
OLR Bill Analysis

sHB 5393

AN ACT ESTABLISHING THE CONNECTICUT TRANSPORTATION FINANCE AUTHORITY TO MAINTAIN MAJOR STATE HIGHWAYS.

SUMMARY

This bill establishes a quasi-public Connecticut Transportation Finance Authority (CTFA), to build, maintain, and operate electronic toll systems (tolls) and manage tolled roads. The bill specifies that its provisions establishing and empowering the authority are not effective until the General Assembly enacts legislation implementing tolling on state highways.

The bill establishes a 15-member board to govern CTFA and gives it general powers to operate as a quasi-public agency and specific powers for implementing tolls and managing tolled roads. It requires CTFA to use the toll revenue it collects to pay tolled highway maintenance, operation, and improvement costs. Under the bill, CTFA may deposit all toll revenue into an account it controls and must use it in accordance with federal toll revenue restrictions (see BACKGROUND).

The bill also eliminates a requirement that all money collected or received from the use of highways, expressways, and ferries be deposited into the Special Transportation Fund (STF) (see BACKGROUND), except that which is used to pay transportation-related debt service (§ 9).

EFFECTIVE DATE: Upon passage, except the STF provision and conforming changes to quasi-public laws (§§ 5-8) are effective July 1, 2018.

ESTABLISHMENT AND PURPOSE

Quasi-Public Agency

The bill establishes CTFA as a public instrumentality and political subdivision of the state created to perform an essential public and government function. Under the bill, CTFA is a quasi-public agency, not a state department, institution, or agency, and is subject to the statutory procedural, operating, and reporting requirements for quasi-public agencies, including lobbying restrictions and an ethics code.

It has perpetual succession as long as any of its obligations are outstanding. Termination does not affect outstanding contractual obligations. Its rights and properties vest in the state when it lawfully terminates.

Purpose

Under the bill, CTFA’s purpose is to:

1. construct, maintain, and operate “electronic tolling systems” on highways, or portions of highways, when legislation authorizing tolls is effective, or have a private entity (i.e., a toll operator) do so;
2. use any toll revenue to pay the costs of owning, maintaining, repairing, reconstructing, improving, rehabilitating, using, administering, controlling, and operating the tolled highways; and
3. promote the safe and efficient movement of people and goods on the tolled highways.

Under the bill, an “electronic tolling system” is an electronic system for recording, monitoring, collecting, and paying for tolls on the highways of the state, including transponders or other electronic transaction or payment technology devices or video toll transaction systems.

Existing DOT Authority and Highway Laws

State law (1) makes DOT responsible for all aspects of planning, developing, maintaining, and improving transportation in the state (CGS § 13b-3) and (2) gives the DOT commissioner jurisdiction over

the state highway system and the general responsibility for all highways in the state (CGS § 13b-24).

Although the bill gives CTFA control over toll revenue, it does not appear to give CTFA authority to independently alter, lay out, construct, or maintain state highways, nor does it limit DOT's ability to do so. Additionally, the bill does not define the relationship between the two entities.

POWERS

General Powers

To accomplish its purpose, the bill gives CTFA general powers to function as a quasi-public authority and specific powers related to tolling. The general powers allow it to:

1. have perpetual succession as a body and adopt bylaws;
2. adopt and alter an official seal;
3. maintain one or more offices;
4. sue and be sued;
5. receive, from any source, aid or contributions of money, labor, property, or other things of value (including state or federal grants or gifts) and use such contributions to carry out its purpose, subject to the conditions upon which the contributions were made;
6. issue bonds, bond anticipation notes, and other obligations;
7. borrow money for working capital;
8. use consultants, attorneys, and appraisers;
9. enter into contracts and agreements, including for professional services provided by financial consultants, bond counsel, underwriters, and technical specialists;

10. acquire, lease, manage, and dispose of real and personal property and enter into agreements with respect to such property (the bill specifies that real property transactions are not subject to any approval, reviews, or regulations applicable to state property under current law);
11. purchase insurance for its property, other assets, and employees;
12. account for and audit authority funds and any recipients of authority funds; and
13. do all things necessary or convenient to carry out its purpose and powers.

The bill also authorizes CTFA to employ staff as necessary and specifies that they are not state employees, and CTFA is not an employer under the state's collective bargaining law. CTFA may establish and modify personnel policies, including those relating to employee hiring, compensation, promotion, retirement, and collective bargaining. CTFA may enter into collective bargaining agreements with labor unions, but these agreements do not have to comply with the state's collective bargaining law for state employees.

