Washington Research Council

Policy Brief

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I-1125: Jamming Transportation Planning

Briefly

I-1125 would make it more difficult to pay for transportation projects that are needed statewide, and its restrictions on tolling would reduce the effectiveness of tolls. In all, the initiative would significantly impact the state's transportation plans.

"As a trade dependent state, Washington's economic competitiveness is intertwined with its transportation system." (Washington Transportation Plan 2030)

Initiative 1125 would make several changes to tolling and transportation policy in Washington—changes that would negatively impact funding for major infrastructure improvements. It would forbid the transfer of revenues in the motor vehicle fund or any toll fund to the general fund; require that lanes funded by the gas tax or tolls be used for highway purposes; require the legislature, rather than the Transportation Commission, to set tolls; require that toll rates be uniform, consistent and non-variable; require that tolls on future tolling facilities end when the cost of the project has been paid; require that tolls may not be diverted to other projects; and specify that I-90 floating bridge tolls may only be used for work on I-90.

In the Washington Transportation Plan 2030 (WTP 2030), the Transportation Commission estimates that "at a minimum, the statewide transportation need of transit providers and state, county, and city governments for the 2011–2030 time frame of WTP 2030 is in the range of $175 to $200 billion." The state transportation system portion of that is estimated by the Washington State Department of Transportation to equal $63.8 billion. The ability to meet these transportation needs, which are critical to the economic vitality of the state, would be jeopardized by this initiative.

I-1125

Under the initiative, revenues in the motor vehicle fund or any toll fund would not be able to be transferred to the general fund (or other funds) and used for non-transportation purposes. (The constitution already prohibits the use of motor vehicle tax revenues for non-highway purposes.) Similarly, *lanes* on state highways that were funded by the gas tax or tolls would not be able to be transferred or used for non-highway purposes. (Effectively, the voter-approved plan to allow light rail on the I-90 floating bridge would be forbidden.)

The initiative would move toll-setting authority from the independent Transportation Commission to the legislature. Additionally, "except for Washington state ferries toll facilities, revenue from tolls or charges on a highway, freeway, road, bridge, or street may only be used for the cost of construction and capital improvements to that particular highway, freeway, road, bridge, or street and all revenues from such tolls may only be used for purposes consistent with the eighteenth amendment to the Washington Constitution."

I-1125 would require toll rates to be "uniform and consistent" and "not include variable pricing." Further, current law recognizes that "transportation infrastructure projects have costs and benefits that extend well beyond those paid for by initial construction funding," but I-1125 would require future tolls to end when the cost of the project is paid.

Lastly, I-1125 specifies that "toll revenue imposed and collected on the Interstate 90 floating bridge must be used exclusively for toll facilities and capital improvements to Interstate 90 and may only be used for purposes consistent with the eighteenth amendment to the Washington Constitution." (The state could not toll the I-90 floating bridge to help pay for the State Route (SR) 520 bridge project.)

Fiscal Impacts of I-1125

The Office of Financial Management (OFM) has prepared a fiscal impact statement for I-1125. While there would be no fiscal impact on the existing Tacoma Narrows toll bridge and SR 167 toll lanes, "fiscal impacts for future toll roads and toll bridges are unknown and indeterminate." A major concern is that "bonds secured solely by toll revenue will become prohibitively

Washington Research Council
16300 Christensen Road, Ste. 207
Tukwila, Washington 98188
206-467-7088
fax: 206-467-6957
www.researchcouncil.org

Article II, Section 40 of the State Constitution (the 18th Amendment):

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.

expensive if the Legislature sets tolls, thus eliminating this financing tool for transportation projects." Also, because some projects assume the use of variable tolling, "prohibiting variable tolling will require additional analyses estimated to cost up to $8.3 million."

Although OFM finds that fiscal impacts of this initiative are mostly indeterminate, some aspects of I-1125 that could have impacts are the requirement of legislative action to increase tolls, the inability to use tolls for non-highway purposes, and the inability to use variable tolling. These issues apply to many of the transportation projects currently underway or planned.

