

TO: Senate Committee on Business and Transportation  
FROM: Douglas R. Allen, 734 SE 47th Ave., Portland OR 97215  
SUBJECT: Testimony on SJR 16 for March 30, 2015 Hearing  
DATE: March 27, 2015

Chair Beyer and Members of the Committee:

I am not a lawyer, and the material below is only my own opinion, but I was involved in developing the language of SJR 16, so I want to share with the committee the reasons **why this measure is worded the way it is, and what supporters of SJR 16 understand it to mean.**

Here is a brief summary from the Oregon Blue Book and other sources, of related past measures:

Restriction on use of motor vehicle revenues was put into the Oregon Constitution by Oregon voters in 1942. A joint legislative committee stated in the Voters Pamphlet that the amendment would ensure "that the state keep faith with the users of its highways who gladly pay and have paid these taxes because of their unquestioning reliance and full expectation that the proceeds would be applied to the highway purposes to which they now are dedicated." [quoted by Oregon Supreme Court in *Rogers v. Lane County*]

As private operation of mass transit became uneconomical, the Highway Fund was looked to as a possible source of support for public projects. A citizen initiative to broaden the allowable uses of motor vehicle revenue on the May 1974 ballot lost

A measure to allow a motor vehicle fee for mass transit, on the May 1976 ballot lost.

In 1980, the Oregon Legislature referred a measure to remove policing and parks from the allowed uses. This measure passed.

Following the 1980 vote, the Oregon Attorney General issued an opinion clarifying what the restrictions (Article IX, section 3a) now meant:

41 Op.Att'y.Gen. 545, 547 (Or. 1981):  
"[B]enefit alone is not sufficient. Art IX, Sec 3a does not authorize expenditures for anything as broad as benefits to highway users, but limits them "exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas \* \* \*."  
"In short, expenditures must be for the highway *itself*. In 35 Op.Atty.Gen. 198 (1970), it was concluded that indirect benefits to highway users, such as mass transit facilities which reduce highway congestion, were not included.' (Emphasis in original.)"  
[quoted by Supreme Court in 1989 decision in *Rogers v Lane County*].

The current ODOT web page dealing with Oregon's 1971 "Bicycle Bill"  
[http://www.oregon.gov/odot/hwy/bikeped/pages/bike\\_bill.aspx](http://www.oregon.gov/odot/hwy/bikeped/pages/bike_bill.aspx)  
explains their understanding of the limitations:

"The 1980 Constitutional Amendment (Article IX, section 3a) now prohibits the expenditure of highway funds in parks and recreation areas. A subsequent Oregon Supreme Court opinion, **Rogers v. Lane County**, supports continued use of highway funds to construct and maintain walkways and bikeways within the highway right-of-way, but allows such use only when they are within the highway right-of-way."

After a decade's pause, efforts resumed to soften the restrictions.

In May 1990, voters refused to allow local vehicle taxes to be used for transit.

In the 1991 session, Senator Joan Dukes introduced SJR 10, which would have added passenger rail and mass transit projects that reduce congestion, to the allowable uses. The Senate failed to approve this measure.

In May 1992, voters refused to allow future fuel taxes for police. In November 1992 they refused to allow future fuel taxes for parks.

A citizen group, Oregonians for Cost Effect Transportation then developed an initiative that they hoped to get on the November 1994 ballot. The language developed for that initiative has been used as the basis for SJR 16. Those of us involved in that initiative effort concluded that simply expanding the allowable uses for motor vehicle revenue is looked at as a "raid" on highway funding. We reviewed the history of the current restrictions, which were created to assure voters that if they approved a fuel tax, it would be spent to improve highways, not siphoned away for general purposes. We developed language that attempts to keep faith with the "user fee" concept, ensuring that those fees are used for the benefit of highway users, or to ameliorate problems directly attributable to them.

Following is the ballot title, question and measure summary assigned to the 1994 initiative (which failed to obtain sufficient signatures):

***Ballot Title:*** AMENDS CONSTITUTION: VEHICLE, FUEL TAXES USABLE TO REDUCE TRAFFIC, POLLUTION

***QUESTION:*** Shall Constitution permit using motor vehicle and fuel taxes for surface transportation projects that reduce motor vehicle pollution or traffic?

***SUMMARY:*** This measure would amend the Oregon Constitution. Under current constitutional provisions, proceeds from taxes on motor vehicle fuel and taxes and fees on motor vehicles may be used only for "construction, reconstruction, improvement, repair, maintenance, operation and use" of public highways and rest areas. The measure would allow those funds also to be used for "surface transportation projects," such as

*certain bus, rail, bicycle and pedestrian projects, "which reduce the traffic burden or pollution from motor vehicles on public roads."*

Beaverton Lawyer Henry Kane challenged this proposal, but the Court upheld the above summary.

**How SJR16 (2015 session) is similar:**

The language added to the Constitution by SJR16 (2015 session) as formulated by Legislative Counsel is substantially the same as the 1994 initiative, except that it makes it clearer that the allowed uses, including "operation and use" also apply to the new category, and uses the word "infrastructure" rather than "projects."

