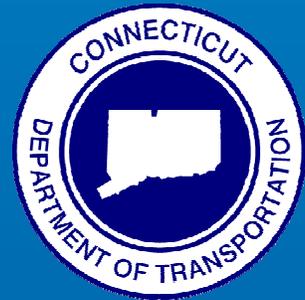


# Current Laws on Tolling Existing and New Facilities on Federal Interstate Highways

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# Current Laws on Tolling Existing and New Facilities on Federal Interstate Highways

The purpose of this paper is to present a review of the federal laws on tolling, and how they relate to Connecticut and the two congestion relief studies that are currently being conducted through the Connecticut Department of Transportation (CTDOT). The findings presented in this paper are an important component of how tolling could be legally implemented in Connecticut under current Federal Law, if such a decision is made at the conclusion of these studies. This paper is organized into the following topics:

- Overview of Two Congestion Relief Studies
- Current Federal Law on Tolling
- Exceptions to the Federal Tolling Prohibition
- Restrictions on and Permitted Uses of Toll Revenue
- History of Tolling and Toll Removal in Connecticut
- Options to Implement Tolls in Connecticut
- Conclusion

## 1.1 Overview of Two Congestion Relief Studies

The Connecticut Department of Transportation (CTDOT) submitted two applications to the Federal Highway Administration (FHWA) Value Pricing Pilot Program (VPPP) for study of the I-95 (New Haven to Greenwich) and I-84 (Hartford) Corridors. Both studies were selected for funding and will be concluded by the end of 2015. The VPPP provides a potential mechanism for exception to the Federal tolling prohibition along these two selected study corridors. The two VPPP studies focus on Connecticut's two most congested highways (I-95 and I-84) to evaluate whether congestion pricing using electronic tolling, and in combination with other transportation system improvements can reduce traffic congestion. The goal is to find an appropriate combination of pricing and transportation improvements that achieve a noticeable level of congestion relief.

### **I-95 Corridor Congestion Relief Study**

One of the planning grants awarded by FHWA is focused on the I-95 Corridor from the New York State border in Greenwich to New Haven. This is Connecticut's most congested corridor in terms of the severity, extent, and duration of congestion experienced by motorists on a daily basis. Providing congestion relief in the I-95 corridor has historically been viewed as a difficult undertaking due to the extremely high levels of travel demand, perceived challenge to expand highway capacity, and lack of parking availability at rail stations along the Metro North rail line. As a result, the I-

95 study will adopt a multimodal approach and explore a wide range of options to help address these challenges. More importantly, it will look at combinations of options that include highway improvements, transit improvements, and congestion pricing options to find a combination that can provide measurable relief. This will include examining new methods of pricing such as express toll lanes along I-95.

### **I-84 Hartford Congestion Relief Study**

I-84 in Hartford has the highest traffic volumes in the state, and is one of the most congested corridors. However, I-84 through Hartford has additional challenges. This includes how to replace and pay for the major reconstruction of the I-84 Viaduct. The grant application submitted by CTDOT for this study specifically outlined the I-84 Viaduct through Hartford as a pricing candidate due to its high travel demand, significant congestion, and impending need for a costly replacement. The I-84 Viaduct, built in 1965, is a ¾ mile long section of elevated highway that needs to be reconstructed or replaced. As with I-95, a variety of physical and pricing alternatives will be evaluated, including “spot” pricing on the Viaduct, conversion of the existing HOV lanes to High Occupancy Toll (HOT) lanes, and the addition of express toll lanes through Hartford with possible connection to the existing HOV (potential HOT) lanes.

## **1.2 Current Federal Law on Tolling**

Generally, current federal law prohibits the collection of tolls on federal aid highways including Interstate Highways. This prohibition on tolling applies to most of the Interstate Highway System including the portions in Connecticut that are the subject of this project, that is, I-95 from the New York State line to the City of New Haven and the portion of I-84 that carries that Interstate Highway over a portion of downtown Hartford, Connecticut (the I-84 Viaduct).

***Generally, current federal law prohibits the collection of tolls on Interstate Highways; however, in recent years, federal law has provided for exceptions to this tolling prohibition.***

Federal law is somewhat less restrictive about placing tolls on “non-interstate” highways like Route 2, Route 9, and Route 11. The focus of this paper is on “Interstate” highways, but a summary of tolling non-interstate highways is discussed briefly in “Exceptions under Section 129” below.

### **Exceptions to Federal Tolling Prohibition**

In 1991, ISTEA made changes to the general prohibition on tolling, and in succeeding federal surface transportation authorization acts over the next 20 years further exceptions to the Section 129 prohibition on tolling were enacted, and new pilot programs were established.

Each is discussed below.

