



# Tolling of Interstate Highways: Issues in Brief

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## Introduction

The prohibition of tolling of federal-aid highways dates back to the Federal Road Act of 1916 (39 Stat. 355). Subsequent legislation modified the prohibition to the point where now the only significant part of the federal-aid highway system under the toll prohibition is the Interstate Highway System, comprising approximately 47,000 miles of the roughly 1-million-mile federal-aid highway system. Congress, in approving the Federal-Aid Highway Act and Highway Revenue Act of 1956 (P.L. 84-621; 70 Stat. 374), rejected the use of tolls to finance construction in favor of creating a highway trust fund supported by dedicated fuel taxes. However, 2,102 miles of tolled expressway segments were incorporated into the Interstate Highway System in 1957, and these segments are not covered by the tolling prohibition.<sup>1</sup>

In recent years, the revenues flowing into the highway trust fund have been insufficient to maintain even current levels of federal funding for highways. Political resistance to raising the federal fuels tax is high. The fuel taxes dedicated to the highway trust fund, currently 18.3 cents per gallon of gasoline and 24.3 cents per gallon of diesel fuel, were last raised in 1993.

Historically, interest in toll financing has increased during periods of constrained federal funding. Since the Interstate highways make up nearly all federal-aid highway segments that are still under the tolling prohibition, advocates of expanded use of tolling focus their efforts on giving states more flexibility to impose tolls on the Interstates within their borders.

On July 6, 2012, President Barack Obama signed into law the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21; P.L. 112-141). The act made modest changes to the Interstate highway tolling prohibition.

## Pros and Cons<sup>2</sup>

The arguments in favor of expanding tolling of the Interstate highways include the following:

- The Interstate Highway System includes many of the corridors with the level of traffic that makes the best business sense for toll-supported public-private partnerships and other forms of alternative finance, which could use the tolls along with other sources of revenue to finance roadway improvements.
- The highways and bridges on the Interstate System are nearly all 50 years old and need to be rebuilt at many times their original cost. Given the insufficiency of the revenues flowing into the highway trust fund and constrained state budgets, states need to be able to use tolling to rebuild the Interstate highways.

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<sup>1</sup> Bureau of Public Roads, *Toll Roads Included in Interstate System: press release*, BPR 57-25, August 21, 1957. A number of other toll roads were added later by legislation. Historically, bridges and tunnels have been treated differently than routes. The reconstruction of a toll-free bridge or tunnel and conversion of the bridge or tunnel to a toll facility is allowed.

<sup>2</sup> See Ed Regan and Steven Brown, "Building the Case for Tolling the Interstates," *Tollways*, spring 2011, reprint pp. 1-10; Beth Pinkston, *Toll Roads: a Review of Recent Experience*, Congressional Budget Office, February 1997, pp. 1-6; U.S. Government Accountability Office, *Road Pricing Can Help Reduce Congestion, but Equity Concerns May Grow*, Washington, GAO, "GAO-12-119," pp. 1-33; William Reinhardt, "The Role of Private Investment in Meeting U.S. Transportation Infrastructure Needs," *Public Works Financing*, v. 260, May 2011, p. 9; Alan van der Hilst, *Using Public-Private Partnerships to Carry Out Highway Projects*, Congressional Budget Office, January 2012, pp. 1-32.

- Tolls on urban Interstates could be set to vary according to the time of day or the amount of traffic, potentially reducing congestion while also providing revenue for maintenance or reconstruction of urban Interstates.
- Tolling of the Interstates gives drivers the choice of paying for the advantages of using a tolled Interstate segment or choosing to use an alternative route that may require greater travel time.
- Tolling of the Interstates will allow states to reconstruct them sooner than they otherwise could.
- Tolling can improve the efficiency of investment in highways because private investors will not buy securities backed by the tolls unless they are convinced that a facility will attract sufficient patronage to meet financial expectations.