- *SR 167 high-occupancy toll (HOT) lanes*: These lanes are currently tolled. OFM estimates that I-1125 would have no fiscal impact on this project.
- *SR 520 bridge*: Although not yet in effect, tolls have been set for this project. OFM estimates that the impact of I-1125 on this project is indeterminate because "current law requires the use of variable tolling."

  Additionally, the SR 520 project won Federal Urban Partnership Agreement grants that were "conditioned on implementing variable tolling." As a consequence of the initiative, the state, King County and King County Ferry District could "lose authority to spend remaining grant funds and could be required to repay the entire grant amount." (The state has already spent $64.4 million of its $86.1 million grant, King County has spent $34.8 million of its $41 million, and the King County Ferry District has not spent any of its $1 million.) That said, "Because it is not known if a toll rate increase is necessary during the period covered by the fiscal impact statement or what action the federal government will take, the impact on this grant revenue is indeterminate."

  Lastly, "Current law authorizes the issuance of $1.95 billion in bonds secured solely by toll revenue or secured by both toll and gas tax revenue. . . . The State Treasurer states that bonds secured solely by toll revenue would be eliminated as a financing tool for the bridge. Gas tax or other revenues would be necessary to issue bonds, reducing overall capacity to finance transportation projects, which may impact future expenditures."
- *I-405 HOT lanes*: Though authorized, tolls have not yet been set. OFM estimates that the impact of I-1125 is indeterminate because "current law requires the use of dynamic tolling."
- *SR 99 Alaskan Way Viaduct*: OFM estimates that the impact is indeterminate because "tolls have not been authorized" and "current toll rate analysis for this highway has assumed the use of variable pricing," requiring a new analysis.

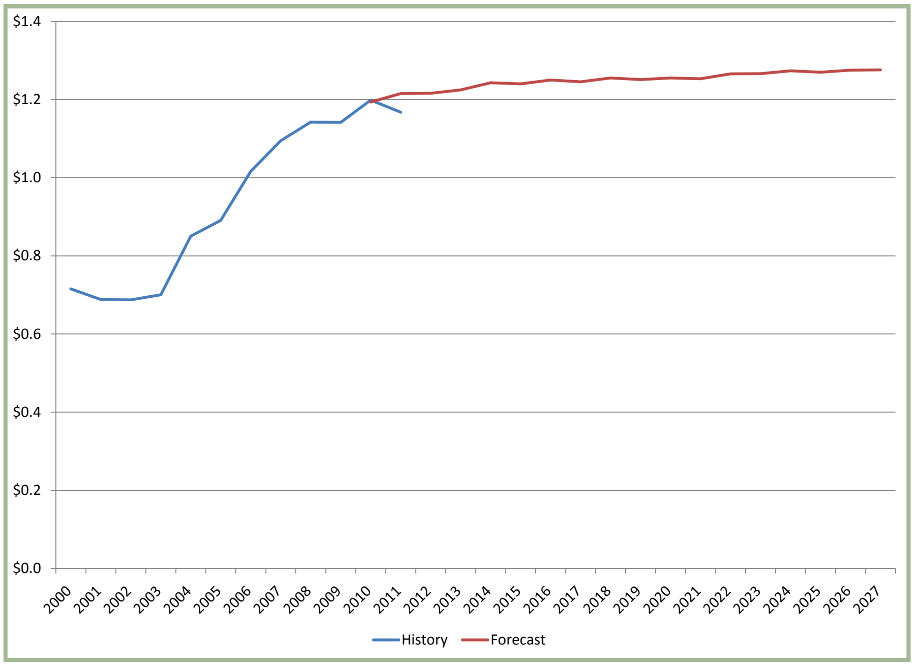
  Additionally, "Current bond authorizations for construction and capital improvements for portions of the State Route 99 Alaskan Way Viaduct replacement project are secured by gas tax revenue. If costs exceed $2.4 billion, no more than $400 million of additional costs will be financed with toll revenue. Because there is no authorization to use toll revenue for bonds, the fiscal impact on indebtedness for this highway is indeterminate. Additionally, the State Treasurer states that bonds secured solely by toll revenue would be eliminated as a financing tool for this highway."

