

Policy Reform Monitoring Report



RA 8794 or the Motor Vehicle User's Charge Law: Successful in raising funds but still needs some improvements

I. Introduction

Republic Act (RA) 8794, the Motor Vehicles User Charges (Road Funds) Law, was enacted on 27 June 2000 and its Implementing Rules and Regulations (IRRs) became effective on 5 September 2000. The law mandated the government to collect annual user charges based on gross vehicle weight from owners of all motor vehicles, including government vehicles. The new system replaced the annual registration fees. The new user charges would, after four years, represent a 100 percent increase of fees existing at the time the law was passed.

The Road Funds, placed in four special Road Funds ("Road Funds"), were meant for maintenance and drainage improvements on national roads (80%), maintenance of local roads (5%), installation of traffic lights and road safety devices (7.5%) and air pollution control (7.5%). The law also sought the creation of a multi-sectoral Road Board ("Board") and the RB Secretariat ("Secretariat") to manage the Road Funds and the creation of a Road Program Office (RPO) in DPWH¹ to prepare work programs.

The law was crafted to provide additional funding to fill the gap between the P4billion yearly DPWH budget for road maintenance ("general funds") and the P13.5billion annual requirement for the maintenance of national and provincial roads. EGTA reviewed the impact of the law on the improvement of road quality in March 2002², and found that RA8794 was not fully implemented and its objectives were not fulfilled. The apparent misuse of funds may have also caused the deterioration of road quality. The government was also slow in implementing the IRRs. In fact the Road Board (RB) was unable to release the funds for road maintenance.

EGTA revisited RA 8794 in this paper to find out if these problems have been resolved and if the law has effected some improvements in the road quality.

¹ Department of Public Works and Highways (DPWH)

² Speed Limits on RA 8794 Implementation: An Assessment of the Implementation of the Motor Vehicle User's Charge Law

II. Background

EGTA provided technical assistance in the enactment of RA 8794. In March 2002, the Project made an initial assessment on the law's implementation. The review found that one and a half years into implementation, the government had accomplished three tasks related to RA 8794: (a) established the Board in November 2000, (b) issued the law's IRRs in September 2000 and; (c) started collecting Road Funds in January 2001, but only six-months after the enactment of the law. While these were important steps, they were insufficient to meet the law's goal of providing additional funds for road maintenance.

The EGTA assessment found that the government failed to properly implement RA 8794 for two main reasons:

1. **The Government did not operationalize the Secretariat and the RPO.** The success of the implementation of the law rested heavily on the creation of the Secretariat and the RPO - the two offices that were supposed to support the law's implementation. The Secretariat should have assisted in the daily management of the Road Funds and in the implementation of the decisions of the Board. Among other things, the Secretariat should have ensured that the Manual of Operating Procedures (MOP or "manual") and the Contracting Methods and Competitive Bidding Procedures ("bidding procedures") were developed. The RPO, on the other hand, was mandated to give the Board technical support to prepare the annual work program (AWP) and, for projects with longer gestation periods, to draft the rolling Multi-year Work Program (MWP).

The Office of the President, however, owing to the government's austerity policy³, did not create these two offices. The Secretariat and RPO functions were given to interim task forces composed of DPWH employees who had to perform dual functions. Without focused efforts, the Board had yet to receive a draft of the manual, bidding procedures, AWP and MWP as of March 2002.

2. **The Road Board was unable to release the Road Funds.** The Board was unable to withdraw the Road Funds from the Bureau of Treasury (BTr) as of March 2002. Firstly, it was unable to secure the agency code from the Department Budget and Management (DBM) that would have authorized the withdrawal of the special funds. Secondly, it was unable to draft the manual that would have laid down the administrative process involved in managing the fund. Lastly, the interim RPO was unable to draft an AWP and MWP, which were needed in justifying the fund disbursement schedule. Due to multiple functions, - for the Secretariat and for the employees' respective

³ The austerity policy was proclaimed in Administrative Order (AO) No. 5, series of 2001. It prohibited government agencies from (a) operationalizing new agencies or offices; (b) expanding organizational units and creating new positions; and (c) establishing task forces, inter-agency committees and interim bodies.

mother units, the interim Secretariat was unable to monitor the progress of these activities.

