

HB 1899 and SB 5825: WSDOT's attempt to hide failure of I-405 tolls and make them permanent

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Key findings

1. Current state law requires that toll lanes must meet two performance standards in order to continue operating: revenues must cover operating expenses and the lanes must operate at 45 miles per hour at least 90 percent of the time.
2. While toll lanes on I-405 are meeting the revenue requirement, they are failing to meet federal and state standards for speed reliability, which should prompt termination of the tolls.
3. Through new legislation, WSDOT is seeking to expand its failing toll system on I-405, SR-167, and SR 509, and make the toll lanes permanent.
4. The legislation nullifies the speed requirement by making it optional. An optional requirement is a meaningless requirement.
5. The legislation also shifts toll revenue along the I-405 corridor from the 18th amendment-protected Motor Vehicle Fund (MVF) to the general state treasury, allowing lawmakers to spend money on non-highway purposes.
6. Both SB 5825 and HB 1899 represent policy that seeks to protect WSDOT from criticism, preserve toll revenue, and divert public money away from promised benefits.

Introduction

This Legislative Memo summarizes House Bill 1899¹ and its companion, Senate Bill 5825², regarding toll authorization and expansion on Interstate 405, State Route 167 and State Route 509 in the Puget Sound area. It provides an analysis explaining why the bills represent bad transportation policy that will harm the public interest, particularly for travelers on I-405, and how the bills undermine public trust and accountability.

Background

In 2002, state officials agreed to an Interstate 405 Master Plan that included approximately 150 roadway improvements to provide congestion relief for the public and to increase speeds on the I-405 corridor. Officials said they would add up to two general-purpose travel lanes in each direction on I-405, as well as bus rapid transit, vanpools, new interchanges, and auxiliary lanes.

However, despite this agreement, in 2011, lawmakers passed House Bill 1382, which took away the new general-purpose lanes and turned them into toll lanes.³ In addition, state lawmakers converted the existing High Occupancy Vehicle (HOV) lanes into toll lanes. State officials said their tolling scheme would

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- 1 House Bill 1899 – Addressing the tolling of Interstate 405, state route number 167, and state route number 509, Washington State Legislature, 2019-20 Legislative Session, February 5, 2019, at <https://app.leg.wa.gov/bills/summary?BillNumber=1899&Year=2019&Initiative=false>.
 - 2 Senate Bill 5825 – Addressing the tolling of Interstate 405, state route number 167, and state route number 509, Washington State Legislature, 2019-20 Legislative Session, February 5, 2019, at <https://app.leg.wa.gov/bills/summary?BillNumber=5825&Year=2019&Initiative=false>.
 - 3 House Bill 1382 – Concerning the use of express toll lanes in the eastside corridor, Washington State Legislature, 2011-12 Legislative Session, Effective date July 22, 2011, at <https://app.leg.wa.gov/bills/summary?BillNumber=1382&Year=2011>.

benefit all users of the highway, both in the toll lanes and those in the regular lanes. Instead, congestion in the area has gotten worse.

Several performance measures were created by lawmakers to measure the success or failure of the toll lane system. Two measures in particular had to be met in order for the tolls to remain in place; first, the toll lanes must maintain travel speeds of 45 miles per hour at least 90 percent of the time during peak periods, and second, they must generate sufficient revenue to pay for operating costs.

The Washington State Department of Transportation (WSDOT) and lawmakers gained the votes needed to create the tolling system based on the statutory promise that “If, after two years of operation of the express toll lanes on Interstate 405 performance measures...were not being met, the express toll lanes project [would be] terminated as soon as practicable.” The lanes would then be returned to the traveling public as free general-purpose lanes open to all.

In September 2015, WSDOT began its two-year Express Toll Lanes (ETLs) experiment. While state officials say they are meeting the revenue requirement, they admit they have failed to meet the federal and state requirements for speed reliability.⁴

The two-year trial program ended in September 2017. WSDOT officials report the toll lanes failed to meet both standards required by law (the tolls generated sufficient revenue but did not maintain target speeds), yet they continue to charge drivers to use the lanes.

Now WSDOT is seeking to expand the failing toll system and has requested authorization from the Legislature to do so. The two new toll authorization bills that are moving through the legislative process – Senate Bill 5825 and its companion, House Bill 1899 – would not only authorize tolls on I-405, SR-167, and SR 509 – but also nullify the

important speed performance metric, making the toll lanes permanent.

Text of HB 1899 and SB 5825

The legislation would make the following changes.

First, the bills would combine the I-405 and SR-167 toll facilities, redefining the corridor in a new account with a new name – the Interstate 405 and State Route Number 167 Express Toll Lanes Operations Account. The bills would authorize tolls from Lynnwood to Tukwila along I-405, and from SR-167 in the north end to SR 512 in the south end. They would also designate the Puget Sound Gateway as an eligible toll facility (part of SR 167 and SR 509).

Second, the bills would shift toll revenue in this corridor from the 18th amendment-protected Motor Vehicle Fund (MVF) to the general state treasury, allowing lawmakers to spend money taken from drivers on non-highway purposes. While lawmakers directed SR 167 toll revenue outside of the MVF since tolling was first initiated on the highway in 2008, I-405 toll revenue is currently deposited into the MVF.

This change would mostly affect I-405 toll revenue, removing the protection for drivers that the MVF inherently provides by ensuring their toll money is spent on projects that provide a direct benefit to drivers. Tolls collected in the Puget Sound Gateway toll facility would also go into an account outside of the MVF.

