

## Center for Municipal Finance Commentary

### More Questions than Answers: Illinois Transportation Taxes and Fees Lockbox Amendment

#### Overview

*The proposed constitutional amendment, the Illinois Transportation Taxes and Fees Lockbox Amendment, is highly problematic for several reasons.*

- *First, its wording is vague, and as a result its actual impact is unclear. The proposed amendment's lack of clarity may result in more revenue streams, at both state and local levels of government, than intended being restricted to a limited number of transportation related expenses.*
- *Second, the proposed amendment is likely to divert revenue away from other areas of state and local budgets. The Lockbox Amendment would not increase total revenue—rather, it would change how existing revenue is spent.*
- *Third, because it is being proposed as a constitutional amendment and not a regular statute, any negative consequences would be extremely difficult to modify or reverse.*

#### What is the “Lockbox Amendment”?

Voters in Illinois are being asked to weigh in on a new constitutional provision, the “Lockbox Amendment,” this election. At its core, the Lockbox Amendment is meant to earmark revenue derived from transportation-related taxes and fees for transportation spending as a way of ensuring full state and local funding for these projects. Adequate investment in infrastructure, in general, is a thorny issue because the need is not always visible, making infrastructure a particularly appealing (and easy) target for lawmakers to underfund. The underfunding of infrastructure is a well-known issue in the United States,<sup>1</sup> and addressing this problem through earmarking revenue seems like a logical solution.

Proponents of the Lockbox Amendment argue that the Illinois’ infrastructure sorely needs investment—up to \$43 billion over the next 10 years just to get existing roads, bridges and transit systems in a state of good repair, according to the Metropolitan Planning Council.<sup>2</sup> They also claim that this shortfall is, in part, a result of diversions of transportation funds for other purposes. The Lockbox Amendment is supposed to remedy both of these issues; however, it likely creates more problems than it actually solves.

If the ultimate goal is to increase transportation funding, then the lawmakers who overwhelmingly supported the Lockbox Amendment<sup>3</sup> could simply increase revenue, which would be a better option than augmenting the state’s constitution and inserting new provisions that may end up hurting more than helping.

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<sup>1</sup> American Society of Civil Engineers, “2013 Infrastructure Report Card”, <http://www.infrastructurereportcard.org/>

<sup>2</sup> Metropolitan Planning Council, “Vote yes for a transportation lockbox”, <http://www.metroplanning.org/news/7309/Vote-yes-for-a-transportation-lockbox>

<sup>3</sup> The Senate approved of the Lockbox Amendment (House Joint Resolution Constitutional Amendment 36) with 55 yeas and no nays, and the House approved it with 98 yeas, four nays, and two voting present.



## What Exactly Qualifies as Transportation Revenue and Spending?

The wording of the Lockbox Amendment is vague and does not specify exactly what constitutes transportation revenue or transportation expenses. This lack of clarity results in several issues.

First, it is unclear whether transportation funds really have been used for other purposes because analysis cited by proponents is based on categorizing certain expenses, like health insurance for Department of Transportation employees, as non-transportation expenses. That categorization seems to conflict with the Lockbox Amendment's actual language, which is broad and explicitly states administrative expenses *are* permissible. In general, there is a lack of consensus on how much transportation revenue really has been misspent.<sup>4</sup> As such, the Lockbox Amendment may be addressing a problem that does not really exist. The proposed amendment does not, however, provide a comprehensive list of permissible expenditures, so what constitutes an acceptable transportation expense remains debatable.

It is also equally as unclear what constitutes transportation revenue. The broad wording of the proposed amendment may ultimately include more revenue streams than intended, in-turn resulting in unforeseen budgetary shortfalls for both the state and local governments. In general, because of the vague wording of the proposed amendment the full scope of its impact is unknown to voters and even proponents.<sup>5</sup>

## How Much Transportation Revenue Has Been Misspent?

The Lockbox Amendment is supposed to resolve what its backers argue has been a problem of lawmakers taking transportation revenue and using it for other spending purposes. But the question of how much transportation revenue has been "diverted" depends on what qualifies as an acceptable expense. For example, proponents' calculation of diverted transportation funds includes an annual \$5 million in motor fuel tax revenue that is used by the Department of Natural Resources<sup>6</sup> for "administering the registration, boat safety, boat safety education, and enforcement [of the State Boating Act]."<sup>7</sup> By law that amount of motor fuel tax revenue is supposed to go to the Department of Natural Resources for that purpose, so categorizing it as a diversion is misleading.<sup>8</sup>

