



BRIEFLY

Initiative 745 directs the legislature to pass legislation assuring that 90 percent of transportation funds are spent on roads. Because existing transit taxes cannot be diverted to roads purposes, the legislature faces several serious obstacles to accomplishing the initiative's intent. Either roads spending must be increased substantially, or non-roads spending, primarily transit, will have to be cut back.

Significant discretion is given the legislature, so it's impossible to predict exactly what effect passage of I-745 would have on current transportation spending. Further, the legislature cannot be compelled by the initiative to pass any law.

The only certain outcome will be months of costly and difficult negotiations and intense interest group lobbying.

Part 2 of 3

I-745: So Many Roadblocks, So Little Time

Passage of Initiative 745 will unleash an army of lobbyists on Olympia eager to help the legislature interpret the initiative's sometimes ambiguous provisions. By directing the legislature to "adopt implementing legislation" requiring that 90 percent of transportation funds be spent on roads, the initiative places the burden of interpretation and execution in lawmakers' hands. In so doing, I-745's proponents probably avoid direct legal challenges to the initiative. After all, it simply orders the legislature to fix things.

By adopting that tactic, though, initiative sponsors accept instead the prospect of protracted, potentially unsatisfactory, legislative deliberations. And, the power of the initiative is entirely political. There is no enforcement power behind it, as the legislature cannot be ordered to pass a law.

The complexity of the decisions that would be placed on the legislative agenda invites substantial debate. In particular, provisions relating to local transit taxes and how the spending requirement is to be achieved pose questions of both interpretation and implementation.

Can't spend transit taxes on roads. Possibly confused by state budget analysts' technique of rearranging revenues to demonstrate hypothetical responses to the initiative, some initiative supporters seem to believe that lawmakers could divert transit funds to increase roads spending.

Although state budget analysts assumed that local transit taxes could be applied to roads projects under the initiative (see ePB 00:27), the state constitution says otherwise. Specifically, the constitution states: "...every law imposing a tax shall state distinctly the object of the same to which only it shall be applied" (Article VII, Section 5).

So, if the tax was initially imposed to fund transit systems, to transit only shall it be applied. Furthermore, as the Washington State Transit Association points out, "the current statute authorizing the transit sales tax says systems can ask the voters to approve the tax for the sole purpose of providing transit service."

Tim Eyman, sponsor and main spokesman for the I-745 campaign, agrees. He says it would be illegal to spend the money for other purposes. Furthermore, he says, the legislature can most easily address the problem by increasing the amount of money spent on roads. He supports, for example, using transportation-related sales taxes to support additional highway bonds.

Substantial increase required. Enlarging the transportation budget would, of course, be the only way to preserve existing transit spending while complying

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with the initiative's requirement that 90 percent of transportation funds be spent on roads. To do so, however, would require an enormous increase in roads spending.

For the 1999-2001 biennium, state analysts estimate affected spending to be about \$7.047 billion. Under the analysts' broad definition of roads, about 80 percent of current spending is already allocated to roads. About \$1.39 billion of the total is spent on other purposes, and 85 percent of that goes to transit systems and Sound Transit (the Puget Sound area's regional rail and bus system). To hold non-roads spending constant, total transportation spending would have to increase by about \$6.8 billion, nearly double current spending. (Calculation: The current non-roads expenditure of \$1.39 billion is 10 percent of \$13.9 billion, \$6.8 billion more than is currently being spent.)

Using the narrow definition of roads spending, which finds that just 60 percent of current spending is dedicated to roads, the total would have to increase by an improbable \$20.2 billion (nearly the size of the biennial state general fund budget).

Besides, there is no assurance that the legislature would muster the votes to increase spending even a fraction of the level required to meet the goal. For example, passage of Initiative 728 (see ePB 00-24) or Initiative 732 (see ePB 00-25), or both, will reduce available revenues substantially – nearly \$725 million in the next biennium – making it more difficult to use existing general fund taxes to support road projects.

This requirement of the initiative led transportation secretary Sid Morrison to step outside his official role and write state legislators – from home, as a citizen, on his own time and at his own expense – alerting them to the political impossibility of complying with the 90 percent formula. He notes that transit money cannot be moved, and examines the alternative of increasing roads spending. This, he says, would entail “a significant reach into the state general fund, ... and/or a rather dramatic state tax increase which seems unlikely.”

New questions, then, arise. If spending on roads does not increase substantially, then must transit spending be reduced? What becomes of unspent money in transit accounts? And how does the state ensure enforcement?

Achieving 90 percent roads spending. Finding the answers to these and similar questions begins with understanding how the goal of spending 90 percent of transportation funds on roads is to be met. Initiative sponsors in a brief filed with the superior court said, “... the intent of the initiative is to treat the 90 percent allocation formula as being applicable only to the aggregate of transportation funds and not that 90 percent applies to each individual fund.”

In other words, individual cities and counties may depart from the 90/10 split as long as total statewide roads spending does not fall below 90 percent of all transportation spending.

Currently, the governance and funding of transit and transportation programs involve myriad agencies and revenue streams. According to OFM, state government, through various agencies and departments, is responsible for 7,047 miles of highway, 16 airports, a fleet of 29 ferries and the state patrol. Counties have responsibility for 40,500 miles of roads; cities, for 13,500 miles of streets. Some local governments even operate ferry systems. And twenty-six transit



systems operate on a regional basis. Overlaying these systems are regional transportation and planning organizations, which coordinate planning by cities and counties.

