

Tolling and Pricing of Federal-Aid Highways: Summary of Opportunities and Process

Background

Tolling and pricing strategies (e.g., strategies that vary the price of a toll based on the time of day or traffic volume) are increasingly emerging as necessary and useful tools to finance projects, manage congestion, improve air quality, and facilitate the creation of public-private partnerships. However, all tolling and pricing of Federal-aid highway system facilities requires legal authority from the Federal government, through the U.S. Department of Transportation. The purpose of this paper is to summarize the various opportunities for tolling and pricing of federal-aid highways and the process for requesting permission to toll a federal-aid highway. This paper directly references material from the January 6, 2006 Federal Register Notice on this subject.

Tolling and Pricing Programs and Provisions

Title 23 of the United States Code (23 U.S.C.), Section 301, generally prohibits the imposition of tolls on federal-aid highway facilities. However, SAFETEA-LU legislation, along with previous provisions, offers States and other public entities an enhanced variety of opportunities to toll motor vehicles to finance Interstate construction and reconstruction, promote efficiency in the use of highways, reduce traffic congestion, and/or improve air quality. There are now six tolling and pricing programs or provisions that allow tolling or pricing of federal-aid highways:

- **Value Pricing Pilot Program** (SAFETEA-LU Section 1604(a)): This is the only program that provides funding to support studies and implementation aspects of a tolling or pricing project for the purpose of managing congestion. The program is limited to 15 States, of which only one vacancy remains (Washington State is already enrolled in the program). Each State can have multiple projects, the number of which is limited only by the dollar amount apportioned by the program. For FY 2008 and 2009, Value Pricing Pilot Program funds have been committed to the U.S. DOT Urban Partnership Agreements.
- **Express Lane Demonstration Program** (SAFETEA-LU Section 1604(b)): Permits tolling on up to 15 selected demonstration projects to manage congestion, reduce emissions in a non-attainment area, or to finance added Interstate lanes for the purposes of reducing congestion. A Federal Register Notice published on February 4, 2008 invited States and public entities to apply to participate in this Program (see the *Further Information* section below for a link to this Notice).

- **Interstate System Construction Toll Pilot Program** (SAFETEA-LU Section 1604(c)): Authorizes up to three facilities on the Interstate System to toll for the purpose of financing the construction of new Interstate highways.
- **Interstate System Reconstruction and Rehabilitation Pilot Program** (TEA-21 Section 1216(b)): Allows up to three existing Interstate facilities in three different states to be tolled for reconstruction or rehabilitation on Interstate corridors. Virginia and Missouri have submitted applications to be considered for this program (they are “provisional conditionally” approved but have not been officially accepted to the program.)
- **High Occupancy Vehicle (HOV) Facilities** (SAFETEA-LU Section 1121, amended 23 U.S.C. Section 166): States are permitted to create High Occupancy Toll (HOT) lanes either by applying a pricing strategy to existing HOV lanes or building new lanes. If a State decides to allow HOT vehicles to use an HOV lane, the State must: (1) establish programs addressing how operators of HOT vehicles can enroll and participate in the toll program; (2) develop, manage, and maintain a system that will automatically collect the toll; and (3) establish policies and procedures to manage the demand of the facility by such vehicles by varying the toll amount and enforcing violations. In addition, a toll agreement must be executed between the FHWA, the State Department of Transportation, and operating agencies. There is no limit on the number of participants. HOT lanes may be established on both Interstate and non-Interstate facilities.
- **23 U.S.C. Section 129 Tolling Agreements**: If Federal-aid funds are used for construction of or improvements to a toll facility or the approach to a toll facility, or if a State plans to reconstruct and convert a free highway, bridge or tunnel to a toll facility, a toll agreement under 23 U.S.C. Section 129(a)(3) must be executed. There is no limit to the number of agreements that may be executed.

More detailed information on these programs and provisions is contained in the *Federal Tolling Programs and Provisions Decision Support Guidance* matrix at the end of this paper.

Process for Requesting Permission to Toll a Federal-Aid Facility

The six programs and provisions described above can be potentially confusing because of their range of specific purposes. In an effort to minimize this potential confusion, FHWA has established a collaborative process for a State or other public entity to work with the FHWA “Tolling and Pricing Team” in identifying the appropriate program or provision and applying to a specific program or provision. This process can be summarized as follows:

1. Submit an “Expression of Interest” to the FHWA Tolling and Pricing Team. The information items requested and a sample template is available at: http://www.ops.fhwa.dot.gov/tolling_pricing/participation.htm. The Tolling and Pricing Team will work with the applicant to identify the most appropriate program or provision to pursue.
2. Submit a formal application for tolling and pricing authority to the appropriate FHWA program office for formal review, ultimately leading to a decision on approval. If the project is approved, a formal tolling agreement will then be prepared.