## Exceptions under Section 129 (General Tolling Provision)

### *Interstate Highways*

Under current federal law (23 USC Section 129, the general toll program), *new* highways, bridges, and tunnels (including on the Interstate System) can be constructed as tolled facilities; new tolled lanes can be added to *existing* highways (as long as the number of existing toll-free lanes is not reduced); bridges and tunnels reconstructed or replaced as tolled facilities; and, capital improvements can be made to existing tolled facilities with federal funds. Under MAP-21, tolling agreements between relevant state transportation agencies and FHWA are no longer required for Section 129 projects, although (as will be discussed in more detail below) tolling agreements are still required for the implementation of tolling pursuant to VPPP.

### *Non-Interstate Highways*

Federal laws regarding tolling non-Interstate highways are somewhat less restrictive than those that govern Interstates. Under current federal law, Connecticut is allowed to institute tolls on any non-Interstate Highway such as Route 2, Route 9, or Route 11, if that road is being reconstructed or if it is a construction project. If the non-interstate road is not part of new construction or reconstruction project, the tolling is allowed only if it is part of the VPPP program. That is, Connecticut would have to add the project to the VPPP slot. The State could not take the action of tolling existing non-interstates under the general tolling provisions of Sec. 129 without reconstruction.

#### **Section 129 exceptions:**

- 1. *New highways***
- 2. *New bridges & tunnels***
- 3. *New lanes on existing Interstate highways***
- 4. *New non-interstate highways or as part of reconstruction***

## Exceptions to the General Prohibitions on Tolling

In addition to Section 129, or the general toll program, three tolling programs exist under current federal law, all of which allow an exception to the general prohibition on tolling existing Interstate or other federal-aid highways. By selection for inclusion in any one of these pilot programs by FHWA, a state is allowed to impose tolls on those portions of its Interstate Highway System included in the relevant pilot program.

### **#1: *High Occupancy Vehicle/High Occupancy Toll Lanes***

The first of these federal tolling programs is the Section 166, high-occupancy vehicle/high-occupancy toll (HOV/HOT) lanes program that allows states to charge tolls to vehicles that do not meet the established high-occupancy requirements to use HOV lanes. This program is available for facilities both on and off the Interstate System, and there are no restrictions on the number of projects or states that may receive tolling authority under this program.

Several states have converted HOV lanes to HOT lanes under this provision. HOV lane conversions provide an opportunity to efficiently use excess capacity in HOV lanes and provide congestion relief for the entire facility. In Connecticut, there are two existing HOV lanes in the Hartford area that are eligible for conversion: (1) I-91 north of Hartford, and (2) I-84 east of Hartford.

### ***#2: Interstate System Reconstruction and Rehabilitation Pilot Program***

The second federal tolling program is the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP). This program allows the conversion of up to three (3) *existing* and currently free Interstate Highways to tolled facilities, in order to fund needed reconstruction or rehabilitation of the facilities that would not otherwise be possible without toll revenues. All three slots in this pilot program have been conditionally awarded by FHWA, but one or more of those slots may become available in the future, because the selected state(s) may be unable to meet the requirements of the pilot program and/or may be unable to proceed with the improvements and/or may be unable to institute tolling on the highway, pursuant to applicable state law.

### ***#3: Value Pricing Pilot Program***

The third, and final, federal tolling program that allows an exception to the prohibition on tolling the Interstate Highway System is the program for which Connecticut received funds to study the subject of this project, that is, VPPP. This program initially authorized in ISTEA (as the Congestion Pricing Pilot Program) and continued in subsequent surface transportation authorization acts, encourages implementation of a variety of pricing strategies to manage highway congestion, including, but not limited to, tolling. Under VPPP, tolls may be imposed on *existing* toll-free highways, bridges, and tunnels, so long as variable pricing is used to manage demand for the facility. VPPP was continued under MAP-21, but did not receive a specific authorization for funding.

### ***Connecticut's Designation as a VPPP State.***

Once a state has received one of the fifteen slots under VPPP, as Connecticut has, there is no limit to the number of value pricing projects that can be pursued under that slot, provided that the additional projects for study and/or implementation are added to VPPP while Connecticut still holds the VPPP slot and an active cooperative agreement with FHWA is still in effect. However, each implementation project would require a separate application and tolling authority approval from FHWA. This means that Connecticut could consider implementing other value pricing projects outside the two current VPPP study areas. If additional projects are to be considered, the projects

### ***Federal Tolling Programs:***

- 1. HOV/HOT Lanes Program;***
- 2. Interstate System Reconstruction and Rehabilitation Pilot Program; and,***
- 3. Value Pricing Pilot Program***

***One of the benefits of VPPP is that as long as the state is acting under an active cooperative agreement with FHWA, there is no limit to the number of value pricing projects that can be studied and implemented under the slot.***

should be identified while Connecticut is under its cooperative agreement with FHWA.