Also, consider the state's Road Fund, which is the largest transportation fund and receives revenue from the federal government, motor fuel taxes, and motorist fees. Illinois' state auditor concluded in 2013 that, "In the 8 of the last 10 fiscal years, less than half of Road Fund expenditures went for direct road construction costs."<sup>9</sup> The auditor's conclusion indicates that a large amount of transportation revenue has been misspent. However, the auditor's conclusion is questionable because it is based on a narrow

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<sup>4</sup> See also "State of Illinois Diversions of Transportation Funds" by the Civic Federation, <http://civicfed.org/iifs/blog/state-illinois-diversions-transportation-funds>

<sup>5</sup> See the discussion in the Chicago Metropolitan Agency for Planning's memorandum on the Lockbox Amendment: <http://www.cmap.illinois.gov/documents/10180/583513/JointMemo--ConstitutionalAmendment10-05-2016.pdf/d250f1db-5eff-46fd-ba48-41833968f9a0>

<sup>6</sup> Analysis of excels provided to the Civic Federation by the Transportation for Illinois Coalition, available on the Civic Federation's website, <http://civicfed.org/iifs/blog/state-illinois-diversions-transportation-funds>

<sup>7</sup> 625 ILCS 45/10-1

<sup>8</sup> 35 ILCS 505/8

<sup>9</sup> State of Illinois, Office of the Auditor General, "Management Audit of Road Fund Revenue and Expenditures", May 2013, <http://www.auditor.illinois.gov/audit-reports/performance-special-multi/performance-audits/2013%20releases/13-road-fund-expend-mgmt-audit-full.pdf>



definition of direct road costs that excludes debt service for bonds that financed road construction and personnel costs.

Acceptable transportation expenditures in the Lockbox Amendment, however, include “the costs of administering laws related to vehicles and transportation,” indicating that personnel costs should be included. Further, during Senate floor debate regarding the proposed amendment, the chief sponsor, Senator Haine, stated that bond debt service is also considered a transportation expense. The overwhelming majority of what the auditor categorizes as indirect costs are for bond debt service and personnel costs (see Appendix A for more detail).

### **What Counts as Transportation Revenue?**

Putting aside the issue of whether transportation funds have been diverted, another problem with the Lockbox Amendment is its broad language. While backers of the proposal often suggest that it narrowly applies to motor fuel taxes and motorist fees, the actual proposed amendment is not limited in scope to particular taxes or fees. Instead, revenue streams derived from transportation-related items on all governmental levels within the state could be impacted. Counties and cities have their own transportation taxes and fees and this could create financial consequences for them as well as the state.

The actual language of the Lockbox Amendment is sweeping: “**No moneys...derived from taxes, fees, excises, or license taxes** relating to” transportation can be used for non-transportation related expenditures. There are a number of taxes and fees that would seem to be impacted by the proposed amendment. For example, the Secretary of State offers a variety of personalized vanity plates, one of which is the Firefighters Memorial license plate. Currently, fees from Firefighters Memorial license plates are used for the maintenance of the Illinois Firefighter Memorial, holding an annual commemoration and Medal of Honor Ceremony, and providing education scholarships to the children and spouses of firefighters killed in the line of duty. None of these are transportation-related expenses. While the amount of revenue collected each year from the sale of Firefighters Memorial license plates may be small,<sup>10</sup> it appears that the plain language of the Lockbox Amendment *would* require this money to be redirected.

Backers of the proposal have stated that it will not impact items like specialty license fee revenue. During the senate floor debate, the chief sponsor of the bill, addressed this concern and declared that fees would continue to go to their dedicated purposes, such as the license plate fees that fund the Firefighters Memorial. That assurance, however, conflicts with the actual wording of the proposed amendment, which explicitly says, “**No moneys...derived from...fees.**” The amendment does not distinguish between license plate fees that are collected as general revenue versus fees collected for a specific, dedicated purpose. While proponents of the Lockbox Amendment may intend for it to be limited in scope, the language of the amendment does not restrict its applicability to specific revenue sources. Ultimately, the duty of determining what constitutes transportation revenue may fall to the Illinois Supreme Court who could interpret the Lockbox Amendment in the broadest sense possible.

