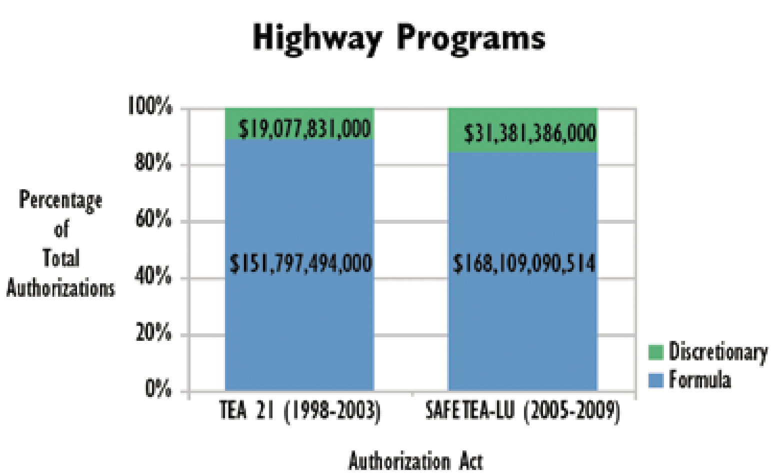
Transit Program Rate of Return

As discussed above, not all the funds that pay for the federal-aid transit program come from an identifiable source like the motor fuels tax. Approximately 20% of the federal transit program funds come from the General Fund, which includes revenues from a variety of taxes. To calculate a state's rate of return on its federal investment in the transit program is therefore more complicated. There has never been a transit equity provision in federal law, but several states that consider themselves donor states to the transit program have worked in recent years to develop a transit rate-of-return calculation and have proposed legislation (not yet enacted) to bring greater equity to the transit program, in a manner similar to the current highway funding equity programs.

The recent proposal for calculating a state's rate of return on its transit program investment looks solely at the state's contributions to the Transit Account of the Highway Trust Fund and compares the state's share of those contributions to the state's share of transit formula program funds. The assumption is that the formula programs are fully funded by the revenues in the Transit Account, although federal law states that every federal-aid transit program is partially funded by the General Fund. However, for these calculation purposes, this assumption is made. As a result, the calculation of a state's transit rate of return is similar to the highway program rate of return calculation: % share of a state's contributions to the Transit Account compared to the state's share of transit formula program funding. Texas' FY 2004 contribution to the Transit Account of the Highway Trust Fund was $398,112,000, or 8.08% of the funds contributed by all states for that year. Under SAFETEA-LU, Texas is slated to receive $1,247,385,194 in transit formula program funds under TEA 21, or 4.75% of the total formula program funds distributed to the states. The resulting estimated SAFETEA-LU transit rate of return is $0.59 for every Texas dollar invested in the nation's transit programs. When discretionary allocations are considered in this formula, Texas' overall rate of return on the federal transit program drops to $0.51.

Funding: Formula versus Discretionary Programs & Demonstration Projects

The state's rate of return under TEA 21 and SAFETEA-LU depends to a large extent on how much of the total federal-aid highway program is distributed via formula versus discretionary program allocations and, to a lesser extent, on the number of demonstration projects (projects earmarked by Congress in statute). Formula programs provide more certainty in funding, since the formulas are established in the authorization acts, the resulting distributions of apportionments to the states are known fairly soon after the legislation is enacted, and the formula programs are not typically earmarked by Congress. Formula program funds flow by statute to the states and localities in amounts determined by the formulas and program structure incorporated in the law.



Discretionary Programs

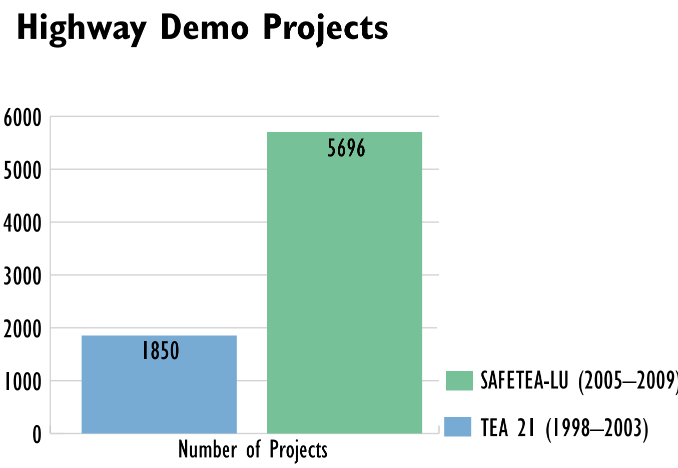
Discretionary programs are, by their nature, uncertain sources of funding for states and localities. Congress first created a handful of federal discretionary highway programs to assist the US Department of Transportation in meeting special needs that couldn't easily be addressed through a state's formula apportionments. For more than 20 years, Congress authorized these select discretionary programs and gave USDOT the authority to distribute the program funds according to statutory and programmatic requirements regarding eligibility, limited only by available program funding.

