

HB 2132 would use tolls to increase bond debt and would make traffic congestion worse

By Hon. Mark Harmsworth, WPC Research Fellow

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Key findings

1. **Within 36 months, drivers have paid \$74.9 million in tolls on Interstate 405, or \$49.9 million after operating expenses, which has far exceeded WSDOT officials' expectations.**
2. **Public officials want to borrow money through long-term bond financing based on future I-405 and SR-167 toll revenue, issuing up to \$1.5 billion of general obligation bonds.**
3. **Project costs for the required I-405 corridor improvements are estimated to be \$100 million.¹**
4. **The I-405 toll lanes are failing the speed performance requirement of 45 mph, 90 percent of the time.**
5. **Bonding against toll revenue would create a perverse incentive for WSDOT officials to not expand I-405 to reduce traffic congestion, as this would potentially reduce toll revenue needed to repay the bonds.**

Introduction

House Bill 2132 would make radical changes in the way state officials spend the toll money they charge drivers who use restricted lanes of Interstate 405. Officials initially promised they would make the new travel lanes available to the general public. Then they imposed restrictive tolls on the lanes instead. Now, with HB 2132, they want to cancel speed performance standards that protect the public and take on more long-term debt by bonding toll revenue.

This Legislative Memo describes how the bill would weaken performance standards

and increase public borrowing. This paper also provides an analysis explaining why this proposal represents bad transportation policy that would erode public trust and likely make traffic congestion worse for travelers on I-405.

Background

In 2002, state officials announced their Interstate 405 Master Plan that included approximately 150 roadway improvements to provide congestion relief for the public and to increase travel 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.² In addition, state lawmakers converted the existing High Occupancy Vehicle (HOV) lanes into toll lanes. State officials said their tolling scheme would 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 had to both 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

1 "Eastside Transportation Associated 25-Year State Highway Needs Project List," by Vic Bishop, Eastside Transportation Association, February 2019.

2 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/billsummary?BillNumber=1382&Year=2011>.

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.³

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 enough revenue but did not maintain target speeds), yet they continue to charge drivers to use the lanes.

Now WSDOT officials are seeking to expand and make permanent their failing toll system and have asked the Legislature to let them do so. In addition, public officials want to borrow money through long-term bond financing based on future I-405 toll revenue.

Text of HB 2132

House Bill 2132 would let WSDOT officials bond the toll revenue collected from drivers on the I-405 corridor. Additionally, the bill would combine I-167 and I-405 into one transportation facility and would cancel a key speed performance standard from statute.

In sum, lawmakers would give WSDOT officials more power and less public accountability.

First, HB 2132 authorizes up to \$1.5 billion of general obligation bonds for I-405 and SR-167, which would be paid from toll money and gas taxes paid by drivers.

Second, the bill combines 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 bill would impose 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).

Third, the bill 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 standard 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 weaker standard of “the most efficient movement of traffic.” In the second mention, the standard is canceled by language added to allow an “alternate metric determined by the department in conjunction with the Federal Highway Administration [FHWA].”

Policy analysis

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

³ “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>.

miles per hour speed objective.⁴

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.⁵

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

WSDOT continues to ignore the promised speed performance requirement, citing an unofficial opinion from the Attorney General’s office on the definition of the statute of the performance metrics. The Attorney General, 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).⁶

It is obvious from the original toll authorization,⁷ and from a recent University of Minnesota evaluation of the toll lanes, that the speed criteria would be “one of two performance measures that the facility must meet or else state law requires termination of

the ETLs.”⁸ Failing either of these standards would require the system to be shut down.⁹

Bonding toll revenue creates a policy conflict

Tolls can be a way to expand highways by adding new lanes to provide congestion relief, yet the revenue taken from tolls on I-405 could be used by officials as a reason not to expand I-405. The money they get from drivers using toll lanes provides state officials with a strong deterrent against providing general congestion relief.

In addition, using tolls for borrowing would create a financial obligation that may prevent officials from ever providing general congestion relief. In tying toll money to bonds, lawmakers would have an incentive to keep general purpose lanes jammed with traffic, so more drivers pay to drive in the toll lanes. The state’s tolling profits would be collected in addition to gas taxes drivers already pay.

Thus, bonding the toll revenue sets up a conflict between toll lane performance targets and honoring bond repayments. This obvious conflict, putting toll revenue in jeopardy and subsequently the bond repayment, requires the state to guarantee the bond repayment from other transportation revenue and with its full faith and credit.

Commuters with fixed work schedules, daycare drop-offs and school runs do not get to choose when to drive on the freeway. They are forced to use the toll lanes since the general-purpose lanes are clogged up. The times they are on the freeway are often the peak hours and they pay the peak tolls.

4 “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.

5 “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>.

6 “AG’s office: I-405 express toll lanes don’t have to meet both requirement,” by Dori Monson Show, December 21, 2017, at <http://mynorthwest.com/852054/ag-letter-i-405-express-toll-lanes/>.

7 Revised Code of Washington 47.56.880 – Interstate 405 corridor – Tolls authorized – Eligible toll facility – Toll rate schedule – Capacity improvements – Performance measured – Violation, Washington State Legislature, 2011, at <https://app.leg.wa.gov/rcw/default.aspx?cite=47.56.880>.

8 “I-405 Traffic Data and Corridor Performance Analysis Draft Final Report,” University of Minnesota Department of Civil, Environmental, and Geo-Engineering Humphrey School of Public Affairs, December 6, 2017, at <http://leg.wa.gov/JTC/Meetings/Documents/Agendas/2017%20Agendas/Dec%202017%20Meeting/I-405DraftFinal.pdf>.

9 Arguably, the true cost of the toll lanes should be based on repaying the original capital installation costs and the maintenance and operation costs to run the system. This would drive up the toll rates still further, exasperating the problem. WSDOT omits the repayment cost of the installation from its reporting on the toll lanes.

Further, all taxpayers in the state, including those who never travel the I-405 corridor, would end up paying for any shortfall in bond repayment revenues. WSDOT would need to maintain repayment in order to protect the state's credit rating.

Additional debt service

According to the Washington State Treasurer's 2019 Debt Affordability Study,

“Washington is one of the most highly leveraged states in the country. According to Moody's and Standard and Poor's (S&P) the State ranks in the top ten nationally for 'debt per capita' (7th highest by Moody's, 6th by S&P..”)

Bonding the toll revenue reduces the state's borrowing capacity. As the state is already highly leveraged, any additional emergency or requirement of immediate expenditures would place the state in a difficult position and potentially at risk of default. Given the fact that we live in a seismically active area, this is a real risk.

As they said in committee on March 14th, 2019, WSDOT officials do not want to wait until money is available. Instead they want to borrow the money now so they can spend it sooner. While we do need infrastructure improvements, leveraging more debt is not a responsible solution.

Conclusion

WSDOT should not increase public debt and take toll money from drivers on I-405 and SR-167 to pay it back. Doing so would remove any incentive for them to reduce traffic congestion. In fact, WSDOT officials would profit when traffic gets worse. This would create a conflict between reducing traffic congestion for the traveling public and repaying bonds. This also has the potential to affect bond ratings for the state by incurring more debt, and it violates the trust the public placed in WSDOT officials when they started imposing tolls on public roads in the first place.

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