OLR Bill Analysis
sHB 7202

AN ACT CONCERNING THE SUSTAINABILITY OF CONNECTICUT’S TRANSPORTATION INFRASTRUCTURE.

SUMMARY

This bill authorizes the Department of Transportation (DOT) to build, maintain, and operate electronic tolls on I-95, I-91, I-84, and portions of Route 15.

Under the bill, DOT may set toll rates and collect toll revenue, which must be deposited into the Special Transportation Fund (STF) and spent only as federal law allows (see BACKGROUND). Toll rates may vary based on the time of day or anticipated traffic congestion and may include toll discounts or exemptions for certain users, among other things. DOT must set the rates to at least cover the cost of (1) tolled highway construction, maintenance, operation, and improvement and (2) debt service on obligations related to such highways.

The bill allows the department to hire consultants and other contractors and enter into agreements necessary to implement tolling (e.g., a tolling agreement with the Federal Highway Administration (FHWA)). It also requires that any tolling system comply with all state and federal interoperability requirements.

The bill contains provisions regarding public hearing and notice requirements, toll customer privacy, and toll enforcement and penalties for violations. It also requires the DOT and Department of Motor Vehicles (DMV) commissioners to adopt implementing regulations.

EFFECTIVE DATE: Upon passage

TOLL AUTHORIZATION AND IMPLEMENTATION
The bill authorizes DOT to construct, maintain, and operate electronic tolling systems on I-95, I-91, I-84, and portions of Route 15 (“specified highways”). It also allows DOT to contract with a private entity to operate the toll systems (i.e., a toll operator).

Under the bill, an “electronic tolling system” is an electronic system used for recording, monitoring, collecting, and paying tolls. It includes video toll transaction systems, transponders, or other electronic transaction or payment technology or devices.

**Tolling Agreements**
Under the bill, DOT may:

1. enter into tolling agreements with the FHWA and other related agreements with other governmental entities to carry out its duties under the bill and its implementing regulations;

2. spend money to procure and retain technical, traffic, revenue, financial, legal, and other types of consultants and experts to help develop, implement, operate, and maintain the tolling system; and

3. spend funds to procure and retain toll operators, vendors, suppliers, designers, engineers, software designers, installers, contractors, maintenance and customer service personnel, and other personnel, and for other equipment, material, staff, and service to help develop, implement, maintain, and operate the tolling system.

The bill specifically authorizes DOT to enter into agreements for any of the services described above pursuant to an open, competitive process, which the bill does not specify. (Existing federal and state law establishes extensive procedures for procuring consultants and other contractors for transportation projects. Presumably, DOT must follow these procedures for toll-related contracting and procurement.)

The bill authorizes DOT and DMV, either jointly or separately, to enter into reciprocal agreements with other states and jurisdictions,
and with toll operators in other states, to share information on out-of-state vehicle owners who used a tolled highway, including the vehicle owner’s name and address and the vehicle’s make and license plate number. DOT, DMV, and the toll operator may enter into reciprocal agreements with other states, jurisdictions, and toll operators to efficiently collect tolls from out-of-state residents.

The bill also allows DOT and the Department of Emergency Services and Public Protection to enter into an agreement to have state police enforce laws on tolled highways that they do not enforce elsewhere (e.g., laws on toll evasion). It gives state and local police the same powers on tolled highways as they have in their respective jurisdictions.

TOLL RATES, COLLECTION, AND REVENUE

Setting Rates

Under the bill, DOT may charge, collect, retain, set, and change toll rates on the specified highways, and retain and employ the assistance it needs to collect the tolls. The department must set the toll rates to provide sufficient funding to cover specified costs, but it may consider the availability of funds from other sources in doing so. Under the bill, the revenue generated by tolls, plus such other available funding, must at least cover the following for the tolled highways:

1. costs related to owning, maintaining, repairing, rebuilding, improving, rehabilitating, using, administering, controlling, and operating them;

2. the principal, interest, and any redemption premium on notes or bonds related to them, as they become due and payable; and

3. creating and maintaining reserves established under laws on state highways and bridges to operate and maintain them.

The bill requires DOT to adopt regulations, which may cover the following:

1. setting variable toll rates that consider the day of the week and
traffic congestion level or anticipated congestion;

2. setting different fees depending on the type of vehicle, including its size, weight, occupancy, or number of axles;

3. establishing discounts or toll customer account credits for people with transponders or other similar devices issued by DOT or a toll operator;

4. exempting certain types of vehicles, including (a) state-owned or -leased vehicles, (b) vehicles used by law enforcement, firefighters, or emergency medical personnel (c) public transit vehicles, and (d) high occupancy vehicles;

5. imposing surcharges, premiums, or additional fees on users without a valid transponder or similar technology;

6. imposing administrative charges and penalties for late toll payments and toll evasion; and

7. specifying how a transponder or similar device must be located in or on a vehicle entering a tolling system, if the system uses such devices.

**Toll Revenue Use**

Under the bill, toll revenue, as well as any revenue from penalties for toll nonpayment, evasion, and other toll-related violations, (1) must be deposited into the STF, (2) cannot be commingled with other funds and revenues, and (3) must be spent only as federal law allows (see BACKGROUND).