The number of federal discretionary programs has also grown as Congress sought ways to shape federal transportation policy and, more pointedly, federal transportation funding. The first federal-aid highway discretionary program was created in 1970[4]. By 1998, the number of discretionary programs had increased to 11. SAFETEA-LU authorizes a total of 59 discretionary highway programs, most of which were fully earmarked by Congress before the USDOT had any chance to determine where the funds would go. Transit discretionary programs have also proliferated; SAFETEA-LU more than doubles the TEA 21 number, continuing or creating 11 discretionary programs in Title III.

The growth in discretionary programs influences the effectiveness and equity of the federal-aid highway program. When discretionary programs are enacted, less money is typically available through the more flexible formula programs that are distributed to states and localities. In addition, when those new discretionary programs are kept outside of the equity calculations, a state's ability to achieve a true minimum guaranteed rate of return on its contributions to the Highway Trust Fund is severely limited. Finally, Congressional earmarking of discretionary programs, when not paired with effective coordination with the state and local planning process, can result in more work for transportation planners and even crowd out limited funding for planned projects.

Demonstration Projects

A special type of discretionary program that has gained broader popularity in Congress is the demonstration project (i.e., demos). A demo is a special statutory earmark directing a specific amount of federal funding to a particular project. There are nearly 5700 "demo projects" in SAFETEA-LU. By comparison, there were only 2 demo projects in the 1956 act creating the modern federal-aid highway program. SAFETEA-LU also includes 385 transit demo project earmarks in the bill's New Starts and Bus Facilities programs.



As with any type of Congressional direction, the key issue for state transportation planners is how the demo project fits into the existing or future plans for transportation improvements at the state and local levels. When members of Congress fail to earmark projects from the plan, the result is often additional work for state and local transportation officials, delays in planned projects when earmarked funding displaces needed formula funds, and confusion about what the region's true transportation project priorities are.

Of secondary importance is whether the demo project is covered by the equity provisions of the related authorization legislation. Since 1998, demo projects (known as High Priority Projects in TEA 21 and SAFETEA-LU) have been included in the equity provision calculations. The equity provisions of TEA 21 and SAFETEA-LU apportion to each state that state's minimum guaranteed share of demo project funds even if the state's delegation is not successful in obtaining the state's appropriate share of earmarks in the bill. These apportioned equity funds are distributed through the various formula programs, providing additional funding for meeting the state's planned transportation projects. For example, in SAFETEA-LU, Texas received a total of $678,670,000 in High Priority Project funds or 4.6% of the total HPP category ($14.8 billion). To secure our guaranteed average share (7.98%) of the total HPP funds, Texas will receive an additional $505 million in Equity Bonus funds. These Equity Bonus funds are more flexible than any demo earmark we might have received instead.

4 FHWA Discretionary Programs website (http://www.fhwa.dot.gov/discretionary/proginfo.htm)

Program Structure: Too Much Change Creates Uncertainty

Another issue that often indicates the unreliability of the federal-aid program is the frequency of program structural changes. Each reauthorization process provides an opportunity for Congress to shape the direction of federal transportation policy by changing the number, type, eligibility, and funding of the various federal-aid programs. For state transportation planners, consistency across time is a hallmark of effective and efficient national transportation policy. However, state transportation officials also acknowledge and seek flexibility within the federal program structure to enable them to adjust to changing needs.

Whenever the core transportation programs are significantly altered during the reauthorization process or major new programs are added, state and local transportation officials must adjust their internal processes to match the programmatic and funding structures and requirements so that the flow of federal funds will not be interrupted. The multi-year reauthorizations provide an opportunity for state and local officials to review and update their programs to match federal priorities. However, the transitions between authorizations can have significant impacts on state and local plans if Congress dramatically changes the program funding structure.

