

Background Paper #10

Legal and Regulatory Issues

■ Introduction

This Background Paper addresses the legal and regulatory issues associated with carrying out the proposed tolling policies in Washington State. The first section summarizes the key issues and observations particularly as they relate to implementation of the Study's Proposed Tolling Policies for Washington State. That is followed by a more in-depth analysis of the relevant legal and regulatory issues. We have also prepared documentation that summarizes state and Federal statutes that directly relate to the imposition of tolls within the State, which is an appendix to this paper.

■ Key Issues and Observations

- In 2005, the legislature repealed many restrictions on tolling specific facilities that had previously borne tolls until related bond issues were paid off. At the same time, lawmakers required that no new tolls could be imposed on state highways or bridges without express statutory authorization. This raises the basic policy question of whether future decisions to impose tolls should be made by elected lawmakers on a case-by-case basis, or whether tolls should be imposed by the Transportation Commission or WSDOT pursuant to basic policies and a process established by the legislature. *To implement Proposed Tolling Policies 1, 2, 6 and 7, it would be appropriate to enact legislation by which the legislature would establish the basic policies and criteria governing the imposition of tolls in Washington State. These policies would provide "high-level" direction to the Transportation Commission and WSDOT, and they might be similar to the Study's Proposed Tolling Policies. The legislation should also specify the responsibilities of the legislature, the Transportation Commission, WSDOT, local and multistate entities, respectively, in proposing and selecting facilities for tolling, in rate-setting, and in implementing tolls.*
- Under existing law, the Transportation Commission is the basic tolling authority in the State. There is, however, authorization for special purpose subunits of government to establish tolls. These include a Regional Transportation Improvement District in the central Puget Sound area, local Transportation Benefit Districts, cities, and port districts. Tolls established by some of these local districts must also be approved by the Commission and by the voters within the jurisdiction establishing the tolls. *To implement Proposed Tolling Policies 7 and 8, various statutes would need to be amended to clarify*

the scope of the state tolling authority's role and responsibilities with respect to local tolls. For example, in order to ensure operational coordination and consistency, legislation should delineate the procedures for approving new local toll projects. Statewide polices (perhaps refined by WSDOT and the Transportation Commission) should delineate specific practices related to toll collection activities. It may be appropriate to require that prior to imposing tolls on any streets, highways or bridges, all local governments would be required to obtain approval from the Transportation Commission, as tolling authority. Where voter approval is required before new tolls can be imposed, perhaps Commission approval should be obtained before submitting a measure to the electorate.

- Tolls on Federally funded facilities (e.g., Interstate highways) are generally prohibited by Federal law, although there are some exceptions, such as for “HOT Lanes” and “reconstruction” of existing bridges. Also, Congress has established various programs (including specific demonstration programs) that enable tolling of certain types of projects proposed by states and selected by the Federal Highway Administration. *To implement Tolling Policies 1 and 2 with respect to Federally funded highways, Washington State will need to act swiftly and decisively to identify those facilities, to implement the basic policy and legal framework for tolling, and to apply to FHWA for clearance to impose tolls (including being included in demonstration programs). To the extent necessary, Washington should work with its Congressional Delegation to support amendments to Federal law, including the continuation of pilot programs, so that Federal Highway Administration approval may be obtained where necessary the State's tolling policies and program.*
- Apart from statutes providing for State Ferry tolls (RCW 47.60.150 and .326), for SR 167 HOT lanes (RCW 47.56.403), and for the use of Tacoma Narrows Bridge tolls to reimburse the Motor Vehicle Fund for debt service on bonds issued to construct that facility (RCW 47.56.165), State law does not currently address the disposition of revenue from tolled facilities in a manner that would address the Commission's proposed policies. For example, RCW 47.56.160 remains as a general statement, dedicating toll revenue to bond repayment, in the expectation that the legislature will continue to authorize toll facilities on a specific, project-by-project basis, rather than on a comprehensive basis. *To implement Proposed Tolling Policies 3 and 4, legislation, and more detailed policies, should address the accounting and disposition of toll revenues to pay for toll system operation and maintenance, to fund construction and maintenance of highways and to pay for other parts of the transportation system, similar to authority now provided for Transportation Innovative Partnership accounts in RCW 47.29.240.*
- The legislature recently strengthened privacy protections for persons who use transponders or other technology to facilitate payment of tolls. However, lawmakers may wish to continue to evaluate whether sufficient protections exist for citizens who want to reduce their vulnerability to tracking by government agencies or others. The Transportation Commission and WSDOT will obtain important experience and information from the implementation of an automated tolling system on the Tacoma Narrows Bridge, including data on the anonymous purchase of prepaid cards and feedback from users about whether they feel the character and level of privacy protections are adequate. The Transportation Commission and WSDOT may then be in a

position to determine whether to recommend additional legislation that would require or strengthen anonymous purchases or other approaches to ensure consumer privacy.