The state is considering using tolling on other facilities in the future. OFM says that the fiscal impact of I-1125 on them is "unknown and indeterminate," but they would not be able to use toll revenue bonds. This is because the initiative's requirement that tolls be set and adjusted by the legislature (instead of the Transportation Commission) would, according to the treasurer, "make the cost of bonds secured solely by toll revenue prohibitively expensive."

In February 2011, the Public Resources Advisory Group (PRAG) reported to the Office of the State Treasurer that "all three of the national credit rating agencies that rate toll revenue bonds—Moody's Investors Service, Standard & Poor's Corporation and Fitch Investors—include as a significant rating factor the autonomy of toll setting authority." According to PRAG, no other state makes its tolls subject to legislative approval. Instead, "The dominant paradigm nationally is an independent board or commission, often comprised of members appointed by the governor and/or legislature, which has the power to establish tolls independent of legislative oversight or approval." Two states make toll levels subject to gubernatorial approval (New Hampshire and New Jersey), and "in both cases, these higher levels of governmental approval processes have been cited by the rating agencies as a credit challenge."

PRAG believes "that legislative approval of tolls will have rating and/or cost implications for Washington." As an example, they assume that Washington could issue toll revenue bonds rated "A." Assuming those bonds fell to "BBB" ("a potential outcome should the toll-setting process require legislative approval"), the state could see "more than $18 million in higher interest costs over 30 years for every $100 million borrowed. Increased borrowing costs, in addition to reducing the funds that are available to finance transportation projects, also could have the effect of requiring higher toll levels than would otherwise be required to finance a transportation project."

Chart 1: Motor Fuels Tax Collections (Billions of Dollars)



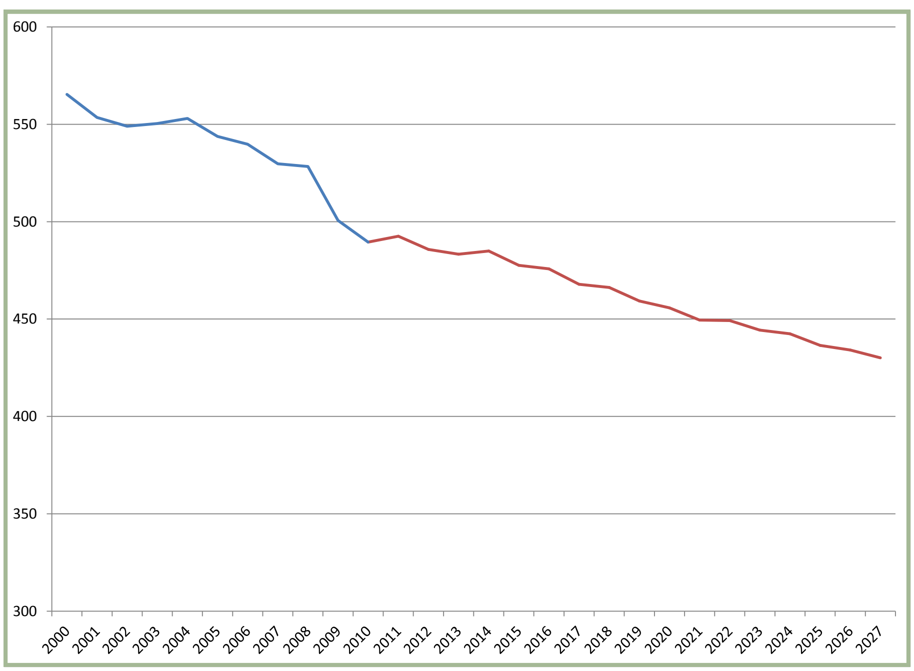


Chart 2: Motor Fuels Consumption Per Capita (Gallons)

PRAG concludes that "Issuing bonds secured by tolls that are subject to legislative approval would be unprecedented nationally, and we believe would result in increased interest costs to the State and reduced leverage capacity to fund transportation projects in the State."