For example, it appeared during the early stages of the TEA 21 reauthorization process that the successor legislation would closely follow the program and funding structure of TEA 21. By the time Congress agreed on the final legislation, several major changes were made to the underlying TEA 21 programs. In particular, Congress created a new Highway Safety Improvement Program, eliminated the old highway safety set-aside within the Surface Transportation Program, and directed more funds toward this new program than anticipated. As a result, while the state's overall federal highway program funding increased, the portion flowing into the state's mobility categories was less than projected. A comparison of pre-SAFETEA-LU vs. post-SAFETEA-LU authorizations revealed that the state's forecast for mobility dollars for FYs 2004-2016 (13 years) was approximately $2.47 billion less than expected. State transportation planners are adjusting the programming allocations within the state based on the act's actual funding structure. This has caused some confusion and uncertainty about the availability of funds for mobility purposes.

Transportation Policy Changes: Shifting Priorities Create Uncertainty

The above situation represents a shift in national policy that affects the state's ability to plan for other related transportation needs. In addition, the multi-year reauthorization acts provide Congress the opportunity to change the policy emphasis within existing programs. Congress often changes the eligibility criteria, planning considerations, and funding distribution formulas within a program to reflect a new or slightly adjusted policy emphasis. Furthermore, Congress will create new programs to be funded out of the Highway Trust Fund. When this occurs, the already limited funding in the Highway Trust Fund is further diluted to address other, sometimes ancillary purposes.

The core issue for state transportation planners is identifying how authorized federal programs aid them in meeting their primary mission to provide a safe, efficient and effective transportation system for the movement of people and goods. In Texas, our strategic plan focuses on reducing congestion, enhancing safety, expanding economic opportunity, improving air quality, and increasing the value of transportation assets. Anything that doesn't support those goals will affect our ability to address the needs of our citizens.

SAFETEA-LU, like previous authorizations before it, contains several programs that, while worthy in and of themselves, essentially serve to dilute limited available funds needed for our core pursuits. Programs such as Transportation Enhancement Activities (a 10% set-aside from the STP formula program), the Recreational Trails program, various discretionary programs (discussed above), and a multitude of demonstration project earmarks (also discussed above) take needed funds away for the core formula programs targeted at addressing the nation's mobility challenge.

Key Issues in USDOT Discretionary Decisions

Congress creates the federal-aid transportation programs by statute and authorizes the US Department of Transportation to administer the formula and discretionary programs created by law. How USDOT chooses to implement these important national programs affects the reliability of federal funding and program policy for the states and localities affected by them.

Administration of Discretionary Programs

As mentioned previously, Congress has created a variety of federal highway and transit discretionary programs and authorized USDOT to distribute funds for these programs, according to statutory and programmatic requirements regarding eligibility, and limited only by available program funding. This authority essentially gives the Administration in power executive discretionary control over these pots of funds. The discretionary programs are intended to be limited in reach and the program criteria are intended to control how the program funds are allocated.

However, in the 1990s, states became increasingly concerned that these limited discretionary program dollars were not adequately spread across the nation. It appeared that certain programs had become limited to first-come, first-served distributions, with certain states getting approval for their projects in one year and continually being funded again and again. It seemed that, once a project got "on the list," a project was guaranteed to receive continued funds, leaving other states to wait until funding became available for their eligible projects.

State officials, including those from Texas, began informing their Congressional delegations about their concerns that states were not receiving a real opportunity to secure these discretionary dollars for their eligible projects. The result: beginning in FY 1998, Congressional appropriations committees began directing the USDOT on which projects and funding amounts to award in these discretionary programs. Each year after that, the appropriators, having found a new source for directing limited federal dollars back home, incrementally earmarked a larger percentage of these discretionary program funds in Congress until, by 2002, 100% of the highway discretionary program funds were being earmarked by Congress rather than by the USDOT. Despite this transfer in discretionary authority from the executive to the legislative branch of government, Texas' collective rate of return on these programs and Congressional demo projects was only 58¢ for every Texas dollar spent to support the federal-aid highway discretionary programs.

Interpretation & Implementation of Program Criteria

State and local transportation officials also often view the federal-aid program as being unreliable based on how USDOT agencies interpret and implement national transportation policies and programs. During the authorization process in Congress, transportation officials work to incorporate language that will provide the greatest flexibility and reliability possible for federal-aid transportation programs. Once the bill is signed by the President and becomes law, USDOT agencies are authorized to implement the authorized programs and develop program guidance reflecting their interpretation of the law's provisions.