### **Restrictions on Use of Toll Revenue**

The general tolling (Section 129) and the pilot programs carry with them restrictions on the use of toll revenues generated by the highway facility or facilities. In general, toll revenues are to be used to pay for improvements on the highway facility, including debt service, to provide reasonable returns on any private investments made to pay for improvement projects, and to pay for the ongoing costs of toll collection on, and operations and maintenance of, the highway facility. Under Section 129 and VPPP (but not under ISRRPP) surplus toll revenues can also be used for any other Title 23 eligible project. Title 23 is the section of the U.S. Code that deals with the federal 'highway' programs.

Under the VPPP and ISRRPP pilot programs, the state must execute a cooperative toll agreement with FHWA, in order to be able to impose tolls on the currently free existing facilities. This requirement will be discussed in more detail, below.

*In general, toll revenues are to be used to pay for improvements on the tolled highway. Toll revenues can be used to pay for:*

- ✓ *Improvements on the tolled highway including debt service;*
- ✓ *Costs related to toll collection; and,*
- ✓ *Operations and maintenance of the tolled highway*

*Also, surplus revenues can be used for any other Title 23 (highway) eligible project.*

## **1.3 Value Pricing Pilot Program (Formerly called Congestion Pricing Program)**

### **Current VPPP Study in Connecticut**

In the Connecticut study, pricing is being considered as one part of a larger multi-modal strategy to reduce congestion. CTDOT, with the support of the consultant team, is currently evaluating variable pricing strategies to consider implementing one or more strategies on a pilot or permanent basis under VPPP. Under VPPP and in the case of this study, the intent is to identify and evaluate various value pricing alternatives as part of a congestion relief strategy that includes other highway and transit improvements.

### **Elements and Provisions of VPPP**

As this project is taking place under VPPP, the terms of that program and the authority that it allows regarding the imposition and use of tolls are particularly relevant to this discussion.

Born as part of ISTEA in 1991, VPPP was originally called the congestion pricing pilot program. This program was reauthorized and renamed, as the "value pricing pilot program," in the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) and has been

reauthorized in each of the succeeding surface transportation acts, including MAP-21.

Since Connecticut was selected for VPPP under the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU), the successor surface transportation act to TEA-21 and the predecessor surface transportation authorization act to MAP-21, the State received funding to study congestion pricing options and their effectiveness. Obtaining tolling authority from FHWA through a VPPP tolling agreement would further provide for an exception to the prohibition on tolling the Interstate Highway System, as long as the terms of VPPP are met (including, of course, that the tolls imposed are variable in nature).

Additional key elements of VPPP include:

- *Funding Options.* Costs to implement a value pricing program and related improvements, such as constructing and/or reconstructing highway travel lanes and implementing traffic control systems or transit projects, can be funded under other federal-aid programs, as well as from new revenues generated by the tolling project.
- *Mitigation for Low-Income Drivers.* The potential effects of value pricing projects on low-income drivers must be considered (discussed in more detail below). Where there may be potentially significant and negative impacts on such drivers, mitigation projects, such as funding new or expanded transit services, as an integral part of the value pricing project, and other mitigation options, including, but not limited to, credits for low-income drivers, who do not have viable transit alternatives, should be considered. These measures can be funded from the toll revenues on the project.
- *Reporting Requirement.* The Secretary of Transportation must monitor the effect of value pricing projects that have already been granted tolling authority by the FHWA for at least ten years and therefore requires that the State of Connecticut must report every year on the effects of such programs on driver behavior, traffic volumes, transit ridership, air quality, and availability of funds for transportation programs.

Of the 15 slots currently awarded under VPPP, seven states have permanent slots, that is, they have entered into tolling agreements with FHWA. The balance of the states selected for VPPP, including Connecticut, are considered “temporary,” that is, there is not yet a tolling agreement with FHWA and no accepted plan for the imposition of variable tolls in either of the two VPPP study areas. Connecticut does not have the conditional VPPP slot in perpetuity. After the completion of the current study and the development of a pricing strategy, Connecticut will have to decide whether to toll the portions of the Interstate Highway System covered by this VPPP project. To do this, the state would apply for tolling authority under the VPPP and, if accepted, enter into a tolling agreement with FHWA.

Entering into a tolling agreement with FHWA would allow Connecticut to operate the highway facility or facilities either directly (through CTDOT) or through a third-party

public authority or private entity, such as a public-private partnership (PPP), under the terms of a value pricing program. If the State does not enter into a tolling agreement with FHWA, Connecticut's VPPP slot could be reallocated to another State.

