

An Act Concerning the Sustainability of Connecticut's Transportation Infrastructure

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Issue

Provide a preliminary analysis of An Act Concerning the Sustainability of Connecticut's Transportation Infrastructure ([LCO 373](#)).

Summary

This bill authorizes the Department of Transportation (DOT) to charge and collect tolls from large commercial trucks at 12 specified locations in the state through an electronic toll collection system. It (1) requires DOT to establish base rate tolls, which must be from \$6 to \$13, and (2) allows DOT to propose certain toll rate changes, which are subject to approval by the Transportation Policy Council. DOT must deposit toll revenue and any revenue from tolling-related civil penalties into the Special Transportation Fund (STF). This revenue must be used in accordance with federal restrictions on toll revenue use.

The bill allows DOT to enter into various tolling-related agreements, including with toll operators to design, engineer, construct, finance, operate, or maintain electronic toll collection systems. It also allows DOT and the Department of Motor Vehicles (DMV) to jointly enter into, or to authorize a toll operator to enter into on their behalf, reciprocal agreements with other states' toll operators to facilitate collecting unpaid tolls and civil penalties.

The bill establishes a schedule of toll violation fees and penalties for failure to pay a toll. It prohibits DMV from issuing or renewing a motor vehicle registration for a toll customer with unpaid tolls or

penalties. It also establishes requirements concerning access to and retention of toll customers' personally identifiable information.

The bill prohibits the state, during any fiscal year in which special tax obligation (STO) bonds issued from July 1, 2020, through June 30, 2022, are outstanding, from charging any tolls other than those authorized by the bill. For STO bonds issued during this timeframe, the treasurer must include a pledge to bondholders that, unless certain conditions are met, the state will not enact any laws taking effect from July 1, 2020, through June 30, 2030, that change the state's obligation to comply with the above prohibition until the bonds are fully paid off. The bill also prohibits the DOT commissioner from pledging toll revenue to pay a loan or another financial assistance agreement's obligations, other than toll revenue collected from large commercial trucks under the bill.

The bill reconstitutes the Transportation Policy Council (named under current law as the Transportation Policy Advisory Council) as a part of the Legislative Department. In addition to granting the council authority to approve or reject toll rate schedule adjustments submitted by DOT, the bill (1) establishes criteria that its appointed members must meet, and (2) gives the council review and, in some cases, approval authority over specified DOT plans and projects.

The bill requires the DOT commissioner, as he deems appropriate, to apply for loans from the U.S. Department of Transportation under Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation and Improvement Financing (RRIF) programs to finance transportation projects.

Among its other changes, the bill requires the Department of Administrative Services (DAS) to contract with a third party to conduct a disparity study to determine whether the current form of the state's set-aside program achieves the goal of facilitating small and minority contractors' participation in state contracting. It also (1) increases the number of eligible contracts under the set-aside program, (2) creates additional reporting requirements for awarding agencies failing to meet their set-aside goals, and (3) requires DOT to appoint an independent construction compliance officer or agent to monitor compliance by the commissioner, project manager, and each prime construction contractor with applicable state law and DOT contract requirements.

Lastly, the bill increases, from eight to 16, the number of work shifts each week at the Greenwich weigh station that the DMV commissioner must staff.

EFFECTIVE DATE: Upon passage, except where noted

§ 1 — Definitions

This section defines various terms used in sections 1-6 of the bill. These definitions are described below where appropriate.

§ 2 — Tolls Authorized

Toll Locations

The bill allows DOT, in accordance with federal law, to charge and collect tolls from large commercial trucks at specified limited access highway bridges requiring construction, reconstruction, or replacement.

The bill authorizes tolls at the following locations:

1. I-84 crossing the Housatonic River in Newtown and Southbury,
2. I-84 and Route 8 in Waterbury,
3. I-84 over Berkshire Road in West Hartford,
4. I-91 and Route 15 at the Charter Oak Bridge in Hartford and East Hartford,
5. I-95 over the Metro-North Railroad in Stamford,
6. I-95 over Route 33 in Westport,
7. I-95 over the Metro-North Railroad in West Haven,
8. I-95 over Route 161 in East Lyme,
9. I-95 over the Thames River in New London and Groton,
10. I-395 over the Moosup River in Plainfield,
11. I-684 over the Byram River in Greenwich, and
12. Route 8 south of the interchange on I-84 in Waterbury.

DOT must place and maintain signs in advance of any tolled bridge to notify large commercial trucks that a toll will be charged and how to pay it.

Under the bill, a "large commercial truck" is any vehicle in classes 8 to 13 in the Federal Highway Administration's (FHWA) vehicle category classification system. Generally, this means all vehicles with two or more units, one of which is a tractor or straight truck power unit. It excludes all single-unit trucks, regardless of the number of axles (e.g., classes 5 to 7).

The bill also excludes emergency vehicles from this definition (i.e., a fire department vehicle, police vehicle, or public service company or municipal department ambulance or emergency vehicle designated or authorized for use as an emergency vehicle by the DMV commissioner).

