

# CAPITOL RESEARCH

## ● ● ● TRANSPORTATION POLICY

### TRANSPORTATION TRUST FUNDS & LOCKBOX PROTECTIONS

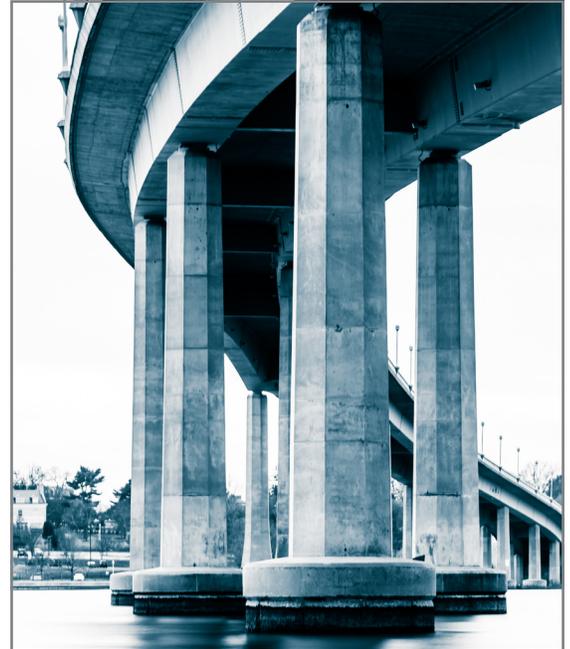
In 2014, Maryland and Wisconsin both had measures on the ballot aimed at preventing transportation revenues from being spent for other purposes. The measures were in reaction to recent budgets that used transportation funds in those states to shore up general services during fiscal crunches. In Wisconsin, between 2003 and 2011, lawmakers borrowed a total of \$1.4 billion in transportation funds. While much of that money was later repaid through bond proceeds, the diversions were raised as an issue by Scott Walker in his successful 2010 campaign for governor. Similarly, in Maryland, lawmakers had taken more than \$1 billion out of transportation funds to balance the budget in recent years. Those diversions resulted in the delay of numerous transportation projects.<sup>1</sup>

#### States have created dedicated trust funds to support state departments of transportation and transportation spending in general.

- Forty-seven states have at least one transportation-dedicated trust fund.<sup>2</sup>
- Thirty states have constitutional restrictions on how the revenues in those funds can be spent.<sup>3</sup>
- While states without constitutional restrictions have restrictions codified in statute, those protections haven't always prevented the diversion of transportation revenues to other budgetary areas.<sup>4</sup>

#### The restrictive language is stronger in some states than in others.

- In New Hampshire, the constitutional restrictions are on the revenues that go into the highway fund rather than on the fund itself.
- Seven states specifically prohibit the use of fuel tax receipts for anything other than transportation.
- Missouri's constitution prohibits any state revenues from highway users that are allocated to the State Road Fund from being diverted away from highway purposes and uses.
- Georgia's constitution restricts the use of motor



fuel revenues to roads and bridges, except in case of "invasion or major catastrophe declared by the governor."

- Virginia is the only state that specifically allows the governor and legislature to divert transportation funds provided they come up with a plan to repay those dollars within three years.<sup>5</sup>

#### Maryland and Wisconsin are the two newest states with constitutional protections for their transportation trust funds. The two states took different approaches.

- Maryland's constitutional amendment, which was approved by more than 80 percent of voters, includes an escape clause. It states that funds in the Transportation Trust Fund may be used for a purpose not related to transportation or transferred to the state's general fund if "the Governor, by



executive order, declares a fiscal emergency exists; and the General Assembly, by legislation ... supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, concurs with the use or transfer of the funds.”<sup>6</sup>

- Wisconsin’s constitutional amendment, which was also approved by nearly 80 percent of voters, includes no such escape clause. The amendment states that “none of the funds collected or received by the state from any source and deposited into the transportation fund shall be lapsed, further transferred, or appropriated to any program that is not directly administered by the department of transportation.”<sup>7</sup>