A statement from the state treasurer notes that "passage of I-1125 would remove more than $500 million in FY 2014 toll revenue bond proceeds from the baseline financing plan for the 520 bridge replacement project now underway." And it "would eliminate toll revenue bond financing as a way to help pay for other major highway projects." Thus, "I-1125 increases the need to rely on bonds secured by already over-subscribed motor vehicle fuel tax revenues."

Tolling in Washington

Washington is dependent on those motor vehicle fuel tax revenues for transportation project funding.

Washington's 37.5 cent per gallon motor vehicle fuel tax (the sixth highest in the country in 2010) brought in $1.2 billion in 2011 (7.54 percent of all state tax collections). In 2003, the base rate of 23 cents was increased by 5 cents, followed by increases totaling 9.5 cents between 2005 and 2008.

These tax increases and the use of tolls are in part a response to the loss of motor vehicle excise tax (MVET) revenues. The MVET was a 2.2 percent tax applied against the value of motor vehicles. It was repealed following voter approval of I-695 in 1999. Fuel taxes and tolls are more directly tied to the use of roadways than the MVET, which was a more general tax. (The Washington Research Council published a series of reports on I-695 and the MVET in 1999, including "Growth of the MVET.")

Motor fuels tax collections dropped in 2011 and are forecast to grow very slowly in the future. Motor fuel consumption per capita has been declining, and the decline is expected to continue. Total motor fuel consumption dropped in 2009, and it isn't expected to re-gain its 2008 peak until 2022.

WTP 2030 concludes that "transportation infrastructure is aging, with needs that far outstrip available local, state, and federal funding, all of which have decreased. . . . As currently structured, new state policies encouraging people to drive less and consume less fuel undermine the viability of the gas tax, the primary funding source for transportation." As a way to deal with this structural issue, the Commission "recommends the state increase the use of tolling."

In laying out some principles of tolling, the state treasurer notes that "Federal and state transportation policy experts agree that

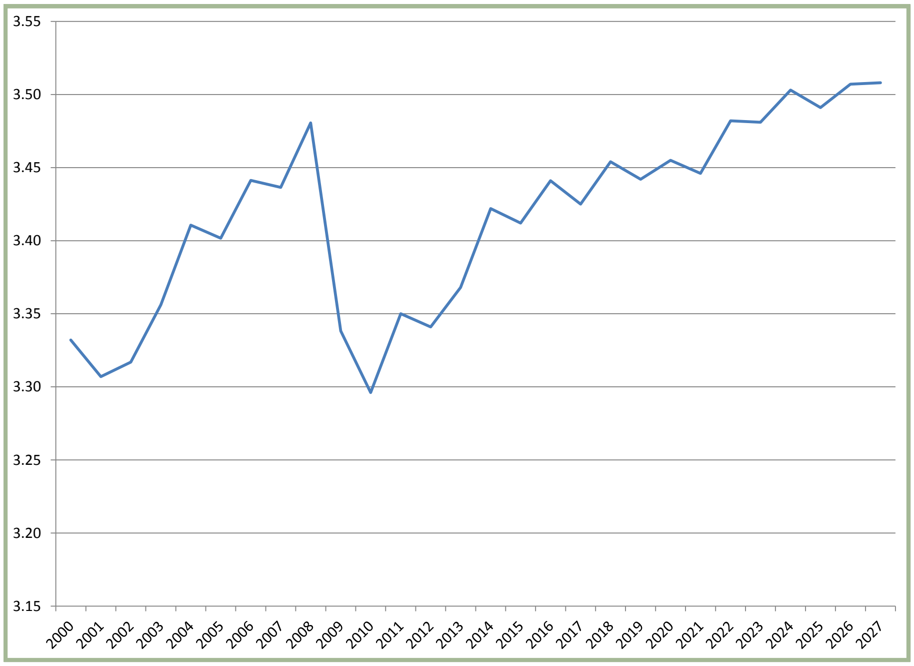


Chart 3: Total Motor Fuel Consumption (Billions of Gallons)

the fuel taxes are no longer a sustainable or sufficient revenue source for funding new transportation infrastructure. Few major transportation projects are being funded without tolls in this country." Some of the "market-based" tolling principles described by the treasurer include:

- Using tolling "to finance the transportation system within a corridor, not individual projects or facilities" (i.e., tolling "both the 520 and I-90 bridges to finance improvements on either bridge");
- Taking measures to "enhance the predictability of toll revenues and reduce their volatility" as a way to achieve "lower financing costs" and to "better protect the state's credit rating;" and
- Delegating "toll-setting authority to an independent government body, so that future political and regulatory decisions do not compromise the financing mechanism."