Tolling Agreements

The bill allows DOT to enter into tolling agreements with the FHWA and other related agreements with other governmental entities to carry out its duties under the bill.

It also allows DOT to do the following:

1. design, construct, maintain, and operate electronic toll collection systems;
2. enter into agreements with toll operators to design, engineer, construct, finance, operate, or maintain electronic toll collection systems; and
3. retain and employ consultants and assistants on a contract or other basis for legal, financial, professional, technical, or other assistance and advice needed for designing, constructing, operating, maintaining, and financing electronic toll collection systems, or collecting and enforcing tolls.

Under the bill, an "electronic toll collection system" is one where a transponder, camera-based vehicle identification system, video toll transaction system, or other electronic transaction and payment technology is used to deduct a toll payment from a customer's account or create an obligation to pay a toll.

A "toll operator" is an entity that operates an electronic toll collection system through an agreement with DOT.

Reciprocal Agreements

The bill allows DOT and DMV to jointly enter into, or to authorize a toll operator to enter into on their behalf, reciprocal agreements with operators of tolled highways, bridges, or other facilities in other states. The agreements may (1) facilitate collecting unpaid tolls and civil penalties imposed in connection with tolling by owners of large commercial trucks registered in another state and (2) permit sharing information about these persons, including their name, address, and make and number plate of their large commercial truck.

Toll Revenue Use

The bill requires DOT to deposit toll revenue and any revenue from tolling-related civil penalties (see below) into the STF. It requires that this revenue be used in accordance with federal restrictions on toll revenue use (see BACKGROUND).

Toll System Interoperability

The bill requires that the electronic toll collection system operated by DOT or the toll operator be interoperable with all other electronic toll collection systems in the state. It must also comply with all state and federal interoperability requirements and standards, including system technology and fund transfers. (Interoperability refers to the ability of computer systems to exchange and use information.) The DOT and DMV commissioners must consult with the DAS commissioner to ensure coordination and compatibility of information system technology and data.

The bill specifies that, for purposes of interoperability, state laws on state information and telecommunications systems and state purchasing and printing do not apply to electronic tolling systems.

DOT Regulations

The bill requires DOT to adopt regulations implementing the bill's provisions concerning toll locations, tolling agreements, reciprocal agreements, toll revenue use, toll system interoperability, and certain construction-related requirements (see *Other Requirements* below). The regulations specifically must include the manner in which a transponder must be attached to a large commercial truck when travelling on a tolled bridge.

Other Requirements

The bill specifically subjects the construction, reconstruction, or replacement of any limited access highway bridge specified above to the following:

1. (a) prevailing wage requirements or (b) a rate established through a project labor agreement;
2. the state's environmental policy requirements;
3. the state set-aside program for small contractors; and
4. any applicable permitting or inspection requirements for projects of a similar type, scope, and size specified in the general statutes or local ordinances of the municipality where the project is located.

§ 3 — Toll Rates

Initial Schedule

The bill requires the DOT commissioner to establish the initial schedule for "base rate" tolls. Under the bill, the base rates range from \$6 to \$13. At least 30 days before these rates take effect, DOT

must publish them on its website and provide a copy to the Transportation Policy Council (see § 10).

Under the bill, the "base rate" is the rate charged by DOT or the toll operator to the registered owner of a large commercial truck equipped with a transponder.

Transponder-Related Provisions

Under the bill, the registered owner of a large commercial truck equipped with a transponder cannot be charged more than one toll per day per tolled bridge in each direction. The bill requires that large commercial trucks not equipped with a transponder be charged a rate 50% higher than the base rate toll.

Under the bill, a "transponder" is a device attached to a motor vehicle or other electronic transaction and payment technology that automatically identifies the motor vehicle as it travels on a tolled bridge.

Tax Exemption

Under the bill, tolls are exempt from tax by the state, municipalities, and all other political subdivisions or special districts authorized to levy taxes.

Rate Changes

The bill allows DOT to propose toll rate adjustments to the Transportation Policy Council and prohibits toll rate changes from taking effect unless the council approves them (see § 10). The bill does not specify any processes or deadlines that the council must follow in considering proposed rate changes. It is unclear whether "toll rates" are different from "base rate tolls" (see above).

DOT may propose adjusting the rates by the rate of inflation or a rate based on the construction cost index, whichever is greater. The bill does not identify (1) a specific measure of inflation or specific construction cost index or (2) dates on which these calculations must be based.

§§ 4 & 13 — Toll Violations and Vehicle Registrations

Toll Violations (§ 4)

Under the bill, the registered owner of a large commercial truck that travels on a tolled bridge (i.e., "toll customer") incurs an obligation to pay a toll. The failure to pay a toll constitutes a toll violation. The bill does not specify what constitutes a failure to pay a toll.

