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**RUC & AMENDMENT 18 OF THE  
WASHINGTON CONSTITUTION**

 **WA RUC**





# RUC and Amendment 18 of the Washington Constitution |



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## PREFACE

The purpose of this report is to provide information for the Washington Road Usage Charge Steering Committee’s consideration as they begin to deliberate whether or how the State of Washington could transition to a per-mile fee system as a future replacement for the state’s motor fuels tax (gas tax).

The information contained in this report examines various options for how a road usage charge (RUC) could be implemented in a way that retains the two most distinctive legal features of the current gas tax: that RUC expenditures be used exclusively for “highway purposes;” and that RUC revenue can be bonded outside of the constitutional debt limit.

This report is being presented to the Steering Committee as a draft version for review and discussion at its upcoming meeting on November 29, 2018.

For this report, all footnotes and citations appear at the bottom of the page to improve readability.

# EXECUTIVE SUMMARY

The issue addressed in this report is not *whether* road usage charges (RUC) should be restricted for highway expenditures, but rather *how* RUC could be subject to such expenditure restrictions, particularly as provided in Amendment 18 of the Washington Constitution. The rationale for exploring this is rooted in the original legislative directive given to the Steering Committee: that RUC be investigated as a future replacement for the state’s motor fuels tax (“gas tax”). If RUC is to eventually replace the gas tax, the issue presented is how closely could RUC mimic the same revenue characteristics as the gas tax it is designed to replace.

Amendment 18 requires gas taxes, motor vehicle license fees, and other revenue intended for highway purposes to be placed into a special fund (i.e., the state Motor Vehicle Fund) and the proceeds expended exclusively for highway purposes.<sup>1</sup> In 1944, the voters ratified Amendment 18 in response to a growing reliance by government to use these revenues to bolster the state’s general expenditures, rather than using them to help fund construction and maintenance of the public roadway system as originally intended when the taxes were enacted.

There are two types of tax and fee revenue subject to Amendment 18’s spending restrictions: enumerated revenues, which are the state gas tax and the state vehicle license fee; and “categorical” revenues, which is term used in reference to Amendment 18’s inclusion of “all other state revenue intended to be used for highway purposes.” Both types of revenue must be deposited into the Motor Vehicle Fund where expenditures are restricted. However, only the two enumerated revenues receive favorable treatment under state law for borrowing purposes; gas taxes and vehicle license fees can be pledged for the repayment of bonds with additional assurance (backing) by the state’s full faith and credit, without being subject to the state limit on bonded indebtedness. This issue will be more fully analyzed in a separate report in early 2019.

There are several ways in which the expenditure of RUC revenue can be restricted to highway purposes. First, RUC could be structured and implemented

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<sup>1</sup> Throughout this paper, the term “highway” refers to all public roadways in the state.

as a vehicle license fee. This approach was first outlined by the Office of the State Treasurer in September 2014. This approach is probably the most certain methods for restricting RUC revenue, outside of a voter-approved Constitutional amendment adding RUC as an enumerated revenue under Amendment 18.

A second approach to restricting expenditures of RUC for highway purposes is to statutorily designate RUC as a revenue “intended to be used exclusively for highway purposes,” so that RUC is enacted as a “categorical revenue” as provided for in Amendment 18, requiring the deposit of proceeds into the Motor Vehicle Fund where all expenditures must be made for highway purposes. The combination of specific legislative intent language that mirrors Amendment 18, with the statutory directive to place the revenue in the Motor Vehicle Fund, is probably the next most reliable method for restricting use of RUC revenue.

A third approach, which has been taken by the Legislature in enacting numerous other taxes and fees that are now considered subject to Amendment 18, is to statutorily deposit the revenue into the Motor Vehicle Fund, creating the presumption of legislative intent. This approach might be considered slightly less “protective” because it lacks specific legislative findings and intent in the enactment of the revenue mechanism itself and relies on the statutory deposit of the revenue to meet the intent required under Amendment 18.

Other ways in which the expenditure of revenue can effectively be restricted is if the revenue (in this case, RUC) is pledged for the repayment of highway construction bonds. While this situation creates a legally binding contract between the State of Washington and bondholders that requires the continued use of RUC revenue to repay highway construction bonds, this is not recommended as a legislative drafting technique for the perpetual restriction of the revenue for highway purposes.

