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## INITIATIVE 985 WOULD WIDEN 2009–11 GENERAL FUND DEFICIT

### BRIEFLY

By redirecting a share of motor vehicle related sales tax revenue from the General Fund to a new transportation account, Initiative 985 would add about \$290 million to the General Fund's 2009–11 shortfall.

Initiative 985—the Reduce Traffic Congestion Initiative—is one of three initiatives to the people on the November statewide ballot. If approved by voters, I-985 would open high occupancy vehicle (HOV) lanes to all vehicles outside of peak hours, require city and county governments to synchronize traffic signals on heavily traveled arterials and streets, and increase resources devoted to clearing breakdowns and accidents that obstruct the free flow of traffic on highways and arterials.

The Initiative would create a new earmarked account, the Reduce Traffic Congestion Account, to pay for these and other congestion reduction projects. The reduce traffic congestion account would be funded from three existing revenue sources: it would receive 15 percent of the basic state sales tax collected on purchases of motor vehicles, one-half of 1 percent of state appropriations for transportation-related public works projects, and city and county revenue from tickets issued by red light cameras. In addition, the Initiative specifies that toll revenue on any bridge or roadway in excess of the costs of constructing and maintaining that particular facility be deposited in the Reduce Traffic Congestion Account.

In October 2007, the State Auditor released a performance audit of the Washington State Department of Transportation (WSDOT) management of the state highway system in the Puget Sound Region, with special emphasis on congestion relief, which was prepared by the consultancy Talbot, Korvola & Warwick, LLP (TKW 2007). The introductory section of I-985 asserts that the Initiative “provides voters with the opportunity to implement the strategies recommended in the [audit] report that will have an immediate impact on reducing traffic congestion using existing infrastructure and resources” (I-985, page 2). The Initiative, however, directly addresses only two of the audit's 22 recommendations (those with respect to traffic light synchronization and incident response). Opening HOV lanes to all vehicles outside of peak hours—the Initiative's most significant policy change—was not a recommendation of the audit report.

Redirecting a share of motor vehicle related sales tax from the general fund to the new Reduce Traffic Congestion Account would add about \$290 million to the budget shortfall projected for the general fund in the 2009–11 biennium.

### HOV Lanes

The Initiative would require WSDOT to open “carpool” lanes to all vehicles outside of “peak hours.” The Initiative defines peak hours as Monday through Friday, 6 AM to 9 AM and 3 PM to 6 PM and defines carpool lanes as “high-occupancy vehicle lanes, including express lanes, . . . off-ramp bypass lanes, and on-ramp bypass lanes.” The Initiative also sets the threshold for access to HOV lanes during peak hours at two occupants per vehicle (I-985, page 7).

The audit report does not recommend opening up carpool lanes to general traffic outside of peak hours, and, in fact, is highly supportive of the HOV lane system as one mechanism for addressing the congestion problem:

We recommend WSDOT . . . complete the core HOV network, with an emphasis on the I-5 corridor to Tacoma. (TKW, page 149)

When HOV lanes were first introduced in the central Puget Sound region, the access threshold was three occupants. To increase utilization of the lanes, the threshold was subsequently dropped to two occupants for most of the HOV network. The one segment that retains the three-occupant threshold is westbound SR 520, east of the Lake Washington bridge.

WSDOT's performance standards call for the HOV lanes to maintain an average speed of at least 45 miles per hour 90 percent of the time during peak hours. Six segments currently fail to meet that standard during the afternoon peak period due to over crowding of the lanes, while four segments fail to meet the standard during the morning period.

The audit report recommends that WSDOT consider increasing the thresholds on these segments of the network, in order to meet the existing performance standard (TKW, page 149). The Initiative would prohibit WSDOT from making such adjustments.

### ***HOT Lanes***

The performance audit's preferred solution to the problem of HOV lane underutilization during off-peak hours is to convert the HOV lanes into HOT (high occupancy toll) lanes. HOT lanes are HOV lanes that allow access to toll paying vehicles below the occupancy threshold.