- Environmental regulations will continue to play a key role in the process of selecting specific facilities for tolling. Attention must be paid to complying with applicable requirements of the State Environmental Policy Act (SEPA), the National Environmental Policy Act (NEPA), and Washington’s Growth Management Act (GMA).

■ Discussion of Legal and Regulatory Issues

Tolls – The Legislative Context

The State has a history of being cautious about tolls and requiring specific legislative authorization for any toll bridge or highway. Recently there has also been a trend to require a public vote before new tolls can be imposed. Two statutes, adopted in 2005 and 2002 respectively, encompass that principle:

47.56.031 Approval of tolls.

No tolls may be imposed on new or existing highways or bridges without specific legislative authorization, or upon a majority vote of the people within the boundaries of the unit of government empowered to impose tolls. This section applies to chapter 47.56 RCW and to any tolls authorized under chapter 47.29 RCW, the transportation innovative partnership act of 2005.

47.56.075 Toll roads, facilities – Legislative authorization or regional or local sponsorship required.

The department shall approve for construction only such toll roads as the legislature specifically authorizes or such toll facilities as are specifically sponsored by a regional transportation investment district, city, town, or county.

The State has also been reluctant to allow tolls to remain on any facility once the initial capital costs (usually funded by a bond issue) are paid off. An example of this type of restriction was incorporated in RCW 47.60.445 (now repealed) restricting the use of tolls on the Hood Canal Bridge:

[Repealed] 47.60.445 Hood Canal Bridge – Tolls, upkeep costs.

Notwithstanding the provisions of RCW 47.56.240 and 47.56.245 the transportation commission shall not collect tolls on the Hood Canal bridge for any purpose except where necessary to comply with bond covenants.

The cost of maintenance upkeep, and repair may be paid from funds appropriated for the construction and maintenance of the primary state highways of the State of Washington.

In 2005, the legislature passed a comprehensive repeal of most of the numerous, specific toll road and bridge designations of the past and adopted the general statement in RCW 47.56.075 quoted above (Laws of 2005, Chapter 335). In essence, the voluminous list of historic toll authorizations was wiped clean. But for the time being the legislature has retained the power to allow tolls to be imposed on any new or existing facility. This raises the basic policy question of whether future decisions to impose tolls should be made by elected lawmakers on a case-by-case basis, or whether tolls should be imposed by the Transportation Commission or WSDOT pursuant to basic policies or a basic framework established by the legislature.

Under RCW 47.56.240, the Transportation Commission is the tolling authority for any toll projects authorized under Chapter 47.56, RCW. The Commission must also approve of the tolls established under local, special purpose district authority described below.

One issue that is not currently addressed in state law is whether toll revenues are to be deposited in single transportation fund to be used for a broad array of transportation projects, or whether tolls from a specific facility are to be dedicated to financing capital and/or operating costs of that facility. Tolls from the expanded Tacoma Narrows Bridge will be used to reimburse the State for gas tax revenues used to repay bonds issued for that facility. RCW 47.56.245, a feature of the specific revisions related to the Tacoma Narrows Bridge, contains a classic pledge for the benefit of bondholders – that tolls must remain until bonds are paid off. However, the legislature and the Transportation Commission may wish to consider whether a broader, systemwide approach to use of toll revenues is beneficial, and if so, to implement such an approach by statute or by rule.

Additional Authorization for Tolls

In addition to the general requirement in RCW 47.56.031, for legislative authorization of new toll projects, there are a number of other Washington statutes that authorize toll roads and bridges, either in the context of “public-private partnerships” or in the context of newly created special purpose districts.

The Transportation Commission, pursuant to RCW 47.46.100, remains the tolling authority for partnerships authorized under RCW Chapter 47.46. Under RCW Chapter 47.29, the Commission has the power to select and control “innovative partnership” agreements, and thus can retain control of the tolling authority. In the creation of special purpose districts for tolling described below, the Commission either retains the direct tolling authority, as in the case of RTID, or must approve the tolls, as in the case of local transportation benefit districts.

