

Lawmakers should limit the Governor's fund transfer authority

By Mariya Frost, Director, Coles Center for Transportation

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Key Findings

1. **Washington state statute allows WSDOT to make administrative transfers between transportation projects on a legislatively approved project list less than \$250,000 or 10 percent of the total project, whichever is less. Beyond this amount, transfers must be approved by the Governor's Office of Financial Management (OFM).**
2. **Between 2011 and 2019, officials shifted approximately \$290 million between transportation projects, the majority of it approved by OFM. However, in 2019, the Governor decided to use fund transfer authority to shift \$149 million to fish passage barrier replacement, on top of the \$100 million increase the legislature had already appropriated.**
3. **The Governor's fund transfer in 2019 represents a significant 52 percent of the total \$290 million in transfers that have taken place since 2011.**
4. **This action of increasing funding beyond what the legislature approved for culverts for the 2019-21 represented a major shift from how fund transfer authority was intended to be used. It was rightly criticized by lawmakers as a circumvention of legislative authority.**
5. **The Governor's fund transfer did not comply with the intent and historical use of Section 601 fund transfer authority.**
6. **Lawmakers can adopt a range of policy solutions, from various limitations to the complete elimination of fund transfer authority.**
7. **Lawmakers should examine, clarify and limit the fund transfer statute to prevent further abuse by the executive branch.**

Introduction

Until 2005, the Washington State Transportation Commission (WSTC) functioned as the board of directors that oversaw Washington State Department of Transportation (WSDOT) operations, as well as the appointment of the Transportation Secretary. The responsibilities of the Commission also included (and still include) statewide transportation planning, serving as the state's tolling authority, and setting fares for state ferries.

The Commission was also in charge of authorizing spending adjustments that WSDOT needed to make between projects, called fund transfers. The legislature's purpose in granting fund transfer authority was to help WSDOT officials deliver transportation projects more efficiently during interim, moving money from "donor" projects that are funded in excess of what they need in the current biennium, or which are experiencing expenditure delays, to projects that need additional funds for completion.

In 2005, the legislature passed Senate Bill 5513, which made WSDOT a cabinet agency under the authority of the Governor rather than the Commission. A year later, in 2006, the legislature shifted the Commission's authority to approve fund transfers, moving it over to the Office of Financial Management (OFM).

Fund transfer language has been routinely adjusted over the years. It can be found under Section 601 of the transportation budget (formerly Section 603). As currently written, state statute allows WSDOT to make administrative transfers of less than \$250,000 or 10 percent of the total project, whichever is less, without approval from OFM. Beyond that level, transfers must be approved by OFM.

Transfers can only be made within a specific fund source and between transportation projects on a legislatively

Project(s) providing additional cash flow (\$ Millions)	CWA	TPA	Total	Description
SR 520 Seattle Corridor Improvements - West End (M00400R)	70	-	70	Reappropriation of under expenditures in 2017-19 provides cash flow in excess of what is needed in 2019-21.
I-5 JBLM Corridor Improvements (M00100R)	30	-	30	Reappropriation of under expenditures in 2017-19 provides cash flow in excess of what is needed in 2019-21.
Total	100	-	100	

Project(s) providing additional cash flow (\$ Thousands)	CWA	TPA	Total	Description
SR 520 Seattle Corridor Improvements - West End (M00400R)	20,000	-	20,000	Reappropriation of under expenditures in 2017-19 provides cash flow in excess of what is needed in 2019-21.
US-12 Walla Walla Corridor Improvements (T20900R)	20,000	-	20,000	Reappropriation of under expenditures in 2017-19 provides cash flow in excess of what is needed in 2019-21.
I-5 JBLM Corridor Improvements (M00100R)	9,037	-	9,037	Reappropriation of under expenditures in 2017-19 provides cash flow in excess of what is needed in 2019-21.
Total	49,037	-	49,037	

approved project list. The money cannot be used to pay for increases in the scope of a project, or to fund projects that are not on the project list. Further, OFM has to determine that the transfer will not have a negative impact on the completion of a project the legislature has approved and promised to the public. Transfers cannot occur during the legislative session, and they must be reported quarterly to the director of OFM and the chairs of the House and Senate transportation committees.

State statute also requires that before a fund transfer is approved, OFM staff need to work with legislative staff in the House and Senate transportation committees to review the transfers and address any concerns that are raised. WSDOT officials are to receive OFM's decision within 10 days of submitting their request for the transfer.

Fund transfer authority abused in 2019

The Department of Transportation and the Governor's office have largely used fund transfer authority as intended. Between 2011 and 2019, approximately \$290 million was shifted among projects, the majority of it approved by OFM.

In 2019, however, the Governor decided to use fund transfer authority to shift \$149 million for fish passage barrier replacement, on top of the \$100 million increase the legislature had already appropriated. Since he wanted to reach a total of \$275 million, the legislature appropriated an additional \$26

million in 2020. The Governor's fund transfer in 2019 represents a significant 52 percent of the total \$290 million in transfers that have taken place since 2011.