The audit report states HOT lanes' advantages: "HOT lanes provide a way to take advantage of otherwise unused portions of HOV lanes and provide a premium service for those who need a reliable travel time for a particular trip" (TKW, page 104). The auditors examined HOT lane projects in California, Colorado, Minnesota, and Texas and found that "equity issues have not emerged and HOT lane users represent a cross section of income levels. On the SR-91 express lanes [in Orange County, California], many frequent users are low-income while many high income commuters are infrequent or nonusers" (TKW, page 107).

WSDOT recently opened a pilot HOT lane program along SR-167 between Renton and Auburn. The audit report recommends that "WSDOT deploy future HOT lane projects aggressively if the SR 167 pilot is successful" (TKW, page 109). The report suggests that higher HOV access thresholds in heavily travelled corridors would provide additional capacity for toll paying vehicles (TKW, page 149).

I-985 compromises the effectiveness and financial viability of HOT lanes by allowing tolls to be collected only during the Initiative-specified peak hours of 6 AM to 9 AM and 3 PM to 6 PM, Monday through Friday.

As required by state law, the Office of Financial Management (OFM) has prepared a fiscal impact statement for I-985. OFM estimates that the costs of modifying the HOV lane system to accommodate general purpose traffic during off-peak hours would total \$224 million, and that this work would be accomplished over five years. (See Table 1.) Costs include \$200 million (\$4 million per mile) for installation or modification of variable speed limit and lane-use control systems, \$16 million for ramp gates and electronic signing at eight locations, \$6 million to install additional ramp

**Table 1: Estimated Expenditures from the Reduce Traffic Congestion Account  
Fiscal Years 2009 to 2013**

	Biennium			Total
	2007-09	2009-11	2011-13	
Traffic Light Synchronization	\$20,935,000	\$20,935,000	\$23,870,000	\$65,740,000
Red Light Traffic Cameras	14,640	-	-	14,640
Carpool Lanes	200,000	30,000,000	194,000,000	224,200,000
Sales and Use Taxes on Motor Vehicles	27,000	-	-	27,000
Washington State Auditor	200,000	600,000	600,000	1,400,000
Department of Transportation Audit Support	50,000	100,000	100,000	250,000
Emergency Roadside Response	5,636,500	6,190,800	6,190,900	18,018,200
<b>Total Revenue</b>	<b>\$27,063,140</b>	<b>\$57,825,800</b>	<b>\$224,760,900</b>	<b>\$309,649,840</b>

Source: Office of Financial Management

meters, and \$2 million to replace HOV signs. These state costs would be covered from the Reduce Traffic Congestion Account. In addition, the prohibition of off-peak tolls would reduce revenue to the SR-167 HOT lane pilot by one-third, \$3.1 million over five years.

King County Metro estimates that opening of HOV lanes in off-peak hours will reduce the efficiency of its bus network increasing its costs by \$15 million. OFM has not

estimated the costs to other transit agencies but assumes they would be equivalent to King County Metro’s costs. In addition to these operational costs, OFM estimates that transit agencies will lose \$20 million in federal funds over five years if the HOV lanes are opened to general traffic during off-peak hours.

### Traffic light synchronization

The Initiative requires cities, counties, and the state to synchronize traffic lights on heavily traveled arterials and streets within their respective jurisdictions and to coordinate with each other as they carry this out. The Initiative defines heavily-traveled arterials and streets:

Heavily-traveled arterials and streets include routes of regional and local significance and include major and secondary arterials as defined in RCW 35.78.010.

While the congestion audit did recommend a coordinated traffic-light synchronization program, this recommendation applies to major arterials only.

We recommend WSDOT (or a new regional entity) collaborate with the PSRC and other local jurisdictions to implement a traffic signal coordination program for major arterials in the Region. (TKW 2007, page 102)

The Initiative’s signalization mandate extends to secondary arterials (defined by RCW 35.78.010 as “routes which serve lesser points of traffic interest within a city; provide communication with outlying districts in the same degree or serve to collect and distribute traffic from the major arterials to the local streets”) as well as primary arterials.

Funding for city, county and state signalization efforts is to be provided from the Reduce Traffic Congestion Account. OFM estimates that the program would include 3,734 city intersections, 362 county intersections and 405 state highway intersections. One half of intersections would be synchronized in 2009 and the other half in 2010. Intersections would then be resynchronized every two and one-half to three years. OFM estimates that implementation of the signalization mandate will cost \$65.7 million through the 2011–13 biennium.

