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Brinley H. Williams Jr.

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The Highway Trust Fund: Road to Anti-Pollution?

The Federal-Aid Highway Act of 1956 created the highway trust fund (Fund)¹ from which money collected from excise taxes on gasoline and other highway associated products would be disbursed to build a nationwide system of high speed, limited access highways and improved primary and secondary roads.² Since its creation over 44.5 billion dollars have been paid into the Fund,³ and current revenue is estimated at nearly five billion dollars a year.⁴ The Act provides that money paid into the Fund can be spent only for highway planning and construction.⁵ As a result of this limitation on the use of the monies, the Fund has been able to provide the 90 percent federal share of the national system of interstate and defense highways (interstate system)⁶ and the federal share of other federally-aided highway programs.⁷

The Act originally provided that the Fund would terminate on the completion of the 41,000 mile interstate system on July 1, 1972⁸ but subsequent

1. Ch. 462, § 209, 70 Stat. 374 (codified in scattered sections of 23 U.S.C.).

2. 23 U.S.C. § 103 (1964).

3. HIGHWAY TRUST FUND—FOURTEENTH ANNUAL REPORT, H.R. DOC. NO. 91-265, 91st Cong., 2d Sess. 9 (1970) [hereinafter cited as TRUST FUND REPORT]. As of December 31, 1969, expenditures from the trust fund amounted to over 42.8 billion dollars and a balance of 1.961 billion dollars was on hand. This surplus results primarily from administration efforts to halt inflation. Effective January 23, 1968, a limitation of 4.115 billion dollars was established for obligations that could be incurred for highways during calendar year 1968, a five percent reduction from the amount obligated in 1967. An additional 200 million dollar cut was ordered by Secretary of Transportation Boyd on September 9, 1968. On September 4, 1969, President Nixon directed that the federal government reduce new construction by 75 percent, and urged the states to make similar reductions resulting in the states withholding one billion dollars from highway construction. See generally Cope, *The Highway Trust Fund*, AM. ROAD BUILDER, May 1969, at 27 [hereinafter cited as *The Highway Trust Fund*].

4. TRUST FUND REPORT 6.

5. Ch. 462, § 209(f), 70 Stat. 374 § 209(f) (codified in scattered sections of 23 U.S.C.).

6. 23 U.S.C. § 120(c) (1964).

7. *Id.* § 120.

8. Ch. 462, § 209(f), 70 Stat. 374 § 209(f) (codified in scattered sections of 23 U.S.C.). See *The Highway Trust Fund* 5-6. The completion date for the interstate system was extended to July 30, 1972 in 1966. Federal-Aid Highway Act of 1966, Pub. L. No. 89-574, § 4, 80 Stat. 767.

amendments have extended its life to September 30th of that year.⁹ These dates have proven too optimistic in both cases. As of the end of 1969, 29,638 miles of the interstate system were complete and open to traffic,¹⁰ and approximately 11,000 miles were in various stages of construction.¹¹ At that time there were approximately 2,000 miles on which no work had commenced.¹² At the present time Congress is considering legislation that would extend the Fund's life only to 1976¹³ despite the fact that completion of the entire system is estimated to take a year longer.¹⁴ This comment will examine the legal possibilities of using the Fund to combat pollution problems or, alternatively, of creating a new trust fund for anti-pollution endeavors.

The Trust Fund: History and Operation

As early as 1916, Congress recognized that the states were unable to cope with the demand for more and better highways, a need occasioned by the advent of the automobile. In the early years the emphasis was on paving existing country roads and city streets and building inter-city highways which an already automobile conscious populace was demanding. The Federal-Aid Road Act of 1916¹⁵ made it possible for the states to obtain federal funds for road construction. Under the 1916 Act, the federal assistance funds came out of the general funds. They were not identifiable as coming from highway associated taxes. As an omen of things to come, however, the Act was amended in 1933 to require that the states designate their gasoline and motor vehicle taxes specifically for highway purposes as a condition for future federal aid.¹⁶

9. Federal-Aid Highway Act of 1961, Pub. L. No. 87-61, § 203, 75 Stat. 124.

10. U.S. DEP'T OF TRANSPORTATION, QUARTERLY REPORT ON FEDERAL-AID HIGHWAY PROGRAM 1 (1970) [hereinafter cited as QUARTERLY REPORT]. The system is now scheduled for 42,500 miles. See TRUST FUND REPORT 4.

