

# Tolling Enforcement Reciprocity Agreements

## 2015 Report

Virginia Department of Motor Vehicles  
July 2015

# Tolling Reciprocity Report to Virginia General Assembly

## I Introduction

This report is offered in response to Item 433. J. of Chapter 3 of the 2014 Acts of the General Assembly, Special Session 1{Appropriations Act). Pursuant to Item 433. J., the Commissioner of the Department of Motor Vehicles, is directed, in consultation with the Commissioner of Highways, to report on the feasibility and advisability of entering into reciprocal agreements with other states for the purpose of toll enforcement. The report is to be made to the Chairmen of the House Appropriations, Senate Finance, and House and Senate Transportation Committees no later than December 1, 2014.

There are eleven toll facilities<sup>1</sup> operating in the Commonwealth of Virginia which are managed either by local governments, the state government, or private entities. While toll enforcement procedures and penalties are detailed in the *Code of Virginia*, the collection of unpaid tolls, civil penalties, and administrative fees from non-Virginia drivers remains a challenge due to legal obstacles and the costs of collection.

The Commonwealth is seeking avenues by which toll operators in Virginia can increase the collection of unpaid tolls, penalties and fees from non-Virginia drivers. Currently, non-Virginia drivers owe approximately \$8.8 million in tolls, penalties and fees to eight<sup>2</sup> of the toll facilities in Virginia. The inability to collect these unpaid tolls, civil penalties and administrative fees from non-Virginia residents results in unequal treatment between Virginia residents and non-Virginia residents. The number and value of the outstanding tolls, civil penalties and administrative fees owing from non-Virginia residents, warrant determining what steps could be taken to collect these levies both in the short term and on a long-term basis.

Some states have turned to reciprocal toll enforcement agreements as a means of assisting in toll enforcement for out-of-state drivers. Massachusetts, Maine and New Hampshire have entered into such reciprocal agreements to enforce unpaid tolls against non-resident violators with some apparent success. Those agreements, which are between the state tolling authorities, motor vehicle administrators, and transportation departments, allow the home state of the toll violator to suspend or withhold renewal of vehicle registrations in order to compel payment of the unpaid tolls and penalties due to the tolling state. Maryland and North

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<sup>1</sup> The I-95 Express lanes became the 11th toll facility in the Commonwealth when they began operation in late December, 2014. However, the information for this report was collected prior to the opening of that facility.

<sup>2</sup> VDOT was able to collect sufficient toll violation and enforcement data from 8 of the 11 facilities operating in the Commonwealth for use in this report.

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Carolina have each recently enacted legislation authorizing the transportation agencies within those states to enter into similar agreements. Given the toll revenue losses attributable to the inability to collect from out-of-state drivers, the Commonwealth could benefit from similar arrangements; however, current statutes do not allow the Commonwealth to enter such agreements.

### 2 Background

The *Code of Virginia* prescribes enforcement rules for the different types of tolling methods: video, photo, vehicle identification technology such as EZ-pass and gated. In addition, it sets out separate enforcement rules for High-Occupancy Toll (HOT)/Express lanes, which use photo enforcement and vehicle identification technology. Toll facilities in northern Virginia present unique challenges for collecting unpaid tolls, as they see a larger share of use by non-Virginia residents. Of the 11 toll facilities in Virginia, six are publically-operated and five are managed by private entities. The Virginia Department of Transportation (VDOT) is currently responsible for toll violation collections on the following facilities: the Dulles Toll Road (operated by the Metropolitan Washington Airports Authority), the facilities operated by the Richmond Metropolitan Transportation Authority, the Powhite Parkway Extension (operated by VDOT directly) and the Coleman Bridge (operated by VDOT directly).

In addition to non-Virginia residents owing unpaid tolls on Virginia facilities, Virginia residents also have outstanding toll violations in other jurisdictions. VDOT collected information from selected toll facilities in New Hampshire, Delaware, Illinois, Indiana, Massachusetts, Maine, New York, New Jersey, Ohio, Pennsylvania and West Virginia. Of the facilities that provided information, Virginia residents represent 19,895 violations totaling approximately \$5 million in unpaid tolls and other fees. Given the toll-related revenue losses in Virginia and other states attributable to out of state drivers/violators, there is clearly a need for toll enforcement reciprocity amongst states.