# 1 BACKGROUND AND OBJECTIVES

## 1.1 WA RUC Steering Committee interest in Amendment 18

The Legislature’s intent in authorizing investigation of a per-mile road usage charge (RUC) was to study the funding mechanism as a potential future replacement for the state’s motor fuel tax (“gas tax”).<sup>2</sup> With increases in vehicle fuel economy expected to accelerate in the coming decade, a transportation funding system that is almost entirely dependent on gasoline sales will face declining revenue per mile, drawing into question whether the current gas tax system of roadway funding is financially sustainable over the mid and longer term.

Very early in Washington’s assessment of RUC, the Steering Committee decided that its investigation of RUC would be limited to a “full replacement” scenario, consistent with the Committee’s understanding of their legislative charge. If a RUC someday replaces the current gas tax, policymakers must still confront what “replacement” of the gas tax means in the context of transportation fiscal policy. Below are some important characteristics of the state’s current gas tax. Ultimately, the Legislature will have to decide which of these to carry forward in any future RUC authorization:

- ▶ **Gas tax revenue can only be spent for highway purposes:** The gas tax is one of the revenue sources subject to Article II, Section 40 of the Washington Constitution (more commonly known as the 18<sup>th</sup> Amendment, hereafter Amendment 18). This provision requires subject taxes and fees to be spent “exclusively for highway purposes.”
- ▶ **Bonds that pledge the gas tax as a source of repayment are not subject to the state’s constitutional debt limit:** The Washington Constitution establishes a debt limit to regulate the amount of borrowing to be repaid from general state revenues.<sup>3,4</sup> However, the constitutional

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<sup>2</sup> 2012 Supplemental Transportation Budget, Chapter 86, Laws of 2012, at section 205, subsection (4),

<sup>3</sup> See Const. art. VIII, Section 1(b), which provides the formula used to calculate the state’s 9% debt limit.

<sup>4</sup> Const. art. VIII, Section 1(f) of the Washington Constitution provides that the state can pledge its full faith and credit to guarantee repayment of any obligation payable from Amendment 18 sources, and from interest on the common school fund. This provision has the effect of allowing gas tax bonds to be issued without regard for the state’s debt limit. The importance of this provision extends beyond transportation. If

debt limit exempts certain revenue sources, including gas tax revenues and motor vehicle license fees, since these are protected through “special fund” status.

- ▶ **Gas tax refunds are allowed to persons who use fuel for non-highway purposes:** Although the gas tax is owed by in-state “fuel licensees” and levied at the time the fuel is removed from a terminal rack (i.e., wholesale distribution level),<sup>5</sup> the Legislature’s intent is that the tax ultimately be applied to the propulsion of vehicles driven on the highways of the state.<sup>6</sup> To the extent that gasoline is used for non-highway purposes, the Legislature allows vehicle owners to apply for tax refunds.
- ▶ **Certain entities and uses are exempt from the gas tax:** State law specifically exempts taxation on the sale of fuel used by the state, cities, and counties for road construction or maintenance; fuel used in firefighting equipment; fuel sold to the federal government; fuel used by paratransit vehicles, trolleys, and other urban transport vehicles; and more.<sup>7</sup>

## 1.2 Objectives of this report

This report specifically examines how the Legislature could enact RUC legislation that mimics the first two gas tax characteristics above,<sup>8</sup> which are restated in the following questions:

- ▶ How can a RUC be structured so that the revenue can only be spent on highway purposes?
- ▶ Can a RUC be structured so that the revenue is not calculated as part of the state’s constitutional debt limit?

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these revenues were subject to the state’s debt limit – even if limited to highway purposes – bonds issued would have the effect of displacing borrowing capacity available for other state capital construction projects such as higher education facilities, parks, public buildings, etc. This subject will be fully addressed in the WA RUC policy paper related to state bonds 2019.

<sup>5</sup> RCW 82.38.030(1)

<sup>6</sup> RCW 82.38.010

<sup>7</sup> RCW 82.38.080

<sup>8</sup> The question of whether the gas tax exemptions and refunds can (or should) be carried forward in a future RUC system is addressed in other white papers or reports presented to the WA RUC Steering Committee.