The Comprehensive Tolling Study (Transportation Commission, 2006) suggests that toll revenues should pay for construction, operation and maintenance and even fund "related parts of the transportation system, potentially, including transit." Further, "managing tolling and pricing from a true system perspective would point towards no geographic constraints on the use of funds."

In Part II of the study (2008), the Transportation Commission recommends that "tolls on projects should stay on over the life of the facility to ensure adequate funding is available to cover the maintenance and rehabilitation needs of the facility, and to continue serving as a traffic management tool to optimize traffic flows."

Variable tolling, which would not be allowed under I-1125, is considered by transportation economists to be a way to maximize the efficient use of public resources. As an example, the SR 520 bridge project will be adding additional lanes, and variable tolling is planned. Pricing tolls the highest during peak hours means that the drivers who will benefit the most from the additional lanes pay the most.

These general tolling principles and policies would be upended by I-1125—adding so many restrictions on how tolls can be used would reduce their effectiveness. Tolling requires users to pay for the project, reducing the burden on other state residents.

Capital Project Financing

As the 2011 Debt Affordability Study (from the state treasurer) notes, "Although the state pays interest, debt-financed capital projects can be cost effective if borrowing costs are less than the costs associated with waiting to build. In addition, debt-financing can promote tax equity as each asset is paid for over its useful life, and not all-at-once by taxpayers in one given year."

Washington has a number of financing options. These include:

- *Various Purpose General Obligation bonds*: These bonds pay for capital projects like schools and correctional facilities. The "full faith, credit and taxing power of the state is pledged *irrevocably* to the payment of the bonds." General obligation bonds have high credit ratings and their borrowing costs are thus "lower than costs for other types of state obligations."
- *Motor Vehicle Fuel Tax General Obligation (MVFT GO) bonds*: These bonds pay for highway projects. They "are also general obligations and—like the various purpose bonds—are backed by the full faith, credit and taxing power of the state. But, in keeping with the State Constitution, debt service on these bonds is first payable from the proceeds of state excise taxes on motor vehicle and special fuels. The general obligation pledge support for MVFT GO bonds has ensured that transportation infrastructure is financed at the lowest possible cost to the state."
- *Triple Pledge General Obligation Bonds*: These are a special case in which "debt service is first payable from toll revenues; second, from the excise taxes on motor

vehicle and special fuels; and third, backed by the general obligation pledge of the state's full faith, credit and taxing power."

- *Revenue bonds*: These bonds are "secured by a dedicated stream of revenues, such as tolls, special taxes, or utility payments, without the general obligation backing of the state. Revenue bonds typically have lower ratings and higher borrowing costs that general obligation bonds."
- *Certificates of participation*: These are used for "certain other real estate and equipment needs" and they "are not backed by the full faith and credit of the state."

The state constitution (article VIII) limits the amount of debt the state can carry: "The aggregate debt contracted by the state shall not exceed that amount for which payments of principal and interest in any fiscal year would require the state to expend more than nine percent of the arithmetic mean of its general state revenues for the three immediately preceding fiscal years as certified by the treasurer." There are exceptions to the limit, however, including debt payable from motor vehicle fuel taxes.

Consequently, MVFT GO bonds are not counted toward the debt limit. Even so, as the Debt Affordability Study explains, "issuance is nonetheless constrained in practice by current and projected MVFT revenues. These tax revenues . . . are the first source of repayment."

