OLR Bill Analysis
sHB 7280

AN ACT CONCERNING SUPPORT FOR TRANSPORTATION INFRASTRUCTURE AND THE CREATION OF THE CONNECTICUT TRANSPORTATION FINANCE AUTHORITY.

SUMMARY

The bill establishes a two-step process for authorizing tolling, requiring the Department of Transportation (DOT) to develop a toll proposal and submit it to the legislature for final approval. After a proposal is approved, the bill authorizes DOT to build, maintain, and operate tolls on I-95, I-91, I-84, and Route 15. Under the bill, a proposal is (1) approved upon a majority vote of both houses or (2) deemed approved if the legislature does not vote within the required timeframe.

The bill also creates the quasi-public Connecticut Transportation Finance Authority (CTFA), the purposes of which are to (1) establish and adjust toll rates, (2) establish a Connecticut Transportation Infrastructure Bank, and (3) approve specified transportation plans. It establishes a 13-member board to govern CTFA and gives it general powers to operate as a quasi-public agency, including the power to issue bonds and hire staff, who are state employees for collective bargaining purposes. It requires the authority to adopt written procedures establishing toll rates, which must vary based on the time of day or anticipated traffic congestion and include toll discounts or exemptions for certain users, among other things. CTFA must set the rates to cover at least the cost of (1) tolled highway construction, maintenance, operation, and improvement and (2) debt service on obligations related to such highways.

The bill includes toll implementation and administration provisions (§§ 3-8), which cover contracting and procurement, toll collection and revenue, enforcement and penalties, data privacy, system
interoperability, and agency regulations. Under the bill, toll revenue must be deposited into the Special Transportation Fund (STF) and spent only as federal law allows.

Lastly, the bill reduces the motor fuels tax rate over a five-year period after the start of electronic tolls, when certain conditions are met.

EFFECTIVE DATE: Upon passage

§ 2 — TOLL DEVELOPMENT AND PROPOSAL

This bill requires DOT to:

1. conduct studies and satisfy other conditions required under the National Environmental Policy Act (NEPA) (see BACKGROUND) in order to develop electronic tolling systems on state highways;

2. procure a program manager and any other necessary consultants to help develop toll systems; and

3. develop a tolling proposal, to the bill’s specifications, and submit it to the legislature for approval.

Proposal Contents and Considerations

The proposal DOT prepares must implement tolling on I-95, I-91, I-84, and portions of Route 15, and may implement tolling on other limited access highways if the DOT commissioner determines that doing so is necessary and he provides his rationale for such determination. The proposal must also:

1. identify the specific locations where the proposed tolls may be charged (i.e., toll gantries);

2. include the (a) toll rates that may be charged, including the use of value pricing and discounts, if any, and (b) time periods for peak and off-peak travel; and

3. estimate the toll system’s capital and operating costs.
In developing the proposal, the DOT commissioner must consider discounts, income tax credits, and toll account credits for (1) state residents, (2) people with a transponder or similar device issued by DOT or its toll operator, (3) frequent users of the tolled highways, (4) individuals with low incomes, and (5) high-occupancy vehicles. The department must also consider phasing in the toll system’s operation and, in consultation with the economic and community development commissioner, ways to help small businesses impacted by tolls.

**Legislative Approval Process**

Under the bill, the DOT commissioner must file the toll proposal with the House and Senate clerks. The Transportation Committee must hold an informational hearing on the proposal (1) within 10 days after the filing or (2) if it is filed when the legislature is not in session, within 10 days after the first day of the next regular session. During the hearing, the committee must receive comments from the public.

Within 15 days after the Transportation Committee holds this hearing, the legislature must vote to approve or reject the proposal. The proposal is:

1. approved, if a majority in both houses votes to approve;

2. rejected, if a majority in either house votes to reject; or

3. deemed approved, if both houses do not vote within the 15-day timeframe.

Under the bill, the 15-day timeframe does not end unless the legislature is in regular session. If the session adjourns before the 15th day and the legislature has not acted on the proposal, the proposal is deemed filed on the first day of the next regular session.

The bill allows the DOT commissioner to revise the proposal if it is rejected by the legislature. After revising it, he must submit it to the House and Senate clerks, and it follows the same approval process as for the initial proposal.
Federal Approval

Under the bill, once a toll proposal is approved or deemed approved, the DOT commissioner must submit the proposal to the Federal Highway Administration (FHWA). The bill prohibits him from submitting a tolling proposal to the FHWA unless it is approved or deemed approved.

Under federal law, DOT may not implement tolls until it receives federal approval and executes a tolling agreement with the FHWA (see BACKGROUND).