The state taps nearly sixty revenue streams to support the state and local transportation system. The gas tax, by far the largest funding source, is constitutionally dedicated to highway purposes and generates more than \$700 million annually. Some of the gas tax is earmarked for distribution to local governments; the balance is appropriated by the legislature. Other transportation funds include bond proceeds, licenses, permits, fees, and ferry fares.

So rearranging existing funding will involve a number of parties with different, occasionally conflicting, interests. To begin, sorting out the definition of roads pits some interests against each other. For example, the analysis by OFM does not distinguish between car-carrying and passenger ferries. The proponents' argument in the Voter's Guide says "car-carrying" ferries would be included in the 90 percent. Eyman says passenger-only ferries would be "other."

But, would they? It's not clear, and the determination is just one of many legislators will be forced to make.

Consider the Washington State Patrol. Currently, the WSP is funded from vehicle registration fees, as a legitimate "highway purpose," and so is included under the broad definition of roads funding developed by state analysts. The narrow definition puts that nearly \$230 million in "other." Where it's placed has clear implications for the degree of fund shifting or program reduction required to reach the 90 percent target.

Giving state government a veto over local spending. Local governments may also raise taxes for transportation and transit services. Some, like King County, are seeking additional transit funding.

What latitude do local governments retain after the statewide limit is reached? Virtually none, if lawmakers choose to take a hard line.

A review by Marc Greenough, an attorney with Foster Pepper & Shefelman PLLC, notes that should the legislature require the 90 percent goal be achieved on an aggregate basis statewide, it "would essentially remove all local control over transportation spending and give the State veto power over local governments." (Note: this is the aggregate interpretation endorsed by the proponents.)

Morrison, in his letter to the legislature, said that moving transit money to roads could be accomplished if lawmakers were to pass legislation repealing local option transit taxing authority and replacing it with a statewide uniform-rate tax that could be distributed at the state level to achieve the 90 percent requirement. Unlikely, he says.

Greenough's analysis points up the problems with alternative interpretations of the requirement. If the legislature requires each local government to meet the 90 percent requirement, those jurisdictions that are heavily invested in supporting regional transit would face significant hardship. If the legislature opts to have the 90 percent standard achieved at the county level, he says, then counties would have effective veto power over city transportation spending.



What’s “traffic carrying capacity”? The initiative directs the legislature to require a “minimum of 90% of transportation funds to be spent on construction of new roads, new lanes on existing roads, *improvements to the traffic carrying capacity of roads*, or maintenance of roads.” (Emphasis added.)

State transportation and budget analysts point out that transit systems, an apparent target of the initiative, might qualify for road spending. They reason that bus service might be considered “... improvements to the traffic carrying capacity of roads....”

Of course, that definition would render the initiative virtually meaningless. Even the state transit association concedes in its review of the initiative that liberal construction of the initiative would support an interpretation that “would move the most transit dollars” to roads. But, if threatened, would transit districts try to convince the legislature that they’re entitled to roads money? Probably.

Sound Transit. In a provision that seems unnecessary if I-745 backers agree that local transit taxes cannot be diverted to other uses, the initiative requires that Sound Transit (the Puget Sound area’s regional rail and bus system) spend its money for “projects, programs and services” within its service area. In their superior court brief proponents argued that I-745 does not “require any particular percentage of Sound Transit’s budget to be spent on roads, instead of buses or rails.” They add that it would be up to the legislature to determine “whether all or part of Sound Transit’s proposed activities fit within the 10 percent of funds . . .”

Sound Transit amounts to about \$514.4 million of affected transportation spending in the 1999-01 biennium, according to the OFM analysis, which used revenues as a surrogate for spending. About one-third of that was identified as roads spending.

Requiring the legislature to act. Opponents of I-745 struggle to identify the initiative’s consequences. Their biggest challenge stems from the fact that I-745 is not self-enacting. It directs the legislature to “adopt implementing legislation.”

That makes sense. The reallocation of transportation spending involves judgment; it’s not as simple as repealing a tax or banning a steel trap. So, the initiative requires the legislature figure out how to accomplish the objective.

As OFM analysts state, “There is a multitude of ways that the Legislature could achieve the 90/10 split.” They also point out that it is “premature” to assume revenue flows into the future, noting that increases and decreases in various funding streams could significantly alter the 90/10 allocation.

I-745 doesn’t say when the legislation must be adopted, but it does require OFM to provide annual reports beginning August 1, 2001 “to ensure compliance.” Nor does it say what happens if the legislature fails to pass the required legislation.

Given some of the ambiguity in the initiative, and the likelihood that legislators and local officials will disagree on implementation strategies, it’s probable that the legislature will stumble on the road to passing legislation.

Then what? The consequences would be exclusively political. The initiative cannot force the legislature to act.



Marc Greenough says, “No court will order the Legislature to enact a statute unless that enactment is specifically mandated by the Constitution.”

Comments. Achieving the 90 percent target for roads will necessarily require a reallocation of existing expenditures. Lawmakers are unlikely to increase transportation spending for roads enough to accomplish the initiative’s objective without reducing non-roads spending; without a tax increase, a multi-billion dollar infusion of new money to roads is virtually impossible, even with aggressive use of debt financing. If the legislature chooses to implement the provisions of the initiative by reducing non-roads spending, transit systems would face sharp cutbacks.

Consequently, passage of the initiative will result in difficult negotiations among affected jurisdictions.

No one can predict with confidence what the specific effects of I-745’s passage will be. That’s up to the legislature. Nonetheless, with some confidence, we can predict months of costly and difficult negotiation, recrimination and frustration in its wake.



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