



# Backgrounder

## Gas Tax Revenues Only for Highway Purposes

### Key facts

- The 18th Amendment of the Washington Constitution (Article 2 § 40) was a citizen-initiated amendment that restrains government from using motor vehicle fuel tax revenues and license fee revenues for things other than highway purposes. It passed in November 1944 with 69 percent of the vote.
- The Climate Commitment Act regulates greenhouse gas emissions so it is not considered a fee for highway purposes despite its impact on motor fuel prices.
- The Legislature determines whether programs or policies are intended for highway purposes.

### The debate

Often, people will look at a new tax or fee on motor vehicle fuels or motor vehicles and ask whether the 18th Amendment<sup>i</sup> will apply. The people adopted the 18th Amendment because they didn't want taxes that the Legislature said were to build roads to be used for other things. Certain advocates continue to want drivers and motor vehicles to subsidize other public transportation programs. The Legislature has been able to put new taxes and fees on motor vehicle fuel and license fees by not making the fee or tax "for highway purposes." There is an on-going debate about whether a road usage charge (pay-by-mile or highway-user fee) should allow revenues to pay for non-highway transportation needs. This issue brief provides some historical context for people who want to better understand this topic. The arguments today are similar to those made almost a century ago.

### Historical perspective

The [Washington Good Roads Association](#) was formed back in 1899 to promote the building of roads, and was a driving force in the laws that were established in Washington related to the highway system. The state's gas tax started with 1 cent in 1921. In the 1930s people noticed across the country that gas-tax and vehicle-registration revenues were being diverted from building roads to pay for other things. As early as 1934 the Washington Good Roads Association was advocating for a constitutional amendment to protect road funding from diversion for other purposes. It took more than a decade for a constitutional amendment to pass. Amendment proponents wanted to assure that adequate funds were available to develop a wide-spread, post-war street and highway program. Schools were to continue to receive the excise tax on cars, which was not considered a special motor vehicle tax.<sup>ii</sup> In 1943, the constitutional amendment started as House Joint Resolution 4. The legislative files on this topic are not in the state archives. The 18th Constitutional Amendment was placed on the November 7, 1944 ballot and passed with 69.03 percent of the votes (358,581 yes/160,898 no).

### Court interpretations

The Washington Supreme Court in 2012 opined that nothing in the 18th Amendment indicates that any new tax similar to a gas tax would require the Legislature to use the funds for highway purposes.<sup>iii</sup> The Supreme Court's position in multiple opinions is that the Legislature may put additional taxes on motor vehicle fuel or license fees and make clear it is not used for highway purposes.<sup>iv</sup> For example, it has done so with the hazardous substance taxes.

The courts have determined that "highway purposes" means spending must directly or indirectly benefit the highway system. Such spending must contribute to safety, administration, or operation of the highway system.<sup>v</sup> In 1969, the Supreme Court made a strong statement against use of any funding that doesn't benefit the highways. They rejected the concept of taking people and putting them on busses as being a benefit to the highways.<sup>vi</sup> Furthermore, they were critical of arguments that tried to justify diversion of spending because it would benefit people or alleviate transportation problems. Instead, they said, "But courts should never allow a change in public sentiment to influence them in giving a construction to a written constitution not warranted by the intention of the founders."<sup>vii</sup> Such funding is not supposed to be used to purchase or do maintenance on any type of vehicle for public transportation.<sup>viii</sup> It is not to be used to relocate utility lines<sup>ix</sup>, nor pay for death and bodily injury judgments due to negligence of bridge tenders.<sup>x</sup>

## Key point

The way to assure that any new taxes or fees are used for highway purposes is to clearly state such in statute and to also direct funding into specific protected accounts,<sup>xi</sup> like the motor vehicle account. While a replacement of the gas tax with a highway or road user fee would likely fall within the definitions for protection under the 18th Amendment, the courts cannot be relied upon to find that such a fee is protected by the 18th Amendment, especially if the legislative enactment allows revenues from new fees or taxes to be used on other things.