### 3 Virginia Tolling Statutes

The *Code of Virginia* provides enforcement procedures for all toll facilities in the Commonwealth based on the type of tolling facility. Specifically, § 46.2-819.1 allows and sets forth the procedures and requirements for use of photo-enforcement systems in conjunction with both traditional toll plazas and gated toll lanes as well as with the open-road tolling facilities that allow for free flow of traffic. Section 46.2-819.3 provides the enforcement processes and requirements for gated toll lanes that do not use photo-enforcement systems. Section 46.2-819.3:1 sets out the enforcement procedures and requirements for all-electronic tolling facilities, which are facilities that do not utilize manual collection of tolls. Section 46.2-819.5 provides for and sets forth the procedures and requirements for use of photo-monitoring

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or vehicle identification systems on the Dulles Access Highway. Finally, § 33.2-503 sets forth the procedures and requirements relating to enforcement of High Occupancy Toll (HOT) Lanes. While the toll collection and enforcement processes set forth in the above-referenced statutes vary slightly, the primary and ultimate means of ensuring collection of unpaid tolls, penalties and fees is imposition of a vehicle registration hold or stop<sup>3</sup> for the vehicle that was used in violation of the relevant statute, or in those cases where the violator did not own the vehicle operated in commission of the offense or violation, a vehicle registration hold or stop on each vehicle owned or co-owned by the violator.<sup>4</sup>

### 4 Issues of Concern

#### 4.1 Loss of Revenue Due to Uncollected Tolls

Based on data collected by VDOT, it is estimated that over 200,000 non-Virginia residents owe approximately \$8.8 million in unpaid *tolls*, penalties and fees to eight of the toll facilities in Virginia. Based on information available for the four facilities for which VDOT performs and manages violation processing (the Dulles Toll Road, the Richmond Metropolitan Transportation Authority Toll Road, Powhite Parkway Extension and the Coleman Bridge), a majority of the out of state violations committed on these facilities are committed by residents of Maryland, North Carolina and the District of Columbia. For these four facilities, there are currently 6,293 North Carolina drivers who owe a total of \$69,052 in unpaid tolls; 12,623 drivers in the District of Columbia who owe a total of \$192,742 in unpaid tolls; and 63,923 Maryland drivers who owe a total of \$1,028,476 in unpaid tolls.

Several other toll facilities in Virginia have also provided information to VDOT relating to non-Virginia violators. The 495 Express Lanes has indicated that the majority of outstanding non-Virginia toll violations are attributable to 5 states: Maryland, the District of Columbia, Pennsylvania, North Carolina and Texas, with Maryland drivers representing approximately 58 percent of the non-Virginia toll violations for that facility and drivers from the remaining four states representing approximately 18 percent, collectively. Based on information received from the Chesapeake Expressway, the majority of outstanding non-Virginia toll violations for that facility are attributable to drivers from North Carolina (52 percent), Maryland (17 percent),

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<sup>3</sup> A vehicle registration hold or stop is imposed by the Virginia Department of Motor Vehicles and involves the Department's refusal to reissue or renew the vehicle registration and/or license plates for the vehicle until the Department is notified by a court, or in certain cases, the toll facility operator, that the unpaid tolls, penalties and fees have been paid.

<sup>4</sup> It should be noted that for violations involving HOT Lanes, it appears that a court may have authority to order a driver's license suspension for a driver's failure to pay the unpaid tolls, penalties and fees that the court orders to be paid. This option is clearly not available for toll violations on other facilities and may be explained by the fact that a toll violation on a HOT Lanes facility would also involve an HOV violation.

<sup>5</sup> Previously the Richmond Metropolitan Authority (RMA)

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Pennsylvania (13 percent) and New Jersey (6 percent). Based on information received from the Jordan Bridge, the majority of outstanding non-Virginia toll violations for that facility are attributable to drivers from North Carolina (31 percent) and several other states, Florida, Maryland, Texas, Georgia, and South Carolina (representing approximately 30 percent of the non-Virginia violations, collectively). For 1-895, Pocahontas Parkway, approximately 22 percent of the non-Virginia violations on that facility are attributable to North Carolina drivers while another 27 percent of such violations are attributable to Florida, Maryland, Tennessee and Georgia drivers, collectively.

Generally, the *Code of Virginia* requires that penalties assessed pursuant to toll collection actions initiated by VDOT are to be collected by the clerks of courts and remanded to the VDOT Toll Facilities Revolving Account. Penalties assessed pursuant to toll collection actions initiated by non-VDOT facilities must be remanded by the clerk of courts to the local government officials in the locality where the toll is located, who then make payment to the toll facility operator.

