



QUESTIONS ABOUT TOLLING IN CONNECTICUT

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ISSUE

This report answers several questions about tolling in Connecticut and the federal Value Pricing Pilot Program. The questions are:

1. What is the Value Pricing Pilot Program (VPPP)?
2. Connecticut's VPPP slot is "conditional." What does that mean?
3. What changes in state law must be made to implement tolls?
4. Must Connecticut repay the federal government if it puts tolls back on I-95?
5. How can the state use toll revenue?

This report is based on a [2014 report](#) by Department of Transportation (DOT) consultant CDM Smith and email correspondence with DOT and CDM Smith. It does not represent the current opinions of the Federal Highway Administration (FHWA), which is reviewing some of the questions this report addresses. The FHWA's current opinion is critically important because federal law governs the ability to toll interstates and the FHWA has in the past required repayment of federal funds where tolls have been reinstated. We will update this report with FHWA's responses as soon as we receive them.

We answer the questions individually below.

WHAT IS THE VALUE PRICING PILOT PROGRAM (VPPP)?

Although the federal government generally bans tolling of interstate highways, the VPPP is one of several FHWA programs allowing states to toll in specific circumstances. Under VPPP, FHWA provides grants to 15 state and local governments to study ways to manage traffic flow through "congestion pricing" or other strategies. Connecticut has one of the 15 VPPP slots.

"Congestion pricing" typically refers to charging a higher toll during the busiest drive times, such as rush hours, and lower or no tolls at other times. Congestion pricing seeks to encourage drivers who do not want to pay the higher toll to (1)

drive at less busy times, (2) use other routes, (3) take public transit, or (4) use the existing free lanes where a tolled lane has been added to an existing highway. Drivers who pay the higher toll should expect to see less traffic and quicker travel times.

There are several ways to implement congestion pricing. For example, under a “dynamic pricing” system, tolls would fluctuate according to actual traffic conditions. Also, the state does not have to toll an entire highway. It could instead add one tolled lane in each direction on an existing highway, leaving the other lanes toll-free.

Under VPPP, tolling would also be done electronically; that is, drivers would not have to stop or slow down to pay tolls, but would be billed on a monthly basis. Toll would be tracked by overhead gantries, not collected at toll booths.

State Department of Transportation (DOT) VPPP Studies

DOT received federal grants to study ways to improve traffic flow in two of the state’s most heavily congested areas: I-95 from New York to New Haven, and I-84 in Hartford. Both studies are expected to be completed early this year.

I-95 Study. Between 2001 and 2011, traffic increased 19% on I-95 between New York and New Haven, the state’s most congested corridor. DOT estimates that drivers spent 41 million hours stuck in traffic in 2011, and that delays and gridlock cost businesses and residents \$860 million in that year alone. DOT says its goal is to “find integrated solutions to relieve traffic congestion.” This would likely include “both transportation system improvements (for example, highway improvements such as lane additions, interchange reconstruction, rail and bus transit improvements) and electronic tolling alternatives.”

I-84 Study. This study is focusing on the Hartford viaduct. This three-quarter mile stretch of I-84 between the Sisson Avenue and the Asylum and Capitol Avenue exits is 50 years old and in need of replacement. In addition to value pricing and physical improvement, DOT is studying the possibility of converting the HOV lanes on I-95 and I-84 to High Occupancy Toll (HOT) lanes. DOT is also considering

a possible express lane on I-84 through Hartford. (HOT lanes allow drivers to use HOV lanes by paying a toll, even if they do not have enough passengers to qualify as a high occupancy vehicle.)

More information about the studies can be found at: <http://www.ct-congestion-relief.com/documents/MPO%20congestion%20pricing%20presentation%20v2-1.pdf>.

CONNECTICUT'S VPPP SLOT IS "CONDITIONAL." WHAT DOES THAT MEAN?

CDM Smith says in its 2014 report that Connecticut's VPPP slot is considered conditional because the state (1) has not yet entered into a tolling agreement with FHWA, and (2) so far has no plans to implement variable tolls. To make the slot permanent, Connecticut must decide whether to proceed with tolling. If it decides to go ahead, it must develop a pricing strategy and enter into a tolling agreement with FHWA. The agreement could allow DOT to operate tolls directly or through a private third-party. If the state does not enter into such an agreement, it loses its conditional slot. (According to CDM Smith, there is no limit to the number of projects the state can implement as a VPPP state. This means, the consultant said, that Connecticut could put in place projects in addition to the two now being studied as long as it holds a VPPP slot and has an active tolling agreement with FHWA.)

In order to toll, the state must also complete an environmental review under the National Environmental Policy Act and comply with all applicable federal and state laws. In addition, the U.S. Transportation secretary must monitor the effect of the VPPP for at least 10 years, and the state DOT must report every two years on the program's effects on (1) driver behavior, (2) traffic volume, (3) transit ridership, (4) air quality, and (5) availability of funds for transportation programs.

WHAT CHANGES TO STATE LAW MUST BE MADE TO IMPLEMENT TOLLS?

According to CDM Smith, the implementation of tolls would require the state to adopt (1) enabling laws and (2) statutes setting the terms and conditions of electronic toll collection. The state might also want to consider enacting a law allowing a private company to operate the tolls as part of a public-private

partnership. For example, such a law might allow the state to sell a private company the right to operate and maintain a highway in return for the company's right to keep the tolls it collects on that highway.

MUST CONNECTICUT REPAY THE FEDERAL GOVERNMENT IF IT PUTS TOLLS BACK ON I-95?