### **Creating New Budgetary Holes**

Turning away from issues regarding the broad language of the proposed amendment and assuming it will only impact motor fuel taxes and motorist revenue fees, the amendment is likely to create budgetary

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<sup>10</sup> For an original issuance of a Firefighters Memorial license plate, out of \$27, \$12 is deposited into the Illinois Fire Fighters' Memorial Fund (See 625 ILCS 5/2-119(N) and 625 ILCS 5/3-634). The Illinois Fire Fighters' Memorial Fund is a special state fund. Revenue from the license fees deposited into the Illinois Fire Fighters' Memorial Fund totaled \$543,408 in FY2016 and \$543,495 in FY2015 (data obtained from Comptroller data, <http://ledger.illinoiscomptroller.gov/find-a-revenue/>)



holes for the state and local governments. This is because any revenue currently used for non-transportation purposes will have to be re-directed. As such, the Lockbox Amendment increases transportation spending not by increasing total revenue, but by redistributing existing revenue. Taking money from one part of a budget for another part does not fix a budgetary shortfall, it simply shifts it around in a zero-sum fashion.

Budgetary shortfalls in the General Fund is what led lawmakers to sweep \$250 million from the Road Fund in FY2015.<sup>11</sup> The hole in the state's General Fund budget was a direct result of income tax rate cuts that took effect on January 1, 2015. The loss of revenue from the decreased income tax rates remains a pressing issue. The state's fiscal condition has continued to decline and there has been no formal, full year budget since FY2015. This disarray has resulted in the state's backlog of bills ballooning,<sup>12</sup> as well as credit rating downgrades. The sweep of the Road Fund in FY2015 was a symptom of a larger problem that has yet to be resolved.

The Lockbox Amendment may worsen the state's fiscal issues by further reducing General Fund revenue. A portion of titling fee revenue, for example, is deposited into the state's General Fund, where it is used as general operating revenue. In fiscal year 2015, certificate of title revenue totaled \$269.83 million and \$27.69 million, or roughly 10%, was deposited into the state's General Fund.<sup>13</sup> If approved, it appears that the Lockbox Amendment would prohibit that revenue from being deposited into that fund, thus creating a \$27.69 million hole in the state's General Fund budget. Further reducing General Fund revenue is a serious concern as the state is already facing large revenue shortfalls. The Lockbox Amendment would do nothing to resolve the state's larger budgetary issues, and restricting the use of funds could make the situation worse by creating a further shortage in the General Fund budget.

The Lockbox Amendment may also create budgetary shortfalls for local governments with their own motor fuel taxes and motorist fees. Motor fuel tax revenue is clearly a transportation tax, and if approved, the Lockbox Amendment would require that revenue be used for transportation expenses only. In Chicago, proceeds from the Vehicle Fuel Tax are deposited into the city's Corporate Fund, which is used to pay for the fire department, police department, streets and sanitation, and the Mayor's office, among other uses. In other words, the Vehicle Fuel Tax is a general revenue source for the City of Chicago. For the upcoming fiscal year, FY2017, Chicago estimates Vehicle Fuel Tax revenue will be \$49.04 million.<sup>14</sup> If the Lockbox Amendment requires the city to use that \$49.04 million only on transportation related items, then available revenue for other aspects of Chicago's budget may be decreased by that amount.

Importantly, the motor fuel tax is only one example of the many other taxes and fees that might be impacted similarly by the Lockbox Amendment. Indeed, Chicago's budget director has indicated that the

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<sup>11</sup> \$1.284 billion was swept from special state funds in FY2015. Commission on Government Forecasting and Accountability, *State of Illinois Budget Summary: FY2017*, pp. 222-224, <http://cgfa.ilga.gov/Upload/FY2017BudgetSummary.pdf>

<sup>12</sup> Moody's, for example, estimates that the state is on track to end the current fiscal year with a backlog of \$14 billion, far surpassing a previous high of \$10 billion. See: <http://www.chicagotribune.com/news/local/politics/ct-bruce-rauner-illinois-moodys-met-0901-20160831-story.html>

<sup>13</sup> Analysis done using the Office of Comptroller's "Find a Revenue" database, <http://ledger.illinoiscomptroller.gov/find-a-revenue/>. Certificate of titling revenue deposited into the General Fund in 2016 was also approximately 10% of all certificate titling revenue.

