SJR

66

# SENATE COMMITTEE REPORT

FURTHER

3/4/88 DATE TURNED INTO OFFICE 4/14/88

Mr. President:

Finance Committee considered SJR 66

Proposing an amendment to the Constitution of the State of Alaska creating a dedicated fund for the construction and maintenance of roads and highways

and recommended

[ ] replace with ___ CS _____ ) [✓] same title
[✓] or adopt _____ CS SJR 66 (Draft) ) [ ] new title

[ ] attached amendment(s) and

[ ] do pass

[ ] do not pass

[ ] no recommendation

[✓] individual recommendations

[ ] further referral to _____

[ ] letter of intent adopted _____

Committee [ ] attached or [✓] adopted fiscal note(s)
[ ] new [ ] updated or [✓] previous
[ ] zero [✓] fiscal impact

MEMBERS SIGNING DO PASS

Jim Duncan

Rick Halford

OTHER RECOMMENDATIONS

Willie Hensley - No Rec

Loren Leman No Rec

Rick Halford NO REC
Chairman signature and recommendation

[ ] Committee Backup attached

A/B

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CS SJR 66 (TRSJ)
PUBLISH DATE: Senate 3/4/88

# FISCAL NOTE

REQUEST:

Revision Date: 2/16/88
Title: Constitutional amendment creating a dedicated fund for construction/maintenance of roads/highways.
Sponsor: JONES
Requestor: Senate Transportation & Finance

Agency Affected: Office of the Governor
BRU: Division of Elections
Components: II - Primary & General Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | 0 | 2.2* | 0 | 0 | 0 | 0 |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 2.2* | 0 | 0 | 0 | 0 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | 0 | 2.2* | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

* Costs included cover 2 to 3 additional pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote

(cont.)

Prepared by: Linda Edgeworth
Phone: 465-4611
Division: Elections
Date: 2/16/88

Approved by Commissioner:
Date: 2/22/88
Agency: Office of the Governor, Division of Elections

Distribution (by preparer): 2/23/88
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FEB 24 1988
LEGISLATIVE FINANCE

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SJR 66

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be $51.2.

Under these circumstances the fiscal note would be:

53.4

Offered: 3/4/88
Referrd: Finance

5-1853B

Original sponsors: Jones, Coghill,
Faiks, et al.

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 66 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Constitution of the State of Alaska creating a dedicated fund for the construction and maintenance of roads and highways.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Article IX, sec. 7, Constitution of the State of Alaska, is amended to read:

SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Sections [SECTION] 15 and 17 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

* Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 17. HIGHWAY FUND. The proceeds of a State tax on the transfer or consumption of fuel for motor vehicles less refunds and credits as provided by law shall be placed in a highway fund, the principal and income of which shall be appropriated by the legislature for the construction and maintenance of highways and roads in the State.

* Sec. 3. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the

election laws of the state.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

P.O. BOX Z
JUNEAU, ALASKA 99811-2500
PHONE: (907) 465-3900

OFFICE OF THE COMMISSIONER

March 18, 1988

The Honorable Steve Cowper
Governor, State of Alaska
Post Office Box A
Juneau, AK 99811

Dear Governor Cowper:

In your Administrative Order creating the Task Force on Transportation Facilities, we were charged with, among other things, examining "reasonable and equitable funding sources for maintenance activities, including a review of the motor fuel tax..." Pursuant to this charge, the task force has closely examined issues related to using fuel taxes as a means of providing funding for the maintenance and operations of transportation facilities and has unanimously adopted two interim recommendations which are conveyed by this letter.

There are some underlying assumptions and positions which we feel deserve highlighting. First, in reviewing historical information related to the fuel tax issue in Alaska, it is clear that the tax was meant to be a user fee collected to recoup some of the funds necessary to maintain the particular transportation system from which it was collected. We believe that over the years this purpose has become clouded by legislative action. We are unanimous in our belief that the state should clarify and reaffirm the intended purpose of the fuel tax in Alaska as a user fee for the particular transportation system from which it was collected.

After considerable thought and debate, it is the position of the task force that a fuel tax is one of the reasonable and equitable funding sources for expenses, related to transportation systems, so long as it is treated as a user fee. In this regard, it is our unanimous recommendation that the best method of re-establishing the fuel tax as a user fee is to dedicate the revenues from the tax to the expenses related to the maintenance activities of the transportation system from which the revenue was generated.

In adopting the attached interim recommendations, the task force also debated at length what expenses should be included in maintenance activity costs. It is the unanimous consensus of the task force that all direct costs for improvement, maintenance and operation of the existing transportation systems should be included in the maintenance activity costs. This analysis would include such expenses as the operation of a maintenance station

camp facility as a maintenance expense, but would exclude indirect administrative costs as a maintenance expense. Similarly, reconstruction of an existing highway to comparable standards would be a direct maintenance expense, while construction of a new highway to a higher standard, even on an existing right-of-way, would not be a maintenance expense.

The task force continues to study issues related to the distribution of responsibility and equitable funding sources for transportation facilities as you directed. As this study continues, it is becoming increasingly clear that any realignment of responsibility also involves establishing a mechanism whereby adequate funding to support a transferred facility is consistently available. We have a full schedule during the next four months, and expect to have our final recommendations to you by the June 30th deadline.

Thank you for your consideration of our recommendations. If you have any questions or would like to discuss our recommendations with the members of the task force, please do not hesitate to call upon us.

Sincerely,

Mark S. Hickey
Chairman, Governor's Task Force on Transportation Facilities

cc: Senator Jan Faiks, President, Alaska State Senate
Representative Ben Grussendorf, Speaker, Alaska State House of Representatives
Members of the Governor's Task Force on Transportation Facilities

GOVERNOR'S TASK FORCE ON

TRANSPORTATION FACILITIES

## INTERIM TASK FORCE RECOMMENDATION # 2

**Whereas:** This task force was created by the Governor's Administrative Order #105 and under intent language adopted by the 15th Alaska Legislature.

**Whereas:** The charge by the Governor and the Legislature to this task force was to evaluate and examine reasonable and equitable funding sources for expenses related to transportation facilities.

**Whereas:** The charge by the Governor and the Legislature to this task force specifically required a review of motor fuel taxes in Alaska.

**Whereas:** The task force, for purposes of this resolution, interpets expenses related to transportation facilities to mean expenses for the Alaska transportation systems excluding indirect costs.