Public-Private Partnerships in RCW 47.46 and 47.29

Public-private partnerships in transportation projects are authorized by the Public-Private Transportation Initiatives Act, RCW Chapter 47.46, first enacted in 1993. The purpose of the statute was to supplement state transportation funds with private funds in up to six

demonstration projects. In 1995, the statute was amended to require an advisory election on any preferred alternative (under SEPA) for a specific project. Other 1995 amendments made it relatively difficult to accomplish projects under the statute. In 2004, the act was amended again to specifically authorize systems that include manual cash collection, electronic collection, and photo monitoring, including restrictions on the use of photo documentation only for toll collection purposes. RCW 47.46.105.

The principal example of use of this statute is the second span of the Tacoma Narrows Bridge, currently under construction. The design-construction team for that project was selected through the Chapter 47.46 process. But litigation ensued when the project began. A collection of citizen plaintiffs sued the Washington State Department of Transportation (WSDOT) and initially blocked the imposition of tolls because the original Tacoma Narrows Bridge had been specifically required to be toll-free when its construction debt was retired. *Peninsula Neighborhood Association v. DOT*, 142 Wn.2d 328, 12 P.3d 134 (2000). The Supreme Court in *Peninsula* did, however, uphold the constitutionality of the public-private partnership construction under the act, as it had “sufficient standards and guidelines as well as procedural safeguards to satisfy the constitutional challenge.” *Id.*, 142 Wn.2d at 346. Tolls were later authorized by an amendment to the original law.

In place of earlier public-private partnerships, the legislature promulgated the Transportation Innovative Partnership Program in Chapter 47.29 RCW. The Tacoma Narrows Bridge is expected to be the last example of the prior partnership program. The new statutory authority is an outline, with the details to be filled in by future specific project partnership agreements. Required elements that must be included in one of these agreements are listed in RCW 47.29.140. These include part (c) providing that “If there is a tolling component to the project, then it must be specified that tolling technology used in the project must be consistent with tolling technology standards adopted by the department for transportation-related purposes.” To come within the approved ambit of the Supreme Court’s approval of public-private partnerships under RCW, Chapter 47.46 in *Peninsula*, these required elements must be carefully adhered to.

Local Transportation Benefit Districts RCW 36.73

Following a long-standing trend in Washington law to address a problem by creating a new special purpose subunit of government, this 2005 statute allows local governments – cities towns and counties – to create a special purpose district to address local transportation needs. Laws of 2005, Chapter 336, codified in RCW Chapter 36.73.

The Transportation Benefit District has both taxing power and the power to adopt fees, charges and tolls, but any of those taxes, fees or a range of tolls must first be approved by voters in the district. RCW 36.73.065. In addition, any tolls on city or county streets must be approved by the Transportation Commission, and tolling on Federal or state highways within the district must be administered by the Commission. RCW 36.73.040(d). This ensures that local tolling, at least by a Local Transportation Benefit District, fits into a statewide framework.

Cities and Towns

For many years cities and towns have had independent powers to build and maintain toll bridges and to create their own systems to establish and operate those tolls. RCW 35.74.050. While it may be unlikely that any city or town will now create an independent toll authority, this statute would need to be amended to guarantee statewide tolling consistency.

Regional Transportation Investment Districts RCW 36.120

In 2002, the legislature authorized the creation of a Regional Transportation Investment District (RTID) in the central Puget Sound area. RCW, Chapter 36.120. The RTID has the authority to develop a “regional transportation investment plan” for various improvements. One of the important powers of an RTID is to use the “design build” procedure for transportation projects developed by it. RCW 36.120.110(7).

Pursuant to RCW 36.120.050(1)(g), the RTID may propose vehicle tolls on new or reconstructed facilities. The tolling proposal, together with the whole plan, must be approved by a majority of voters within the boundaries of the RTID. Once tolls are approved by the voters in the RTID, the tolls are administered by WSDOT and the tolling authority is the Transportation Commission. RCW 36.120.050(1)(g).

High-Occupancy Toll Lane Pilot Project RCW 47.56.403

Another 2005 amendment to Washington transportation law provides authority for WSDOT to create a demonstration project for High-Occupancy Toll lanes on SR 167. The Transportation Commission is given guidance in the statute for the types of tolls to apply and the types of vehicles that must be exempt. Toll charges are to be imposed on single-occupancy vehicle users who would be permitted to enter the lanes to the extent that average vehicle speeds are maintained at 45 miles per hour at least 90 percent of the time during peak hours. Tolls would not be assessed on transit and vanpool vehicles. Tolls on other multiple occupancy vehicles would be discretionary, as determined by the Commission. This is set up as a pilot project with performance reporting requirements and a four-year implementation window.