#### 4.2 Court Jurisdiction over Non-Virginia Violators

The toll facilities using photo-monitoring systems and vehicle identification tolling systems often rely on the toll facility operator issuing a violation notice and summons to the toll violator sometime after the actual toll violation. For Virginia residents, personal service of these invoices and summonses can be made through normal service of process procedures outlined in the *Code of Virginia*. Personal service on non-Virginia drivers can be expensive and difficult, often costing significantly more than could be recouped through allowed administrative fees. Even if the toll facility operator goes through that expensive process and obtains a judgment in a Virginia court, compelling payment on that judgment from a non-resident of Virginia can be difficult. As a matter of practice, toll facility operators only assume the additional cost of engaging a process server for personal service on non-resident drivers with the highest unpaid toll bills.

Without personal service of a summons on non-resident toll violators, several Virginia courts have declined to assert personal jurisdiction over those non-resident toll violators under the existing statutes governing court jurisdiction and procedures for service of process. Thus, toll facility operators, including VDOT, are currently without any economically viable means for recovering most unpaid tolls from non-resident toll violators.

*Virginia Code* § 8.01-328.1 is Virginia's "long-arm" statute; it enumerates under what conditions a Virginia court may exercise personal jurisdiction over a non-resident person. Using toll facilities and failing to pay those tolls is not explicitly enumerated in that statute as a condition for which Virginia courts may exercise jurisdiction over a non-resident.

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### 4.3 Reciprocity with Other States or Jurisdictions

Assuming the issue of court jurisdiction over non-Virginia violators can be readily addressed, Virginia statutes currently do not provide for enforcement reciprocity with other states or jurisdictions. The most effective means of enforcing violation convictions issued by Virginia courts to non-Virginia violators is for the violator's state of residence to take action in enforcing the violation and payment of the unpaid tolls and fees. Legislation authorizing the necessary entity(ies) in the Commonwealth to enter into reciprocity agreements with other jurisdictions whereby each of the parties would agree to enforce toll violations of their resident drivers committed in the other jurisdiction would be necessary in order to effectuate enforcement of toll violations committed in Virginia by non-resident toll violators.

### 5 Potential Solutions

In order to effectively address the issues associated with enforcement of toll violations by out of state residents as noted in Section 4 of this report, any potential solution must contain at least the following elements:

- i. the process by which alleged toll violations are confirmed must include an arbiter (such as a Virginia Circuit Court) with appropriate personal and subject matter jurisdiction and must provide for due process protections such as properly notifying the alleged toll violator of the charge, facts and procedures and providing the alleged toll violator with an opportunity to defend against the allegation if they choose,
- ii. the costs of that procedure must not substantially outweigh the amount of tolls and administrative fees that may be collected, and
- iii. the toll facility operator must have an economically feasible means for collecting/ensuring collection of the unpaid tolls and administrative fees after they are confirmed by the independent arbiter.

Subject matter jurisdiction is the authority vested in a court by constitution or statute to adjudicate certain categories of disputes. Personal jurisdiction is the authority vested in a court by constitution or statute over a particular party to a dispute. Due process of law is a constitutional concept requiring all persons to be provided notice<sup>6</sup> and an opportunity to be heard prior to depriving them of life, liberty or property. Without both forms of jurisdiction and the provision of due process, any ruling confirming a toll violation could potentially be overturned by an appellate court.

Toll facility operators are unlikely to pursue toll violation enforcement against an individual driver if the costs of confirming the violation and collecting the unpaid tolls exceed the amounts that can be collected. In turn, the failure to pursue enforcement and the resulting perception

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<sup>6</sup> Notice is usually interpreted to mean notice of the law that is alleged to have been violated, the facts and evidence that may be used to prove that violation, and procedures and rights of the defendant in defending himself against those charges.

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on the part of out of state drivers that there is no consequence for non-payment of tolls in Virginia could result in higher violation rates and non-payment of tolls.

Possible solutions that provide proper jurisdiction in a Virginia Court for out of state drivers while allowing toll facility operators a cost-effective means for confirming toll violations and enforcing those violations are described below. These solutions would allow toll operators in Virginia to collect more of the incurred toll revenue while maintaining the efficiency in traffic flow afforded by electronic tolling facilities.

### 5.1 Amend Virginia statutes to allow the Commonwealth to enter into reciprocal agreements with other jurisdictions

As noted in the Introduction, as of 2011, Maine, New Hampshire and Massachusetts have entered into reciprocity agreements for toll enforcement, and Maryland and North Carolina have recently passed laws authorizing those states to enter into similar reciprocity agreements.

