



FEASIBILITY OF INTERSTATE TOLLING

# Policy Report

December 30, 2016

**Prepared for:**

Wisconsin Department of Transportation

**Prepared by:**

**HNTB**



## DISCLAIMER

This report was funded by the Wisconsin Department of Transportation (WisDOT) under project #0900-04-25. The contents of this report reflect the views of the authors who are responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official view of WisDOT at the time of publication.

This document is disseminated under the sponsorship of WisDOT in the interest of information exchange. WisDOT assumes no liability for its contents or use thereof. This report does not constitute a standard, specification or regulation.

WisDOT does not endorse products or manufacturers. Trade and manufacturers' names may appear in this report only because they are considered essential to the object of the document.

### **SPONSOR AGENCY NAME AND ADDRESS**

Wisconsin Department of Transportation  
Office of Policy, Finance and Improvement  
PO Box 7910  
Madison, WI 53707-7910  
[opfi@dot.wi.gov](mailto:opfi@dot.wi.gov)

## PREFACE

This Policy Report discusses legal and policy issues that Wisconsin would need to address should a decision be made to toll the Interstate highway system within the state. The document is the second deliverable prepared by HNTB in response to Wisconsin Department of Transportation (WisDOT) project #0900-04-25, addressing the feasibility of state-sponsored Interstate tolling. The first deliverable was the Tolling Resource Document dated June 30, 2016. This Policy Report, in conjunction with the Tolling Resource Document and other analyses, is intended to partially fulfill the requirements of the Transportation Fund Solvency Study as outlined in Section 9145 (5f), 2015 Wisconsin Act 55.

Tolling is one of several funding options available to help support the construction, maintenance, and operating costs of providing a safe and efficient roadway network to meet Wisconsin's current and future surface transportation needs. As with other funding options, a thorough analysis of the policy and legal framework under which tolling would operate is necessary before implementation may begin. Implementing a tolling system without careful consideration of these issues could potentially result in legal challenges that may lead to costly project delays or adverse legal judgments that may impact the State's ability to enforce toll payment.

This Policy Report is divided into four Sections. Section one includes analysis of state and federal legal considerations that may impact how tolling could be implemented and what actions the State may take when tolling. Section two focuses on the major policy and operational considerations that would need to be addressed during the development of tolling legislation and during implementation. Section three includes a more concise summary of the policy and operational considerations set forth in Section two and a detailed Policy Decision Matrix to assist Wisconsin in addressing these issues.

Section four sets forth examples of common statutory components from other states and tolling authorities. It is important to note that while Wisconsin can and should look to other states that have implemented tolling for guidance, legal principles vary significantly from state to state. All decisions undertaken should be considered with Wisconsin-specific implementation in mind.

# CONTENTS

1. MAJOR LEGAL CONSIDERATIONS .....	1-1
1.1 Wisconsin Constitution Article VIII, Section 11 .....	1-2
1.2 User Fees and Delegation of Taxing Authority .....	1-4
1.3 Federal Issues.....	1-6
2. MAJOR POLICY CONSIDERATIONS .....	2-1
2.1 Governance.....	2-1
2.2 Revenue Use .....	2-4
2.3 Project Selection .....	2-6
2.4 Rate Setting .....	2-7
2.5 Toll Collection.....	2-8
2.6 Enforcement.....	2-15
2.7 Privacy and Data Retention.....	2-17
3. POLICY SUMMARY AND DECISION MATRIX .....	3-1
3.1 Major Policy Considerations Summary.....	3-1
3.3 Policy Decision Matrix .....	3-3
4. EXAMPLES OF COMMON STATUTORY COMPONENTS.....	4-1
4.1 Governance.....	4-1
4.2 Revenue Use .....	4-7
4.3 Project Selection .....	4-8
4.4 Rate Setting .....	4-12
4.5 Toll Collection.....	4-15
4.6 Toll Enforcement.....	4-19
4.7 Privacy and Data Retention.....	4-24

# APPENDICES

APPENDIX A: Implementation and Other Considerations

## TABLES

Table 3-1: Policy Decision Matrix .....	3-3
Table 4-1: Governance Examples – Tolling by DOT .....	4-2
Table 4-2: Governance Examples – Independent Tolling Authorities within DOT .....	4-4
Table 4-3: Revenue Use Examples .....	4-7
Table 4-4: Project Selection Examples .....	4-9
Table 4-5: Rate Setting Examples .....	4-13
Table 4-6: Toll Collection Examples .....	4-16
Table 4-7: Toll Enforcement Examples.....	4-20
Table 4-8: Privacy and Data Retention Examples .....	4-24

# 1. MAJOR LEGAL CONSIDERATIONS

Wisconsin policy makers are not bound by existing precedent as they consider setting policy and enacting legislation to allow for tolling implementation. The State therefore has considerable flexibility to draw upon national best practices to create an effective and efficient tolling operation. Fortunately, a variety of different tolling models exist throughout the U.S. to which the State can look for guidance.

Beginning with the first toll road, the Philadelphia and Lancaster Turnpike in 1792, tolling has expanded gradually in the U.S. This incremental expansion has included implementation of tolling by turnpike authorities, port authorities, regional mobility authorities, state departments of transportation, municipalities and other government agencies. The different policy decisions these agencies made during the development of toll facilities has resulted in various systems of governance and administration.

While it is helpful to examine the decisions made by other states and agencies in developing toll facilities, it is important to keep in mind that Wisconsin law may limit the ability to replicate these decisions exactly. Legal concepts vary significantly from state to state. Many states, including Wisconsin, have created restrictions on the use of transportation-related revenues. State specific concepts of uniformity of application, due process and equal protection can all impact rate setting and enforcement. The degree of administrative discretion a state agency may have to establish a toll and modify it over time may also differ sharply. In many states, courts have held that giving an administrative agency overly broad discretion constitutes an unconstitutional delegation of legislative authority. These constraints are not the same in every state and careful examination of Wisconsin specific limitations would be necessary in the development of legislation to allow for a tolled Interstate system. To the extent current Wisconsin law does not provide for implementation of a preferred governance approach, the State could consider amending the law. However, some of the legal concepts are included in the State's Constitution and modification may be difficult or impractical.

Finally, it is important to note, as a general principal, that state agencies have only the authority expressly granted to them by the legislature, or necessarily implied from such grants. Tolling on Interstate highways is not currently authorized by state law, and would require an affirmative change in state law to begin to collect tolls. This policy report discusses major considerations required to inform the larger policy questions of whether and how to

implement tolls. Affirmative answers to those fundamental questions invariably raise numerous smaller questions of other necessary or desirable changes to state law.

For example, were a commission deemed desirable to administer tolling, the legislature would have to effect changes to Chapter 15 of the Wisconsin Statutes. Were additional State Troopers deemed desirable for enforcement activities on tolled roads, the legislature would have to effect changes to the limit on their number in s.110.07(1)(a) of the statutes. Enumerating these many consequential statutory changes (and related provisions of the Wisconsin Administrative Code) is beyond the scope of this study and this policy report does not identify specific statutes that may require changes to effectuate the legislative intent. This report assumes the legislative changes would be developed in response to the legislative choices to the fundamental policy questions.

This remainder of this Section includes analysis of major state and federal legal considerations that may impact how tolling could be implemented and what actions the State may take when tolling.

## 1.1 Wisconsin Constitution Article VIII, Section 11

One of these specific legal issues that merits consideration is Article VIII, Section 11 of the Wisconsin Constitution. Although this Section prevents the diversion of transportation revenue, it includes language which may be interpreted as precluding the implementation of tolling through the use of independent toll authorities or regional tolling authorities. These authorities are common in many states.

Article VIII, Section 11 requires that:

*All funds collected by the state from any taxes or fees levied or imposed for the licensing of motor vehicle operators, for the titling, licensing, or registration of motor vehicles, for motor vehicle fuel, or for the use of roadways, highways, or bridges, and from taxes and fees levied or imposed for aircraft, airline property, or aviation fuel or for railroads or railroad property shall be deposited only into the transportation fund or with a trustee for the benefit of the department of transportation or the holders of transportation-related revenue bonds, except for collections from taxes or fees in existence on December 31, 2010, that were not being deposited in the transportation fund on that date. None of the funds collected or received by the state from any source and deposited into the*

*transportation fund shall be lapsed, further transferred, or appropriated to any program that is not directly administered by the department of transportation in furtherance of the department's responsibility for the planning, promotion, and protection of all transportation systems in the state except for programs for which there was an appropriation from the transportation fund on December 31, 2010. In this section, the term "motor vehicle" does not include any all-terrain vehicles, snowmobiles, or watercraft.*

The two key parts of this Section that may impact available tolling approaches include the requirement that (1) tolls be deposited to the transportation fund or to the holders of transportation revenue bonds and that (2) none of the funds deposited into the transportation fund shall be lapsed, transferred or appropriated to any program that is not directly administered by the Department of Transportation for furtherance of its responsibilities for transportation systems.

This Section arguably requires that tolling in Wisconsin must be directly administered by WisDOT. This could be interpreted to preclude the establishment of regional toll authorities and regional mobility authorities which are common in states such as Texas, Florida, California and Virginia. The Wisconsin Legislature's Special Committee on Regional Transportation Authority, *2009 Senate Bill 205 AND 2009 Assembly Bill 282*, evaluated this approach to fund transit in 2009. After the study, legislation allowing local governments to establish regional transit authorities was passed. That legislation was later repealed.

Article VIII, Section 11 could also be interpreted to prohibit the use of independent toll authorities such as The Illinois State Toll Highway Authority or The Pennsylvania Turnpike Commission and as potentially invalidating the use of turnpike corporations which are currently allowed by 182.30 Wisconsin Statutes. These turnpike authorities are common throughout the U.S.

The Amendment creating this Section was passed in 2014, and as such the Section has not yet been the subject of any litigation. Therefore, there is no guidance on what "directly administered by the department" means and whether it would completely preclude the use of a tolling entity that is affiliated but also quasi-independent from WisDOT like the Florida Turnpike Enterprise's relationship to the Florida Department of Transportation. Creating an entity that maintains some level of independence can have material benefits in the implementation and administration of toll facilities. These benefits are discussed in Section 2.1.2 below. One critical issue may be determining what level of independence can be



achieved without simultaneously creating unacceptable legal risk that the governance structure violates Article VIII, Section 11 by not being directly administered by WisDOT.

Additionally, although Article VIII, Section 11 requires “All funds collected by the state from ... fees levied ... for the use of roadways” to be deposited into the transportation fund, it does not indicate whether “funds” refers to gross revenue or net revenue after deducting operating costs potential debt service and other costs associated with collecting the revenue. Taking the latter interpretation could leave open the possibility of administering a tolling program within a collection authority distinct from WisDOT and depositing only net revenue into the transportation fund. Given the lack of clarity in Article VIII, Section 11, this approach may likely be subject to legal challenge by tolling opponents. Also, if the amount of net revenue is grossly disproportionate to the costs and benefits of the facility it could set up a challenge under federal law as discussed in more detail below.

## 1.2 User Fees and Delegation of Taxing Authority

Another Wisconsin specific legal issue includes whether the setting of toll rates can be delegated to an administrative agency. Although the legislature may not entirely delegate its obligation to set taxes, it can, in some circumstances, delegate the rate setting function. It is also generally recognized that charges exacted in the exercise of the police power are not taxes and are not subject to constitutional limitations which apply to the exercise of the power to tax. Analyzing this issue requires an examination of whether tolls are a fee or a tax, and if a tax, the extent to which the setting of that tax rate can be delegated to WisDOT or some other entity.

As explained by the Wisconsin Supreme Court in *Wisconsin v. Jackman*, 60 Wis.2d 700 (1973), a tax is a charge whose primary purpose is to obtain revenue, while a fee is a charge made primarily for regulation and the fee is provided to cover the cost and the expense of supervision or regulation. The *Jackman* Court upheld a \$3.25 boat registration fee. It found that the primary purpose of the fee was not to raise revenue and that the registration of boats bears a reasonable relationship to safety and the cost of the related safety program. The Court found that if the primary purpose of a charge is to cover the expense of providing services, supervision or regulation, the charge is a fee and not a tax.

Relying on *Jackman* and other similar cases, the Wisconsin Supreme Court upheld water and fire protection charges imposed by the City of River Falls (See *City of River Falls v. St. Bridget's Catholic Church*, 182 Wis.2d 436, 1994). The *River Falls* Court upheld the water fee

by finding that the fee was reasonably related to providing a service or of regulation and supervision of certain activities.

If the primary purpose of a charge is to cover the expense of providing services, supervision or regulation, the charge is a fee and not a tax. Today in Wisconsin fees are common to fund regulatory functions and services provided by various agencies. This distinction between fee and tax, however, is not always clear. Under the reasoning in *Jackman*, if tolls are considered a fee, then delegating the ability to set that fee to WisDOT may be appropriate. Since the primary purpose of tolls is to raise revenue, it may be possible that tolls would be viewed as a tax under Wisconsin law. How toll revenue is used would also likely impact this analysis. If the revenue is tied to the facility from which it accrues, tolls could properly be construed as fees. If the revenue is distributed to local units of government by formula for purposes unrelated to the facility such as general transportation aids, the tolls may be construed as taxes as their primary purpose would be to raise revenue. Given this possibility, the extent to which the setting of tax rates can be delegated to an administrative agency should also be examined.

The Wisconsin Supreme Court addressed the issue of delegation of taxing authority in *Village of West Milwaukee v. Area Bd of Vocational Technical and Adult Ed*, 51 Wis.2d 356, 1971. Relying on previous cases related to sewage commissions, the Court upheld a taxing scheme to fund vocational education. Although it recognized that they were different factually, the Court found the reasoning of the sewage commission cases controlling on the issue of delegation of the power to levy a property tax to fund vocational education. The Court accepted that that the legislature clearly cannot delegate the power to determine the amount of money to be raised from taxing a particular class of property to an administrative board. It held, however, that the legislature can delegate the administrative duty of determining, subject to a legitimate legislative scheme, taxes previously approved by the legislature. The statute being challenged clearly described the authority delegated, stated the purpose of the legislation, identified a governance structure, and set the maximum tax which may be levied.

This line of cases should be carefully evaluated when drafting tolling legislation. In determining whether the delegation of taxing authority is permissible, Wisconsin courts may likely scrutinize the process set forth in the legislation and whether a maximum tax rate is included. When the Special Committee on Regional Transportation Authority, 2009 Senate Bill 205 and 2009 Assembly Bill 282, made recommendations for the creation and funding of four regional transit authorities, it recommended a cap on the amount of sales tax the authorities could impose.

## 1.3 Federal Issues

This scope of this study assumes that, from a federal perspective, tolling the Wisconsin Interstate system would be allowed through potential future changes to existing tolling programs set forth in Section 129 and 166 Title 23 United States Code or through the further expansion or availability of pilot programs such as the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP) or the Value Pricing Pilot Program (VPPP). As a result of this assumption, analysis of these current federal tolling programs is outside the scope of this report. However, other federal issues may also impact tolling and are set forth below.

### 1.3.1 Dormant Commerce Clause

Although tolls have been the subject of periodic legal challenges, they have generally been upheld from a federal perspective. In 1824, the U.S. Supreme Court upheld tolls finding that toll roads were products of state legislation and exist only within the territorial boundaries of the state that created the road (See *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 203, 1824). As toll roads have become an integral part of the Interstate system and more clearly a component of Interstate commerce, courts have recognized that under certain circumstances tolls can violate federal law. The Dormant Commerce Clause was recently used as the basis for a successful claim that diversion of toll revenue from the New York Thruway to fund operation and maintenance of the New York canal system was unconstitutional. (See *American Trucking Associations, Inc. v. New York Thruway*, 2016 WL 4275435)

The current test to determine the validity of a state tolling scheme from a federal perspective was established in *Evansville-Vanderburgh Airport Authority District v. Delta Airlines, Inc.*, 405 U.S. 707, 715-17 (1972). The U.S. Supreme Court adopted a three-part test to determine whether state tolling practices violated the dormant Commerce Clause. Under the *Evansville* Test, a toll will be upheld as valid as long as it is reasonable. A toll is reasonable if it (1) is based on some fair approximation of use of the facilities, (2) is not excessive in relation to the benefits conferred, and (3) does not discriminate against Interstate commerce. When developing legislation to allow for tolling, it is important to consider the existing federal limitations identified by the *Evansville* Court.

In the U.S., revenue from toll facilities is traditionally tied to the facility or system from which the tolls accrue. Tolls are typically set to fund the facility or system with which they are associated and revenue is not generally diverted to other programs. This is likely a result of the first two requirements under the *Evansville* test that tolls be based on some fair approximation of the use of the facilities and not be excessive compared to the benefits

conferred. In developing tolling legislation and policy, Wisconsin should carefully evaluate the relationship between the cost of the toll facility and the benefits it gives travelers. These factors should be considered when setting toll rates. Careful consideration should also be given to whether a Wisconsin tolling scheme discriminates against Interstate commerce. One way this can occur is if tolls disproportionately affect out of state travelers, such as unreasonably high tolls at borders that adversely impact Interstate commuters or commercial carriers.