### Other states seem likely to follow in the footsteps of states with trust funds and constitutional protections.

- Alaska—which has the lowest gas tax in the country—is the only state with no transportation-dedicated trust funds and no restrictions on how transportation-derived revenues can be spent.<sup>8</sup> The Alaska Legislature has considered bills to define a new, dedicated Transportation Infrastructure Fund that would receive revenues from state fuel taxes and registration fees, but they have all been unsuccessful.<sup>9</sup>
- Connecticut Gov. Dannel Malloy in 2015 has proposed both a constitutional amendment and a statutory change to protect the state’s Special Transportation Fund, which would ensure dollars from the fund are spent only for transportation purposes. Neither provision would include an escape clause like an override option for the general assembly or governor. If approved by the

legislature, the proposed constitutional amendment would be put to voters in 2016. The statutory change would protect the fund during the interim.<sup>10</sup> Since 2005, when lawmakers and then- Gov. Jodi Rell approved five increases in the state’s wholesale fuel levy, more than \$1.4 billion in fuel tax receipts have been spent on non-transportation programs. At the same time, the state amassed between \$12 billion and \$20 billion in vital highway and rail improvement projects currently deemed “unfundable.”<sup>11</sup>

- Delaware Gov. Jack Markell in 2015 proposed transferring \$40 million from the state’s Transportation Trust Fund to help cover general fund expenses and balance the budget. It was the second year in a row he proposed such a diversion and took place even as he was asking state legislators to come up with new revenues to help meet Delaware’s transportation needs.<sup>12</sup>

### Protections for transportation trust funds may yield real or perceived benefits but such funds can’t solve some problems.

- While stronger protections for transportation trust funds may help improve public perceptions of state transportation officials—particularly as they seek support for additional transportation funding in the future—those protections are unlikely to have much impact on struggling state transportation budgets. Moreover, the raids on transportation trust funds seem likely to be a problem that takes care of itself for the same reason: The gas taxes that largely fund them aren’t keeping up with current infrastructure needs. “The days of raiding gas tax money for other things besides transportation are likely to be numbered, because the money won’t be there,” said Eno Center for Transportation President and CEO Joshua Schank.<sup>13</sup>



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<sup>1</sup> Daniel C. Vock. “3 States Consider Ways to Maximize Existing Transportation Money,” *Governing*, October 27, 2014. Accessed from: <http://www.governing.com/topics/transportation-infrastructure/gov-three-states-consider-ways-maximize-existing-transportation-money.html>

<sup>2</sup> National Conference of State Legislatures and AASHTO Center for Excellence in Project Finance. “Transportation Governance and Finance: A 50-State Review of State Legislatures and Departments of Transportation,” May 2011. Accessed from: [http://www.transportation-finance.org/pdf/50\\_State\\_Review\\_State\\_Legislatures\\_Departments\\_Transportation.pdf](http://www.transportation-finance.org/pdf/50_State_Review_State_Legislatures_Departments_Transportation.pdf)

<sup>3</sup> *Ibid.*

<sup>4</sup> Keith Phaneuf. “With ‘lockboxes’ for toll receipts, there are lots of ways to pick the lock,” *The CT Mirror*, January 5, 2015. Accessed from: <http://ctmirror.org/2015/01/05/with-transportation-lockboxes-there-are-lots-of-ways-to-pick-the-lock/>

<sup>5</sup> NCSL & AASHTO.

<sup>6</sup> Constitution of Maryland. Article III, Section 53. Accessed from: [http://ballotpedia.org/Maryland\\_Transportation\\_Fund\\_Amendment\\_Question\\_1\\_%282014%29](http://ballotpedia.org/Maryland_Transportation_Fund_Amendment_Question_1_%282014%29)

<sup>7</sup> Constitution of Wisconsin. Article VIII, Section 11. Accessed from: [http://ballotpedia.org/Wisconsin\\_Transportation\\_Fund\\_Amendment\\_Question\\_1\\_\(2014\)](http://ballotpedia.org/Wisconsin_Transportation_Fund_Amendment_Question_1_(2014))

<sup>8</sup> Alexander E.M. Hess and Thomas C. Frohlich. “States with the highest (and lowest) gas taxes,” *USA Today*, January 20, 2015. Accessed from: <http://www.usatoday.com/story/money/business/2015/01/20/24-7-wall-st-state-gas-taxes/22056799/>

<sup>9</sup> Alaska House Majority. “Sponsor Statement: HB 123,” February 25, 2013. Accessed from: <http://www.housemajority.org/2013/02/25/sponsor-statement-hb-123/>

<sup>10</sup> Office of Dannel P. Malloy, Governor of Connecticut. “Gov. Malloy Outlines Transportation Lockbox Proposals,” Press Release. January 9, 2015. Accessed from: <http://www.governor.ct.gov/malloy/cwp/view.asp?Q=559232&A=4010>

<sup>11</sup> Phaneuf.