**Whereas:** This task force has recommended with Interim Task Force Recommendation # 1, that revenue collected and retained by the State of Alaska for fuel taxes should be dedicated for direct costs related to the transportation system from which the revenue was generated.

**And Whereas:** It is the determination of this task force that the current status of the dedication of fuel taxes for the Alaska transportation systems found in article IX, section 7, of the Alaska Constitution is unclear.

**NOW THEREFORE BE IT RESOLVED,** that it is the recommendation of this task force that the Governor and the Legislature should seek a constitutional amendment which would unequivocally dedicate all fuel tax revenues collected and retained by the State of Alaska to the direct costs associated with the improvement, maintenance and operation of the existing transportation system from which the revenues were generated.

Adopted this 8th day of March, 1988.

Mark S. Hickey, Chairman

GOVERNOR'S TASK FORCE ON

TRANSPORTATION FACILITIES

INTERIM TASK FORCE RECOMMENDATION # 1

Whereas: This task force was created by the Governor's Administrative Order #105 and under intent language adopted by the 15th Alaska Legislature.

Whereas: The charge by the Governor and the Legislature to this task force was to evaluate and examine reasonable and equitable funding sources for expenses related to transportation facilities.

Whereas: The charge by the Governor and the Legislature to this task force specifically required a review of motor fuel taxes in Alaska.

Whereas: This task force has evaluated and examined historical, constitutional and statutory information regarding fuel taxes as a source of funding for transportation facilities in Alaska.

Whereas: The task force, for the purposes of this resolution, interpets expenses related to transportation facilities to mean expenses for the Alaska transportation systems excluding indirect costs.

Whereas: This task force has determined that fuel taxes are one reasonable source of funding for expenses related to the Alaska transportation systems.

Whereas: This task force has determined that fuel taxes are one equitable method of assessing costs for the use of the Alaska transportation systems.

And Whereas: This task force has further determined that funding for transportation systems is an important function of government; that the Alaska transportation systems are an investment in current and future economic development and stability; that funding for the Alaska transportation systems requires a predictable and stable source of revenue.

NOW THEREFORE BE IT RESOLVED, that it is the recommendation of this task force after careful review of all information put before us, and in response to the charge of the Governor and the Legislature of the State of Alaska, that revenue collected and retained by the State of Alaska for fuel taxes should be dedicated for direct costs related to the transportation system from which the revenue was generated.

Adopted this 8th day of March, 1988.

Mark S. Hickey, Chairman

# ALASKA STATE LEGISLATURE

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## Senator Lloyd Jones

MEMORANDUM

TO: Senator Rick Halford, Co-Chairman
Senate Finance Committee

FROM: Senator Lloyd Jones

DATE: March 7, 1988

SUBJECT: Hearing for SJR 66 - Proposed constitutional amendment creating a dedicated fund for highways.

Please consider hearing SJR 66 at the earliest possible opportunity. The purpose of this proposed constitutional amendment is to dedicate the proceeds of the motor fuel tax, thus making it a direct user fee. This constitutional amendment would assure, with a diminishing state budget, these fuel tax funds would not be diverted to other uses.

The highways and roads of our state have not been adequately maintained over the past few years. This has been the result of a combination of factors, among them; an expansion of the state's road system during the high growth years and an inflated DOT/PF administrative budget. These factors resulted in less money for maintenance of roads when the DOT/PF budget was reduced.

Twenty-four states[1] presently have constitutional provisions in place which protect highway user revenue through anti-diversion language.

The fund would receive an approximate annual revenue stream of an estimated $23,235,888[2] in proceeds from the highway motor fuel tax, from both highway and off-highway uses, after the six cents per gallon off-highway rebate.

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[1]According to the June 1, 1987, STATUS ON HIGHWAY USER FEE PROTECTION, by the Highway users Federation for Safety and Mobility

[2]Source: Department of Revenue FY 87

Backup from Senator Jones

This resolution would afford the voters of Alaska the option of dedicating proceeds from the highway fuel tax to a highway fund. The fund would be available for appropriation by the legislature for expenditure for construction and maintenance of roads and highways in the state.

Attached for your consideration and information is a portion of the Highway Users Federation for Safety and Mobility report on user fee protection. The report contains information on Alaska's current law and on the constitutional protection provisions provided by various states.

In conclusion, I am offering this proposal to ensure all funds received from the fuel tax will continue to be utilized for the construction, and maintenance of roads and highways in the state. I believe dedicating these funds will give the citizens of Alaska confidence that expenditures from these user taxes will be used for roads and highways into the future.

# STATUS OF HIGHWAY USER FEE PROTECTION

June 1, 1987

Prepared by

John W. English
Legal Consultant

7428 Tower Street
Falls Church, VA 22046

For the

Highway Users Federation for Safety and Mobility

1776 Massachusetts Avenue N.W.
Washington, DC 20036

## Highway User Fees

Highway user fees are those taxes and fees which are imposed on the owners and operators of motor vehicles for the privilege of using the highways. Although such fees are imposed by the federal, state, and local governments, we are primarily concerned in this project with state highway user fees. State highway user fees include all of the following:

**Vehicle registration fees.** This is the first structure tax on highway users. It is a tax imposed directly on the owners of the vehicles which use the highways. Typically the fees are collected on an annual basis, and vary according to the weight and use of the vehicle. Heavier vehicles and commercial vehicles generally pay more.

**Motor fuel taxes.** This is the second structure tax on highway users. It is a tax on the fuel which is used in motor vehicles operated on the highways. The gasoline tax is the most common of this group of taxes, but taxes on diesel fuel and other special fuels are generally included.[1] The tax is typically imposed on a cents per gallon basis. It is generally assessed against distributors of the fuel, and then passed on to highway users in the price of the fuel. Most states also have some form of motor fuel use tax which is assessed directly against certain highway users such as commercial carriers. This is not really a separate tax. It is just a different means of collecting the regular motor fuel taxes. It is intended to prevent avoidance of the motor fuel taxes by out of state purchases.

**Weight-distance taxes.** This group of taxes, which constitutes a third structure tax on highway users, is the least well defined. Only about one-fifth of the states impose this

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1. The term "special fuel" typically refers to all combustible gases and liquids suitable for use to generate power in an internal combustion engine, except gasoline.

kind of tax, and it differs from state to state.[2] The tax is imposed only on commercial carriers, and typically only on vehicles which exceed a specified weight limit. In most cases, the tax is based on vehicle weight and the miles operated within the state during the tax year.