<sup>14</sup> See City of Chicago, 2017 Budget Recommendations, p. 26.



Lockbox Amendment would result in the city losing discretion over \$250 million in local tax revenue.<sup>15</sup> If local governments have to re-direct revenue as a consequence of the proposed amendment, they will have to raise revenue elsewhere or cut services to make up for the shortfall.

## **Conclusion**

If voters approve the Lockbox Amendment, lawmakers have indicated they will pass legislation for its implementation to clarify what counts as transportation revenue and spending. However, there is no guarantee that these details to be decided after the amendment is passed will align with voters' wishes. Further, the legislation could be legally challenged and struck down by the Illinois Supreme Court. Backers of the proposed amendment have clarified that they intend for it to apply to a narrow set of revenue sources, but this conflicts with the actual language of the proposal. As such, the Illinois Supreme Court could rule that the amendment must be implemented in accordance with the broad language, and as consequence this would also mean that the proposed amendment's actual impact is very different than is intended. Given the questions surrounding the Lockbox Amendment's ultimate impact, voters should be cautious about permanently changing the state's constitution.

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<sup>15</sup> Greg Hinz, "Why you should vote 'no' on the Safe Roads Amendment", *Crain's Chicago Business*, October 22, 2016, <http://www.chicagobusiness.com/article/20161022/ISSUE05/310229994/why-the-safe-roads-amendment-is-bad-policy-in-illinois>



## Appendix A

Table 1 examines Road Fund expenditures for fiscal years 2009-2012. The first part of Table 1 shows the state auditor's analysis of Road Fund expenditures when bond debt service and personnel costs are considered indirect expenditures, and based on that definition most Road Fund expenditures were not used for transportation costs. Part 2 of Table 1 shows a modified analysis that includes bond debt and personnel costs as direct expenditures, and in that analysis transportation expenditures are over 85% of all Road Fund expenditures. As such, if bond debt service and personnel costs are acceptable spending items, then the vast majority of Road Fund expenditures have been for transportation and there has not been an inappropriate diversion of transportation funds.<sup>16</sup> Further, nearly all other of the Road Fund expenditures that the auditor categorizes as indirect costs (like transportation grants and Rock Salt, Calcium Chloride and Abrasives for Road Use) could be considered acceptable transportation expenses under the Lockbox Amendment.

**Table 1**  
**Analysis of Road Fund Expenditures – Fiscal Years 2009 through 2012<sup>17</sup>**

Part 1: Auditor Analysis				
	2009	2010	2011	2012
Indirect Expenditures	\$1,472,733,528	\$1,320,423,619	\$1,482,795,271	\$1,531,000,725
Direct Expenditures	\$1,087,090,960	\$1,593,445,413	\$1,342,802,362	\$1,354,731,271
Total	\$2,559,824,488	\$2,913,869,032	\$2,825,597,633	\$2,885,731,996
Direct as % of Total (Auditor Analysis)	42%	55%	48%	47%
Part 2: Modified Analysis				
Bond Debt	\$244,566,929	\$296,243,714	\$391,634,769	\$332,943,244
Personnel Costs	\$887,757,440	\$705,925,305	\$729,040,902	\$796,974,481
Auditor Direct Expenditures Subtotal	\$1,087,090,960	\$1,593,445,413	\$1,342,802,362	\$1,354,731,271
<b>Modified Direct Cost</b>	<b>\$2,219,415,329</b>	<b>\$2,595,614,432</b>	<b>\$2,463,478,032</b>	<b>\$2,484,648,997</b>
<b>Modified Direct as % of Total</b>	<b>87%</b>	<b>89%</b>	<b>87%</b>	<b>86%</b>

<sup>16</sup> The auditor did find that the Road Fund was overcharged by \$156.6 million for group health insurance for current employees in fiscal years 2010 and 2011.

<sup>17</sup> Analysis done using data from the 2013 auditor's report (pages 38, 40, and 44). The following line-items were considered personnel costs: group health insurance, social security and Medicare contributions, retirement contributions, professional and artistic services, regular positions, and extra help.