

TOLL REVENUE GUARDRAILS AND HISTORY

OREGON CONSTITUTIONAL RESTRICTION ON USES OF REVENUE


Oregon Constitutional Language - Toll Revenue Use

Article IX, section 3a, of the Oregon Constitution requires that *“any tax or excise levied on the ownership, operation or use of motor vehicles” “be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in this state.”*

ODOT has interpreted that **tolls may constitute a tax**, subject to this clause.


ODOT has concluded that it most likely can **fund the following transit and bicycle/pedestrian programs** using resources constitutionally dedicated to highway purposes.

- Congestion management options such as dedicated lanes for transit or carpooling, shared lanes for mixed auto/light rail traffic, and queue-jumping lanes
- Transit facilities within public highway rights-of-way such as transit stops and transit stations
- Park and ride locations in or adjacent to the right of way that serve buses
- Transit signal priority
- Highway pull outs to accommodate buses
- Bicycle and pedestrian facilities within the highway, road, or street right-of-way



I-5 and I-205 Toll Projects

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At Equity and Mobility Advisory committee (EMAC) Meeting #3, on August 26, 2020, Travis Brouwer, Assistant Director for ODOT, provided an explanation of the Oregon Constitutional language and interpretation. The [presentation](#) can be found on the EMAC webpage and the presentation can be viewed on YouTube ([starting at 59:40](#)).

The Oregon Constitution (Article IX, Section 3a) specifies that revenues collected from the use or operation of motor vehicles is spent on roadway projects, which could include construction or reconstruction of travel lanes, as well as bicycle and pedestrian facilities or transit improvements in or along the roadway. In addition, the cost of projects or services needed to address negative effects of tolling could be paid using toll revenue. For example, if a local roadway was made less safe by drivers rerouting to avoid a toll, it could be upgraded with improved sidewalks, bike facilities and traffic calming measures to discourage rerouting and preserve neighborhood livability.

HB 2017 dedicates net revenue from value pricing to a newly created Congestion Relief Fund, which is a dedicated account to finance congestion relief efforts on the identified tollways, including value pricing administrative and operating costs, new or expanded facilities and ongoing maintenance of the tollways.

While the Congestion Relief Fund is established in statute as a distinct account from the previously established State Tollway Account, the latter may provide insights into future rules for use for the newly created fund. ORS 383.009(2) provides that State Tollway Account funds

may be used to finance preliminary studies, acquire right of way, construct, improve or maintain the tollway, operate and administer applicable toll systems, and finance any bonds or other obligations used for such expenses.

Upon passage of HB 2017, the legislature included a “budget note” directing ODOT to dedicate value pricing revenue for funding congestion relief efforts along I-205, particularly the I-205 Stafford Road to Abernethy Bridge projects. The note attached to ODOT’s 2017-2019 budget was in effect through the duration of the budgetary biennium, which ended June 30, 2019. Beyond the period of time covered by the budget note, the Oregon Transportation Commission will set policy for where revenue from value pricing should be directed, subject to further direction from the Legislature. EMAC will make recommendations to the Commission on this topic.

As a tax or excise levied on the operation or use of a motor vehicle, revenue from value pricing would be subject to the same limitations as the State Highway Fund. The State Highway Fund is bound by the restrictions of Article IX, Section 3a of the Oregon Constitution, as described above.

The Oregon Supreme Court has interpreted this to mean that these funds “must be limited exclusively to expenditures on highways, roads, streets and roadside rest areas themselves and for other projects or purposes within or adjacent to a highway, road, street or roadside rest area right-of-way that primarily and directly facilitate motorized vehicle travel.”