The bill allows DOT or the toll operator to assess and collect fees and penalties from a toll customer for each toll violation. It also prescribes a series of notices that DOT or the operator must send to a toll customer that does not timely pay a toll invoice, as shown in Table 1 below.

Table 1: Schedule of Toll Violation Fees and Penalties

<i>Customer Action</i>	<i>Result</i>
Toll violation	DOT or the toll operator must issue an invoice to the toll customer for the amount of the past due toll balance, plus a postage fee The toll customer must pay the invoice within 30 days after receiving it
Unpaid invoice	DOT or the toll operator must issue a second invoice to the toll customer for the amount of the past due toll balance, plus a \$1 fee for each unpaid toll violation and a postage fee The toll customer must pay the second invoice within 30 days after receiving it
Unpaid second invoice	DOT or the toll operator must issue a notice of nonpayment to the toll customer for the amount of the past due toll balance and fees, plus a \$1 fee for each unpaid toll violation and a postage fee The toll customer must pay the notice of nonpayment invoice within 30 days after receiving it
Unpaid notice of nonpayment	DOT must issue a notice of liability to the toll customer for the amount of the past due toll balance and fees, plus a \$1 fee for each unpaid toll violation, a \$20 penalty, and a postage fee The toll customer must pay the notice of liability invoice within 30 days after receiving it
Unpaid notice of liability	(1) Toll customer fined up to \$3,000 or (2) if the customer's large commercial truck is registered in Connecticut, the registration is suspended until the amount due on the notice of liability is paid

The bill requires that any person contesting the amount of a toll or civil penalty be given the opportunity for a hearing with DOT in accordance with the Uniform Administrative Procedure Act. The bill requires DMV to provide DOT and any toll operator with information necessary to collect tolls and civil penalties. This includes information about the large commercial truck's make and number plate and toll customer's name and address.

Unpaid Tolls and Vehicle Registrations (§ 13)

The bill requires the DOT commissioner or toll operator to notify DMV at least monthly of every owner of a registered large commercial truck who owes an unpaid toll or civil penalty associated with tolling in Connecticut. The bill prohibits DMV from issuing or renewing the owner's motor vehicle registration until it receives notice from DOT or the toll operator that the toll or civil penalty was paid.

The bill also allows the DMV commissioner to suspend or cancel any motor vehicle registration issued to an owner who has been reported as owing a toll or related civil penalty and whose registration was renewed through an error or false evidence that the toll or penalty was paid. It also allows DMV to suspend or cancel a registration if DOT or the toll operator reports that the toll or penalty was paid with a dishonored check and remains unpaid.

§ 5 — DOT Project Prioritization

The bill requires DOT to prioritize completing transportation projects on and in the immediate vicinity of the tolled bridges specified in the bill. If the commissioner determines that a toll gantry is causing a significant amount of traffic to divert from a highway onto local roads in the municipality where a toll is located, then the commissioner must prioritize projects to mitigate these diversions.

§ 6 — Data Confidentiality

Disclosure of Toll Customer Information

The bill generally prohibits DOT or a toll operator from selling or disclosing personally identifiable toll customer information to any person or entity. However, it allows disclosures that are (1) connected to charging, collecting, and enforcing tolls and related civil penalties; (2) pursuant to (a) a reciprocal agreement, (b) an administrative hearing to contest a toll or civil penalty, or (c) a judicial order; or (3) made to comply with federal or state laws or regulations.

The bill specifies that personally identifiable toll customer information is not a public record for purposes of the Freedom of Information Act.

Under the bill, "personally identifiable toll customer information" is information created or maintained by DOT or a toll operator that identifies or describes a toll customer. This includes the customer's address; telephone number; number plate; photograph; bank account information; credit or debit card number; or the date, time, location, or direction of travel on a tolled highway, bridge, or other facility.

A "toll customer" is the registered owner of a large commercial truck that incurs an obligation to pay a toll.

Retention of Toll Customer Information

The bill prohibits DOT or a toll operator from storing or retaining personally identifiable toll customer information unless it is necessary for collecting and enforcing tolls.

The bill requires DOT or a toll operator to destroy certain information within a specified timeframe unless otherwise provided by law or in connection with an administrative summons or judicial order, including a search warrant or subpoena, in a criminal proceeding. Table 2 provides the deadlines by which certain information must be destroyed.

Table 2: Data Retention Limits

<i>Information Collected</i>	<i>Deadline for Destroying</i>
Personally identifiable toll customer information and other data that specifically identifies a large commercial truck and relates to a specific tolling transaction	Within 60 days after collecting the toll or any related civil penalty or the resolution of an administrative hearing to contest a toll or civil penalty
Data collected by an electronic toll collection system that is not necessary for collecting or enforcing tolls	Within 15 days after collecting the data

The bill allows DOT or a toll operator to release aggregate toll customer information that does not directly or indirectly identify a toll customer or motor vehicle for DOT-authorized research purposes. However, it is unclear how DOT could do this if it must destroy all data that is not necessary for collecting or enforcing tolls 15 days after collecting such data (see above).