Importantly, this report does not address whether restricting RUC expenditures to highway purposes is mandatory (or even desirable) transportation policy. That topic is examined in greater depth in a separate report to the Steering Committee (see, *Use of RUC Revenues*, November 2018). This report focuses on the “how” question -- not the “should” question -- of restricting revenues to highway purposes.

## 2 OPTIONS FOR RESTRICTING RUC REVENUES TO HIGHWAY PURPOSES

### 2.1 Enactment of Washington's Amendment 18

Before considering the available options for restricting RUC proceeds to highway purposes, it is helpful to first review exactly what Article II, Section 40 (Amendment 18) of the Washington Constitution provides and why it was enacted.

First, the full text of this provision<sup>9</sup>:

*SECTION 40 HIGHWAY FUNDS. 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:*

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<sup>9</sup> Const. art. II, Section 40, (amend. 18), 1943 House Joint Resolution No. 4, p 938. Approved November 1944.

*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.*

## 2.2 History leading to the enactment of Amendment 18

Until the early 1900s, throughout the U.S. roads were mostly privately-funded endeavors, undertaken as private toll roads. Financially, these roadways only had modest success. Highly traveled road segments serving heavily populated areas tended to pay for themselves, but roadways that sought to connect towns of smaller populations were often financially infeasible. By the turn of the 20<sup>th</sup> century, the need to create roadways to ensure the delivery of farm products to market, and to allow widespread postal delivery became an important public need.

With the advent of the automobile and its growing importance as a viable form of daily transportation, automobile clubs sprung up in each of the states to lobby elected officials for public funding to construct and maintain roadways. In the early 1900s, state and local roadways were funded from property taxes, polls taxes, and a mix of other general tax revenues. But in 1919, Oregon became the first state in the nation to impose a gas tax of one cent, levied at the production level but with the intent that the tax be passed down through the retail chain to roadway users.

Soon after Oregon enacted the first gas tax, other states quickly followed suit. Within 10 years, every state had enacted some form of a gas tax. Although the tax rates were comparatively low (typically about one or two cents per gallon), the tax was a very effective revenue-generator for state and local governments. In fact, some governments had found the gas tax so productive that they diverted much of the proceeds to support large portions of their general government operations. Nebraska, for example, generated more than half its total state revenue from gasoline taxes alone; Georgia, Florida and Tennessee each relied on their gas

taxes to fund nearly half of all state spending. By 1939, only six states<sup>10</sup> derived less than 20% of their total state revenues from gas taxes.

While states grew increasingly dependent on gas taxes and vehicle license fees to fund their general government operations, the need for new roadways was also becoming a pressing concern. Road-building could help put more people to work during the Great Depression, while also meeting the urgent requirements for better ways to move materials, supplies, equipment and soldiers throughout the country during a pending time of war.

In April 1941, President Roosevelt appointed the National Interregional Highway Committee to study the creation of a unique system of highways that would meet the immediate requirements of the War Department as well as the future needs of increased postwar traffic. This committee sent its report to Congress in January 1944 recommending the creation of a national highway system.<sup>11</sup>

Back at the state level, road advocates – especially the influential automobile clubs – became more vocal in their protest against the growing reliance of state and local governments’ uses of gas tax revenue to support general government operations, instead of using the funds for roadways as originally intended. As the federal government began planning for construction of a national roadway network (which would require local matching funds from states), a movement began within the states to push for legal provisions requiring gas taxes to be expended only for highway purposes. In some states, measures were passed by the Legislature; in other states, these measures were placed on the ballot for voter approval.

By the 1940s, many Washington citizens shared these same concerns about diversion of their gas tax revenue for other purposes.<sup>12</sup> In November 1944, Washington voters ratified Amendment 18 to the state constitution to ensure the

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<sup>10</sup> The six states that used less than 20% of their gas tax revenue to support general government California, Massachusetts, Michigan, Missouri, New York and Pennsylvania. Washington Post article quoting Pittsburgh Press, May 21, 1939, courtesy of Google News.

<sup>11</sup> Congressional Research Service report, *Federal Aid to Roads and Highways Since the 18<sup>th</sup> Century: A Legislative History*, January 6, 2012, citing U.S. Congress, House, *Interregional Highways*, H.Doc. 379 (Washington: GPO, 1944), p. 214.

