

SB 5444, to impose a mileage tax on owners of electric and hybrid vehicles

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Key Facts

1. **Senate Bill 5444 would require the Washington State Transportation Commission (WSTC) and state Department of Licensing (DOL) to create a plan for implementing a Road Usage Charge (RUC) on electric and hybrid vehicles by December 1, 2022.**
2. **The legislation is premature given the artificial cost-drivers officials impose on transportation projects. These should be eliminated before imposing a new tax on the public.**
3. **Owners of electric vehicles pay \$150 each year as a gas tax offset. If lawmakers feel that is too low, they should consider raising it, rather than imposing a new and administratively costly tax to replace it.**
4. **Privacy protection is a critical element of the RUC, so any potential data vulnerability should be corrected before imposing a RUC system.**
5. **Rather than rushing implementation of a RUC despite unresolved privacy concerns, a better approach would be to first allow the Commission to complete its federally-funded research over the next few years and report concrete findings back to the legislature.**
6. **Any per-mile charge should be protected under the state constitution's 18th Amendment, which protects money for highway purposes only.**
7. **To increase public trust, lawmakers should reduce artificial cost-drivers in transportation, and take preliminary steps to ensure any per-mile charge directly benefits and protects the drivers who pay it.**

Introduction

The Washington State Transportation Commission (WSTC) has led the effort to study, test, and report back to the legislature on the feasibility of imposing a Road Usage Charge (RUC) in Washington State. If implemented, a RUC would require drivers to pay a tax for every mile they drive, rather than paying a tax on every gallon of gas they purchase at the pump.

The year-long Road Usage Charge (RUC) Pilot Project was completed in 2018. I was one of 2,000 volunteer participants and submitted my mileage information through a GPS-enabled transponder that was installed in my car, as well as an odometer reading. The purpose of the pilot was to explore the feasibility of getting the public to accept paying a per-mile tax instead of a per-gallon gas tax. The tested rate was 2.4 cents per mile, based on the average driver getting 20 miles per gallon.

The WSTC produced a final report on the proposal and voted in support of 16 policy recommendations that were sent to the legislature for consideration.¹ One recommendation was that expenditures of RUC revenue be protected under the state constitution's 18th Amendment, restricting spending to highway purposes only. Another recommendation was that there be a "start-up phase" that includes "a limited number of vehicles to facilitate further testing and system improvements."² Specifically, the Commission advised that such a phase could include electric and hybrid vehicles, as well as state-owned vehicles.

During the 2020 legislative session, SB 6586 was introduced, but it did not pass

1 "Road Usage Charge Assessment Final Report," Washington State Transportation Commission, January 13, 2020, at <https://waroadusagecharge.org/final-report/>.
2 Ibid.

through the legislature. During the 2021 legislative session, lawmakers introduced SB 5444, a second attempt at RUC implementation, with modified provisions. This legislative memo reviews this latest bill and analyzes whether it would represent good policy.³

Text of SB 5444

SB 5444 would require the WSTC and state Department of Licensing (DOL) to create a plan for implementing a per-mile charge on electric and hybrid vehicles by December 1, 2022. The plan would include mileage reporting options, recommended rates and collection methods, options for working with other states or countries in developing and administering the RUC, options for payment plans as well as offsets and rebates, a governance structure and transition plan with the Department of Licensing (DOL) as the lead agency that would operate and administer the RUC, and recommendations relating to privacy protection.

The bill directs that by July 1, 2026, electric and hybrid vehicles would pay a RUC of two cents per mile. In June of 2029, that rate would increase to two and one-half cents per mile. This would replace the \$150 electric vehicle fee and the \$75 transportation electrification fee that EV owners pay now when they renew vehicle registrations., as those fees would be repealed that same year. Drivers who wish to pay a RUC sooner could do so through an early adoption program that would begin in 2025, and could have their EV fees waived.

Money collected from a RUC would be deposited into the Motor Vehicle Fund and used for preservation and maintenance.

Policy analysis

We have several concerns with this proposal. It is premature given the lack of discussion about reducing artificial cost drivers in state transportation construction.

³ SB 5444, implementing a per mile charge on electric and hybrid vehicles,” Washington State Legislature, introduced February 10, 2021, at <https://apps.leg.wa.gov/billssummary/?BillNumber=5444&Year=2021&Initiative=false>.

It does not consider possible adjustments that can be made to the existing gas tax offset paid by drivers of electric vehicles. It makes several early privacy assurances, including implementing and maintaining “reasonable security procedures and practices in order to protect per mile information from unauthorized access, destruction, use, modification or disclosure.” Lastly, it deposits money into the state Motor Vehicle Fund rather than requiring legislators to provide stronger constitutional protection of revenues.

Recommendation: Policymakers should reduce artificial cost drivers in transportation projects before imposing a new tax

SB 5444 is premature given the lack of progress in reducing artificial cost drivers that lawmakers impose on transportation projects. This problem should be addressed before lawmakers impose a new tax on the public.

Government officials often demand efficiency, compliance, and accountability from taxpayers, yet do not hold themselves to the same standard. As a result, taxpayers are being asked to financially “keep pace” with a broken, artificially expensive, transportation funding system.