## Rapid response to breakdowns, accidents and other obstructions

Traffic incidents account for 25 percent of congestion. WSDOT currently operates a roving fleet of response trucks to respond to and clear incidents, with a goal of clearing all incidents within 90 minutes. This goal is not met several hundred times a year. The Initiative provides additional funding for incident response from the Reduce Traffic Congestion Account.

To reduce traffic congestion and increase traffic flow, the department of transportation and other governmental entities must rapidly respond to traffic accidents and other obstructions on highways, freeways, roads, and streets, and clear these obstructions as expeditiously as possible. The department and other governmental agencies must receive increased funding for emergency roadside assistance from the dedicated revenue in the Reduce Traffic Congestion Account. (I-985, page 12.)

The WSP is the lead agency with respect to most incidents, and the congestion audit notes that WSP controls how quickly WSDOT is able to re-open roadways. The audit report notes that the WSP has been chronically understaffed in the central Puget Sound urban area. Troopers working the area tend to be inexperienced, turnover is high, and training has not emphasized congestion mitigation. These staffing issues are in some cases the reason that the 90-minute standard is not met. The audit recommends that “WSDOT, in conjunction with the Washington State Patrol, improve its current incident response system through resolution of WSP staffing issues and an all agency after-action review process for every closure over 90 minutes (TKW, page 137).

The Initiative does not specify the amount that funding for incident response should increase. OFM assumes that WSDOT would receive funding for 10 additional response vehicles and ten full time equivalent employees. The state patrol would get funding for 16 additional employees, 13 of whom would be troopers assigned to the central Puget Sound region, and additional equipment for troopers and investigative staff. Altogether, OFM estimates that these enhancements would cost \$18 million in FY 2009 to FY 2013.

### Auditor responsibilities

The Initiative instructs the state auditor to establish best practice performance benchmarks for traffic light synchronization and incident response and then to track city, county and state governments’ progress against these benchmarks. The auditor would receive funding from the Reduce Traffic Congestion Account for these activities.

OFM estimates that the auditor’s cost for these activities would total \$1.4 million through FY 2013, and that WSDOT will spend \$250,000 supporting the audits.

### Reduce Traffic Congestion Account—Revenue

The Initiative establishes the Reduce Traffic Congestion Account as a subaccount of the Motor Vehicle Fund, and provides the account with four sources of revenue.

**Sales tax on motor vehicles.** The basic state retail sales tax rate is 6.5¢ per dollar. Virtually all of the proceeds from this basic tax are deposited in the state general fund. Since 2003 the state has collected an additional 0.3¢ per

dollar tax on retail sales of “motor vehicles” excluding farm tractors and farm vehicles, off-road and nonhighway vehicles, and snowmobiles. The proceeds from this selective tax are deposited in the multimodal transportation account. I-895 dedicates to the Reduce Traffic Congestion Account 15 percent of the existing 6.5¢ basic sales tax on those motor vehicles (0.975¢ per dollar of sales). OFM estimates that the Reduce Traffic Congestion account would receive (and the general fund would lose) \$574 million during through FY 2013 from this provision. See Table 2.

The most recent projections from the Senate Ways and Means Committee show a \$3.2 billion shortfall in the general fund by the end of the 2009–11 biennium. I-985 would widen that shortfall to \$3.5 billion.

**One-half percent for art.** State law currently dedicates one-half of one percent of spending for new state buildings to the purchase of art:

All state agencies . . . shall allocate, . . . out of any moneys appropriated for the original construction of any public building, an amount of one-half of one percent of the appropriation to be expended by the Washington state arts commission for the acquisition of works of art. (RCW 43.17.200)

I-985 exempts “transportation-related public works projects” from this rake-off for art. Since only a small fraction of the money that is appropriated for transportation-related public works projects goes to construct buildings, OFM projects this exemption would reduce art spending by only \$500,000 through FY 2013.