The cooperative agreement and the relevant statute require that the tolls imposed must be variable by time of day. Typically, tolls are set higher during peak traffic periods to encourage drivers to travel at less congested times or use alternate routes or modes of travel. Authorization for tolling under the cooperative agreement will also be contingent on completion of any required reviews under the National Environmental Policy Act (NEPA). Importantly, under the permanent cooperative agreement, Connecticut must agree to comply with all federal and state laws and policies. As discussed in Section 1.4, this requirement will require a change in Connecticut statutes to allow tolling.

### Permitted Uses of Revenues

Under the terms of relevant federal law and the cooperative agreement, **Connecticut would be committed to use the revenues received from the tolled highway to fund the capital costs of highway improvements and to support the costs of operating and maintaining the same facility.** Operating costs include project implementation costs; maintenance of the toll facility; any reconstruction, rehabilitation, restoration, or resurfacing of the toll facility; and, debt service and reasonable returns on any private investments, related to financing the project(s). Eligible operating costs also include measures to mitigate any adverse economic impacts on low-income drivers, which are discussed in more detail below. There are no priorities required in the use of revenues for project operating costs.

#### *Permitted Uses of 'Net' Revenues: any Title 23 (highway) eligible projects*

Any net revenues (balance of revenues after capital and operating costs are paid) would be available to CTDOT for any other Title 23 (highway) eligible projects. FHWA guidance for the implementation of VPPP notes that states are encouraged to consider using excess toll revenues for projects designed to provide *benefits to those traveling in the corridor where the project is being implemented.*

***Any net revenues on the VPPP project can be used for any eligible Title 23 project. VPPP participants are encouraged to use any such net revenues on eligible projects within the same travel corridor (in this case, in the corridor paralleling I-95 between the Connecticut-New York state line and the City of New Haven), in order to benefit those traveling in that corridor.***

***The application of any net toll revenues for such purposes is in addition to the requirement of VPPP that toll revenues should be used to invest in projects that mitigate impacts of value pricing on low-income individuals.***

As discussed above, the VPPP statutory provisions require that measures be taken to mitigate the impact of tolls on low-income drivers. States are allowed a fair amount of latitude in defining and implementing measures to lessen or mitigate the impact of tolls on low-income populations. Measures can be as diverse as toll credit programs, transit credit programs, expanded or improved transit services, and even improvements to

non-tolled roadways in the same travel corridor.

Of particular interest in Connecticut's two study areas are the options to use toll revenues to support transit service improvements. This is especially the case in the I-95 corridor, where rail transit service is an important travel option and likely to be a preferred alternative to paying tolls.

### *Transit*

As discussed above, the VPPP statutory provisions require that measures be taken to mitigate the impact of tolls on low-income drivers. States can use a wide variety of measures to reduce the impact of tolls on low-income populations. For example, toll revenues could be used to expand commuter rail, bus, and ride-sharing services in the I-95 corridor to provide other travel choices for low-income drivers. Such projects and investments would be considered "operating expenses" of the VPPP project and would not depend on the existence of "excess" or "net" toll revenues. In other words, these expenses could be incurred from toll revenues even before net revenues, if any, are calculated. Simply put, the expansion of transit services could serve as mitigation of potentially adverse economic impacts on low-income persons, and thus, an appropriate operating expense of this VPPP project on I-95. In particular, the investment of these toll revenues into improvements to the New Haven commuter rail line could be a positive feature of the multi-modal congestion management project.

Possible uses for such commuter rail investment capital, derived from the variable tolling project on I-95, include the replacement or restoration of rail bridges; accelerating the replacement of the catenary wires and other upgrades to the electrical support system; improvements to track, switching, and signal systems; expanding the rolling stock of this commuter railroad; improvements to rail stations; and, expansion of rail parking facilities. Eligibilities for specific activities would need to be confirmed with the FHWA Division and FTA Region offices.

It should be noted that one of the most important preconditions to influencing demand for highway use on I-95 from the New York State line to the City of New Haven (in Fairfield and New Haven Counties) through the use of variable tolling is the necessity to greatly increase the availability of commuter parking spaces at the various rail stations on the New Haven Line. It is of no use to divert traffic from I-95 to an alternative mode, that is, the parallel commuter rail line, unless parking spaces are available for potential commuter rail riders at the stations along the Line. Generally, this is not the case today. In some cases, surface parking could be expanded at some of the stations and/or parking structures constructed. Such capital investments in commuter rail parking would seem to be both an eligible and necessary use of revenues, resulting from the implementation of variable tolling on I-95 from the New York State line to the City of New Haven under VPPP.

### *Route 1 and Merritt Parkway*

Another possible VPPP project operating expense could be further investments in physical and operational improvements to US Route 1 and Merritt Parkway that parallel I-95 from the New York State line to the City of New Haven. Such improvements to

parallel “free” roadways could also be viewed, as a project to mitigate potential impacts on low-income drivers.