Tolls on Federally Funded Facilities

Federal law imposes substantial constraints on tolling Federally funded highways. 23 U.S.C. §301. However, in August 2005, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). In addition to certain preexisting exceptions, such as HOT lanes (23 U.S.C. §149) and reconstructed bridges (23 U.S.C. §129(a)(1)), SAFETEA-LU enabled three new exceptions, and modified one existing exception, to the general prohibition on the imposition of tolls by states on Federally funded facilities. The legislation permits states and other qualifying agencies to

impose tolls on certain Interstate highways, tunnels, and bridges. All tolling and pricing programs are coordinated by the Federal Highway Administration (FHWA).

The application process for all tolling and pricing programs is a two-step process. The first step involves submitting an Expression of Interest to an FHWA “Tolling and Pricing Team” (which does not approve projects, but acts as a clearinghouse for all applications). After receiving the Expression of Interest, the Tolling and Pricing Team assists the applicant in identifying the range of available options and directs the applicant to the most appropriate program office to accomplish the goals stated in the Expression of Interest. The Team will make comments on the Expression of Interest, to which the applicant must respond. The applicant must then formally apply to the appropriate program office for review (second step), in compliance with any specific procedural requirements of the selected program office.

The number of opportunities for these demonstration projects or new highway funding opportunities is limited to three projects in three different states, so there will be competition for the limited demonstration slots. Early approaches to the Federal Highway Administration on any specific toll proposals would be important, and at least two of the demonstration opportunities have been taken in Virginia, and Missouri. More information on SAFETEA-LU, is available at: http://ops.fhwa.dot.gov/tolling_pricing/announcement/tolling_announcement.htm

If Washington State desires to have tolls imposed on an existing Interstate highway or other Federally funded facility, the State should move as swiftly as practicable to identify those facilities, to implement the basic policy and legal framework for tolling, and to apply to FHWA for clearance to impose tolls. There is expected to be a new highway authorization bill in 2009, under which additional toll demonstrations may be permitted.

Interstate Commerce Issues

Federal courts have consistently upheld tolls linking different states. For example, in 1972, the Supreme Court distinguished an 1868 decision barring Nevada from imposing exit tolls on travelers leaving that state. The 1972 decision held that a tax designed merely to impose upon an interstate traveler the traveler’s fair share of the government’s costs in maintaining the public facility used is not an unconstitutional burden on the constitutionally guaranteed right to travel. *Evansville-Vanderburgh Airport Auth. Dist. v. Delta Airlines*, 405 U.S. 707, 712-14, 92 S.Ct. 1349, 1353-54, 31 L.Ed.2d 620 (1972). The Supreme Court established a three-part test for making this determination: whether the toll 1) discriminates against interstate travelers, 2) represents a fair approximation of the use conferred on those who pay, and 3) is excessive in relation to the costs incurred. These standards appear straightforward, and are the ones that the Transportation Commission would itself use in setting toll rates on any project in Washington.

The issue of interstate commerce has been raised in the multiple toll bridges and tunnels in New York metropolitan area. In 1991, for example, the Third Circuit ruled against a challenge by New Jersey citizens to increased tolls on the bridges and tunnels to New

York imposed by the Port Authority of New York and New Jersey. *Wallach v. Bresnoff*, 930 F.2d 1070 (3rd Circle, 1991). There, the court rejected the attack on a 50 percent rate increase for tolls and found that there is “no dispute by appellants that the tolls in place before the increase were inadequate to operate the interstate system of tunnels, bridges, the bus terminal and PATH and also finance a necessary capital program, nor that the river crossing system as a whole gets only a fair rate of return on its service.” *Id.*, 930 F.3d at 1072.

Rate Setting

Rate setting for state toll facilities is considered to be an administrative function, and not a delegation of legislative authority. *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 61 Wn.2d 28, 47, 377 P.2d 466 (1962); *Peninsula Neighborhood Ass’n, v. DOT*, 142 Wn.2d 328, 338, 12 P.3d 134 (2000). This is an important principle, because it enables the legislature to charge WSDOT or the Transportation Commission with responsibility to select specific facilities for tolling and to set the rates. However, legislation must establish the purpose and basic components of a tolling mechanism, and the Transportation Commission (or WSDOT) must follow the Administrative Procedures Act when establishing and altering tolls. However, current toll requirements may be too restrictive. RCW 47.56.240, for example, requires that the Commission set tolls “at rates to yield annual revenue equal to annual operating and maintenance expenses including insurance costs and all redemption payments and interest charges of the bonds issued for any particular toll bridge.”