### **1.3.2 National Environmental Policy Act**

The National Environmental Policy Act (42 U.S.C. §4321 et seq. (1969)) established a national framework for protecting the environment while making federal program and project decisions. Transportation and environmental planners use NEPA to evaluate impacts of their programs and projects including commitments to avoid or mitigate adverse impacts. Social, economic, and environmental concerns are assessed and addressed through compliance with NEPA during project development, preliminary and final engineering design, construction

There are many environmental laws, regulations and polices considered under the NEPA process that are well understood and continually satisfied by WisDOT as it delivers its federally funded program of projects. However, for the purposes of addressing the potential environmental consequences due to tolling the use of the Interstate system in Wisconsin, the focus of high level guidance in this paper adds the linkages between transportation planning and environmental documentation and the evolving area of study related to Executive Order 12898, signed in 1994 by President Clinton that directs federal agencies to address the impacts of federal projects on environmental justice communities.

As a procedural law, NEPA requires agencies to document their decisions during the project development process. Deference to decisions reached within the transportation planning process has been repeatedly defended by the courts when challenges to projects and programs occur during the NEPA phase, adding more weight to the quality of documentation throughout the project development process, particularly in the early development stage. Quality transportation planning defines and narrows the scope of “all reasonable alternatives” to be considered. During the project’s development, a purpose and need statement along with goals and objectives can be derived from a completed transportation planning processes. These become the lens by which alternative analysis will be conducted.

Therefore, transportation agencies may define a project's purpose and need and the range of alternatives based on the objectives described in an approved regional transportation plan, and in certain circumstances, rely on the socioeconomic projections created by the metropolitan planning organization to form the basis of both the Action and No-Action Alternatives (See *Protecting Arizona's Resources and Children v. Federal Highway Administration*, No. CV-15-00893 (D. Ariz. Aug. 19, 2016)).

Through this feasibility process, it is assumed the decisions on toll projects will be adopted by state and regional planning programs. This will enable the decisions on range of alternatives to be considered to reference the adopted regional or state projects emerging from the transportation planning process as the justification of certain projects and alternatives advancing into the NEPA phase for detail analysis. If an alternative is eliminated through a screening level analysis and it is demonstrated that it does not meet the purpose and need as established by the approved regional plan, this allows agencies to move forward, in some cases, with only the Build and No-Build alternatives. In addition, socioeconomic data and forecasting conducted by the Metropolitan Planning Organization may be used to demonstrate potential impacts to social conditions and communities due to the project's implementation. Toll projects often face additional scrutiny for effects to community cohesion and environmental justice and this data will be the basis for technical analysis.

An evolving area of analysis related to tolling is the compliance with Executive Order 12898. Environmental justice communities are certain racial and ethnic minority groups and low income individuals that have historically borne disproportionately more adverse impacts of federal projects than the general population as a whole. To help address this inequity, Executive Order 12898 mandates that federal agencies must evaluate the adverse impacts that will result from projects and the distribution of those negative impacts amongst the impacted population. If the adverse impacts of the project are anticipated to fall disproportionately to environmental justice communities, the federal agency must evaluate and recommend strategies to minimize and mitigate those disproportionately high adverse impacts.

For transportation projects, the US DOT has incorporated the mandates of Executive Order 12898 into the framework of the NEPA and Title VI of the Civil Rights Act of 1964. As projects undergo the normal environmental review process for air quality impacts, noise impacts, water impacts, and various other environmental factors, an analysis is also performed on the impacts of tolling if tolling is part of the project's plan of finance. The tolling impact analysis typically focuses on how the cost of a trip changes with the imposition of a toll. Some users

may elect to pay the toll, while other users may elect to avoid the toll even if that results in extra travel time in order to take a non-tolled alternative.

With toll projects, the disclosure of potential benefits and burdens is important for addressing the intent of Executive Order 12898. Toll equipment locations determine the possible on and off decisions, which could cause traffic diversions and off-system indirect impacts. Decision makers may need to examine alternative toll access locations due to among other considerations, the results of traffic diversion, travel demand model analysis, and public outreach. Alternatives analysis may take the form of testing scenarios for different toll equipment locations or access points. Toll diversion may have indirect impacts on local and state roads and it will be necessary to understand and disclose potential impacts. Mitigation strategies may also be developed to offset real and perceived negative project externalities. Additionally, public outreach may result in the need to adjust the project's design or to develop mitigation plans to address particular impacts to resources. Tolling projects add a social element that often requires additional analysis and consideration of the issues raised by the public.

One means of complying with the intent of Executive Order 12898 is through the disclosure of potential impacts prior to opening a toll project to traffic and during the ongoing monitoring of the toll project. Using the travel demand model, projected origin and destination trips utilizing the toll lanes can be determined. While individual socioeconomic characteristics of each user are unknown, the corridor trip profile can be established and a comparison of trips from different census block groups can be performed to determine if there is a statistically significant difference between trips from defined block groups of a certain income classification or predominant racial makeup. This allows analysis to be conducted between trips from low income and non-low income and minority and non-minority areas. Understanding the socioeconomic profile from the travel demand model is one way to determine if disproportionately high and adverse impacts are borne by environmental justice communities.

It is also important to understand traffic diversion due to tolling and potential increases in vehicles in low-income and minority areas and indirect impacts to safety and air quality due to these changes in travel patterns in order to develop mitigation strategies. Technical analysis in combination with public outreach to specific areas within the travel shed that are predominantly low income and/or minority communities helps inform the decision makers and offers opportunities for avoidance and minimization alternatives to be considered and developed. Toll policy, toll rates, and tolled trips are important to understand within this analysis framework to create more informed preliminary concept design decisions. In

addition, data collected before opening a toll project to traffic and during operation can help establish the basis for programs to mitigate disproportionately high and adverse impacts due to tolling, if these are demonstrated to occur.

There are several strategies available for mitigating the potential environmental justice impacts of tolling. One commonly used strategy in an all-electronic tolling environment is to enhance outreach to the environmental justice community to educate individuals on the benefits of, and encourage the use of, transponder technology. This has the potential to increase usage by explaining how the system operates, where to register for a transponder and what the potential benefits are. This may reduce the overall toll burden by allowing customers to take advantage of the lowest possible toll rates. A second common strategy includes accepting cash at customer service center or retail partner locations as a toll account replenishment option, which removes a significant participation barrier for unbanked and underbanked members of the environmental justice community. Other strategies include marketing campaigns and roadway signage in environmental justice areas that inform travelers about non-tolled alternatives.

Innovative programs such as linking toll and transit trips and providing credits to customers to travel at different times of the day are also being explored by different tolling entities. As the FHWA has focused more attention on environmental justice concerns in recent years, some agencies have considered programs to provide free or reduced cost tolls to qualified individuals. Initiating such a program requires careful consideration and planning around how to define qualified individuals, how to accurately and efficiently administer the program, what the overall impact to revenue would be, and how the program would be viewed in terms of overall fairness and equity.

Award for construction is a major milestone and with toll projects, it carries added urgency to begin revenue collection and meet other financial arrangements related to project delivery. This adds emphasis to developing a detailed and realistic project schedule that is monitored for progress continuously. Agencies must demonstrate that environmental commitments have been satisfied throughout construction. Environmental commitments may take the form of mitigation or ongoing monitoring of potential issues identified during the NEPA and preliminary engineering phase. For example, tolling locations or access points and toll policy and potential mitigation strategies need to be cohesive. Environmental commitments made in the preliminary engineering phase are requirements to be satisfied during final design and construction phases.

It is necessary to vet constructability issues early to ensure commitments are achievable and capable of being implemented. Otherwise commitments must be modified and reevaluated.

With tolling projects, there may be particular commitments as a result of public outreach that must be embedded into the project implementation. It is important to be able to honor these decisions and mitigation plans. Federal and state policies are evolving related to toll projects. A proper decision framework and analysis is crucial to achieve NEPA approval and project implementation to be effective and efficient.



*THIS PAGE INTENTIONALLY LEFT BLANK*

## 2. MAJOR POLICY CONSIDERATIONS

If a decision is made to move forward with tolling, Wisconsin would need to make multiple policy decisions related to governance, administration and operation of a tolled Interstate system. Many of these policy decisions may be impacted by the legal issues discussed above. This Section identifies the major issues, challenges, and potential options that Wisconsin may consider when addressing policy decisions.

### 2.1 Governance

When considering the key legal drivers discussed in Section 1 above, two governance structures emerge as the most viable options for implementing Interstate tolling in Wisconsin. The first option would be to expand the authority of the Wisconsin Department of Transportation (WisDOT) and provide WisDOT the ability to develop and administer a tolled Interstate system. The second option would be to create a quasi-independent entity under the supervision of the Secretary of Transportation that has distinct powers from WisDOT to develop and administer a tolled Interstate system.

#### 2.1.1 Expanded WisDOT Authority

Expanding the authority of WisDOT is arguably the most legally defensible approach for implementing tolling on the Wisconsin Interstate system. Article VIII, Section 11 of the Wisconsin Constitution requires that (1) tolls be deposited to the transportation fund or to the holders of transportation revenue bonds and that (2) none of the funds deposited into the transportation fund shall be lapsed, transferred or appropriated to any program that is not directly administered by the department of transportation. Although these requirements could be interpreted as allowing other tolling governance structures, such an interpretation could be subject to legal challenges from tolling opponents which may impact implementation and place toll revenue at risk.

Although expanding WisDOT authority is likely the lower risk legal option, integrating a tolling program within the Department would nevertheless require substantial modification to its current statutory authority in chs. 84, 85 and 86, Wis. Stats. Existing WisDOT processes in areas including but not limited to staffing, procurement, engineering and construction, contracting, maintenance (i.e. county maintenance contracts), planning, and financing may

inhibit or conflict with processes required for an effective tolling program. Identifying and resolving conflicts between existing and needed authority would be a complex task. Developing completely comprehensive legislation would require considerable effort. Potential conflicts that are not discovered until implementation can result in substantial delay and increased project costs. This is especially true if the issue requires an additional legislative effort for resolution.

### **2.1.2 Quasi-Independent Entity Within WisDOT**

Creating a quasi-independent tolling entity under the general supervision and control of the Secretary of Transportation is a second governance option that should be explored. If the new entity is ultimately under the supervision and control of the Secretary of the Department of Transportation it would arguably be considered a program directly administered by WisDOT as required by Article VIII, Section 11.

Creating an entity that is not subject to WisDOT's existing statutory requirements may be beneficial in that the legislature can then work from a blank slate to authorize the new tolling entity to use alternative process and business practices necessary for effective management of a tolled Interstate system. This eliminates the need for a lengthy analysis of WisDOT processes during the legislative timeframe, thereby reducing the risk that an un-reconciled issue could delay tolling implementation.

Operating a tolled Interstate system requires decisions that have financial consequences to the users of those facilities. Project selection and toll rate setting are among the most consequential of these decisions. Subjecting a newly created tolling agency under the Secretary of Transportation to oversight from a board or commission can expand involvement in critical decisions made outside of the legislative process. This can allow greater representation of particular interests and can allow decisions to be made in a more bi-partisan and timely nature. Although Section 15.07 Wisconsin Statutes provides legal defaults for the structure of boards, councils and commissions, additional or alternative requirements could be included in legislation authorizes tolling. For example, legislation could require members to have specific experience thereby providing access to outside experts.

Although including the concept of a board or commission may have benefits in some areas, it is not essential for creating a quasi-independent tolling entity. In some instances, boards can create a less efficient decision making process if there is insufficient delegation to executive leadership. If a board is contemplated, members should be appointed and not elected. This helps insulate difficult toll rate increase decisions, which may be required to meet bond

covenants, from undue political pressure. A board could also be comprised of a mix of elected officials and citizens. The Transportation Projects Commission, *Section 13.489 Wisconsin Statutes*, is established in this manner. Its members include five state senators, five Assembly representatives and three citizen members. The Governor serves as the Commission Chairman. The Wisconsin Department of Transportation (WisDOT) Secretary serves as a non-voting member.

A quasi-independent entity can also be structured to operate more like a business. Financing and operating a tolled Interstate system requires personnel with highly specialized experience. Recruiting and retaining this level of experience may require higher compensation scales than those available to WisDOT. A quasi-independent entity could be exempted from public employment requirements that may limit the ability to recruit and retain employees with the necessary skills and experience to implement and manage a tolled Interstate system. The statutory authority of the Florida Turnpike Enterprise exempts Enterprise employees from Florida's public employee requirements. A quasi-independent entity can also be given more flexibility to make the decisions that may be necessary to meet potential bond covenants. Financing requirements for toll supported revenue bonds can be extensive and require additional reporting compared to other types of transportation revenue bonds. Individuals with a high level of financial expertise would be needed to support any potential toll supported bonding program.

Quasi-independent toll authorities may also enjoy increased flexibility to use contractors and professional advisory services in furtherance of their mission. Operating toll collection systems, customer service centers and complying with potential bond covenants may require expanded ability and flexibility in the utilization of professional advisory services beyond what is possible through WisDOT. Expanded ability to use advisors can allow the entity to operate with a smaller number of core employees. Agencies like the Miami Dade Expressway Authority and the Central Texas Regional Mobility Authority operate in this manner and have delivered successful programs.

Toll roads have paying customers. Establishing a point of sale at the time of use creates a closer nexus between the toll paid and the experience the customer receives while driving on the toll road. This can also create a higher level of expectation on the part of the customer. Meeting this expectation may require alternative maintenance processes than are used on non-toll roads. Implementing new maintenance processes within an existing culture can be difficult and require extensive effort. Maintaining dual standards may also be difficult. Different processes may be difficult to manage if they conflict with existing WisDOT

processes. A new entity would not be influenced by past maintenance practices and may more easily develop the maintenance practices needed for a tolled Interstate system.

If a quasi-independent entity is considered, the level of independence the entity should have would need to be determined. One of the issues that should be considered is whether the entity would have its own budget. It may also have distinct authority and process such as planning, contracting, financing, purchasing, and right of way acquisition. One option for the entity would be to make it completely distinct and only capable of doing those things specifically authorized. Another option would be to identify areas where greater flexibility is needed and to grant that flexibility and/or allow the entity to take advantage of WisDOT's authority to the extent it does not conflict with the entity's authority. How the relationship between WisDOT and the entity would be managed and whether they can contract with each other for services should also be addressed.

## 2.2 Revenue Use

In the U.S., revenue generated by toll facilities is generally used to fund the costs of the facility. These costs include debt service, capital and maintenance costs and the costs of other associated activities such as administrative costs, traffic patrol and enforcement, toll collection, intelligent traffic systems operation and any other cost that could be considered necessary and proper for the administration of a toll facility. Funds are not generally diverted to other facilities or uses in significant amounts.

However, in some instances, funds are taken off of the toll system to fund other regional transportation programs or projects. For example, The Pennsylvania Turnpike makes annual transfers for state DOT and transit purpose. The Ohio Turnpike used two large bond issues to fund certain projects with a nexus to the turnpike and The Harris County Toll Road Authority makes small annual transfers for local roads. In Washington, pursuant to RCWA Section 47.46.080 a new bridge can be constructed within two miles of an existing bridge. Both can be tolled and operated as one toll facility.

In certain circumstances using revenue off system can result in legal challenges. For example, a lawsuit is currently pending against the Ohio Turnpike and Infrastructure Commission related to toll increases that took effect in January of 2014 to fund infrastructure projects of the Department of Transportation located off of the turnpike. This case, *Ullmo v. Ohio Turnpike and Infrastructure Commission*, is based on state laws related to improper taxation. The Elizabeth River Crossing P3 project in Virginia suffered significant delay due to

litigation related to the use of toll revenue from an existing bridge to reduce the toll rate on a new bridge. That suit was based on Virginia laws related to improper taxation. Ultimately the decision of the lower court, finding the use of existing tolls unconstitutional, was reversed by the Virginia Supreme Court. See *Elizabeth River Crossings OpCo, LLC v. Meeks*, 286 Va. 286 (2013).

Challenges to tolling schemes can also arise from alleged violations of federal law including the Dormant Commerce clause. For the federal district in which Wisconsin is located, the current test to determine the validity of a state tolling scheme from a federal perspective was established in *Evansville-Vanderburgh Airport Authority District v. Delta Airlines, Inc.*, 405 U.S. 707, 715-17 (1972). The U.S. Supreme Court adopted a three-part test to determine whether state tolling practices violated the Dormant Commerce clause. Under the *Evansville* Test, a toll will be upheld as valid as long as it is reasonable. A toll is reasonable if it (1) is based on some fair approximation of use of the facilities, (2) is not excessive in relation to the benefits conferred, and (3) does not discriminate against Interstate commerce. When developing legislation to allow for tolling, it is important to consider the existing federal limitations identified by the *Evansville* Court.

In developing a tolling scheme, Wisconsin should consider both state and federal laws related to the validity of tolling schemes. The most conservative and legally defensible approach to using revenue would be to follow the lead of other tolling agencies and use toll revenue to fund financing, construction and operation and maintenance of the facility or system from which the revenue is derived. The level of specificity in defining this relationship could include using tolls to fund specific projects, groups or projects, corridors or the entire Interstate system. The more closely related the tolls are to the cost of the facilities that generate them, the more defensible they will be. Many toll authorities use toll revenue to fund auxiliary services that are reasonably related to the operation of the toll facility. These include services such as traffic enforcement, public outreach activities related to electronic payment processes, regional intelligent traffic systems and transit services that improve operation of the facility or corridor. It may also be desirable to allow funds to be used on projects that have a nexus to the Interstate system; however this can create legal risk to the revenue. This is especially true as the nexus is expanded.

