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# Missouri Legislative Academy

## Toll Roads in Missouri?

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### ***A. Introduction***

In the past few years, Missouri legislators have been considering whether the state should implement toll roads. Historically, Missouri and other states have funded transportation projects on a "pay-as-you-go" basis, paying for construction, maintenance and administration as money became available from traditional user fees such as gas tax revenues and registration fees. Today, however, there are toll roads in 29 states and they bring in approximately \$4 billion a year.<sup>2</sup> Given Missouri's current situation with transportation financing, toll roads might be one avenue in addressing some of our highway needs. Toll roads, however, should not be seen as a panacea for financing all of our transportation needs. Toll roads are typically not very popular with Missouri voters, and since all roads in Missouri cannot become toll roads, toll roads are at best a limited source of new revenue.

Several bills and resolutions have been introduced to authorize toll roads in Missouri in the 2004 session. The reader is encouraged to review the House and Senate web pages for additional information at [www.house.mo.gov](http://www.house.mo.gov) and [www.senate.mo.gov](http://www.senate.mo.gov).<sup>3</sup>

### ***B. History of Toll Roads***

Tolls go back to beginnings of civilization and commerce. Toll roads in India are mentioned in ancient texts from the 4<sup>th</sup> century BC. In the early 18<sup>th</sup> century, England passed a series of laws to allow the formation of toll road companies, known as "turnpikes."<sup>4</sup> By the early 1800s, Britain had 24,856 miles of toll roads.

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1. Stephen Witte is a Staff Attorney in the Division of Research for the Missouri State Senate.

2. Matt Sundeen and James Reed, "Is it the End of Pay-As-You-Go in Transportation Finance?" *State Legislatures Magazine*, National Conference of State Legislatures, April 2000.

3. Resolutions and bills authorizing toll roads include SJR 31, SJR 38, SB 855, SB 958, HJR 31, HJR 34 and HB 857 (2004).

4. The companies were named turnpikes because the companies used pikes or spear-like bars to block passage on the roads unless the individual paid his toll.

Toll roads were prominent in the early days of the American republic. After the American Revolution, an era of road building began. In 1792, the first turnpike was chartered in Pennsylvania.<sup>5</sup> Following the construction of this toll road, several other turnpike companies were chartered across the country. According to one account, at least 10,000 miles of private toll roads were built in the first 60 years of the Republic.<sup>6</sup>

By the late 1800s, turnpikes went into decline because they were unable to compete with the railroads that were more efficient in moving large amounts of goods across the country. After the advent of the automobile in the early 20<sup>th</sup> century, however, the need for a greater system of highways became more important. The financing of these roads was another matter. In the 1920s the Federal Bureau of Public Roads was created. This agency successfully pushed the idea that a national network of roads was needed and that only government funding would ensure development.<sup>7</sup> Following this paradigm, the Federal Highway Act was enacted in 1921 to provide financial assistance to the states to build roads and bridges.

By the 1930s, it was becoming more apparent that a national network of highways required up-front investments too large to be financed by taxes alone, especially in the eastern part of the United States. A highway building boom ensued in the 1930s and tolls were used on many roads, bridges and tunnels to help finance the construction.

The first roadways to be tolled by a state highway department were in Connecticut.<sup>8</sup> Various state turnpike authorities were formed during the war years, following the example of the Pennsylvania Turnpike, which was launched in 1935. These government-owned business corporations pioneered the earliest sections of the interstate highway system and financed approximately 2,100 miles of tolled roadways between 1940 and 1956.<sup>9</sup>

In 1956, Congress passed the Federal Aid Highway Act. This act introduced a federal gasoline tax to finance a highway trust account out of which the federal government would fund 90 percent of the cost of new interstate freeways. The federal act grandfathered the existing toll roads into the interstate system, but banned any new toll roads on the interstates.<sup>10</sup> The coast-to-coast highway system envisioned by the federal act was legislated as a tax-supported system, not

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5. *Toll Facilities in the United States*, U.S. Department of Transportation, Federal Highway Administration, February 1999.

6. Joseph Gomez-Ibanez and John R. Meyer, "Private Toll Roads in the United States," Report prepared for the U.S. Department of Transportation, 1991.

7. Bruce E. Seely, *Building the American Highway System: Engineers and Policymakers* (Philadelphia: Temple University Press, 1987).