The New England *States'* agreements are authorized by those *states'* respective laws, and include provisions which allow each state to provide due process protections in its own manner, whether through administrative hearings or judicial review. Notifications are provided by mail to the toll violator. Each state has agreed to honor the determinations of violations adjudicated in the other states, and agreed to honor the existing rules and fine structures of the other states. The home state of the toll violator would place a vehicle registration hold on the toll violator's vehicle upon notification from the tolling state, and would release the hold only upon notification by the tolling state that all unpaid tolls and fees have been paid.

According to New Hampshire officials, the agreements have been successful for each of the states, and have been extended permanently.

Maryland Code § 21-1415 contains language which allows the Maryland Transportation Authority (MTA) to enter into reciprocal agreements with other jurisdictions for the purpose of collecting unpaid tolls. This section states that such agreements must provide benefits, privileges and exemptions in other states that Maryland would provide to out-of-state drivers. Finally, this section allows, but does not require, a refusal or suspension of the registration of a motor vehicle.

North Carolina General Statute § 136-89.220 contains language which allows the North Carolina Turnpike Authority (NCTA) to enter into reciprocal agreements with other jurisdictions for the purpose of collecting unpaid tolls. This section requires the other state to have authority for reciprocal agreements, and due process and judicial appeal protections. It also allows the toll violator in North Carolina to present evidence to the other state by mail or other means to

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invoke rights of due process without having to appear personally in the jurisdiction where the violation allegedly occurred. This section finally requires that the reciprocity agreement provide that entities that are party to the agreement are to charge each other the costs of registration holds in their respective jurisdictions.

The General Assembly could enact legislation granting the Commonwealth the authority to enter into reciprocal agreements with other states or tolling entities in a similar manner as have the above-mentioned states. This solution would require an addition to the *Code of Virginia* to permit such agreements and clear authorization for the vehicle registration renewal stops, and may require modifications to any other statutes governing toll collection to address the notification portions of the agreements. Instead of amending the *Code of Virginia* in a way that attempts to create a uniform enforcement process with multiple jurisdictions, the legislation could authorize a reciprocal agreement that allows each participating jurisdiction to maintain its current enforcement practices and due process protections.

Additionally, because Virginia adjudicates alleged toll violations in court rather than through administrative hearings, the *Code of Virginia* would likely have to be amended to allow for the Virginia courts to exercise personal jurisdiction over the non-resident toll violators, and to give toll facility operators a less expensive means for providing the summonses to the non-resident toll violators (for example, through service by certified mail or by service on the other state's transportation agency that is party to the agreement).

### 5.2 Further examine long-term solutions that address toll collection from additional states or jurisdictions.

Developing usable reciprocal agreements with individual neighboring states for toll enforcement may require significant negotiation, especially if the enforcement mechanisms and allowable administrative fees are fundamentally different. For the short *term*, an initial agreement with a single state will allow the Commonwealth to judge the effectiveness of such agreements, while, for the longer *term*, VDOT and DMV coordinate with other states to determine the feasibility of additional agreements *or*, potentially, a single, regional compact. In addition, those discussions will allow the agencies to determine whether additional, specific, legislation might be required in order to support the agreements.

Additionally, federal law requires that by 2016, all toll facilities on federal-aid highways must implement technologies or business practices that allow for the interoperability of electronic toll collection programs. As both private and public toll facility operators move toward that *system*, opportunities may arise to further refine interstate toll enforcement mechanisms.



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## 6 Recommendation

### Continue Discussions on Potential Solutions

With the introduction of HOT lanes in northern Virginia that will be used extensively by non-Virginia residents and the further use of toll facilities across the Commonwealth, the need to create a mechanism to ensure collection of unpaid toll violations from these non-resident drivers increases due to the burden these unpaid tolls place on the toll facility operators and the Virginia resident drivers who ultimately pay for the lost revenue. The possibility exists to authorize the Commonwealth to enter into a reciprocal agreement with an individual state or states to address an immediate need, but additional discussion between VDOT and DMV is recommended to determine the proper course of action for addressing this issue with multiple jurisdictions on a permanent basis. In addition, both agencies need to discuss possible solutions with the Office of the Attorney General to ensure any reciprocity agreements conform to Virginia law. Given the concerns and possible solutions raised above, it is recommended that additional discussions be held, with periodic updates provided to the General Assembly.

