

Administrative and Legislative Arrangements of Tolling Agencies

Requested by

Joe Rouse, Caltrans Office of Managed Lanes

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There are approximately 150 toll roads, bridges, and tunnels in the United States that operate in 27 states. Forty of these toll facilities are administered by state operating authorities. In 2006, state-administered toll facility revenue accounted for about 5 percent of total state transportation funding. Tolls generated \$7.6 billion in state revenues in 2007.

Title 23 of the United States Code (highways) prohibits the imposition of tolls on federal-aid highways. However, Title 23 and other statutes allow for exceptions through six federal tolling programs that provide states with tolling options for federally funded highways, including interstate highways. While these six programs have various limitations, the guiding principle for consideration of any toll project is that if federal funds have been used or will be used on a highway, then the public authority responsible for the facility must qualify for toll authority under one of these six federal programs. The Federal Highway Administration's (FHWA's) Office of Innovative Program Delivery is responsible for receiving and reviewing all Expressions of Interest submitted by a public authority and for coordinating all tolling and pricing programs that exist under the federal-aid highway program. Submittal of an Expression of Interest initiates the review process that leads a recommendation as to which tolling program (or programs) will be appropriate to meet the goals of the public authority. The toll agreement must be executed with FHWA and must address the use of revenues collected from the toll facility.

Toll programs require that toll revenues are used for debt service; that tolls provide a reasonable return on investment for private party financing; and that tolls contribute funds needed for the proper operation and maintenance of the facility. In some cases, toll revenues may be applied to other uses on federally eligible highway and transit projects. The six federal toll programs consist of tolling revenue programs and congestion management programs. The recently enacted federal transportation reauthorization legislation, Moving Ahead for Progress in the 21st Century (MAP-21), modified these programs. The most significant change expands the ability of states to use federal funds to construct and toll new capacity on the Interstate and the federal-aid highway system as long as there is a net increase in new capacity associated with the project.

While MAP-21 relaxes the general prohibition against tolling, the two-year federal transportation legislation reaffirms that individual states must enact tolling legislation prior to instituting any tolling on bridges, highways, or tunnels.

Variations in state toll road legislation are common and range from the creation of a toll authority or commission to impossible constraints on the use of funds. Legislation should, and

generally does, address the legal powers of an entity, the authority to set and revise tolls, police powers, the relationship to/with other entities, and operation, maintenance and repair obligations. An agency structure over toll road projects can run from all public to complete privatization of agency responsibility. The three main types of administrative jurisdiction are:

- *Traditional new public highway – state government ownership and funding;*
- *Traditional new public toll-road delivery;*
- *Public authority ownership and operation; and Public-private partnerships (P3s) – contractual agreements between a public agency and a private entity with the private sector taking on additional project risks, such as design, finance, long-term operation and traffic revenue.*

Some state statutes provide peer review agencies with the authority to operate toll facilities. Common elements of these statutes generally enable the tolling of roads, bridges, tunnels, and other transportation facilities, and may address specific policy and operational details. Tolling authority is either granted to a state Department of Transportation (DOT) or to a separately-formed toll agency; an indication of the level of government that may institute a toll agency is usually specified. Such specification can include one, or a combination of the state DOT, the state toll authority separate from the DOT, local government, or a regional public entity. Statutes creating a state toll agency other than one controlled by the state DOT typically stipulate characteristics of the governing body of the toll agency. Such provisions include the number of members, method for appointing and for electing members to posts, and the length and number of terms the members will serve. Statutes creating a state toll agency other than one controlled by the state DOT typically stipulate characteristics of the governing body of the toll agency. Such provisions include the number of members, method for appointing and for electing members to posts, and the length and number of terms the members will serve.

Often statutes that create tolling agencies allow for more flexible construction practices such as the use of design/build contracting. This is true in North Carolina and Maryland. In addition to the basic elements, statutory language may address pertinent policy, operations, and financial objectives, including: the ability of the toll agency to toll existing facilities; mandatory public involvement in the planning and design phases of toll facility development; and a requirement that the determination of facilities to toll results only from the statewide transportation planning process. Policy goals and performance measures may also be mentioned in statute including congestion management, air quality conformity, economic development, demand-driven infrastructure investment, and toll revenues as a supplement to tax revenues.

Various provisions related to toll revenues and financing can also be written into state laws. For instance, some states address whether toll collections can continue upon the retirement of toll-backed bonds. These laws may explicitly require tolls to be removed after bonds are repaid, such as in North Carolina, or they may explicitly allow, at the discretion of the DOT or facility operating agency, the continuation of toll collections after bond indebtedness is discharged, such as in Florida. This continuation allowance provides a clear advantage for the on-going maintenance, improvement, and extension of the toll facility itself plus the possible subsidy of corresponding transportation facilities in the corridor such as arterials, feeder roads, and transit.