### *Conclusion*

As noted above, any net revenues on the VPPP project can be used for any eligible Title 23 (Title 23 of the U.S. code defines the Federal-Aid Highway Program) project. VPPP participants are encouraged to use any such net revenues on eligible projects within the same travel corridor (in this case, in the corridor paralleling I-95 between the Connecticut-New York state line and the City of New Haven), in order to benefit those traveling in that corridor. The application of any net toll revenues for such purposes is in addition to the requirement of VPPP that toll revenues should be used to invest in projects that mitigate impacts of value pricing on low-income individuals and provide alternative modes of transportation to them, as operating expenses of the project.

Any uses of toll revenues (either as operating expenses, or as applications of any excess or net toll revenues of the project) in order to provide benefits and alternative modes of transportation to those traveling in the I-95 corridor between the Connecticut-New York state line and New Haven, would meet the terms and conditions of VPPP and are likely to be popular as public policy initiatives.

## **1.4 Tolling in Connecticut**

### **History of the Elimination of Tolls in Connecticut**

Even if the terms of VPPP and Connecticut’s designation under this pilot program allow tolls to be implemented under federal law, the use of tolling must still be allowed under Connecticut law (including any agreements between the State of Connecticut (presumably, acting through CTDOT) and the United States Department of Transportation (USDOT)).

Since the 1980s, Connecticut has had no tolls on any bridge, tunnel, or highway. In 1983 action was taken to remove tolls from the John Davis Lodge (or Connecticut) Turnpike and from several bridges over the Connecticut River (toll collection ended on the Connecticut Turnpike (for most of its length, currently known as I-95) in October 1985). In 1986, the legislature required the end of tolling on the Merritt and Wilbur Cross Parkways, and the last toll in Connecticut was paid on the Charter Oak Bridge over the Connecticut River in the Hartford area on April 28, 1989.

### **The Removal of Tolls on I-95 After the Mianus River Bridge Collapse**

For most of its length, I-95 was constructed as the Connecticut Turnpike in the pre-Interstate era. It was subsequently incorporated into the federal Interstate Highway System. Thus, between the New York-Connecticut state line in Greenwich and Waterford, I-95 remained tolled until 1985. All other Interstate highways in Connecticut including the portion of what is now I-95 between Waterford and the Connecticut-Rhode Island border were originally constructed with federal-aid funds as part of the

Interstate Highway program and thus never had tolls. From the time of their construction, these highways (including I-84 and I-84 Viaduct) have been subject to the federal ban on tolling.

On August 30, 1983, in the wake of the collapse of the bridge that carried I-95 over the Mianus River in Greenwich in southwestern Connecticut, Connecticut and USDOT entered into an agreement that allowed mileage on what had been a tolled facility to be factored into the State's apportionment formula for resurfacing, restoring, rehabilitating, and reconstructing its highways (Interstate 4R Funds). The agreement was conditional on Connecticut's removing tolls from the Connecticut Turnpike (essentially, I-95 in Connecticut) no later than January 1, 1997, when all of the outstanding debt on the Connecticut Turnpike was to be retired. In fact, as noted above, all tolls were removed on the Connecticut Turnpike by 1985. The State's ability to include this mileage in the calculation of Connecticut's eligibility for formula Interstate 4R Funds was an important financial consideration for the State in the implementation of a broad and extensive program to reconstruct and restore its transportation infrastructure after the Mianus Bridge collapse.

***When tolls were removed from I-95, Connecticut and USDOT entered into an agreement that allowed mileage on what had been this tolled highway to be factored into the state's apportionment formula for Interstate 4R Funds.***

### **Connecticut's Ability to Re-Impose Tolls on I-95 Under Federal Law**

The August 30, 1983 agreement between the State of Connecticut and USDOT has been the source of much discussion over the years. The primary focus of the debate has been whether or not this agreement would require Connecticut to repay the federal government hundreds of millions of dollars were it to re-instate tolls on those portions of I-95 from which they had been removed.

As a general matter, it had long been assumed that, once removed, Connecticut could not re-impose tolls on I-95 without violating federal law and the terms of the August 30, 1983, agreement.

Connecticut received an explicit confirmation of these circumstances in 1984. CTDOT Commissioner at the time, J. William Burns, asked FHWA's Connecticut division office several questions regarding retaining some of the tolls on I-95 and erecting a toll barrier on this Interstate Highway at the Rhode Island state line. The FHWA's Division Administrator responded to Commissioner Burns in a February 6, 1984 letter, as follows: "If Connecticut retained some of the tolls, it would have to enter a new Secretarial Section 105 that would require repayment of all of the federal funds it had received after the first agreement was signed and would also forfeit its right to receive the emergency relief funding it received following the Mianus River Bridge collapse." The Division Administrator went on to note that if Connecticut put up a toll at the Rhode Island border, all federal funds used for projects on I-95 from its juncture with the Connecticut Turnpike in Waterford to the Rhode Island border would have to be repaid.