When making determinations about the use of revenue, it is important to identify what funds held by the toll authority are revenue and what funds should not be considered revenue and be treated differently. When toll authorities began implementing electronic tolling and allowing customers to open accounts from which tolls may be deducted, they became the custodian of prepaid transponder accounts. These accounts include money paid by the account holder to

the toll authority that although held by the toll authority, are not revenues until the account holder incurs tolls and those tolls are debited from the account.

Transponder prepaid accounts are universally considered to be funds held in trust by a toll authority for the benefit of the account holders. The unused balance of a prepaid transponder account is returned to the account holder when the account is closed. The sum of the prepaid accounts is shown by some toll authorities as a liability of the toll authority for accounting purposes. For example, if two million accounts exist with an average balance of \$30, the toll authority would show a \$60M liability on its balance sheet. Some toll authorities show a simultaneous asset and liability so that the transponder trust account does not negatively impact bonding capacity. Most toll authorities do receive interest on the funds held in trust for the benefit of the account holders and this income is considered revenue that may be used by the toll authority. However, it is not a significant source of revenue. Interest revenue in Wisconsin may be subject to the same legal restrictions that apply to toll revenue generally. In developing financial systems to administer an electronic toll system, WisDOT should coordinate with auditing and accounting branches of state government to ensure the system is compliant with state law.

## 2.3 Project Selection

If Wisconsin decides to move forward with a tolled Interstate system, a clear and transparent process for explaining how decisions would be made in the context of project selection and phasing for implementation should be established. Considering that public outreach is a requirement of the NEPA process, it may be prudent to clarify the process for receiving public comment when developing legislation to allow for a tolled Interstate system. Many state departments of transportation have written project selection process that include a number of factors that must be considered when evaluating projects and provide for public hearings.

In Wisconsin, The Transportation Projects Commission (TPC) must approve major projects before an environmental assessment may be conducted. As currently written, this would require TPC approval of toll implementation on projects that meet the definition of major projects. Tolling legislation should clarify the role of the TPC with respect to toll projects. Some toll projects may impact local networks. Tolling legislation should also clarify the role that local governments and metropolitan planning organizations (MPOs) would have in the selection and phasing of toll projects.

## 2.4 Rate Setting

The method by which toll rates are set varies from jurisdiction to jurisdiction. Generally, where tolling is administered by a department of transportation, toll rates are set by the department. Where tolling is administered by a turnpike commission or some other type of board, toll rates are set by the commission or board. Some agencies are required to have public hearings and provide an opportunity for public input in the setting of toll rates. Since the setting of toll rates may be of significant interest to the general public, Wisconsin enabling legislation should consider the level of public involvement that will be required in setting either initial toll policy or specific toll rates. Although public involvement may be desirable, it can reduce flexibility in setting toll rates. This reduced flexibility can impact financing costs if toll financing is a component of an Interstate tolling program.

As discussed in Section 1.2 above, in the event of a challenge to a tolling scheme as an improper tax, Wisconsin courts would likely scrutinize the rate setting process set forth in the legislation and whether a maximum toll rate is included. Wisconsin should review state law to determine if a maximum toll rate would be required to make the tolling scheme constitutionally valid. Delegating the authority to set rates to either the Department of Transportation or some other entity without a clear process for determining toll rates and without setting a maximum toll rate would increase the risk of a potentially successful legal challenge.

Wisconsin law in the area of the issue of fee v. tax and allowable delegation of taxing authority is unique. Maximum toll rates are not typically included in the enabling legislation of agencies that administer tolling. Placing them in statute may be viewed negatively by rating agencies. It may limit the ability to comply with trust indentures and increase the cost of borrowing against toll revenue. This negative view may be mitigated if there is a streamlined legislative process for increasing the maximum rate or if it is possible to require the legislature to increase the maximum toll rate under certain circumstances. Indexing the maximum toll rate to the consumer price index or some other index may also be a potential option for mitigating the limitations associated with a statutory maximum toll rate. However, the previous indexation of the gas tax in Wisconsin was controversial and the indexation was eliminated in 2005.

If it is determined that including a maximum toll rate is necessary, additional consideration should be given to how specific the maximum rate must be. The maximum rate could be based on mileage. A maximum per mile rate may be the simplest to include in legislation but could be potentially problematic. Depending on how the toll system is designed to capture



vehicle movements, the actual cost per mile may vary. Some miles of the toll system may be free while others could easily exceed a maximum per mile rate if it is set too low.

It may also be possible to set a maximum toll per tolling location. However, without a limit on how close tolling locations are to each other, the maximum rate per location limitation may not be sufficiently clear. Including a limit on the proximity of tolling locations could severely limit the ability to design an optimal toll system. Another issue to consider is whether a maximum rate must be established for each vehicle classification. A possibility that could be explored is setting a level of service based on performance criteria such as pavement smoothness and travel times and establishing the maximum rate as the rate required to meet this level of service. Additional evaluation would be needed on whether this type of maximum rate would meet constitutional validity thresholds.

Regardless of how the maximum toll rate is determined, the goal should be to allow for as much flexibility in the setting of toll rates as is constitutionally allowable. Enabling legislation should not preclude toll rates based on geographic region, vehicle classification or direction of travel. It should also not preclude variable and dynamic tolls based on congestion or travel time.

## 2.5 Toll Collection

Several policy decisions would need to be made to implement tolling on the Wisconsin Interstate system. Many of those decisions are unique to the utilization of all-electronic toll collection (AET), and some apply to tolling generally. Through collaboration with WisDOT it was assumed that converting the existing Interstate system to a tolled system would require the utilization of AET. This assumption is based on a variety of factors including safety, right of way constraints and Federal Highway Administration requirements. A more detailed discussion of AET is included in the Toll Resource Document. This section begins with a discussion of policy issues related to AET and then addresses other matters related to electronic toll collection (ETC) and tolling in general.

AET is a method of collecting tolls using transponders and/or license plate images without the option of the vehicle stopping to pay the toll with cash. To effectively operate an AET facility, Wisconsin would need to establish procedures for processing both transponder transactions and image based transactions. These processes vary nationally depending on the needs of the specific agency. They are generally established by administrative rule or set forth in

enabling legislation. Regardless of how the processes are established, to be effective, they should include certain components that are generally consistent from agency to agency.

### **2.5.1 Video Billing – Registered owner responsible for toll**

The video billing process begins by taking an image of the vehicles license plate. The image is used to identify the registered owner of the vehicle for collection and enforcement. Establishing the registered owner as the responsible party for the payment of tolls is essential for an efficient video billing process. This is critical because reliable technology does not yet exist to identify the driver of the vehicle, and even when such technology becomes available there may likely be significant privacy concerns surrounding its use. It should be noted that Section 349.02(3)(a) Wisconsin Statutes, which prohibits the use of photo radar speed detection, was enacted primarily over such privacy concerns. These privacy concerns should be carefully considered in developing a video billing process. Because video billing incorporates some of the same technology, Section 349.02 should be clarified so that that it cannot be later construed to prohibit it. Enforcement of traffic laws and collection of tolls are different concepts. Prohibiting the use of toll collection information for the enforcement of traffic violations may help resolve privacy concerns.

Making the registered owner of the vehicle responsible for paying tolls has been widely accepted and is necessary for implementation of AET. For AET transactions involving video billing, enabling legislation or administrative regulation should clearly specify that the transaction occurs when an invoice is sent to the registered owner of the vehicle. Establishing a time for transaction occurrence is a pre-requisite for effective collection and enforcement, which are discussed later.

### **2.5.2 Identifying Registered Owner**

The video billing processes should allow the agency to determine the registered owner through a variety of manners. The most obvious option for determining the registered owner for Wisconsin residents would be to coordinate with the Department of Motor Vehicles (DMV) for owner lookup. The process should also allow for the utilization of commercially accepted vehicle look up methods for out of state drivers or when records of the DMV are not current. Incorporating the ability to skip the lookup completely and send an invoice to a verified address should also be an option and would be the lowest cost option for determining ownership. A verified address would be an address that has been used and verified by the

tolling agency within a specific time period, for example six months. Flexibility to use other technologies and options such as third-party look up services should be considered.

### **2.5.3 Notice**

The video billing process ultimately adopted should clearly identify the form of the customer invoice. At a minimum the invoice should contain date, time stamp and location of the toll. The invoice may require a picture of the vehicle; however, if multiple transactions are included on the same invoice it may not be efficient to include a picture for each transaction. The invoice should instruct the registered owner as to available actions that can be taken upon receipt. Generally, these actions are to pay the toll or contest it. A discussion of contesting invoices is included below under enforcement. The process should also identify how the notice would be delivered. Although other analogous processes in Wisconsin may require certified mail, this is not recommended for video billing. Given the number of potential video transactions, certified mail would dramatically increase the costs of processing those transactions.

Many agencies send an invoice and one or two late notices before beginning enforcement actions. The number of invoices and late notices sent can be written into law or determined by the agency pursuant to administrative rule. At least the initial invoice and one late notice should be delivered before beginning enforcement actions. Processes related to timing of invoices and late notices vary dramatically from agency to agency. For some agencies time periods for the initial invoice and for subsequent late notices are written into law. This may be necessary to clearly convey to the legislature what the processes would look like, however it can limit the agency's ability to adjust time periods to lower transactional costs. Allowing administrative flexibility to adjust procedures over time can facilitate achieving optimal efficiency.

### **2.5.4 Administrative Fees**

Video billing processes typically include escalating fees for each invoice and late notice. Fees vary but should be set to reflect administrative costs. Some agencies have fee requirements that are included in statute and others have the flexibility to set fees. Retaining more flexibility at the agency level to set fees to approximate administrative costs would increase the efficiency of processing video billing transactions. Additionally, since these fees correspond to the increased costs of video billing transactions, it is critical that they be retained by the agency and not diverted to other use.

## 2.5.5 Leased and Rented Vehicles

Leased and rented vehicles should be contemplated in the video billing process. Some agencies allow liability to be transferred from the registered owner to the renter or lessee of the vehicle. This is not recommended as it represents a significant administrative burden to re-assign transactions. This is especially true when both the owner and renter or lessee reside in other states. A more efficient approach is to retain the liability on the renting and leasing dealer. This limits the administrative burden of reassigning transactions and would incentivize those owners to use transponders. Rental companies have started to use third-party vendors to manage toll transaction for their fleets. Nothing in the video billing process should prohibit leasing and rental dealers from using third party vendors to manage toll transactions and passing these costs along to their customers. Video billing processes also typically provide relief for the owners of stolen vehicles. The owner is normally required to provide a police report or other evidence that the vehicle was stolen. Under Wis. Stat. 341.01(2)(b), the owner includes a lessee that is leasing a vehicle for one year or more. This should be considered when determining how the video billing process will be applied to leased vehicles.

## 2.5.6 Incentivizing Transponder Use

The cost to process a transponder based transaction is substantially lower than the cost to process a video transaction. As such, increasing transponder penetration increases the number of lower cost transactions and result in more net revenue. Wisconsin should consider options for increasing transponder use when developing tolling legislation and policy. New transponder technology has led to the development of transponders that cost less than a dollar. As a result, many agencies have determined that it is in their financial best interest to give transponders to customers free of charge. In some jurisdictions giving something away that is classified as an asset is illegal without a legislative change. Wisconsin should evaluate if any current state law would prohibit giving away transponders and make appropriate modification during the development of tolling legislation. Another option for increasing transponder penetration would be to adopt electronic vehicle registration with an embedded transponder or to include a transponder in annual window stickers.

## 2.5.7 Transponder Protocol Selection / Interoperability

One tolling decision that has both policy and operational implications is the choice of transponder protocol. Several key considerations factor into this decision including leveraging

pre-existing transponder penetration, maximizing customer convenience by enhancing regional interoperability, maintaining flexibility for national interoperability, ensuring transponder performance, minimizing transponder cost, and maximizing transponder penetration in the future to drive down operating costs.

Even in areas of the country that are remote from existing tolling facilities, some percentage of daily traffic likely has existing transponder technology in their vehicles. Regional business commuters, leisure vacationers and commercial carriers may travel sufficient distances and frequencies that they have already placed transponders in their vehicles that serve the areas to which they travel. A decision to adopt a transponder protocol should leverage this existing penetration.

Many bordering and nearby states including Minnesota, Illinois, Indiana, and Michigan all employ some form of tolling. Additionally, the I-90 corridor runs through the tolled states of Ohio, Pennsylvania, New York, and Massachusetts. To lower operating costs, Wisconsin would need to convince as many customers to pay tolls using a transponder. When marketing transponders, one significant advantage that may induce customers on the fence to go with a transponder is the fact that the transponder will work in surrounding areas. By providing a transponder that is consistent with technology used in surrounding states, the toll authority is both increasing customer convenience and lowering future operating costs.

The federal government has mandated that tolling authorities achieve national interoperability. See *Moving Ahead for Progress in the 21st Century Act* (P.L. 112-141, Sec. 1512(b)). National interoperability means that a customer would be able to use a single transponder, linked to a single account, to travel and pay tolls anywhere in the United States. This could be achieved through the use of single, nationally recognized transponder, or through the use of readers capable of reading multiple transponder protocols. There are many hurdles to overcome in achieving national interoperability. Chief among these is that existing groups of regionally interoperable toll authorities must agree to use common transponders and readers. This process is complicated by the fact that many toll authorities have invested millions of dollars in existing transponder and readers, providing them with a powerful vested interest and strong financial incentive to make sure that the technology they currently use will not need to be replaced in order to be compliant with the new national standard.

If tolling commences in Wisconsin before a national standard is adopted, it may be beneficial to be a member of a regionally interoperable group of toll agencies, such as E-ZPass, to achieve a greater voice in the national discussion. Wisconsin does not need to make such a

decision until implementation. If a national standard emerges before tolling implementation, it would eliminate the risk that WisDOT might select a protocol only to have to re-invest in a new standard. Legislation to allow for a tolled Interstate system should include clear language that allows WisDOT or another entity to enter into agreements with other states for the purposes of interoperability. This should include the ability to share information with other states for the purpose processing transactions.

### 2.5.8 Transponder Accounts

A transponder prepaid account is an account held in trust by a tolling authority from which tolls are deducted as they are incurred by the customer. Multiple policy and business rule decisions will be necessary when implementing systems to process transponder based toll transactions. For accounts that are funded through a debit card, credit card or electronic funds transfer, toll authorities typically set minimum account balances for opening a transponder account and also minimum balances for automatic replenishment. Minimum initial account balances vary and can depend on the desire to promote transponder transactions. Lower initial account balances may incentive customers to open transponder accounts. Since these transactions are more cost effective, this may result in lower administrative costs for the toll system. Minimum replenishment balances and minimum replenishment amounts also vary significantly among toll authorities. Minimum balances are often set differently depending on the type of transponder account. Personal, commercial and fleet accounts are treated differently because of the way these accounts are used.

Multiple issues can impact setting of minimum balances and replenishment levels. Some toll authorities and states are prohibited from issuing credit and view a negative transponder account as an issuance of credit. In these jurisdictions, replenishment levels may be set to avoid the inadvertent extension of credit. Limits for automatic replenishment can have a significant impact on transaction costs. Replenishing transponder accounts has incremental administrative costs for a toll authority. Raising the minimum replenishment amount can reduce the frequency of replenishment and result in lower incremental administrative costs.

Continual analysis will be needed during implementation and operation to identify the most efficient method of funding and replenishing prepaid toll accounts. High cost transactions like those that can occur for managed lanes or fleet use can rapidly deplete an account. This can cause more frequent replenishments and increase incremental transaction costs.

Development of these types of business rules is an analytical process that depends on toll rates and traffic volumes. It is important is to have sufficient flexibility to refine the process on an iterative basis in order to achieve optimal operating efficiency.

Prepaid accounts that are funded with cash are typically treated differently than those funded through electronic transfers. The ability to fund a transponder account with cash can be an environmental justice issue that may be raised through the NEPA process. Because video billing transactions include a premium, if cash only customers are not provided the ability to fund a transponder account with cash those users can be negatively impacted. These concerns can impact policy and business rule decisions associated with these types of accounts. Instead of automatic replenishment, cash account holders are notified when the balance is low. Toll authorities often provide this notification electronically by phone, email or text. If the account is not replenished, it can be deactivated when a negative balance occurs and the customer can be treated as a video billing customer.

The treatment of dormant accounts also varies among toll authorities. Some toll authorities cancel accounts that are dormant for a specific period of time and either refund unused balances or, if not capable of being refunded, treat unused balances as unclaimed funds under state laws. Other toll authorities leave dormant accounts active indefinitely to maximize potential interest they may receive on the money held in trust. Unless Wisconsin State law would require a refunding of dormant accounts, it is recommended that dormant accounts not be automatically closed and refunded.

### **2.5.9 Exempt Vehicles**

One issue related to tolling generally and not specific to electronic toll collection (ETC) or all-electronic toll collection (AET) is establishing exempt vehicles. This is an area that varies greatly from jurisdiction to jurisdiction. Public police and emergency vehicles are nearly universally exempted. Government vehicles are treated differently depending on the division of government. The important thing to remember when exempting vehicles is that every class of vehicles allowed to travel without charge impacts revenue. Exempting large numbers or many different classes of vehicles can increase operational costs as exemptions are a type of exception transaction that generally require more human intervention than standard types of transactions. Additionally, to the extent that any non-government vehicles are included as exempt it can create fairness and equity issues. Exempt vehicles should be clearly identified in enabling legislation.