California

Statute: Chapter 32, Section 143 (amended) and Section 149.7 (added)

Effective May 2006 to January 2012, California's law regarding 3P for transportation was amended to allow Caltrans, when working jointly with regional transportation agencies, to enter into comprehensive development lease agreements with public and private entities, or consortia of those entities, for certain transportation projects that may charge certain users of those projects tolls and user fees. Private sector proposals can be either solicited or unsolicited. These new provisions are subject to several specific terms and requirements, including a limitation to four total projects (two in Northern California and two in Southern California).

All lease agreements or concessions negotiated with Caltrans and regional authority to be subject to approval by state legislature. Additionally, lease agreements or concessions will establish specific toll rates. Existing free (general purpose) lanes cannot be converted to tolled facilities. Another anomaly of the law is that truck on toll lanes and passenger high occupancy toll lanes are both authorized in one clause but another clause states that tolls cannot be charged on vehicles with less than three axle vehicles.

State Current Legislative Provisions Policy

It should not be surprising to find that States which pass toll road legislation do not follow a fixed pattern as each State confronts unique circumstances. But the following provisions in State toll road legislation are common:

- *creation of an authority or commission,*
- *scope, purpose, and function of the entity,*
- *definition of terms*
- *delineation of the district within the entity operates,*
- *details about the entity's governing board,*
- *the legal powers of the entity,*
- *the authority to issue bonds and use tolls,*
- *authority to set and revise tolls,*
- *ability to invest bond proceeds,*
- *administrative requirements (audits, annual reports, etc.),*
- *constraints on the use of the funds,*
- *rights and remedies of bondholders,*
- *tax*
- *exempt status of the entity's property and bonds,*
- *venue and jurisdiction for legal actions,*
- *police powers,*
- *operating, maintenance and repair obligations, and*
- *relationships with other entities*

A successful toll road project can be built with virtually any mix of public and private financial sponsorship. Several prototypical models have developed, incorporating increasing amounts of

private involvement along with nongovernmental funds. As the private sector contributes more equity financing and assumes more risks, the partnership develops more characteristics of full privatization. The structures described here fit along a continuum from traditional public to mostly private:

Traditional New Public Highway:

State government ownership and funding with investment commonly justified by general system wide public needs.

Traditional New Public Toll-Road Delivery:

Public authority ownership and operation: Using toll revenues to finance nonrecourse and State-backed tax-exempt debt to construct the facility and provide interim operating funds. Although the traditional public toll authority does not incorporate private sector participation in the ways that the models described in the following sub-bullets do, it nonetheless provides an alternative structure for tollways. The following illustrates a number of variations of the traditional public toll authority:

- *City or County Government: Local toll road and bridge financial and ownership aspects which are completely controlled by a local government. Local taxes and bond revenue may be set aside for specific toll projects as the need arises, and the toll revenues are disbursed as the local government sees fit.*
- *Local Commissions or Authorities: Toll entities which are created by State statute and act like independent State commissions. They are completely financially independent of the local government; although they may be directed by a board of commissioners appointed by the government or actually be a division of the local government. These authorities have ultimate financial responsibility for all commitments entered into and completely fund their own projects.*
- *Dependent State Authorities: In essence, this type of authority acts as a financial extension of the State Department of Transportation. The authority is responsible for all debt issued, but transfers the bond revenues and the operation of the toll system to the State under a lease agreement. The lease payments received from the State are then applied to service the debt.*
- *Independent State Authorities or Commissions: State commissions and authorities which are autonomous in financial responsibilities such as fixing toll rates and charges as well as repayment of debt, but subject to some degree of political control as the governor appoints members of the board and the authority's debt issuance may or may not be subject to review by a State finance board. No funding is received from the State, and ultimate payment of debt is the sole obligation of the authority.*
- *Innovative Financing for New Public Facilities: Public ownership and operation with full or partial reliance on revenue sources such as development impact fees as well as tolls.*
- *Blended Public-Private Financing for New Public Toll Road Delivery: Control and direction under governmental oversight, usually by a local authority; financing delivers a complete, stand-alone project without recourse to government funding if toll revenues are not sufficient.*
- *Public-Private Partnerships to Deliver New Road Capacity: Substantial private equity participation and a strong private role in finance, construction, and operation; public role tends more toward framing the overall agreement, contributing pre-development costs, or assembling rights of way.*

- *Privately Supplied New Highway: Finance provided and risk borne almost entirely by private developers and their financial supporters; significant private equity combined with the issuance of taxable debt.*