The Washington Administrative Procedures Act (RCW Chapter 39.34) follows the Federal model and provides for public notice of rule-making and an opportunity to challenge administrative decisions in court based on lack of statutory authority, lack of supporting evidence, or on the basis of arbitrary and capricious conduct. In essence, this provides the Commission with a fair amount of flexibility in how it determines tolls, so long as the tolls are not set arbitrarily.

Apart from any Federal restrictions that may be imposed, the location of toll booths or the creation of an electronic system for collecting tolls rests with the Transportation Commission or WSDOT under an general delegation to administer and establish tolls. An example of the kind of detail that would result from establishing tolls on any facility can be seen in WAC Chapter 463-300, in which specific tolls are established by regulation for the use of the state ferries, and within which certain flexibility is delegated to the state ferry system itself.

Tolls generally need to be related both to the cost of operating the system and paying for the capital and operating expenses of the tolled roadway, bridge, or broader system of tolled facilities and related transportation facilities. With legislative direction, however, other considerations, such as congestion management and off-peak usage, may be employed. The legislative authorization for State Ferry tolls in RCW 47.60.326, for example, lists additional considerations the Transportation Commission can incorporate into the adoption of State Ferry tolls. A new statute enacted in 2005, authorizing tolls for transportation benefit districts, likewise contains flexible toll purpose language the

Commission may wish to recommend to the legislature in other toll statutes: “... shall impose tolls, only with the permission of the transportation commission, in amounts sufficient to implement the district’s transportation improvement plan. Tolls may vary for type of vehicle, time of day for traffic conditions, and/or other factors designed to improve performance of the facility or the transportation network.” RCW 47.56.078.

Toll Enforcement

The classic government mechanism for enforcing collection can be employed to collect tolls, at least for in-state vehicles. RCW 46.16.216 provides that licensing of vehicles is contingent on first paying off all stopping or moving violations charged against the vehicle when registered to the owner. Under RCW 46.16.216(1) and RCW 46.63.030(1)(d), failure to pay a toll can block reissuance of a vehicle license if the infraction was detected through a photo enforcement system. It may be useful to clarify the relevant statutes so that failure of pay a toll will prevent relicensing even if a photo enforcement mechanism is not in use. It may also be useful to have legislation enacted in Washington State and in nearby states and provinces, so that vehicles licensed in those other jurisdictions also must pay tolls in Washington prior to being relicensed by their home government. Further, it may be appropriate to adjust current statutes so that when a toll evader is charged with an infraction, and eventually pays a fine, a portion of the amount paid (representing the evaded toll plus subsequent costs) is returned to the toll system.

Privacy Concerns

RCW 47.46.105(1)(c) provides that toll payment monitoring photographs may be used solely for toll enforcement purposes and must then be destroyed. A provision of the public disclosure act, RCW 42.56.070(9), (42.17.260(9) until July 1, 2006) provides that an agency cannot provide any lists of names to a requestor seeking to use the list for commercial purposes.

This provides some protection from the commercial use of information about those who purchase electronic toll payment devices for their vehicles. Substantially more protection was added in 2005 by the enactment of RCW 42.17.310(1)(ggg), (42.56.330 beginning on July 1, 2006). The exemption provides:

The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order.

Privacy remains a significant public concern, and lawmakers may wish to continue to evaluate whether sufficient protections exist for citizens who want to reduce their vulnerability to tracking by government agencies or others.

SEPA/NEPA Issues

A number of actions may be taken by the State related to tolling. They range from the adoption of statutes by the legislature, to policy or programmatic decisions by the Transportation Commission, to the siting and construction of individual tolling facilities by the WSDOT. Actions taken by the state legislature are exempt from the State Environmental Policy Act (SEPA), chapter 43.21C RCW.¹ Decisions by the Commission establishing or changing toll rates are also exempt.² However, at least some of the actions taken by the Commission or WSDOT to develop additional tolling facilities will likely require an analysis of environmental impacts under SEPA.