Table 1. Status of the Implementation of RA 8794 as of March 2002

Measures Mandated by RA 8794	Implementation Status (March 2002)
1. Setting up of the Road Board	
The law mandates the creation of a Road Board. The Secretaries of the DPWH, DOF, DBM and DOTC were to comprise the Board, as well as representatives of transport organizations.	President Estrada created the Board and appointed its members in November 2000. The transport industry representative, Gen. Kanapi, died however, and had not yet been replaced as of March 2002.
2. Establishment of the Special Funds	
The law requires the establishment of the following special trust accounts in the Bureau of Treasury (BTr) to maintain the Road Funds: Special Road Support Fund; Special Local Road Fund; Special Road Safety Fund; and the Special Vehicle Pollution Control Fund.	The DBM assigned program codes for each fund in January 2001. As of March 2002, however, the DBM had yet to assign agency codes to the Board, which would have allowed the Board to withdraw funds from the BTr. The DBM said it would only issue the codes after the Board Secretariat had been staffed and made operational, for accountability.
3. Collection of Road Funds	
RA 8794 mandated the Board to start collecting Road Funds by July 16, 2000.	The LTO started collecting Road Funds in January 2001. The lag between the issuance of the IRRs in August 2000 and the establishment of the Board in November 2000 reduced Road Funds collections in 2001.
4. Establishment of a Secretariat	
The IRRs provide for the creation of a Board Secretariat to render accounting, auditing and administrative functions for the Board.	The Secretariat was not operationalized because of the government's austerity policy. Secretariat support was provided by a task force staffed by DPWH personnel.
5. Creation of the DPWH-RPO	
The IRRs call for the creation of the RPO under the DPWH. The RPO was to assist the Board in planning for road maintenance and road safety projects, budget allocation, reporting of fund status and progress of activities, and development of systems for monitoring fund disbursements and quality of work.	The DBM did not approve the creation of the RPO in view of the government's austerity policy. As of March 2002, a task force of Bureau of Maintenance (BOM) staff was providing technical support to the Board.
6. Development of a Manual of Operating Procedures (MOP)	
The IRRs mandate the preparation of an MOP to outline the administrative procedures to be followed by the Board and the Secretariat in implementing RA 8794 and its IRRs.	The Board developed a draft MOP in September 2001 with the help of the New Zealand government. It had yet to finalize the MOP as of March 2002, however.
7. Approval of Contracting Methods and Competitive Bidding Procedures	
The IRRs mandate the Board to prescribe the bidding procedures to be followed in implementing Road Fund-funded projects.	The Board had yet to approve the bidding procedures that will govern its funding of road maintenance and safety projects, as well as air pollution control measures.

III. Status and Impact of RA 8974

RA 8794 was enacted to increase the total funds available for road maintenance, road safety, and pollution control. This review, three years into the implementation of the law, suggests that there had not been appreciable improvement as yet, and that RA 8794 has not had a positive impact on road maintenance. Anecdotal evidence also suggests that the government may have violated the law by using the Road Funds to pay for general road maintenance expenses and by appointing an unqualified person to the Board. The status of the measures mandated by RA 8794 as of December 31, 2003 is as follows:

1. **Setting up of the Road Board - Appointment of Cong. Danilo Suarez is inconsistent with RA 8794.** President Arroyo appointed former Cong. Suarez as director and vice-chairman of the Road Board in the first quarter of 2003 to fill the vacancy left by Gen. Kanapi. It must be noted, however, that Gen. Kanapi, prior to his death, was one of the representatives of the transport sector in the Board. Since Cong. Suarez is neither a transport sector representative nor a Cabinet secretary, he was unqualified to sit on the Board. Cong. Suarez should have been aware of this being one of the main proponents of the law.
2. **Establishment and Collection of the Special Funds - The Road Funds management problem is deepening.** The fund management problem has three facets: there is massive under-programming of the Road Funds, the Board has incomplete control over the management of the Road Funds and the DBM continues to use the Road Funds for paying general road maintenance expenses, thereby effectively thwarting the intent of the law.