<sup>12</sup> “Markell Budget Again Proposes Shifting Millions from Transportation Fund,” *AASHTO Journal*. February 6, 2015. Accessed from: <http://www.aashtojournal.org/Pages/020615Delaware.aspx>

<sup>13</sup> Vock.

# STATE LAWS & CONSTITUTIONAL PROVISIONS ON DEDICATED OR RESTRICTED STATE FUNDS FOR TRANSPORTATION

State	Dedicated Funds	Restrictions/ Prohibitions of Diversion	Description & Citations
Alabama	Yes	Constitution & Statute	Constitution limits use of any state revenues from (transportation-related) fees or taxes to the construction, maintenance and repair of roads and bridges and enforcement of state traffic laws (Ala. Const. art. IV, §111.06). State highway bond proceeds and revenues appropriated to Alabama DOT are deposited in the State Highway Fund, use of which is restricted to transportation purposes (Ala. Code §23-1-62).
Alaska	No	No	Constitution prohibits dedication of state revenues to any special purpose, unless federally required or dedicated prior to statehood (Alaska Const. art. IX, §7). All state revenues available for appropriation.
Arizona	Yes	Constitution & Statute	Constitution dedicates (most vehicle-related) revenues from fuel taxes and fees to highway and street purposes (Ariz. Const. art. IX, §14). These revenues are deposited into the Highway User Revenue Fund (Ariz. Rev. Stat. Ann. §28-6533). Diversion to the general fund has taken place in years past.
Arkansas	Yes	Statute	Statute dedicates fuel tax revenues to the purposes of constructing, widening, reconstructing, maintaining, resurfacing and repairing the public highways, and retiring highway indebtedness (Ark. Stat. Ann. §26-55-206). Three funds are designated special revenues to be used for the purposes collected (Ark. Stat. Ann. §19-5-1126, §27-70-207 and §27-115-110).
California	Yes	Constitution & Statute	Restrictions are tied to both revenue sources and accounts. Constitution restricts the use of fuel excise tax revenues to public streets and highways and fixed guideway mass transit projects (Cal. Const. art. XIX §2). Constitution dedicates to certain transportation purposes the use of the Highway Users Tax Account, Public Transportation Account and the multimodal Transportation Investment Fund and prohibits the state from borrowing most fuel tax revenues or funds in those accounts.
Colorado	Yes	Constitution	Constitution restricts the use of fuel taxes and other vehicle-related fees to the construction, maintenance and supervision of public highways (Colo. Const. art. X, §18). These revenues are deposited into the Highway Users Tax Fund (Colo. Rev. Stat. §§43-4-201 et seq.).
Connecticut	Yes	Statute	Special Transportation Fund receives revenues from various sources and is statutorily dedicated to debt service, payment of general obligation bonds for transportation, and appropriations to ConnDOT, the Dept. of Motor Vehicles or the Dept. of Public Safety (Conn. Gen. Stat. Ann. §§13b-59 et seq.).
Delaware	Yes	Statute	Statute requires certain revenues to go solely to the multimodal Transportation Trust Fund. Transfer of motor fuel tax revenues or motor carrier registration fees to the general fund is prohibited (Del. Code Ann. Tit. 2, §1415 and §1416).
Florida	Yes	Statute	Statute requires that Transportation Trust Fund money be used only for certain transportation-related purposes (Fla. Stat. Ann. §339.08).
Georgia	Yes	Constitution	Constitution restricts use of motor fuel revenues to roads and bridges, except in case of invasion or major catastrophe declared by the governor (Ga. Const. art. III, §91VI(b)). Transportation-related revenues are deposited into the State Public Transportation Fund, which must be used for certain transportation purposes (Ga. Code Ann. §§32-5-20 et seq.).
Hawaii	Yes	Statute	Statute restricts State Highway Fund expenditures to highways, roads, bikeways and transit and certain other transportation-related purposes (Hawaii Rev. Stat. §248-9 and §249-18).
Idaho	Yes	Constitution	Constitution restricts the use of highway-user revenues in the State Highway Fund to highway construction and maintenance (Idaho Const. art. VII, §17).
Illinois	Yes	Statute	Statute limits Road Fund appropriations to approved uses (Ill. Rev. Stat. ch. 30, §105/8.3).
Indiana	Yes	Statute	Statute dedicates fuel tax receipts to highway and road purposes (Ind. Code Ann. §6-6-1.1-801.5). The State Highway Fund is a dedicated fund for construction, reconstruction of state highways (Ind. Code Ann. §8-14-2-2, §§8-23-9-54 et seq.).
Iowa	Yes	Constitution	Constitution restricts use of all motor vehicle registration fees and all licenses and excise taxes on motor vehicle fuel (minus cost of administration), to construction, maintenance and supervision of public highways (Iowa Const. art. VII, §8). Special funds include Road Use Tax Fund, Primary Road Fund.
Kansas	Yes	Statute	Constitution empowers state to levy special taxes on motor vehicles and motor fuels for road and highway purposes (Kan. Const. art. XI, §10, Kan. Stat. Ann. §79-3402). Statute dedicates State Highway Fund to certain transportation purposes (Kan. Stat. Ann. §68-416 and §68-2314b).
Kentucky	Yes	Constitution	Constitution dedicates revenues from fuel taxes and motor vehicle-related taxes and fees to certain transportation-related purposes (Ky. Const. §230). Revenues are deposited to the Road Fund.
Louisiana	Yes	Constitution	Constitution establishes and outlines uses of multimodal Transportation Trust Fund (La. Const. art. VII, §27).
Maine	Yes	Constitution	Constitution restricts use of transportation revenues to the cost of administration, construction, reconstruction, maintenance and repair of public highways and bridges (Me. Const. art. IX, §19). The State Highway Fund receives the revenues (Me. Rev. Stat. Ann. tit. 23, §1653).
Maryland	Yes	Constitution	Constitution now prohibits diversion of protected transportation revenues to non-transportation related items unless the governor declares a fiscal emergency and both chambers of the General Assembly approve the transfers by a three-fifths vote (Md. Constitution Art. III, §53).