Some had assumed that if tolls were reinstated on I-95, Connecticut would have to repay federal highway funds that the State received for I-95. However, such an interpretation is not appropriate. The 1983 agreement provides the following: “When freed of tolls, the Connecticut Turnpike toll road subject to this Agreement shall be treated the same as any other portions of the Interstate and Primary Systems which were constructed with Federal aid.” This language suggests that were variable tolls implemented on any portions of I-95 between the Connecticut-New York state line and the City of New Haven, pursuant to the provisions of VPPP, there would be no consequences under the 1983 agreement. Under these circumstances, Connecticut would not have to return any Interstate 4R Funds or any other federal highway aid received since the execution of the 1983 agreement.

Congress also has been more flexible in recent years in allowing states to modify or withdraw from toll removal agreements without having to repay federal funds. “As time has passed and new exceptions to the toll prohibition were enacted, some of these circumstances have changed. *There seems little doubt that if a toll project falling within one of the exception programs was pursued and the appropriate requirements met, federal fund repayment would not be an issue*” (emphasis added) (OLR Report 2009-R-0122, p. 17).

Thus, there seems to be no basis to believe that the repayment of federal funds would be required if tolls were re-imposed on any portion of Connecticut’s Interstate Highway System as a consequence of implementing a variable pricing program under the

**Pursuant to VPPP, mileage on an Interstate Highway in CT subject to tolls would not be deducted from the State’s total highway mileage used in calculating CT’s eligibility for federal highway grants under Title 23 of the United States Code.**

provisions of VPPP. Moreover, pursuant to VPPP and consistent with the 1983 agreement, mileage on an Interstate Highway facility subject to tolls would not be deducted from the State’s total highway mileage used in calculating Connecticut’s eligibility for federal highway grants under Title 23 of the United States Code.

#### **Allowing Tolls Under Connecticut Law**

As long as tolls are implemented pursuant to one of the exceptions to the federal prohibition on

tolling the Interstate System, Connecticut would not suffer any consequences under federal law including the loss of, or the necessity to repay, federal funds. However, the implementation of tolls – even variable tolls subject to VPPP – would require Connecticut to enact legislation allowing it. This appears necessary given the language of the several Connecticut statutes that removed tolls from various facilities in the State in the 1980s. In addition, the issuance of revenue bonds related to the implementation of

***The 1983 agreement provides the following:***

***“When freed of tolls, the Connecticut Turnpike toll road subject to this Agreement . . . shall be treated the same as any other portions of the Interstate and Primary Systems which were constructed with Federal aid.”***

***This language suggests that CT could implement variable tolling on I-95 consistent with the terms of VPPP, relevant federal laws, and a cooperative agreement with FHWA without having to return Interstate 4R Funds or any other federal highway aid received in the years since 1983.***

value pricing projects on specific facilities in which toll revenues on the applicable facility or facilities are pledged or dedicated to the servicing and repayment of the bonds would have to be authorized under Connecticut law.

#### *Public Private Partnerships*

If Connecticut were to utilize a public private partnership (PPP) to undertake the development and management of a tolled facility (as is allowed under VPPP and, presumably, under any related cooperative agreement between Connecticut and FHWA), such a venture would have to be specifically approved by the State (ultimately, by the Governor) pursuant to the provisions of Sections 4-255 to 4-263 of the Connecticut General Statutes. The use of tolls in any such PPP would have to be specifically authorized. In addition, should such a PPP wish to issue private activity bonds and/or to borrow funds under a program, such as the federal TIFIA credit and credit enhancement program, additional specific approvals would be required for any such financing and for the imposition and dedication of tolls to service such financing.

***The issuance of revenue bonds related to the implementation of value pricing projects on specific facilities in which toll revenues on the applicable facility or facilities would be used to secure, service, and ultimately pay off the bonds would have to be authorized under Connecticut law.***

#### *Electronic Toll Collection*

Finally, “the legislature also will need to establish the terms and conditions governing the use of Electronic Toll Collection (ETC) systems and requirements for account holders. This legislation needs to allow ETC operators access to motor vehicle registration data and allow the use of video technology for prosecution of toll violators” (Cambridge Systematics, Inc., *Connecticut Electronic Tolls and Congestion Pricing Study, Final Report – Volume 2: Background Report*, p. 2-9).

#### *Conclusion*

To implement a value pricing program in Connecticut, the Connecticut General Assembly would have to change state statutes. The necessary changes include: (1) adopting enabling legislation that allows tolls to be charged, and (2) establishing terms and conditions for electronic toll collection. Additional changes might be needed to authorize public-private partnerships for toll projects, if there is a desire to adopt a PPP approach to implement and finance a project.