Semi-Annual Report

The bill requires DOT to report to the Transportation Committee every six months, beginning six months from the date a toll is first collected. The report must list any request for personally identifiable toll customer information the department receives, identify who made the request, and include a copy of each request.

DOT Regulations

The bill requires DOT to adopt regulations concerning the privacy, security, confidentiality, collection, and use of specified data. This includes personally identifiable toll customer information and any other data the department or a toll operator collects, receives, maintains, archives, accesses, and discloses regarding toll collection and enforcement.

The regulations must include (1) a description of the types of information the department or a toll operator collects, (2) procedures to ensure the privacy and security of personally identifiable toll customer information, and (3) provisions to appropriately limit access to personally identifiable toll customer information and other data.

The bill prohibits DOT from collecting tolls before it adopts these regulations.

§ 7 — Status Report

The bill requires DOT to report to the Transportation Committee annually by October 1 on the status and actions undertaken by the department to implement the bill's tolling-related provisions.

§ 8 — Bond Covenant

The bill prohibits the state, during any fiscal year in which STO bonds issued from July 1, 2020, through June 30, 2022, are outstanding, from charging any tolls other than those authorized by the bill (i.e., on large commercial trucks traveling over the 12 bridges described above).

For STO bonds issued during this timeframe, the treasurer must include a pledge to bondholders that the state will not enact any laws taking effect from July 1, 2020, through June 30, 2030, that change the state's obligation to comply with the above prohibition until the bonds are fully paid off unless the following conditions are met:

1. bondholders are protected in another way or
2. (a) the governor declares an emergency or the existence of extraordinary circumstances in which he invokes the statute allowing him at his discretion, and requiring him whenever the comptroller projects a General Fund budget deficit greater than 1%, to reduce appropriated accounts by up to 5% and total fund appropriations by up to 3% (CGS § 4-85); (b) at least three-fifths of the members of each house of the General Assembly approve the change in compliance; and (c) the change is limited to the fiscal year in progress.

Under the bill, the pledge does not apply to refunding bonds issued to pay the original bonds.

§ 9 — Toll Revenue Pledge

The bill prohibits any agreement the DOT commissioner enters into for a loan or other financial assistance for constructing, reconstructing, or replacing a tolled bridge from pledging toll revenue to pay the agreement's obligations, other than toll revenue collected from large commercial trucks under the bill.

§§ 10 & 21 — Transportation Policy Council

The bill reconstitutes the Transportation Policy Advisory Council (renamed by the bill as the Transportation Policy Council) as a part of the Legislative Department. It requires the Transportation Committee's administrative staff to serve as the council's administrative staff. Under current law, the council is part of the Executive Department and within OPM for administrative purposes only.

As described below, the bill adds specified criteria for appointments to the council, increases the number of non-voting members, and expands the council's powers and duties (e.g., by authorizing it to approve or reject proposed toll rate changes).

Appointed Members

By law, the council consists of 13 voting members, eight appointed and five ex-officio. The bill establishes criteria for each of the eight appointed members, as shown in Table 3 below.

Table 3: Appointment Criteria

<i>Appointing Authority</i>	<i>Criteria Added by Bill</i>
House speaker	Experience and expertise in commuter rail transportation
Senate president pro tempore	Experience and expertise in transportation equity
House majority leader	Experience and expertise in bus transportation
Senate majority leader	Experience and expertise in municipal government
House minority leader	Experience and expertise in public safety
Senate minority leader	Experience and expertise in construction or engineering
Governor	Experience and expertise in transit-oriented development
Governor	Representative of the building trades

As under existing law, the following officials, or their designees, serve as ex-officio council members: the OPM secretary; state treasurer; and the economic and community development, energy and environmental protection, and housing commissioners.

The bill requires that all initial appointments to the council be made by April 1, 2020. As under existing law, (1) appointed members serve at the pleasure of their appointing authority, but no later than the appointing authority's term of office, and (2) legislative leaders' appointees may be legislators.

The bill requires appointing authorities to use best efforts to reflect the state's racial, gender, and geographic diversity. Existing law contains similar requirements (CGS § 4-9b).

Non-Voting Members

The bill adds the chairpersons and ranking members of the Finance, Revenue and Bonding Committee to the council as ex-officio, non-voting members. It thus increases the number of nonvoting members from five to nine. Under existing law, unchanged by the bill, the Transportation Committee's chairpersons and ranking members, and the DOT commissioner or his designee, serve as ex-officio, non-voting members.

Chairperson and Meetings

The bill requires the council's members to select a chairperson from among the council's membership. Under current law, the OPM secretary, or her designee, serves as the council's chairperson.

The bill requires that the council's first meeting be held by June 1, 2020. As under current law, the OPM secretary must schedule the first meeting. The bill requires the council to meet quarterly and at other times as the chairperson deems necessary.

