

# ODOT Funding Package Resource Library

## Oregon's Constitutional Dedication of Highway Funds

Article IX Section 3a of Oregon's Constitution dedicates revenue from motor fuels taxes and taxes and fees on the ownership, operation or use of a motor vehicle to highway purposes.<sup>1</sup> This provision includes two parts:

- What revenues are dedicated to the State Highway Fund
- How those funds can be spent

### What Goes into the State Highway Fund

The Constitution requires that "Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles" and "Any tax or excise levied on the ownership, operation or use of motor vehicles" goes into the State Highway Fund.

The fuels tax, weight-mile tax on heavy trucks, vehicle title and registration fees, and driver license fees all fall under this dedication. These taxes and fees form the core of the State Highway Fund. This provision also applies to tolls, as tolls are included in the legal definition of a tax and are levied on the ownership, operation, or use of a motor vehicle.<sup>2</sup> It does not apply to the vehicle dealer privilege tax created by HB 2017 because it was defined by the Legislature as a tax for the privilege of selling new vehicles in the state of Oregon; if the Legislature had defined the tax specific to the sale of motor vehicles it would likely have been subject to the constitutional dedication.<sup>3</sup>

Revenues and profits from investment of the State Highway Fund are also subject to the constitutional dedication, as are the proceeds of any sale of real property obtained with dedicated funds. Moreover, ODOT must obtain fair market value for sale or lease of any real property obtained with dedicated funds to satisfy its trust responsibility.<sup>4</sup>

### What Highway Funds Can Be Used For

The Constitution specifies that highway revenues must be used "exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in this state."

Article IX Section 3a also includes several specific provisions related to use of funds.

- Highway funds may also be used for the cost of administration, for any refunds or credits authorized by law, and to retire bonds for which such revenues have been pledged.

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<sup>1</sup> [Bills and Laws OrConst \(oregonlegislature.gov\)](https://www.oregonlegislature.gov/bills_laws/const/)

<sup>2</sup> [Oregon Toll Program](#)

<sup>3</sup> The use tax established in HB 2017 applies to out-of-state vehicle sales and is considered a revenue dedicated to the State Highway Fund.

<sup>4</sup> [Oregon Department of Transportation : Property Sales Program : Right of Way : State of Oregon](#)

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- Highway funds derived from campers, motor homes, travel trailers, snowmobiles, or like vehicles, may also be used for the acquisition, development, maintenance or care of parks or recreation areas.
- Highway funds collected from commercial motor vehicles may also be used for enforcement of commercial vehicle weight, size, load, conformation and equipment regulation.

The language of the Constitution and court rulings to date have dedicated highway funds to road work within the right-of-way. In [Rogers v. Lane County](#), the Oregon Supreme Court ruled that, “Because the language of Article IX, section 3a must be narrowly construed, expenditures of motor vehicle and fuel taxes within the meaning of “improvement, \* \* \* operation and use” must be limited exclusively to expenditures on highways, roads, streets and roadside rest areas themselves and for other projects or purposes within or adjacent to a highway, road, street or roadside rest area right-of-way that *primarily and directly facilitate motorized vehicle travel.*” This ruling that the State Highway Fund must be used for highway purposes “that primarily and directly facilitate motorized vehicle travel” remains the core of the case law on this topic and forms the foundation for all agency and legal review of potential uses of the State Highway Fund.

### *Public and Active Transportation*

ODOT requested legal advice from the Oregon Department of Justice concerning whether public transportation and bicycle/pedestrian programs can be funded using constitutionally dedicated State Highway Fund resources. DOJ reviewed transit programs that involve some type of motorized vehicle use and are within public highway rights-of-way. After consultation with DOJ, ODOT has concluded that it most likely can fund the following transit and bicycle/pedestrian programs using resources constitutionally dedicated to highway purposes.

- Bicycle and pedestrian facilities within the highway, road, or street right-of-way.
- Congestion management options such as dedicated lanes for transit or carpooling, shared lanes for mixed auto/light rail traffic, and queue-jumping lanes.
- Transit facilities within public highway rights-of-way such as transit stops and transit stations.
- Park and ride locations in or adjacent to the right of way that serve buses.
- Transit signal priority.
- Highway pull outs to accommodate buses.

### Text of Article IX Section 3a (1) and (2)

(1) Except as provided in subsection (2) of this section, revenue from the following shall be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in this state:

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(a) Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles; and

(b) Any tax or excise levied on the ownership, operation or use of motor vehicles.

(2) Revenues described in subsection (1) of this section:

(a) May also be used for the cost of administration and any refunds or credits authorized by law.

(b) May also be used for the retirement of bonds for which such revenues have been pledged.

(c) If from levies under paragraph (b) of subsection (1) of this section on campers, motor homes, travel trailers, snowmobiles, or like vehicles, may also be used for the acquisition, development, maintenance or care of parks or recreation areas.

(d) If from levies under paragraph (b) of subsection (1) of this section on vehicles used or held out for use for commercial purposes, may also be used for enforcement of commercial vehicle weight, size, load, conformation and equipment regulation.