8. Gomez-Ibanez and Meyer, 4.

9. Peter Samuel, "Highway Aggravation: The Case for Privatizing Highways", Cato Institute, June 27, 1995.

10. See 23 U.S.C. Sec. 301 for the general prohibition against tolls on interstates and federal highways.

a toll system. Accordingly, with the implementation of federal aid to states to build the interstate system, proposals for further toll road construction diminished.

By the 1980's, the pendulum began to swing back again in favor of toll roads. The nation's highway infrastructure was beginning to show signs of age, resistance grew to new state taxes, and federal gas tax money was increasingly unavailable for new highway construction. With decreasing sources of revenues to build new roads, states once again considered the concept of toll roads.

### ***C. Missouri and Toll Roads***

The state of Missouri has never had a state-sponsored toll road system. Although the statutes allow for local political subdivisions to build toll bridges and toll roads under certain circumstances, the Missouri Department of Transportation does not have the authority to engage in building toll roads on its own.<sup>11</sup>

In 1967, Governor Hearnes successfully obtained passage of a bill through the General Assembly creating the Missouri Turnpike Authority.<sup>12</sup> The following year, however, the Missouri Supreme Court struck down the act as unconstitutional.<sup>13</sup> In that case, the Missouri Supreme Court held that the act was unconstitutional because it allowed the highway commission to use state road funds to retire obligations incurred by the toll authority. Since the state road fund was only to be used for the purposes enumerated in the constitution, and toll roads were not one of the stated purposes, the Court struck the Act down. The Court further found that the whole Act was unconstitutional since using the state road fund to meet certain obligations of the toll authority was an essential part of the legislation.

In 1970, toll road supporters took the proposal to the voters in the form of a constitutional amendment, but nearly 71 percent of the electorate rejected the plan. In 1991, the General Assembly passed House Joint Resolution 2, a constitutional amendment to authorize toll roads, but the measure failed at the polls in 1992. In recent years, several resolutions to allow toll roads have been proposed in the General Assembly, but none of the resolutions garnered enough votes to be submitted to the voters. Nonetheless, many legislators, discouraged by the recently terminated Fifteen Year Plan, have turned to tolls as another method to finance new construction and to rehabilitate deteriorating highways.

### ***D. Feasibility of Toll Roads in Missouri***

Even if the Missouri Department of Transportation had the authority to construct toll roads, it would have to determine where they would be built. Some highways would not support tolls imposed upon them because they would either not generate enough traffic to support toll road construction or, if constructed, the tolls would be too high to make them economically feasible.

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11. See chapter 234 and 238, RSMo. For example, under the Transportation Corporation Act of 1990 (sections 238.300 to 238.367), not-for-profit corporations are given the authority to build toll roads and toll bridges. The first and only project financed under the Public-Private Partnership Act was the Lake of the Ozarks Bridge and several miles of approach road to the bridge. The toll bridge opened in 1998 and cost approximately \$24 million.

12. Chapter 225, RSMo 1967 (now repealed).

13. See, *Pohl v. State Highway Commission of Missouri*, 431 S.W.2d 99 (Mo. banc 1968).

Many supporters of tolls have suggested that some of the interstates, such as I-70, should become toll roads. As mentioned above, however, there is a federal prohibition against charging a toll on a federal interstate, although in recent years, Congress has curtailed the restriction. In 1987, Congress enacted a toll road pilot program in which nine states were given the authority to pursue development and construction of toll roads with up to 35 percent federal aid funds.

In 1998, Congress passed the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21). TEA-21 creates a pilot program under which a state may collect tolls on an interstate highway. The pilot program contains a long list of requirements for using tolls on existing interstates. These requirements include: (1) no more than three national projects can be approved under the pilot program; (2) projects selected for the program must be those that cannot be funded without tolls; (3) the state must show that the interstate could not be maintained or improved “to meet current or future needs” from state apportionments and allocations; (4) all tolls must be used only for debt service, reasonable rates of returns on private sector investments (if any) and costs to improve and operate the toll facility; (5) the local metropolitan planning organization must be notified of the plan to use tolls; (6) the state must develop a management and finance plan for implementing tolls; (7) the project must be audited on a regular basis; and (8) no interstate maintenance funds can be used on the project.<sup>14</sup>

Thus, if Missouri wants to toll portions of I-70 or some other interstate, it will have to get the Federal government’s approval first. Recently, the Missouri Department of Transportation considered building a parallel toll road along I-70 as one alternative to rehabilitating the aging highway. The Department, however, has chosen to widen the lanes on I-70 as the preferred strategy for improving the interstate. Estimated construction costs for widening the highway are \$2.5 billion to \$3 billion.<sup>15</sup> Based on the high price tag for repairing I-70 and Missouri’s current revenue shortfalls, Missouri might qualify under the federal pilot project by showing that its conventional funding sources are not sufficient to maintain the interstate.