Here is SJR16's definition of the added category:

"Surface transportation infrastructure that reduces the traffic burden of, or pollution from, motor vehicles on public highways, roads and streets in this state."

To update the summary of the 1994 proposal, we believe SJR 16 would allow motor vehicle funds also to be used for "surface transportation infrastructure," such as certain bus, rail, bicycle and pedestrian projects, that reduces the traffic burden of, or pollution from, motor vehicles on public highways, roads and streets in this state."

We believe that "surface transportation" is a well-defined category, excluding marine and aviation, but including elevated, surface, and underground rail and transit, as well as bicycle and pedestrian projects.

Governments will not have free rein to use motor vehicle revenues for just any purpose. They will need substantial evidence that an expenditure will reduce highway pollution, congestion, noise, energy consumption, cost, etc. or improve safety and reduce injuries and deaths from motor vehicles.



## SUMMARY: TRANSPORTATION 2013 OREGON VALUES & BELIEFS STUDY

*Project Background: This memo presents summary points related to transportation from the 2013 Oregon Values & Beliefs study. The summary draws from three surveys conducted in April and May 2013. Final sample sizes were 3971 respondents for Survey #1, 1958 for Survey #2, and 1865 for Survey #3. The questionnaires and findings are available at [www.oregonvaluesproject.org](http://www.oregonvaluesproject.org).*

*DHM Research and PolicyInteractive Research designed and conducted the surveys using telephone and online formats to aid accessibility and help obtain a representative sample. Enough interviews were completed in five geographic regions (Central, Eastern, Portland Metro, Southern, and Willamette) to permit statistically reliable analysis at the regional level. The research design used quotas and statistical weighting based on the U.S. Census to ensure representativeness within regions by age, gender, and income. The regions were then weighted proportionally by population per the U.S. Census to yield statewide results.*

*This study stands out from others in that, when asking questions about policy priorities with cost implications, we informed respondents that rating an item as "important" or "desirable" meant willingness to support some increase in taxes or reallocation of funds from other public services. The visual surveys used \$ symbols to emphasize the real-world implications of policy preferences.*

*Another distinctive feature of the study is that focal topics recur across the three surveys in a variety of question forms and contexts. High-quality research uses this "test-retest" or "triangulation" method to improve confidence in response validity.*

*This summary of key findings, observations and conclusions reflects the judgment of the research partners and not necessarily the views of the sponsoring organizations.*

### Findings

1. Asked about the top issues they want local government officials to do something about, Oregonians rate **road infrastructure** fifth in the list of responses. While **road maintenance issues** do come up, they are not among the top responses for what state government officials should do something about (S1.4-5 open).
2. Seventy-two percent (72%) of Oregonians consider **road and highway maintenance** important and indicate they would support some increase or reallocation in tax dollars to increase such services (S1.12).
3. Nearly half of Oregonians (49%) consider **new roads and highways** very or somewhat important, indicating they would support some increase or reallocation in tax dollars to increase the service (S1.23).
4. Fifty-five percent (55%) of Oregonians consider **public transportation** important, indicating they would support some increase or reallocation in tax dollars to increase the service (S1.13). A majority support the importance of public transportation in all regions except Eastern Oregon, where the



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response is 45% important vs. 27% unimportant. Neutral positions ranged from 24% to 30% across the regions.

5. When answering a forced choice question about investing in cars or public transportation, half of Oregonians (53%) agree that **we should invest more in public transit**, while fewer than four in ten (38%) would rather **invest more in roads for cars** (S1.28).
6. Asked about desirable outcomes for Oregon's energy supply, nearly half (47%) of Oregonians favor shifting some **funding for road and highway construction towards public transportation** projects such as better bus service and high speed rail. The ratio of those who feel strongly is 1.4 to 1 in favor of public transportation over road construction. Neutral positions ran about 20% across all regions. (S2.50)
7. The survey asked respondents whether they thought Oregon and their community would be a better or worse place to live 10 years from now, with an open-ended follow up question explaining why. The top transportation issue given for why Oregon will be a better place 10 years from now was **better infrastructure such as roads and bridges** at 5% (S2). Conversely, 5% of Oregonians who feel pessimistic about the future mention the **need to upgrade infrastructure**, which could include transportation (S2.3).
8. **Better transit** is a reason 6% of Oregonians give for feeling their community will be a better place to live 10 years from now. Regional differences are striking, however, with 10% in Portland/Metro and zero percent in Eastern Oregon (S3.2). On the contrary, **traffic congestion** and a **need to upgrade infrastructure** are top transit-related reasons people give for why their community will be worse off in 10 ten years (S3.3).

## Observations and Conclusions

A majority of Oregonians support more investment in public transit and consider such investment more important than investing further in roads for cars. Oregonians also find it desirable to shift some funding away from road and highway construction and towards public transportation such as better bus services and high speed rail projects. This result is consistent with responses elsewhere in the study for ways to deal with climate change.

A slightly different view emerges when asking respondents to consider a list of public service priorities. In this context, road and highway maintenance receive higher taxpayer support than public transportation such as buses and trains, new roads and highways. Perhaps Oregonians want to take care of what roads they have while recognizing that public transportation is a better future choice than building new roads.