Under current law, three-fourths of the council's voting members constitutes a quorum for transacting business. The bill instead requires an affirmative vote by at least seven members in order to transact business.

Under the bill, any appointed member or designee who fails to attend three consecutive meetings or 50% of the meetings during a calendar year is deemed to have resigned from the council.

Powers and Duties

The bill expands the council's powers and duties, as described below.

Five-Year Transportation Capital Plan. Current law allows the council to review the five-year transportation capital plan DOT develops each year and hold an annual public hearing on it. The bill instead allows the council to (1) hold at least one, rather than only one, public hearing on the plan and (2) approve or reject it in whole or in part (see § 11 below).

Comprehensive Long-Range Plan. The bill allows the council to review the comprehensive long-range plan DOT develops under federal law (see BACKGROUND). (The bill does not specifically require DOT to submit this plan to the council.)

Under the bill, the council may (1) examine the plan's impact on the state's present and future transportation needs; (2) evaluate whether it assures the development and maintenance of an adequate, safe, and efficient transportation system; and (3) conduct at least one public hearing on the plan.

Toll Rates. The bill allows the council to review DOT's initial base rate toll schedule, but it does not grant the council authority to approve or reject this initial schedule.

The bill grants the council authority to approve or reject toll rate schedule adjustments submitted by DOT, as described above. However, it prohibits the council from expanding the classification of trucks or type of motor vehicles subject to tolls for travelling on a tolled bridge (see § 3 above).

State Transportation Improvement Program. The bill allows the council to approve or reject certain transportation projects in the state transportation improvement program (STIP), which DOT develops under federal law, before the program is submitted to the U.S. DOT (see BACKGROUND). (The bill does not specifically require the state DOT to submit the STIP to the council.)

The council's approval authority is limited to projects that are (1) not in DOT's five-year transportation capital plan (see § 11 below) and (2) estimated to cost at least \$50 million. If the council does not approve or reject a project within 15 days after receiving the STIP from DOT, the project is deemed approved.

TIFIA and RRIF. The bill allows the council to review certain transportation projects for which DOT will apply for loans under the federal Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation and Improvement Financing (RRIF) programs (see BACKGROUND). The council's review is limited to projects that (1) are not in the five-year transportation capital plan or STIP and (2) the council has not previously reviewed.

Annual Report. The bill delays, from January 1, 2019, to January 1, 2021, the date by which the council must begin annually reporting on its activities to the Finance, Revenue and Bonding and Transportation committees.

§ 11 — Five-Year Transportation Capital Plan

The bill requires DOT, annually by December 31, to develop a five-year transportation capital plan for the next five federal fiscal years. (Federal fiscal years are from October 1 through September 30.) In practice, DOT already prepares this capital plan.

The bill requires approval by the Transportation Policy Council before the plan may be effective. The plan must (1) include projects in all transportation modes that the department plans to initiate in the next five federal fiscal years, including, highways, bridges, public transportation, facilities, and pedestrian enhancements, and (2) detail these projects' financing and planned investments.

The bill requires DOT to submit and present the proposed plan to the council. The council must approve or reject the plan, in whole or in part, within 30 days after the department's presentation. The plan is deemed approved if the council does not act within this timeframe.

In reviewing the plan, the council must evaluate whether it (1) assures the development and maintenance of an adequate, safe, and efficient transportation system and (2) is consistent with the long-range plan the department develops under federal law (see BACKGROUND).

Under the bill, if the council rejects the plan in whole or in part, it must issue a detailed written explanation of its reasons for doing so. If the council rejects the plan in whole, DOT must submit a revised plan to the council within 30 days after the rejection. (It appears that this requirement does not apply to a plan rejected in part.)

Under the bill, once the council approves a five-year plan for the first time, whether in whole or in part, the presentation and review of a subsequent plan must be limited to new projects and any changes made to the previous five-year plan and any projects in that plan.

§ 12 — Confidential Information

Existing law establishes protocols to protect confidential information (CI) (e.g., Social Security numbers and credit card numbers) that an entity obtains from a state contracting agency under a written agreement to provide goods or services to the state. If an agreement requires a state contracting agency to share CI with a contractor, the contractor must, at its own expense, take certain steps to prevent data breaches. Among other things, contractors must do the following:

1. implement and maintain a comprehensive data security program to protect CI;
2. limit CI access to authorized employees and agents for authorized purposes under confidential agreements;
3. use certain technology, such as firewalls and intrusion detection software, to maintain all data obtained from state contracting agencies; and
4. report actual or suspected data breaches to the attorney general and state contracting agency.

The bill specifies that a toll operator is a contractor for purposes of this law. It also specifies that CI includes the date, time, location, and direction an individual has travelled over a tolled bridge.

§ 14 — Assessment of Transportation Projects

Definition of Transportation Project

Existing law requires the DOT commissioner to (1) develop, and obtain legislative approval for, a method to evaluate “transportation projects” and (2) use this method to evaluate these projects before seeking funding from the legislature for them.

