



## MEMORANDUM

**To:** CMAP Board and MPO Policy Committee

**From:** CMAP Staff

**Date:** October 5, 2016

**Re:** Constitutional Amendment Regarding Transportation Revenues

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House Joint Resolution Constitutional Amendment 36 ([HJRCA36](#)), to be placed on the ballot statewide in the General Election on November 8, 2016, would amend the Illinois Constitution to restrict the use of transportation-related revenues for transportation purposes only, preventing transfers, offsets, or other diversions to non-transportation purposes. The measure will require 60 percent of voters approving the question -- more than a majority of those voting in the election -- to become part of the Illinois Constitution.

Amending the Constitution is an extraordinary step for the General Assembly and Illinois voters to take, and, if approved, the proposed text would permanently govern how state and local governments support the transportation system. As such, it is important to identify points of clarification and potential unintended consequences of the proposed text. In recent weeks, CMAP staff reached out to several stakeholders in the region to solicit their input and analysis of the amendment, particularly focusing on several ambiguities in the text. The following sections review the background, the main points of discussion, and the potential next steps CMAP's Board and MPO Policy Committee.

### Background

In recent years, similar "lockbox" measures have been adopted or considered in other states such as in Wisconsin.<sup>1</sup> While literature supporting the proposed amendment indicates that non-transportation diversions in Illinois have exceeded \$6 billion over the past decade, CMAP analysis finds a smaller total. During fiscal years 2004 and 2015, a total of \$519.5 million was diverted from the Road Fund, Motor Fuel Tax Fund, and State Construction Account via fund sweeps and chargebacks benefiting the General Revenue Fund. These sweeps were used to address other budget gaps, and they represent a small fraction of total transportation budgets in

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<sup>1</sup> Council of State Governments, "Transportation Trust Funds and Lockbox Protections," March 9, 2015, <http://knowledgecenter.csg.org/kc/content/transportation-trust-funds-and-lockbox-protections>.

these years. Proponents also cite other fees, like the Commercial Distribution Fee, that have not been deposited into the state road fund as “diversions” that would be prohibited by the amendment. Preventing similar transfers in the future would represent a modest potential increase to total state transportation revenues. Proponents of the amendment acknowledge that just a portion of the \$6 billion would have been prevented by the proposed amendment.

On the other hand, our state's and region's transportation networks do suffer from significant state-of-good-repair needs, while funds to modernize or expand the system are limited. When those funds get swept, it is indeed a direct diversion from transportation revenues that runs contrary to the GO TO 2040 regional plan's support for depending on user fees to fund the transportation system.

## **Key Considerations**

The following paragraphs summarize initial staff analysis of potential issues caused by ambiguities in the proposed amendment. It is unclear whether the amendment will leave intact the current flow of revenues and eligibility in the state and local transportation programs. According to staff outreach with key stakeholders, legislative intent is to leave intact the current flow of revenues and eligibility in state and local transportation programs. As described in this section, however, the amendment text itself and the ballot language could be interpreted in ways that could prevent critical support for the transportation network.

**Lack of explicit support for planning.** The proposed amendment does not explicitly define statewide and metropolitan planning as eligible activities, only referring directly to project-level engineering studies, which omits key steps in developing and implementing transportation improvements. If interpreted to allow planning activities, it is unclear whether the text would permit comprehensive regional planning, as required by CMAP's enabling legislation, or simply permit transportation planning. The amendment does allow the General Assembly “to define other transportation purposes by law” with respect to local governments. Given CMAP's legal status as a local unit of government, our comprehensive planning activities could benefit from clarification or explicit eligibility in state law.

**Lack of multimodal focus.** The text of the proposed amendment is largely highway-oriented. While some references allow capital expenditures for non-highway modes, there is no explicit approval for the non-safety-related administrative costs for these other modes. Further, the text would allow state and local agencies to use transportation user fees to provide local match to federal highway dollars, but it provides no corresponding language for federal transit dollars. Bicycle and pedestrian modes are not directly mentioned in the text, despite their importance in supporting livable communities and their current eligibility under several federal and state transportation programs. Proponents of the amendment told CMAP staff that the intent is not to change support for multimodal transportation investments, and they assert that elastic clauses like “betterment of highways...mass transit, intercity passenger rail, ports, airports, or other forms of transportation” would be sufficient to protect existing eligible activities. With specific respect to the transit agencies, as local units of government, they would have the ability to expend administrative and operations costs to the extent that they relate to the “betterment of” the transportation system. Proponents also claim that explicit administrative expenses

could be handled through clarifying legislation passed by the General Assembly and signed by the Governor.

**Lack of support for related activities.** Federal, state, and local policies have increasingly reflected a broader understanding of transportation facilities over time, including multimodal and livability enhancements, as well as planning for associated land-use and environmental impacts. For instance, some transit projects have complex financing that includes a real estate component supporting the transportation facility, and projects may have negotiated commitments to mitigate environmental and community impacts. It is unclear whether improvements related to these ancillary activities would continue to be eligible under the proposed text. According to proponents of the amendment, these activities would be allowed so long as they constitute the “betterment of highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, airports...”

In addition, many transportation-related administrative expenses would be restricted by [HJR154](#) -- which explains the amendment and submits the question to the voters -- to “direct program expenses” that maintain eligibility for program expenses related to enforcement of traffic, railroad, and motor carrier laws and safety of the transportation system. The amendment does not define “direct program expenses,” and there is ambiguity as to what may or may not be considered a direct program expense of administering laws related to transportation. Proponents also claim that the eligibility of these administrative expenses can be clarified in legislation passed by the General Assembly and signed by the governor.