ITEM 433.	Item Details(\$)		Appropriations(\$)	
	First Year FY2015	Second Year FY2016	First Year FY2015	Second Year FY2016
set aside to meet the expenses of the department.				
2. Notwithstanding any other provision of law, the department shall assess a \$10 late fee on all registration renewal transactions that occur after the expiration date. The late fee shall not apply to those exceptions granted under § 46.2-221.4, Code of Virginia. In assessing the late renewal fee the department shall provide a ten day grace period for transactions conducted by mail to allow for administrative processing. This grace period shall not apply to registration renewals for vehicles registered under the International Registration Plan. The revenue generated from this fee shall be set aside to meet the expenses of the department.				
3. Notwithstanding any other provision of law, the department shall establish a \$20 minimum fee for original driver's licenses and replacements. The revenue generated from this fee shall be set aside to meet the expenses of the department.				
G. The Department of Motor Vehicles is hereby granted approval to renew or extend existing capital leases due to expire during the current biennium for existing customer service centers.				
H. The Department of Motor Vehicles is hereby appropriated revenues from the additional sales tax on fuel in certain transportation districts to recover the direct cost of administration incurred by the department in implementing and collecting this tax as provided by § 58.1-2295, Code of Virginia.				
I. The Commissioner of the Department of Motor Vehicles, in consultation with the Commissioner of Highways, shall take such steps as may be necessary to expand access to the E-ZPass program through its customer service channels using such locations and methods as are practicable.				
J. The Commissioner of the Department of Motor Vehicles, in consultation with the Commissioner of Highways, shall report on the feasibility and advisability of entering into reciprocal agreements with other states for the purpose of toll enforcement. Such report shall be made to the Chairmen of the House Appropriations, Senate Finance, and House and Senate Transportation Committees no later than December 1, 2014.				
434.	Ground Transportation System Safety Services (60500) ..		\$6,829,294	\$6,829,294
	Highway Safety Services (60508) .....	\$6,829,294	\$6,829,294	
	Fund Sources: Commonwealth Transportation .....	\$5,096,970	\$5,096,970	
	Federal Trust .....	\$1,732,324	\$1,732,324	
	Authority: §§ 46.2-222 through 46.2-224, Code of Virginia; Chapter 4, United States Code.			
435.	Administrative and Support Services (69900) .....		\$63,453,049	\$64,958,267
	General Management and Direction (69901) .....	\$25,793,793	\$26,344,812	
	Information Technology Services (69902) .....	\$32,700,679	\$33,654,878	
	Facilities and Grounds Management Services (69915) .....	\$4,958,577	\$4,958,577	
	Fund Sources: Commonwealth Transportation .....	\$61,216,049	\$62,721,267	
	Federal Trust .....	\$2,237,000	\$2,237,000	
	Authority: Title 46.2, Chapters 1 and 2, and § 46.2-697.1; Title 58.1, Chapters 17, 21, and 24, Code of Virginia.			
	The Department of Transportation shall reimburse the Department of Motor Vehicles for the operating costs of the Fuels Tax Evasion Program.			
	Total for Department of Motor Vehicles .....		\$234,411,474	\$236,822,802
	Nongeneral Fund Positions .....	2,038.00	2,038.00	
	Position Level .....	2,038.00	2,038.00	
	Fund Sources: Commonwealth Transportation .....	\$222,995,550	\$225,406,878	
	Trust and Agency .....	\$5,446,600	\$5,446,600	
	Federal Trust .....	\$5,969,324	\$5,969,324	



# COMMONWEALTH of VIRGINIA


DEPARTMENT OF TRANSPORTATION  
1401 EAST BROAD STREET  
RICHMOND, VIRGINIA 23219 2000

**Charles A. Kilpatrick, P.E.**  
Commissioner

June 26, 2015

## MEMORANDUM

**TO:** Richard D. Holcomb

**FROM:** Charles A. Kilpatrick, P.E. 

**SUBJECT:** General Assembly Report on Feasibility of Tolling Enforcement Reciprocity Agreements

Enclosed, please find the General Assembly report on the feasibility of tolling enforcement reciprocity agreements that has been jointly prepared by members of your staff and members of the Department of Transportation. I have reviewed the report, and approve of its content. I submit the report to you for your review and submission to the Chairmen of the House Appropriations, Senate Finance, and House and Senate Transportation Committees in accordance with Item 433. J. of Chapter 3 of the 2014 Acts of the General Assembly, Special Session 1 (Appropriations Act).

Enclosure