The bill expands the definition of a transportation project covered by this requirement, as shown in Table 4 below.

Table 4: Definition of Transportation Project

<i>Current Law</i>	<i>The Bill</i>
Any transportation planning or capital project that the state begins on or after July 1, 2018, that (1) expands capacity on a limited access highway, transit or railroad system, or parking facility or (2) is estimated to cost at least \$150 million	Any transportation planning or capital project that the state begins on or after July 1, 2021, that (1) expands capacity on a limited access highway, transit or railroad system, or parking facility or (2) is estimated to cost at least \$50 million
The definition excludes any project begun on or after July 1, 2018, that (1) the DOT commissioner finds necessary to maintain the state's infrastructure in good repair and (2) is estimated to cost less than \$150 million	The definition excludes any project begun on or after July 1, 2021, that the DOT commissioner finds is necessary to maintain the state's infrastructure in good repair and does not expand capacity on a limited access highway, transit or rail system, or parking facility

Assessment-Related Deadlines

In delaying the date on which transportation projects become subject to the assessment requirements, the bill makes conforming changes to other deadlines associated with developing and implementing the assessments, as shown in Table 5 below.

Table 5: Deadlines Associated With Transportation Project Assessments

<i>Requirement</i>	<i>Deadline in Current Law</i>	<i>Deadline Under the Bill</i>
DOT commissioner submits the assessment method to the Transportation Committee (the committee must meet to approve or reject the method within 60 days after receiving it)	February 1, 2018	July 1, 2020

Table 5 (continued)

<i>Requirement</i>	<i>Deadline in Current Law</i>	<i>Deadline Under the Bill</i>
DOT commissioner must (1) assess each transportation project using the approved assessment method and (2) submit the assessments to the Transportation Policy Council and post them on DOT's website	Beginning July 1, 2018	Beginning January 1, 2021
DOT commissioner annually reports to the Transportation and Finance, Revenue and Bonding committees on the transportation project assessments completed in the previous calendar year	Beginning January 1, 2019	Beginning July 1, 2021

The bill also retains the following provisions in existing law:

1. requiring DOT to consult with the economic and community development, energy and environmental protection, and housing commissioners; OPM secretary; and the chairpersons and ranking members of the Finance, Revenue and Bonding and Transportation committees in developing the assessment method and
2. prohibiting DOT's five-year transportation capital plan (see § 11 above) from including a "transportation project" unless the department completes an assessment of the project. (As described above, the bill subjects this five-year capital plan to the council's approval.)

§§ 15-17 — State Set-Aside Program

Disparity Study (§ 15)

The bill requires the Department of Administrative Services (DAS) to contract with a third party to conduct a disparity study (see BACKGROUND). The study must provide a statistical analysis of the state's current set-aside program to determine whether its current form facilitates small and minority contractors' participation in state contracting. It must also include a review of current program practices and other states' or governmental entities' best practices.

The study must examine the following:

1. whether there is a disparity between the number of qualified historically underutilized businesses that are ready, willing, and able to perform state contracts and the number of these contractors engaged by state agencies to do so;
2. whether, in the total amount spent on state contracts in a fiscal year, there is a disparity between the percentage of spending awarded to qualified historically underutilized businesses and the percentage of state contracts awarded to these entities in that fiscal year;

3. whether there are any contracting practices or unintentional but existing barriers in the state's contracting processes that prevent small contractors and minority business enterprises (MBEs) from fully participating in the contracting processes; and
4. the impediments to the establishment and growth of small contractors and MBEs capable of performing work required to construct, improve, and maintain transportation infrastructure and transit-oriented development in Connecticut.

By January 1, 2022, the DAS commissioner must submit the study's findings and any recommendations for legislative action to the OPM secretary; DOT commissioner; Transportation Policy Council; and the Government Administration and Elections (GAE), Labor and Public Employees, and Transportation committees.

The bill requires DOT, beginning July 1, 2022, and consistent with federal law, to (1) consider the study's results when evaluating and formulating programmatic goals for minority and disadvantaged business participation and (2) formulate project-specific goals to address and mitigate disparities identified by the study for any project funded solely with state funds.

Set-Aside Contracts (§ 16)

The state set-aside program requires "awarding agencies" (i.e., state agencies and political subdivisions, other than municipalities) to set aside 25% of the total value of all contracts they let for construction, goods, and services each year for exclusive bidding by certified small contractors. The agencies must further reserve 25% of the set-aside value (6.25% of the total) for exclusive bidding by certified MBEs. (Municipalities are covered by a similar requirement concerning certain state-financed public works contracts.)

The bill potentially expands set-aside contracting opportunities with awarding agencies by expanding the total value of contracts on which the 25% set-aside requirement is calculated. More specifically, it eliminates a provision in current law that excludes from this total any goods or services contract that the DAS commissioner determines is not customarily available from or supplied by small contractors.