Third, the bills would remove the state requirement, which matches a federal requirement, that toll lanes must operate at 45 miles per hour at least 90 percent of the time. The speed metric is mentioned twice in statute, and this legislation modifies both instances.

In the first mention, the speed metric would be removed entirely and replaced with the lower standard of “the most efficient movement of traffic.” In the second mention, the standard is weakened by language added to allow an “alternate metric determined by the department in conjunction with the Federal Highway Administration [FHWA].”

⁴ “I-405 Express Toll Lanes: 36 Months of Operations, October 2015 – October 2018,” Washington State Department of Transportation, December 12, 2018, at <https://www.wsdot.wa.gov/sites/default/files/2018/12/27/Toll-405-ETL-36-Month-Report-FINAL.pdf>.

Policy Analysis

These two bills represent an attempt to deceive the public because they break the promises lawmakers made when they took away two general-travel lanes and imposed tolls on I-405.

First, the Legislature committed to providing the public general-purpose lanes but then took the lanes away and directed that they be tolled. Then, the Legislature promised that tolls would be terminated if the tolled lanes did not meet both the revenue and speed requirements in state law. After three years of not meeting the required speed standard, state officials continued to impose tolls. Now, this legislation seeks to make those tolls permanent by lowering the promised standard, even though the toll lanes fail to move people in a reliable and fair way.

Removing the speed requirement

Removing the speed requirement which was used to justify the need for the project in the first place, suggests that transportation officials and lawmakers know the standard they set cannot be met. In 2015, Washington State Transportation Commission (WSTC) members said, “In order to conform to standards, we need to be able to change the carpool definition to three or more people all of the time or manage the lanes to...maintain the 45 miles per hour speed objective.”⁵

The former head of WSDOT, who implemented the toll lanes, said federal mandates were forcing her to impose tolls on I-405 drivers: “Well, in the HOV lanes, the federal government does have performance standards that we need to continuously meet, and that is 45 miles per hour, 90 percent of the

time. This is actually why we are even moving in that direction.”⁶

Weakening and replacing the metric with “the most efficient movement of traffic” is an unreliable and subjective standard that is subject to ideology and political whims.

Further, WSDOT officials argue they do not need to meet both revenue and speed metrics in order for them to keep the tolls in place. Specifically, the Attorney General’s office, in a letter to the Legislature, claimed officials only need to meet either the speed or revenue requirement to keep the lanes open (or fail both to shut down).

Yet, introducing bills that seek to change statute shows that officials know that their interpretation of state law in favor of tolls is on shaky ground.

Lastly, adding language that allows a weaker standard to be used that is determined by the FHWA makes the requirement optional. An optional requirement is a meaningless requirement. Reporting speed performance to the Legislature while planning to ignore a hard speed metric nullifies the commitment that officials made to the public that the restricted toll lanes would perform as promised or be shut down. Additionally, making the requirement optional allows WSDOT to keep the toll lanes in place permanently, as officials would no longer have to meet a standard that threatens termination of the tolls.

WSDOT officials defend this change by arguing that “across the country, HOV and express toll lanes in urban areas are not achieving the 45 mph/90 percent of the time metric, and other metrics may be used in the future.”⁷ However, WSDOT officials must know that changing how failing toll lanes are measured will not produce more reliable trips on the ground. WSDOT officials are basically

5 “I-405 Express Toll Lanes Public Meetings: Answers to questions posed by the public during the 2015 public input process,” Washington State Transportation Commission, February 3, 2015, at http://wstc.wa.gov/HighwayTolling/documents/2015_0219_BellevueQuestions_000.pdf.

6 “Federal regulations allow state officials to end unpopular tolls on I-405,” by Bob Pishue, Blog, Washington Policy Center, November 11, 2015, at <https://www.washingtonpolicy.org/publications/detail/federal-regulations-allow-state-officials-to-end-unpopular-tolls-on-i-405>.

7 “Shifting goal posts for I-405,” by TJ Martinell, The Lens, February 6, 2019, at <https://thelens.news/2019/02/06/shifting-goalposts-for-i-405-tolling/>.

arguing “other people are failing, so it’s okay for us to fail too.” This justification is absurd and dishonest.

Removing protection for drivers under the 18th Amendment

Diverting toll revenue from the 18th amendment-protected MVF to the general state treasury would allow the money to be spent on things like mass transit or transit-oriented development, removing a key protection for drivers. The MVF protects drivers by ensuring their money is spent on highway projects that provide a direct benefit to them and serves the interest of the general public.

In other words, not only are WSDOT officials and lawmakers seeking to expand a failing toll system, and make it permanent, but they are also hoping to gain the authority to use the toll money however they want throughout the corridor.

Conclusion

Both SB 5825 and HB 1899 represent policy that seeks to protect WSDOT from criticism, preserve toll revenue, and divert public money away from promised benefits rather than provide reliable, fast trips to working families.

The state continues to profit from toll revenue and uses revenue generation as a justification for keeping toll lanes in place, despite their failure to operate at reasonable, federally-mandated speeds. Officials should reconsider this approach to tolling policy and review thoughtful alternatives that respond sincerely to public need – alternatives that increase travel choices for all drivers, both those who can and cannot afford to pay tolls every day.

Taking a step back from this legislation to evaluate legitimate alternatives, such as a general-purpose lane alternative, would reassure the public that increased mobility matters and government promises are not meaningless.

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