The Oregon Department of Justice (DOJ) has not completed a full analysis of what activities that support public transportation or active transportation may be eligible under Article IX, Section 3a. However, DOJ has provided informal and formal opinions on a range of potential eligible uses of State Highway Fund dollars that may help inform the Oregon Transportation Commission (OTC) considerations:

- Park-and-ride lots that connect auto users to bus systems: these must be in or adjacent to the right-of-way and must serve bus routes (and could not solely serve light rail, for example, as it is not “motorized vehicle travel”).
- Construction of shared-purpose lanes that include light rail—although the cost of light rail-only improvements within the lane (such as the rail itself) would not be eligible to be paid with State Highway Fund dollars.
- Bus malls: former public streets that will be closed to all motor vehicle traffic except buses are eligible.
- Bus pullouts on the highway.
- Bicycle and pedestrian facilities that are within the highway, road or street right-of-way are eligible. Off-system paths and trails are not.

EXISTING POLICY, PLANNING, AND REGULATORY FRAMEWORK

The following list provides an overview of the existing structure through which an equitable toll program would be developed in Oregon:

- [Federal Highway Administration](#), [United States Department of Transportation](#), the [Value Pricing Pilot Program](#), and other federal regulations, policies, or executive orders (e.g. [Section 129](#), [Executive Order On Advancing Racial Equity and Support for Underserved Communities](#)) or communication on
- Oregon's Constitution (e.g. [Article IX 3a](#)), Governor Executive Orders (e.g. [Order 20-04 Reduce Greenhouse Gas Emissions](#)), legislative actions (e.g. [HB2017](#)) and oversight (e.g. [Joint Committee on Transportation](#)), and state policies, plans and regulations (e.g. ORS Chapter [367](#) and [383](#), [Statewide Transportation Strategy: A 2050 Vision for Greenhouse Gas Reduction](#))
- Oregon Transportation Commission and Oregon Department of Transportation (ODOT) regulations, plans, and policies (e.g. [Strategic Action Plan](#), [Oregon Transportation Plan](#), [Oregon Highway Plan](#), [Tolling and Congestion Pricing Research and Policy Support: Congestion Pricing White Paper](#), [Blueprint for Urban Design](#), mobility measures, design standards, and modal plans for bicycles, pedestrians, freight, public transportation, transportation options, and safety)
- ODOT's [Urban Mobility Office](#) and the [Oregon Toll Program](#) project administration (e.g. [Comprehensive Congestion Management and Mobility Plan](#) and NEPA documentation of toll projects (e.g., [I-205 Toll Project](#), [I-5/205 Regional Toll Project](#), [Equity Framework](#), and [Equity and Mobility Strategies](#)))
- Regional transportation plans, policies, and regulations (e.g. [Metropolitan Transportation Improvement Program](#), [Regional Transportation Plan](#), Southwest Washington Regional Transportation Council's [Regional Transportation Plan](#))
- City and County-level (e.g. [Portland Bureau of Transportation](#), [Clackamas County \(transit\)](#), [Washington County \(transit\)](#), [Multnomah County](#), and [Clark County](#)), transit or transportation option providers (e.g., [C-TRAN 2030](#), [TriMet Unified Service Enhancement Plan](#), [SMART Transit Master Plan](#), [Ride Connection](#)), and mobility service provider transportation plans, policies, and regulations

HISTORY AND DECISIONS PRE-2021

ODOT's approach to modern tolling and value pricing policy began in 1995 with the passage of Senate Bill 626. That legislation resulted in much of Oregon Revised Statutes (ORS) Chapter 383 as it exists today, governing tollway project authority, agreements, funding and fee collection.

In 2006, the OTC adopted policies to support the consideration of tolling in Oregon as a means to improve the capacity and operational efficiency of the state highway system. Following the commission of a series of white papers that investigated many facets of tolling and value pricing, ODOT updated the Oregon Highway Plan (OHP) in 2009 with [Goal 6: Tolling and Congestion Pricing](#). These amendments set the policy for ODOT and the OTC to follow on future value pricing projects. Research papers, such as "[Tolling Impacts on Mitigation Strategies for Environmental Justice Communities](#)," and resulted in policy commitments that tolling can accomplish more than just revenue generation. Additional objectives include congestion relief, greenhouse gas/emission reduction, and economic development. OHP Goal 6 also established policies that stipulate tolling project requirements, public engagement and education, and tolling technology and system interoperability.