**Other taxes and fees.** There are, of course, myriad other state and local taxes and fees imposed on highway users which are in some way related to the use of their vehicles or the highways. Some of these obviously should be considered highway user fees, and some should not. Some examples:

Sales tax on vehicles, accessories, and fuels
Personal property tax on vehicles
Vehicle title fees
Driver license fees
Overweight permit fees and overweight fines
Traffic law fines
Motor carrier registration or permit fees
Highway tolls

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2. Examples of such taxes may be found in Arizona, Arkansas, Colorado, Idaho, Kentucky, New Mexico, New York, Ohio (based on number of axles rather than weight), Oregon, Utah (based on months of operation rather than mileage), and Wyoming. Several other states, Illinois and Nevada for example, have taxes which are similar to weight-distance taxes, but which are imposed only in lieu of some other kind of tax.

Not all of these taxes are discussed in the state summaries which make up the bulk of this report. In those states which have a protective constitutional anti-diversion provision, our research did not explore the statutory provisions relative to each highway user tax.

General sales taxes and personal property taxes are based on the value of the vehicle or other object of the tax. Such ad valorem taxes have generally not been considered highway user taxes, although a few states will include revenue from some such taxes as highway user revenue.[3]

Title fees, driver licensing fees, and other service fees charged by the motor vehicle administration are generally not large revenue producers. In most states, these fees are used to pay the administrative cost of providing the service, but there are exceptions.[4] Motor carrier registration and permit fees are also generally used to pay the cost of administering and enforcing the carrier regulations.

Highway tolls, overweight or oversize vehicle permit fees, and size-weight fines or penalties seem clearly to be highway user fees. It is somewhat surprising that few of the constitutional or statutory provisions which protect highway user revenue specifically mention these fees.[5] Revenue from all traffic law fines, often including size-weight violations, is often allocated to traffic safety programs or enforcement, or to the general education fund. Tolls are often collected and expended by a separate entity which owns and operates the toll roads.

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3. See, for example, the state summaries for Alabama (revenue from use tax in lieu of sales tax on vehicle is not highway user revenue), Arizona (constitutional license tax in lieu of ad valorem tax on vehicle is not protected highway user revenue), and Virginia (revenue from sales tax on vehicle is highway user revenue).

4. See, for example, the state summaries for Indiana and Pennsylvania (driver license fees); Kansas (title fees); and Maryland, New York, North Carolina, and Wisconsin (all DMV revenue).

5. See, for example, the state summaries for New Hampshire (tolls), Maryland and Vermont (overweight penalties), and Connecticut (all penalties).

Some states also impose other kinds of taxes on highway users which differ from the taxes imposed in most states.[6] Although they may clearly consitute highway user fees, it is difficult to compare one state with another on the basis of these taxes.

The goal of this project was to assess the overall status of highway user fee protection in the United States, and to identify states where that protection is particularly strong, or weak. In order to accomplish that, we have focused primarily on the first and second structure taxes -- the vehicle registration fees and the motor fuel taxes. Other highway user fees move in and out of the picture, from state to state, but the registration fees and fuel taxes are constants. Every state imposes these taxes on highway users, and they certainly constitute the largest component of state highway user revenue. Evaluation of the protection of revenue from these two user fees affords an excellent assessment of the overall status.

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6. Pennsylvania, for example, imposes an "axle tax" and a "gross receipts tax" on commercial carriers

## Legitimate Use and Diversion

The purpose in assessing highway user fees is to create a fund to defray the expense of providing the highways being used, now and in the future. Some uses of highway funds are unquestionably legitimate. Using the funds for construction and maintenance of a highway, for example, is clearly legitimate. Highways cannot be built without right of way, so using the funds to purchase right of way is obviously legitimate. Highways are often funded through the sale of bonds. Where the proceeds of the bond sale are used entirely for highway purposes, highway funds can legitimately be used to pay off those bonds. These are easy conclusions.

There are some other uses of highway funds which are clearly not legitimate. Expending highway funds to build schools or pay teachers, for example, would clearly be a diversion. Spending highway money on a subway system or other forms of nonhighway transportation is also a diversion of the funds from their proper use.

Between these extremes, however, there are many potential uses for highway funds which are less clearly either legitimate or diversionary. This report will not attempt to determine which expenses are legitimate. It will list some of the potential uses for highway funds, along with references to identify the state summaries in which there is some discussion of the manner in which the issue has been addressed by the states. This listing follows in the tables on the next six pages.

NOTE: Keep in mind that the tables <u>do not</u> show whether a particular kind of expenditure is considered legitimate in a particular state. The tables only indicate that more information on that issue will be found in the state summary for the indicated state.

## Overview of Highway User Fee Protection

**In assessing the overall status of highway user fee protection, it is important to understand that only a clear and comprehensive constitutional anti-diversion provision can provide any real protection.** That point cannot be too strongly emphasized.

The kind of constitutional provision needed does not have to be long or complicated. The following language would serve quite well, for example:

> No monies derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for other than the cost of administering the laws under which such monies are derived, statutory refunds and adjustments provided therein, payment of highway obligations, the cost of construction, reconstruction, maintenance, and repair of public highways and bridges, and the expense of state enforcement of traffic laws.

Seventeen states currently have language in their constitutions which affords that kind of excellent protection for highway user revenue. These states are shown in column A of the table on the next two pages. Another seven states have constitutional provisions which afford some protection for highway user revenue, but the protection is not complete. These states are shown in column B of the table.

## ALASKA

**Alaska lacks a constitutional anti-diversion provision. Current statutes afford protection for motor fuel tax revenue only. The constitution prohibits any new dedication of tax revenue to any particular purpose.**

A statutory provision specifies that revenue from the tax on motor fuels used to propel vehicles on the highways must be deposited in a special highway fuel tax account.[1] These funds may be expended only for highway construction and maintenance, construction of ferries, right of way acquisition, and other highway costs, including surveys, administration, and related matters.[2]

The constitution prohibits dedication of the proceeds of any state tax or license fee to any special purpose except when such dedication is required by the federal government as a condition of participation in federal programs.[3] The provision also specifies that dedications existing at the time the provision was adopted (1956) may be continued. The statutory dedication of motor fuel tax revenue described above was in effect prior to the adoption of the constitution's prohibition of dedications.[4]

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1. Alaska Stat. § 43.40.010 (g) (1985).

2. The law also permits paying valid motor fuel tax refund claims from the highway fuel tax account. Alaska Stat. § 43.40.010 (h) (1985).