One key consideration for the state in deciding whether to put tolls back on I-95 is whether it would have to repay the federal government the money it received after removing the tolls 30 years ago. According to CDM Smith, the state most likely will not have to repay this money. FHWA has not yet confirmed this, however.

Background

Congress, in creating the Interstate Highway System in 1956, prohibited states from tolling the interstates, but did allow certain roads, such as the Connecticut Turnpike (most of I-95) to retain tolls already in place. But no federal funds could be used to build, reconstruct, operate, or improve these tolled roads.

In 1978, Congress allowed segments of tolled roads that were part of the Interstate Highway System, including the Connecticut Turnpike, to qualify for federal "Interstate 4R Funds" to resurface, restore, rehabilitate, or rebuild the roads. To do this, states had to agree to remove all tolls once the costs associated with the highway's construction, including debt service, had been satisfied. Once the state signed one of these "Secretarial Agreements," the tolled mileage could be calculated as part of the state's mileage eligible for annual apportionment of the federal money.

Accordingly, Connecticut executed a Secretarial Agreement on August 30, 1983 for the Connecticut Turnpike. In exchange, the turnpike's mileage was added to Connecticut's eligible 4R mileage, resulting in an initial annual increase of \$11 million to \$12 million in federal funding. In addition, removal of the tolls meant that federal funds could be used to pay for highway improvements.

CDM Smith said Connecticut's receipt of this money "was an important financial consideration . . . in implementing a broad and extensive program to reconstruct and restore its transportation infrastructure after the Mianus Bridge collapse." (The June 1983 early morning collapse of the bridge on I-95 in Greenwich killed three people and critically injured three others.)

Early Discussions with the Federal Highway Administration

For many years after Connecticut signed the 1983 agreement, federal officials told the state that it would have to repay federal funds received under the agreement if it kept or restored tolls on I-95.

The FHWA made this clear in 1984. In that year, DOT asked FHWA about the possible consequences of (1) retaining some tolls on I-95 and (2) erecting a toll station on I-95 at the Rhode Island border.

In response to the first question, FHWA told the state it would (1) have to repay all federal funds it spent on the Connecticut Turnpike after the 1983 agreement was signed, and (2) lose its right to receive the emergency relief funding it received after the collapse of the Mianus River Bridge.

To the second question, FHWA said that if Connecticut placed a toll booth on I-95 near the Rhode Island border, the state would have to repay the federal money it used for projects on I-95 from its juncture with the Connecticut Turnpike to Rhode Island.

CDM Smith Analysis

According to CDM Smith, however, the state would not have to repay the federal money if it implemented tolling under VPPP. "Such an [FHWA] interpretation is no longer appropriate," the CDM Smith report says. The consultant points to language in the 1983 agreement stating that once "freed of tolls," the Connecticut Turnpike "shall be treated the same as any other portions of the interstate and primary systems which were constructed with federal aid."

CDM Smith says this language "suggests that were variable tolls implemented on any portions of I-95 between the Connecticut-New York state line and the City of New Haven [the portion of I-95 being studied under the VPPP] pursuant to the provisions of VPPP, there would be no consequences under the 1983 agreement. Under these circumstances, Connecticut would not have to return any Interstate 4R funds or any other federal highway aid received since the execution of the 1983 agreement."

"There seems to be no basis to believe that the repayment of federal funds would be required if tolls are re-imposed on any portions of Connecticut's interstate highway system as a consequence of implementing a variable pricing program under the provisions of VPPP," the report states. "Moreover, pursuant to VPPP,

mileage on an interstate highway facility subject to tolls would not be deducted from the state's total highway mileage used in calculating Connecticut's eligibility for federal highway grants."

DOT says it has confirmed this in conversations with FHWA. As noted above, we have not yet heard from FHWA on this matter and will update the report when we do.

In addition, tolling of newly built capacity (e.g., adding a lane on an interstate and tolling only that lane while leaving the other lanes toll-free) could also be done under a different exemption under federal law without repaying FHWA (23 USC § 129).

HOW CAN THE STATE USE TOLL REVENUE?

Under federal law, Connecticut must first use any toll revenue to improve, operate, and maintain the tolled highway, including for debt service. The law allows the spending of "net" toll revenues (i.e., revenue left after paying capital and operating costs) on other projects for which federal highway funds may be used. FHWA encourages states in the VPPP program to spend this excess money on projects that benefit people traveling along the corridor that is being tolled.

In addition, CDM Smith says, the state should be able to spend VPPP toll revenue on certain transportation projects even before it determines whether there is net toll revenue. This is because, according to FHWA, a VPPP project's operating costs "include...mitigation measures to deal with [the project's] adverse financial effects on low income drivers." Such measures would include "new or expanded transit" provided as "an integral part of the project."

According to CDM Smith, improving commuter service on the New Haven Line would be one such allowed use of VPPP toll revenue. "Possible uses for such investment . . . include the replacement or restoration of rail bridges . . . improvements to rail stations, and expansion of rail parking facilities," the consultant said. "Capital investments in commuter rail parking would seem to be both an eligible and necessary use of revenues resulting from the implementation of variable tolling on I-95."

The consultant says that “any uses of toll revenues (either as operating expenses or as applications of any excess or net toll revenues of the project) . . . to provide benefits and alternative modes of transportation to those traveling in the I-95 corridor . . . would meet the terms and conditions of VPPP and are likely to be popular as public policy initiatives.”

The consultant cautions, however, that the answer to when toll revenue can be used to finance other projects may depend on how the toll project is financed. If it is done through revenue bonds, then the toll revenue is typically first dedicated to paying off those bonds. In any case, the consultant says, the state should consult with FHWA regarding acceptable uses of the revenue.

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