§§ 1 & 3-8 — TOLL IMPLEMENTATION AND ADMINISTRATION

After a tolling proposal is approved or deemed approved, the bill authorizes DOT to construct, maintain, and operate electronic tolling systems on I-95, I-91, I-84, and portions of Route 15. (If the approved tolling proposal were to include additional limited access highways, it is unclear whether the bill allows DOT to implement tolls on those 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 devices.

Tolling Agreements and Authorizations

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;

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

3. procure, retain, and spend funds for toll operators, vendors, suppliers, designers, engineers, software designers, installers,
contractors, customer service personnel, and other personnel, and for other equipment, material, staff, and service to help develop and implement 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 define. (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 the Department of Motor Vehicles (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 have used a tolled highway, including the name and address of the vehicle owner and the vehicle’s make and license plate number. DOT, DMV, and the toll operator may enter into agreements with other states, jurisdictions, and toll operators to efficiently collect tolls from out-of-state residents.

**Toll Collection and Revenue Use**

After a tolling proposal is approved or deemed approved, the bill allows DOT to collect tolls on the highways specified in the proposal. Under the bill, toll rates are set and adjusted by the CTFA (see below).

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.
DOT also 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 exempt from tax by the state, municipalities, and all other political subdivisions or special districts authorized to levy taxes.

**Enforcement Procedures and Penalties**

The bill requires that anyone who contests the amount of a toll or associated charges be given an opportunity for a hearing with DOT in accordance with the Uniform Administrative Procedure Act. Under the bill, 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 or subsequent violation.

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 and the toll operator any information it needs to collect tolls and enforce penalties for nonpayment, toll evasion, or other violations, including information on the vehicle owner’s name and address and the vehicle’s make and license plate number.

**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 that is unrelated to charging, collecting, and enforcing tolls and 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” apparently refers to a billing account the customer establishes.

**Toll System Interoperability**

The bill requires that a 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 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.

**Implementing Regulations**

The bill requires the DOT commissioner to adopt implementing regulations. The regulations may cover (1) protecting and appropriately limiting access to toll customer information and other data the department collects, receives, maintains, archives, accesses, and discloses and (2) 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.

The bill also requires the DMV commissioner, in 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.

§ 9 — MOTOR FUELS TAX REDUCTION

The bill requires the state treasurer to notify the Department of Revenue Services (DRS) commissioner, in writing, when he determines that the STF’s resources exceed three times the estimated payments on debt service owed on state obligations incurred for transportation purposes. (It is unclear whether this means annual estimated debt service payments or total debt service payments.)

It also requires the DOT commissioner to notify the DRS commissioner, in writing, of the date electronic tolling systems start. (Presumably, this is the date a toll system begins operating and collecting tolls.) He must do this within 15 days after such date.

Under the bill, the DRS commissioner must lower the motor fuels tax rate by one cent beginning the first full fiscal year that follows the later of the two required notices, and in each of the following four fiscal years. (It is unclear whether this requires the commissioner to lower the tax rate by one cent for a five-year period or one cent each
year, for a total five cent reduction. It is also unclear whether the reduced rate remains in place after the five-year period or reverts to its current level.)

Under the bill, DRS must calculate the applicable tax rate per gallon of fuel sold or used in the state and provide notice of the tax rate for each fiscal year to each distributor; the policy and management secretary; and the Finance, Revenue and Bonding Committee chairpersons and ranking members.

§§ 10-17 — CONNECTICUT TRANSPORTATION FINANCE AUTHORITY (CTFA)

The bill establishes the CTFA as a public instrumentality and political subdivision of the state created to perform an essential public and government function. Its purposes are to (1) approve specified transportation plans, (2) establish a Connecticut Transportation Infrastructure Bank (CTIB), and (3) establish and adjust toll rates.

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 and until it is terminated by law. Termination does not affect outstanding contractual obligations. Its rights and properties vest in the state when it lawfully terminates.

Powers

To accomplish its purposes, the bill gives CTFA the following general powers to function as a quasi-public authority:

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. issue bonds, bond anticipation notes, and other obligations;

6. 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;

7. borrow money for working capital;

8. use consultants, attorneys, and appraisers;

9. enter into contracts and agreements, including those necessary to establish the CTIB and 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 state law);

11. purchase insurance for its property, other assets, and employees;

12. account for and audit authority funds and any recipients of authority funds;

13. establish advisory committees to assist in accomplishing its duties;

14. pursue public-private partnerships for the design, development, operation, or maintenance of transportation systems, transit-oriented development, and related infrastructure; and

15. 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 state employees, and CTFA is 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, which must be in accordance with state employee collective bargaining laws.