3. Alaska Const. art. 9, § 7 (1985).

4. This constitutional provision was ratified on April 24, 1956. This provision has been construed strictly against dedications. The state attorney general has concluded that the only power which the legislature retains with respect to existing dedications is to repeal them. Existing dedications may be continued but may not be revised in any way which would increase or decrease either the percentage or total amount of the proceeds which are dedicated. Op.Atty.Gen. No. 7, No. 14 (1959). If the tax is decreased, the entire dedication falls and all of the tax revenue goes to the general fund; if the tax is increased, all of the increased revenue goes to the general fund. Op.Atty.Gen. No. 14 (1959).

## PROTECTION OF HIGHWAY FUNDS

A = Has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

B = Has a constitutional provision, but protection is incomplete.

C = Has a constitutional provision which specifically permits or requires diversion.

D = Has no relevant constitutional provision but current statutes generally apply highway user revenue to highway purposes.

E = Has no relevant constitutional provision and current statutes afford little or no protection for highway user revenue.

F = Has no relevant constitutional provision and current statutes provide for significant diversion of highway user revenue to nonhighway purposes.

Designated states are marked with an 'O'

| | A | B | C | D | E | F |
|---|---|---|---|---|---|---|
| Alabama | - | O | - | - | - | - |
| Alaska | - | - | - | - | O | - |
| Arizona | O | - | - | - | - | - |
| Arkansas | - | O | - | - | - | - |
| California | - | - | O | - | - | - |
| Colorado | O | - | - | - | - | - |
| Connecticut | - | - | - | - | O | - |
| Delaware | - | - | - | - | O | - |
| D. of Columbia | - | - | - | - | O | - |
| Florida | - | - | - | - | - | O |
| Georgia | - | O | - | - | - | - |
| Hawaii | - | - | - | - | O | - |
| Idaho | O | - | - | - | - | - |
| Illinois | - | - | - | - | O | - |
| Indiana | - | - | - | O | - | - |
| Iowa | O | - | - | - | - | - |
| Kansas | - | O | - | - | - | - |
| Kentucky | O | - | - | - | - | - |
| Louisiana | - | - | - | - | - | O |
| Maine | O | - | - | - | - | - |
| Maryland | - | - | - | - | - | O |

Designated states are marked with an 'O'

| | A | B | C | D | E | F |
|---|---|---|---|---|---|---|
| Massachusetts | - | - | O | - | - | - |
| Michigan | - | - | O | - | - | - |
| Minnesota | O | - | - | - | - | - |
| Mississippi | - | - | - | O | - | - |
| Missouri | O | - | - | - | - | - |
| Montana | - | - | O | - | - | - |
| Nebraska | - | - | - | - | - | O |
| Nevada | O | - | - | - | - | - |
| New Hampshire | O | - | - | - | - | - |
| New Jersey | - | O | - | - | - | - |
| New Mexico | - | - | - | - | - | O |
| New York | - | - | - | - | O | - |
| North Carolina | - | - | - | O | - | - |
| North Dakota | O | - | - | - | - | - |
| Ohio | O | - | - | - | - | - |
| Oklahoma | - | - | - | - | - | O |
| Oregon | O | - | - | - | - | - |
| Pennsylvania | O | - | - | - | - | - |
| Rhode Island | - | - | - | - | O | - |
| South Carolina | - | - | - | O | - | - |
| South Dakota | O | - | - | - | - | - |
| Tennessee | - | - | - | - | - | O |
| Texas | - | - | O | - | - | - |
| Utah | - | O | - | - | - | - |
| Vermont | - | - | - | - | O | - |
| Virginia | - | - | - | - | - | O |
| Washington | O | - | - | - | - | - |
| West Virginia | O | - | - | - | - | - |
| Wisconsin | - | - | - | - | O | - |
| Wyoming | - | O | - | - | - | - |

The situation in the remaining states is much worse. Four states are shown in column D as having no constitutional provision but having current statutes which apply highway user revenue to highway purposes. While the current application of the revenue in these states is laudable, that status could change at any time the legislature decided to change it. There is no real protection for highway user revenue in these states.[7] A statutory dedication cannot provide any real protection for highway user revenue.

The 18 states shown in columns E and F of the table have no constitutional provision, and current statutes do not allocate all of the revenue to highway purposes. In some cases, the statutes provide for diversion of the funds. Statutes in the eight column F states provide for significant diversions to nonhighway purposes.

The five states shown in column C have constitutional provisions which specifically permit or require a diversion of some highway user revenue to nonhighway purposes.

It is interesting to compare the status today with the status of constitutional anti-diversion provisions in 1965.[8] Today there are 17 states with excellent protection. In 1965 there were 22. One of the 22 has been repealed (Louisiana). The other four were not repealed but were amended to specifically permit or require some diversion of funds (California, Massachusetts, Michigan, and Montana). The total number of relevant constitutional provisions remains 29 today, just as it was in 1965. The one provision newly adopted since 1965 (New Jersey) affects only a portion of highway user revenue and dedicates it to general transportation purposes rather than specifically to highway purposes. We might conclude that there has not been a significant amount of change since 1965, but all the change has been negative.

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7. The point is well illustrated by the statutory laws of Illinois. One section attempts to dedicate highway user revenue to highway purposes, while other sections provide for extensive diversion. See the Illinois summary.

8. In 1965 the National Highway Users Conference published the text of the then-current constitutional anti-diversion provisions in a paper entitled, "Texts of Good Roads Amendments." That is the basis for this comparison.

## ARIZONA

**Arizona has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.**

The constitution provides that revenue from taxes relating to the registration, operation, or use of vehicles on the highways, and revenue from taxes on fuels or other energy sources used to propel vehicles on the highways shall not be expended for other than highway purposes. The section also provides for distribution of the funds to local governments to use solely for highway purposes.[1]

The section specifies that highway purposes includes construction, reconstruction, maintenance, and repair of highways; right of way acquisition; principal and interest on highway bonds; highway department administration; highway safety program administration; roadside development; and the cost of publishing and distributing Arizona Highways magazine.[2] This last item constitutes a minor diversion from the traditional concept of "highway purposes."

The constitution also provides for a license tax, in lieu of all property taxes based on the value of the vehicle, on all vehicles registered for operation on the highways, and it specifically exempts the revenue derived from this tax from protection by the anti-diversion section described above.[3]

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1. Ariz. Const. art. 9, § 14 (1984). The Statutes identify a large number of taxes and fees which constitute "highway user revenues," and provide for the use of those revenues for highway purposes, consistent with the constitution. See Ariz. Rev. Stat. §§ 28-1595, -1598 (Supp. 1985).