SEPA requires a threshold determination for any proposal that meets the definition of an “action” and is not exempt.³ The purpose of the threshold determination is to decide whether a full-blown environmental impact statement (EIS) is necessary. An EIS is required if the proposed action has a reasonable likelihood of causing more than a moderate adverse impact on the environment.⁴ Decisions on policies, plans, or programs are considered “nonproject actions”⁵ and typically require a programmatic EIS if they have probable significant adverse impacts.⁶ The Transportation Commission or the Department of Transportation may make programmatic or policy decisions concerning where and under what conditions to place tolling facilities, which could require the preparation of a programmatic EIS. However, the agency would need to be at a stage in the decision-making process where the environmental effects of the proposed decisions could be meaningfully evaluated.⁷ In addition, any proposal to site and build a particular tolling facility would be a “project action” and, at a minimum, would require a threshold

¹ WAC 197-11-800(10).

² WAC 197-11-800(14)(i); WAC 468-12-800(2).

³ WAC 197-11-310(1).

⁴ WAC 197-11-330; WAC 197-11-794(1).

⁵ WAC 197-11-704(2)(b).

⁶ WAC 197-11-442.

⁷ Preliminary information gathering and conceptual planning leading to a proposal may be exempt. WAC 197-11-800(17). A proposal exists triggering SEPA when an agency has a goal and is actively preparing to make a decision on one or more alternative ways of meeting that goal and the environmental effects of the proposal can be meaningfully evaluated. WAC 197-11-055(2)(a).

determination.⁸ It may also require an EIS, depending on the significance of the impacts of the facility.

Tolling facilities may cause a number of potential environmental impacts that would need to be evaluated under SEPA. The most likely impacts would be increased traffic on alternate routes to avoid the toll booths, with all of the associated impacts, such as air emissions and noise. There may also be air quality and noise issues associated with cars slowing and stopping at toll booths, as well as any impacts from actual construction of the booths.

Finally, if any of the decisions involved Federal action such as approval or funding (e.g., requiring tolls on an interstate route), the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, may be triggered in addition to SEPA. In that event, WSDOT and the Commission could possibly rely on a NEPA EIS prepared by or for the Federal government,⁹ or prepare a joint NEPA/SEPA EIS.

Growth Management Act Backdrop

A transportation element is a critical feature of growth management plans under the growth management act. RCW 36.70A.070(6). Therefore, any proposal to establish tolls on a highway will inevitably be seen to have significant consequences on the adjacent transportation plan elements in urban growth areas.

While there is generally a “concurrency” requirement for state agencies to comply with local growth management plans, RCW 36.70A.103, there is an exception for concurrency within the local plans for state highways of statewide significance. RCW 36.70A.070(6)(a)(iii)(C). Of course, it is likely that tolls will largely be established on highways of statewide significance.

The GMA is a ripe area for litigation, however, and the effects of any toll proposal on local growth management plans should be closely scrutinized.

Background Paper prepared by Foster Pepper PLLC in May 2006.

⁸ WAC 197-11-704(2)(a) (“project action” is a decision on a specific project, such as construction in a defined geographic area).

⁹ WAC 197-11-610.

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Appendix

Below is a summary of Washington statutory authority to establish toll facilities, enforce toll collection, and state privacy laws regarding electronic tolling systems. Also included is a brief discussion of the programs and exceptions which permit the imposition of tolls on Federally funded facilities.

■ Authority to Set Tolls

Chapter 47.56 RCW: State toll bridges, tunnels and ferries

RCW 47.56.010 Definitions

“Toll bridge”: a bridge upon which tolls are charged, together with all appurtenances, additions, alterations, improvements, and replacements; approaches; lands used therefor; and buildings and improvements thereon.

“Toll road”: any express highway, superhighway, or motorway constructed or to be constructed as a limited access highway, and including but not limited to: all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service areas, service facilities, communications facilities, and other buildings deemed necessary for the project; and all property, rights, easements and interests acquired by the department [of transportation] for the construction or operation of the project.

RCW 47.56.030 Powers and duties regarding toll facilities

(1) “Except as permitted under chapter 47.46 RCW [see below]:

(a) The department of transportation shall have full charge of the construction of all toll bridges and other toll facilities...and the operation and maintenance thereof.

(b) **The transportation commission shall determine and establish the tolls and charges thereon**, and shall perform all duties and exercise all powers relating to the financing, refinancing, and fiscal management of all toll bridges and other toll facilities...”

RCW 47.56.031 Approval of tolls

“No tolls may be imposed on new or existing highways or bridges without specific legislative authorization, or upon a majority vote of the people within the boundaries of the unit of government empowered to impose tolls. This section applies to chapter 47.56

RCW and to any tolls authorized under chapter 47.29 RCW, the transportation innovative partnership act of 2005.”