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**Text:** ARTICLE 2, § 40 HIGHWAY FUNDS. All fees collected by the State of Washington as license fees for motor vehicles and all excise taxes collected by the State of Washington on the sale, distribution or use of motor vehicle fuel and all other state revenue *intended to be used for highway purposes*, shall be paid into the state treasury and placed in a special fund to be used exclusively for highway purposes. Such highway purposes shall be construed to include the following: (a) The necessary operating, engineering and legal expenses connected with the administration of public highways, county roads and city streets; (b) The construction, reconstruction, maintenance, repair, and betterment of public highways, county roads, bridges and city streets; including the cost and expense of (1) acquisition of rights-of-way, (2) installing, maintaining and operating traffic signs and signal lights, (3) policing by the state of public highways, (4) operation of movable span bridges, (5) operation of ferries which are a part of any public highway, county road, or city street; (c) The payment or refunding of any obligation of the State of Washington, or any political subdivision thereof, for which any of the revenues described in section 1 may have been legally pledged prior to the effective date of this act; (d) Refunds authorized by law for taxes paid on motor vehicle fuels; (e) The cost of collection of any revenues described in this section: *Provided*, That this section shall not be construed to include revenue from general or special taxes or excises not levied primarily for highway purposes, or apply to vehicle operator's license fees or any excise tax imposed on motor vehicles or the use thereof in lieu of a property tax thereon, or fees for certificates of ownership of motor vehicles.

<sup>ii</sup> See "On Roads Association", Anacortes American, Volume 55, No. 23, 12 October 1944, p. 1.

<sup>iii</sup> See *Auto. United Trades Org. v. State*, 175 Wn.2d 545-546 (2012).

<sup>iv</sup> See *Auto. United Trades Org. v. State*, 175 Wn.2d 546 (2012) (Stating that the hazardous substance tax does not have to be used for highway purposes because the Legislature did not restrict it for those purposes and never intended it to be in that manner); *State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 812-13 (1999) (Stating proceeds from the motor vehicle excise tax placed on vehicle registrations are not required to be put into the motor vehicle fund to be protected by the 18th Amendment).

<sup>v</sup> *Washington State Highway Commission v. O'Brien*, 83 Wn.2d 878, 882-883 (1974).

<sup>vi</sup> See *State ex rel. O'Connell v. Slavin*, 75 Wn.2d 554, 452 P.2d 943 (1969).

<sup>vii</sup> Id. At 562.

<sup>viii</sup> See *State ex rel. O'Connell v. Slavin*, 75 Wn.2d 554, 452 P.2d 943 (1969).

<sup>ix</sup> See *Washington State Highway Commission v. Pacific Northwest Bell Tel. Co.*, 59 Wn.2d 216, 367 P.2d 605 (1961).

<sup>x</sup> See *Automobile Club of Wash. v. City of Seattle*, 55 Wn.2d 161, 346 P.2d 695 (1959).

<sup>xi</sup> [State accounts](#) restricted to highway purposes:

Capital Vessel Replacement Account, [RCW 47.60.322](#)

Connecting Washington Account, [RCW 46.68.395](#)

County Arterial Preservation Account, [RCW 46.68.090 \(2\)\(i\)](#)

County Road Administration Board (CRAB) Emergency Loan Account, [RCW 36.78.135](#)

Department of Licensing Services Account, [RCW 46.68.220](#)

Ferry Bond Retirement Account, [RCW 47.60.600](#)

Freight Mobility Investment Account, restricted by virtue of TPA transfer, [RCW 46.68.300](#), [RCW 46.68.295](#)

Highway Infrastructure Account, [RCW 46.68.240](#)

Interstate 405 and State Route Number 167 Express Toll Lanes Account, [RCW 47.56.884](#)

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Motor Vehicle Account, [RCW 46.68.070](#)  
Move Ahead WA Account, [RCW 46.68.510](#)  
Puget Sound Capital Construction Account, [RCW 47.60.505](#)  
Puget Sound Ferry Operations Account, [RCW 47.60.530](#)  
Puget Sound Gateway Facility Account, [RCW 47.56.897](#)  
Recreational Vehicle Account, [RCW 46.68.170](#)  
Rural Arterial Trust Account, [RCW 36.79.020](#)  
Small City Pavement and Sidewalk Account, restricted by virtue of TPA transfer, [RCW 47.26.340](#), [RCW 46.68.295](#)  
Special Category C Account, [RCW 46.68.090\(2\)\(b\)](#)  
State Patrol Highway Account, [RCW 46.68.030\(2\)\(a\)](#)  
Tacoma Narrows Toll Bridge Account, [RCW 47.56.165](#)  
Transportation 2003 Account (Nickel Account), [RCW 46.68.280](#)  
Transportation Improvement Account, [RCW 47.26.084](#)