Firstly, while total Road Funds collections have reached P11.6 billion as of August 2003 (Appendix 1), only about P3.7 billion have been approved for release so far. Of that amount, about P700million have been released in 2002 and P3billion was programmed for release in 2003. This massive under-programming implies that RA 8794 has yet to cause significant improvements in road quality in the country. With interest income not going back to the Road Funds⁴ moreover, under-programming also translates to increasing carrying costs. This carrying cost is due to the opportunity cost for not being able to use the Road Funds, which when computed based on the average 91-day T-bill rate from January 2001 to August 2003 of 7.26%, already amounts to P1.17billion.

Secondly, since the Road Funds are in already in trust accounts deposited with the BTr, and it is already given an agency code, the Board should technically be able to manage and withdraw the Road Funds from the BTr at its own option. The Secretariat says, however, that this has not been the case. Since the Board is a government entity, the DBM continues to

⁴ RA 8794 is silent on the disposition of the Road Funds' interest earnings. As such, these earnings are treated as unprogrammed funds that can be spent on other government programs.

have the final say on whether or not to give the Board its funding requests. The same applies in cases when the Board has already given a board resolution authorizing funds withdrawal.

Lastly, the DBM is also able to influence the use of the special funds because of its control over the release of Road Funds. Arguing that the DBM lost the revenues used to finance road maintenance projects when RA 8794 had vehicle registration fees earmarked for the four special road funds⁵, the DBM withheld the release of the DPWH's general funds and used the Road Funds to finance general road maintenance works⁶. Of the P4billion budget allocated for general road maintenance by the GAA the DBM only released about P3.3billion in 2002. To fill the gap, the DBM according to the Secretariat, released P700million of the Road Funds to the Board during the year. The Secretariat also said that the P3billion to be released out of the Road Funds in 2003 are meant to pay for general road maintenance activities.

3. **Establishment of the Secretariat and the RPO - Task forces still perform the Secretariat and RPO functions for the Road Board.** While its organizational set up has already been approved, the Secretariat and RPO staffs have not yet been appointed because of continuous changes in DPWH management. Former Sec. Datumanong was replaced by Former Sec. Fernando on 5 January 2003, who in turn, was replaced by Sec. Soriquez four months after. Sec. Soriquez himself could not, as of yet, give his full attention to the Secretariat because the Sandiganbayan suspended him on 15 October 2003 for graft charges. The President, on her part, has yet to name the Executive Director, opting instead to wait until the Secretariat staff positions have already been filled.

Because of the scrap and build requirement of AO5 the Secretariat also said that it is still unclear whether the RPO will be created. The DBM wanted the DPWH to abolish the Bureau of Maintenance (BOM) office before creating the RPO because the two offices have redundant functions. The DPWH did not want to do this because it would affect the BOM's 300 strong staff. The BOM, as a result, continues to act as the interim RPO that drafts the AWP and the MWP.

4. **Development of the Manual and Bidding Procedures- The manual is vulnerable to circumvention.** The interim Secretariat was able to develop the manual and the bidding procedures with the help of a consultant funded by the New Zealand government. Without a dedicated staff, however, the Secretariat has been unable to ensure compliance to the provisions of these documents. Anecdotal evidence suggests, for

⁵ The funds were earmarked to the Special Road Support Fund (SRSF), the Special Local Road Fund (SLRF), the Special Vehicle Pollution Control Fund and the Special Road Safety Fund.

