Testimony on HB 3065

Why "Pave Now, Pay Later" is bad transportation and financial policy for Oregon.

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March 16, 2021
Joint Committee on Transportation

Chair Beyer and Chair McLain:

Your committee should closely scrutinize the "-5" amendments to HB 3065. What's proposed here is a substantial departure from the congestion management emphasis of HB 2017 (of 2017) and the financial structures put in place would significantly increase financial risks to the state.

The -5 amendments would best be titled the "Pave Now, Pay Later" Act. They authorize ODOT to issue huge amounts of debt for freeway expansion projects secured in part by toll revenues, but also allow ODOT to pledge a wide range of other revenues as well.

Section 18 authorizes ODOT to pledge federal revenues and "any monies legally available" to the department to repay these nominal toll-backed bonds.

Section 25 also authorizes General Obligation bonds for the "permanent road" portion of any tolled project (which presumably includes all, or nearly all of the cost of a tolled freeway expansion).

The -5 amendments also authorize bonding of "capitalized interest"—what this means in practice is that ODOT could issue additional debt to cover borrowing during a period of time when it isn't tolling a facility, adding to project costs.

Together, these provisions mean that ODOT can commence construction of any number of expensive freeway expansion projects (the I-5 Rose Quarter project, I-205, the I-5 Bridge/CRC revival, the Boone Bridge and others) and toll them only later, after the projects are complete.

In the event that toll revenues from these projects don't cover the cost of debt service on issued bonds, ODOT would be obligated to make these debt service payments from other sources of revenue it pledges, including state gas tax funds, future federal funds and "any monies legally available" to the department.

In the March 16 hearing. Senator Findley asked whether the -5 amendments to reduce the availability of funds for regions outside region 1 (Portland). ODOT Director Strickler said that ". . . we do not anticipate . . ." that will happen. This is a facile and misleading answer: If ODOT experiences cost overruns on a project and/or realizes less toll revenue that projected—whether it anticipates this or not—it would be legally obligated to use other ODOT revenues to repay the bonds. Nothing in the -5 amendments insulates other parts of the state from this obligation.

Legislators should make no mistake: Once bonds are issued under the -5 amendments, **repayment of debt takes precedence over all other uses of any pledged funds**. Consequently, a financial shortfall on a bond-financed tolled highway would require the reduction of expenditures on road maintenance or other transportation projects anywhere in the state.

Whether shortfalls materialize depend entirely on ODOT's ability to accurately forecast and manage both project costs and future toll revenues. The agency's record in managing costs, particularly on large projects is abysmal. The agency also has zero experience in forecasting tolled revenues. ODOT's profound weakness in both of these areas is a significant financial red flag.

Cost Overruns

ODOT has a demonstrated track record of consistent 200 percent and higher cost overruns on major projects. Here's a list covering the past two decades:

	Estimated Cost		
Project (Year of Original Estimate)	Original	Latest	Overrun
Newberg Dundee Bypass (2003)	222,000,000	752,000,000	239%
US 20 Pioneer Mountain/Eddyville (2003)	110,000,000	360,000,000	227%
South Medford Interchange (1999)	30,000,000	96,000,000	220%
99E Grand Avenue Viaduct (2002)	31,200,000	91,800,000	194%
I-5 Woodburn Interchange (2006)	25,000,000	68,000,000	172%

ODOT continues to under-estimate costs on current project, as well. The cost of the I-5 Rose Quarter freeway widening has already ballooned from $450 million in 2017 to as much as $795 million now. The "financial gap" estimates presented by ODOT to this committee for the I-5 bridge replacement project contained a math error that understated the project's maximum funding shortfall by $1.1 billion. ODOT has raised the state's expected contribution for this project by $150 million in just the past three months.

This is an agency that routinely blows through its cost estimates. In the context of HB 3065, this means that cost overruns (which are independent of toll revenue forecasts) lead directly to a liability for the state to repay issued debt out of other sources of revenue, i.e. pledges of state gas tax money and federal funds that would otherwise be available for maintenance and other projects statewide.

Toll Revenue Forecasts

The second great risk comes from ODOT's lack of ability to accurately predict toll revenues.

