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# Why the House Should Give States Greater Tolling Flexibility

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## INTRODUCTION

In mid-March of 2012 a battle took place over the future of toll finance in the U.S. highway system. Dueling amendments were being offered to the Senate surface transportation reauthorization bill, S.1813. One, by Sen. Hutchison, would have prevented the use of toll finance for reconstructing and modernizing aging U.S. Interstate highways. The other, a bipartisan amendment, would have given states more options by modestly expanding several tolling and pricing pilot programs enacted by Congress during the last three reauthorizations. After strenuous lobbying on both sides, the proponents agreed to withdraw both amendments rather than risk defeat.

This policy brief explains what is at stake for America's most important surface transportation infrastructure, the aging U.S. Interstate highway system and why the House should give states more flexibility in using pricing to reduce congestion and toll finance to rebuild and modernize that system.

## THE NEED FOR INTERSTATE RECONSTRUCTION AND MODERNIZATION

The Interstate system, accounting for only 2% of all highway miles, handles 25% of all highway vehicle miles of travel. This vitally important network was planned in the 1940s, based on a very different America than exists in 2012. It was built starting in the mid-1950s and nearly all of it was completed by the 1970s. The typical design life for an Interstate highway is 50 years, at which point it needs major reconstruction. Hence, an Interstate corridor completed in 1960 reached its 50-year mark in 2010, and those completed by 1970 will do likewise by 2020. Many of these Interstates use designs that are obsolete for safety and other reasons. The system has several hundred major interchanges that are bottlenecks due to obsolete design and/or inadequate capacity for today's (and future) traffic levels. And many corridors lack sufficient lanes for current and projected traffic. Moreover, because the map was planned in the 1940s, there are gaps and missing links, such as the lack of an Interstate between Phoenix and Las Vegas. There are also some unfinished routes, such as I-69.

There is no detailed estimate of the cost, in today's dollars, of reconstructing and modernizing the entire Interstate system as it wears out, let alone adding selected new routes and replacing hundreds of bottleneck interchanges. One credible estimate of simply reconstructing the system as it now exists—without adding capacity or any new routes—is $1.3 to $2.5 trillion over the next several decades.[1] Current federal and state Interstate spending of $20 billion per year is not even sufficient to maintain the system's current pavement quality and congestion levels, according to the FHWA's *2010 Conditions and Performance Report*. It estimates that keeping things from getting worse would require an additional $4.3 billion per year, but that an additional $43 billion per year could productively be invested to improve pavement and bridge conditions and reduce congestion via capacity additions. Any of those actions is already beyond what current gasoline and diesel taxes bring in. Reconstructing the entire Interstate system is completely impossible without a new funding source, such as toll finance.

## RECONSTRUCTION AS A THIRD CATEGORY FOR TOLLING

The battle over Interstate tolling rests on a misconception by opponents that using tolls to finance major reconstruction and widening is "tolling existing lanes." On the contrary, it is replacing existing lanes with state-of-the-art lanes with proper overhead clearance of 17.5 feet (compared with 15 feet on some Interstates, such as portions of I-95 in North Carolina), applying current design and safety standards to the spacing of on and off-ramps, replacing less-safe left exits, reconstructing bottleneck interchanges, etc. It also means replacing worn-out pavement—I-70 in Missouri is nearly 60 years old, well beyond its design life of 50 years.

Many federal officials, including DOT Secretary LaHood, support tolling only for "new" capacity, such as lanes added to an Interstate highway, but oppose tolling of "existing" capacity. This ignores the fact that reconstructing a crumbling Interstate of obsolete design is replacing that existing capacity. Reconstructing a worn-out highway to today's standards—even if no additional lanes are needed—will cost 10 to 20 times what the original "existing" capacity cost to build in the 1960s.[2] And in nearly every case, that cost is far beyond the ability of state DOTs to afford with revenues from current federal and state fuel taxes.

In short, Interstate reconstruction is a third category—neither "existing" lanes nor "new" lanes. It is also America's single most important need for additional highway investment.

Since Congress is in no position to provide a net increase in funding, the least it can do is to give states more financing tools, enabling them to make larger investments in transportation infrastructure on their own.

## SAFEGUARDS FOR HIGHWAY USERS

Tolling opponents misrepresent this approach as "erecting toll booths on the Interstate." That is wrong for two reasons. First, it implies simply charging more to use the same worn-out, inadequate lanes (which is illegal under the terms of the Pilot Program). Second, it calls to mind obsolete 20th-century toll booths, when what innovative states are proposing is 21st-century all-electronic tolling, with all tolling being done either via transponders (like E-ZPass in the northeast and Midwest, SunPass in Florida, and FasTrak in California) or via license-plate billing.

The two existing Interstate toll finance pilot programs (one for reconstruction, the other to finance brand-new Interstate routes) contain carefully worked out safeguards on the use of the toll revenues. Those revenues can be used only to construct or reconstruct, operate, maintain and refurbish the Interstate corridors involved; they may not legally be diverted to other uses, transportation or otherwise. These safeguards were tested by Pennsylvania, which twice applied to the Reconstruction pilot program, intending to toll I-80 but use most of the revenues for statewide transportation funding, including transit subsidies around the state. Both times U.S. DOT turned them down, since their proposal clearly violated the safeguards Congress had enacted into law.