RCW 47.56.075 Toll roads, facilities – authorization or sponsorship required

“The department shall approve for construction only such toll roads as the legislature specifically authorizes or such toll facilities as are specifically sponsored by a regional transportation investment district, city, town, or county.”

**RCW 47.56.076 Regional transportation investment district – Tolls – Voter approval
*effective 06/07/2006***

“Upon approval of a majority of the voters within its boundaries voting on the ballot proposition, and with the approval of the state transportation commission or its successor statewide tolling authority, a regional transportation investment district may authorize vehicle tolls on a local or regional arterial or a state or Federal highway within the boundaries of the district. The department shall administer the collection of vehicle tolls authorized on designated facilities unless otherwise specified in law or by contract, and the commission or its successor statewide tolling authority shall set and impose the tolls in amounts sufficient to implement the regional transportation investment plan under RCW 36.120.020.”

RCW 47.56.xxx *new section effective 06/07/2006*

“Notwithstanding any provision to the contrary in this chapter, a regional transportation investment district may authorize tolls on either Lake Washington bridge within its boundaries to implement a regional transportation investment plan as authorized in chapter 36.120 RCW and RCW 47.56.076.”

RCW 47.56.240 Toll bridges – fixing of toll rates authorized

“The [transportation] commission is hereby empowered to fix the rates of toll and other charges for all toll bridges built under the terms of this chapter. Toll charges so fixed may be changed from time to time as conditions warrant. The commission, in establishing toll charges, shall give due consideration to the cost of operating and maintaining such toll bridge or toll bridges including the cost of insurance, and to the amount required annually to meet the redemption of bonds and interest payments on them. The tolls and charges shall at all times be fixed at rates to yield annual revenue equal to annual operating and maintenance expenses including insurance costs and all redemption payments and interest charges of the bonds issued for any particular toll bridge or bridges as the bonds become due....”

RCW 47.56.245 Toll charges retained until costs paid

“The department shall retain toll charges on all existing and future facilities until all costs of investigation, financing, acquisition of property, and construction advanced from the motor vehicle fund, and obligations incurred under RCW 47.56.250 and chapter 16, Laws of 1945 have been fully paid.”

(2) “Where a state toll facility is constructed under chapter 47.46 RCW [see below] adjacent to or within two miles of an existing bridge that was constructed under this chapter, revenue from the toll facility may not be used to pay for costs of maintenance on the existing bridge.”

RCW 47.56.247 Credit permits for vehicular passage

“The department may issue permits for the passage of vehicles on any or all of its toll bridges, toll tunnels, toll roads, or for the Washington State ferry system on a credit basis upon such terms and conditions as the department deems proper.”

RCW 47.56.248 Credit permits – deposit or bond – revocation of permit

“The department may require the holder of the permit to furnish to and maintain in force with the department a cash deposit or a corporate surety bond.” The department may require the bond to be increased, may require an additional surety bond, or may revoke any permit for failure to comply with any of its terms.

RCW 47.56.403 High-occupancy toll lane pilot project

This section provides the authorization and requirements for a pilot project for high-occupancy toll lanes on State Route 167. It provides for Transportation Commission establishment of tolls on SR 167 for use of high-occupancy toll lanes. Toll charges are to be imposed on single-occupancy vehicle users who would be permitted to enter the lanes to the extent that average vehicle speeds are maintained at 45 miles per hour at least 90 percent of the time during peak hours. Tolls would not be assessed on transit and vanpool vehicles. Tolls on other multiple occupancy vehicles would be discretionary, as determined by the Commission.

Chapter 47.58 RCW: Existing and additional bridges**RCW 47.58.0140 [Existing and new bridges within two miles as single project] – Tolls**

“...The department has the right to impose tolls for traffic over the existing bridge as well as the additional bridge for the purpose of paying the cost of operation and maintenance of the bridge or bridges and the interest on and creating a sinking fund for the retirement of revenue bonds issued for account of such project, all in the manner permitted and provided by this chapter.”

RCW 47.58.030 Construction/operation – collection of tolls – charges

“The secretary shall have full charge of the construction of all such improvements ...that may be authorized under this chapter...as well as the collection of tolls and other charges for services and facilities thereby afforded. The schedule of charges for the services and facilities shall be fixed and revised from time to time by the commission so that the tolls and revenues collected will yield annual revenue and income sufficient, after payment or allowance for all operating, maintenance, and repair expenses, to pay the interest on all revenue bonds outstanding under the provisions of this chapter...The charges shall be continued until all such bonds and interest thereon and unpaid advancements, if any, have been paid.”

