

Protecting Toll Revenue

Constitutional amendment ensures toll fees benefit motorists who pay

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In 1921, officials implemented Washington's first gas tax: one cent per gallon. With this new revenue stream, state leaders were able to build, operate, maintain and expand Washington's highway network. And as the state's transportation infrastructure needs increased, so did the tax. Today, Washington's gas tax rate is 37.5 cents per gallon.

Nationally and in Washington state, the highway system was constructed largely on the philosophy that users would pay. This user-fee theory successfully built 7,000 miles of roadway and allows Washingtonians to drive nearly 60 billion miles per year, producing industry, mobility, economic freedom and a higher quality of life for everyone.

Seventy years ago, as they often do today, politicians saw "opportunities" with a new and stable revenue stream, and they began to divert gas tax collections to programs and services not related to roads and highways.

According to the Washington State Good Roads Association (WSGRA), more than \$10 million of gas taxes was diverted to other purposes in the ten years between 1933 and 1943.¹

This gave rise to a popular, statewide effort to protect motor vehicle fuel taxes for their intended purpose. In 1944, Washington voters passed the 18th Amendment to the state constitution, which limits the use of gas tax revenue exclusively to roads and highways.

To gather support for the constitutional amendment, the WSGRA hit on the natural attractiveness of a user-fee system by stating, "Several hundred miles of good, paved, safe highway would have been built to save money in motor vehicle operation had this special motor tax money been used as it was intended. These were highways and streets we paid for, but didn't get!"²

The measure passed and since then, gas tax revenues have been restricted solely to "highway purposes."

Today and for a variety of reasons, the increase in gas tax revenues has not kept pace with the state's infrastructure needs. The Washington Transportation Commission estimates the state has up to \$200 billion in unmet, unfunded transportation projects.³

So state leaders are now looking toward another type of road-user-fee to create a supplemental funding stream, tolls.

¹ Washington State Voter's Pamphlet, Washington Secretary of State's Office, November, 1944, pg. 47, at www.sos.wa.gov/library/docs/OSOS/voterspamphlet/voterspamphlet_1944_2006_002278.pdf.

² Ibid.

³ As gasoline use drops, so does state revenue, Mike Prager, The Seattle Times, December 2010, at www.seattletimes.nwsourc.com/html/localnews/2013781974_gasolineuse28.html.

Washington motorists have plenty of modern-day experience with tolls, which have been recently implemented on the Tacoma Narrows Bridge and Highway 167. Transportation officials will also implement tolls on the Evergreen Point floating bridge across Lake Washington later this spring and a bill in Olympia proposes to implement express toll lanes on Interstate 405.

People intuitively have positive feelings in support of public programs and services funded through user fees. Roadway tolls are no exception. When tolls are used to pay for a piece of infrastructure like a bridge or highway, drivers naturally understand and generally support the added costs of performing the activity. Likewise, but to a lesser extent, when tolls are used to manage congestion and the revenue is returned to the infrastructure where it was collected, users generally agree to pay.

For the payer, tolls fund a visible product that results directly in a tangible benefit.

However, as Washington's early experience with gas taxes illustrates, the public become less acceptable when the fees are diverted to benefit other user groups. People naturally see the diversion of toll revenue as unfair.

To their credit, legislative leaders in Olympia tried to address these fairness issues in 2008 by implementing a statewide tolling policy. Among other provisions, the policy statutorily defines how toll revenue can be used. According to the law, toll revenue is limited to operating costs, debt, and any other project or improvement on the tolled facility.

However, the policy also allows toll revenue to be used for "the operations of conveyances of people or goods." This clause allows tolls, which are paid by motorists, to be used to fund an activity of a different user group, public transportation, and for the benefit of public transportation unions.

Public transportation is important, especially in dense urban areas, but it is not a highway purpose, and therefore should not be funded with vehicle-related taxes and fees, like tolls, which are paid by drivers.

In 1969, the Washington State Supreme Court ruled in *O'Connell v. Slavin*, that public transportation did not fall under the provision of "highway purposes" defined in the 18th Amendment. The Court said,

"But all of the purposes which are listed pertain to highways, roads and streets, all of which are by nature adapted and dedicated to use by operators of motor vehicles, both public and private, and none of them pertain to other modes of transportation, such as railways, waterways, or airways."⁴

The Court also reaffirmed the definition of a highway and ruled that public transportation is,

"... not a 'way' at all, but is a number of buses, trains, or other carriers each holding a number of passengers, which may travel upon the highways or may travel upon rails or water, or through the air, and which are owned and operated, either publicly or privately, for the transportation of the public. The mere fact that these vehicles may travel over the highways, or that, as the appellant points out, may relieve the highways of vehicular traffic, does not make their construction, ownership, operation, or planning a highway purpose, within the meaning of the constitutional provision."⁵

⁴ State ex rel. *O'Connell v. Slavin*, 452 P.2d 943, Washington State Supreme Court, Section 558-559, March, 1969, at http://scholar.google.com/scholar_case?case=6319778577384224560&hl=en&as_sdt=2,9&as_vis=1#[1]

⁵ *Ibid.* Section 560.

Like gas taxes, tolls are paid by drivers and in fairness should be limited to highway purposes, as defined by the 18th Amendment.

The state already cannot keep pace with funding its current and future transportation needs. Public transit is a local function with its own public tax support. Any new transportation revenue source at the state level should be used to pay for existing obligations or to expand highway capacity; it should not be diverted to new commitments, such as public transit.

Constitutionally protecting toll revenue for highway purposes ensures fair and equitable treatment for toll payers, guarantees a sensible connection between the fee charged and what it is used to pay for, and contributes financially to the state's unmet transportation obligations.

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