### **2.5.10 Signage Requirements**

A component of enabling legislation that is often added by amendment during the legislative process is a signing requirement. Basic fairness demands that notice be provided to

customers prior to imposing a toll pursuant to an AET tolling scheme. However, in some cases if the signing requirement is too prescriptive it can be difficult and prohibitively expensive to install and maintain the required signs. For example, if signs providing notice are required before tolls are imposed that may mean that for tolls that begin at the State's borders, signs must be installed in the adjoining state. Also, overly prescriptive requirements can result in multiple signs at entrance and exit ramps. This can clutter the ramps and make other signs related to safety less effective.

### **2.5.11 Other Administrative Issues**

Additional issues that are not always contemplated during the development of legislation can have a significant impact on an agency's ability to efficiently collect tolls. Some toll invoices may not be capable of collection for a variety of reasons. This introduces the concept of bad debt. The way in which this bad debt would be written off or otherwise handled should be contemplated when legislation is being developed. Some toll accounts may be funded but may go unused. Tolling authority should address when accounts become dormant and what should be done with remaining funds.

Although AET has been in use for many years, innovation continues to occur. Legislation should provide sufficient contracting flexibility to allow Wisconsin to take advantage of new processes. One emerging innovation is net revenue contracts where Wisconsin would contract with a private company solely responsible for collection of tolls and receive a percentage of revenue collected. Guaranteed revenue contracts are also starting to appear where a private company would take the entire risk of collection.

## **2.6 Enforcement**

### **2.6.1 Evolution of Enforcement**

For traditional toll systems, toll evasion laws were typically enforced in the same manner as any other traffic violation. With gated systems, evading a toll meant crashing through a gate. This was a rare occurrence and enforcement was effective using traditional policing methods. With the increasing use of AET, toll system operators are developing new technology, legislation and processes to collect payments from AET toll violators within and outside of their jurisdiction. Many agencies in the U.S. have moved away from the criminal or traffic



process and have instituted a civil process similar to parking violations in an effort to make the enforcement process more efficient.

Pursuing toll evasion violators through effective enforcement creates equity and fairness by ensuring all users of the facility pay their fair share. Effective enforcement also reduces overall system revenue loss. The point at which a user is considered to be a violator depends on the policies and business rules established by the agency. Revenue resulting from enforcement should be retained by the agency administering the system to offset the cost of enforcement.

Although enforcing non-payment through a civil or quasi-civil proceeding can create a more streamlined process, it can also create due process concerns depending on the penalties and appeal rights provided. The degree of due process required varies substantially from state to state. Careful examination of Wisconsin specific limitations should be carefully examined in the development of an effective enforcement process. Enforcement of traffic signal violations through the civil process implicates some of the same due process concerns and has been controversial in multiple states. Both the Missouri Supreme Court and Ohio Supreme Court have ruled on the validity of enforcing traffic violations through a civil process. *See Tupper v. City of St. Louis*, 468 S.W.3d 360 (2015) and *Walker v. City of Toledo* 143, Ohio St.3d 420 (2014). Although these cases are not controlling in Wisconsin, they are good examples of what courts would look for if enforcement processes are challenged.

## 2.6.2 Modern Enforcement Process

The ability to enforce is typically created in one of two ways. One is through a broad grant of authority to the agency to enforce non-payment through the creation of administrative rules. The second is through detailed legislatively established enforcement process. Enforcement schemes vary but have some common components. Typically, enforcement begins when some type of notice is sent from the tolling authority to the user that the user has failed to pay or contest a video invoice. The form and content of this notice is typically prescribed by statute or administrative rule.

The notice identifies what actions are available to the person receiving the notice. Typically, there are two options available, to either pay the invoice or contest it. If the notice is contested some type of review and appeal process is triggered. This process varies significantly from agency to agency depending on due process requirements. In some agencies the review is strictly administrative with no ability to appeal to a court. In other agencies individuals contesting the invoice do have the ability to seek judicial review. In

developing an enforcement process, Wisconsin should look to existing state processes that could be modified or adapted. This helps ensure that the process provides appropriate due process protections to survive any potential challenge.

An effective enforcement process clearly identifies the level of review and the location, jurisdiction and form of review. It also establishes what appeal options are available and how those may be invoked. Most importantly, an effective enforcement process provides sufficient penalties to incentivize payment. In most jurisdictions this includes monetary penalties and prohibiting the renewal of vehicle registrations. Some agencies have the ability to take more aggressive actions like suspending driving privileges, issuing trespass notices and impounding vehicles. The ultimate penalty affects how much due process must be provided.

### **2.6.3 Debt Collection**

Many agencies also use commercial debt collection services to collect unpaid invoices. In some states, the state attorney general is the exclusive provider of these services and laws establishing this include requirements for when unpaid invoices must be submitted to the attorney general for collection. These time requirements can conflict with timing requirements of the enforcement process. In developing an enforcement process, Wisconsin should examine if existing law includes requirements regarding the collection of state debt and whether modification may be necessary to develop an effective enforcement process.

### **2.6.4 Reciprocal Enforcement**

Imposing enforcement remedies is difficult across state lines. Collaboration among multiple entities in numerous states is needed to achieve effective enforcement of AET violations. An example of multistate coordination lies within the Interstate 95 region where the states of Maine, New Hampshire and Massachusetts have entered into agreements for information sharing and reciprocal enforcement of out-of-state vehicle toll violations. Enabling legislation should provide sufficient authority to allow WisDOT or other entity to collaborate with other states for the purposes of enforcement.

## **2.7 Privacy and Data Retention**

Appropriate privacy protection should be included in any enabling legislation. With AET and ETC toll collection, Wisconsin would be collecting and managing large amounts of personal

data. Groups advocating for privacy may be interested in how this data is managed and for what reasons it may be released. Including strong privacy protections would help assure interested groups that data would be managed in a responsible manner and only released for very limited purposes.

The use of video, images and other data collected for video billing purposes will be of concern for many stakeholders. The public may be accepting of using real time traffic data for activities such as issuing Amber or Silver alerts. It may also be appropriate and publicly acceptable to release information for use in criminal proceedings such as human trafficking, abduction and other serious matters, especially if the release requires a court order. However, use of data for civil proceedings and traffic violations would likely be met with objection. Many states have recently passed legislation to protect data collected during the AET process. In some cases, this was a direct result of public opposition to data being used in civil cases like divorce and for enforcement of traffic laws. Enabling legislation should include clear privacy protections and only provide for release of data for criminal proceedings upon a court order. This may be in conflict with other public records requirements in Wisconsin. Careful consideration should be given to what other Wisconsin law may need to be changed to accomplish this.

Generally, once a toll is paid, data is no longer necessary for the purposes of toll collection. To ensure appropriate privacy protection, it is recommended that all data that would allow a person to be personally identified be deleted once any applicable audit period for the toll transaction has expired. However, other non-personally identifiable data should be available to the tolling entity for purposes of planning and operational analysis. This may conflict with existing Wisconsin records retention requirements. Any laws establishing records retention requirements should be reviewed to ensure that they do not conflict with approach.

The collection and use of data necessary to process transponder transactions will also be of concern for customers and stakeholders. The personal and financial information that is required to open and replenish prepaid transponder accounts should be maintained with the same level of security that applies payment systems generally. In developing these systems, industry best practices should be evaluated to ensure that breaches of personal and financial information do not occur.

## 3. POLICY SUMMARY AND DECISION MATRIX

### 3.1 Major Policy Considerations Summary

This section summarizes major policy and legal considerations that must be addressed before implementing tolling in Wisconsin.

<b>Governance Structure</b>	The Wisconsin Constitution arguably restricts a tolling program to being governed directly by WisDOT. It may also be feasible to initiate a tolling program under the direction of a quasi-independent toll authority or board. While the second option presents more legal risk, it also offers potential benefits in the form of additional flexibility.
<b>Delegation of Taxing Authority</b>	A determination must be made as to whether tolls are more appropriately classified as user fees or as taxes. This determination impacts how far the legislature may go in delegating the authority to set toll rates.
<b>Federal Issues</b>	Implementation of tolls must be done in compliance with National Environmental Policy Act. Care must be taken to ensure a Wisconsin tolling program does not violate the dormant Commerce Clause by unfairly burdening Interstate commerce.
<b>Revenue Use</b>	Generally, tolling programs are more likely to withstand legal challenges if the use of toll revenue is restricted to the roadways where the tolls are collected. The use of toll revenues more broadly, for projects that are only indirectly related, increases legal risks associated with revenue use.
<b>Project Selection</b>	It is important that consideration be given to what stakeholders would be included in the project selection process, and what that process would look like.

**Rate Setting**

There are a wide variety of toll rate setting processes employed throughout the country. Two best practices that have emerged are for enabling statutes to insulate the rate setting process as much as possible from political pressure, and to allow for maximum rate setting flexibility within the boundaries of appropriate delegation of legislative authority.

**Toll Collection**

Increasingly, toll authorities are moving away from cash toll collection toward all-electronic toll collection. While electronic toll collection is more efficient and offers increased customer convenience, it also introduces concepts that must be considered in enabling legislation. As examples, a video billing process, a process to establish and transfer responsibility for toll payment, and a process for writing off uncollectable tolls are all issues that need to be addressed when electronic tolling is contemplated.

**Enforcement**

Another impact of electronic tolling is the need to enforce payment of the toll. Consideration must be given to the processes by which Wisconsin residents would be allowed to contest a toll bill, and how they would be afforded due process and ultimately punished for failure to make payment. Consideration must also be made for how information may be shared with agencies outside of Wisconsin to pursue out-of-state violators, and what if any reciprocal enforcement agreements the State may wish to establish.

**Privacy and Data Retention**

Electronic toll collection relies on the collection and use of large amounts of customer data, some of which is personally identifiable. Enabling legislation should maximize the ability of the toll agency to use this data for toll collection purposes, but be very explicit in placing limitations on how and under what circumstances the data may be used for purposes unrelated to toll collection.

### 3.3 Policy Decision Matrix

The matrix bellows identifies policy decisions that may need to be addressed in the development of legislation to allow for a tolled Interstate system in Wisconsin.

**Table 3-1: Policy Decision Matrix**

TOPIC	POLICY DECISION	OPTIONS
<b>Governance</b>	Basic governance structure	<ul style="list-style-type: none"> <li>• Part of WisDOT</li> <li>• Quasi-independent entity</li> </ul>
	General powers. Powers would vary depending on governance structure.	<ul style="list-style-type: none"> <li>• Sue and be sued in own name</li> <li>• Limitations of liability / Sovereign immunity</li> <li>• Planning</li> <li>• Contracting</li> <li>• Purchasing</li> <li>• ROW acquisition</li> <li>• Personnel exempt from public employment requirements</li> <li>• Debt collection</li> <li>• Bonding</li> </ul>
	Relationship to WisDOT Conflicting authority	<ul style="list-style-type: none"> <li>• Powers Supplemental to WisDOT</li> <li>• Distinct Powers</li> <li>• Contract with WisDOT for services</li> </ul>
	Potential distinct powers	<ul style="list-style-type: none"> <li>• Tolling only</li> <li>• Budget</li> <li>• Planning document</li> <li>• Bonding</li> <li>• Other administrative functions               <ul style="list-style-type: none"> <li>» Contracting</li> <li>» Purchasing</li> <li>» Other</li> </ul> </li> </ul>
	Executive leadership	<ul style="list-style-type: none"> <li>• Secretary of Transportation</li> <li>• Executive Director appointed by Secretary, board or other governing body</li> </ul>
	Required key staff	<ul style="list-style-type: none"> <li>• Key staff identified</li> <li>• No key staff identified</li> </ul>
	Required financial experience of key staff	<ul style="list-style-type: none"> <li>• Financial experience for executive director or other key staff required</li> <li>• No specific experience required</li> </ul>

TOPIC	POLICY DECISION	OPTIONS
<b>Revenue Use</b>	Use of revenue	<ul style="list-style-type: none"> <li>• To fund the tolled portion of the Interstate system.</li> <li>• Development</li> <li>• Construction</li> <li>• Operation</li> <li>• Other specifically identified usage</li> </ul>
	Defining the tolled system	<ul style="list-style-type: none"> <li>• Interstate system</li> <li>• Roads with a nexus</li> </ul>
	Other available funding sources	<ul style="list-style-type: none"> <li>• Use of other state funds</li> <li>• Use of federal funds</li> <li>• Ability of WisDOT to contribute to projects</li> </ul>
<b>Project Selection</b>	Project selection	<ul style="list-style-type: none"> <li>• Clarify current authority of the Transportation Projects Commission?</li> <li>• Projects selected at the discretion of Secretary of Transportation</li> <li>• Projects selected with input from board, commission or other advisory group</li> <li>• Projects selected with input from MPO or local governments</li> </ul>
<b>Rate Setting</b>	Setting toll rates Potential constraints	<ul style="list-style-type: none"> <li>• Set by Secretary or other governing body</li> <li>• Maximum toll rate</li> <li>• Public comment</li> <li>• Pursuant to administrative rulemaking requirements</li> <li>• Dynamic pricing</li> <li>• Variable pricing</li> <li>• By geographic regions</li> </ul>
<b>Collection</b>	Establishing collection process	<ul style="list-style-type: none"> <li>• Detailed statutory scheme</li> <li>• Broad statutory grant with rulemaking authority</li> <li>• Hybrid statutory scheme/rulemaking authority</li> </ul>
	Signing requirements	<ul style="list-style-type: none"> <li>• Notice of last exit before tolling begins</li> <li>• Notice of differential toll</li> <li>• Notice of video billing</li> </ul>
	Registered owner liable for toll	<ul style="list-style-type: none"> <li>• Critical component of video billing process</li> <li>• Additional fees may be charged to cover additional cost of video transaction</li> </ul>
	Method of identifying registered owner	<ul style="list-style-type: none"> <li>• As identified in DMV records</li> <li>• As identified in records of comparable agency in another state or country</li> <li>• Previously verified address</li> </ul>

TOPIC	POLICY DECISION	OPTIONS
<b>Collection</b>	Invoicing requirements	<ul style="list-style-type: none"> <li>• Invoice registered owner</li> <li>• Allow consolidation of multiple transactions on a single invoice</li> <li>• Send by regular mail</li> <li>• Presumption of receipt within prescribed time period. (e.g. 3 days min)</li> </ul>
	Form of invoice	<ul style="list-style-type: none"> <li>• Registered owner's name</li> <li>• Descriptions amounts of tolls due</li> <li>• Images of video transaction</li> <li>• Request for payment within specified time period (e.g. 35 days min)</li> <li>• Notice of potential consequences</li> <li>• Instructions for disputing invoice</li> <li>• Contact information for customer service center</li> <li>• Instructions for obtaining a transponder</li> </ul>
	Actions available upon receipt of invoice	<ul style="list-style-type: none"> <li>• Pay invoice</li> <li>• Contest invoice</li> </ul>
	Late Notices	<ul style="list-style-type: none"> <li>• Require late notice within prescribed time period (e.g. 35 days min) if owner does not pay or contest the initial invoice</li> </ul>
	Transponder accounts	<ul style="list-style-type: none"> <li>• Business rules to establish transponder transaction processes including minimum account balances, replenishment and accommodation of cash only customers</li> <li>• Dormant accounts become unclaimed funds within prescribed time period</li> <li>• Actions agency must take with dormant accounts</li> </ul>
	Rented and Leased Vehicles	<ul style="list-style-type: none"> <li>• Vehicle renting or leasing dealer liable for toll as registered owner.</li> <li>• Vehicle renting or leasing dealer not liable for toll upon providing notice of rental or leasing contract</li> </ul>
	Other limitations on owner liability	<ul style="list-style-type: none"> <li>• Owners of stolen vehicles not liable upon providing police report</li> </ul>
	Agreements for national interoperability	<ul style="list-style-type: none"> <li>• Specific authority to enter into agreements with other states for the purposes of establishing interoperability</li> <li>• Requirements for executing agreements</li> </ul>
	Exempt vehicles	<ul style="list-style-type: none"> <li>• Police, fire and other emergency vehicles</li> <li>• WisDOT vehicles</li> <li>• All State vehicles</li> <li>• Local government vehicles</li> </ul>



TOPIC	POLICY DECISION	OPTIONS
<b>Enforcement</b>	Establishing enforcement process	<ul style="list-style-type: none"> <li>• Military convoys</li> <li>• Detailed statutory scheme</li> <li>• Broad statutory grant with rulemaking authority</li> <li>• Hybrid statutory scheme/rulemaking authority</li> </ul>
<b>Enforcement</b>	Consequences of failure to pay or contest within prescribed time period from initial invoice or late notice (e.g. 35 days min)	<ul style="list-style-type: none"> <li>• Owner liable for toll</li> <li>• Loss of right to appeal</li> <li>• Notification to DMV to block registration</li> <li>• Additional fees and monetary penalties</li> </ul>
	Contesting initial invoice	<ul style="list-style-type: none"> <li>• Time within which owner may contest invoice (e.g. 30 days min)</li> <li>• Level of review</li> <li>• Hearing</li> <li>• Admin review no hearing</li> <li>• Ability of owner to submit or present evidence</li> <li>• Qualifications of hearing officer if any</li> <li>• Time within which review must take place (e.g. 35 days min)</li> </ul>
	Process following admin review/hearing	<ul style="list-style-type: none"> <li>• Owner pays amounts due</li> <li>• Within prescribed time period.</li> <li>• Ability to appeal determination</li> </ul>
	Form of appeal available	<ul style="list-style-type: none"> <li>• Court review</li> <li>• Administrative review</li> </ul>
	Penalties for failure to pay tolls and fees	<ul style="list-style-type: none"> <li>• Monetary penalties</li> <li>• Increasing penalties based on number of previous violations</li> <li>• Registration blocks</li> </ul>
	Requirements for imposing penalties	<ul style="list-style-type: none"> <li>• Imposed as part of the review/appeal process</li> <li>• Imposed automatically in event of failure to pay or contest</li> <li>• Imposed through administrative or court action initiated by agency in event of failure to pay or contest</li> </ul>
	Debt Collection	<ul style="list-style-type: none"> <li>• Ability to use debt collection practices to collect unpaid invoices</li> <li>• Ability to forgive unpaid invoices under certain circumstances</li> <li>• Clarification of conflict with any other debt collection practices required by law</li> <li>• Prohibition of debt collection during period of contesting/review</li> </ul>

TOPIC	POLICY DECISION	OPTIONS
	Agreements for reciprocal enforcement	<ul style="list-style-type: none"> <li>• Specific authority to enter into agreements with other states for the purposes of reciprocal enforcement</li> <li>• Requirements for executing agreements</li> </ul>
<b>Privacy Records Ret.</b>	Privacy and data retention requirements for personal information collected as part of the toll collection process	<ul style="list-style-type: none"> <li>• Personal information may be used only for toll collection and enforcement</li> <li>• Use in civil proceedings specifically precluded</li> <li>• Use in traffic proceedings specifically precluded</li> <li>• Use in criminal proceedings allowed upon court order</li> </ul>

*THIS PAGE INTENTIONALLY LEFT BLANK*

## 4. EXAMPLES OF COMMON STATUTORY COMPONENTS

Although legislation varies substantially from jurisdiction to jurisdiction, generally, effective tolling legislation includes basic concepts which are consistently present in the statutory authority of various tolling agencies. This Section includes examples of common statutory components.

