

The Moving Forward Act (H.R. 2) Would Both Restrict and Encourage Highway Tolls

June 26, 2020

Section 1110 of the Moving Forward Act ([H.R. 2](#), as reported) would make substantial changes to the statutory and regulatory framework governing highway transportation tolls. Some of the changes would increase federal oversight of tolling operations while others encourage state and local governments to increase use of tolling. On the one hand, by reinstating the requirement that a detailed tolling agreement be negotiated between states or public authorities and the Secretary of Transportation before a previously untolled federal-aid highway, bridge, or tunnel is made subject to tolls, the provision would increase the oversight role of the U.S. Department of Transportation (DOT). On the other hand, the congestion pricing provisions in the act would increase the ability of states to implement tolling on congested Interstate System highways. These new provisions, together with the complexity of existing law, could create ambiguity about what is and what is not permissible when implementing new tolling schemes.

Federal tolling law applies only to roads, bridges, and tunnels that are eligible for federal aid. These facilities, referred to as federal-aid highways, make up about 1 million of the roughly 4 million miles of [public roads](#) in the United States. Within the federal-aid highways is a category of designated major highways referred to as the National Highway System (NHS), which includes about 220,000 miles of highways. Within the NHS are the Interstate System highways, which make up just under 49,000 miles of highways.

Toll Agreements

For many years, federal law required that before the Secretary of Transportation could authorize tolling of a federal-aid highway, bridge, or tunnel, the tolling authority with jurisdiction over the facility had to enter into an agreement with the Secretary. Toll agreements generally included such provisions as a description of the facility, a commitment on the use of revenues, and a provision on federal access to records. This requirement was eliminated in FY2013 by the Moving Ahead for Progress in the 21st Century Act (MAP-21; [P.L. 112-141](#)).

The Moving Forward Act would reinstate a requirement that DOT and the state or local agency with jurisdiction over the relevant federal-aid highway, bridge, or tunnel reach an agreement regarding the implementation of tolls. This requirement would apply to any new tolling of a federal-aid highway. It would not apply to changes in toll rates, which are not subject to federal regulation. In addition, the bill

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IN11439

would require that the public authority certify no-cost access for public transportation and over-the-road buses (mostly privately owned by intercity bus companies) as well as regional interoperability of electronic toll collection (such as between E-ZPass in the Northeast and SunPass in Florida). Under H.R. 2, a toll agreement would also have to consider the anticipated impact of the proposed collection of tolls on congestion, air quality, public transportation, and non-tolled roads in the corridor; environmental justice; freight movement; and business.

“Major Federal Action” Under NEPA

H.R. 2 §1110(a) would require that approval by the Secretary of an agreement to toll be considered a major federal action ([40 C.F.R. §1508.18](#)) under the National Environmental Policy Act (NEPA) of 1969 ([42 U.S.C. 4321 et. seq.](#)). This means that approval by the Secretary would make the conversion to tolling subject to an environmental review process similar to that applied to highway construction projects.

Tolling of Interstate System Highway Lanes Under Congestion Pricing

The legal ability to collect a toll is contingent on exceptions to the 1958 “Freedom from Tolls” provision of [23 U.S.C. §301](#), which broadly prohibited tolls on any highway constructed under provisions of Title 23. The exceptions are set forth in [23 U.S.C. §129](#). In general, current law allows tolls to be levied on federal-aid highways, bridges, and tunnels, other than those incorporated into the Interstate Highway system, if they are reconstructed, replaced, or expanded. No specific federal approval is required as long as the tolled facility is in compliance with Section 129. New Interstate routes and added Interstate lane capacity may be tolled. Over the years, the exceptions have expanded to the point that toll-free surface lanes on Interstate System highways are the only federal-aid highways that may not be tolled. Even then, those Interstate Highway lanes may be tolled under two pilot programs, the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRP) and the Value Pricing Pilot Program (VPPP).

The Moving Forward Act would repeal the ISRRP and sunset the VPPP. However, congestion pricing would be “mainstreamed” by making it allowable under [23 U.S.C. §129](#) on any National Highway System highway (including Interstate System highways). Congestion pricing utilizes electronic tolling to manage congestion by varying tolls by time of day or by the level of traffic in a tolled corridor or entering a cordoned area. Under the act, conversions to congestion pricing would be required to comply with the toll agreement requirements set forth in the act. Also, the responsible state or local agency would have to insure that improvements in the operation of the cordon or corridor are maintained through performance monitoring and take action to resolve performance degradation as defined in the act.

Because the Interstate System highways are part of the National Highway System, it appears that conversion of existing Interstate System highway lanes to tolling would be allowed under the congestion pricing provision of Section 1110 of the Moving Forward Act. This, in effect, could make roads on the National Highway System that have sufficient traffic to sustain tolls, including Interstate System highways, eligible for conversion to tolling under the act’s congestion pricing provision. Section 1110 would also provide a means of converting a highway, bridge, or tunnel on the National Highway System to tolling without reconstruction, replacement, or expansion.

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