By law, a certified "small contractor" is a business or nonprofit organization that (1) maintains its principal place of business in Connecticut, (2) had gross revenues of \$20 million or less during the most recent fiscal year, and (3) is independent. MBEs are small contractors owned by women, minorities, or people with disabilities. The MBE owner must also have managerial and technical competence and experience directly related to his or her principal business activities (CGS § 4a-60g(a)).

EFFECTIVE DATE: July 1, 2020, and applicable to small contractor and MBE set-aside program goals established on or after August 30, 2020

Agency Goals and Reporting Requirements (§ 17)

Existing law requires awarding agencies to file a quarterly status report with DAS and the Commission on Human Rights and Opportunities (CHRO) on the implementation and results of their small contractor and MBE set-aside goals. The bill requires that these quarterly reports also be submitted to the Minority Business Initiative Advisory Board.

The bill additionally requires awarding agencies that do not meet their set-aside goals by June 30 of the reporting period to submit a written notice that explains the failure and summarizes the (1) agency's efforts to achieve the goals and (2) strategies it will implement to achieve the goals. The awarding agency must submit the notice to DAS, CHRO, the Minority Business Initiative Advisory Board, and the GAE and Planning and Development committees. The bill allows the committees to hold a public hearing on the notice and require the awarding agency's head to appear at the hearing to explain the noncompliance.

Good Faith Efforts (§ 17)

By law, CHRO, must monitor awarding agencies' achievement of their annual established set-aside goal and submit a quarterly report on the goal achievement to specified recipients (e.g., the DAS commissioner). For awarding agencies that have not achieved their annual goals, the bill additionally requires CHRO to determine whether the agency has made a good-faith effort to do so.

The bill adds the OPM secretary to the list of required report recipients. Under the bill, if CHRO determines the agency has not made good-faith efforts to achieve its annual goals, the secretary must require the agency to implement remedial measures. These may include appointing an independent contract compliance officer or agent. The officer or agent may be an officer or agency of a political subdivision or a private consultant experienced in similar government compliance matters and the state set-aside program's requirements for agency contracts.

§ 18 — DOT Construction Procedures

The bill requires the DOT commissioner to adopt procedures connected with constructing, reconstructing, or replacing the limited access highway bridges specified in the bill. The procedures must do the following:

1. require that contractors or subcontractors take affirmative action to provide equal employment opportunity regardless of race, creed, color, national origin or ancestry, or gender;
2. ensure that hourly wages be paid at the host municipality's prevailing wage unless otherwise established through a project labor agreement; and
3. require prime construction contractors to make reasonable efforts to hire (a) available and qualified residents of the municipality where the work occurs and (b) qualified members of minorities.

These requirements appear to be covered in existing state and federal laws (see BACKGROUND).

Construction Compliance Officer

The bill requires the DOT commissioner to appoint an independent construction compliance officer or agent. The officer or agent may be (1) an officer or agency of a political subdivision of the state or (2) a private consultant experienced in similar public contract compliance matters.

The bill requires the compliance officer to monitor compliance by the DOT commissioner, project manager, and each prime construction contractor with (1) provisions of applicable state law and (2) applicable DOT contract requirements. These include set-asides for small contractors and MBEs, required efforts to hire available and qualified members of a minority, and available and qualified residents of the municipality where the construction, reconstruction, or replacement of a limited access bridge occurs. In practice, DOT's Office of Contract Compliance performs similar functions.

Under the bill, the officer or agent must file quarterly a written report of its findings with the DOT commissioner while the work occurs.

§ 19 — Greenwich Weigh Station Shifts

The bill increases, from eight to 16, the number of work shifts at the Greenwich weigh station that the DMV commissioner must staff in each week. It also eliminates current law's limitation on the number of consecutive shifts that may be worked in one week.

Under existing law, the commissioner must adjust the shifts daily to create an unpredictable schedule. Additionally, the emergency services and public protection commissioner, in consultation with the DMV commissioner, must assign one state trooper to each working shift (CGS §14-270c(b) and (d)).

§ 20 — Applying for Federal Loans

The bill requires the DOT commissioner, as he deems appropriate, to apply for loans from the U.S. Department of Transportation under TIFIA and RRIF to finance transportation projects. In doing so, the commissioner must consider the state's transportation needs and the interest rates of available financing instruments.

Existing law already permits the commissioner, OPM secretary, and state treasurer to enter into loan agreements or other credit agreements with the U.S. DOT, including agreements under TIFIA and RRIF. These loan agreements may be backed by STO bonds (CGS § 13b-78).

Background

Tolling and Federal Law

Although states are free to toll roads, bridges, and tunnels built without federal funds, federal law limits the imposition of tolls on existing federal-aid highways, especially interstate highways. However, recent federal laws have expanded states' abilities to allow tolling in certain instances, such as when reconstructing or replacing bridges (23 U.S.C. § 129).