<sup>12</sup> *C.f.*, Laws of 1933, Ch. 8 and 65 (spending fuel excise tax revenue on unemployment relief).

availability of funds for the highway projects expected to be the key to post-World War II expansion and economic development.<sup>13</sup> The official 1944 voters' pamphlet for Amendment 18 only contained arguments for the measure's approval, with the stated intent being to protect the money raised for the highways from other uses by the state general fund.<sup>14</sup> Washington courts have consistently found that it was the express intent of the people to limit expenditures from motor vehicle fund revenues to those things that contribute to the safety, administration or operation directly or indirectly benefiting the highways.<sup>15</sup>

Washington is now one of 30 states that restrict the use of gas tax revenue for highway purposes only. Among these states, 22 restrict expenditures through provisions in their state constitutions, while eight accomplish this through statutes. The remaining 20 states allow at least a portion of their gas tax revenue to be used for other purposes, including Texas, which dedicates 25% of its gas tax revenue to the Permanent School Fund to support the public-school system.<sup>16</sup>

### 2.3 Types of revenues subject to Amendment 18

This report is not intended to explore whether different types of expenditures might qualify as a "highway purpose" under Amendment 18. Rather, the issue raised by the Steering Committee is whether RUC revenue can be construed or structured to fall within the purview of Amendment 18 so that its proceeds would be spent in the exact same manner as the gas tax it is intended to replace.

Amendment 18 applies to three types of revenue:

- ▶ License fees collected by the State for motor vehicles; and
- ▶ Excise taxes on the sale, distribution or use of motor vehicle fuel collected by the State; and
- ▶ All other state revenue intended to be used for highway purposes.

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<sup>13</sup> Utter and Spitzer, *The Washington State Constitution, A Reference Guide*, 2002, at page 73.

<sup>14</sup> *Ibid*, at p. 73, (citing *1944 Washington State Official Voters Pamphlet*, 47).

<sup>15</sup> *Washington State Highway Commission v. Pacific Northwest Bell Tel. Co* (1961) 59 Wash.2d 216.

<sup>16</sup> National Conference of State Legislatures, *Surface Transportation Funding Options for States*, May 2006, at p. 24.

The first two types of revenue are specifically enumerated: motor vehicle license fees and an excise tax on motor vehicle fuel. The third type of revenue, “all other state revenue intended to be used for highway purposes,” is categorical.

### 2.3.1 Enumerated revenues

One effect of enumerating specific revenue sources is that changes in how these revenues are governed can only be made by amending the Washington Constitution itself.<sup>17</sup> Legislation that attempts to alter the restrictions contained in Amendment 18 would be found unconstitutional unless those changes are approved by two-thirds vote of each chamber of the Legislature and presented to voters for their ratification or rejection by majority vote at a November general election. Thus, the level of approval required to alter the use of gas tax and vehicle license fee revenue is much higher than required for other revenue sources.

Given the level of public discord over how gas taxes and vehicle license fees were being used at the time for general government spending, it’s understandable why the drafters of Amendment 18 specifically called out these two revenue sources for restriction. Other states with similar restrictions, whether constitutional or statutory, tailored their restrictions to fit their own unique tax situation. Some states placed specific restrictions on the use of tire tax revenue, others toll revenue, and other taxes or fees that were being diverted away from highway spending.

### 2.3.2 Categorical revenues: “Other taxes or fees intended for highway purposes”

While the drafters of Washington’s Amendment 18 were principally concerned with halting the diversion of gas taxes and vehicle license fees, they also appeared to recognize that the Legislature might wish, at some point after the Amendment’s ratification in 1944, to extend these same expenditure restrictions to other taxes or fees intended to fund public highways. To accommodate this, the drafters created an entire category of revenue that would fall within the purview of Amendment 18:

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<sup>17</sup> A possible exception to this would be changes resulting from court rulings. However, no cases could be found where courts have altered the applicability of gas taxes, vehicle license fees, or other taxes intended for highway purposes under Amendment 18. In 75 years since its enactment, there have only been 14 cases related to Amendment 18, and most of these cases revolve around whether a proposed use of funds meets the definition of a “highway purpose.”

any tax or fee that the Legislature intended to be spent exclusively for the purpose of funding highways.