Toll-Related Powers

The bill gives CTFA numerous powers in order to implement and administer tolling.

Resource Procurement and Expenditures. To assist in developing and implementing tolls, the bill authorizes CTFA to retain and pay technical, traffic, revenue, financial, legal and other consultants and experts. It may also procure, retain, and spend funds on toll operators, vendors, suppliers, designers, engineers, software designers, installers, and contractors; maintenance back-office and customer service personnel; collections and enforcement; and for other necessary equipment, staff, and services.

Agreements. The bill authorizes CTFA to enter into a number of agreements necessary for implementing tolls. It may enter into

reciprocal agreements with other states, jurisdictions, and toll operators to (1) share toll operator information on out-of-state vehicle owners that have used tolled highways, including the vehicle's make and license plate number and the owner's name and address and (2) implement additional enforcement mechanisms to efficiently collect tolls owed by out-of-state residents.

It may also enter into agreements with (1) DOT for providing services on tolled highways and (2) the Department of Emergency Services and Public Protection (DESPP) for state police to enforce laws on tolled highways that they do not enforce elsewhere.

Toll Charges and Collection. The bill authorizes CTFA to charge, collect, retain, and fix the amount of tolls charged for travelling on tolled highways. It requires CTFA to set tolls so that it collects enough revenue to, at a minimum:

1. cover the costs of owning, maintaining, repairing, reconstructing, improving, rehabilitating, using, administering, controlling, and operating tolled highways;
2. pay debt service on bonds relating to the tolled highways; and
3. create and maintain reserves established for tolled highway maintenance and operation.

Under the bill, before toll construction starts, CTFA may hold one or more public informational hearings, in the general vicinity of the proposed toll location, to receive public comments on the proposed toll, the methodology for changing the tolls, and user classifications. The bill also authorizes CTFA to notify drivers, before they enter tolled highways, of the tolls that will be charged and how they can be paid.

The bill authorizes CTFA to deposit all revenues it receives into an account it exclusively controls, as long the revenue is (1) not commingled with other funds and (2) spent in accordance with federal restrictions on toll revenue (see BACKGROUND).

Privacy. Under the bill, CTFA may develop and implement a privacy policy for toll customer information and other data it collects, receives, maintains, and discloses to a toll operator.

GOVERNANCE

Board Membership

Under the bill, CTFA's board consists of the following 15 voting members, 11 of whom are appointed and four who serve ex officio:

1. the transportation, motor vehicles, and revenue services commissioners, or their designees;
2. the policy and management secretary or his designee;
3. five members appointed by the governor; and
4. one appointed by each of the six legislative leaders.

Appointing authorities must make initial appointments within 60 days after the legislature authorizes toll implementation in the state. Each appointed member serves a four-year term and may not designate a representative to perform his or her duties. Vacancies must be filled for the unexpired term by the original appointing authority. Board members may be removed, at the appointing authority's discretion, for misfeasance, malfeasance, or willful neglect of duty.

Board members are not paid but are reimbursed for expenses.

Chairpersons and Executive Director

The bill requires the governor to appoint the board's chairperson from among the members, with the advice and consent of both legislative chambers, and the chairperson serves at the pleasure of the governor. The board must select a vice-chairperson from among its members, as well as any other officers it deems necessary.

The chairperson, with the board's approval, must appoint an executive director of the authority. The executive director is (1) an employee of the authority, (2) paid a salary prescribed by the board,

and (3) responsible for supervising the authority's administrative affairs and technical activities according to the board's directives.

Conflicts of Interest

Board members may be privately employed or engage in a business or profession, subject to state ethics and conflict of interest laws, rules, and regulations. Under the bill, it is not a conflict of interest for a trustee, director, partner, or officer of any person, firm, or corporation, or any person with a financial interest in the person, firm, or corporation, to serve as a director, provided he or she complies with applicable state ethics laws.

Board Deliberations

Eight board members constitute a quorum, and the board can act by a majority of those present. Vacancies do not prevent a quorum from acting.