## 1.5 Implementing Tolling in Connecticut and Obtaining Federal Approval

This section describes the most likely legal avenues through which Connecticut can seek federal approvals for instituting various forms of tolling in the project areas. Since the options are somewhat different in each project area, the section is organized into two parts:

1. **I-84 Viaduct & nearby HOV lanes**
2. **I-95 Corridor from New York state line to New Haven**

### **I-84 Viaduct & nearby HOV Lanes: Tolling Law Considerations**

In the Hartford study area, there are several options for instituting tolling. Two are specific to the I-84 Viaduct, and a third is related to the two existing HOV lanes that are not part of the viaduct, but were included in the study due to their close proximity. The tolling options discussed below are:

- 1) VPPP option for the I-84 Viaduct
- 2) Section 129 option for the I-84 Viaduct
- 3) HOV/HOT conversion option for existing I-91 & I-84 HOV lanes

#### *#1: VPPP Option for I-84 Viaduct*

By virtue of the study grant awarded to Connecticut, the state could seek approval for tolling on I-84 under the special provisions of the VPPP program. However, it must convert its current 'temporary' exclusion from the tolling prohibition into a 'permanent' exclusion. This requires the state to apply for tolling authority under the VPPP and enter into a tolling agreement with FHWA. Such a tolling agreement with FHWA would allow Connecticut to implement tolled or managed lanes on a new or rebuilt I-84 in Hartford. However, pursuant to the terms of VPPP, tolling must be part of a 'congestion pricing' program that varies toll rates by setting the rates higher during peak travel periods. Additionally, the state must comply with other provisions of VPPP such as a ten-year monitoring period and consideration of the effects of value pricing on low-income drivers. (VPPP requirements are discussed in more detail in section 1.3 above.)

#### *#2: Section 129 Option for I-84 Viaduct (Bridge Replacement)*

Tolling I-84 in Hartford might also be possible under the general tolling provisions of Section 129 since the I-84 Viaduct might qualify as a bridge. The  $\frac{3}{4}$ -mile long Viaduct is an elevated structure that carries I-84 over city streets, Amtrak, and large sections of Hartford. Most previous implementations of tolls on bridges under Section 129 have involved large bridges over rivers or other bodies of water. However, federal officials indicated that they would consider a request from Connecticut to allow tolls on I-84 under this provision of Section 129. If granted, the reconstruction, improvement, or replacement of the Viaduct would permit tolls to be imposed on some or all lanes, as a matter of right.

Under the Section 129 option, tolls on the new or replacement facility, whether on some or all lanes, would *not* have to be variably priced. Additionally, permission from FHWA would not be necessary, nor would a tolling agreement between Connecticut and FHWA be required. Under Section 129, tolling on the new or replacement facility on I-84 could be implemented and the federal prohibition on tolling Federal-aid highways could be waived, as a matter of right, under federal law. However, such tolling would still have to be authorized under Connecticut state law.

### *#3: HOV/HOT Conversion Option for Existing I-91 & I-84 HOV Lanes*

There are two existing HOV (High Occupancy Vehicle) lanes in Hartford area: the I-91 HOV lanes from downtown Hartford north to Windsor/Windsor Locks, and the I-84 HOV lanes from the Connecticut River east to Vernon. Both are being evaluated as part of the current study, and both are eligible to be converted from HOV lanes to HOT (High Occupancy Toll) lanes under current federal law. Under the HOV/HOT provisions of federal law, vehicles that do not meet the carpool or minimum number of occupants) requirement of the HOV lane can be allowed into the lane, but they are charged a fee or toll electronically to do so.

HOV/HOT conversions have been successful in cities where there was excess capacity in the HOV lane and congestion in the regular or general purpose lanes. Typically, they do not generate large revenue streams, but they can help reduce congestion by taking some traffic out of the general purpose lanes. The two HOV lanes in the Hartford area were built in a manner that would make conversion to a HOT lane relatively easy.

### *Conclusion*

Whichever option is adopted, the spirit of the selection of Connecticut for one of the fifteen slots under VPPP (and its choice to include the I-84 Viaduct study in the pilot program) suggests that the congestion and demand management features of variable tolling should be at the core of imposing tolls on some or all of the lanes of the facility that replaces the I-84 Viaduct.