Toll Revenue Restrictions

Under federal law, toll revenue must be used first on the facility being tolled, including (1) debt service for the tolled road; (2) a reasonable return on investment of any private person financing the road; (3) road maintenance, operating, and improvement costs; and (4) if applicable, payments that the entity that controls tolling revenue owes to another party under a public-private partnership agreement (23 U.S.C. § 129(a)(3)(A)).

If the public authority with jurisdiction over the toll road has met the annual financial obligations related to the toll road and certifies that the road is adequately maintained, any additional toll revenue may be used for other roads and other uses allowed under federal highway law (e.g., maintenance and improvement of other highways, congestion mitigation and air quality improvements, and highway safety initiatives).

Special Transportation Fund and the “Lockbox”

The STF is a dedicated fund used to finance the state's transportation infrastructure program and operate DOT and DMV (CGS § 13b-68). The law requires that specified tax revenue (e.g., fuel taxes and a portion of sales and use tax revenue) and various transportation-related fees, fines, and charges be credited to the STF. By law, STF revenue is pledged to STO bonds issued for

transportation projects through DOT's capital program (CGS §§ 13b-74 to 13b-77), and its resources must be used first to pay off STO bond debt service.

Both the state constitution and the general statutes contain a “lockbox” provision, which preserves the STF as a perpetual fund; requires that the fund be used exclusively for transportation purposes, including paying transportation-related debt; and requires that any funding sources directed to the STF by law continue to be directed there, as long as the law authorizes the state to collect or receive them (Conn. Const., art. III § 19; CGS § 13b-68(b)).

Long-Range Statewide Transportation Plan

Federal law requires each state to prepare a long-range statewide transportation plan that provides for developing and implementing a multimodal transportation system, including transit, highway, bicycle, pedestrian, and accessible transportation. The plan must identify how the transportation system will meet the state's economic, transportation, development, and sustainability goals, among others, over a long-term planning horizon (23 U.S.C. § 135 & 49 U.S.C. § 5304).

Statewide Transportation Improvement Program

Federal law requires each state to develop a statewide transportation improvement program (STIP) covering a period of at least four years. The STIP is a staged, multi-year, statewide intermodal program of transportation projects, consistent with the statewide transportation plan and planning processes as well as metropolitan plans, transportation improvement programs (TIPs), and planning processes. The STIP must be developed in cooperation with the metropolitan planning organizations (MPOs), public transit providers, and any Regional Transportation Planning Organizations (RTPOs) in the state and must be compatible with the TIPs for the state's metropolitan areas (23 U.S.C. § 135(g) & 49 U.S.C. § 5304(g)).

TIFIA and RRIF

Under federal law, the TIFIA program provides credit assistance, including direct loans, loan guarantees, and standby lines of credit, for qualified transportation projects of regional and national significance. In general, states may receive federal credit assistance in amounts of up to 33% of total reasonably anticipated eligible project costs (23 U.S.C. § 601 *et seq.*).

The RRIF program provides direct loans and loan guarantees to finance development of railroad infrastructure. Under the program, states can receive direct loans to fund up to 100% of a railroad project with repayment periods of up to 35 years (45 U.S.C. § 821 *et seq.*).

Disparity Study

In *City of Richmond v. Croson*, (488 U.S. 469 (1989)), the U.S. Supreme Court held that race-based action by local and state governments requires strict scrutiny review under the Fourteenth Amendment's equal protection clause. To withstand strict scrutiny review, the government must demonstrate that the statute serves a compelling public interest and is narrowly tailored to meet that interest.

Regarding racial preferences or quotas in public contracting, the Court held that a public agency must show statistical evidence of a significant disparity between the number of qualified minority contractors willing and able to perform a particular service and the number actually hired by the agency or its prime contractors.

PA 12-1, § 110, (June 12 Special Session) required the Connecticut Academy of Science and Engineering (CASE) to conduct a disparity study analyzing the state's set-aside program. CASE divided the study into four phases and completed the third of these phases in May 2016. However, it did not conduct the fourth phase, an analysis of the availability and utilization of minority-owned businesses.

Existing State and Federal Contracting Requirements

Under existing law, each state contract must contain specified language that the contractor agrees to, among other things, take affirmative action and state that it is an “affirmative action-equal opportunity employer” (CGS § 4a-60). Additionally, existing law generally requires state contractors to file affirmative action plans with CHRO (CGS §§ 46a-68c and -68d).

Federal regulations require contractors and subcontractors performing work on federal and federally assisted highway contracts to comply with nondiscrimination and affirmative action requirements (23 C.F.R. 230).

Both federal and state law establish prevailing wage requirements. Federal law (the Davis-Bacon and Related Acts) applies to contractors and subcontractors performing on federally funded or assisted contracts that exceed \$2,000 for constructing, altering, or repairing public buildings or public works. The state's prevailing wage law applies to any public works construction project that will cost at least \$1,000,000 for new construction or \$100,000 for remodeling projects (CGS § 31-53).

Federal regulations generally prohibit local hiring preferences for federally funded projects (2 C.F.R. 1201).

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