⁶ "Sec. 8: The four (4) special funds established under this Act shall be distinct and separate from and in addition to any appropriation authorized and granted yearly to the DPWH and the DOTC to cover expenditures for the identified objects of expenditures under this Act."

example, that the interim RPO may have been submitting work programs inconsistent with provisions in the manual and which were designed to favor some contractors or implementation regions. A more dedicated Secretariat would have been more vigilant in spotting and rectifying these violations.

IV. Other Concerns: The Road Funds is Vulnerable to Being Used to Fund Political Campaigns

Without adequate checks and balance and with billions of pesos at its disposal the Road Board could be used to support political campaigns. This can be inferred in the way the project dubbed "Kalsada Natin, Alagaan Natin" (These are our roads, we must take care of them) is being implemented. This is not to say that this project is a form of political campaigning. We merely mention the project to show possible ways by which the Road Funds could be tapped for such campaigns, in view of recommending ways to minimize or remove possible leakage. Kalsada Natin Alagaan Natin, according to the Secretariat, is a pet project of Vice Chairman Suarez. Box 1 enumerates its salient points.

Box 1: Salient Points concerning the "Kalsada Natin Alagaan Natin" Project

- It transfers the responsibility of maintaining road quality to the local community by treating the barangay units as contractors for road maintenance work;
- From the Road Funds, the DPWH gives the barangay units enough funds to pay for labor (coming from local residents), tools and materials.
- The barangay units are made responsible for shoulder maintenance, vegetation control and drainage maintenance. For these functions, they are given T-shirts, raincoats, hats, boots and cleaning tools; and
- Laborers are paid daily, and each kilometer of national roads is assigned four laborers.

While consistent with the policy statement of RA 8794⁷, the project can be used for political campaigning because it involves using the Road Funds to distribute T-shirts and set up streamers and billboards that advertise the names of incumbent politicians (these paraphernalia constitute 25% of project expenses). It could also be used as a vote-buying scheme as is feared in the way the President deputized barangay captains in caring and monitoring the project for a P500 monthly supervision fee.

The programming of project implementation could also be used to gain political support. The first project to be implemented under this scheme, for example, involves the national roads passing through Unisan, Quezon - the congressional district of Congresswoman Aleta Suarez, the wife of Road Board Vice-Chairman and former Cong. Suarez. Anecdotal evidence suggests that the project site

⁷ "Sec. 1: Declaration of Policy. - it is hereby declared as the policy of the State to provide for and ensure the adequate maintenance of national and provincial roads through sufficient funding for the purpose."

choice may have been inconsistent with the provisions of the manual but was made nevertheless at the behest of Cong. Suarez.

Feedback from the interim Secretariat also indicates that other Congressmen are lining up to have the project implemented in their respective districts. The Unisan experience shows that the Board could circumvent the provisions of the manual and solicit political support in exchange for implementing the project in chosen congressional districts.

V. Conclusions and Recommendations

RA 8794 has two important components: collecting Road Funds based on vehicle weight and using the Road Funds to maintain road quality. The law has so far been successful on the collection part, raising for the Road Funds a total of P11.6 billion as of August 2003. Collections started in January 2001. At the rate collections are going, it is expected that annual collections could reach up to P7.1 billion by 2008 (Appendix 2) raising total collections to as much as P45 billion.

Disbursement, however, remains a problem. Although the law has given the Board the mandate to manage the Road Funds, the DBM has the last say on whether or not to release the funds to the Board. This allowed the DBM to control the flow of the Road Funds to suit the government's cash flow requirements. There is, therefore, a need to amend RA 8794 to allow the Board to directly draw down from the BTr trust accounts without the need to pass through the DBM.