If certain taxes or fees were, in fact, used for highway purposes, the mere expenditure of the proceeds on highways would not be sufficient to place these revenues under the control of Amendment 18. The Legislature must create (or enact) the taxes or fees with the specific intention that they be dedicated exclusively for highway purposes. Presumably, this intention must be manifest in the exact wording of the tax or fee enabling statute; merely appropriating the proceeds for highway purposes is unlikely to be sufficient proof of the Legislature's intent that the revenue be perpetually restricted under Amendment 18<sup>18</sup>.

One important difference between enumerated revenue and categorial revenue is that since categorial revenues are created by statute, they could also be altered or repealed by amendments to the tax or fee mechanism's enabling statute (which, like other legislation, requires simple legislative majority vote). This stands in contrast with the legislative supermajority and voter approval requirements to alter how gas taxes and vehicle license fees are governed under Amendment 18.

## 2.4 Options for applying Amendment 18 to RUC revenues

### 2.4.1 RUC as a motor fuel tax

RUC is clearly not an excise tax on motor fuel. However, one design alternative is for RUC to be implemented as an "in lieu of" tax – that is, imposed specifically as an alternative form of financial contribution for highway purposes, in situations where the taxpayer is otherwise deemed not paying his or her proportionate share of the perceived benefits provided by government.<sup>19</sup> In-lieu-of taxes are most

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<sup>18</sup> See *State ex rel. Heavy v. Murphy*, 138 Wn.2d 800 (Wash. 1999). The specific issue argued in the *Heavy* case was whether the deposit of motor vehicle excise tax (MVET) revenue into the state Motor Vehicle Fund (i.e., the "special fund" referenced in Amendment 18) violated the Amendment's proviso that specifically exempts MVET revenue from deposit into the Motor Vehicle Fund. The court held that the Legislature's discretionary deposit of other revenue sources into the Motor Vehicle Fund does not violate the constitutional provision; mere deposit of revenue into the Fund does not transform it into the category of revenue restricted by Amendment 18: "It is not reasonable, however, to believe that where a practice is not required it is necessarily forbidden, or that, quite paradoxically, by expressly not being limited the expenditure of MVET revenue is somehow limited [by Amendment 18]." *Heavey* at 806.

<sup>19</sup> This is what economists refer to as the benefit-principle of taxation, dating back to Adam Smith's *Wealth of Nations*. The benefit principle holds that consumers of government services should be taxed in

commonly applied in property tax situations.<sup>20</sup> In Washington, there are several transportation-related in-lieu-of taxes in law. For example, the state’s rental vehicle sales tax was originally designed as an in-lieu-of tax to be paid by rental car companies (who in turn pass these costs down to customers), in recognition of the fact the state exempted rental car companies from otherwise paying the state motor vehicle excise tax on each car in their fleet.<sup>21</sup>

If RUC were enacted in lieu of gas taxes, this would mean that a certain set of vehicles would not be subject to the gas tax, and instead be required to pay RUC. In this situation, since RUC is owed in lieu of gas taxes, the argument would be that the use of the RUC revenue would be restricted in the same manner as gas taxes. One example of how this could be designed: the Legislature could exempt certain types of vehicles from owing gas taxes; say, plug-in hybrid electric vehicles (PHEVs), which use both gasoline and battery-powered electricity for propulsion. No longer subject to the gas tax, the Legislature would instead impose a RUC on these vehicles “in lieu of” the gas tax. The revenue would be deposited in the motor vehicle fund, and when accompanied with explicit legislative intent language in the RUC authorizing statute, the revenue could be restricted “exclusively for highway purposes.”

This approach does not magically convert a RUC into a motor vehicle fuel tax. However, it does create the strongest possible presumption of legislative intent that RUC revenues are the categorical type specifically anticipated in Amendment 18.

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proportion to the benefit they obtain from those services. See *Encyclopedia Britannica, Taxation, The benefit principle*, [www.britannica.com/topic/taxation/The-benefit-principle](http://www.britannica.com/topic/taxation/The-benefit-principle). Last accessed: November 18, 2018.

<sup>20</sup> See, for example: *Payments in Lieu of Taxes*, Report from the Washington State Department of Revenue, December 2013.

