

To: Joint Committee on Transportation, Oregon Legislature 2021 Session
From: Douglas R. Allen
Date: March 15, 2021
Re: HB 3065 (-5 Amendment)

The loose ends left by HB2017(2017) have become more apparent over time. It mandated certain freeway expansion projects but didn't provide sufficient funding. It gave an apparently empty promise of early implementation of congestion pricing on Portland area freeways. It failed to account for greenhouse gas emissions from increasing motor vehicle traffic, and it short-changed highway maintenance. The equity implications of the freeway expansions were overlooked.

The -5 amendment to HB3065 is intended to deal with some of those loose ends, but fails on numerous specifics. It doesn't address the greenhouse gas emissions from the freeway expansions, it eliminates variable tolling as a useful tool for managing congestion, it provides essentially nothing for alternative transportation to mitigate for tolling, and it puts a large cost burden on metro area residents in the form of tolls to pay for freeway expansions without giving residents a meaningful role in deciding how that money is spent.

HB2017(2017) launched congestion pricing with the Value Pricing Policy Advisory Committee convened by the Oregon Transportation Commission. With broad representation, the VPPAC concluded that mitigating transit service should be in place before tolling is implemented, and recommended that revenue from tolling should be used for that purpose. This view was repeatedly conveyed to the OTC by agencies and organizations that were represented on the VPPAC. The -5 amendment instead locks up tolling revenue until all project construction bonds are paid off.

The VPPAC also intended that tolls be set at the lowest levels necessary for managing congestion, following the language of HB2017 that congestion management, not construction, was the primary goal of tolling. Tolls were assumed to be reduced or set to zero during off-peak times. Furthermore, the VPPAC noted the need to prevent diversion of motor vehicles to adjacent arterial or neighborhood streets, which requires keeping tolls at the lowest level required for congestion management.

Tolling can not serve two masters. If it is to pay for bonded construction projects, tolls will be high, be in effect all day, cause inefficient utilization of highway capacity, and cause diversion. Public acceptance of these high tolls seems dubious. The revenue is unavailable for transit and safety projects on adjacent roadways.

If tolls are designed to solve congestion, they can be much lower, meaning that they are more equitable for low income travelers. They can be reduced to zero outside the peak. Revenue can

be used to construct sidewalks, transit lanes, bicycle lanes, safe pedestrian crossings, etc. Public acceptance is much more likely. Highway capacity is efficiently utilized.

There are numerous specific problems with the details of the -5 amendment:

- The jurisdictional transfer of 82nd Avenue puts the major financial burden on the City of Portland, and doesn't guarantee any real improvement to the street.
- The low income tolling provision doesn't utilize the OTC in a rule-making capacity. It leaves it all up to ODOT.
- It suggests that the Tolling Program is simply a new name for the Congestion Relief Program that is abolished. However, it reduces the scope to purely I-5 and I-205, removing the specific authority to implement congestion pricing on other roads. Why does this language differ from the language in HB3055, and in current law?
- Similarly it directs ODOT to get FHWA permission before implementing tolling, when that would not be needed for tolling Hwy 217 or Hwy 26-Sunset.
- All tollway revenue goes into the Toll Program Fund and is pledged to repay revenue bonds. This prevents any tollway revenue from being used for transit and safety projects on adjacent roadways.
- It seems that a major point of this amendment is to give the go-ahead for multiple projects by eliminating the specific I-5 Rose Quarter earmark, allowing I-205, Interstate Bridge Replacement, Boone Bridge, etc. to all move ahead, along with the I-5 RQ, despite insufficient appropriated money, with the promise that tolls will pay the rest of the cost. This is classic "kick the revenue can down the road" thinking.

But, by far the biggest problem with the -5 amendment is how it switches tolling from congestion management to project construction.

Section 4a asserts that "...the selective use of tolling may help reduce traffic congestion and support the state's greenhouse gas emissions reduction goals." However, Sections 8, 9, and 16 eviscerate the "traffic congestion relief program" mandated by HB2017(2017) by forcing all toll revenue into the Toll Program Fund, which Section 18 then directs into bond payments for construction projects.

While Section 16 also claims that tolls may be implemented for managing congestion, Section 18 eliminates two necessary tools for doing so: a) the ability to promote time-shifting of trips by lowering or eliminating off-peak tolls, and b) the ability to fund projects that actually reduce motor vehicle trips by improving alternative travel modes.

Effective tolling for congestion relief requires a separate congestion relief fund that is unencumbered with bond indentures. The -5 amendment should not move forward until this fatal flaw is repaired.

There is also a technical flaw by which all toll revenue, even from tolls imposed by cities or counties, is directed into the Toll Program Fund where they are locked up for bond repayment. This is the result of four inter-related definitions and directives, as follows, starting in Section 4b on page 10, line 14:

'Toll' means any fee or charge for the use of a tollway.

'Tollway' means any roadway, path, highway, bridge, tunnel, railroad track, bicycle path or other paved surface or structure specifically designed as a land vehicle transportation route **for the use of which tolls are assessed.**

'Tollway operator' means the unit of government or the private entity that is responsible for **all or any portion of** the construction, reconstruction, improvement, financing, maintenance, repair and operation of a tollway or a related facility.

Then in Section 6, on page 13, line 8, into the Toll Program Fund goes:

"(d) All tolls and other revenues received by the department **or tollway operator** from the users of any tollway project;"

Another technical problem is the need to better define what it means to "not pay the toll." The language should be cleaned up about who is the primary person responsible for paying the toll. Is it the driver, or the registered owner? Which vehicles can be denied renewal of registration? The vehicle that used the tollway, or any vehicle owned by the driver, or any vehicle owned by the registered owner of the vehicle that used the tollway?

And here is the worrisome language in Section 18:

" (1) Moneys deposited in the Toll Program Fund established under ORS 383.009 are pledged to the payment of tollway project revenue bonds issued under section 17 of this 2021 Act. ...

...

As long as any tollway project revenue bonds issued under section 17 of this 2021 Act are outstanding, moneys deposited to the Toll Program Fund shall be applied first to the payment of principal of, and interest on, any bonds designated as tollway project revenue bonds under section 17 of this 2021 Act and then to any other purposes described under ORS 383.009."

Note that ORS 383.009 is rather restrictive in what the money can be spent on.