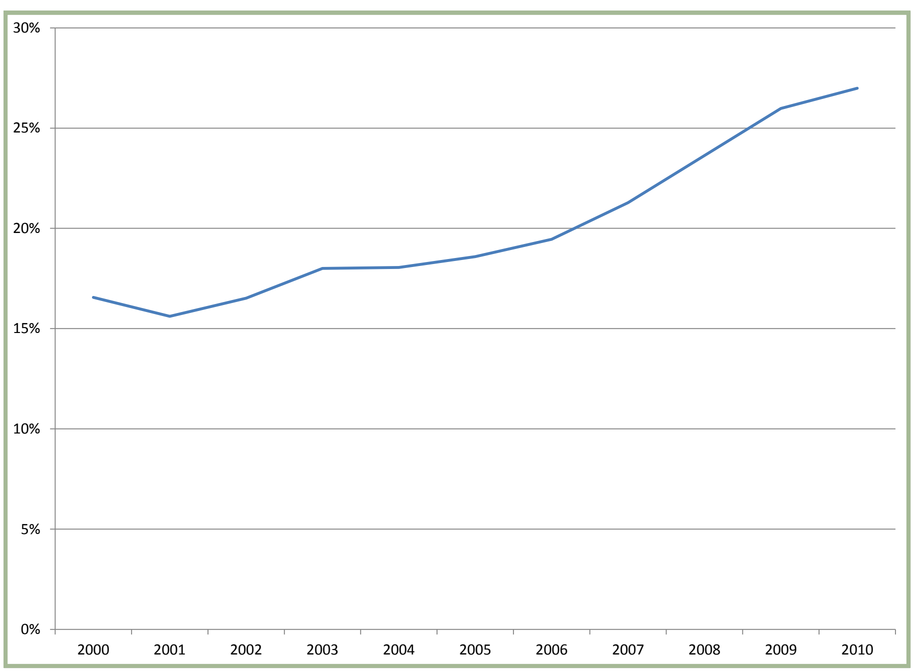
Each year the state treasurer certifies the debt limit. The debt service limit has decreased the past few years, but annual debt service has grown. This has had the effect of reducing the estimated available debt capacity (the amount of 25-year debt that could be serviced under the debt limit) by 53.6 percent from 2009 to 2011. In 2011, the legislature enacted SSB 5181, which established a "working debt limit" that ratchets down over time and will further constrain the issuance of general obligation bonds.

Although not all general obligation bonds are subject to the limit, the certification reports debt service amounts for all general obligation bonds. Debt service from MVFT GO bonds has grown significantly as a percentage of total debt service on general obligation bonds (subject to the limit and otherwise). In 2000, it was 16.6 percent. By 2010, it had grown to 27.0 percent.

Toll revenue bonds are not subject to the debt limit because they are not backed by the state's full faith, credit and taxing power. The SR 520 bridge project is being financed by a combination of tools, including toll revenue bonds, triple pledged bonds, and GARVEE bonds (backed by future federal funds). Given the constraints on motor vehicle fuel taxes (they are already mostly committed elsewhere), the state would not be able to replace the toll revenue bonding with triple pledge bonds.

Further, with toll revenue bonds, the risk of low toll revenues is borne by the bondholders. Taxpayers bear the risk of triple pledge bonds.

Chart 4: MVFT GO Bonds Debt Service as a Percentage of Total GO Bonds Debt Service



Discussion

I-1125 would make it more difficult to pay for transportation projects that are needed statewide. If tolls are set by the legislature, and Washington can no longer sell toll revenue bonds, other projects around the state could be affected. As the state treasurer said, "By eliminating toll revenue bonds to pay for these mega projects, I-1125 increases the need to rely on bonds secured by already over-subscribed motor vehicle fuel tax revenues."

The initiative would also throw a wrench in the state's transportation plans. The state would not be able to toll an entire corridor as a way to fund the corridor and reduce diversion. I-1125 would also complicate the state's ability to deal with congestion.

Last year, voters approved I-1053. That initiative required a two-thirds majority of the legislature in order to increase taxes. It also required a simple majority of the legislature to approve fee increases. Specifying that the legislature must set tolls rather than the independent Transportation Commission is an extension of that requirement, but I-1125 would have a significant impact on state tolling and financing policy.

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