<sup>21</sup> C.f., RCW 82.08.020(2). This in lieu of tax was intended to provide similar compensation as would be received by the state if they collected the motor vehicle excise tax (MVET) on rental vehicles. However, the state MVET was later repealed by Initiative 695 when the substantive provisions were ratified by the voters in 1998 as Referendum 49. As a result, the rental car sales tax was amended to change the depository account and remove the in lieu of designation.

## 2.4.2 RUC as a vehicle license fee

Perhaps the most feasible alternative, first highlighted in the analysis conducted by the Office of the State Treasurer,<sup>22</sup> is to structure RUC as a vehicle license fee<sup>23</sup> that would be levied in an amount based on miles traveled. The fact that the amount of the license fee would vary based on mileage rather than imposed as a single flat rate amount (currently \$30) is not an issue. Amendment 18 makes no reference to specific amounts or how the vehicle license fee must be calculated or determined; it only requires that the fee (i) be collected by the State of Washington (ii) as a license fee (iii) for motor vehicles.<sup>24</sup>

A variable-rate vehicle license fee has been in existence – and subject to Amendment 18 – in some form for decades. Vehicles over 4,000 lbs. pay a “license fee by weight” that includes a variable component based on the gross vehicle weight rating of the vehicle.<sup>25</sup> This license fee by weight applies to both passenger-type and heavier commercial vehicles. The proceeds are deposited to various accounts within the motor vehicle fund (the “special fund” referenced in Amendment 18).

There are several design alternatives for implementing this approach for RUC,<sup>26</sup> but the following is one simplified example: the Legislature could amend the current vehicle license fee so that that the amount owed is based on annual miles traveled. All vehicles would owe an initial fixed amount of \$30 (matching the current vehicle license fee amount), plus a variable amount that scales up (e.g., increments of \$25 for each 1,000 miles traveled during the year). The license fee

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<sup>22</sup> Fiscal Implications of a Potential Transition to Road Usage Charges – Preliminary Findings, Office of the Treasurer, September 25, 2014.

<sup>23</sup> In Washington, the terminology used in the Washington Constitution is motor vehicle license fee. The authorizing statute for this fee, RCW 46.17.350, also uses vehicle licensing fee. However, because the fee is collected at the time of vehicle registration and annual renewals, the fee is sometimes loosely referred to as a vehicle “registration” fee.

<sup>24</sup> Const. art. II, Section 40 (amend. 18) provides, in pertinent part: “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.” The breakdown of distinct elements of this section is provided only to assist readers in focusing in on required elements of the enabling clause.

<sup>25</sup> License Fee by Weight, RCW 46.17.355.

<sup>26</sup> The variables for implementing a mileage-based vehicle license fee include how mileage is reported; whether the license fee varies in increments of 1 mile, 100 miles, 1000 miles or more; how often the vehicle license fee is owed; and many other variables that are the subject of the Steering Committee’s work.

actually owed by the vehicle owner would be offset by an amount attributable to their gas taxes already paid during the year (assuming the gas tax must remain in place during a transitional period). Additional detail revolving around this scenario can be provided if the Steering Committee expresses interest in further development.

Precise drafting will be important to make clear the revenue mechanism is being imposed as a vehicle license fee – not as an additional or new tax collected at the same time as vehicle registration.

When enacting such a system the Legislature might opt to include additional legislative language making clear their intent that the proceeds of the restructured fee be used exclusively for highway purposes, consistent with Article II, Section 40 of the Washington Constitution (i.e., Amendment 18). This should remove any doubt about its status as a vehicle license fee.

#### 2.4.3 RUC as a categorical revenue

A third alternative is to draft and enact RUC legislation that contains all of the elements required for it to qualify as a “state revenue intended to be used for highway purposes,” subjecting it to restriction under Amendment 18. This is best accomplished by including a findings section that cites the underlying factors supporting the Legislature’s desire to transition from the gas tax to RUC, coupled with explicit legislative intent language that the revenue be used exclusively for highway purposes.<sup>27</sup> It may even be helpful to create RUC as an in-lieu-of tax, collected as a replacement for the gas tax. This approach would be similar to that of several smaller fees that are collected during the vehicle licensing process, are made subject to Amendment 18, but are not, strictly speaking, “vehicle license fees.”<sup>28</sup>

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<sup>27</sup> The Legislature’s first authorization for the RUC Assessment work contains several such factors, including the advent of electric and other alternative fueled vehicles, increasing federal fuel economy requirements for passenger vehicles, and the resulting expected decrease in revenue from the motor fuel tax.