11. QUARTERLY REPORT 1. The term "construction" as used here includes highways on which initial surveying has been accomplished as well as those on which actual road construction has started.

12. A relatively large percentage of the interstate system on which no work has been done is in urban areas where the cost is significantly greater.

13. See, e.g., H.R. 16604, 91st Cong., 2d Sess. (1970) (introduced by Paul Findley (R—Ill.)) which would extend both the trust fund and the completion date for the interstate system to 1976. Additionally the bill would transfer all revenue from the automobile excise tax to the trust fund. Currently only 20 percent of the excise tax on automobiles is paid into the trust fund.

14. See, e.g., Washington Daily News, June 18, 1970, at 5, col. 3.

15. Ch. 241, 39 Stat. 355.

16. See 23 U.S.C. § 126(a) (1964). However, individual states did divert over 10 billion dollars of these taxes from highway construction between 1934 and 1969. See HIGHWAY USERS FEDERATION FOR SAFETY & MOBILITY, ECONOMIC & LEGAL RESEARCH DIV., *Diversion of Highway Use Funds by States 1934-1968* (1970).

The roadbuilding success of the states resulting from this earmarking of highway associated tax revenue for highway construction resulted in a movement among highway interests urging that the federal government establish a similiar fund from the federal taxes levied on gasoline and other highway associated products.¹⁷ The burgeoning auto population which followed World War II increased the pressure for a federal highway trust fund. Higher performance automobiles and continuing prosperity made the American public anxious to use the highways for both business and pleasure. The paved farm roads and low capacity highways of the 1920 to 1940 era proved incapable of handling the traffic jams created by the post-war boom. World War II brought highway construction to a near halt and reduced existing maintenance, thereby making the problem more acute.¹⁸ A highway crisis developed.¹⁹

In 1944, Congress, recognizing post war highway needs, considered an "Interregional System of Highways" to ameliorate the situation. Initially a 40,000 mile highway system to be 70 percent federally funded was proposed.²⁰ Little was done to further this interregional concept until 1956 when a special Presidential Committee on National Highways recommended an expenditure of 27 billion dollars for highway construction. It was recommended that the federal government provide 25 billion dollars of this construction money out of funds collected from the federal excise tax on gasoline. These recommendations resulted in the Federal Highway Act of 1956 and the establishment of the Fund.²¹

The Act established the interstate system, and also provided federal funds for federally aided primary and secondary systems and their extension within urban areas (ABC program).²² The Fund is administered by the Secretary of the Treasury. Each month the Office of Tax Analysis in the Office of the Secretary of the Treasury estimates the amount of revenue that the taxes will bring in that month. The estimate is passed on to the Treasury's Bureau of Accounts which then credits the amount to the Fund. Apportionment is later made to the states. The states make payments to the individual contractors who are in turn reimbursed from that state's apportioned share of the Fund.²³ A state's share is based primarily on its needs,

17. See, e.g., *The Highway Trust Fund* 1-3.

18. *Id.*

19. *Id.*

20. See, e.g., Goldstein, *Economic and Social Impact Considerations in Highway Programs*, 1970 URBAN L. ANN 5.

21. *The Highway Trust Fund* 1-3.

22. 23 U.S.C. § 103 (1964).

23. See TRUST FUND REPORT 1-2.

i.e., the number of miles and the cost of its federally approved highways, as a percentage of the national total.²⁴ The "need" feature of the apportionment has led some critics to charge that it constitutes a self-perpetuating cycle—the greater the need a state can establish, the greater the amount of highway funds it can receive.²⁵

The primary source of revenue for the Fund is the federal gasoline excise tax which generates approximately 75 percent of the Fund's total revenue.²⁶ In addition, the Act designates federal excise taxes levied on lubricating oil, special fuels, vehicles, vehicle parts, tires, tubes, and treadrubber for the Fund.²⁷ The Act further directs that Fund revenues, which are not immediately needed, be invested in interest bearing obligations, with interest accruing to the Fund.²⁸ The Act provides for a refund for taxes paid on gasoline and oil used for other than highway purposes.²⁹

Since its enactment in 1956, several amendments have expanded the scope of the Act. These amendments include expansion of the interstate system by 1500 miles,³⁰ the Highway Beautification Act of 1965,³¹ the Relocation Assistance Act of 1962,³² and a requirement that public hearings be held for "Federal-aid highway projects which involve the bypassing of, or the passage through any city, town or village."³³ This last amendment has been one of the cornerstones for the legal attack on construction of expressways through urban areas.³⁴

With the fund's termination date only two years away, Congress must consider not only the future of the Fund, the slowed schedules, rising costs, and objections to specific expressway projects, but also whether the concept of the Fund should be drastically changed, or, whether the fund should be eliminated entirely.