Another gray area is the staffing problem of the Secretariat and the RPO. Anecdotal evidence suggests that the interim Secretariat and RPO are unable to perform their functions efficiently because their staff are performing dual functions and are on-call in both capacities. The uncertainties as regards their positions are also affecting their work and causing laxity in the implementation of the manual. The government may also want to include DOTC personnel in the Secretariat and RPO to give the department representation in the support staff. This would ensure that DOTC concerns would also be given attention in the Board.

The composition of the Board also needs to be reviewed. The law specifically mandates that the Road Board should be composed of seven members including four government representatives (the secretaries of the DPWH, DBM, Department of Finance and Department of Transportation and Communications) and three representatives of the transport and motorists sectors. The allocation of Board positions for the private sector aims to empower the road users themselves in the disposition of the Road Funds, yet this objective is apparently not being met.

Lastly, the law should be amended to make the management of the Road Funds more transparent. It should also include checks and balances to ensure that

the Road Funds could not be used for political gains. As amending the law would take some time, however, civil society in the interim should be active and vigilant enough to ensure that the private sector representatives would not allow the funds to be used to fund political campaigns.

Appendix 1: Schedule of Deposited Collections of the Road Funds

In Million Pesos	Road Support Fund (80%)	Local Road Fund (5.0%)	Road Safety Fund (7.5%)	Vehicle Pollution Control Fund (7.5%)	Total
January – December (2001)	2,396.35	153.11	225.87	235.19	3,010.52
Adjustment (July – December)	140.11	8.14	11.86	-	160.10
Adjustment (July – December)	-	0.82	0.24	-	1.06
2001	2,536.46	162.07	237.97	235.19	3,171.68
January-02	261.61	17.37	24.60	27.82	331.40
February-02	301.27	19.86	28.42	31.64	381.19
March-02	262.04	17.40	24.49	27.88	331.81
April-02	269.37	18.66	25.46	29.43	342.92
May-02	351.82	23.95	32.54	39.32	447.63
June-02	318.70	21.51	30.18	33.47	403.87
July-02	390.93	25.25	36.55	38.82	491.55
August-02	318.09	20.17	29.82	31.20	399.28
September-02	341.03	21.50	31.85	33.42	427.79
Adjustment (July – September)	171.06	9.42	13.78	-	194.26
Adjustment (July – September)	-	2.15	3.07	-	5.22
October-02	356.62	22.29	33.43	33.43	445.77
Adjustment (October)	0.08	0.01	0.01	0.01	0.11
November-02	122.47	8.08	11.48	11.06	153.10
December-02	65.21	4.08	6.11	6.25	81.65
Adjustment (overstatement)	(14.32)	(0.90)	(1.34)	(1.48)	(18.04)
2002	3,515.98	230.80	330.47	342.28	4,419.52
January-03	362.11	22.63	33.94	33.94	452.62
February-03	368.82	23.06	34.59	34.59	461.06
March-03	425.50	26.58	39.87	39.87	531.83
April-03	392.80	24.54	36.81	36.81	490.97
May-03	432.51	27.01	40.53	40.53	540.57
June-03	362.08	22.62	33.97	33.97	452.63
July-03	432.59	27.03	40.55	40.55	540.72
August-03	430.74	26.90	40.36	40.36	538.36
2003 (January to 03 August)	3,207.16	200.38	300.62	300.62	4,008.77
2001 – 2003	9,259.60	593.24	869.05	878.08	11,599.97

Source: Bureau of Treasury

Note: Adjustments were made to correct timing issues in the recognition and collection of funds.

Appendix 2. Projected Road Funds Revenue

	Based on LTO Certificate	Based on BTr Certificate
2001r	3,426.31	3,171.68
2002r	4,673.24	4,419.52
2003p	6,116.17	5,134.66
2004p	6,965.64	5,847.81
2005p	7,313.92	6,140.20
2006p	7,679.61	6,447.21
2007p	8,063.59	6,769.57
2008p	8,466.77	7,108.05

Source: RBS

Note: r-reported, p-projected