### 4.1 Governance

#### 4.1.1 Tolling by Department of Transportation

Toll highways and bridges in the State of Washington are currently operated by the WSDOT Toll Division, rather than a separate regional or statewide toll authority. Toll operations fall under the direction of the Secretary of Transportation. The Toll Division was established by the legislature in 2009 to operate recently opened and planned toll facilities. Prior to this legislative change, 14 toll bridges had been built and financed by the Washington Toll Bridge Authority, and later operated by the Highways Department, a predecessor to modern-day WSDOT.

The Ohio Department of Transportation (ODOT) is another example of a state department of transportation with tolling authority. This ability to toll is distinct from authority of the Ohio Transportation and Infrastructure Commission which operates the Ohio Turnpike. ODOT Tolling authority was passed in 2009 and amended in 2014 to make it compatible with previously enacted law to allow ODOT to deliver projects using public private partnerships. Developing toll projects is at the discretion of the Director of Transportations. However, toll projects must be submitted to the Transportation Review Advisory Counsel. ODOT's tolling authority is included in Chapter 5531 Ohio Revised Code.



<p>application of toll revenue as described in this section, to the owners of any bonds.</p>	
<p><b>Ohio O.R.C. 5531.12 – Ohio Department of Transportation Toll Projects:</b>                  (A) In order to remove present and anticipated handicaps and potential hazards on the highways in this state, to facilitate vehicular traffic throughout the state, to promote the agricultural, commercial, recreational, tourism, and industrial development of the state, and to provide for the general welfare of its citizens, the director of transportation may approve toll projects. Any revenue derived from toll projects shall be used only for purposes of the toll project, including a toll project or any aspect of a toll project pursuant to a public-private agreement authorized by sections 5501.70 to 5501.83 of the Revised Code, and shall not be expended for any purpose other than as provided in Section 5a of Article XII, Ohio Constitution. The toll projects authorized by sections 5531.11 to 5531.18 of the Revised Code are part of the state highway system.                  (B) Any toll project shall be developed and submitted for selection in accordance with the policies and procedures of the selection process of the transportation review advisory council, created under Chapter 5512. of the Revised Code. Each toll project may be separately designated, by name or number, and may be constructed, improved, or reconstructed as the department of transportation may from time to time determine pursuant to sections 5531.11 to 5531.18 of the Revised Code. A toll project shall be considered a state infrastructure project as defined in section 5531.10 of the Revised Code for all purposes of that section and section 5531.09 of the Revised Code and also is a transportation facility as defined in section 5501.01 of the Revised Code.                  (C)(1) Nothing in this chapter shall be construed to permit user fees to be charged on existing nontoll public roads.                  (2) Division (C)(1) of this section does not apply to a toll project as described in division (N)(4) of section 5531.11 of the Revised Code.</p>	<p>Department of Transportation may develop toll projects or impose tolls as part of a public private partnership.</p>

### 4.1.2 Independent Tolling Entities within Department of Transportation

The Florida Turnpike Enterprise (FTE) is an example of an independent tolling entity within a state department of transportation. FTE operates as a separate business unit of the Florida Department of Transportation (FDOT). It was originally created in 1953 as the Florida State Turnpike Authority (FSTA), under which the state’s first toll road, the Sunshine State Parkway (now part of Florida’s Turnpike), was built and opened in 1957. The FSTA was incorporated into the newly-formed FDOT in 1969, with operations of various segments of the Turnpike managed by the individual districts within FDOT. The FTE was established in its current form in 2002, when the Florida Office of Toll Operations, a formerly separate state agency, was folded into the FTE. The FTE is led by an executive director/CEO, who is selected by the Secretary of FDOT. FTE’s authority is set forth in Chapter 338 Florida Statutes.

The North Carolina Turnpike Authority (NCTA) is an example of a tolling entity within a department of transportation. The NCTA was originally established as an independent state agency in 2002. However, in 2009, the agency was transferred into the North Carolina Department of Transportation (NCDOT). The authority is governed by a nine-member board of directors, with members serving staggered four-year terms. Four members are appointed by the governor; two are appointed by the president pro tempore of the North Carolina Senate; and two are appointed by the speaker of the North Carolina House of Representatives. The Secretary of the NCDOT is the ninth member, and is also appointed by the governor. The board of directors hires an executive director of the authority. NCTA's authority is set forth in Chapter 136-89 North Carolina Statutes.

**Table 4-2: Governance Examples – Independent Tolling Authorities within DOT**

<p><b>Florida F.S.A. 338.2215 – Florida Turnpike Enterprise; legislative findings, policy, purpose, and intent:</b> It is the intent of the Legislature that the turnpike enterprise be provided additional powers and authority in order to maximize the advantages obtainable through fully leveraging the Florida Turnpike System asset. The additional powers and authority will provide the turnpike enterprise with the autonomy and flexibility to enable it to more easily pursue innovations as well as best practices found in the private sector in management, finance, organization, and operations. The additional powers and authority are intended to improve cost-effectiveness and timeliness of project delivery, increase revenues, expand the turnpike system's capital program capability, and improve the quality of service to its patrons, while continuing to protect the turnpike system's bondholders and further preserve, expand, and improve the Florida Turnpike System.</p>	<p>FTE given broad authority and responsibility.</p>
<p><b>Florida F.S.A. 338.2216 – Florida Turnpike Enterprise; powers and authority:</b> (1)(a) In addition to the powers granted to the department, the Florida Turnpike Enterprise has full authority to exercise all powers granted to it under this chapter. Powers shall include, but are not limited to, the ability to plan, construct, maintain, repair, and operate the Florida Turnpike System.                  (b) It is the express intention of the Florida Turnpike Law that the Florida Turnpike Enterprise be authorized to plan, develop, own, purchase, lease, or otherwise acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate, and manage the Florida Turnpike System; to expend funds to publicize, advertise, and promote the advantages of using the turnpike system and its facilities; and to cooperate, coordinate, partner, and contract with other entities, public and private, to accomplish these purposes.                  (c) The executive director of the turnpike enterprise shall appoint a staff, which shall be exempt from part II of chapter 110. Among the staff shall be a chief financial officer, who must be a proven, effective administrator with demonstrated experience in financial management of a large bonded capital program and must hold an active license to practice public accounting in Florida pursuant to chapter 473. The turnpike enterprise staff shall also include the Office of Toll Operations.</p>	<p>FTE has broad authority to hire staff.</p> <p>Requirement to pursue and implement new technologies including variable pricing.</p>

<p>(d) The Florida Turnpike Enterprise shall pursue and implement new technologies and processes in its operations and collection of tolls and the collection of other amounts associated with road and infrastructure usage. Such technologies and processes must include, without limitation, video billing and variable pricing.</p> <p>(2) The department shall have the authority to employ procurement methods available to the Department of Management Services under chapters 255 and 287 and under any rule adopted under such chapters solely for the benefit of the turnpike enterprise.</p> <p>(3)(a) The turnpike enterprise shall be a single budget entity and shall develop a budget pursuant to chapter 216. The turnpike enterprise's budget shall be submitted to the Legislature along with the department's budget.</p> <p>(b) Notwithstanding the provisions of s. 216.301 to the contrary and in accordance with s. 216.351, the Executive Office of the Governor shall, on July 1 of each year, certify forward all unexpended funds appropriated or provided pursuant to this section for the turnpike enterprise. Of the unexpended funds certified forward, any unencumbered amounts shall be carried forward. Such funds carried forward shall not exceed 5 percent of the original approved operating budget as defined in s. 216.181(1) of the turnpike enterprise. Funds carried forward pursuant to this section may be used for any lawful purpose, including, but not limited to, promotional and market activities, technology, and training. Any certified forward funds remaining undisbursed on September 30 of each year shall be carried forward.</p> <p>(4) The powers conferred upon the turnpike enterprise under ss. 338.22-338.241 shall be in addition and supplemental to the existing powers of the department and the turnpike enterprise, and these powers shall not be construed as repealing any provision of any other law, general or local, but shall supersede such other laws that are inconsistent with the exercise of the powers provided under ss. 338.22-338.241 and provide a complete method for the exercise of such powers granted.</p>	<p>FTE is treated as a discrete component unit for financial reporting purposes.</p> <p>Powers are supplemental to powers of the Florida Department of transportation.</p>
<p><b>North Carolina N.C.G.S.A. § 136-89.182 – North Carolina Turnpike Authority:</b></p> <p>(a) Creation. - There is created a body politic and corporate to be known as the “North Carolina Turnpike Authority”. The Authority is constituted as a public agency, and the exercise by the Authority of the powers conferred by this Article in the construction, operation, and maintenance of toll roads and bridges shall be deemed and held to be the performance of an essential governmental function.</p> <p>(b) Administrative Placement. - The Authority shall be located within the Department of Transportation and shall be subject to and under the direct supervision of the Secretary of Transportation.</p> <p>(c) Authority Board. - The North Carolina Turnpike Authority shall be governed by a nine-member Authority Board consisting of two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, four members appointed by the Governor, and the Secretary of Transportation. Each appointing authority</p>	<p>NCTA established as a distinct entity.</p> <p>NCTA placed within the DOT and under supervision of Secretary of Transportation.</p> <p>NCTA governed by Authority Board.</p>



shall appoint members who reside in diverse regions of the State. The Chair of the Authority shall be selected by the Authority Board.

(d) Board of Transportation Members. - Members of the North Carolina Board of Transportation may serve as members of the Authority Board.

(e) Staggered Terms. - One of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and three of the initial appointments of the Governor shall be appointed to terms ending January 14, 2007. One of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of the initial appointments to the Authority Board by the General Assembly upon the recommendation of the Speaker of the House of Representatives, and one of the initial appointments of the Governor shall be appointed to terms ending January 14, 2005. The Secretary of Transportation shall serve as an ex officio voting member of the Board. Thereafter, at the expiration of each stipulated term of office, all appointments shall be to a term of four years from the date of the expiration of the term.

(f) Vacancies. - All members of the Authority Board shall remain in office until their successors are appointed and qualified. The original appointing authority may appoint a member to serve out the unexpired term of any member.

(g) Removal of Board Members. - Each member of the Authority Board, notwithstanding subsection (e) of this section, shall serve at the pleasure of the appointing authority. The Chair of the Authority serves at the pleasure of the Authority Board.

(h) Conflicts of Interest, Ethics. - Members of the Authority Board shall be subject to the provisions of G.S. 136-13, 136-13.1, and 136-14.

(i) Compensation. - The appointed members of the Authority Board shall receive no salary for their services but shall be entitled to receive per diem and travel allowances in accordance with the provisions of G.S. 138-5 and G.S. 138-6 as appropriate.

(j) Bylaws. - The Authority Board shall adopt, change, or amend bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational, staffing, and administrative matters as the Authority Board may determine. Any bylaws, or subsequent changes or amendments to the bylaws, shall be included in the Annual Report as required by G.S. 136-89.193.

(k) Executive Director and Administrative Employees. - The Authority Board shall appoint an Executive Director, whose salary shall be fixed by the Authority, to serve at its pleasure. The Executive Director shall be the Authority's chief administrative officer and shall be responsible for the daily administration of the toll roads and bridges constructed, maintained, or operated pursuant to this Article. The Executive Director or his designee shall appoint, employ, dismiss, and, within the limits approved by the Authority Board, fix the compensation of administrative employees as the Executive Director deems necessary to carry out this Article.

(l) Office. - The offices of the Authority may be housed in one or more facilities of the Department of Transportation.

Authority to hire executive director and other employees.

## 4.2 Revenue Use

Enabling legislation for tolling typically places restrictions on how revenue is used. The North Carolina Turnpike Authority and Washington Department of Transportation have clear requirements for use of revenue that limit its use to the facility from which it is derived. Regional tollway authorities in Texas can use revenue off system under certain circumstances. The restrictions on off system use include that there be a benefit to the tolled system.

**Table 4-3: Revenue Use Examples**

<p><b>North Carolina N.C.G.S.A. 136-89.188 – Turnpike Authority - Use of revenues:</b></p> <p>(a) Revenues derived from Turnpike Projects authorized under this Article shall be used only for the following:</p> <ol style="list-style-type: none"> <li>(1) Authority administration costs.</li> <li>(2) Turnpike Project development, right-of-way acquisition, design, construction, operation, maintenance, reconstruction, rehabilitation, and replacement.</li> <li>(3) Debt service on the Authority's revenue bonds or related purposes such as the establishment of debt service reserve funds.</li> <li>(4) Debt service, debt service reserve funds, and other financing costs related to any of the following:             <ol style="list-style-type: none"> <li>a. A financing undertaken by a private entity under a partnership agreement with the entity for a Turnpike Project.</li> <li>b. Private activity bonds issued under law related to a Turnpike Project.</li> <li>c. Any federal or State loan, line of credit, or loan guarantee relating to a Turnpike Project.</li> </ol> </li> <li>(5) A return on investment of any private entity under a partnership agreement with the entity for a Turnpike Project.</li> <li>(6) Any other uses granted to a private entity under a partnership agreement with the entity for a Turnpike Project.</li> </ol> <p>(b) The Authority may use up to one hundred percent (100%) of the revenue derived from a Turnpike Project for debt service on the Authority's revenue bonds or for a combination of debt service and operation and maintenance expenses of the Turnpike Projects.</p> <p>(c) The Authority shall use not more than five percent (5%) of total revenue derived from all Turnpike Projects for Authority administration costs.</p> <p>(d) Notwithstanding the provisions of subsections (a) and (b) of this section, toll revenues generated from a converted segment of the State highway system previously planned for operation as a nontoll facility shall only be used for the funding or financing of the right of way acquisition, construction, expansion, operations, maintenance, and Authority administration costs associated with the converted segment or a contiguous toll facility.</p>	<p>Use of toll revenue restricted by statute.</p> <p>Only 5% of toll revenue may be used for administrative costs</p> <p>Additional limitations on revenue use when non-toll roads are converted to toll roads</p>
<p><b>Washington RCWA 47.56.820 - Imposition of tolls on eligible toll facilities-- Who may authorize, revenue expenditures:</b></p>	

<p>(1) Unless otherwise delegated, only the legislature may authorize the imposition of tolls on eligible toll facilities.</p> <p>(2) All revenue from an eligible toll facility must be used only to construct, improve, preserve, maintain, manage, or operate the eligible toll facility on or in which the revenue is collected. Expenditures of toll revenues are subject to appropriation and must be made only:</p> <p>(a) To cover the operating costs of the eligible toll facility, including necessary maintenance, preservation, administration, and toll enforcement by public law enforcement within the boundaries of the facility;</p> <p>(b) To meet obligations for the repayment of debt and interest on the eligible toll facilities, and any other associated financing costs including, but not limited to, required reserves and insurance;</p> <p>(c) To meet any other obligations to provide funding contributions for any projects or operations on the eligible toll facilities;</p> <p>(d) To provide for the operations of conveyances of people or goods; or</p> <p>(e) For any other improvements to the eligible toll facilities.</p>	<p>Revenue is tied to the facility that generates the revenue.</p> <p>Revenue may only be used for specifically identified purposes.</p>
<p><b>Texas V.T.C.A § 366.037 - Other Highway Projects:</b></p> <p>(a) In addition to the powers granted under this chapter and without supervision or regulation by any state agency or local governmental entity, but subject to an agreement entered into under Subsection (c), the board of an authority may by resolution, and on making the findings set forth in this subsection, authorize the use of surplus revenue of a turnpike project or system for the study, design, construction, maintenance, repair, and operation of a highway or similar facility that is not a turnpike project if the highway or similar facility is:</p> <p>(1) situated in a county in which the authority is authorized to design, construct, and operate a turnpike project;</p> <p>(2) anticipated to either:</p> <p>(A) enhance the operation or revenue of an existing, or the feasibility of a proposed, turnpike project by bringing traffic to that turnpike project or enhancing the flow of traffic either on that turnpike project or to or from that turnpike project to another facility; or</p> <p>(B) ameliorate the impact of an existing or proposed turnpike project by enhancing the capability of another facility to handle traffic traveling, or anticipated to travel, to or from that turnpike project; and</p> <p>(3) not anticipated to result in an overall reduction of revenue of any turnpike project or system.</p> <p>(b) The board in the resolution may prescribe terms for the use of the surplus revenue, including the manner in which the highway or related</p>	<p>An authority may use surplus revenue on non-turnpike projects.</p> <p>Among other requirements it must improve impact on turnpike.</p>

### 4.3 Project Selection

Legislative requirements for project selection often include requirements for feasibility and restrictions on expansion of an existing toll system. If Wisconsin decides to move forward with a tolled Interstate system, it would be important to establish a clear and transparent

process for explaining how decisions are made in the context of project selection and phasing for implementation.

