

WSDOT has spent over \$234 million in constitutionally protected road funds to pay for transit, bike and pedestrian infrastructure

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Key Findings

1. Since 2015, WSDOT has spent at least \$234.9 million of exclusively 18th amendment protected Connecting Washington funds on project elements for transit, bike and pedestrian use.
2. In many places, it makes sense and is important to consider all transportation modes in the construction or improvement of road infrastructure, including the ability of bicyclists and pedestrians to cross bridges safely.
3. However, five million state drivers cannot be expected to pay for these improvements for modes that do not support themselves or contribute their fair share to pay for such infrastructure.
4. State taxpayers pay about \$3.3 billion per year for transportation. A portion of that revenue is protected under the 18th amendment for functional and safe roads and bridges, which serve the vast majority of the traveling public.
5. Rather than stretching the law to be able to use 18th amendment funds on non-highway projects, WSDOT should work with lawmakers to find appropriate user fees to ensure roads are not short-changed.

Introduction

In the 2015 Connecting Washington transportation package, lawmakers included a provision that requires the Washington State Department of Transportation (WSDOT) to “report annually on the amounts expended to benefit transit, bicycle, or pedestrian elements within Connecting Washington projects.”

Though transit, bike and pedestrian projects are funded largely by driver fees deposited into the state’s multimodal account, the legislature wanted to know what the cost was to implement any multimodal elements as a part of larger road infrastructure projects – spending that might otherwise be overlooked.

Spending highway dollars on non-highway projects

Since 2015, WSDOT has spent at least \$234.9 million of exclusively 18th amendment protected Connecting Washington funds on project elements for transit, bike and pedestrian use. The state constitution’s 18th amendment restricts the use of state gas tax and vehicle license fees deposited into the Motor Vehicle Account for highway spending only.¹ The policy is based on a promise lawmakers made to the traveling public that the gas taxes they pay would be dedicated to supporting highways, not be used to fund other projects.

All of the available reports are listed below, with the total calculated spending on those projects that were funded entirely with 18th amendment protected funds. The amounts are higher if one counts projects that were fully or partially funded from other accounts.

¹ 18th Amendment to the Washington State Constitution, Washington State Legislature, at https://leg.wa.gov/JTC/trm/Documents/TRM_1315Update/6%20-%2018th%20Amendment.pdf.

- 2015² – \$0
- 2016³ - \$25,577
- 2017⁴ - \$14,222,142
- 2018⁵ – \$18,901,170
- 2019⁶ - \$23,718,559
- 2020⁷ - \$71,667,574
- 2021⁸ - \$106,372,942

Some of this funding could be double counting – road improvements that benefit transit may also help drivers. The most recent report shows a near \$50 million spending on transit in the I-405 Renton to Lynnwood corridor widening and a \$16 million spending on transit in the SR 520 Seattle west end corridor improvements for FY 2021.

Then there are projects that include recreational trails (Mountain to Sound Greenway, Interurban Trail), and the addition of bike and pedestrian paths on roads and bridges.

Policy analysis

Of course, in many places, it makes sense and is important to consider all transportation modes in the construction or improvement of road infrastructure, including the ability of bicyclists and pedestrians to cross bridges safely. Some of the projects listed in the reports are meaningful and have community support.

However, five million state drivers cannot be expected to pay for these improvements for modes that do not support themselves or contribute their fair share to pay for such infrastructure. For every bike path or trail funded with scarce highway dollars, there is an unsafe road that doesn't get fixed.

It is unsurprising to see bike and pedestrian improvements wedged into highway projects. When WSDOT Secretary Millar was the vice president of Smart Growth America, he helped