<sup>28</sup> Examples of these categorical revenues that are treated as restricted by Amendment 18 are numerous: camper registration fee (RCW 46.17.350); commercial vehicle safety enforcement fee (RCW 46.17.315); Farm Exempt Decal Fee (RCW 46.16A.420); and several others. See *Transportation Resource Manual*, Joint Transportation Committee, January 2017 for complete listing.

Although the expenditure of the RUC revenue would be restricted by Amendment 18, unlike the gas tax and a vehicle license fee, these “other revenues” are not granted a specific exemption from the state’s constitutional debt limit that regulates how much debt the state can lawfully carry<sup>29</sup>.

A second potential drawback with this approach is that technically, the Legislature could amend the language of the RUC enabling statute to remove it from the Amendment 18 restrictions. If there are concerns about the permanency of the dedication of RUC for highway purposes, then this approach might be viewed by some as less desirable than the RUC vehicle license fee approach described above.

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<sup>29</sup> Const. art. VIII, Section 1(b).

## 3 OTHER METHODS OF RESTRICTING RUC TO HIGHWAY PURPOSES

### 3.1 Statutory dedication of revenue to special accounts

In Washington, most all taxes and fees earmarked for specific purposes lack a Washington Constitutional provisions restricting the revenue from being diverted for other purposes. In transportation alone, there are numerous taxes, fees and charges that successfully fund highway-related expenditures yet are not specifically protected under Amendment 18<sup>30</sup>. Toll revenue from the Tacoma Narrows bridge isn't constitutionally protected; it is statutorily dedicated<sup>31</sup>. Ferry fares aren't constitutionally protected either, even though the revenues are deposited into ferry-related accounts that roll up under the motor vehicle fund<sup>32</sup>. There is a long-standing practice of restricting the expenditure of various taxes and fees by directing the deposit of revenue into the motor vehicle fund (or specific accounts established within the motor vehicle fund), which is the "special fund" referenced in Amendment 18. While the Legislature has the power to redirect these revenues by amending the state statute, no instances were found where this was done in practice. Statutorily dedicating RUC revenue to the motor vehicle fund appears to be a practical and effective option for limiting the use of the revenue for highway purposes.

### 3.2 Pledging revenue for the repayment of bonds

Another way that revenue can be restricted is if the revenue is subsequently pledged for the repayment of bonds. This situation occurs when the state (or a local government) issues bonds that pledge repayment from a specific revenue source. Legally, public bonds are a type of financing contract between a unit of government and bondholders who agree to lend money to government. Once the contract has been entered into, government cannot unilaterally change the underlying terms of the contract in a way that impairs the rights held by the

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<sup>30</sup> See footnote 28.

<sup>31</sup> RCW 47.56.165 requires all tolls collected to be placed in a specially created Tacoma Narrows Toll bridge account, which resides within the motor vehicle fund, which is the special account referenced in Amendment 18.

<sup>32</sup> RCW 47.60.315 requires ferry fares to be deposited into the Puget Sound Ferry Operations account and the Capital Vessel Replacement account, both residing within the motor vehicle fund.

bondholders. This is the current situation with regard to outstanding gas tax bonds: the State cannot fully repeal the gas tax because there are many outstanding bonds that pledged to keep the gas tax in force in amounts sufficient to guarantee repayment to the bondholders. If the State repealed the gas tax, that action would constitute an unlawful impair on the obligation of contracts under the Constitution of the United States<sup>33</sup>.

Although pledging revenue for the repayment of bonds can prevent subsequent actions to redirect, reduce or repeal the revenue source, this approach is not intentionally used as a means of restricting revenue expenditures and is not recommended as a technique to limit how revenues can be spent.

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<sup>33</sup> The Constitution of the United States, art. 1, section 9, clause 1 declares that “no state shall pass any bill of attainder, ex post factor law, or law impairing the obligation of contracts.” The Washington Constitution contains a nearly identical provision.