The Initiative requires that one-half of one percent of appropriations for any transportation-related project be deposited in the Reduce Traffic Congestion Account. OFM estimates that this rake-off would provide \$8.8 million to the account through FY 2013. Of this \$8.8 million, \$0.5 million would be a diversion from the arts commission. The remaining \$8.3

million would be tacked on to transportation project costs and would not represent a net gain in transportation funding.

**Red light cameras.** Seattle and 11 other cities recently have begun to use automated cameras at intersections to ticket vehicles that run red lights. I-895 would redirect the city share of fines issued from these red-light cameras to the Reduce Traffic Congestion Account. (The disposition of the state portion of these fines is unaffected by the Initiative.) Sponsors say the Initiative “removes the profit motive for red-light cameras.”

OFM estimates that the RTCA would receive (and cities would lose) \$39.8 million in revenue from red-light cameras through FY 213.

**Tolls.** I-985 requires, beginning December 8, 2008, that toll revenue on any newly constructed or improved facility (excepting the Washington State Ferry System) in excess of the costs of constructing and maintaining

**Table 2: Estimated Revenue to the Reduce Traffic Congestion Account  
Fiscal Years 2009 to 2013**

	Biennium			Total
	2007-09	2009-11	2011-13	
Red Light Traffic Cameras	\$13,043,998	\$13,383,998	\$13,383,998	\$39,811,994
Transportation-Related Public Works Projects	-	4,921,505	3,895,273	8,816,778
Sales and Use Taxes on Motor Vehicles	52,453,000	237,965,000	283,526,000	573,944,000
Toll Revenues	-	-	-	-
<b>Total Revenue</b>	<b>\$65,496,998</b>	<b>\$256,270,503</b>	<b>\$300,805,271</b>	<b>\$622,572,772</b>

Source: Office of Financial Management

that facility be deposited in the Reduce Traffic Congestion Account. Where new tolls are imposed on an existing facility, in the absence on any improvements to that facility, all revenue received in excess of toll collection costs must be deposited in the Reduce Traffic Congestion Account. Finally, the Initiative provides that any toll revenue from the SR 167 HOT lane pilot in excess of constructing and operating this project be deposited in the Reduce Traffic Congestion Account.

OFM projects that the Reduce Traffic Congestion Account will receive no toll revenue through FY 2013.

### **Reduce Traffic Congestion Account—Spending**

Section 15 of I-895 provides that moneys in the Reduce Traffic Congestion Account may be used to fund the specific activities mandated by the Initiative: conversion of HOV lanes to allow access for single occupant vehicles in off peak hours, traffic light synchronization, expansion of emergency roadside assistance and congestion related benchmarking and monitoring by the state auditor. To the extent the funds available in the Reduce Traffic Congestion Account are greater than needed for these four purposes, the excess may be used for

any other purpose which reduces traffic congestion by reducing vehicle delay times by expanding road capacity and general purpose use to improve traffic flow for all vehicles . . . [but excluding] bike paths or lanes, wildlife crossings, landscaping, park and ride lots, ferries, trolleys, buses, monorail, light rail, or heavy rail. (I-895, pages 14 and 15.)

(We should note here that section 15 of the Initiative could be subject to constitutional challenge. Section 15 amends RCW 47.56.030, which was modified during the 2008 legislative session. The language of the Initiative reflects the language of the statute prior to the 2008 modifications. The State Supreme Court sustained a challenge to Initiative 747 on these grounds in 2007.)

OFM estimates that expenditures for HOV conversion, signalization, emergency roadside assistance expansion and monitoring by the state auditor will total \$309.7 million through FY 2013, which would leave \$312.9 for the legislature to appropriate for other congestion reduction projects.

### ***Impact on SR 520 Bridge Project***

Initiative sponsor Tim Eyman has suggested that I-985 would prohibit the use of tolls collected on the I-90 bridge to fund the replacement of the SR 520 bridge. We are not convinced that this is true.

The subheading that proceeds section 15 of the initiative seems to support Eyman’s interpretation:

Critical Taxpayer Protection: Prevents Politicians From Diverting Toll Revenue To The General Fund; Tolls On A Project Get Spent On The Project (I-895, page 20.)

Section 20 of the Initiative, however, states “Subheadings used in this act [i.e. I-895] are not any part of the law.” (I-895, page 24.)