No state has taken advantage of the toll road pilot project authorized in 1998. Arkansas attempted to do so recently, but the proposal received a lot of opposition from the trucking industry. As a result, the measure was shelved. Other states have faced opposition from the trucking industry when the issue of toll roads has arisen. For example, in Wisconsin, a policy study was issued which stated that Wisconsin’s interstate system could be funded by using tolls.<sup>16</sup> Shortly after its release, both the media and the trucking industry attacked the report.<sup>17</sup> As other state experience has shown, not only must toll road projects be economically feasible, they must be politically feasible.

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14. Section 1216 of TEA-21, Innovative Surface Transportation Financing Methods, subsection (b) Interstate System Reconstruction and Rehabilitation Pilot Program.

15. *I-70 Improvement Study*, The Missouri Highways and Transportation Commission, October 4, 2000.

16. Robert W. Poole, Jr., “Private Tollways for Wisconsin,” *Wisconsin Policy Research Institute Report*, Vol. 9, No. 2, February 1996.

17. Robert W. Poole, Jr. “Another Look at Tolling Wisconsin’s Interstates,” *Wisconsin Interest*, Fall/Winter 1998.

### ***E. Advantages and Disadvantages of Toll Roads***

Toll roads offer an alternative source of revenue for constructing new highways or maintaining current roads. Toll roads, like any other issue, offer both positive and negative aspects. The supporters of toll roads tout toll roads as the fairest way to charge motorists for their use of the highways. Tolls force those who use the highway to pay for it, whereas those who do not use the highway are not required to contribute.<sup>18</sup> In addition, toll roads generally charge heavy vehicles in a way that corresponds more closely than motor fuel taxes with the degree of wear that they impose on the pavement. According to the latest federal cost allocation study, the current highway fees “do a poor job reflecting costs at the heavier weights.”<sup>19</sup> For example, single-unit trucks over 23 tons pay only 20 percent of the costs they impose, and certain combination trucks near the federal weight limit pay about half the costs they impose. Toll roads could make heavier trucks pay their fair share by imposing a toll, which corresponds with the costs they impose. The Pennsylvania and Ohio turnpikes base their tolls for trucks on weight classes multiplied by the distance traveled by the truck.

Toll roads also offer a way of capturing costs from out-of-state travelers who do not necessarily purchase gasoline while traveling in the state. Since many of these drivers may not purchase gasoline in this state, they are also not paying any gasoline taxes or other similar user fees for driving on our roads. In essence, toll roads ensure that out-of-state drivers pay for the highways they use.

One of the major objections to toll roads raised by opponents is that drivers traveling toll roads are paying twice. In addition to the toll they pay, they are paying motor fuel taxes, registration fees and other transportation-related taxes. Some states, which have toll roads, address the motor fuel tax issue by rebating a certain percentage of the fuel tax when the vehicle is being driven on a toll road. However, this method might be too administratively complex and cumbersome for many motorists.<sup>20</sup>

Using toll roads to finance Missouri’s highway infrastructure is just another alternative for the General Assembly to consider. Before implementing a toll road system in Missouri, a constitutional amendment would have to be passed giving Missouri Department of Transportation the authority to build and operate them. Further, the state should conduct feasibility studies to determine where to construct the toll roads. Finally, legislators need to determine whether toll roads are “politically feasible” in a state where motorists are used to driving toll-free.

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18. Peter Samuel, *Putting Customers in the Driver’s Seat: The Case for Tolls*, Reason Public Policy Institute, Policy Study No. 274, November 2000.

19. Jim March, *1997 Federal Highway Cost Allocation Study*, (Washington D.C: Federal Highway Administration, report HPP-10/9/97(3M) E, August 1997), p. IV-22.

20. For example, Missouri could rebate motor fuel taxes to motorists who use toll roads in the same manner as it rebates the tax paid by farmers and other persons who use motor fuel for non-highway purposes. Returning rebates would be administratively complicated and it would be difficult for individuals to maintain records of the fuel they used while on a toll road.

Toll roads can only be a part of the solution to Missouri's highway transportation needs, under the best of circumstances. In addition, toll roads cannot significantly contribute to the resolution of Missouri's current transportation needs because of the time required for voter approval, for the adoption of specific proposals, and for the construction of those projects.