Federal Highway Tolling Programs

Innovative Program Delivery

Transportation Finance Innovations

Quick Facts

- Any toll facility using Federal funds must qualify for toll authority under one of four toll programs.
- Toll pilot programs have limited participation and require toll agreements prior to the implementation of tolling. Mainstream toll programs do not require tolling agreements and have unlimited participation.
- The use of toll revenue is restricted under all of the Federal programs, and is generally limited to the repayment of financing for the project and for operations and maintenance. Revenues may also be used for other eligible purposes in some circumstances.

Contact

Darren Timothy
202-366-4051
darren.timothy@dot.gov
www.fhwa.dot.gov/ipd

U.S. Department of Transportation
Federal Highway Administration

UNDER TITLE 23 of the U.S. Code (Highways), there is a long-standing general prohibition on the imposition of tolls on Federal-aid highways; however, Title 23 and other statutes have carved out certain exceptions to this general prohibition through special programs. These programs allow tolling to generate revenue to support highway construction activities and/or enable the use of road pricing for congestion management. If Federal funds have been used or will be used on the highway, then the public authority responsible for the facility must qualify for toll authority under one of these Federal toll programs.

MAINSTREAM TOLLING PROGRAMS

Two of the Federal programs are codified in Title 23 and are sometimes referred to as the "mainstream" tolling programs. There are no restrictions on the number of projects or States that may receive tolling authority under these programs, and there are no requirements for State or local public agencies to execute a tolling agreement with the Federal Highway Administration (FHWA) prior to imposing tolls.

Section 129 (General Toll Program)

Under the General Toll Program, Congress permits Federal participation in certain types of toll-financed construction activities, including new highways, new lanes added to existing highways (so long as the number of existing toll-free lanes is not reduced), reconstruction of highways (non-Interstate only), reconstruction or replacement of bridges or tunnels, and capital improvements to existing toll facilities.

Section 166 (HOV/HOT Lanes)

Section 166(c) of Title 23 provides authority for public agencies to allow toll-paying vehicles that do not meet the minimum occupancy standards to use high-occupancy vehicle (HOV) lanes. Such lanes are commonly referred to as *high occupancy toll* (HOT) lanes. This tolling authority is available for facilities both on and off the Interstate System.

© Maryland State Highway Administration—ICC Team

The Intercounty Connector (ICC) project in Maryland is the first all-electronic toll-road in the State where tolls are collected at highway speeds.

TOLL PILOT PROGRAMS

Other tolling programs have been specially authorized by Congress on a pilot basis in various highway authorization acts since 1991. Participation in these programs is limited to a set number of slots that have been authorized for each program. Project sponsors are also required to submit an application and to execute a toll agreement with FHWA to receive authorization to impose tolls under these programs.

Some tolling and pricing strategies could be eligible for implementation under either the mainstream tolling programs or one of the pilot programs. In such cases, FHWA prefers that the two mainstream programs be used where possible, limiting requests for participation in the pilot programs to situations that cannot be otherwise accommodated.

Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP)

The ISRRPP allows the conversion of free Interstate highways into toll facilities in conjunction with needed reconstruction or rehabilitation that is only possible with the collection of tolls. Congress has authorized up to three slots in the program, which must be used for projects in different States. At the present time, all three slots are conditionally reserved for States that are currently developing applications to the program.

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Value Pricing Pilot Program (VPPP)

The VPPP is an experimental program that is designed to assess the potential of different value pricing approaches for reducing congestion. Under this program, tolls may be imposed on existing toll-free highways, bridges, and tunnels, so long as variable pricing is used to manage demand. Congress has authorized up to 15 slots under the VPPP, which are allocated to State or local agencies. Seven of these slots have been permanently allocated to States that have executed agreements for tolling projects under the program. The remaining eight slots have been temporarily reserved for State agencies that are pursuing other eligible activities under the program, including value pricing studies and non-toll value pricing projects; these slots may become available in the future as those activities are completed. Once an agency holds a slot in the program, there is no limit on the number of value pricing projects that can be implemented under the slot.

TOLLING PROGRAM REQUIREMENTS

Use of Toll Revenue

The Federal tolling programs also come with restrictions on the use of toll revenues generated by the facilities that receive tolling authority. Under the mainstream tolling programs (Section 129 and Section 166), toll revenue may be used for debt service, to provide a reasonable return on investment to any private party financing a project, for the operations and maintenance (including capital improvements) of the toll facility, and for payments between public and private partners involved in a public–private partnership. If the public authority with responsibility for the toll facility certifies that that facility is being adequately maintained, then toll revenues may also be used for other purposes eligible under Title 23. The ISRRPP includes similar restrictions but does not allow toll revenues to be used on other facilities. The VPPP allows toll revenues to be used to mitigate the adverse effects of tolls on low-income drivers, in addition to project-related costs and other Title 23 uses.

Toll facilities are required to undergo annual audits to ensure compliance with the limitations on the use of toll revenues. The results of these audits must be transmitted to FHWA.

Operational Performance

Section 166 has a number of performance requirements that apply to HOT lanes, including the enforcement of HOV restrictions, automatic collection of tolls (which must be varied to manage demand on the HOV facility), and requirements to ensure that the operational performance of the HOT lanes does not become degraded. The VPPP requires that project sponsors monitor a number of project performance indicators for a period of at least 10 years and that this data be compiled by FHWA for biennial reports to Congress.

TECHNICAL ASSISTANCE

Tolling project sponsors are encouraged to seek technical assistance from FHWA on the requirements and eligibilities of tolling programs and how they might apply to individual projects. Many complex projects have parameters that are not explicitly addressed in the tolling statutes and therefore require considerable consideration on the part of FHWA to appropriately apply the legislative language to a particular project. FHWA will also be posting responses to frequently asked questions at the Web site address below to provide additional guidance on the tolling programs. At their discretion, project sponsors may wish to seek FHWA's formal concurrence of a facility's eligibility for tolling under the mainstream programs, even where tolling agreements are no longer required.

For More Information

More information on these Federal tolling programs can be found at http://www.fhwa.dot.gov/ipd/revenue/road_pricing/tolling_pricing/#programs. ▮

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PROGRAM AREAS OF THE OFFICE OF INNOVATIVE PROGRAM DELIVERY

IPD provides a one-stop source for expertise, guidance, research, decision tools, and publications on program delivery innovations. Our Web page, workshops, and other resources help build the capacity of transportation professionals to deliver innovation.

PROJECT DELIVERY

IPD's project delivery team covers cost estimate reviews, financial planning, and project management and assists FHWA Divisions with statutory requirements for major projects (e.g., cost estimate reviews, financial plans, and project management plans).

PROJECT FINANCE

IPD's project finance program focuses on alternative financing, including State Infrastructure Banks (SIBs), Grant Anticipation Revenue Vehicles (GARVEEs), and Build America Bonds (BABs).

PUBLIC–PRIVATE PARTNERSHIPS

IPD's P3 program covers alternative procurement and payment models (e.g., toll and availability payments), which can reduce cost, improve project quality, and provide additional financing options.

REVENUE

IPD's revenue program focuses on how governments can use innovation to generate revenue from transportation projects (e.g., concessions, value capture, developer mitigation fees, air rights, and road pricing).

TIFIA

The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides credit assistance for significant projects. Most surface transportation projects—highway, transit, railroad, intermodal freight, and port access—are eligible for assistance.

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