2. The cost of utility relocation due to highway construction is not a legitimate use of these funds. Op.Att'y.Gen No. 60-27.

Construction of buildings for county highway officials is a legitimate use. Op.Att'y.Gen. No. I84-087. Where such a building is later sold to an agency whose function is not directly related to highway purpose, the highway users fund must be reimbursed. Op.Att'y.Gen. No. I79-319.

3. Ariz. Const. art. 9, §§ 11, 14 (1984). A large percentage of the revenue from this tax is used for non-highway purposes. See Ariz. Rev. Stat. § 1591 (Supp. 1985). Property taxes based upon the value of the vehicle have traditionally not been considered highway user taxes.

## COLORADO

**Colorado has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.**

The constitution provides that revenue from any license, registration fee, or other charge with respect to the operation of a motor vehicle on the highways, and revenue from the imposition of any excise tax on gasoline or other liquid motor fuel, except aviation fuel used for aviation purposes, must be used exclusively for the construction, maintenance, and supervision of the highways.[1]

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1. Colo. Const. art. 10, § 18 (1980). The provision also specifies that the revenue may be used for the cost of administration of the tax law.

Since this section sets aside the whole of the revenues from the specified taxes for highway purposes, no appropriation by the legislature is required. Johnson v. McDonald, 49 P.2d 1017 (Colo. 1935).

## IDAHO

**Idaho has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.**

The constitution specifies that revenue from any tax on gasoline and other fuels used to propel motor vehicles on the highways, and revenue from motor vehicle registration fees must be used exclusively for the construction, repair, maintenance, and traffic supervision of the highways; and for payment of the interest and principal on bond obligations incurred for such highway purposes.[1]

This provision has been interpreted to prohibit use of these funds to pay for relocation of utilities necessitated by highway construction.[2] Also, use of the funds to advertise the state and its highways for tourism development is illegal.[3]

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1. Idaho Const. art. 7, § 17 (1980).

2. State ex rel. Rich v. Idaho Power Co., 346 P.2d 596 (Idaho 1959).

3. State ex rel. Moon v. Jonasson, 299 P.2d 755 (Idaho 1956).

## IOWA

**Iowa has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.**

The constitution provides that revenue from motor vehicle registration fees and all taxes and license fees on motor vehicle fuel must be used exclusively for the construction, maintenance, and supervision of the highways, or for the payment of principal and interest on highway construction bonds.[1]

This provision has been interpreted to allow use of the funds to pay for relocation of utilities necessitated by highway construction;[2] to lease land in order to provide barriers to control wind erosion which interferes with highway maintenance and safety;[3] to pay the salaries of the highway patrol, since supervision of the highways is one of their primary duties;[4] to erect a garage to house and maintain highway construction and maintenance equipment;[5] and to provide rest areas along the highways.[6] On the other hand, the provision prohibits use of highway funds to pay for construction of a bridge when part of it would lie in another state;[7] to develop and operate a motor vehicle ferry service;[8] and to purchase billboards, signs, and

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1. Iowa Const. art. 7, § 8 (1949). Motor vehicle certificate of title fees and lien notation fees are not "registration fees" within the meaning of this provision. Op.Att'y.Gen. (Thompson) April 13, 1971. Also, revenue from tax on motor vehicle fuel used for non-highway purposes is not covered by this provision. Op.Att'y.Gen. (Tieden) March 13, 1970.

2. Edge v. Brice, 113 N.W.2d 755 (Iowa 1962).

3. Op.Att'y.Gen. (Scott) April 26, 1979.

4. Op.Att'y.Gen. (Walsh) May 3, 1971.

5. Op.Att'y.Gen. (Fenton) June 2, 1969.

6. Op.Att'y.Gen. Jan. 16, 1968.

7. Frost v. State, 172 N.W.2d 575 (Iowa 1969).

8. Op.Att'y.Gen. (Rigler) Oct. 12, 1977.

junk yards located adjacent to highways but outside the right of way.[9] The highway fund must be reimbursed for highway department manpower and equipment used in flood prevention activities.[10]

One statutory provision threatens some potentially significant diversion. It provides for an appropriation from protected highway funds of whatever amount is necessary in order to pay a judgement against the department of transportation under the state tort claims act, when the judgement cannot be charged to a current appropriation.[11] The constitutionality of this law is yet to be tested in the courts, but the Iowa Attorney General has upheld it.[12]

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9. Op.Att'y.Gen. (Holden) Feb. 16, 1972.

10. Op.Att'y.Gen. (Coupal) May 12, 1969. This ruling is due to a comingling of restricted and nonrestricted highway department funds. If the funds were not comingled, nonrestricted funds could be used without any reimbursement.

11. Iowa Code Ann. § 313.16 (Supp. 1985). The section actually applies to awards or judgements rendered under chapter 25, the Claims Against the State Act, or chapter 25A, the State Tort Claims Act. There is no limitation on the amount of a judgement which can be rendered against the state under the tort claims act. See Iowa Code Ann. §§ 25A.1 to 25A.23 (1978, Supp. 1985). The department has some protection in discretionary function immunity, and some design immunity. See § 25A.14 (1)(1978) and § 25A.14 (8) (Supp. 1985).

12. Op.Att'y.Gen. (Rodgers) Sept. 26, 1984. This appears to overrule an earlier opinion. 1946 Op.Att'y.Gen. 7. Courts in other states have frequently ruled that payment of tort claims is not a legitimate use of protected highway funds. See State ex rel. Varnado v. Louisiana Highway Comm., 147 So. 361 (La. 1933); Malard v. State, 194 So. 447 (La. App. 1939); State ex rel. Wharton v. Babcock, 232 N.W. 718 (1930); Automobile Club of Washington v. City of Seattle, 346 P.2d 695 (1959).

## KENTUCKY

**Kentucky has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.**

The constitution provides that money derived from taxes related to gasoline and other motor fuels, and from taxes relating to registration, operation, or use of vehicles on the highways may be expended only for the payment of highway obligations; the costs of construction, reconstruction, maintenance, and repair of the highways and bridges; the cost of highway right-of-way; and the cost of enforcing the state traffic and motor vehicle laws.[1] Several judicial and attorney general's opinions have construed this section.[2]

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1. Ky. Const. § 230 (1973). The section also specifies that such money may be expended for the cost of administration and for refunds and adjustments relating to the tax from which the money is derived.