### **I-95 from NY State line to New Haven: Tolling Law Considerations**

The primary option for instituting tolling on I-95 is through the special authority of the VPPP. However, Connecticut would be allowed to institute tolling under Section 129 on new lane capacity along I-95, so long as the number of existing non-tolled lanes remained in place. Any new lane(s) would likely be in the form of what is called tolled managed lanes. Tolling the existing lane(s) under Section 129 would not be permissible under current law. The tolling options discussed below are:

- 1) VPPP option for tolling I-95
- 2) Section 129 option for tolling I-95

### *#1: VPPP Option for Tolling on I-95*

If Connecticut decides to place tolls on any of I-95's existing lane capacity, it must be done through VPPP, and all users of the facility must be subject to a 'congestion pricing' program that

would vary toll rates such that the cost of tolls would be higher during peak travel periods. This requires the state to enter into a cooperative agreement with FHWA. Such a tolling agreement with FHWA would allow Connecticut to toll any or all of the existing lane capacity on I-95 and/or to construct and implement tolls on new, or 'managed,' lanes on I-95 (although, as discussed in the next option, managed lanes on I-95 could be introduced under the general tolling provisions of Section 129). Conversion of an existing lane to an HOV/HOT lane would have to be undertaken pursuant to Section 166, the statutory provisions that define and establish the terms of such a conversion. It should be noted that it is FHWA's policy to reserve VPPP tolling authority for projects that would not be eligible under either Section 129 or Section 166. Tolling I-95 would also make it subject to other provisions of VPPP such as a ten-year monitoring period and consideration of the effects of value pricing on low-income drivers. (VPPP requirements are discussed in more detail in section 1.3 above.)

#### *#2: Section 129 Option for Tolling on I-95(Managed Lanes)*

Tolling I-95 anywhere between New Haven and the NY State line would also be possible under the general tolling provisions of Section 129. **However, Section 129 only allows the tolling of new additional lanes on existing Interstates, while preserving the current number of non-tolled lanes.** The new lanes would be operated as tolled managed lanes, with variable time of day pricing in order to keep the managed lanes free of congestion.

Additionally, permission from FHWA would not be necessary, nor would a tolling agreement between Connecticut and FHWA be required. Under Section 129, tolling on the new lane capacity on I-95 could be implemented and the federal prohibition on tolling Federal-aid highways could be waived, as a matter of right, under federal law. However, such tolling would still have to be authorized under Connecticut state law.

#### *Conclusion*

As noted earlier, any net revenues on the VPPP project can be used for any eligible Title 23 project. VPPP participants are encouraged to use any such net revenues on eligible projects within the same travel corridor (in this case, in the corridor paralleling I-95 between the Connecticut-New York state line and the City of New Haven), in order to benefit those traveling in that corridor. The application of any net toll revenues for such purposes is in addition to the requirement of VPPP that toll revenues should be used to invest in projects that mitigate impacts of value pricing on low-income individuals and provide alternative modes of transportation to them, as operating expenses of the project.

Any uses of toll revenues (either as operating expenses, or as applications of any excess or net toll revenues of the project) in order to provide benefits and alternative modes of transportation to those traveling in the I-95 corridor between the Connecticut-New York state line and New Haven, would meet the terms and conditions of VPPP and are likely to be popular as public policy initiatives.

## 1.6 Conclusion

Nothing in federal law would appear to prevent the introduction of variable tolls, as a congestion management tool, on a rebuilt I-84 Viaduct in Hartford and on I-95 from the New York State line to the City of New Haven under Connecticut's VPPP slot.

Under the general tolling provisions of Section 129, CTDOT might consider adding capacity, in the form of new tolled managed lanes on either the rebuilt I-84 Viaduct or I-95 from the New York State line to the City of New Haven, while preserving the current number of non-tolled capacity or lanes. In addition, the I-84 Viaduct is likely classified as a Bridge, allowing all the lanes of the replacement facility to be tolled if Connecticut so desired. Under the provisions of Section 129, the variable pricing and other requirements of VPPP would not apply, and no tolling agreement between Connecticut and FHWA would be required.

Alternatively, Connecticut may seek an exclusion from the federal prohibition on tolling the Interstate Highway System through the conversion of its current temporary exclusion under VPPP to a permanent slot through a tolling agreement between the State and FHWA. In these circumstances, any tolls imposed on this Interstate facility or these facilities would have to be variable, and the other requirements of VPPP would be applicable.

In these circumstances, greater public understanding and acceptance of the following factors and opportunities are likely to be critical to overcoming the challenges to implementing tolls in Connecticut:

- The connections between the use of variable tolls, in influencing demand and in managing highway congestion;
- The ability to use toll revenues to make improvements to I-95 and I-84 to help reduce congestion and to maintain the infrastructure in a good state of repair;
- The ability to use toll revenues to make improvements to other nearby roadways, such as Route 1 and the Merritt Parkway, and help reduce congestion in the same corridor;
- The possibility to use toll revenues to help finance the reconstruction of the I-84 Viaduct and to do so on a more accelerated schedule than is possible using regular transportation funds; and,
- The possibility to use toll revenues to improve and enhance commuter services on the New Haven rail line (both the main line and the branch lines) in Fairfield and New Haven Counties, and for additional bus and ridesharing services in both the Hartford region and southwestern Connecticut.