24. See, e.g., *The Highway Trust Fund* 5.

25. See, e.g., *Hearings on Economic Analysis and the Efficiency of Government Before the Subcomm. on Economy in Government of the Joint Economic Comm.*, 91st Cong., 2d Sess., pt. 5, at 1129-32 (1970) [Hereinafter cited as *Economic Analysis*].

26. TRUST FUND REPORT 4. The 1956 Act immediately increased the federal gasoline excise tax from two to three cents, Ch. 462, § 205, and subsequently increased to four cents effective in 1959. Federal-Aid Highway Act of 1959, Pub. L. No. 86-342, § 201(f), 73 Stat. 613.

27. Ch. 462, §§ 204-04.

28. *Id.* § 209(e)(2). As of June 30, 1969 interest on investment totaled \$199,038,155.82. See TRUST FUND REPORT 7.

29. Pub. L. No. 89-44, § 809, 79 Stat. 168.

30. 23 U.S.C. § 103(d)(3) (1964).

31. *Id.* § 131.

32. *Id.* § 133.

33. *Id.* § 128.

34. See, e.g., *Challenging Highways: Widening the Access to Judicial Review*, 20 CATHOLIC U.L. REV. 143 (1970).

Proposals for the Fund's Future

The courses of action being urged on Congress (expansion or termination of the Fund) stem from the same social and economic philosophies, and are often put forward alternately by the same parties.³⁵ The opponents of the Fund as it presently exists argue that it results in poor fiscal management and that the Fund's resources should be available for other "national priorities." Those seeking federal funds for public projects such as low-cost housing, rapid transit, and anti-pollution cast a covetous eye at the five billion dollars a year which goes into the Fund. As it exists the Fund has powerful opponents—among them Senators Proxmire (D-Wis.), Nelson (D-Wis.), Kennedy (D-Mass.), and Goodell (R-N.Y.)—who want to either do away with the Fund or broaden it into a transportation trust fund.

On the other hand, the idea of either eliminating or expanding the Fund has met with considerable opposition. The supporters of the Fund argue that even after the interstate system is complete there will be a need to shift emphasis to the neglected hundreds of thousands of miles of ABC roads; that railroad grade crossings should be eliminated and highway hazards, such as hidden driveways, should be removed.³⁶ The Nixon administration has proposed extension of the present Fund concept to 1977 while the House Ways and Means Committee has proposed extension to 1975.³⁷

The supporters of the Fund, usually referred to as the "Highway Lobby," hammer away at the theme that the Fund is supported by a user's tax. It is argued that the Fund's principal income is from taxes enacted exclusively for highway construction purposes;³⁸ taxes which are scheduled to expire at approximately the same time as the Fund.³⁹

The Fund's supporters further argue that if the user's taxes are to be given an extended life, then the Fund's life must also be extended. In essence, Fund supporters contend that since highway users pay additional taxes in order to have better roads; their goals should be accomplished before consideration is given to other interests which would divert user revenues to other priorities.

35. See p. 176 *infra* (remarks of Senator Proxmire).

36. As of December 31, 1969, over 236,256 miles of the 900,000 miles of ABC roads had been improved at a cost (including state and local funds) of approximately 21 billion dollars, and work on an additional 13,840 miles was in progress. See QUARTERLY REPORT 2. In 1968 it was estimated that only 44,000 of approximately 220,000 crossings had some type of safety device. See H. RICHARDS & G. BRIDGES, TRAFFIC CONTROL ELEMENTS—RAILROAD GRADE CROSSINGS 1 (Highway Users Fed'n Pub. No. 1, 1968). See also P. BOX, TRAFFIC CONTROL AND ROADWAY ELEMENTS—INTERSECTIONS 7 (Highway Users Fed'n Pub. No. 7, 1970).