Massachusetts	Yes	Constitution	Constitution requires that all revenue derived from vehicles be used only for certain transportation purposes (Mass. Const. art. LXXVII). The Commonwealth Transportation Fund and the Transportation Trust Fund, which are both multimodal funds, both receive transportation revenues.
Michigan	Yes	Constitution	Constitution dedicates motor fuel taxes and vehicle registration taxes to transportation (Mich. Const. art. IX, §9). The Michigan Transportation Fund is the main collection and distribution fund for transportation revenues (Mich. Comp. Laws Ann. §§247.660 et seq.).
Minnesota	Yes	Constitution	Constitution establishes the Highway User Tax Distribution Fund, which consists of motor fuel taxes and taxes on motor vehicles and is dedicated solely to highway purposes (Minn. Const. art. XIV, §51 et seq.). The constitution also distributes at least 60 percent of motor vehicle sales tax receipts to the Highway User Tax Distribution Fund, and not less than 40 percent to a Transit Assistance Fund, which by statute is dedicated to greater Minnesota and Twin Cities metro area transit (Minn. Stat. Ann. §164.88).
Mississippi	Yes	Statute	Statute specifies that gas taxes are to be used for highways, streets and roads (Miss. Code Ann. §27-55-3). Fuel taxes and certain other transportation-related taxes and fees are dedicated to the State Highway Fund.
Missouri	Yes	Constitution	Constitution dedicates use of all motor vehicle-related taxes and fees to roads, bridges and tunnels and prohibits any state revenues from highway users that are allocated to the State Road Fund from being diverted from highway purposes and uses (Mo. Const. art. IV, §30(b) and §30(d)).
Montana	No	Diversions Allowed	Constitution requires highway user fee revenues be used as authorized by the Legislature solely for specific road and bridge funding purposes. Such revenues may be appropriated for other purposes by a three-fifths vote of the members of each house of the Legislature (Mont. Const. art. VIII, §6).
Nebraska	Yes	Statute	Statutes require fuel tax and other revenues be credited to the Highway Trust Fund and allocated to the Highway Cash Fund (Neb. Rev. Stat. §66-499, §60-3,104.01 and §39-2215). Fund must be used for highway construction and maintenance, with limited exceptions including transit aid (Neb. Rev. Stat. §66-4,100).
Nevada	Yes	Constitution	Constitution restricts use of proceeds from any fuel tax or motor vehicle related fee or charge to the construction, maintenance and repair of public highways and administrative costs (Nev. Const. art. IX, §5). These revenues are deposited into the State Highway Fund (Nev. Rev. Stat. §408.235).
New Hampshire	Yes	Constitution	Constitution restricts use of revenues from any charges or taxes on the operation of motor vehicles or the sale or consumption of motor fuel to the construction, reconstruction and maintenance of public highways and prohibits diversion of these revenues to any other purpose (N.H. Const. part II, art. 6-a).
New Jersey	Yes	Constitution	Constitution dedicates certain revenues, including the motor fuel tax, to transportation system capital improvements and prohibits the Legislature from borrowing, appropriating or using any part of these funds for any other purpose (N.J. Const. art. VIII, §2, ¶4). Statute dedicates other revenues sources, including certain vehicle registration fees, to the multimodal Transportation Trust Fund (N.J. Stat. Ann. §27:1B-20). The statutory dedication of revenues, unlike that in the constitution, is not binding on the Legislature and an appropriation act takes precedence.