Further Information

While this paper presents a summary of this subject, further information can be found from a variety of sources:

- FHWA Tolling and Pricing Web site - http://www.ops.fhwa.dot.gov/tolling_pricing/index.htm.
- January 6, 2006 Federal Register Notice, Opportunities for State and Other Qualifying Agencies to Gain Authority to Toll Facilities Constructed Using Federal Funds - http://www.ops.fhwa.dot.gov/tolling_pricing/announcement/tolling_announcement.htm.
- February 4, 2008 Federal Register Notice, Express Lanes Demonstration Program Request for Applications - http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2008_register&docid=fr04fe08-85.
- Points of Contact:
 - Tolling and Pricing Team – Wayne Berman, Wayne.Berman@dot.gov.
 - Value Pricing Pilot Program – Angela Jacobs, Angela.Jacobs@dot.gov.
 - Express Lanes Demonstration Program – Wayne Berman, Wayne.Berman@dot.gov.
 - Interstate System Construction Toll Pilot Program, Interstate System Reconstruction and Rehabilitation Pilot Program, and 23 U.S.C. Section 129 Tolling Agreements – Greg Wolf, Greg.Wolf@dot.gov.
 - High Occupancy Vehicle (HOV) Facilities – Jessie Yung, Jessie.Yung@dot.gov.

Federal Tolling Programs and Provisions Decision Support Guidance

Issues/Federal Requirements	Value Pricing Pilot Program (Sec. 1012(b) of ISTEA, as amended)	Express Lanes Demonstration Program (Sec. 1604(b) of SAFETEA-LU)	Interstate Construction Toll Pilot (Sec. 1604(c) of SAFETEA-LU)	Interstate Rehab & Reconstruction (Sec. 1216(b) of TEA-21)	HOV Facilities (Includes HOT Lanes) 23 U.S.C. 166	23 U.S.C. Section 129 Section 129 Agreements
Funding (Discretionary funding for Feasibility, Pre-Implementation, Implementation, and Evaluation)	\$12 mil for each of the FYs 2006-2009 (\$3 mil shall be available only for projects that do not involve highway tolls) <i>Projects may not be funded for a period longer than 3 years.</i>	None	None	None	None	None
State Participation Restrictions	Only 15 States may participate <i>14 currently participating: CA, CO, FL, GA, IL, MD, MN, NC, NJ, OR, PA, TX, VA, WA</i>	15 demonstration projects eligible in any state	3 facilities on the Interstate eligible *Compact of states are eligible	3 facilities on the Interstate eligible Each facility must be located in a different state <i>2 facilities currently participating: VA, MO</i>	Unlimited participation	Unlimited participation
Deadlines for Participation	Expressions of Interest- <i>August 1</i> each year for the subsequent fiscal year. Formal application- <i>October 1</i> in the fiscal year where funds are requested.	September 30, 2008	August 10, 2015	None	None	None
Eligible Projects						
Conversion of Interstate HOV lanes to new HOT lanes	No *Authority will be granted under 23 USC 166	Yes *May toll new HOT/Managed Lanes and existing HOV lanes *Authority will be granted under 23 USC 166	No	Yes	Yes *Only HOV lane may be tolled	No