**Transportation Plan Approval**

Under the bill, CTFA must approve the statewide transportation improvement plan, the five-year transportation capital plan, and the long-range transportation plan developed by DOT. Before approving any transportation plan, the CTFA must (1) evaluate whether the plans assure the development and maintenance of an adequate, safe, and efficient transportation system that meets the state’s present and future transportation needs and (2) assess the plans’ impact on economic development, transit-oriented development, housing development, access to employment, the environment, and the specific needs of different geographic areas of the state.

**Connecticut Transportation Infrastructure Bank (CTIB)**

Under the bill, the CTFA must establish the CTIB to assist in financing transportation projects by providing loans and other financial assistance to public and private entities to improve transportation infrastructure in the state. This includes acquiring, removing, constructing, equipping, reconstructing, repairing, rehabilititating, and improving highways, bridges, commuter and freight railways, transit and intermodal systems, airports and aeronautic facilities, ports, harbors, and navigable waterways.

The bill establishes a Connecticut Transportation Infrastructure Bank Fund within the CTFA. It allows the fund to receive any funds the law requires to be deposited into it, including principal and interest loan payments, investment earnings, bond funds, and any federal funds available to the state for infrastructure improvement. Any balance in the fund must be carried forward to the next fiscal year.

The fund’s resources must be used by CTFA for expenditures that promote transportation infrastructure project investment.
Expenditures may include:

1. providing low interest loans or other financial assistance to finance all or part of the costs incurred for acquiring, removing, constructing, equipping, reconstructing, repairing, rehabilitating, and improving transportation infrastructure projects;

2. reimbursing operating expenses, including administrative expenses incurred by the authority; and

3. capital costs the CTFA incurs in connection with operating the fund, other permitted CTIB activities, grants, direct or equity investments, contracts, or other actions that support infrastructure projects in the state.

**Toll Rate Setting**

Upon the approval of DOT’s tolling proposal, the bill authorizes the CTFA to set and adjust toll rates on the highways specified in the proposal. CTFA 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 cover at least the following:

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

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

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

Before setting or adjusting toll rates, CTFA must hold at least one public hearing.
The bill requires the CTFA to adopt written procedures, in accordance with quasi-public notice requirements, establishing:

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

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

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

4. exemptions for 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. surcharges, premiums, or additional fees on users without a valid transponder or similar technology; and

6. administrative charges and penalties for toll late payment and toll evasion, which may not exceed $25 for a first violation, $50 for a second violation, and $100 for a third and subsequent violations.

**Governance**

The CTFA is governed by a 13-member board of directors, comprised of the following members:

1. three senators, one each appointed by the president pro tempore, majority leader, and minority leader;

2. three House members, one each appointed by the speaker, the majority leader, and the minority leader;

3. the transportation, economic development, energy and environmental protection, and housing commissioners (or their designees);
4. the treasurer or his designee; and

5. two members appointed by the governor.

Under the bill, board members who are legislators serve for the term for which they are elected, and gubernatorial appointees serve four-year terms. 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 inefficiency, misfeasance, malfeasance, or willful neglect of duty.

The bill prohibits legislative members and members appointed by the governor from designating a representative to perform their duties in their absence.

**Chairpersons and Executive Director.** The bill requires that the board select from among its members (1) its chairperson, who serves a two-year term, and (2) vice chairperson and any other officers it deems necessary.

The chairperson, with board approval, must appoint the CTFA’s executive director. The executive director is (1) an employee of CTFA, (2) paid a salary determined by the board, and (3) responsible for supervising the CTFA’s administrative affairs and technical activities according to the board’s direction.

**Board Deliberations.** Seven board members, at least three of whom must be legislators, constitute a quorum, and the board can act by a majority of those present.

**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.

**Written Procedures.** 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;

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

7. using surplus funds to the extent authorized under the bill.

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

BACKGROUND

National Environmental Policy Act (NEPA)

NEPA requires federal agencies to consider the environmental effects of their proposals and actions, including the projects they fund (42 U.S.C § 4321 et seq.). Federal regulations specify the basic requirements for making decisions under NEPA, which include (1) assessing social, economic, and environmental impacts; (2) analyzing project alternatives; (3) considering appropriate impact mitigation; and (4) providing opportunities for public participation (40 C.F.R. §§ 1500-1508).
**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 toll road and certifies that the road 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 Special Tax Obligation (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 and HB 7202, both favorably reported by the Transportation Committee, authorize tolls on I-95, I-91, I-84, and portions of Route 15.

SB 70 (File 255), favorably reported by the Banking Committee, establishes a Connecticut Infrastructure Bank.

COMMITTEE ACTION

Transportation Committee

Joint Favorable

Yea 23  Nay 13  (03/20/2019)