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- 2 Transit, Bicycle and Pedestrian Report (2015), Washington State Department of Transportation, November 10, 2015, at https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=Section502TransitBicyclePedestrianReport2015_9b069bdf-0bac-405c-b605-bc331df4187d.pdf.
 - 3 Transit, Bicycle and Pedestrian Report (2016), Washington State Department of Transportation, November 14, 2016, at https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=TransitBikePedExpenditures_2016_46865b6b-ce57-43a3-866f-c12be9999015.pdf.
 - 4 Transit, Bicycle and Pedestrian Report (2017), Washington State Department of Transportation, November 15, 2017, at https://wsdot.wa.gov/publications/fulltext/LegReports/17-19/TransitBikePedExpenditures_2017.pdf.
 - 5 Transit, Bicycle and Pedestrian Report (2018), Washington State Department of Transportation, November 1, 2018, at https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=TransitBikePedExpenditures_2018_2e90501b-f5a8-4ff5-8e97-eb0ac65a3d20.pdf.
 - 6 Transit, Bicycle and Pedestrian Report (2019), Washington State Department of Transportation, November 15, 2019, at https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=Transit-Bike-Ped-Expenditures-2019_87374e9f-ef0e-4416-98d7-8ffbb34e6c09.pdf.
 - 7 Transit, Bicycle and Pedestrian Report (2020), Washington State Department of Transportation, November 15, 2020, at https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=Transit-Bike-Ped-Expenditures-2020_f9c1bb65-ca32-405e-bda7-4a6d714bd271.pdf.
 - 8 Transit, Bicycle and Pedestrian Report (2021), Washington State Department of Transportation, November 5, 2021, at <https://wsdot.wa.gov/sites/default/files/2021-11/Transit-Bike-Ped-Expenditures-FY2021.pdf>.

author a publication called *The Innovative DOT*, which specifically advocated this type of scheme.⁹

Examining how to secure funding for transit and “active transportation” (i.e. biking and walking) projects in states that have protected revenue like Washington, the publication recommended states “expand the definition of ‘roads and highways.’”

Expand the definition of “roads and highways.” If changing earmarking language is not feasible, expanding the definition of “roads and highways” can allow states more flexibility with fund allocation. For example, as a result of state-level Complete Streets legislation, Wisconsin’s DOT provided guidance in Chapter Trans 75 that requires roads built with state and federal funds to have amenities for bike, pedestrian, and transit users.⁸ Communities now must consider all road users when building new roads, including motorized, non-motorized, and transit. This means that bike lanes, sidewalks, wide paved shoulders, and/or transit pull-outs may be included in the definition of a road, so separate funding is not necessary.

Another recommendation is to “identify openings in modal dedication language.” What this actually means is to look for loopholes in the law.

Identify openings in modal dedication language. If amending restrictive statutory or constitutional language is politically unfeasible, there are still opportunities for transportation revenue flexibility. Oregon has separated the tax paid on gas for non-road machines (such as lawn mowers, chainsaws, and leaf blowers) from the gas tax paid by motorists and sets aside this money, the “Lawnmower Fund,” specifically for non-road transportation projects. As defined in ORS 184.642, this fund consists of taxes on fuel for non-road vehicles and machines, and therefore is not subject to the constitutional restrictions that apply to the state’s highway fund.⁹ This nuance complies with state law, which mandates that revenues generated from roads must be used exclusively for road projects. While the amount collected in the Lawnmower Fund is relatively small—approximately \$5 million annually, as of 2009, compared to \$328 million in the Highway Fund—it still provides some funding that the DOT may use for transportation projects that go beyond roads and highways.¹⁰

Looking for loopholes in a law that protects driver money is an underhanded approach to obtaining funding for other public projects. No one should trust their money to a person who looks for ways to work around the law. The same applies to WSDOT. It is not sustainable or fair.

State taxpayers pay about \$3.3 billion per year for transportation. A portion of that revenue is protected under the 18th amendment for functional and safe roads and bridges, which serve the vast majority of the traveling public. Rather than stretching the law to be able to use 18th amendment funds on non-highway projects, WSDOT should work with lawmakers to find appropriate user fees to ensure roads are not short-changed.

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Conclusion

Transit agencies and bicyclists should pay their fair share for infrastructure they use and from which they benefit. Drivers should not disproportionately pay for these modes, especially as agency officials support policies that make driving (and the money it generates) more difficult.

The next time WSDOT leadership complains about a lack of funding for road maintenance (or transit boosters complain they don’t get enough money from the state), the legislature should point to WSDOT’s use of finite road dollars to spend on other modes. Then, lawmakers should work to develop a more fair and user-based approach to funding non-highway elements in transportation projects.

⁹ “The Innovative DOT: A handbook of policy and practice,” Smart Growth America, 2012, at <https://smartgrowthamerica.org/wp-content/uploads/2016/08/the-innovative-dot.pdf>.