In 2012, statewide tolling policy work continued with the adoption of many additions to Oregon Administrative Rule (OAR) Chapter 731, Division 40. These rules implement the provisions of ORS Chapter 383 that direct ODOT and OTC to further clarify statute and set the parameters OTC will use when considering toll project proposals. These rules also create a process for reviewing and approving toll rates, reinforce Oregon's commitment to interoperability, establish civil penalties for failure to pay a toll, and set up processes specific to interstate bridge toll projects. Also, Oregon secured one of fifteen slots in the Value Pricing Pilot Program (VPPP).

In 2016, the Governor's Transportation Vision Panel held a series of regional forums across the state to better understand how the transportation system affects local economies. The negative effect of congestion in the Portland metro area was consistently identified as one of three key themes across Oregon. Congestion in the Portland metropolitan region affects commuters and businesses, as well as producers who move their products across the state.

In 2017, the Oregon Legislature passed House Bill 2017, known as "Keep Oregon Moving." This bill committed hundreds of millions of dollars in projects that will address our congestion problem and improve the transportation system in the region and statewide. HB 2017 funded bottleneck relief highway projects, freight rail enhancements, improvements to transit, and upgrades to biking and walking facilities. The Legislature also directed the OTC to pursue and implement tolling on I-5 and I-205 in the Portland Metro region to help manage traffic congestion.

In 2018, the OTC and ODOT conducted the Portland Metro Area Value Pricing Feasibility Analysis (VPFA) to study how and where congestion pricing could be applied. Substantial public input and a Policy Advisory Committee (PAC) informed the final recommendations. For

Toll Revenue Guardrails and History

I-205, the PAC recommended implementing variable-rate tolls on all lanes of I-205 on or near the Abernethy Bridge as a potential funding strategy and for congestion management. In addition to the projects identified, the following were recommended mitigation strategies:

- Improved public transportation and other transportation options are essential strategies for equity and mobility
- Special provisions are needed for Environmental Justice populations, including low income communities
- Diversion strategies should be incorporated to minimize and mitigate negative impacts

In December 2018, the [OTC submitted a proposal to the FHWA](#) outlining the findings of the feasibility analysis and seeking approval to continue the process of implementing tolls on I-5 and I-205 (ODOT 2018a). In January 2019, [FHWA provided guidance](#) to move into the next phase of evaluation and study.

In December 2019, the OTC approved the creation of an Equity and Mobility Advisory Committee (EMAC) to advise them with the following tasks:

- Supporting ODOT in development and implementation of an equity framework to guide project development and public engagement
- Providing input to ODOT at the start of the technical and environmental review process to ensure project development is grounded in the equity framework, including the development and refinement of performance measures to evaluate alternatives for I-205 and I-5 tolling
- Providing input on mobility and equity strategies that should be considered as tolling projects are developed, including:
 - Availability of transit and other transportation options
 - Transportation needs of, and benefits for, people of color and people with low-income, limited English proficiency or disabilities that live near or travel through the project area
 - Better understanding of neighborhood benefits and impacts for the communities near the tolled facilities (e.g. changes to cut-through traffic, pedestrian and bicycle options, transit access)
- Developing an equitable engagement plan that will result in ongoing input and participation from communities that have been historically underrepresented in transportation planning
- Supporting the implementation of the equitable engagement plan by hosting or cohosting meetings, events and/or other activities as determined by the engagement plan

Toll Revenue Guardrails and History

In September 2020, the OTC adopted a policy that net toll revenue stays in the corridor in which it was collected to address concerns raised from community input from community engagement.

In December 2020, the OTC provided support for ODOT's Urban Mobility Office and Oregon Toll Program direction to pursue an I-5/I-205 regional toll project as a part of the Comprehensive Congestion Mobility and Management Plan (CCMMP).



POLICY DECISION-MAKING MAP 2021-2024

The image below from the Public Involvement Plan identifies multiple decision-making bodies that will shape an equitable toll program for Oregon.