ODOT's only substantive experience with a potentially toll-backed project is the proposed Columbia River Crossing. For years, ODOT and WSDOT advanced the project with internally generated promotional forecasts suggestion the CRC would carry 180,000 cars a day, and could generate boatloads of revenue with relatively low tolls. The agency delayed for years undertaking an "Investment Grade" toll revenue analysis (an independent financial analysis demanded by bond markets). When they finally commissioned this independent analysis, they found that the project would require much higher tolls ($3.25 peak each way for cars, $13 for large trucks) than ODOT originally forecast. This high level of tolls, in turn, was determined by the department's consultants (CDM Smith) to result in a permanently lower level of traffic on a new tolled I-5 crossing (roughly 80,000 vehicles per day, compared to a current level of 125,000 per day).

In actual practice, tolled roadways have much lower levels of traffic than un-tolled roadways. In Louisville, Kentucky, the states of Indiana and Kentucky built the equivalent of the Columbia River Crossing. They doubled the size of the I-65 freeway crossing the Ohio River from 6 lanes to 12, and a year after opening the new $1.3 billion span, implemented tolls (which for regular commuters average $1 each way). Traffic on the bridge fell from more than 120,000 vehicles per day to 70,000.

Both of these examples show why using tolls to manage traffic, rather than to retroactively finance freeway expansion is the only fiscally prudent policy. The "pave first, pay later" approach leads to the construction of excess capacity that goes unused, burdens travelers with paying for this un-used capacity, and diverts real resources from maintenance and other worthwhile projects.

It's apparent that ODOT has been dragging its feet on congestion pricing. In the four years since the passage of HB 2017, they've done almost nothing to accelerate the implementation of congestion pricing.

The agency's own consultants have testified publicly that congestion pricing *alone* could deliver exactly the same reduction in traffic as the proposed $800 million I-5 Rose Quarter freeway widening project. Yet ODOT has explicitly deleted any consideration of congestion pricing from its analysis of the Rose Quarter project and has ignored Governor Brown's December 2019 order to include congestion pricing in its Rose Quarter environmental analysis. (On December 16, 2019, the Governor wrote: "as you move toward a decision on an environmental review path I would like you to include a full review of congestion pricing and how its implementation would impact the Rose Quarter." ODOT did not conduct such a review, and in fact concluded its environmental review in November, 2020, with a statement saying it specifically *excluded* any consideration of congestion pricing from its environmental review." This agency has demonstrated that it has no intent or desire to use pricing as a means to manage congestion.

What this legislation does is to authorize ODOT to issue vast amounts of debt and start many projects of dubious need and value. It will then, only after projects are build or building, then implement tolling. And if (and likely when) toll revenues aren't adequate to cover the cost of debt service, it will end up having to divert its other revenues (federal grants and state gas taxes and other revenue) to repaying these supposedly "toll-backed" bonds. Projects backed by bonds issued under the -5 amendments to HB 3065 would be forever first in line to get ODOT revenues, no matter how large their cost overruns, and no matter how badly toll revenues fall short of ODOT estimates.

HB 3065 should be amended to provide for a "toll first, build later" strategy. If you are truly serious about managing congestion, then the first step is to reflect back to road users a fraction of the actual cost of providing the roadway capacity that they are using. There's very good evidence that even modest levels of peak hour tolling would lead to reduced traffic, as people adjust the timing, mode, and path of their trips. Importantly: because peak hour tolling would eliminate or at least reduce the need for expanding freeway capacity, the level of tolls could be much lower than the "pave now, pay later" approach that is set up in the -5 amendments. In addition, implementing tolling first will establish a reliable baseline for knowing the actual level of revenues a roadway will provide, enabling ODOT to "right-size" whatever investment it makes to reflect the actual economic value the road produces.

The -5 amendments to HB 3065 are, effectively, a running leap off a very high fiscal cliff. Given ODOT's chronic cost overruns, it's complete inexperience in accurately forecasting toll revenues, and its unwillingness to first use value pricing to manage congestion before squandering hundreds of millions or billions on un-needed road capacity, the Legislature would be well advised to look before it leaps.