Arguments in opposition to tolling of the Interstate highways include the following:

- Such a policy would overturn the “freedom from tolls” provision of the 1956 act, and might be open to criticism that tolling of roads that were built or improved with revenues from highway user taxes is double taxation.
- Much of the Interstate System, especially lightly traveled rural routes, may not be suitable for tolling. For tolling to make economic sense, the traffic on the toll facility must be sufficient to cover costs and, in the case of public-private partnerships, to provide for a reasonable profit.
- Tolls increase highway operating costs and place a burden on interstate commerce.
- Tolls may be regressive, disproportionately impacting low-income drivers.
- States are likely to neglect competing free roads once they commit to a toll facility.
- Most proposals for tolling of the Interstate highways envision continued federal financial participation, but this should be unnecessary if tolling of an Interstate highway segment truly makes economic sense.

## **Interstate Highway Tolling: Current Law**

Current law (23 U.S.C. §129) allows significant exceptions from the Interstate highway tolling prohibition, including

- initial construction of a toll highway (including an Interstate route), bridge, or tunnel, or the initial construction of an extension of an existing Interstate highway;
- initial construction of one or more lanes to increase the capacity of an Interstate System highway, bridge, or tunnel and the tolling of the increased capacity on the condition that the no less than the number of preconstruction toll-free lanes on the facility remain toll-free;

- reconstruction, restoration, or rehabilitation of a highway on the Interstate System if the number of toll-free non-HOV lanes after construction remains not less than the number of toll-free non-HOV lanes before construction;
- reconstruction of a toll free bridge or tunnel and conversion of the bridge or tunnel to a toll facility.

Basically, most existing Interstate highway toll-free lane capacity remains protected. Virtually all conversions of Interstate highways require reconstruction, replacement, or rehabilitation. The only possibility of converting all the lanes of a toll-free federal-aid highway, bridge, or tunnel without reconstructing or replacing it is through the Value Pricing Pilot Program (VPPP), which supports strategies to manage traffic congestion. However, even under VPPP states have to develop a value pricing project using variable tolls designed to manage congestion on the facility.<sup>3</sup>

## Policy Choices

Advocates of tolling would make more or all Interstate Highway System segments eligible for conversion to toll roads. The Interstates carry high traffic volumes relative to other roads and are often congested in urban areas. About 7% of the 16,555 miles of urban Interstates are currently tolled.

Both of the commissions established under Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA; P.L. 109-59)<sup>4</sup> recommended allowing expanded tolling of Interstate highways. This could be done in a number of ways, such as changing the law to allow the imposition of tolls at state discretion or making permanent the Federal Highway Administration's existing pilot programs involving tolling, the Value Pricing Pilot Program and the Interstate System Reconstruction and Rehabilitation Pilot Program.<sup>5</sup>

The policy choice is not all or nothing. One possibility would be to allow the tolling of urban Interstate highways only. However, this could lead to a difference in Interstate highway funding between more densely populated urban areas that rely on tolling and sparsely populated rural areas that remain dependent on federal grants. This could weaken urban support for federal-aid highway grants, which might be seen as primarily benefiting rural areas.

Recently, two other issues related to tolling of the Interstate highways have surfaced that could have a major impact on the acceptance or rejection of tolling the Interstates. These concern how and on whom the tolls might be imposed.

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<sup>3</sup> Federal Highway Administration, *Guidance on Section 129 General Tolling Program: Memorandum*, Washington, DC, September 24, 2012, <http://www.fhwa.dot.gov/map21/guidance/guidetoll.cfm>.

<sup>4</sup> National Surface Transportation Policy and Revenue Study Commission, *Transportation for Tomorrow: Final Report*, Chapter 5, [http://mtcfilehost.net/transportationfortomorrow/final\\_report/pdf/volume\\_2\\_chapter\\_5.pdf](http://mtcfilehost.net/transportationfortomorrow/final_report/pdf/volume_2_chapter_5.pdf). The study estimated that aggressive use of tolling opportunities in SAFETEA could generate \$8.9 billion in additional revenue between FY2007 and FY2017. See also National Surface Transportation Infrastructure Financing Commission, *Paying Our Way: a New Framework for Transportation Finance, Final Report*, February 26, 2009, pp. 28, 25-36, 207, [http://financecommission.dot.gov/Documents/NSTIF\\_Commission\\_Final\\_Report\\_Mar09FNL.pdf](http://financecommission.dot.gov/Documents/NSTIF_Commission_Final_Report_Mar09FNL.pdf).