Often, language and legislative intent developed in Congress is misinterpreted by the USDOT. A recent example is the USDOT's interpretation of legislative language in TEA 21 that created the National Corridor Planning and Development Program and the Coordinated Border Infrastructure Program. These new programs were to improve transportation facilities in order to enhance and facilitate international trade. However, USDOT, in its implementation rules, defined international trade very broadly, allowing even interregional trade within the United States to count toward the eligibility and selection criteria considerations. Border state and major international trade corridor states did not approve this interpretation, as it resulted in a dilution of the programs' already small funding allocation for true international trade projects.

Key Issues in Federal Appropriations

As mentioned previously, in recent years, Congressional appropriations committees have taken advantage of their legislative powers to effectively remove executive discretionary authority from USDOT over most of the federal-aid highway and transit discretionary programs. While the authorizing committees have had legendary squabbles with appropriators over what they call "authorizing in an appropriations bill," the authorizers' objections have been overruled by the appeal of member earmarks.

Until recently, appropriators had limited their actions in the annual appropriations process to approving the annual obligation authority necessary to keep federal-aid highway and transit funds flowing to the states and localities in accordance with the authorization statutes. As overall federal discretionary funding became more restricted, appropriators had less and less control over where those funds went. When states alerted the appropriators to their dissatisfaction with the manner in which USDOT was allocating the federal-aid highway and transit discretionary programs, the appropriators took advantage of this opportunity and began earmarking those programs to direct funds where they wanted them to go.

Beginning in FY 1998, Congress began to earmark projects along with the projects awarded by the USDOT. Each year, more and more of the funding available for discretionary projects is earmarked by Congress, leaving very little to be distributed by USDOT. In addition, Congressional appropriators created their own category for earmarking projects outside the bounds of the authorized discretionary programs. Appropriators began earmarking highway and transit projects in a special category (funded out of the Highway Account of the Highway Trust Fund) called Surface Transportation Projects. These earmarks were subject only to the requirements of Title 23 (the statute governing federal-aid highway programs) and did not carry any limit on how quickly the project funds had to be spent.

A Look at Texas Federal Appropriations & Discretionary Earmarks

Over the authorization period for TEA 21, the amount of discretionary funding through the Federal Highway Administration (FHWA) has gradually increased. In FY 2003, Texas received 6.86 percent of total FHWA discretionary funding, totaling $103,045,000. This total includes the funding received through Section 330 of Surface Transportation Projects and Texas' $31.4 million dollar share of the Border Safety Improvement Program. The Border Safety Improvement Program totaled $46.7 million dollars and is divided among the four states along the Texas/Mexico border. Because of the large portion that Texas received, this funding boosted Texas to the top of the ranking for overall discretionary funding among the states. However, the final Texas rate of return for FY 2003 was only 79¢. The average rate of return under TEA 21 discretionary programs was 64¢.

Highway Discretionary Allocations & Earmarks

Examining the earmarked portion of the highway discretionary funding (found by comparing the

House, Senate, and Conference appropriations bills), the Texas delegation in the House routinely obtained a higher portion of the earmarks and greater rate of return, setting the high water mark. The Senate version of the bill generally did not favor Texas to the same degree. The following chart is a summary of those findings.

Texas Appropriations Earmarks - Highways (TEA 21)

Fiscal Year	House			Senate			Conference		
	$	%[5]	ROR	$	%	ROR	$	%	ROR
1998-1999	$4,500,000	4.59%	$0.56	$2,900,000	3.45%	$0.42	$5,900,000	7.16%	$0.89
2000	$10,000,000	6.37%	$0.79	$8,000,000	5.17%	$0.62	24,965,000	6.18%	$0.76
2001	$6,500,000	3.74%	$0.45	$5,750,000	2.78%	$0.33	$12,175,000	3.08%	$0.37
2002	$36,750,000	6.38%	$0.75	$29,000,000	3.10%	$0.37	$67,915,000	4.58%	$0.54
2003	$34,400,000	7.16%	$0.83	$26,500,000	2.79%	$0.32	$71,645,000	5.13%	$0.59
TOTAL	$92,150,000	5.82%	$0.69	$72,150,000	3.09%	$0.37	$182,600,000	4.89%	$0.58
AVG	$18,430,000	5.65%	$0.68	$14,430,000	3.46%	$0.41	$36,520,000	5.22%	$0.63

By comparing the House and Senate transportation appropriations bills, we see that the Senate usually earmarked more dollars than the House. However, even though the House delegation earmarked fewer total dollars, Texas received a higher percentage of the total funds available for earmarks in the House bill. As a result, the House, on average, had a higher rate of return for discretionary funding than the Senate. In the Conference report with the final earmarks, Texas, on average, received a rate of return somewhere between the rates of return for the House and Senate bills.