**Local option fees and potential limitations to home rule.** It is unclear how the proposed amendment would affect municipal and county budgeting for transportation and non-transportation uses. Many local governments in the region raise revenues from the transportation system that are not always directly reinvested in transportation improvements, including vehicle registration stickers and local option motor fuel taxes (MFTs). In northeastern Illinois, 60 home rule municipalities impose local MFTs, while 83 home rule and 75 non-home rule municipalities impose local vehicle license fees.<sup>2</sup>

The amendment will restrict the use of any transportation revenues generated at the state and local levels to the eligibilities defined by the amendment. For example, it would appear to require non-home rule municipalities with vehicle license stickers to devote that revenue to transportation only. However, it remains unclear whether home rule governments, including Cook County and many municipalities, could continue to use local option MFTs and vehicle license sticker revenues for any general purpose. According to proponents, the amendment would limit home rule authority to the extent that a home rule government seeks to spend transportation revenues on non-transportation purposes. However, the amendment may be in conflict with Article VII §6 of the Illinois Constitution, which granted home rule municipalities and counties broad powers to perform government functions. While the proposed amendment does not affect local governments’ ability to tax, it certainly calls into question their ability to devote local transportation revenues to non-transportation purposes. Proponents’ intention to

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<sup>2</sup> Chicago Metropolitan Agency for Planning, “Use of local transportation user fees in northeastern Illinois,” July 28, 2016, <http://cmap.is/2amuCXC>.

limit home rule authority may be contradicted by HJR154, which states that the amendment “does not, and is not intended to...alter home rule powers granted under this Constitution.”

The **constitutional amendment** does include language granting local governments the ability to use transportation revenues for eligible expenses beyond those enumerated in the amendment if such expenses are defined as “other *transportation* purposes authorized by law” (emphasis added). This would appear to mean *state* law, giving the General Assembly and Governor the authority to define what other transportation uses local governments could spend transportation revenues on beyond what is allowed in the amendment.

**Impact on bonding programs.** It is unclear how the proposed amendment would affect state or local bonding programs that rely on transportation funds (or a mix of non-transportation and transportation funds) to support a variety of purposes. For example, the General Assembly created the Capital Projects Fund in 2009 as part of the Illinois Jobs Now! program, relying on transportation fees like vehicle registrations, as well as additional sales, liquor, gaming, and other taxes. Bond proceeds support not only transportation projects, but other non-transportation capital projects. Given this commingling of funds, it would appear that the Capital Projects Fund could not continue in its current form if the amendment were to pass. Proponents assert that the amendment will not be retroactive and thus would not alter existing programs.

More broadly, it is unknown how the proposed amendment would affect the state’s finances, including the state’s ability to access new financing or refinancing of existing bonds from the private market at a reasonable rate. To the extent that the state would have fewer revenue sources available to make bond payments due to the provisions of the proposed amendment, it may face higher financing costs, especially for general obligation bonds.

**Need for “dedicated source of funding.”** Section (e) of the amendment requires the General Assembly to “provide for a dedicated source of funding” for any appropriation given to a mode of transportation “not described in [the amendment].” It is unclear if appropriations to bike, pedestrian, freight rail, waterways, or pipelines would need a separate, dedicated source of funding, as they are not specifically mentioned in the text of the amendment. Also unclear is whether the General Assembly would be prohibited from general funds if they wish to appropriate funds for these unnamed modes.

Proponents of the amendment told staff that the intention was not to require existing modes of transportation to secure dedicated sources of revenue, rather that modes that do not currently exist today would need new sources of revenue. HJRCA36 includes various elastic clauses like “other statutory highway purposes” and “other transportation purposes authorized by law” that could be interpreted to allow IDOT and local governments to continue supporting multimodal activities, ancillary activities, and critical planning functions. But additional legislation may be required to ensure that these activities would continue to be eligible. It also remains unclear how the amendment would affect practical budgeting considerations for state and local agencies.

## Next Steps

CMAP and the GO TO 2040 plan clearly recommend developing user fees and increasing overall transportation revenues. But if narrowly interpreted by public agencies, the General Assembly, or the Illinois Supreme Court, the proposed amendment could in fact hinder critical maintenance of the transportation network by limiting the ability to expend a wide array of transportation revenues and fees on support services. In addition, the goal of limiting sweeps from the Road Fund to non-transportation uses is laudable, but it does not address the region's broader lack of transportation funding resources.

Should a supermajority of the voters approve the amendment, numerous ambiguities -- including those enumerated above -- will require further interpretation through rulemakings and legislation. CMAP staff do not yet have clarity regarding the process to interpret the amendment or to determine which agencies or committees will issue rulemakings. It is likely that if questions persist and if there is disagreement over interpretations of the language, lawsuits will be filed to resolve those questions or disagreements, leaving the courts to be the ultimate arbiter of the constitutional language.

Proponents of the amendment posit that the General Assembly will quickly move legislation after the election to clarify or more specifically address some of the issues outlined in this memo. The Board and MPO Policy Committee should be prepared both to engage in this conversation with the General Assembly and to offer suggestions for clarifying several items, including but not limited to:

- Eligibility of planning activities, non-highway modes, and related activities for funding
- Effects of the amendment on home rule governments' ability to spend transportation user fees.
- Effects of the amendment on key bonding programs.

Additionally, the Board and MPO Policy Committee should be prepared to engage with Illinois Department of Transportation (IDOT), Illinois Department of Revenue (IDOR), and potentially other state and local agencies to discuss any rulemaking that could result from the passage of the amendment. CMAP staff would pursue additional research and continue to provide resources for the Board and MPO Policy Committee to consider.

ACTION REQUESTED: Discussion

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