<sup>5</sup> "The Role of Private Investment in Meeting U.S. Transportation Infrastructure Needs," *Public Works Financing*, May 2011, p. 9.

## Collecting Tolls at State Borders

Officials from some of the states that have expressed interest in the Interstate System Reconstruction and Rehabilitation Pilot Program have proposed in public statements collecting the tolls at state borders on segments of the Interstate System that are converted to toll roads. This would shift much of the toll burden onto interstate travelers or shippers, while leaving many intra-state trips along the same highways toll-free. Tolling supporters in these states see border tolls as a way of shifting the costs of “pass through” traffic to out-of-state travelers and shippers while making tolling of the routes more acceptable to their states’ residents.

Border tolling raises a number of policy issues at the federal level. One is whether it is appropriate for a federal program to support conversion of a “free” Interstate highway, bridge, or tunnel to a toll facility whose costs are borne primarily by interstate travel and shipping. In a broader sense, should the Interstate Highway System be opened up to tolling, border tolling could become the norm as states respond to border tolls set by adjacent states by setting their own border tolls; “toll wars” between states are not unimaginable. An unsettled question is whether schemes that impose highway tolls only at state borders, and not within the state, contravene the Commerce Clause of the Constitution, which reserved the power to “regulate commerce with foreign nations, and among the several states” to Congress.<sup>6</sup>

In a practical sense, depending on border tolls and giving intra-state users a free ride could have a major negative impact on the revenue potential of the toll conversion. This collection regime also is one that is relatively easy to bypass, as many state border crossings have competing non-Interstate roads nearby.

## Setting Different Rates for Interstate and In-State Toll Facility Users

Officials in some states have suggested a two-tier tolling system, with lower toll charges for in-state residents and higher charges on out-of-state users. Electronic toll collection makes the segmenting of toll facility users into out-of-state and in-state users feasible.

As is true with border tolling, differential tolls based on state of residence may invoke issues related to the Commerce Clause.<sup>7</sup> Some state and local authorities have imposed residence-based tolls on bridges, which have not been subject to federal toll regulation since passage of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (P.L. 100-17).<sup>8</sup> Currently,

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<sup>6</sup> Current case law has addressed certain residence discounts, but not border tolling.

<sup>7</sup> See “On Tolls, Transponders, and the Constitution’s Commerce Clause,” *Wall Street Journal*, April 2, 2009; “Rhode Island Bridge Defeats Law Suit Claiming Unconstitutionality of Residence Discount,” *Tollroads News*, April 7, 2011, <http://www.tollroadsnews.com/node/5254>. Reportedly, the Rhode Island Bridge Authority and the plaintiff agreed that in return for not appealing the decision, the Bridge Authority would pay some of the plaintiff’s litigation costs. See also “Possible Commerce Clause Claims Related to State Tolling of Existing Interstates,” *Truckline*, <http://www.truckline.com/Federation/STA/Documents/CONSTITUTIONAL%20CLAIMS.pdf>. For case law, see Yeager, et. al. v. Massachusetts Turnpike Authority, United States Court of Appeals for the Third Circuit, 395 Fed. Appx. 878; 2010, and Carol Suprenant v. the Massachusetts Department of Transportation, United States District Court for the District of Massachusetts, 768 F. Supp. 2d 312; 2011.

<sup>8</sup> Section 135 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (P.L. 100-17) repealed the Department of Transportation’s (DOT’s) authority to regulate tolls on bridges. Bridge tolls were required to be “just and reasonable,” but were no longer subject to regulation by DOT.

the Federal Highway Administration plays no oversight role in regard to the setting of toll rates, either on toll roads or on toll bridges.

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