The following chart reflects the percentage of USDOT discretionary funding that Texas received and the final percentage of all highway discretionary funding available to states that Texas received. (Note: the overall total amount is reflective of the actual amount that states received after mandatory reductions.) In FY 2002 and FY 2003, USDOT only distributed funding for smaller highway programs like the National Historic Covered Bridge Program, the Scenic Byways Program, and the Value Pricing Pilot Program. USDOT did, however, distribute funding to the four states for the Border Safety Improvement Program in FY 2002 and FY 2003. For this reason, the percentage of USDOT discretionary funding that Texas received in FY 2002 and FY 2003 and the subsequent rates of return on USDOT discretionary selections for those two years are abnormally high.

Texas USDOT & Combined USDOT/Appropriations Earmarks - Highways (TEA 21)

Fiscal Year	US DOT			OVERALL TOTAL (Earmarked and USDOT)		
	$	%*	ROR	$	%	ROR
1998-1999	$20,489,130	3.41%	$0.42	$26,389,130	3.53%	$0.43
2000	$10,718,500	3.61%	$0.44	$35,683,500	5.15%	$0.62
2001	$13,382,840	5.59%	$0.67	$25,557,840	4.23%	$0.51
2002	$41,432,071	32.47%	$3.83	$109,347,071	6.99%	$0.82
2003	$31,400,000	30.05%	$3.47	$103,045,000	6.86%	$0.79
TOTAL	$117,422,541	8.55%	$1.02	$300,022,541	5.88%	$0.70
AVG	$23,484,508	15.03%	$1.77	$60,004,508	5.35%	$0.64

5 The percentage of funds Texas received out of all funds distributed

Transit Discretionary Allocations & Earmarks

Transit discretionary funds include federal dollars from the Capital Program, of which the funding for New Starts and the Bus Program are distributed on a discretionary basis by Congressional earmarks. The Job Access Reverse Commute (JARC) Program is also distributed on a discretionary basis. Although TxDOT does administer some of the discretionary funds, nearly all of the funding is distributed to the Metropolitan Transit Authorities throughout the state.

It is difficult to determine the exact amount of funding available from the Federal Transit Administration (FTA) due to their inconsistent records and unaggregated data. There are several instances in FTA reports that include large sums to states with no exact source. Also, there are instances where Congressional earmarks are not included in the total funding amount reported by FTA for a particular fiscal year. Due to the inconsistencies, it is almost impossible to report the amount of funding distributed by FTA or the total amount received by each state for a fiscal year without exact data.

It is possible, however, to determine the percentage of total transit discretionary funds that Texas received during TEA 21 through earmarks in the House and Senate appropriations bills and Conference Reports. The chart on the next page reflects the amount of transit discretionary funding earmarked in each bill for Texas, along with the percentage of the total transit discretionary funding in each bill. (Note: for FY 2000 and FY 2001 the Senate recommended projects for funding without actually recommending a dollar amount.)

Texas Appropriations Earmarks - Transit (TEA 21)

Fiscal Year	House		Senate		Conference	
	$	%[6]	$	%	$	%
1998	$84,600,000	7.05%	$93,000,000	7.57%	$86,950,000	7.25%
1999	$87,368,000	6.60%	$83,170,000	9.09%	$113,920,000	8.34%
2000	$103,770,000	7.06%	$0	0.00%	$124,620,000	8.65%
2001	$108,300,000	6.82%	$550,000	1.30%	$106,200,000	6.39%
2002	$97,990,000	5.37%	$110,750,000	5.89%	$99,143,000	5.46%
2003	$104,763,210	5.38%	$107,175,000	5.22%	$100,343,000	4.96%
TOTAL	$586,791,210	6.27%	$394,645,000	4.88%	$631,176,000	6.62%
AVG	$97,798,535	6.38%	$65,774,167	4.84%	$105,196,000	6.84%

Earmarked Projects Don't Help Texas

The challenge for state transportation planners is that while they attempt to direct federal dollars back home to their districts, appropriators too often select projects for appropriations discretionary earmarks that are not in the approved transportation plans. Despite states' best efforts to educate their delegations and their locals about the wisdom and practicality of leveraging existing formula funds by directing discretionary dollars to planned and fully funded projects, the majority of appropriations earmarks are targeted to new, unfunded projects that are usually not ready for construction. As with executive discretionary program earmarks, appropriations earmarks serve to disrupt the state and local transportation planning and funding process, often causing delays in progress on higher priority projects and programs needed to address identified mobility needs.