New Mexico	Yes	Statute	Statute dedicates fuel tax receipts to the State Road Fund and other funds (N.M. Stat. Ann. §57-1-6.7 et seq.). Transportation-related revenues go into the State Road Fund. Statute dedicates the fund to maintenance, construction and improvement of state transportation projects and other purposes (N.M. Stat. Ann. §67-3-65.1).
New York	Yes	Statute	Statute creates the Dedicated Highway and Bridge Trust Fund, a multimodal fund that can be used for highways, airports, ports, rail, ferries and transit (N.Y. State Finance Law §89-b).
North Carolina	Yes	Statute	Statute creates two transportation funds: the multimodal Highway Fund and the Highway Trust Fund (N.C. Gen. Stat. §§136-16.4 et seq.). Statute determines distribution of the Highway Trust Fund (N.C. Gen. Stat. §136-176), but the General Assembly can override during the appropriations process.
North Dakota	Yes	Constitution	Constitution restricts use of revenues from motor fuel taxes and vehicle registration fees and license taxes to public highways (N.D. Const. art. X, §11). All transportation-related revenue is deposited into the State Highway Fund (N.D. Cent. Code §24-02-41).
Ohio	Yes	Constitution	Constitution restricts expenditure of revenues from fuel tax and vehicle fees to certain uses, including highway obligations (Ohio Const. art. XII, §5a and Ohio Rev. Code Ann. §5501.05).
Oklahoma	Yes	Statute	Statute apportions gasoline tax receipts to the State Transportation Fund and other funds (Okla. Stat. Ann. Title 68, §500.6). Statute dedicates use of all money accruing to the fund to construction, repair and maintenance of state highways and other transportation purposes authorized by the Legislature (Okla. Stat. Ann. title 15, §1501.1).
Oregon	Yes	Constitution	Constitution restricts the use of motor fuel tax and motor vehicle-related revenues to highways and other transportation purposes (Or. Const. art. IX, §3a). Net revenues from dedicated taxes and fees are deposited into the State Highway Fund, to be used only for the purposes authorized by law (Or. Rev. Stat. §366.505).
Pennsylvania	Yes	Constitution	Constitution restricts use of motor fuel taxes and registration and license fees to public highways and bridges, administration of and public safety on, and prohibits diversion to other purposes (Pa. Const. art. VIII, §11).
Rhode Island	Yes	Statute	Statute restricts use of motor fuel tax revenues to transportation purposes. Fuel tax receipts are deposited primarily to the Intermodal Surface Transportation Fund, with a portion set aside for transit (R.I. Gen. Laws §31-36-20).
South Carolina	Yes	Statute	The State Highway Fund, state DOT and counties all receive fuel tax revenues. Statute directs some uses of the State Highway Fund (S.C. Code Ann. §57-5-150 and §57-5-1610).
South Dakota	Yes	Constitution	Constitution restricts use of any fuel tax or motor vehicle-related revenues to highways and bridges (S.D. Const. art. XI, §8). The revenues are deposited into the State Highway Fund, the use of which is restricted by statute (S.D. Codified Laws Ann. §32-2-11, §31-2-14.2, §31-5-8 and §31-6-9).
Tennessee	Yes	Statute	Statute calls for the distribution of transportation revenues deposited into the State Highway Fund, which is used mainly for highways and transit projects. Diversions or transfers are prohibited (Tenn. Code Ann. §67-3-901 and §§54-2-102 et seq.).