In Washington, the State Legislature determines which facilities are authorized for tolling. Among other requirements, prior to seeking legislative approval of new projects The Florida Turnpike Enterprise must establish a project’s economic feasibility; include it in the Department’s work plan and the plan of the MPO where the project is located. The North Carolina Turnpike Authority may study an unlimited number of projects but may only deliver a maximum of eleven projects without additional legislative authority. Additionally, it must deliver specifically identified projects.

**Table 4-4: Project Selection Examples**

<p><b>Washington RCWA 47.56.820 - Imposition of tolls on eligible toll facilities--</b>  <b>Who may authorize, revenue expenditures:</b>                  (1) Unless otherwise delegated, only the legislature may authorize the imposition of tolls on eligible toll facilities.                  (2) All revenue from an eligible toll facility must be used only to construct, improve, preserve, maintain, manage, or operate the eligible toll facility on or in which the revenue is collected. Expenditures of toll revenues are subject to appropriation and must be made only:                  (a) To cover the operating costs of the eligible toll facility, including necessary maintenance, preservation, administration, and toll enforcement by public law enforcement within the boundaries of the facility;                  (b) To meet obligations for the repayment of debt and interest on the eligible toll facilities, and any other associated financing costs including, but not limited to, required reserves and insurance;                  (c) To meet any other obligations to provide funding contributions for any projects or operations on the eligible toll facilities;                  (d) To provide for the operations of conveyances of people or goods; or                  (e) For any other improvements to the eligible toll facilities.</p>	<p>Only the legislature may authorize a toll project.</p>
<p><b>Florida F.S.A. 338.223 - Proposed turnpike projects:</b>                  (1)(a) Any proposed project to be constructed or acquired as part of the turnpike system and any turnpike improvement shall be included in the tentative work program. A proposed project or group of proposed projects may not be added to the turnpike system unless such project or projects are determined to be economically feasible and a statement of environmental feasibility has been completed for such project or projects and such projects are determined to be consistent, to the maximum extent feasible, with approved local government comprehensive plans of the local governments in which such projects are located. The department may authorize engineering studies, traffic studies, environmental studies, and other expert studies of the location, costs, economic feasibility, and practicality of proposed turnpike projects throughout the state and may proceed with the design phase of such projects. The department may not request legislative approval of a proposed turnpike project until the design</p>	<p>Projects must be economically feasible and included in a tentative work program before becoming part of the system.</p>

phase of that project is at least 30 percent complete. If a proposed project or group of proposed projects is found to be economically feasible, consistent, to the maximum extent feasible, with approved local government comprehensive plans of the local governments in which such projects are located, and a favorable statement of environmental feasibility has been completed, the department, with the approval of the Legislature, shall, after the receipt of all necessary permits, construct, maintain, and operate such turnpike projects.

(b) Any proposed turnpike project or improvement shall be developed in accordance with the Florida Transportation Plan and the work program pursuant to s. 339.135. Turnpike projects that add capacity, alter access, affect feeder roads, or affect the operation of the local transportation system shall be included in the transportation improvement plan of the affected metropolitan planning organization. If such turnpike project does not fall within the jurisdiction of a metropolitan planning organization, the department shall notify the affected county and provide for public hearings in accordance with s. 339.155(5)(c).

(c) Prior to requesting legislative approval of a proposed turnpike project, the environmental feasibility of the proposed project shall be reviewed by the Department of Environmental Protection. The department shall submit its Project Development and Environmental Report to the Department of Environmental Protection, along with a draft copy of a public notice. Within 14 days of receipt of the draft public notice, the Department of Environmental Protection shall return the draft public notice to the Department of Transportation with an approval of the language or modifications to the language. Upon receipt of the approved or modified draft, or if no comments are provided within 14 days, the Department of Transportation shall publish the notice in a newspaper to provide a 30-day public comment period. The headline of the required notice shall be in a type no smaller than 18 point. The notice shall be placed in that portion of the newspaper where legal notices appear. The notice shall be published in a newspaper of general circulation in the county or counties of general interest and readership in the community as provided in s. 50.031, not one of limited subject matter. Whenever possible, the notice shall appear in a newspaper that is published at least 5 days a week. The notice shall include, but is not limited to, the following information:

1. The purpose of the notice is to provide for a 30-day period for written public comments on the environmental impacts of a proposed turnpike project.
2. The name and description of the project, along with a geographic location map clearly indicating the area where the proposed project will be located.
3. The address where such comments must be sent and the date such comments are due.

After a review of the department's report and any public comments, the Department of Environmental Protection shall submit a statement of environmental feasibility to the department within 30 days after the date on which public comments are due. The notice and the statement of environmental feasibility shall not give rise to any rights to a hearing or other rights or remedies provided pursuant to chapter 120 or chapter 403, and shall not bind the Department of Environmental Protection in any subsequent environmental permit review.

(2)(a) Subject to the provisions of s. 338.228, the department is authorized to expend, out of any funds available for the purpose, such moneys as may be necessary for studies, preliminary engineering, construction, right-of-way

MPO must include the project in their TIP.

acquisition, and construction engineering inspection of any turnpike project and is authorized to use its engineering and other resources for such purposes.

(b) In accordance with the legislative intent expressed in s. 337.273, and after the requirements of paragraph (1)(c) have been met, the department may acquire lands and property before making a final determination of the economic feasibility of a project. The requirements of paragraph (1)(c) do not apply to hardship and protective purchases of advance right-of-way by the department. The cost of advance acquisition of right-of-way may be paid from bonds issued under s. 337.276 or from turnpike revenues. For purposes of this paragraph, the term “hardship purchase” means purchase from a property owner of a residential dwelling of not more than four units who is at a disadvantage due to health impairment, job loss, or significant loss of rental income. For purposes of this paragraph, the term “protective purchase” means that a purchase to limit development, building, or other intensification of land uses within the area right-of-way is needed for transportation facilities. The department shall give written notice to the Department of Environmental Protection 30 days before final agency acceptance as set forth in s. 119.0711, which notice shall allow the Department of Environmental Protection to comment. Hardship and protective purchases of right-of-way shall not influence the environmental feasibility of a project, including the decision relative to the need to construct the project or the selection of a specific location. Costs to acquire and dispose of property acquired as hardship and protective purchases are considered costs of doing business for the department and are not to be considered in the determination of environmental feasibility for the project.

(3) All obligations and expenses incurred by the department under this section shall be paid by the department and charged to the appropriate turnpike project. The department shall keep proper records and accounts showing each amount that is so charged. All obligations and expenses so incurred shall be treated as part of the cost of such project and shall be reimbursed to the department out of turnpike revenues or out of the bonds authorized under ss. 338.22-338.241 except when such reimbursement is prohibited by state or federal law.

(4) The department is authorized, with the approval of the Legislature, to use federal and state transportation funds to lend or pay a portion of the operating, maintenance, and capital costs of turnpike projects. For operating and maintenance loans, the maximum net loan amount in any fiscal year shall not exceed 1.5 percent of state transportation tax revenues for that fiscal year.

<p><b>North Carolina N.C.G.S.A. 136-89.183 - Powers of the Authority:</b>                  (a) The Authority shall have all of the powers necessary to execute the provisions of this Article, including the following:                  (1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.                  (2) To study, plan, develop, and undertake preliminary design work on Turnpike Projects. At the conclusion of these activities, the Turnpike Authority is authorized to design, establish, purchase, construct, operate, and maintain no more than eleven projects, which shall include the following:                  a. Triangle Expressway, including segments also known as N.C. 540, Triangle Parkway, and the Western Wake Freeway in Wake and Durham Counties. The described segments constitute one project.                  b. Repealed by S.L. 2013-183, § 5.1, eff. July 1, 2013.                  c. Monroe Connector/Bypass.                  d., e. Repealed by S.L. 2013-183, § 5.1, eff. July 1, 2013.                  f. Repealed by S.L. 2008-225, § 4, eff. Aug. 17, 2008.                  Any other project proposed by the Authority in addition to the projects listed in this subdivision requires prior consultation with the Joint Legislative Commission on Governmental Operations pursuant to G.S. 120-76.1 no less than 180 days prior to initiating the process required by Article 7 of Chapter 159 of the General Statutes.                  With the exception of the two projects set forth in sub-subdivisions a. and c. of this subdivision, the Turnpike projects selected for construction by the Turnpike Authority, prior to the letting of a contract for the project, shall meet the following conditions: (i) two of the projects must be ranked in the top 35 based on total score on the Department-produced list entitled "Mobility Fund Project Scores" dated June 6, 2012, and, in addition, may be subject to G.S. 136-18(39a); (ii) of the projects not ranked as provided in (i), one may be subject to G.S. 136-18(39a); (iii) the projects shall be included in any applicable locally adopted comprehensive transportation plans; (iv) the projects shall be shown in the current State Transportation Improvement Program; and (v) toll projects must be approved by all affected Metropolitan Planning Organizations and Rural Transportation Planning Organizations for tolling.</p>	<p>Authority to develop eleven turnpike projects.</p> <p>Specific projects must be developed.</p> <p>If project isn't included in statute NCTA must consult the Joint Legislative commission on Governmental Operations.</p>
---	--

## 4.4 Rate Setting

The method by which toll rates are set varies from jurisdiction to jurisdiction. Generally, where tolling is administered by a department of transportation, toll rates are set by the department. Where tolling is administered by a turnpike commission or some other type of board, toll rates are set by the commission or board. Some agencies are required to have public hearings and provide an opportunity for public input in the setting of toll rates. Additionally, legislation commonly requires tolls to be set at a level to fund system operation.

The Florida Turnpike Enterprise must comply with requirements for administrative rulemaking when increasing toll rates for existing projects and establishing toll rates for new projects. In Washington, the toll rates to be charged to motorists are set by the Washington State Transportation Commission (WSTC). Ohio law requires the Director of Transportation to set a plan or system of charges in accordance with administrative rulemaking requirements and to establish a written process for setting actual tolls. Once the written plan is in place the Director may set tolls in accordance with the written plan.

**Table 4-5: Rate Setting Examples**

<p><b>Florida F.S.A. § 338.23- Turnpike tolls, fixing; pledge of tolls and other revenues:</b>                  The department shall at all times fix, adjust, charge, and collect such tolls and amounts for the use of the turnpike system as are required in order to provide a fund sufficient with other revenues of the turnpike system to pay the cost of maintaining, improving, repairing, and operating such turnpike system; to pay the principal of and interest on all bonds issued to finance or refinance any portion of the turnpike system as the same become due and payable; and to create reserves for all such purposes.                  (1) Notwithstanding any other law, the department may defer the scheduled July 1, 1993, toll rate increase on the Homestead Extension of the Florida Turnpike until July 1, 1995. The department may also advance funds to the Turnpike General Reserve Trust Fund to replace estimated lost revenues resulting from this deferral. The amount advanced must be repaid within 12 years from the date of advance; however, the repayment is subordinate to all other debt financing of the turnpike system outstanding at the time repayment is due.                  (2) The department shall publish a proposed change in the toll rate for the use of an existing toll facility, in the manner provided for in s. 120.54, which will provide for public notice and the opportunity for a public hearing before the adoption of the proposed rate change. When the department is evaluating a proposed turnpike toll project under s. 338.223 and has determined that there is a high probability that the project will pass the test of economic feasibility predicated on proposed toll rates, the toll rate that is proposed to be charged after the project is constructed must be adopted during the planning and project development phase of the project, in the manner provided for in s. 120.54, including public notice and the opportunity for a public hearing. For such a new project, the toll rate becomes effective upon the opening of the project to traffic.                  (3)(a) For the period July 1, 1998, through June 30, 2017, the department shall, to the maximum extent feasible, program sufficient funds in the tentative work program such that the percentage of turnpike toll and bond financed commitments in Miami-Dade County, Broward County, and Palm Beach County as compared to total turnpike toll and bond financed commitments shall be at least 90 percent of the share of net toll collections attributable to users of the turnpike system in Miami-Dade County, Broward County, and Palm Beach County as compared to total net toll collections attributable to users of the turnpike system. This subsection does not apply when the application of such requirements would violate any covenant established in a resolution or trust indenture relating to the issuance of turnpike bonds. The department may at any</p>	<p>Tolls must be set to fund tolled system.</p> <p>Toll rate changes require publishing notice and holding a public hearing.</p>
---	--



<p>time for economic considerations establish lower temporary toll rates for a new or existing toll facility for a period not to exceed 1 year, after which the toll rates adopted pursuant to s. 120.54 shall become effective.</p> <p>(b) The department shall also fix, adjust, charge, and collect such amounts needed to cover the costs of administering the different toll collection and payment methods, and types of accounts being offered and used, in the manner provided for in s. 120.54 which will provide for public notice and the opportunity for a public hearing before adoption. Such amounts may stand alone, be incorporated in a toll rate structure, or be a combination of the two.</p> <p>(c) Notwithstanding any other provision of law to the contrary, any prepaid toll account of any kind which has remained inactive for 3 years shall be presumed unclaimed and its disposition shall be handled by the Department of Financial Services in accordance with all applicable provisions of chapter 717 relating to the disposition of unclaimed property, and the prepaid toll account shall be closed by the department.</p> <p>(4) When bonds are outstanding which have been issued to finance or refinance any turnpike project, the tolls and all other revenues derived from the turnpike system and pledged to such bonds shall be set aside as may be provided in the resolution authorizing the issuance of such bonds or the trust agreement securing the same. The tolls or other revenues or other moneys so pledged and thereafter received by the department are immediately subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge is valid and binding as against all parties having claims of any kind in tort or contract or otherwise against the department irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the department.(6)The use and disposition of revenues pledged to bonds are subject to ss. 338.22-338.241 and such regulations as the resolution authorizing the issuance of the bonds or such trust agreement may provide.</p>	<p>Department must also collect sufficient amounts to cover payment and collection costs. Broad flexibility in establishing this charge.</p>
<p><b>Washington RCWA 47.56.850 - Transportation commission as state tolling authority:</b></p> <p>(1) Unless these powers are otherwise delegated by the legislature, the transportation commission is the tolling authority for the state. The tolling authority shall:</p> <p>(a) Set toll rates, establish appropriate exemptions, if any, and make adjustments as conditions warrant on eligible toll facilities;</p> <p>(b) Review toll collection policies, toll operations policies, and toll revenue expenditures on the eligible toll facilities and report annually on this review to the legislature.</p> <p>(2) The tolling authority, in determining toll rates, shall consider the policy guidelines established in RCW 47.56.830.</p> <p>(3) Unless otherwise directed by the legislature, in setting and periodically adjusting toll rates, the tolling authority must ensure that toll rates will generate revenue sufficient to:</p> <p>(a) Meet the operating costs of the eligible toll facilities, including necessary maintenance, preservation, renewal, replacement, administration, and toll enforcement by public law enforcement;</p> <p>(b) Meet obligations for the timely payment of debt service on bonds issued for eligible toll facilities, and any other associated financing costs including, but not</p>	<p>Toll rates are set by the transportation commission.</p> <p>Toll rates must be sufficient to meet statutory obligations.</p>

<p>limited to, required reserves, minimum debt coverage or other appropriate contingency funding, insurance, and compliance with all other financial and other covenants made by the state in the bond proceedings;</p> <p>(c) Meet obligations to reimburse the motor vehicle fund for excise taxes on motor vehicle and special fuels applied to the payment of bonds issued for eligible toll facilities; and</p> <p>(d) Meet any other obligations of the tolling authority to provide its proportionate share of funding contributions for any projects or operations of the eligible toll facilities.</p> <p>(4) The established toll rates may include variable pricing, and should be set to optimize system performance, recognizing necessary trade-offs to generate revenue for the purposes specified in subsection (3) of this section. Tolls may vary for type of vehicle, time of day, traffic conditions, or other factors designed to improve performance of the system.</p> <p>(5) In fixing and adjusting toll rates under this section, the only toll revenue to be taken into account must be toll revenue pledged to bonds that includes toll receipts, and the only debt service requirements to be taken into account must be debt service on bonds payable from and secured by toll revenue that includes toll receipts.</p> <p>(6) The legislature pledges to appropriate toll revenue as necessary to carry out the purposes of this section. When the legislature has specifically identified and designated an eligible toll facility and authorized the issuance of bonds for the financing of the eligible toll facility that are payable from and secured by a pledge of toll revenue, the legislature further agrees for the benefit of the owners of outstanding bonds issued by the state for eligible toll facilities to continue in effect and not to impair or withdraw the authorization of the tolling authority to fix and adjust tolls as provided in this section. The state finance committee shall pledge the state's obligation to impose and maintain tolls, together with the application of toll revenue as described in this section, to the owners of any bonds.</p>	<p>Variable pricing specifically allowed.</p>
<p><b>Ohio O.R.C. 5531.14(B) - Establishment of Tolls:</b> In accordance with Chapter 119. of the Revised Code, the director shall establish a plan, schedule, or system of user fees or charges and shall declare the purpose, amount, and duration of the user fees or charges. Any proposal to implement a user fee or other charge under this section may include a plan, schedule, or system of tolls or charges that is subject to adjustment by the director within and in accordance with that plan, schedule, or system. As part of the plan, schedule, or system, the director shall develop a written process for setting user fee rates. In developing the process, the director shall seek and consider public comment. In doing so, the director shall hold at least one public hearing within fifty miles of the location of the toll project for which the written process is developed.</p>	<p>Toll rates set by Director.</p> <p>Development of a written plan must comply with administrative rulemaking requirements.</p>

## 4.5 Toll Collection

The ability to collect tolls is typically created in one of two ways. One is through a broad grant of authority to the agency to collect tolls by any means. This grant is also usually

accompanied by rulemaking authority which allows the agency to create administrative rules to govern the toll collection process. The second is through detailed legislatively established toll collection schemes. Regardless of how it is authorized, to effectively operate an AET facility, Wisconsin would need to establish a video billing process. Effective video billing processes include certain components that are generally consistent from agency to agency.