## PENDING PROJECTS

Some have argued that because states have been slow to proceed with projects using the existing pilot programs, there is no need to expand those programs. But three different states now occupy all three slots in the Interstate Reconstruction and Rehabilitation Toll Pilot Program—Missouri, North Carolina and Virginia—and FHWA has already turned away additional applicants. Missouri is planning a $4 billion reconstruction of I-70, including the addition of two dedicated truck lanes in each direction along its 252 miles. North Carolina plans to widen the entire 182 miles of I-95 within its borders, with the 50 most congested miles going from four lanes to eight, and the rest going to six lanes. Virginia's program is similar for its 179 miles of I-95 from the North Carolina border to the Woodrow Wilson Bridge.

Congress should remove the numerical limits on the tolling and pricing pilot programs already in existence, retaining their existing safeguards on the use of toll revenue.

Quite a few additional states have expressed interest in doing likewise, if more slots are added to this pilot program. Missouri is one of four states designated by U.S. DOT for its Corridor of the Future project that would rebuild and modernize I-70 from Kansas City to eastern Ohio. Like Missouri, the other three—Illinois, Indiana and Ohio—could not afford to do their portions without toll finance. Likewise, Virginia and North Carolina are part of a similar coalition for I-95 that includes South Carolina, Georgia and Florida. Rhode Island and Connecticut have also expressed serious interest in rebuilding and modernizing their portions of I-95 using toll finance. And Arizona had applied for the slot recently awarded to North Carolina; Arizona needs to rebuild the section of I-15 that crosses the northwest corner of the state, serving almost exclusively travelers from other states who pay no fuel taxes in Arizona. That totals nine states that are good candidates for reconstructing and modernizing Interstates using toll finance, in addition to the three already in the program. There is already a need for at least nine more slots in addition to the three that are already occupied.

## GIVING STATES MORE FLEXIBILITY—WITH SAFEGUARDS

The Senate ignored the need to expand the existing tolling and pricing pilot programs, all of which were enacted by Congress in previous reauthorizations. So it is up to the House to do so now. Both houses have struggled to figure out how to pay for a reauthorized program that would avoid reducing highway and transit funds below recent annual levels. Since Congress is in no position to provide a net increase in funding, the least it can do is to give states more financing tools, enabling them to make larger investments in transportation infrastructure on their own.

The most straightforward way to do this is simply to remove the numerical limits on the tolling and pricing pilot programs already in existence, retaining their existing safeguards on the use of toll revenue. That would mean the following:

- Express Lanes Demonstration Program: remove the limit of 15 projects and eliminate the program's sunset date.
- Interstate System Construction Toll Pilot Program: remove the limit of 3 slots.
- Interstate System Reconstruction and Rehabilitation Pilot Program: remove the limit of 3 slots.
- Value Pricing Pilot Program: remove the limit of 15 states as project partners.

The expansion of the TIFIA program, with all its current safeguards (33% maximum loan amount, requirement of investment-grade rating on senior debt, dedicated revenue source) would also be a great help in financing toll-based projects.

## STEPS TOWARD DEVOLUTION

Many House members favor significantly downsizing the federal government's role in surface transportation, so that states would pay for their own highways and urban areas would pay for their own transit systems. The federal role would be refocused on true interstate commerce infrastructure plus safety and transportation research. But there is not majority support for such devolution in either house of Congress at present.

Nevertheless, this reauthorization bill could start the process moving forward in three key ways. First, refocus the federal program on major highways (e.g., the designated National Highway System, which includes the Interstates), leaving states and urban areas to deal with most state highways, urban boulevards, sidewalks, bike paths, scenic trails, etc. Second, restore the users-pay/users-benefit principle on which the Highway Trust Fund was created by using highway user-tax revenues only for highways, giving transit its own funding source (perhaps from one of many federal taxes on energy use). And third, empower states to leverage the limited federal highway funding by reducing federal restrictions on tolling and public-private partnerships and expanding, with safeguards, the successful TIFIA credit-support program. These steps will get states more accustomed to financing major highway projects, rather than relying so heavily on federal grants.

## IN CONCLUSION

The American public is increasingly upset about the over-reach of the federal government, not just its massive annual budget deficits. The idea that either Congress or the U.S. DOT should be telling states how to plan and manage their transportation infrastructure implies that Washington, DC knows what states should do better than state legislatures and state DOTs. This year's surface transportation reauthorization offers an opportunity to rethink the federal program in response to these legitimate concerns.

## ENDNOTES

1. Ed Regan and Steven Brown, "Building the Case for Tolling the Interstates," *Tollways*, Spring 2011.
2. Ibid.

## ABOUT THE AUTHOR

**Robert Poole** is director of transportation policy, and Searle Freedom Trust Transportation Fellow, at Reason Foundation. In 2010, he was a member of the transportation policy transition team for Florida Governor-Elect Rick Scott. In 2010 he served as a member of the Expert Review Panel convened by the Washington State DOT to advise on a proposed $1.5 billion managed lanes project. In 2008 he was a gubernatorial appointee to the Texas Study Committee on the Role of Private Provision in Toll Projects. He has advised the U.S. DOT Office of the Secretary of Transportation, the Federal Highway and Federal Transit Administrations, and the state DOTs of a number of states, including California and Florida. He is a member of the Transportation Research Board's standing committees on Congestion Pricing and on Managed Lanes. Poole has also testified before U.S. House and Senate Committees, as well as a number of state legislatures. He is the author of several dozen Reason Foundation policy studies on surface transportation. Poole, a Florida resident, received his B.S. and M.S. in mechanical engineering from MIT, and did additional graduate work in operations research at NYU.