POLICIES AND PROCEDURES

General Policies

The bill requires the CTFA board to adopt written procedures for:

1. adopting an annual budget and plan of operations, which must require board approval before either can take effect;
2. hiring, dismissing, promoting, and paying employees, including an affirmative action policy and a requirement for board approval before a position may be created or a vacancy filled;
3. acquiring real and personal property and personal services, which must require board approval for any non-budgeted expenditure that exceeds an amount the board determines;
4. contracting for financial, legal, bond underwriting, and other professional services, which must require the board to solicit proposals at least once every three years for these services;
5. issuing and retiring bonds and other authority obligations; and

6. awarding grants, loans, and other financial assistance, which must include eligibility criteria, the application process, and the role of CTFA staff and board.

CTFA must follow the same notice requirements quasi-public agencies follow before adopting its procedures.

Toll Implementation Policies

In addition to the general policies and procedures it must adopt, CTFA must also adopt written toll implementation policies. Specifically, the policies must cover:

1. establishing variable or dynamic toll rates that account for the day of the week or actual or anticipated traffic congestion;
2. establishing toll rates that vary based on vehicle classification, size, weight, number of axels, or occupancy;
3. establishing reduced or discounted tolls for in-state toll road users with transponders and accounts with the authority or toll operator;
4. exemptions for high-occupancy commuter vehicles, state agency vehicles, law enforcement vehicles, emergency medical service vehicles, and public transit vehicles;
5. surcharges, premiums, or added fees for those who use a tolled highway without a transponder or similar technology;
6. administrative charges and penalties for late toll payment and toll evasion; and
7. due process procedures, including notice and the right to challenge a toll and associated charges, to a hearing, and to appeal.

BACKGROUND

Tolling and Federal Law

Although states are free to toll roads, bridges, and tunnels built

without federal funds, federal law limits the imposition of tolls on existing federal-aid highways, especially interstate highways. But recent federal laws have expanded states' abilities to allow tolling in certain instances, such as when building new interstate routes or when adding a new lane to an existing interstate highway (23 U.S.C. § 129).

Federal law also has created several pilot programs, such as the Value Pricing Pilot Program, in which participating states use "congestion pricing" to try to manage traffic flow and reduce traffic congestion. (Congestion pricing is the practice of charging higher tolls when traffic is heaviest and lower or no tolls at other times.) Connecticut is participating in the Value Pricing Pilot Program.

Toll Revenue Restrictions

Under federal law, toll revenue must be used first on the highway being tolled, including (1) debt service for the tolled road; (2) a reasonable return on investment of any private person financing the road; (3) road maintenance, operating, and improvement costs; and (4) if applicable, payments that the entity that controls tolling revenue owes to another party under a public-private partnership agreement (23 U.S.C. § 129(a)(3)(A)).

If the public authority with jurisdiction over the toll road has met the annual financial obligations related to the toll road and certifies that the road is adequately maintained, any remaining toll revenue may be used for other roads and other uses allowed under federal highway law (e.g., maintenance and improvement of other highways, congestion mitigation and air quality improvements, highway safety initiatives, and certain public transit improvements).

Special Transportation Fund

The STF is a dedicated fund used to finance the state's transportation infrastructure program and operate the Department of Transportation (DOT) and Department of Motor Vehicles (DMV) (CGS § 13b-68). The law requires specified tax revenue (e.g., fuel taxes and a portion of sales and use tax revenue) and various transportation-related fees, fines, and charges to be credited to the STF. By law, STF

revenue is pledged to secure special tax obligation (STO) bonds issued for transportation projects through DOT's capital program, and its resources must be used first to pay off STO bond debt service (CGS §§ 13b-74 to 13b-77).

Connecticut statutes contain a "lockbox" provision, which makes the STF a perpetual fund, requires its current revenue sources to continue to be placed in the fund as long as the state collects them, and restricts the use of its resources to transportation purposes (CGS § 13b-68(b)). In 2017, the legislature approved a constitutional amendment to provide these "lockbox" protections in the constitution. The amendment will be placed on the November 2018 general election ballot.

Related Bills

Several bills favorably reported by the Transportation Committee contain provisions related to tolling:

1. SB 389 creates the quasi-public Connecticut Transportation Authority and authorizes it to implement tolls on I-84, I-91, I-95, and the Merritt and Wilbur Cross Parkways;
2. HB 5046, also favorably reported by the Finance, Revenue and Bonding Committee, authorizes DOT to implement tolling on state highways; and
3. sHB 5391 requires DOT to conduct federally-required toll studies and develop a tolling proposal to submit to the legislature for approval.

COMMITTEE ACTION

Transportation Committee

Joint Favorable
Yea 19 Nay 17 (03/23/2018)