37. Washington Daily News, July 8, 1970, at 46, col. 1.

38. See 3 U.S. CONG. & AD. NEWS 2822 (1956).

39. The increases on federal highway associated excise taxes, as shown below, are

Thus at the same time Congress is faced with the question of the Fund's fate and reenactment of the various federal excise taxes set to expire at nearly the same time,⁴⁰ it is also faced with strong and vocal opposition to continuation of the Fund in its present form. Recent testimony before congressional committees illustrates the position taken by Fund opponents.

The Abolition Position

Senator Proxmire of Wisconsin, a leader in congressional efforts to terminate the Fund, is Vice Chairman of the Joint Economic Committee and Chairman of that Committee's Subcommittee on Economy in Government. As part of its continuing study of efficiency in government the Subcommittee undertook an in-depth examination of the federal highway legislation. As an authority on governmental economy, Senator Proxmire finds the concept of the Fund repugnant to sound fiscal management. In testimony before the Subcommittee on Roads, of the Senate Public Works Committee, Proxmire urged the committee to "review the decisions taken earlier . . . [to establish the Fund], to inquire whether our priorities today remain the same as they were a decade and a half ago."⁴¹

The Senator, in expressing his special concern over the wisdom of the Fund from a budgetary and programming standpoint, testified:

. . . we see \$4 or \$5 billion dollars of Federal funds expended regularly each year on the Federal-aid highway program, without having first been submitted to the usual procedures of budgetary

due to expire or be reduced at about the same time as the Trust Fund. The following table illustrates the status of representative highway associated excise taxes.

	Gasoline*	Oil*	Autos	Buses & Trucks	Tires†	Tread Rubber†
Tax prior to July, 1956	.02	.06	10%	8%	.05	0
Current Tax	.04	.06	7%	10%	.05	.05
Revision Under Current Law	.015 (Oct. 1, 1972)	.06	terminates (Jan. 1, 1973)	5% (Oct. 1, 1972)	.05 (Oct. 1, 1972)	terminates (Sept. 30, 1972)

* per gallon
 † per pound

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40. *Id.*

41. *Hearings on Federal Highway Act of 1970 Before the Subcomm. on Roads of the Senate Comm. on Public Works, 91st Cong., 2d Sess., pt. 1, at 226 (1970) [hereinafter cited as Highway Hearings].*

review, it is an almost instinctive response to question whether it might not be in the national interest to choose to have fewer highways and more of something else—improved public transit facilities, more adequate housing, better schools, cleaner air.⁴²

Proxmire, pointedly at odds with those who argue that the Fund should be continued in its present form because it is funded by a user's tax, stated:

. . . let me . . . comment on the often heard argument that because the highway trust fund derives its revenues from the gasoline tax and other road user charges, there is something improper about using this money for anything except more roads.

First, since the average family finds it very difficult to exist in today's world without an automobile, this family has little choice except to pay gasoline taxes. I find the argument that payment of these taxes constitutes a 'vote' for more highway entirely unpersuasive.

Second, we do not view our other excise taxes this way. Alcoholic beverage taxes, for example, are not used to build distilleries.

Third, even if we were to accept the view that proceeds of the gasoline tax should be expended only for the benefit of road users, new roads are clearly not the only investment from which road users might benefit.

A witness at our recent hearings told of a study he had made indicating 35 percent of the benefit of a proposed new subway line would accrue to road users, rather than subway users.⁴³

The General Trust Fund Position

Senator Proxmire, as well as Senator Nelson, of Wisconsin, advocate total abolition of the Fund.⁴⁴ Other members of Congress (including Senator Kennedy, of Massachusetts) advocate creation of a general transportation trust fund in lieu of the highway trust fund.⁴⁵ This proposal has received support from the Secretary of Transportation.⁴⁶ Senator Proxmire agrees that a general trust fund would be preferable to "proliferating separate trust funds,"⁴⁷ making it at least "possible to allocate funds rationally among transportation modes."⁴⁸ Senator Proxmire, however, argues that the concept of a general transportation trust fund suffers from the same budgeting and programming defects as the highway trust fund, and that its only advantage would be that the total spectrum of projects which could be financed

42. *Id.*

43. *Id.* at 229-30.