As outlined in the fund transfer letters, the tables above provide a breakdown showing which Connecting Washington "donor" road projects the Governor took money from to transfer to fish passage barrier removal. They include a \$90 million cut from State Route 520 corridor improvements, a \$20 million cut from US-12 Walla Walla corridor improvements, and a \$39 million cut from Joint Base Lewis McChord corridor improvements.

In the tables on page three are the corresponding descriptions offered for where the money would be deposited and why.

This action of increasing funding beyond what the legislature approved for fish-passage barrier removal for the 2019-21 budget represented a major shift in how fund transfer authority was intended to be used. Both chairmen and ranking members of the House and Senate transportation committees sent a letter on September 27, 2019 asking the Governor to "stop the proposed reallocation" and "engage in a more productive path."¹

In their letter, the lawmakers said the flexibility of Section 601 was intended to be

¹ Letter from Senate and House Transportation Committee chairs and ranking members to Governor Jay Inslee, September 27, 2019, at <https://www.washingtonpolicy.org/library/docLib/Culverts-response-4corners-27sept2019.pdf>.

Project(s) requiring additional cash flow funding (\$ Millions)	CWA	TPA	Total	Description
Fish Passage Barrier (OBI4001)	100	0	100	To fund the design work that serves as the foundation to deliver the fish barrier replacement program and meet the injunction requirements. This funding mechanism partially fills the gap, between \$100 million of appropriation provided and the \$275 million need. At the Governors direction, we are accelerating the removal of fish barriers using flexibility provided by Legislature in the appropriation bill. In doing so we are not exceeding the funding available in the CW Revenue Package or the total CW contribution for fish barrier removals.
Total	100	0	100	

Project(s) requiring additional funding (\$ Thousands)	CWA	TPA	Total	Description
Fish Passage Barrier (OBI4001)	49,037	-	49,037	To fund the design work that serves as the foundation to deliver the fish barrier replacement program and meet the injunction requirements. This funding mechanism fills the gap, between \$100 million of appropriation provided and the \$275 million need. At the Governors direction, we are accelerating the removal of fish barriers using flexibility provided by Legislature in the appropriation bill. In doing so we are not exceeding the funding available in the CW Revenue Package or the total CW contribution for fish barrier removals.
Total	49,037	0	49,037	

a “limited authority.” The Governor’s transfer diverged in “both the prior use and intent of Section 601 language” by depending “on other projects in the future slowing and/or stalling... to cover the proposed transfer off of projects in the 17-19 biennium.” In other words, the money was transferred from one fiscal biennium to another.

Further, the transferred money did not come from project savings, but from “money that was not spent in 17-19, but that will be spent in the future.” So, that money would have to be replaced. Fund transfers have never been used to increase funding beyond legislatively approved levels. Lawmakers rightly characterized this action as a circumvention of the legislature’s authority.

They also noted that transfers typically occur between specific transportation projects on a project list. The Governor’s transfer was unusual in that it took money from a specific project and moved it to a “programmatic spending bin” – the fish culverts “bucket” of projects.

WSDOT asserts that the Governor’s transfer was appropriate because it did not exceed what the legislature approved for culvert funding in the 16-year Connecting Washington Revenue Package, which covers

several biennia and identifies \$300 million for fish passage barriers.

Policy recommendations

The Governor’s fund transfer did not comply with the intent and historical use of Section 601 fund transfer authority. The legislature should examine, clarify and limit the statute to prevent future abuse by the executive branch.

Lawmakers can adopt a range of solutions, from various limitations to the complete elimination of the Governor and/or WSDOT’s fund transfer authority. Lawmakers can consider enacting the following reforms to Section 601 fund transfer authority:

- In addition to OFM working with legislative staff on House and Senate transportation committees to address concerns about proposed fund transfers, lawmakers should require that transportation chairs and ranking members in both the House and Senate actually sign off on the transfers.
- Lawmakers can require a public meeting or forum where proposed fund transfers can be discussed and public comments can be submitted by concerned groups

and people from the affected communities. One option would be to allow the Washington State Transportation Commission to again oversee and review fund transfers as they did in the past. Proposed fund transfers and any action would take place during Commission public meetings, which would involve legislators and local jurisdictions that may be impacted by the transfer and any changes it requires.

- Limit the administrative fund transfer authority of WSDOT or OFM. Currently, WSDOT can make transfers without approval as long as they are under \$250,000. OFM can approve any amount beyond \$250,000. Adding a cap to OFM's transfer authority would be most meaningful in preventing substantial transfers of funds that deserve more adequate legislator input, public debate and sign-off.
- Clarify and strengthen language in Section 601 to ensure fund transfers do not exceed a biennial appropriation, and that transfers must occur between one identified project to another identified project.
- Eliminate fund transfer authority altogether, requiring WSDOT to make transfers during legislative sessions only.
- Provide funding for the Joint Legislative Audit and Review Committee (JLARC) to study the impacts of limiting or getting rid of fund transfers, as well as explore options that include lawmaker sign-off or reverting to the 2005 model where the Commission vetted fund transfers before they were approved.

Mariya Frost is the Director of the Coles Center for Transportation at Washington Policy Center.

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Conclusion

By enacting these practical reforms, lawmakers can protect the power of the purse which the public has entrusted them with, and ensure that needed transportation infrastructure is delivered to the public as promised.