2. The funds may be used for publication and distribution of highway information which results in increased revenue for use in the highway program. Keck v. Manning, 231 S.W.2d 604 (Ky. 1950). The funds may be used for necessary relocation of utilities belonging to a municipality. Op.Atty.Gen. 74-199. The funds may not be used for a transit authority. Op.Atty.Gen. 78-144. A municipality may not expend the funds for a parking lot. Op.Atty.Gen. 82-492. Where a municipality places road funds in an interest bearing account, the interest earned on the funds is subject to the same restrictions as the road funds. Op.Atty.Gen. 81-143.

## MAINE

**Maine has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.**

The constitutional section provides that revenue derived from taxes relating to registration, operation, or use of vehicles on the highways, and revenue derived from taxes relating to fuels used for the propulsion of such vehicles may be expended only for the payment of debts and liabilities incurred in construction and reconstruction of highways and bridges; the costs of construction, reconstruction, maintenance, and repair of the highways and bridges under the direction and supervision of the state department having jurisdiction; and the cost of state enforcement of traffic laws.[1] The section specifically provides that it does not apply to revenue from any excise tax on motor vehicles imposed in lieu of a personal property tax. The section has been rather strictly construed.[2]

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1. Me. Const. art. 9, § 19 (1964). The section also specifies that such money may be expended for the cost of administration and for refunds and adjustments relating to the tax from which the money is derived.

The section provides that only expenditures on highways under the jurisdiction of a "state department" are qualified. Because the Maine turnpike authority is not a state department, a law which would credit revenue from the tax on gasoline consumed on the turnpike to the turnpike authority would be unconstitutional. Opinion of the Justices, 80 A.2d 417 (Me. 1951); Nelson v. Maine Turnpike Authority, 170 A.2d 687 (Me. 1961).

2. The funds may not be expended for relocation of a utility facility necessitated by a change in a highway. Opinion of the Justices, 132 A.2d 440 (Me. 1957). A charge which is imposed as a prerequisite to the registration of a motor vehicle falls within the limitations of this section regardless of what the charge is called. Opinion of the Justices, 152 A.2d 494 (Me. 1959). The funds may be used for that portion of the state police budget which is used for enforcement of traffic laws, but may not be used for other portions of the state police budget. Op.Atty.Gen. (Feb. 11, 1981).

## MINNESOTA

**Minnesota has several constitutional provisions which together afford excellent protection for highway user revenue.**

One section creates a highway user tax distribution fund to be used solely for highway purposes.[1] This fund is divided into three other funds, for use on state, county, and municipal highways. The sections which create these funds allow expenditures only to pay the principal or interest on highway bonds or for construction, improvement, and maintenance of highways.[2]

The highway user tax distribution fund consists of revenue from taxes authorized by two other sections. The first of these sections authorizes the legislature to tax motor vehicles using the highways, and specifies that this tax is in lieu of any other tax upon motor vehicles except wheelage taxes imposed by political subdivisions solely for highway purposes.[3] The second of the two sections authorizes an excise tax on any means or substance used for propelling vehicles on the highways, or on the business of selling such a substance.[4]

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1. Minn. Const. art. 14, § 5 (1976).

2. Minn. Const. art. 14, §§ 2, 6, 7, 8 (1976); art. 14, § 11 (Supp. 1985).

3. Minn. Const. art. 14, § 9 (1976).

4. Minn. Const. art. 14, § 10 (1976).

## MISSOURI

**Missouri has several extensive constitutional provisions which afford excellent protection for highway user revenue.**

One section deals with the state road fund.[1] It covers all revenue derived from highway users as an incident to their use or right to use the highways. With some exceptions, this includes all taxes on the manufacture, receipt, storage, distribution, sale, or use of vehicles or motor vehicle fuels, and state license fees and taxes on vehicles.[2]

The same section specifies that expenditures may be made from these revenues only for the following purposes: for payment of principal and interest on state road bonds; to complete, widen, improve, or maintain existing state highways; to reimburse political subdivisions for highways taken over by the state or for cash advanced by the subdivision to expedite state highway construction or improvement; to locate, relocate, establish, acquire, construct, and maintain new highways and bridges; to acquire materials, equipment, and buildings necessary to carry out these purposes; to maintain the highway-related activities of the highway commission and the department, including workmen's compensation and retirement programs; for administering and enforcing state motor vehicle and traffic laws; and for such

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1. Mo. Const. art. 4, § 30(b) (Supp. 1986).

2. The exceptions are as follows: property taxes are not covered; twenty-five percent of the revenue from the tax on motor vehicle fuel is allocated to local governments for highway purposes (as described in the text above), and does not pass through the state road fund; and revenue from sales tax on vehicles is not covered, although one-half of that revenue is dedicated to highway use under another provision (also described in the text).

A section added to the constitution in 1979 provides that revenue from any increase in state license fees and taxes on vehicles adopted subsequent to adoption of the constitutional section must be distributed as follows: ten percent to the counties, fifteen percent to the cities, and seventy-five percent to the state road fund. The money distributed must be allocated as provided in section 30(a) of the constitution for highway and transportation purposes. Mo. Const. art. 4, § 30(b)3 (Supp. 1986).

other purposes and contingencies relating and appertaining to the construction and maintenance of highways and bridges as the commission may deem necessary and proper.[3]

Another constitutional provision specifies that one-half the revenue from the state sales tax on vehicles shall be dedicated to "highway and transportation use."[4] Most of this revenue goes to the state road fund described above.[5]

Another section deals with revenue from the motor vehicle fuel tax, and specifies how the portion of that revenue which does not go to the state road fund is to be spent. Ten percent of the fuel tax revenue goes to a county road fund, to be used by counties only for construction, reconstruction, maintenance, and repair or highways and bridges.[6] Fifteen percent of the fuel tax revenue goes to municipalities to be used only for construction, reconstruction, maintenance, repair, policing, signing, lighting, and cleaning highways.[7]

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3. The section specifically allows the payment of fuel tax refunds, and payment of costs of collecting all the taxes before the revenue is credited to the state road fund. Some of the expenses listed in the text are authorized before the revenue is credited to the state road fund; others are authorized from the road fund itself.

4. Mo. Const. art. 4, S 30(b)2 (Supp. 1986).

5. Seventy-four percent goes to the state road fund; twenty-five percent goes to political subdivisions for highway and transportation use; one percent goes to the state transportation fund to be used as provided by law.