Texas	Yes	Constitution	Constitution restricts the use of motor fuel taxes and other vehicle-related taxes and fees to transportation purposes. A quarter of motor fuel tax revenues, however, are constitutionally allocated to the Available School Fund (Tex. Const. art. VIII, §7-a). The State Highway Fund receives the remainder of the revenues (Tex. Transportation Code Ann. §222.001).
Utah	Yes	Constitution & Statute	Constitution restricts use of revenues from the fuel tax and related taxes primarily to construction, maintenance and repair of state and local roads and other purposes (Utah Const. art. XIII, §5). The state Transportation Fund is dedicated by statute to highway purposes (Utah Code Ann. §72-2-102).
Vermont	Yes	Statute	By statute, transportation-related revenues are deposited to the Transportation Fund and reserved primarily for the state DOT budget, though not restricted by mode (Vt. Stat. Ann. Title 19, §§11 et seq.). There are exceptions made for dedications to the Fish and Wildlife Fund, Department of Forests, Education Fund and non-transportation state government functions.
Virginia	Yes	Diversions Allowed	Statute generally dedicates the Transportation Trust Fund to transportation purposes, but Governors and the General Assembly are allowed to divert revenues from the fund in the budget bill if they include language setting out how to repay the amount diverted within three years (Va. Code §2.2-1509.2).
Washington	Yes	Constitution	Constitution requires vehicle license fees and fuel taxes be used exclusively for highway purposes (Wash. Const. art. II, §40). Other transportation-related taxes and fees are deposited to the multimodal transportation account and must be used for transportation purposes.
West Virginia	Yes	Constitution & Statute	Constitution restricts use of all revenues derived from motor vehicles or motor fuels solely to public highways (W. Va. Const. art. VI, §52). Statute restricts use of the State Road Fund--to which such revenues are deposited--to state roads and state DOT administration (W. Va. Code §§17-3-1 et seq.).
Wisconsin	Yes	Constitution	Constitution now requires that all funds collected by the state from any motor vehicle-related or aircraft-related taxes or fees shall be deposited only into the transportation fund. None of the funds collected or received by the state from any source and deposited into the transportation fund shall be lapsed, further transferred, or appropriated to any program that is not directly administered by the state DOT (Wisc. Const. Art. VIII, §11).
Wyoming	No	Constitution	Constitution restricts use of proceeds from state or local taxes or other charges on registration, operation or use of vehicles on public highways or on vehicle fuels to transportation-related purposes (Wyo. Const. §97-15-016).
District of Columbia	Yes	Transfers Allowed	Under statute, fuel tax receipts are deposited in the Highway Trust Fund with excess funds from the Highway Trust Fund and other dedicated revenues going into the Transportation Unified Fund, the use of which is generally restricted to multimodal transportation purposes. A certain amount from the Unified Fund, however, also is transferred annually to the general fund (D.C. Code Ann. §9-111.01 and §50-921.11).
Puerto Rico	Yes	Statute	Statute requires that all Highway and Transportation Authority revenues be deposited into a separate account or accounts in the name of the authority, and all disbursements must be made pursuant to regulations and budgets approved by the authority (9 L.P.R.A. § 2008)

Source: Data from National Conference of State Legislatures and AASHTO Center for Excellence in Project Finance. "Transportation Governance and Finance: A 50-State Review of State Legislatures and Departments of Transportation," May 2011. Accessed from: [http://www.transportation-finance.org/pdf/50\\_State\\_Review\\_State\\_Legislatures\\_Departments\\_Transportation.pdf](http://www.transportation-finance.org/pdf/50_State_Review_State_Legislatures_Departments_Transportation.pdf)