44. *Id.* at 476-78.

45. *Id.*, pt. 2, at 542.

46. *See, e.g.,* Washington Daily News, July 8, 1970, at 46, col. 2.

47. *Highway Hearings*, pt. 1, at 230.

48. *Id.*

would be somewhat increased.⁴⁹ Senator Proxmire further contends that the Fund combined with 23 U.S.C. § 126 (requiring the states to earmark highway taxes for highway uses) and 23 U.S.C. § 301 (prohibiting tolls on federally aided highways)⁵⁰ restricts the ability of states and cities to logically program their resources and to control automobile congestion. Senator Proxmire contends that through the use of tolls, license fees, and meter charges, cities could force rush hour drivers to use public rapid transit systems and thereby reduce congestion while aiding the public system.⁵¹

Advocates of the general transportation trust fund concept suggest that the development of mass transportation systems would reverse the increasing dependency of the American public on the automobile. It appears anomalous from an anti-pollution standpoint, that the Fund used to create better highways, produces a demand for more automobiles and thereby causes more pollution; however it seems questionable whether tolls and other user charges would reverse the American demand for more automobiles and better highways. While such user charges might have an effect on rush hour city traffic they would do little to decrease the public's dependency on the automobile for inter-city travel. The economics of inter-city public transportation appear to insure that the automobile will continue to be the cheapest and most convenient means of travel for a family in the foreseeable future.⁵²

The concept of tolls and other restrictions on rush hour motorists has also been advanced by Peter S. Craig, formerly Assistant General-Counsel, Department of Transportation. Mr. Craig testified before the Joint Economic Committee's Subcommittee on Economy in Government, that although the imposition of a user charge for highways might reduce rush hour traffic:⁵³

It is exceedingly difficult to measure the total 'costs' for use of highways and both difficult and expensive to collect the necessary tolls to cover such costs. The investment costs . . . operating costs and interest costs are rather easily ascertained, but other costs are not.

I speak particularly of the social costs in air pollution, noise pollution, auto accidents, as well as the community cost through displacement of homes and businesses and parks.⁵⁴

Mr. Craig concludes that the Fund should be abolished and 23 U.S.C. § 301

49. *Id.*

50. The states have diverted over \$10 billion of these funds since 934, note 12 *supra*.

51. *Highway Hearings*, pt. 1, at 231-32.

52. Assuming a driving distance of 350 miles at five cents a mile plus five dollars for turnpike tolls, it would cost approximately \$22.50 to drive a private automobile from Washington, D.C. to Cleveland, Ohio. By way of comparison the cheapest reserved seat jet coach fare for a family of three using a "family plan" is \$66.00.

53. *Economic Analysis*, pt. 5, at 1124.

54. *Id.*

repealed. According to Mr. Craig the taxes currently paid into the Fund should be used for "nonhighway transportation investment . . . [or] even nontransportation [uses]"⁵⁵

While the concept of a toll or "user charge" on rush-hour motorists may present a possible solution to urban traffic congestion and at the same time reduce air pollution, tolls might be difficult to implement and might also have political ramifications.

The idea of expanding the Fund, particularly to include other means of transportation, is, however, gaining momentum. Secretary of Transportation John A. Volpe stated that although the administration is firmly committed to completion of the interstate system, one billion dollars should be diverted from the Fund in 1972 and 1973 for certain public land and Indian land roads, as well as for the safety and beautification programs formerly financed from the general treasury.⁵⁶ At the same time, Department of Transportation officials conceded that, "consideration is being given to expansion of the Fund into an overall transportation trust fund."⁵⁷

The Trust Fund and Anti-Pollution

Opponents of the Fund implicitly presume that the taxes imposed to support the Fund will be re-enacted. Senator Proxmire's statements imply his assumption that the revenue collected from the highway associated taxes will continue to be raised and thus be available for other uses. Historically, however, these taxes supported highway construction. It is unlikely, therefore, that Congress will re-enact them without at least minimally restricting their use for highway related purposes. There may be strong arguments for broadening the scope of the Fund, but there is also a historical commitment to complete the interstate system.⁵⁸ This commitment has been recognized by Senator Nelson, a critic of the Fund, who testified that he favors completion of the interstate system and abolition of the Fund.⁵⁹

With the administration supporting extension of the Fund until the mid-seventies,⁶⁰ it is unlikely that the Fund concept will be entirely elimi-

55. *Id.* One such solution suggested by Craig is a 90 percent grant-in-aid program for high density housing in the central city and 50 percent grant-in-aid for refurbishing individual homes in the central city.