6. Mo. Const. art. 4, S 30(a)1(1) (Supp. 1986).

7. Mo. Const. art. 4, S 30(a)1(2) (Supp. 1986). This provision also allows the money to be used for payment of principal and interest on indebtedness incurred prior to January 1, 1980 for highway purposes.

These provisions have been strictly construed. One interesting case holds that interest earned by the state road fund must remain in that fund and cannot be diverted to the general fund or for any other use.[8]

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8. State Highway Comm. v. Spainhower, 504 S.W.2d 121 (Mo. 1973). The attorney general has reached the same conclusion with respect to the county road fund. Op.Atty.Gen. No. 171 (Antonio, 8-15-80).

Another case holds that since fees paid for copies of driving records (and other similar fees) are obtained directly from highway users, they are covered fees and must be credited to the state highway fund. State Highway and Transp. Comm'r v. Mo. Dept. of Revenue, 672 S.W.2d 953 (Mo. 1984). Also, although the constitution specifically allows use of the funds to construct a highway in, to, and through a state park, this does not allow use of the funds to create a new park or highway rest area. State ex rel. State Highway Comm. v. Pinkley, 474 S.W.2d 46 (Mo.App. 1971).

The attorney general has ruled that the funds may not be used to defray the cost of administering a system of permits to regulate outdoor advertising. Op.Atty.Gen. No. 23 (Graham, 2-1-72). Also the funds may not be used to defray the cost of providing a driver education program in the schools. Op.Atty.Gen. No. 85 (Lang, 6-7-74).

## NEW HAMPSHIRE

**New Hampshire has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.**

The constitutional section provides that revenue from registration fees, operators licenses, motor fuel road tolls, and any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels may be used only for the costs of construction, reconstruction, and maintenance of highways; for the payment of principal and interest of highway obligations; and for the costs of supervision of traffic on the highways.[1]

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1. N.H. Const. part 2, art. 6-a (1970). The section also specifies that such revenue may be expended for the cost of administration and collection of the tax or fee from which the revenue is derived.

## NORTH DAKOTA

**North Dakota has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.**

The section specifies that revenue from gasoline and other motor fuel taxes, and from motor vehicle registration and license taxes may be used only for construction, reconstruction, repair, and maintenance of highways, and for payment of obligations incurred for those highway purposes.[1] Several judicial opinions have construed the section.[2]

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1. N.D. Const. art. 10, § 11 (1981). The section also specifies the revenue may be expended for the costs of administration and collection of the tax and for authorized tax refunds.

2. The funds may be used for necessary relocation of utility facilities on interstate highways. Northwestern Bell Telephone Co. v. Wentz, 103 N.W.2d 245 (N.D. 1960). The funds may be used to control advertising and billboard use both on the highway right of way and on land abutting the right of way, if such control is provided for by law. Newman v. Hjelle, 133 N.W.2d 549 (N.D. 1965). The funds may be used to pay the cost of a bridge or culvert on a highway, even where the drain being bridged is built after the highway. Brenna v. Hjelle, 161 N.W.2d 356 (N.D. 1968).

## OHIO

**Ohio has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.**

The section provides that revenue derived from fees or taxes relating to the registration, operation, or use of vehicles on the highways, or to fuels used for propelling such vehicles may be used only for the payment of highway obligations; the costs of construction, reconstruction, maintenance, and repair of highways and bridges; other statutory highway purposes; expenses of state enforcement of traffic laws; and expenses authorized for hospitalization of indigent persons injured in motor vehicle accidents on the highways.[1]

This section has been held applicable only to state revenue; it does not restrict the use of revenue from taxes and fees imposed by municipal corporations.[2]

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1. Ohio Const. art. 12, § 5a (1979). The section also specifies that such revenue may be expended for the cost of administration and for refunds and adjustments relating to the tax from which the revenue is derived.

It has been held that the funds may be used for street lighting systems on urban portions of limited access highways. State ex rel. Walter v. Vogel, 159 N.E.2d 892 (Ohio 1959).

2. Garrett v. Cincinnati, 139 N.E.2d 35 (Ohio 1956).

## OREGON

**Oregon has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.**

The section specifies that revenue from any tax on motor vehicle fuel or other product used for the propulsion of motor vehicles, and revenue from any tax on the ownership, operation, or use of a motor vehicle may only be used for construction, reconstruction, improvement, repair, maintenance, operation and use of the highways, including roadside rest areas.[1] The section specifies that the revenue "may also be used for retirement of bonds for which such revenues have been pledged." It further specifies that if the revenue is produced by application of a tax to a vehicle which is used for commercial purposes, the revenue may also be used for enforcement of commercial vehicle weight, size, load, conformation, and equipment regulations.[2]

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1. Ore. Const. art. 9, § 3a (1985). The section also specifies that the revenue may be used for the costs of administration of the tax, and for any refunds or credits authorized by law. The language used to describe the tax on motor vehicle fuels is as follows: "Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel . . . ."

2. The section also provides that if the revenue is produced by application of a tax on the ownership, operation, or use of recreational vehicles such as campers, mobile homes, motor homes, travel trailers, and snowmobiles, the revenue may also be used for acquisition, development, maintenance and care of parks and recreation areas.

## PENNSYLVANIA

**Pennsylvania has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.**

The provision applies to revenue from gasoline and other motor fuel taxes, motor vehicle registration fees, drivers license fees, and other taxes on products used in motor transportation.[1] It specifies that these funds must be used solely for highway construction, reconstruction, maintenance, and repair; highway safety; expenses incident to those activities; or to pay bond obligations incurred for those purposes.[2] The section also provides for distribution of the funds to political subdivisions to use solely for the same purposes.

The provision also permits the state to borrow from the funds for a period not exceeding eight months. The loan must be repaid within one month after the beginning of a new fiscal year.

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1. Pa. Const. art. 8, § 11(a) (Supp. 1985). A tax on gross receipts of a motor carrier has been held not to be covered by this provision. Shirks Motor Express Corp. v. Messner, 100 A.2d 913 (Pa. 1954), appeal dismissed, 347 U.S. 941 (1954).

2. The language of this provision which would permit use of the funds for construction of a bridge does not permit use of the funds for purchase of an already constructed bridge. Peoples Bridge Co. v. Shroyer, 50 A.2d 499 (Pa. 1947). But see 1973 Op.Att'y.Gen. No. 19. Payment of that portion of a county engineer's salary attributable to the highway purposes specified in the section is a legitimate use of the funds. 1975 Op.Att'y.Gen. No. 10. Payment by the Dept. of Transportation to lease an aircraft for use in highway construction and maintenance is also a legitimate use. 1973 Op.Att'y.Gen. No. 40.

