

**STATEMENT OF  
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BEFORE THE  
PENNSYLVANIA SENATE TRANSPORTATION COMMITTEE,  
REPUBLICAN POLICY COMMITTEE, AND  
DEMOCRATIC POLICY COMMITTEE**

**HEARING ON TOLLING ISSUES**

**SEPTEMBER 1, 2010**

Chairman Rafferty and Members of the Committees, thank you for the opportunity to appear before you today to discuss tolling issues.

The idea of a toll-free highway system has traditionally been a fundamental concept of the Federal-Aid Highway Program. Ever since the enactment of the Federal-Aid Road Act of 1916, Congress has required that roads constructed with Federal funds be free from tolls of all kinds. Since that time, however, Congress has recognized that tolls may be a useful tool for the construction and maintenance of highway facilities in certain, limited circumstances. For instance, the imposition of tolls can accelerate the availability of funds required for construction, guarantee a source of funding for ongoing operation and maintenance, and help manage demand on heavily congested facilities. Today I will provide you a general overview of the current Federal laws and requirements with respect to the imposition of tolls on a Federal-aid highway.

**GENERAL PROVISIONS OF THE UNITED STATES CODE**

23 U.S.C. 129

Under the provisions of title 23, United States Code, there is a general prohibition on the imposition of tolls on Federal-aid highways. Specifically, 23 U.S.C. 301 states that “[e]xcept as provided in section 129 of this title...all highways constructed under the provisions of this title shall be free from tolls of all kinds.” This general prohibition reflects Congress’s long-standing policy underlying the Federal-Aid Highway Program that Federal funds should be used to construct a toll-free highway system. However, this general prohibition is not without exception. Under 23 U.S.C. 129, Congress permits Federal participation in the following five types of toll activities:

- 1) Initial construction (except on the Interstate System) of toll highways, bridges, and tunnels, including the approaches to these facilities;
- 2) Reconstructing, resurfacing, restoring, and rehabilitating work on any existing toll facility;
- 3) Reconstruction or replacement of free bridges or tunnels and conversion to toll facilities;

- 4) Reconstruction of a free highway (except on the Interstate System) and conversion to a toll facility; and
- 5) Preliminary studies to determine the feasibility of the above toll construction activities.

If a State intends to use any Federal funds for any of the eligible activities listed above (except to conduct preliminary studies), then the State must enter into a toll agreement with the Federal Highway Administration (FHWA). The toll agreement must require that all toll revenues received from the operation of the facility will first be used for debt service, reasonable return on private investment, and the costs necessary for the proper operation and maintenance of the facility. At the option of the State, the agreement may also include a provision that toll revenues, in excess of those needed for these initial required uses, may be used for any eligible title 23 activity.

### 23 U.S.C. 166

One other codified exception to 23 U.S.C. 301 concerns high occupancy vehicle (HOV) lanes at 23 U.S.C. 166. Enacted under section 1121 of the Safe, Accountable, Efficient, Flexible, Transportation Equity Act: A Legacy for Users (SAFETEA-LU), 23 U.S.C. 166 permits States to impose tolls on HOV lanes, both Interstate and non-Interstate, for the purpose of allowing vehicles that do not meet the established occupancy requirements to use HOV facilities (also known as High Occupancy Toll (HOT) Lanes). Specifically, this statute enables the States to utilize any excess capacity in HOV lanes by permitting such vehicles to use these lanes. The statute requires States to toll such vehicles for this use, unless the vehicle is a low emission and energy efficient vehicle. If the vehicle is a low emission and energy efficient vehicle, the State has the option of tolling such vehicle. The statute does not authorize a State to toll HOVs, motorcycles, or public transportation vehicles. Tolls must be collected using noncash electronic technologies, and the State must manage the demand of these vehicles by varying the tolls that are charged. If the operation of the HOV facility becomes degraded as a result of the presence of these vehicles, the State must take action to limit or discontinue the use of the facility by these vehicles.

In order to allow tolling under this section, a toll agreement must first be executed between the FHWA and the State. Such an agreement must require that all toll revenues received from the operation of the facility will first be used for debt service, reasonable return on private investment, and the costs necessary for the proper operation and maintenance of the facility. The State may also use toll revenues collected from a HOT lane to fund dedicated bus rapid transit service and supporting infrastructure, such as park-and-ride lots. At the option of the State, the agreement may also include a provision that toll revenues, in excess of those needed for the initial required uses, may be used for any eligible title 23 activity. If the State chooses to use excess revenues for other title 23 eligible activities, the State must give priority consideration to projects for developing alternatives to single occupant vehicle travel and projects for improving highway safety.

## UNCODIFIED TOLLING PROVISIONS

As explained above, Congress has codified two provisions allowing the States to toll Federal-aid highways. However, Congress has also enacted other special provisions that are not codified in section 129, which specifically authorize the imposition of tolls. These provisions include the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP), established under section 1216(b) of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21); the Value Pricing Pilot Program (VPPP), established under section 1012(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), as amended; and the Express Lanes Demonstration Program (ELDP) and the Interstate System Construction Toll Pilot Program (ISCTPP) established under subsections 1604(b) and (c) of SAFETEA-LU.