56. *Highway Hearings*, pt. 3, at 1173-78.

57. *See, e.g.*, Washington, Daily News, July 8, 1970, at 46, col. 2.

58. *Highway Hearings*, pt. 2, at 687.

59. *Id.*, pt. 1, at 477.

60. *Id.*, pt. 2, at 687. While stating that the administration was committed to completion of the interstate system, Secretary of Transportation Volpe stated that he favored cutting back four billion dollars worth of Interstate highways in urban areas. It seems unclear whether the Secretary was stating a view which implied that the administration's commitment was only to finish rural portions of the interstate system.

nated. The "pork barrel" aspects of the Fund alone make it doubtful that many members of Congress would support elimination of the Fund entirely. Nevertheless, there does seem to be a definite possibility that a general transportation trust fund will be eventually substituted for the current highway and airport trust funds, and will be broadened enough to include other forms of transportation, particularly urban rapid transit systems.

It is possible that a compromise between the two positions can be found in the transportation trust fund concept, since the interstate system is near completion and the Fund has a revenue surplus. Such a compromise might broaden the revenue basis for the fund by including additional revenue from excise taxes to be levied on the additional forms of transportation supported by the fund. Furthermore, restrictions could be placed on the percentage of the fund's revenues which could be used for each of the modes of transportation.⁶¹ Included as a separate percentage of the total revenue for each form of transportation could be funds to be used for pollution control.

The arguments advanced in support of a general transportation trust fund often include estimates of the "spin-off" benefits that highway users might derive from improvements in other forms of transportation. Statistics are cited to show that improved mass transit, express bus service, and better air and rail passenger service provide a direct and substantial benefit to the highway user in the form of less traffic and alternative modes of travel.⁶² The "spin-off" benefits pollution control could provide should also be considered. If highway taxes are to be used to decrease highway use and if Fund money is to be diverted to highway beautification projects (both to benefit the highway user)—why not also use highway taxes to reduce or eliminate pollution caused by highway vehicles?

The proposed expanding of the Fund may result in a decrease in pollution by promoting alternatives to the automobile as a means of transportation. If a percentage of the fund were directly devoted to controlling the pollution caused by motor vehicles there would be a benefit to the tax-paying "user" at least as great as the benefit of developing alternate types of transportation.

It is estimated by the District of Columbia's Pollution Control Unit that motor vehicles pump about 23,500 tons of the estimated 25,000 tons of hydrocarbon pollutants found in the city's air yearly.⁶³ The Pollution Con-

61. 14 The American Road Builders Association Newsletter No. 11 (June 9, 1970) reports that ". . . Volpe and other DOT spokesmen are becoming increasingly vocal advocates of a total transportation trust fund . . . to be divided into 'designated accounts for highways, airports and urban mass transportation' but would allow for a certain amount of transfer of funds from one account to another.

62. *Highway Hearings*, pt. 1, at 230.

63. Figures obtained from Pollution Control Unit, D.C. Health Dep't, July 31, 1970.

trol Unit also reports that the air directly above the most heavily traveled arteries has the greatest concentration of pollutants.⁶⁴ It is not an exaggeration, therefore, to say that the motorist might be the greatest beneficiary of a reduction in motor vehicle pollution. With a general transportation trust fund that provided for the expenditure of a certain percentage of its funds for pollution control, money to control pollution from motor vehicles and other modes of transportation would be available.