Issues/Federal Requirements	Value Pricing Pilot Program (Sec. 1012(b) of ISTEA, as amended)	Express Lanes Demonstration Program (Sec. 1604(b) of SAFETEA-LU)	Interstate Construction Toll Pilot (Sec. 1604(c) of SAFETEA-LU)	Interstate Rehab & Reconstruction (Sec. 1216(b) of TEA-21)	HOV Facilities (Includes HOT Lanes) 23 U.S.C. 166	23 U.S.C. Section 129 Section 129 Agreements
Development of new Interstate HOT or Managed Lanes	Yes *May toll only HOT/Managed Lanes	Yes *May toll only HOT/Managed Lanes	No	Yes	Yes *May toll new HOT/Managed Lanes and existing HOV lanes	No
Tolling to Rehab and Reconstruct	No	No	No	Yes *May toll entire facility <i>Interstate only</i>	Yes *Only HOV lane may be tolled	Yes <i>Interstate-bridge or tunnel only</i> <i>Non-Interstate eligible</i>
Tolling to finance expansion of a highway	No	Yes *May toll only HOT/Managed Lanes	No	Yes *May toll entire facility	Yes *May toll new HOT/Managed Lanes and existing HOV lanes	Yes <i>Interstate-bridge or tunnel only</i> <i>Non-Interstate eligible</i>
Tolling to construct a new Interstate facility (other than HOT/Managed Lane)	No	No	Yes <i>Interstate only</i>	No	No	Yes <i>Non-Interstate only</i>
Tolling existing free interstate	Yes	Yes	No	Yes	Yes *Motorcycles, bicycles, and vehicles that do not meet the established occupancy requirements for the HOV lanes may be tolled.	Yes <i>Interstate-bridge or tunnel only</i>
Tolling Requirements						
Ability to toll vehicles that do not meet the established occupancy requirements for the HOV lanes (if HOV occupancy set at 3+, can charge 2 occupants)	No	Yes	Yes	Yes	Yes (except for motorcycles and bicycles)	Yes

Issues/Federal Requirements	Value Pricing Pilot Program (Sec. 1012(b) of ISTEA, as amended)	Express Lanes Demonstration Program (Sec. 1604(b) of SAFETEA-LU)	Interstate Construction Toll Pilot (Sec. 1604(c) of SAFETEA-LU)	Interstate Rehab & Reconstruction (Sec. 1216(b) of TEA-21)	HOV Facilities (Includes HOT Lanes) 23 U.S.C. 166	23 U.S.C. Section 129 Section 129 Agreements
Required use of non-cash electronic technology toll collections	No **However, NPRM will require it	Yes	No **However, NPRM will require it	No	Yes	No
Manage demand by varying toll	Yes	Yes	No	No	Yes	No
Required to limit or discontinue tolling program if facility is degraded	No	Yes	No	No	Yes	No
Toll agreement	Yes	Yes	Yes	Yes	Yes	Yes
Revenue Restrictions						
Use of toll revenue	Debt service, reasonable rate of return on investment, and maintenance and operations of toll facility Also, project implementation costs and mitigation measures for low income users	Debt service, reasonable return on investment, and maintenance and operations of toll facility. If state certifies project is adequately maintained and operated, may be used for any other purpose relating to a highway or transit purpose carried out under Title 23 or Title 49.	Debt service, reasonable return on investment, and maintenance and operations of toll facility	Debt service, reasonable return on investment, and maintenance and operations of toll facility	Debt service, reasonable return on investment, and maintenance and operations of toll facility	Debt service, reasonable return on investment, and maintenance and operations of toll facility
Use of toll revenue for transit operating costs (non-Title 23)	Yes *Only as part of project	No	No	No	No	No

Issues/Federal Requirements	Value Pricing Pilot Program (Sec. 1012(b) of ISTEA, as amended)	Express Lanes Demonstration Program (Sec. 1604(b) of SAFETEA-LU)	Interstate Construction Toll Pilot (Sec. 1604(c) of SAFETEA-LU)	Interstate Rehab & Reconstruction (Sec. 1216(b) of TEA-21)	HOV Facilities (Includes HOT Lanes) 23 U.S.C. 166	23 U.S.C. Section 129 Section 129 Agreements
Use of excess toll revenue	Must be eligible under Title 23	If state certifies project is adequately maintained and operated, may be used for any other purpose relating to a highway or transit purpose carried out under Title 23 or Title 49.	Only on facility	Only on facility	Must be eligible under Title 23 - give priority to projects for developing alternatives to SOV travel and projects for improving safety	Must be eligible under Title 23
Other Restrictions						
Evaluation of value pricing aspects, including if appropriate, the effects on low income drivers	Yes	No	N/A	N/A	No	N/A
Requirement for state to enforce HOV violations	No	Yes	No	No	Yes	No
Requires states to establish a performance monitoring, evaluation and reporting program for HOV facility	No	Yes-Performance goals for each project required	No	No	Yes	No
Required to submit annual certification indicating meeting Federal requirements for HOT lanes	Yes	Yes	No	No	Yes	No
Non-Compete Agreement required	No	No	Yes	No	No	No
Can the facility use IM funds?	Yes	Yes	No	No	Yes	Yes