**Public Notice**

The bill requires DOT, before beginning construction on an electronic tolling system on any highway or portion of a highway, to hold a public informational meeting in the general vicinity of the proposed toll corridor to receive comments on the proposed toll and the methodology for setting and adjusting the toll rate and user classifications.
DOT must erect and maintain signs in advance of a tolled highway to notify drivers (1) that a toll will be charged on the highway and (2) how to pay the toll.

**Tax Exemption**

Under the bill, tolls are not subject to, and are exempt from, all taxes imposed by the state, municipalities, and all other political subdivisions or special districts with the power to levy taxes.

**ENFORCEMENT PROCEDURES AND PENALTIES**

The bill requires anyone contesting the amount of a toll or associated charges to be given an opportunity for a DOT hearing in accordance with the Uniform Administrative Procedure Act. The department, after notice and a hearing, may impose the following civil penalties for violations of the regulations related to toll nonpayment, toll evasion, or any related fees: (1) up to $25 for a first violation, (2) up to $50 for a second violation, and (3) up to $100 for a third violation. (Presumably, the penalty for a third violation would also apply to subsequent violations.)

DOT may impose the penalty on a vehicle’s (1) driver, (2) owner or lessee if the vehicle was operated by someone else with the owner’s or lessee’s permission, or (3) lessor. A copy of a motor vehicle rental agreement, lease, or other contract or affidavit identifying the lessee at the time of the tolling transaction is prima facie evidence that the person named in the agreement was operating the vehicle at all relevant times related to the toll. The bill requires vehicle lessors to cooperate with DOT or the toll operator in providing any information about the lessee that DOT or the toll operator requests from the lessor’s record (presumably, the lease agreement or contract).

DMV must provide DOT or the toll operator any information it needs to collect tolls and enforce penalties for nonpayment, toll evasion, or other toll-related violations, including information on the vehicle owner’s name and address and the vehicle’s make and license plate number.
The bill also requires the DMV commissioner, in coordination and consultation with the DOT commissioner, to adopt regulations to carry out DMV’s responsibilities under the bill. The regulations must include restrictions on issuing registrations to vehicle owners who owe tolls or administrative charges or penalties for late payment or toll evasion.

**PRIVACY PROVISIONS**

*Release of Toll Customer Information*

The bill prohibits DOT or any toll operator from selling or using toll customer information or other data for any commercial purpose unrelated to charging, collecting, and enforcing tolls and toll-related administrative fees and penalties. But it allows DOT to release, for DOT-authorized research purposes, toll customer data that does not directly or indirectly identify a toll customer.

The bill exempts toll customer information and data from disclosure under the Freedom of Information Act. It also specifically subjects toll operators to existing requirements for state contractors who receive confidential information.

*Destruction of Records*

Except as required by law or an administrative or court proceeding, all information relating to a toll customer’s specific transaction or to a “toll customer account” that specifically identifies the toll customer must be destroyed within a specified timeframe.

In the case of a specific transaction, this information must be destroyed within one year after the tolling transaction or toll collection, whichever is later. In the case of a customer account, such information must be destroyed within one year after the collection of all tolls and fees the customer incurred, whether through normal processes, enforcement, or the account’s closing. “Toll customer account” presumably refers to a billing account the customer establishes.

*Regulations*

DOT’s implementing regulations may include provisions for protecting and appropriately limiting access to toll customer
information and other data the department collects, receives, maintains, archives, accesses, and discloses.

**TOLL SYSTEM INTEROPERABILITY**

The bill requires that the tolling system be interoperable with other electronic tolling systems in the state and comply with all state and federal interoperability requirements and standards, including system technology and fund transfers. (Interoperability refers to the ability of computer systems to exchange and use information.) The DOT and DMV commissioners must consult with the Department of Administrative Services commissioner to ensure coordination and compatibility of information system technology and data.

The bill specifies that, for purposes of interoperability, state laws on state information and telecommunications systems and state purchasing and printing do not apply to electronic tolling systems.

**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 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 eligible to toll under the Value Pricing Pilot Program.

*Toll Revenue Restrictions*

Under federal law, toll revenue must be used first on the facility 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 road and certifies that it is adequately maintained, any additional 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, and highway safety initiatives).

**Special Transportation Fund and the “Lockbox”**

The STF is a dedicated fund used to finance the state’s transportation infrastructure program and operate DOT and 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 STO bonds issued for transportation projects through DOT’s capital program (CGS §§ 13b-74 to 13b-77), and its resources must be used first to pay off STO bond debt service.

Both the state constitution and the general statutes contain a “lockbox” provision, which preserves the STF as a perpetual fund, requires that the fund be used exclusively for transportation purposes, including paying transportation-related debt, and requires that any funding sources directed to the STF by law continue to be directed there, as long as the law authorizes the state to collect or receive them (Conn. Const., art. III § 19; CGS § 13b-68(b)).

**Related Bills**

SB 423, favorably reported by the Transportation Committee, contains substantially similar provisions authorizing tolls on I-95, I-91, I-84, and portions of Route 15.

HB 7280, favorably reported by the Transportation Committee,
requires DOT to conduct federally-required toll studies, develop a proposal for implementing tolls on I-95, I-91, I-84, and portions of Route 15, and submit the proposal to the legislature for approval.

**COMMITTEE ACTION**

Transportation Committee

Joint Favorable

Yea 23  Nay 13  (03/20/2019)