In 1969 the total number of motor vehicles in the United States increased from 100,884,000 to 105,403,000, approximately a 4½ percent increase over the 1968 figure.⁶⁵ Total vehicle miles traveled have been increasing at a rate of twice the national population growth.⁶⁶ The increase in both the number of motor vehicles and the number of miles driven indicates that the need for roads and highways has not decreased, and that the problem of air pollution caused by motor vehicles has become more acute. Experiments that excluded motor traffic from three miles of road in Yosemite Valley and from the Lower Manhattan Expressway in New York City,⁶⁷ are not likely to decrease the problem of air pollution caused by motor vehicles, or the dependence of Americans (and their economy) on motor vehicles. Indeed the statistics demonstrating the nation's dependency on the automobile are massive. There are 1.2 motor vehicles per person in the nation's 80 million member workforce.⁶⁸ Three of every four dollars spent for the transportation of freight in the United States are spent for transportation by truck.⁶⁹ It is estimated that as many as one job in five in the United States is directly or indirectly associated with motor vehicles.⁷⁰ With the interstate system and comparable state highways having a safety rate 2 times greater than that of a two lane highway,⁷¹ would be unlikely that Congress will ignore the continuing need for better and safer highways. The time, however, has come to seriously consider air-pollution emitted from motor vehicles and litter dumped along highways. The Fund, whether it be a highway or "total transportation" fund, offers a source of funds to combat pollution caused by motor vehicles and transit systems. Anti-pollution funds, available to the states on a match-

64. *Id.*

65. Dep't of Transportation News Release (June 10, 1970).

66. Goldstein, *Economic and Social Impact Consideration in Highway Programs*, 1970 URBAN L. ANN. 5.

67. See, e.g., Schneiderman, Cohn & Paulson, *Air Pollution and Urban Freeways: Making a Record on Hazards to Health and Property*, 20 CATHOLIC U.L. REV. 5 (1970).

68. Goldstein, note 66 *supra*.

69. *Id.*

70. *Id.*

71. Highway Users Federation for Safety and Mobility, *Your Safety and Mobility at Stake* (undated pamphlet).

ing fund basis, would provide each of the states with the money to combat the forms of pollution which most effect them. Similar to the current Fund, each state would analyze its anti-pollution problems and submit programs to combat them to the federal government for approval. The percentage of the federal share for specific anti-pollution projects could be graudated. For example, federal share for removing litter along primary highways might be 50 percent, the federal share for removing sources of pollutants might be 90 percent.⁷²

To provide additional revenue for the Fund, the 2¢ tax credit for excise taxes paid on gasoline and the 6¢ credit for oil not used for highway purposes might be reduced, and the savings earmarked for the Fund. An excise tax based on the number of cylinders could be imposed on internal combustion engines not used for highway purposes. In order to insure that state matching funds would be available, it probably would be necessary to amend 23 U.S.C. § 126 so as to explicitly include anti-pollution within the scope of the projects to be supported out of the state highway accounts. A course of action that would be less than that desired by Senator Proxmire and other opponents of Section 126, but perhaps preferable to the current restrictions. For anti-pollution purposes it may well be that there should be a graduation of the federal share for pollution projects just as there is in the current federal share of matching funds for highway construction. The federal share for anti-pollution might range from as little as 20 percent for projects which are primarily of local significance, such as state efforts to reduce or eliminate pollution in navigable waterways.

Conclusion

An admitted goal of the present administration is the development of a pollution free automobile by 1975, and their mass production by 1980.⁷³ Availability of Fund resources to help finance that program might help insure its success. Further anti-pollution funds combined with the Highway Beautification Act appropriations would provide resources not only for removing billboards and eliminating junkyards,⁷⁴ but also for removing litter

72. A proposed amendment to California's constitution has been placed on the November 1970 ballot. The amendment would allow 160 million dollars a year to be diverted from California's highway trust fund for anti-pollution and mass transit systems studies. *Wall Street Journal*, Oct. 26, 1970, at 1. The effect of 23 U.S.C. § 126(a), however, might well negate the effect of such an amendment since Section 126(a) requires the states to use highway taxes for highway purposes. See note 16, *supra*.

73. See, e.g., *Washington Post*, July 17, 1970, at 1, cols. 4-5.

74. Secretary of Transportation Volpe has advocated using trust fund money to finance highway beautification; saying there is a need to remove junkyards within sight of the interstate system, *Washington Daily News*, June 19, 1970, at 46, col. 2.

from the highways. The reduction of air-pollution, and the removal of unsightly litter from highways and other transportation corridors would directly benefit the user who is paying the excise taxes supporting the Fund. A general transportation trust fund that provided money not only for new and safer highways and improved alternative transportation systems, but that would also be broad enough to insure that drivers could once again enjoy clean air and the beauty of a clean environment, provides Congress with a possible solution to the Fund dilemma that might benefit all Americans.

Brinley H. Williams, Jr.