The Florida Turnpike Enterprise is an example of broad statutory authority with the ability to make rules to refine the toll collection process. FTE is also required to implement new technology in the toll collection process and may spend money to market electronic toll collection. The Ohio Department of Transportation is an example of an agency with a detailed statutory process for electronic toll collection. The Department may also make rules to refine the collection process.

**Table 4-6: Toll Collection Examples**

<p><b>Florida F.S.A. § 338.155 - Payment of toll on toll facilities required; exemptions:</b>                  (1) A person may not use any toll facility without payment of tolls, except employees of the agency operating the toll project when using the toll facility on official state business, state military personnel while on official military business, handicapped persons as provided in this section, persons exempt from toll payment by the authorizing resolution for bonds issued to finance the facility, and persons exempt on a temporary basis where use of such toll facility is required as a detour route. Any law enforcement officer operating a marked official vehicle is exempt from toll payment when on official law enforcement business. Any person operating a fire vehicle when on official business or a rescue vehicle when on official business is exempt from toll payment. Any person participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty is exempt from toll payment. The secretary or the secretary's designee may suspend the payment of tolls on a toll facility when necessary to assist in emergency evacuation. The failure to pay a prescribed toll constitutes a noncriminal traffic infraction, punishable as a moving violation as provided in s. 318.18. The department may adopt rules relating to the payment, collection, and enforcement of tolls, as authorized in this chapter and chapters 316, 318, 320, and 322, including, but not limited to, rules for the implementation of video or other image billing and variable pricing. With respect to toll facilities managed by the department, the revenues of which are not pledged to repayment of bonds, the department may by rule allow the use of such facilities by public transit vehicles or by vehicles participating in a funeral procession for an active-duty military service member without the payment of tolls.</p>	<p>Payment of toll required.</p> <p>Rulemaking authority for rules related to payment collection and enforcement of tolls.</p>
<p><b>Florida F.S.A. § 338.161 - Authority of department or toll agencies to advertise and promote electronic toll collection; expanded uses of electronic toll collection system; authority of department to collect tolls, fares, and fees for private and public:</b></p>	<p>Specific authority to promote electronic toll collection.</p>

<p>(1) The department may incur expenses for paid advertising, marketing, and promotion of toll facilities and electronic toll collection products and services. Promotions may include discounts and free products.</p> <p>(2) The department may receive funds from advertising placed on electronic toll collection products and promotional materials to defray the costs of products and services.</p> <p>(3) The department or any toll agency created by statute may incur expenses to advertise or promote its electronic toll collection system to consumers on or off the turnpike or toll system.</p> <p>(4) If the department or toll agency created by statute finds that it can increase nontoll revenues or add convenience or other value for its customers, the department or toll agency may enter into agreements with a private or public entity allowing the use of its electronic toll collection system to pay parking fees for vehicles equipped with a transponder or similar device. The department or toll agency may initiate feasibility studies of other future uses of its electronic toll collection system and make recommendations to the Legislature to authorize such uses.</p> <p>(5) If the department finds that it can increase nontoll revenues or add convenience or other value for its customers, and if a public or private transportation facility owner agrees that its facility will become interoperable with the department's electronic toll collection and video billing systems, the department may enter into an agreement with the owner of such facility under which the department uses its electronic toll collection and video billing systems to collect and enforce for the owner tolls, fares, administrative fees, and other applicable charges due in connection with use of the owner's facility. The department may modify its rules regarding toll collection procedures and the imposition of charges to be applicable to toll facilities that are not part of the turnpike system or otherwise owned by the department. This subsection does not limit the authority of the department under any other law or under any agreement entered into before July 1, 2012.</p>	
<p><b>Florida F.S.A. 338.2216(1)(d) - Florida Turnpike Enterprise; powers and authority:</b> The Florida Turnpike Enterprise shall pursue and implement new technologies and processes in its operations and collection of tolls and the collection of other amounts associated with road and infrastructure usage. Such technologies and processes must include, without limitation, video billing and variable pricing.</p>	<p>FTE must pursue new toll collection technology.</p>

<p><b>Ohio O.R.C. 5531.141 - Electronic collection of fees:</b>                  (A) The department of transportation may collect a user fee by utilizing a system of collection that is capable of charging an account holder the appropriate user fee by transmission of information from an electronic toll collection device on a motor vehicle. In addition, for any motor vehicle that does not use an electronic toll collection device, the department may utilize an electronic-monitoring system for user fee collection.                  (B)(1) If a motor vehicle uses a toll project and the user fee is not paid through an electronic toll collection device or otherwise, the toll project operator first shall use the electronic-monitoring system for the toll project to determine if the registered owner of the motor vehicle has established an account for the payment of the user fee. If such an account has been established, the toll project operator shall charge the account holder the appropriate user fee. If the toll project operator cannot locate an established account, or if the toll project operator locates an established account but the account cannot be charged the appropriate user fee, the toll project operator may send by regular first class mail an invoice for the unpaid user fee. The toll project operator shall include with the invoice the information described in section 5531.143 of the Revised Code. The toll project operator shall send the invoice to the registered owner of the motor vehicle as shown in the records of either of the following:                  (a) The bureau of motor vehicles;                  (b) The department, division, bureau, office, or other unit of government of any other state or jurisdiction that is functionally equivalent to the bureau of motor vehicles.                  (2) With respect to any user fee and any associated administrative fee, the toll project operator, in the toll project operator's sole discretion, may determine not to pursue collection of that user fee or administrative fee or to terminate collection measures in relation to that user fee or administrative fee.</p>	<p>Legislation allow for electronic toll collection is specific.</p> <p>Includes detailed processes for charging toll.</p> <p>Process for identifying owner is included in statute.</p>
<p><b>Ohio O.R.C 5531.142- Invoices:</b>                  (A) A person or entity that receives an invoice under section 5531.141 of the Revised Code or a late notice under division (C) of this section shall do one of the following:                  (1) Pay the user fee and any administrative fee set forth in the invoice or late notice directly to the toll project operator within thirty-five days after the date of mailing of the invoice or late notice;                  (2) File with the toll project operator a notice to contest liability for the unpaid user fee within thirty-five days after the date of the mailing of the invoice or late notice by utilizing the form provided with the invoice or late notice under section 5531.143 of the Revised Code;                  (3) If the registered owner is a motor vehicle leasing dealer or a motor vehicle renting dealer, notify the toll project operator within thirty-five days after the date of mailing of the invoice or late notice of the name and address of the person who was the lessee or renter of the motor vehicle at the time the user fee was incurred. A motor vehicle leasing dealer or a motor vehicle renting dealer that receives an invoice or late notice shall not pay a user fee or any administrative fee and subsequently attempt to collect a fee or assess the lessee or renter a charge in excess of the amount actually paid on behalf of the lessee or renter.                  (B) Upon receipt of the name and address of the lessee or renter of a motor vehicle provided by a motor vehicle leasing dealer or motor vehicle renting</p>	<p>Options available to owner are included in statute.</p> <p>Accommodation is made for leased and rented vehicles</p>

<p>dealer under division (A)(3) of this section, the toll project operator shall send an invoice to the lessee or renter of the motor vehicle as described in section 5531.141 of the Revised Code. The toll project operator shall send all subsequent late notices for the unpaid user fees to the lessee or renter, and the motor vehicle renting or leasing dealer has no further liability for unpaid user fees or administrative fees under this chapter.</p> <p>(C) If a registered owner fails to pay or contest an invoice within thirty-five days after the date of mailing of the invoice, the toll project operator may send to the registered owner by regular first class mail a late notice containing the information described in section 5531.143 of the Revised Code. The toll project operator may charge an administrative fee for each late notice, the purpose of which is to enable the toll project operator to recover the expenses of collecting the unpaid user fee. The director of transportation shall establish the amount of the administrative fee by rule.</p>	
<p><b>Ohio O.R.C 5531.143- Contents of invoices:</b>                  A toll project operator shall include with each invoice and late notice all of the following:</p> <ul style="list-style-type: none"> <li>(A) The registered owner's name and current known address;</li> <li>(B) Descriptions and amounts of all user fees and administrative fees assessed;</li> <li>(C) A request for payment within thirty-five days after the date of mailing of such invoice or late notice;</li> <li>(D) A warning of the potential consequences for failing to pay the total amount due as indicated in such invoice or late notice, including additional fees and penalties, potential court summons, and inability to renew motor vehicle registrations;</li> <li>(E) Information for disputing the invoice or late notice and a form that a person may use to file a notice to contest liability for a user fee or administrative fee;</li> <li>(F) Contact information for the customer service center for the applicable toll project; and</li> <li>(G) Information about obtaining an electronic toll collection device and establishing an electronic toll collection account.</li> </ul>	<p>Form of invoice established by statute.</p>

## 4.6 Toll Enforcement

The ability to enforce tolls is typically created in one of two ways. One is through a broad grant of authority to the agency to enforce non-payment through the creation of administrative rules. The second is through a detailed legislatively established enforcement process. However, as enforcement becomes increasingly complex, processes often expand to include both detailed legislation and complex administrative rules. Enforcement schemes vary but have some common components. The Florida Turnpike Authority and Illinois State Toll Highway Authority are examples of agencies that rely heavily on administrative rules to establish enforcement processes but also have fairly detailed legislative requirements.

**Table 4-7: Toll Enforcement Examples**

<p><b>Florida F.S.A. § 338.155 - Payment of toll on toll facilities required; exemptions:</b></p> <p>(1) A person may not use any toll facility without payment of tolls, except employees of the agency operating the toll project when using the toll facility on official state business, state military personnel while on official military business, handicapped persons as provided in this section, persons exempt from toll payment by the authorizing resolution for bonds issued to finance the facility, and persons exempt on a temporary basis where use of such toll facility is required as a detour route. Any law enforcement officer operating a marked official vehicle is exempt from toll payment when on official law enforcement business. Any person operating a fire vehicle when on official business or a rescue vehicle when on official business is exempt from toll payment. Any person participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty is exempt from toll payment. The secretary or the secretary's designee may suspend the payment of tolls on a toll facility when necessary to assist in emergency evacuation. The failure to pay a prescribed toll constitutes a noncriminal traffic infraction, punishable as a moving violation as provided in s. 318.18. The department may adopt rules relating to the payment, collection, and enforcement of tolls, as authorized in this chapter and chapters 316, 318, 320, and 322, including, but not limited to, rules for the implementation of video or other image billing and variable pricing. With respect to toll facilities managed by the department, the revenues of which are not pledged to repayment of bonds, the department may by rule allow the use of such facilities by public transit vehicles or by vehicles participating in a funeral procession for an active-duty military service member without the payment of tolls.</p> <p>(2) Any person driving an automobile or other vehicle belonging to the Department of Military Affairs used for transporting military personnel, stores, and property, when properly identified, shall, together with any such conveyance and military personnel and property of the state in his or her charge, be allowed to pass free through all tollgates and over all toll bridges and ferries in this state.</p> <p>(3) Any handicapped person who has a valid driver license, who operates a vehicle specially equipped for use by the handicapped, and who is certified by a physician licensed under chapter 458 or chapter 459 or by comparable licensing in another state or by the Adjudication Office of the United States Department of Veterans Affairs or its predecessor as being severely physically disabled and having permanent upper limb mobility or dexterity impairments which substantially impair the person's ability to deposit coins in toll baskets, shall be allowed to pass free through all tollgates and over all toll bridges and ferries in this state. A person who meets the requirements of this subsection shall, upon application, be issued a vehicle window sticker by the Department of Transportation.</p> <p>(4) A copy of this section shall be posted at each toll bridge and on each ferry.</p> <p>(5) The Department of Transportation shall provide envelopes for voluntary payments of tolls by those persons exempted from the payment of tolls pursuant to this section. The department shall accept any voluntary payments made by exempt persons.</p> <p>(6) Personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the</p>	<p>Offense for non-payment established. Department given broad rulemaking ability.</p>
---	--

<p>use of toll facilities is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by the Department of Transportation, a county, a municipality, or an expressway authority before, on, or after the effective date of the exemption. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.</p>	
<p><b>Florida F.S.A. § 316.1001 - Payment of toll on toll facilities required; penalties:</b></p> <p>(1) A person may not use any toll facility without payment of tolls, except as provided in s. 338.155. Failure to pay a prescribed toll is a noncriminal traffic infraction, punishable as a moving violation under chapter 318.</p> <p>(2)(a) For the purpose of enforcing this section, any governmental entity, as defined in s. 334.03, that owns or operates a toll facility may, by rule or ordinance, authorize a toll enforcement officer to issue a uniform traffic citation for a violation of this section. Toll enforcement officer means the designee of a governmental entity whose authority is to enforce the payment of tolls. The governmental entity may designate toll enforcement officers pursuant to s. 316.640(1).</p> <p>(b) A citation issued under this subsection may be issued by mailing the citation by first-class mail or by certified mail to the address of the registered owner of the motor vehicle involved in the violation. Mailing the citation to such address constitutes notification. In the case of joint ownership of a motor vehicle, the traffic citation must be mailed to the first name appearing on the registration, unless the first name appearing on the registration is a business organization, in which case the second name appearing on the registration may be used. A citation issued under this paragraph must be mailed to the registered owner of the motor vehicle involved in the violation within 14 days after the date of issuance of the citation. In addition to the citation, notification must be sent to the registered owner of the motor vehicle involved in the violation specifying remedies available under ss. 318.14(12) and 318.18(7).</p> <p>(c) The owner of the motor vehicle involved in the violation is responsible and liable for payment of a citation issued for failure to pay a toll, unless the owner can establish the motor vehicle was, at the time of the violation, in the care, custody, or control of another person. In order to establish such facts, the owner of the motor vehicle is required, within 14 days after the date of issuance of the citation, to furnish to the appropriate governmental entity an affidavit setting forth:</p> <ol style="list-style-type: none"> <li>1. The name, address, date of birth, and, if known, the driver license number of the person who leased, rented, or otherwise had the care, custody, or control of the motor vehicle at the time of the alleged violation; or</li> <li>2. If stolen, the police report indicating that the vehicle was stolen at the time of the alleged violation.</li> </ol> <p>Upon receipt of an affidavit the person designated as having care, custody, and control of the motor vehicle at the time of the violation may be issued a citation for failure to pay a required toll. The affidavit shall be admissible in a proceeding pursuant to this section for the purpose of providing that the person identified in the affidavit was in actual care, custody, or control of the motor vehicle. The owner of a leased vehicle for which a citation is issued for failure to pay a toll is</p>	<p>Process for issuing citation included in statute.</p> <p>Accommodation is made for leased and rented vehicles.</p>