### Interstate System Reconstruction and Rehabilitation Pilot Program

Under the ISRRPP, Congress established a pilot program to allow 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. The Secretary may only allow three Interstate facilities, each in a different State, to be tolled under this program, and the State's collection of tolls must be for a specified term exceeding ten years. Similar to 23 U.S.C. 129, the State must enter into an agreement with the Secretary restricting the use of the toll revenues received from the operation of the facility. However, unlike section 129, the toll revenues may only be used for debt service, reasonable return on investment for private parties, and operation and maintenance on the pilot facility. The statute does not permit the use of any revenues in excess of these purposes to be used for projects on other facilities. In addition, the State is prohibited from using Interstate Maintenance funds on the facility while it is being tolled. Currently, the FHWA has reserved two pilot slots in this program (Virginia I-81 and Missouri I-70), and one slot is available.

### Value Pricing Pilot Program

While there are several tolling and pricing programs and provisions available under title 23 and SAFETEA-LU, discretionary funding is only available under one program, the VPPP. Initially authorized in ISTEA as the Congestion Pricing Pilot Program, Congress authorized \$12 million annually for the VPPP under SAFETEA-LU, \$3 million of which must be set aside for non-toll projects. Under this program, Congress allows the use of tolls on both Interstate and non-Interstate facilities as part of any value pricing pilot program. Value pricing refers to direct time-of-travel charges for road use that may vary by location, time of day, severity of congestion, vehicle occupancy, or type of facility. Value pricing charges are intended to promote the operational efficiency of a transportation facility by shifting some trips to off-peak periods, to mass transit, to higher-occupancy vehicles, or to other less congested routes.

Under the VPPP, the Secretary may enter into cooperative agreements with up to fifteen State or local governments to establish value pricing programs. Currently, the Secretary

has entered into cooperative agreements for all fifteen of the available slots under this program. Specifically, the Secretary has entered into cooperative agreements with California, Colorado, Florida, Georgia, Illinois, Maryland, Minnesota, New Jersey, New York City, New York State, North Carolina, Oregon, Texas, Virginia, and Washington State. Toll revenues must first be used to pay for the costs to operate the project, including debt service, reasonable return on private investment, and the costs necessary for the proper operation and maintenance of the facility. Any excess toll revenues may be used for any purpose eligible for assistance under title 23, United States Code.

#### Express Lanes Demonstration Program

The ELDP authorizes the Secretary to carry-out up to 15 demonstration projects to collect tolls at eligible toll facilities to manage high levels of congestion, reduce emissions in a nonattainment or maintenance area, or to finance the expansion of a highway for the purpose of reducing congestion by constructing one or more additional lanes. Eligible toll facilities include toll facilities in existence on August 10, 2005 (the date of enactment of SAFETEA-LU); HOV lanes in existence on August 10, 2005; facilities modified or constructed after August 10, 2005 to create additional tolled lane capacity; and only the new lane whenever a new lane is added to a previously non-tolled facility. Tolls may be collected only through noncash electronic technology, and tolls collected on HOV facilities must vary by time of day or level of traffic in order to manage demand. Also, a toll agreement must be executed providing that all toll revenues received from the operation of the facility will be used for debt service, reasonable return on private investment, the costs necessary for the proper operation and maintenance of the facility, and, if the State annually certifies that the facility is being adequately operated and maintained, any other highway or transit project carried out under title 23 or 49. The FHWA has approved five projects for participation in this program—four (I-635, I-30, I-35E, and the North Tarrant Express) are in Texas, and one (I-595) is in Florida.

#### Interstate System Construction Toll Pilot Program

Authorized under SAFETEA-LU, the ISCTPP is similar to the ISRRPP, except the program is limited to new Interstate construction. Additionally, the three eligible facilities under the ISCTPP do not need to be located in three separate States. An eligible facility under the ISCTPP may span two or more States and may be operated and administered through an Interstate compact. As provided under the ISRRPP, toll revenues collected under the ISCTPP may only be used for debt service, reasonable return on investment for private parties, and operation and maintenance on the pilot facility. The statute does not permit the use of any revenues in excess of these purposes to be used for projects on other facilities. Currently, the FHWA has reserved one slot for I-73 in South Carolina. There are two slots remaining.

## **INTERSTATE DESIGNATION**

Although the authority to toll Interstate highways is limited, there are approximately 2,800 miles of tolled Interstate in the United States because many of these roads were constructed without Federal funds and then incorporated into the Interstate System. Current Federal law governing Interstate designation is found at 23 U.S.C. 103(c). Under this provision, Interstate routes are selected by the States and approved by the Secretary, and the mileage of the Interstate System is limited to 43,000 miles. However, if the Secretary determines that a highway on the National Highway System meets all of the appropriate standards and that the highway has a logical connection to the current Interstate System, then the Secretary may designate the route as an Interstate notwithstanding the 43,000 mile limitation. Thus, if a toll facility meets these criteria, then the Secretary may designate the road as an Interstate unless the facility was initially constructed with Federal funds.

## **CONCLUSION**

The basic policy regarding tolling in the Federal-Aid Highway Program is that highways constructed under the provisions of title 23 shall be free from tolls. Throughout the years, as highlighted above, Congress has provided for a number of limited exceptions to this general rule.

Mr. Chairman, Committee Members, thank you again for this opportunity to appear before you today. I would be happy to answer your questions.