The bodies of section 15 and 17, which deal with the disposition of toll revenues, do not contain language requiring that all tolls on a project be spent on that project; rather both sections state that excess revenues shall be “dedicated to reducing traffic congestion and deposited in the Reduce

Traffic Congestion Account created in Section 10 of this Act.” (I-895, pages 20 and 24.)

Section I of the Initiative, which lays out its intent, clearly acknowledges that toll revenues can be spent beyond the project on which they are collected:

The intent of sections 15, 16 and 17 of this act: These sections do not create or impose new tolls; but if tolls or charges are imposed, then these sections ensure taxpayers are protected. There has been talk of simply charging people extra just to drive on existing highways, freeways, roads, and streets, including adding global positioning system (GPS) devices or transponders to vehicles or other methods to collect revenues. If citizens are double taxed, then any tolls or charges will be used to reduce traffic congestion.

The question, then, is whether the SR-520 project would meet the qualifications for funding from the Reduce Traffic Congestion Account, which we quoted above.

We believe it would. The existing bridge has two general purpose lanes in each direction and no breakdown lanes. Each of the three options under consideration for SR-520 has two general purpose lanes, one HOV lane and a breakdown lane in each direction. The addition of the HOV lane and breakdown lanes clearly will add capacity and reduce congestion in the corridor. While the new bridge will have the same number of general purpose lanes as the existing bridge, the addition of the HOV lanes, by removing buses, vans and other high occupancy vehicles from the general purpose lanes, will increase capacity for general purpose use. (Moreover, under the terms of the Initiative, the HOV lanes will be general purpose lanes 18 hours a day.) The breakdown lanes will similarly benefit general purpose use.

But even if this interpretation does not hold, it should be possible to find projects that do meet the requirements for funding from the Reduce Traffic Congestion Account and that are currently slated to be funded from the existing motor fuels tax. Shifting funding for these projects to the Reduce Traffic Congestion Account could free up additional motor fuel tax revenue for the SR-520 project.

### **Discussion**

Perhaps the biggest issues presented by the Initiative are the future of the HOV network and the diversion of vehicle related sales tax revenues from the general fund to the new Reduce Traffic Congestion Account.

With respect to the first issue, the Initiative would open the lanes to all traffic outside of the hours of 6 AM to 9 AM and 3 PM to 6PM, Monday to Friday, to allow single occupant vehicles access to unused capacity that exists in these lanes outside of peak hours. On certain segments of roadway, the peak period extends beyond the hours identified as peak by the Initiative. In these cases, allowing all traffic to use the HOV lanes would degrade the performance of the HOV system. The initiative would also prevent WSDOT from adjusting the occupancy threshold

The congestion audit report offers an alternative means of tapping the underutilized capacity of the HOV network, transforming them into HOT lanes.

With respect to the second issue, OFM estimates that the Initiative would divert \$290 million from the General Fund to the Reduce Traffic Congestion Account through the end of the 2009–11 biennium. The state is facing a deep budget shortfall in the 2009–11 biennium. Last month, following the release of the Economic and Revenue Forecast Council’s quarterly update to the forecast of General Fund revenue, Senate Ways and Means Committee staff projected a \$3.2 billion shortfall in the General fund by the end of the 2009-11 biennium. (Fully draining the state’s rainy day fund would reduce the shortfall to \$2.4 billion.) Prospects for the economy have darkened significantly in the last month, and the next forecast update will show a much larger shortfall for 2009–11.

Now is simply not a good time to divert money away from the General Fund.

### Resources

The text of Initiative 985 (I-985) is available at:

<http://www.secstate.wa.gov/elections/initiatives/text/i985.pdf>

The congestion audit report, prepared by the consultancy Talbot, Korvola & Warwick, LLP (TKW), is available at:

<http://www.sao.wa.gov/reports/auditreports/auditreportfiles/ar1000006.pdf>

The Office of Financial Management (OFM) fiscal impact statement is available at:

<http://www.ofm.wa.gov/initiatives/985.asp>

The Senate Ways and Means Committee Six-Year General Fund Outlook is available at:

<http://www1.leg.wa.gov/documents/Senate/SCS/WM/SwmWebsite/6%20Year%20Outlook/September2008SixYearOutlook.pdf>