6 The percentage of funds Texas received out of all funds distributed

Federal Rescissions Affect Funding Reliability

Each year, as Congress considers how much of the overall federal funding will be made available within the context of a targeted balanced federal budget, limitations on available federal funding often result in an across-the-board or programmatic rescission of previous federal funding commitments. For federal-aid highways, those federal funding commitments come in the form of contract authority, which obligates the federal government to reimburse states for eligible expenditures with a certain amount of federal funds over the course of an authorization period. States depend on contract authority levels to plan their current and long-term transportation projects and programs.

Often, Congress includes both small and major rescissions of contract authority in the multi-year authorization acts and in annual appropriations acts. The appropriations rescissions tend to be 1 or 2% across-the-board rescissions affecting all authorized programs in that act. The authorization rescissions tend to be much larger, affecting unobligated contract authority from previous authorization acts. Since states depend on the authorized contract authority amounts for state and local transportation plans, any rescission of contract authority results in the delay of planned projects. States spend their oldest contract authority first, and Congress, when it makes rescissions, tends to rescind the oldest unobligated contract authority. Texas works very diligently to use up its oldest contract authority as quickly and efficiently as possible. However, when a rescission occurs, states are forced to reallocate funding to ensure that the most immediate projects using the oldest contract authority are not jeopardized. Projects in the outer years of the plan are affected as well, resulting in delays to moving them to construction on schedule.

Over the past four years, Congress has enacted a series of rescissions affecting the federal-aid highway program. In total, these rescissions resulted in a nearly $400 million reduction in Texas' available federal highway funds. While these rescissions were applied across the board, affecting all FHWA programs, the majority of our federal-aid highway dollars come to us in major mobility and highway infrastructure programs. Rescissions therefore affect the heart of what we are working to accomplish with federal-aid funds. This $400 million impact means that a significant portion of the state's mobility needs are being delayed.

Conclusions

The federal-aid highway and transit programs are becoming more and more unreliable as a means of significant funding to meet our growing transportation and mobility needs. The federal Highway Trust Fund is precipitously close to reaching insolvency. Congress continues to earmark those limited federal transportation funds for projects that often conflict with state and local priorities. Constraints in the overall federal discretionary budget threaten the viability of protecting future motor-fuels-tax revenues and other transportation user fees from encroachment from other parts of the federal budget. The political climate in Washington is not at all receptive to increasing federal taxes (even user fees like the motor fuels tax) to maintain the current level of federal investment in the nation's transportation systems. All of these circumstances are symptoms of the unreliability of the federal-aid program for future planning.

While Texas will continue to look to the federal government to make future investments in the Texas transportation infrastructure, it is unlikely that Congress alone will ever deliver adequate federal funding to fairly address Texas' transportation challenge. Texas must take new approaches to solving this challenge, and we are already doing so. Congress and USDOT can help by making existing federal programs more flexible and supportive of state and regional planning efforts; removing obstacles to effective partnerships in project development, delivery, and financing; eliminating federal discretionary programs that do not contribute to improving the nation's mobility, safety, economic competitiveness, and air quality; and creating incentives to bring new ideas and funds together to meet the transportation challenges we face.

With the precarious nature of the Highway Trust Fund and the motor fuels tax as the major source of revenues for the national surface transportation system, Congress has authorized two special commissions to identify how future federal surface transportation programs should be financed. At the same time, Texas state officials forecast a decline in state motor fuels tax revenues, despite increasing population trends. Recognizing the uncertain future of the motor-fuels-tax financed, pay-as-you-go approach to transportation delivery, states and localities are moving forward and leading the way in using alternative financing mechanisms to meet their mobility needs. Texas is at the head of the pack in this effort. State leaders have recognized the need to act now to address our transportation mobility needs if we are to sustain our economic vitality and provide a positive quality of life for our citizens.

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