## SOUTH DAKOTA

**South Dakota has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.**

The constitutional provision applies to revenue from registration fees or other charges with respect to the operation of a motor vehicle on the highways, and revenue from any tax on gasoline or other liquid motor fuel used to propel a motor vehicle on the highways.[1] It specifies that such revenue may be used only for the maintenance, construction, and supervision of highways and bridges.[2]

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1. S.D. Const. art. 11, § 8 (1978).

2. The section also specifies that the revenue may be used for the cost of administration of the gasoline and motor fuel tax law.

Ad valorem taxes on motor vehicles are not covered. Op.Atty.Gen. p. 325 (1967-68).

The provision has been tightly construed. The funds may not be used to pay either the interest or the administrative costs on highway bonds. In Re Opinion of Supreme Court, 257 N.W.2d 442 (S.D. 1977). The funds may not be used to pay contractors for cost overruns or damages for breach of contract on highway contracts. G. H. Lindekugel & Sons, Inc. v. State Highway Comm., 202 N.W.2d 125 (S.D. 1972); Northern Improvement Co. v. State Highway Comm., 202 N.W.2d 861 (S.D. 1972); John A. Carlson, Inc. v. State Highway Comm., 202 N.W.2d 867 (S.D. 1972). A special, additional tax on motor fuels imposed to fund the operation and maintenance of a state-owned railroad was declared unconstitutional because a railroad is not a "highway." South Dakota Automobile Club, Inc. v. Volk, 305 N.W.2d 693 (S.D. 1981). The funds may not be used for regulation and removal of public utility facilities and billboards along the highway right of way. Op.Atty.Gen. p. 34 (1963-64). Motor vehicle funds distributed to municipalities must be used for maintenance of streets. Op.Atty.Gen. p. 118 (1951-52).

On the other hand, highway "maintenance, construction, and supervision" includes the cost of acquiring and developing land for roads; acquiring and utilizing materials and equipment for building new roads and maintaining existing ones; and salaries for all highway department employees, including back pay ordered paid by the state personnel policy board. Chilstrom v. State Department of Transportation, 271 N.W.2d 4 (S.D. 1978).

## WASHINGTON

**Washington has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.**

The constitutional provision applies to all fees collected by the state as license fees for motor vehicles; all excise taxes collected by the state on the sale, distribution, or use of motor vehicle fuel; and all other state revenue intended to be used for highway purposes.[1] All such revenue must be placed in a special fund and may be used only for highway purposes.[2]

The section provides that "highway purposes" includes construction, reconstruction, maintenance, repair, and betterment of state, county, and city highways and bridges. More specifically, this includes the cost of right of way acquisition; the cost of installing, maintaining, and operating traffic signs and signal lights; the cost of policing the highways by the state; the cost of operation of movable span bridges; and the cost of operation of ferries which are a part of any highway.[3] The section also provides that "highway purposes" includes the necessary operating, engineering, and legal expenses connected with the administration of the highways.[4]

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1. Washington Const. amend. 18 (1966). The section also specifies that it shall not be construed to apply to revenue from general or special taxes or excises not levied primarily for highway purposes, or to vehicle operator's license fees, 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. The section specifically allows use of the revenue for refunds authorized by law on taxes paid on motor vehicle fuels, and for paying the cost of collecting any revenues described in the section.

3. See State ex rel. Toll Bridge v. Yelle, 377 P.2d 466 (Wash. 1962). The funds may not be used for public transportation systems. State ex rel. O'Connell v. Slavin, 452 P.2d 943 (Wash. 1969). The funds may be used for construction and operation of "park and ride" lots. State Highway Commission v. O'Brien, 523 P.2d 190 (Wash. 1974).

4. The section also specifies that "highway purposes" includes the payment or refunding of any obligation of the state or any political subdivision thereof for which any of the described revenues may have been legally pledged prior to the effective date of the section.

## WEST VIRGINIA

**West Virginia has a constitutional provision which affords excellent protection for highway user revenue.**

The constitutional provision applies to revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, and all other revenue derived from motor vehicles or motor fuels.[1] It specifies that such revenue must be used only for construction, reconstruction, repair, and maintenance of the highways; or for payment of interest and principal on highway bonds; or for the payment of obligations incurred in such highway work.[2]

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1. West Virginia Const. § 52 (1982).

2. The provision specifies that statutory refunds and the cost of administration and collection may be paid from the revenues.

The cost of relocation of utility facilities is an obligation incurred in highway construction and may be paid from these revenues. State ex rel. Appalachian Power Co. v. Gainer, 143 S.E.2d 351 (W.Va. 1965). The cost of construction, maintenance, and operation of an office building and related facilities for the exclusive use of the highway department is a necessary and proper incident of highway construction, maintenance, and repair, and is a legitimate use of these revenues. State ex rel. State Bldg. Comm'n v. Moore, 184 S.E.2d 94 (W.Va. 1971).

Introduced: 2/12/88
Referred: Transportation and Finance

5-1853A

BY JONES, COGHILL, FAIKS, DUNCAN, FAHRENKAMP AND BINKLEY

IN THE SENATE

SENATE JOINT RESOLUTION NO. 66

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Constitution of the State of Alaska creating a dedicated fund for the construction and maintenance of roads and highways.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Article IX, sec. 7, Constitution of the State of Alaska, is amended to read:

SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Sections [SECTION] 15 and 17 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

* Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 17. HIGHWAY FUND. The proceeds of a State tax on the transfer or consumption of fuel for motor vehicles received by the State shall be placed in a highway fund, the principal and income of which shall be appropriated by the legislature for the construction and maintenance of highways and roads in the State.

* Sec. 3. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

# SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2-25-88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: Finance

**FISCAL NOTE(S) ATTACHED ✓ **
IN ACCORDANCE WITH AS 24.08.035
(see below)

2/12/88
Mr. President:

DATE TURNED INTO OFFICE 3-4-88

Transportation Committee considered SJR 66

Proposing an amendment to the Constitution of the State of Alaska creating a dedicated fund for the construction and maintenance of roads and highways

and recommended:

[X] replace with CS SJR 66 (TRSP) [X] same title [ ] new title

[ ] attached amendment(s) and + do pass

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to

[X] letter of intent adopted and attached

** Committee [X] attached or [ ] adopted fiscal note(s)
[ ] zero [X] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

2 - Tim Kelly - No Rec

Chairman Signature and recommendation

[ ] Committee Backup Attached