<p>not responsible for payment of the citation and is not required to submit an affidavit as specified in this subsection if the motor vehicle involved in the violation is registered in the name of the lessee of such motor vehicle.</p> <p>(d) A written report of a toll enforcement officer to photographic evidence that a required toll was not paid is admissible in any proceeding to enforce this section and raises a rebuttable presumption that the motor vehicle named in the report or shown in the photographic evidence was used in violation of this section.</p> <p>(3) The submission of a false affidavit is a misdemeanor of the second degree.</p> <p>(4) Any governmental entity, including, without limitation, a clerk of court, may provide the department with data that is machine readable by the department's computer system, listing persons who have one or more outstanding violations of this section, with reference to the person's driver license number or vehicle registration number in the case of a business entity. Pursuant to s. 320.03(8), those persons may not be issued a license plate or revalidation sticker for any motor vehicle.</p> <p>(5) Subsections (2)-(4) supplement the enforcement of this section by law enforcement officers, and this section does not prohibit a law enforcement officer from issuing a citation for a violation of this section in accordance with normal traffic enforcement techniques.</p>	
<p><b>Illinois 605 ILCS 10/10 - Powers over Authority affairs, fines, traffic rules and regulations, toll rates, land acquisition:</b> The Authority shall have power:</p> <p>(a) To pass resolutions, make by-laws, rules and regulations for the management, regulation and control of its affairs, and to fix tolls, and to make, enact and enforce all needful rules and regulations in connection with the construction, operation, management, care, regulation or protection of its property or any toll highways, constructed or reconstructed hereunder.</p> <p>(a-5) To fix, assess, and collect civil fines for a vehicle's operation on a toll highway without the required toll having been paid. The Authority may establish by rule a system of civil administrative adjudication to adjudicate only alleged instances of a vehicle's operation on a toll highway without the required toll having been paid, as detected by the Authority's video or photo surveillance system. In cases in which the operator of the vehicle is not the registered vehicle owner, the establishment of ownership of the vehicle creates a rebuttable presumption that the vehicle was being operated by an agent of the registered vehicle owner. If the registered vehicle owner liable for a violation under this Section was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator in the circuit court. Rules establishing a system of civil administrative adjudication must provide for written notice, by first class mail or other means provided by law, to the address of the registered owner of the cited vehicle as recorded with the Secretary of State or to the lessee of the cited vehicle at the last address known to the lessor of the cited vehicle at the time of the lease, of the alleged violation and an opportunity to be heard on the question of the violation and must provide for the establishment of a toll-free telephone number to receive inquiries concerning alleged violations. The notice shall also inform the registered vehicle owner that failure to contest in the manner and time provided shall be deemed an admission of liability and that a final order of liability may be entered on that admission. A duly authorized agent of the Authority may perform or execute the preparation, certification, affirmation, or mailing of the notice. A</p>	<p>Broad authority is included to establish civil fines for non-payment.</p> <p>Registered owner may sue operator to recover fines imposed on owner.</p> <p>Statute requires rules to include certain notice requirements.</p>

<p>notice of violation, sworn or affirmed to or certified by a duly authorized agent of the Authority, or a facsimile of the notice, based upon an inspection of photographs, microphotographs, videotape, or other recorded images produced by a video or photo surveillance system, shall be admitted as prima facie evidence of the correctness of the facts contained in the notice or facsimile. Only civil fines, along with the corresponding outstanding toll, and costs may be imposed by administrative adjudication. A fine may be imposed under this paragraph only if a violation is established by a preponderance of the evidence. Judicial review of all final orders of the Authority under this paragraph shall be conducted in the circuit court of the county in which the administrative decision was rendered in accordance with the Administrative Review Law.<sup>1</sup> The Authority may maintain a listing or searchable database on its website of persons or entities that have been issued one or more final orders of liability with a total amount due of more than \$1,000 for tolls, fines, unpaid late fees, or administrative costs that remain unpaid after the exhaustion of, or the failure to exhaust, the judicial review procedures under the Administrative Review Law. Each entry may include the person's or entity's name as listed on the final order of liability.</p> <p>Any outstanding toll, fine, additional late payment fine, other sanction, or costs imposed, or part of any fine, other sanction, or costs imposed, remaining unpaid after the exhaustion of, or the failure to exhaust, judicial review procedures under the Administrative Review Law are a debt due and owing the Authority and may be collected in accordance with applicable law. After expiration of the period in which judicial review under the Administrative Review Law may be sought, unless stayed by a court of competent jurisdiction, a final order of the Authority under this subsection (a-5) may be enforced in the same manner as a judgment entered by a court of competent jurisdiction. Notwithstanding any other provision of this Act, the Authority may, with the approval of the Attorney General, retain a law firm or law firms with expertise in the collection of government fines and debts for the purpose of collecting fines, costs, and other moneys due under this subsection (a-5).</p> <p>A system of civil administrative adjudication may also provide for a program of vehicle immobilization, tow, or impoundment for the purpose of facilitating enforcement of any final order or orders of the Authority under this subsection (a-5) that result in a finding or liability for 5 or more violations after expiration of the period in which judicial review under the Administrative Review Law may be sought. The registered vehicle owner of a vehicle immobilized, towed, or impounded for nonpayment of a final order of the Authority under this subsection (a-5) shall have the right to request a hearing before the Authority's civil administrative adjudicatory system to challenge the validity of the immobilization, tow, or impoundment. This hearing, however, shall not constitute a readjudication of the merits of previously adjudicated notices. Judicial review of all final orders of the Authority under this subsection (a-5) shall be conducted in the circuit court of the county in which the administrative decision was rendered in accordance with the Administrative Review Law.</p> <p>No commercial entity that is the lessor of a vehicle under a written lease agreement shall be liable for an administrative notice of violation for toll evasion issued under this subsection (a-5) involving that vehicle during the period of the lease if the lessor provides a copy of the leasing agreement to the Authority within 30 days of the issue date on the notice of violation. The leasing</p>	<p>Unpaid fines a debt collectable through debt collection procedures.</p> <p>Administrative process may include penalties beyond fines.</p> <p>Statute includes accommodation for leased vehicles.</p>
---	---

<p>agreement also must contain a provision or addendum informing the lessee that the lessee is liable for payment of all tolls and any fines for toll evasion. Each entity must also post a sign at the leasing counter notifying the lessee of that liability. The copy of the leasing agreement provided to the Authority must contain the name, address, and driver's license number of the lessee, as well as the check-out and return dates and times of the vehicle and the vehicle license plate number and vehicle make and model. As used in this subsection (a-5), "lessor" includes commercial leasing and rental entities but does not include public passenger vehicle entities.</p>	
---	--

## 4.7 Privacy and Data Retention

Privacy protection is increasingly common in tolling legislation. With the growth of AET and ETC, agencies are collecting large amounts of personal data. Groups advocating for privacy are interested in how this data is managed and for what reasons it may be released. Illinois recently enacted legislation to provide for the protection of personal information. The Florida Turnpike Enterprise also has legislation that exempts disclosure of certain personal information.

**Table 4-8: Privacy and Data Retention Examples**

<p><b>Illinois 605 ILCS 10/19.1 - Confidentiality of personally identifiable information obtained through electronic toll collection system:</b> (a) For purposes of this Section: "Electronic toll collection system" is a system where a transponder, camera-based vehicle identification system, or other electronic medium is used to deduct payment of a toll from a subscriber's account or to establish an obligation to pay a toll. "Electronic toll collection system user" means any natural person who subscribes to an electronic toll collection system or any natural person who uses a tolled transportation facility that employs the Authority's electronic toll collection system. "Personally identifiable information" means any information that identifies or describes an electronic toll collection system user, including but not limited to travel pattern data, address, telephone number, e-mail address, license plate number, photograph, bank account information, or credit card number. (b) Except as otherwise provided in this Section, the Authority may not sell or otherwise provide to any person or entity personally identifiable information of any electronic toll collection system user that the Authority obtains through the operation of its electronic toll collection system. (c) The Authority may, within practical business and cost constraints, store personally identifiable information of an electronic toll collection system user only if the information is required to perform account functions such as billing, account settlement, or toll violation enforcement activities.</p>	<p>Limitation on what information may be collected and stored.</p> <p>ISTHA required to develop privacy policy.</p> <p>Privacy policy must include certain components.</p>
---	--

<p>(d) By no later than December 31, 2011, the Authority shall establish a privacy policy regarding the collection and use of personally identifiable information. Upon its adoption, the policy shall be posted on the Authority's website and a copy shall be included with each transponder transmitted to a user. The policy shall include but need not be limited to the following:</p> <ul style="list-style-type: none"> <li>(1) A description of the types of personally identifiable information collected by the Authority.</li> <li>(2) The categories of third-party persons or entities with whom the Authority may share personally identifiable information and for what purposes that information is shared.</li> <li>(3) The process by which the Authority notifies electronic toll collection system users of material changes to its privacy policy.</li> <li>(4) The process by which an electronic toll collection system user may review and request changes to any of his or her personally identifiable information.</li> <li>(5) The effective date of the privacy policy.</li> </ul> <p>(e) This Section does not prohibit the Authority from:</p> <ul style="list-style-type: none"> <li>(1) providing aggregated traveler information derived from collective data relating to a group or category of electronic toll collection system users from which personally identifiable information has been removed;</li> <li>(2) sharing data with another transportation agency or third-party vendor to comply with interoperability specifications and standards regarding electronic toll collection devices and technologies, provided that the other transportation agency or third-party vendor may not use personally identifiable information obtained under this Section for a purpose other than described in this Section;</li> <li>(3) performing financial, legal and accounting functions such as billing, account settlement, toll violation enforcement, or other activities required to operate and manage its toll collection system;</li> <li>(4) communicating about products and services offered by itself, a business partner, or another public agency;</li> <li>(5) using personally identifiable information in research projects, provided that appropriate confidentiality restrictions are employed to protect against the unauthorized release of such information;</li> <li>(6) releasing personally identifiable information in response to a warrant, subpoena or lawful order from a court of competent jurisdiction;</li> <li>(7) releasing personally identifiable information to law enforcement agencies in the case of an emergency when obtaining a warrant or subpoena would be impractical; and</li> <li>(8) releasing personally identifiable information to the Authority's Inspector General or, at the Inspector General's direction, to law enforcement agencies under paragraphs (5) and (6) of subsection (f) of Section 8.5 of this Act.</li> </ul> <p>(f) In any agreement allowing another public entity to use the Authority's toll collection system in a transportation facility, the Authority shall require the other public entity to comply with the requirements of this Section.</p> <p>(g) Personally identifiable information generated through the Authority's toll collection process that reveals the date, time, location or direction of travel by an electronic toll collection system user shall be exempt from release under the Illinois Freedom of Information Act. The exemption in this subsection shall not apply to information that concerns (i) the public duties of public employees and officials; (ii) whether an electronic toll collection system user has paid tolls; (iii) whether the Authority is enforcing toll violation penalties against electronic toll</p>	<p>Law recognizes legitimate use and release of certain data.</p>
---	---

<p>collection users who do not pay tolls; (iv) accidents or other incidents that occur on highways under the jurisdiction of the Authority; or (v) the obligation, receipt, and use of the funds of the Authority. The exemption in this subsection (g) shall not be a limitation or restriction on other Freedom of Information Act exemptions applicable to personally identifiable information or private information.</p>	
<p><b>Florida F.S.A. § 338.155(6) - Payment of toll on toll facilities required; exemptions:</b> Personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by the Department of Transportation, a county, a municipality, or an expressway authority before, on, or after the effective date of the exemption. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.</p>	<p>Law exempts certain data from the public records laws.</p>

## APPENDIX A: Implementation Impacts and Other Considerations

Implementing tolling on the Wisconsin Interstate system would have impacts on multiple programs currently managed by WisDOT. The purpose of Appendix A is to document various potential impacts discovered through coordination with WisDOT during the development of the Toll Resource Documents and Policy Report.

### POTENTIAL REST AREA IMPACTS / TURNPIKE SERVICE PLAZAS

Wisconsin currently has a comprehensive system of 30 rest areas located on the Interstate highway system and other major four-lane highways, with the facilities open year round. Implementing tolling on Interstates system does not require WisDOT to add additional rest area facilities on the Interstate system or competing corridors. The ability of WisDOT to use toll revenue from tolls to maintain or upgrade rest areas that serve the tolled corridors should be clarified. It is possible that expansion or construction of additional rest areas could be needed on existing non-tolled facilities depending on the level of diversion that occurs with the implementation tolling. The number, spacing, and operations of rest areas outside of the toll facilities should continue to be determined by WisDOT based on existing policies and guidelines. If WisDOT chooses to add additional facilities to the Interstate system or competing corridors, additional funding could be required.

Some toll facilities, such as the Illinois Tollway, provide concessions including gas, restaurants, retail stores and truck parking as part of their facilities. Providing necessary services to customers increases customer satisfaction and also provides additional revenue. An important additional benefit is that it encourages customers to stay on the toll system instead of seeking services on other roadways, which also reduces costs associated with additional toll transactions. Toll systems like the Illinois Tollway are considered closed systems. Customers pay upon leaving the system and create an additional transaction when they re-enter the facility. Access to the facility is also generally limited making it difficult for drivers to easily re-enter the system if they choose to exit. This makes it important to provide gas, restrooms and other essential services on closed systems.

Since Wisconsin is not developing a new greenfield toll road under a closed ticket system (as the legacy turnpikes did in the mid-1900's), WisDOT would not need to create retail concessions and oases. Drivers would still be able to access existing WisDOT rest areas and services on local roads. Not only is there no federal requirement to provide concessions or services, but federal law (23 U.S.C. 111) prohibits the commercialization of Interstate rest areas. Existing commercial areas on Interstate toll facilities such as the Illinois Tollway were

grandfathered in as they predated the Interstate system, but new commercial development on Interstate right of way is not allowed. The law does allow vending machines operated by the states, as are currently found at Wisconsin's rest areas. Vending machines at rest areas are operated by visually impaired vendors pursuant to the Randolph Sheppard Act. If significant diversion occurs that reduces the usage of existing Interstate rest areas it could impact the business of those vendors.

## POTENTIAL IMPACTS ON SAFETY/WEIGH-IN-MOTION FACILITIES

Currently, 13 Safety and Weight Enforcement Facilities (SWEFS) are located along the Wisconsin's Interstates, U.S. Highways and at entry points to the state. WisDOT's Motor Carrier Enforcement unit in the Division of State Patrol uses Commercial Vehicle Information Systems and Networks (CVISN) technology at the SWEFs to monitor and enforce commercial truck operations in Wisconsin. Specifically, they monitor the legal weight, length and height of loads. They also identify the registration, insurance, authority/permits, and fuel tax collection for the operators.

Implementing tolling on the Interstate could result in a potential need for additional SWEF and/or Weigh-in-Motion (WIM) installations on non-mainline bypass routes in order to monitor routes that may experience diversion of commercial vehicles avoiding tolls. The decision to install new SWEFs and/or WIMs could be made by WisDOT consistent with its current plans and policies, or for new toll facilities, be made by WisDOT. Additional funding could be required if WisDOT chooses to add additional SWEF and/or WIM facilities on the Interstate system or competing corridors. If truck traffic levels change significantly, it could impact funding through MISAP (motor carrier safety assistance).

## POTENTIAL IMPACT ON SIGNAGE OR STRUCTURES

There may be benefits to locating signage within the toll facility on existing WisDOT bridges or structures (or those owned by other agencies). This sharing of resources could potentially be beneficial to both WisDOT. The sharing of signage could be administratively efficient if tolling in Wisconsin is implemented under WisDOT's control. If a quasi-independent entity administers the tolled system or if the signage or bridge structures are controlled by local government, the conditions of any agreement to share resources would need to be negotiated and documented in some form of written agreement.

For the Illinois Tollway, in cases where a sign needs to be attached to a structure belonging to another agency, the Tollway requires that the sign meet both its standards and the

standards and guidelines of the other agency. The sign design and attachment details must be submitted to the other agency for approval prior to installation.

## POTENTIAL IMPACT ON ITS AND TRAFFIC TECHNOLOGY SHARING

The WisDOT State Traffic Operations Center (STOC) currently handles traffic management for all state highways in Wisconsin. The STOC is located in Milwaukee and is staffed 24 hours a day, 7 days a week. The STOC operates Intelligent Transportation Systems (ITS) equipment statewide to improve safety and efficiency of Wisconsin's freeway system and other major routes. ITS technologies currently deployed in Wisconsin include:

- Closed Circuit Television (CCTV): to monitor the roadway system for congestion and incidents
- Ramp Meters: to manage rate of entering traffic to maintain mainline traffic flow
- Dynamic message signs (DMS): to provide traveler information
- Highway advisory radio (HAR): to provide traveler information
- Roadway sensors : to monitor the roadway system for congestion and incidents
- Road Weather Information Systems (RWIS): to monitor weather and pavement conditions

The same ITS technologies are normally found on toll facilities, though there may be differences in the spacing or numbers of devices deployed. There may be benefits to both WisDOT and the toll operator (if not operated by WisDOT) to sharing the use and costs of equipment. ITS equipment on facilities would be controlled by WisDOT or the toll operator, but if there is a separate toll operator, cooperation and communication between the STOC and the toll operator would be essential for effective traffic management. There may be benefits to sharing traffic management resources from co-located or combined Traffic Operations Centers, as well with adjacent states. There may need to be separate data / communications systems for sensitive information such as toll transactions and toll customer account information. The decision of how best to handle the deployment and control of ITS on the toll facilities would be a policy decision to be made by WisDOT, and/or any separate toll operator in coordination with WisDOT. Conversion of a toll system may also impact Wisconsin's ability to comply with the performance requirements in 23 C.F.R. 511, although any change to federal law to allow for tolling would also likely clarify impacts to the federal program.



## POTENTIAL IMPACT ON WISDOT'S COUNTY-BASED MAINTENANCE PROGRAM

Currently, Wisconsin's county highway departments provide the majority of the maintenance and snow-removal operations on all state and US-numbered highways, and the Interstate system via contracts with the State. Consideration should be given to who maintains toll facilities and toll lanes added to existing facilities, but the current arrangements provides sufficient flexibility to accomplish this. The maintenance requirements for toll facilities may be different than those for WisDOT facilities due to customer expectations for a higher level of service. The performance measurements and standards that currently apply to the maintenance program would help ensure that the roads are maintained according to contracts and that a mechanism is in place to remedy any deficiencies. Whether WisDOT's current maintenance program is extended to the toll facilities, or another arrangement is developed would be a future policy decision based in part on the needs of the toll facilities.