Recent Tolling Legislative Actions in Washington

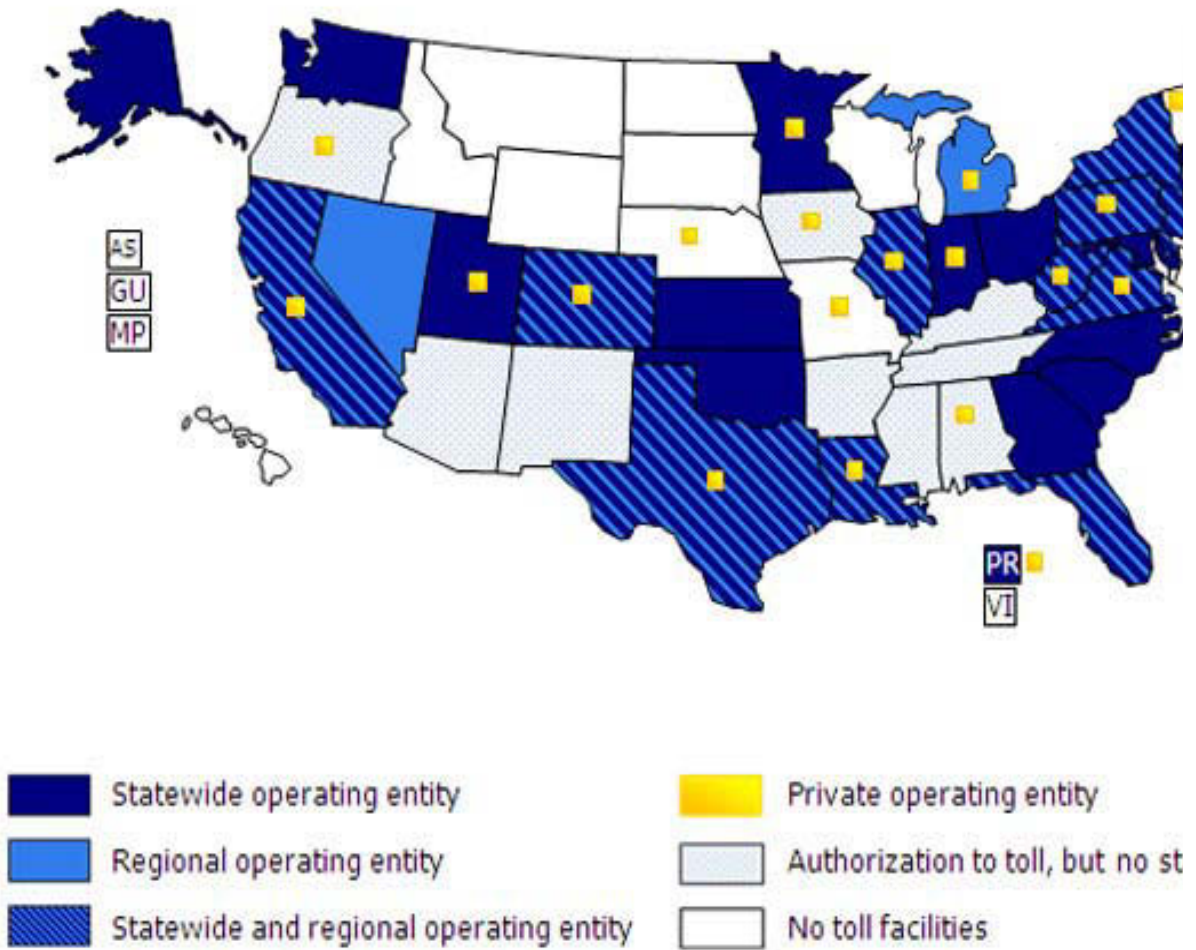
WSDOT Authorizes to finance the new Tacoma Narrows Bridge in 2002. A feasibility of administrating tolls on specific transportation facility was conducted in 2005. Washington State Transportation Commission conducted a planning grade tolling study that is based on the comprehensive tolling study in 2007. Broad tolling policy framework for transportation facilities was established in 2008. It followed up with conducting public outreach, and express toll road study to be reported back to the governor and legislature in 2009.

Toll Facilities in the United States

This 50-state map illustrates toll facilities currently in operation in the United States. The map includes road, bridge and tunnel toll facilities and facilities are categorized by their operating entity—encompassing statewide entities, such as a state Department of Transportation or Tollway Authority; regional entities, such as a regional transportation authority; and private entities, such as privately owned organizations.

As shown, a total of 42 states, the District of Columbia and Puerto Rico have some form of tolling authorization or facility. Of those:

- *28 states and Puerto Rico have toll facilities operated by statewide entities.*
- *14 states have toll facilities operated by regional entities.*
- *20 states and Puerto Rico have privately operated toll facilities.*
- *9 states and the District of Columbia authorize tolling but have no state or regional toll facilities at this time.*



NOTES:

Arkansas: State statute grants the authority to toll to regional mobility authorities.

Only bridge tolls are authorized in statute.

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Statute authorizes toll facilities only if approved by voters.

New Mexico: Only bridge and wagon road tolls are authorized in statute.

SOURCES:

<http://www.dot.wisconsin.gov/about/tfp/docs/tolling-issue.pdf>

<http://www.tdot.state.tn.us/documents/tollstudy/tdotpeerreview.pdf>

<https://www.fhwa.dot.gov/policyinformation/tollpage/documents/history.pdf>

http://ftp.dot.state.tx.us/pub/txdot-info/sla/education_series/texas_tolls.pdf

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<http://www.ncsl.org/research/transportation/toll-facilities-in-the-united-states.aspx>