Statewide and municipal data reflects skyrocketing costs. Some officials argue that indexing taxes to inflation would allow revenue to keep pace with the rising costs of construction, yet costs are soaring far beyond inflation. Looking at just the City of Seattle’s construction cost index (CCI), between December 1995 and July 2015, construction costs increased by 75.5 percent.

Artificial costs result from policies created by government officials that needlessly inflate expenses on public works projects. These policies are implemented for reasons unrelated to actually building a project. Artificial cost drivers include prevailing wage rules, the state charging itself sales tax on some transportation projects, apprenticeship requirements, inefficient permitting, environmental compliance, public money diverted to art projects, and requiring mass transit to be included in highway projects (like

engineering State Route 520 to support future light rail).⁴

Eliminating artificial cost drivers and making the state's transportation dollars go farther should be the first step in tackling funding needs — not an afterthought. Adopting regulatory reforms that promote public-private partnerships, ending prevailing wage rules, streamlining inefficient permitting, and trimming environmental regulations are good places to start.

These common-sense policy reforms would help free up public money for highway purposes and traffic congestion relief, where the traveling public demands it the most.

Recommendation: Policymakers could adjust the gas tax offset already paid by EV owners instead

Owners of electric vehicles do not pay a state fuel tax, but they do pay a total of \$225 in fees each year on car tab renewals. Of that total, \$150 is intended as a gas tax offset. On average, Washington drivers pay an average of \$289 each year in state fuel tax.⁵ If lawmakers feel that the rate of \$150 is too low compared to what other drivers pay, they could consider increasing the electric vehicle fee rather than imposing a new and administratively costly tax.

It should be noted that some older plug-in hybrids have a travel range less than modern all-electric vehicles and so consume gasoline when the battery is drained. Drivers of those vehicles are still charged the full spectrum of electric vehicle fees in addition to the state fuel tax they pay. Officials at the WSTC and DOL should consider equitable, different rates for such vehicles.

Recommendation: The State Transportation Commission needs to complete its research around privacy protection

Although the Commission's research on how to protect the privacy of users' driving data has not been completed, the bill makes several privacy assurances, including implementing and maintaining "reasonable security procedures and practices in order to protect per mile information from unauthorized access, destruction, use, modification or disclosure."

Privacy protection is a critical element of the RUC, so any potential data vulnerability should be corrected before rolling out a RUC system. Protection of private data applies equally in both public and private sectors. However, if a private sector business fails to protect a consumer's privacy, the consumer can go elsewhere. When the state fails to protect data, people do not have a choice to leave or to stop paying using the very state system that failed. The recent data breach of over 1.6 million unemployment records is an example of what can happen when a state agency fails to put proper safeguards in place.⁶

The bill also provides that RUC data that is "retained beyond the period of time necessary to ensure proper mileage account payment must have all personally identifying information removed and may only be used for public purposes." Public purposes are defined as "research, testing, and information gathering that advances the safety of the motoring public and the adequate preservation, maintenance, and upkeep of public roadways." Using travel data for "public purposes" other than billing seems inappropriate. Further, this language simply assumes that removing personally identifying information eliminates

4 "Legislative Memo: How to Reduce the Cost of Highway Projects," by Bob Pishue, Washington Policy Center, February 2014, at http://www.washingtonpolicy.org/library/docLib/Pishue_-_Reduce_Artificial_Cost_Drivers.pdf.

5 "WA RUC FAQs," Washington State Road Usage Charge, 2019, at <https://waroadusagecharge.org/faqs/#customcollapse-0-4>.

6 "New WA data breach exposes personal info of 1.6 million people who applied for unemployment," by Nick Bowman, MYNorthwest, February 2, 2021, at https://mynorthwest.com/2531481/data-breach-washington-state-auditor-unemployment/?fbclid=IwAR0G_eBthU9AIJhuX-ek3qkKa0Mg0EQ3Xoy8Bfve8eaMJWp_RVkc0zGqnGo.

the possibility of revealing driver identities using only location information.⁷

Rather than rushing implementation of a RUC despite these unresolved privacy concerns, a better approach would be to first allow the Commission to complete its federally-funded research over the next few years and report concrete findings back to the legislature.

Recommendation: Any per-mile charge should be constitutionally protected under the 18th Amendment

SB 5444 would direct revenue from per-mile charges to the Motor Vehicle Fund (MVF). Though money in the fund is protected for highway purposes only, future legislatures could easily replace it with a different account and divert money to non-highway projects. For the money to be protected with the higher level of certainty as the gas tax is, it is critical that any per-mile charge explicitly be protected under the state constitution's 18th Amendment, which protects public money for highway purposes only.

Conclusion

As transportation technology advances, an honest public conversation about replacing the gas tax is reasonable and important. To increase the public trust that will be required for this policy shift, policymakers should take meaningful steps to reduce artificial cost drivers in transportation, allow time for privacy concerns to be resolved by the Commission, and provide an 18th amendment guarantee to protect drivers and ensure mileage tax dollars are invested into the roads they depend on.

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Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

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⁷ "ACLU files lawsuit targeting GPS tracking and its risks to individual privacy," by Mark Harmsworth and Mariya Frost, Washington Policy Center, June 9, 2020, at <https://www.washingtonpolicy.org/publications/detail/aclu-files-lawsuit-targeting-gps-tracking-and-its-risks-to-individual-privacy>.