Chapter 47.46 RCW: Public-private transportation initiatives**RCW 47.46.020 Definition**

“As used in this chapter, “transportation systems and facilities” means capital-related improvements and additions to the State’s transportation infrastructure, including but not

limited to highways, roads, bridges, vehicles, and equipment, marine-related facilities, vehicles, and equipment, park and ride lots, transit stations and equipment, transportation management systems, and other transportation-related investments.”

RCW 47.46.080 State toll facilities authorized for public-private transportation projects

“The department [of transportation] may provide for the establishment and construction of state toll bridge facilities upon any public highways of this state together with approaches to them under agreements entered into under this chapter to develop such facilities. A state toll bridge facility authorized under this section includes, but is not limited to, the construction of an additional toll bridge, including approaches, adjacent to and within two miles of an existing bridge, the imposition of tolls on both bridges, and the operation of both bridges as one toll facility.”

RCW 47.46.090 Citizen advisory committee – Tolls

For any project developed under this chapter that imposes toll charges, a citizen advisory committee must be created. The committee is to serve in an advisory capacity to the commission on all matters related to the imposition of tolls, including but not limited to: “a) the feasibility of providing discounts to frequent users, electronic transponder users, senior citizens, or students; b) the tradeoff of lower tolls versus the early retirement of debt; and c) a consideration of variable, or time-of-day pricing.” **No toll charge may be imposed or modified unless the committee has been given at least 20 days to review and comment on any proposed toll charge schedule. In setting toll rates, the commission SHALL give consideration to any of the committee’s recommendations.**

RCW 47.46.100 Tolls – Setting – Lien on

(1) “The commission shall fix the rates of toll and other charges for all toll bridges built under this chapter that are financed primarily by bonds issued by the state. Subject to RCW 47.46.090, the commission may impose and modify toll charges from time to time as conditions warrant.”

(3) “The toll charges must be imposed in amounts sufficient to: a) Provide annual revenue sufficient to provide for annual operating and maintenance expenses, except as provided in RCW 47.56.245; b) Make payments required under RCW 47.56.165 [Tacoma Narrows toll bridge account] and 47.46.140, including insurance costs and the payment of principal and interest on bonds issued for any particular toll bridge or toll bridges; and c) Repay the motor vehicle fund under RCW 47.46.110, 47.56.165, and 47.46.140.”

RCW 47.46.105 Tolls – Collection

(1) “Tolls may be collected by any system that identifies the correct toll and collects the payment. Systems may include manual cash collection, electronic toll collection, and photo monitoring systems.” [this section defines “electronic toll collection” and “photo monitoring systems”]

(2) “The department shall adopt rules to govern toll collection.”

RCW 47.46.110 Tolls – Term, use

Toll charges must be retained on any existing and future facilities constructed under this chapter which are financed primarily by bonds issued by the state, until 1) all costs

advanced from the motor vehicle fund have been repaid; 2) obligations incurred in the construction of the facility have been repaid; and 3) the motor vehicle fund is fully repaid under RCW 47.46.140.

This section does *not* prohibit the use of toll revenues to fund maintenance, operations or management of facilities constructed under this chapter (except as prohibited by RCW 47.56.245), nor does it require repayment of funds specifically appropriated as a nonreimbursable state contribution to a project.

However, **upon satisfaction of the repayment conditions enumerated above, the facility must be operated as a toll-free facility**, and the operation and maintenance of the facility must be repaid from funds appropriated for the construction and maintenance of primary state highways.

RCW 47.46.120 Toll increases in excess of fiscal growth factor

“Pursuant to RCW 43.135.055 [state expenditures limitations], the legislature authorizes the transportation commission to increase bridge tolls in excess of the fiscal growth factor.”

Chapter 36.73 RCW: Transportation benefit districts

RCW 36.73.040 General powers of district

(3) “To carry out the purposes of this chapter, and subject to the provisions of RCW 36.73.065, a district is authorized to impose the following taxes, fees, charges, and tolls:

(d) Vehicle tolls on state routes or Federal highways, city streets, or county roads, within the boundaries of the district, unless otherwise prohibited by law. The department of transportation shall administer the collection of vehicle tolls authorized on state routes or Federal highways, unless otherwise specified in law or by contract, and the state transportation commission, or its successor, may approve, set, and impose the tolls in amounts sufficient to implement the district’s transportation improvement finance plan. The district shall administer the collection of vehicle tolls authorized on city streets or county roads, and shall set and impose, only with approval of the transportation commission, or its successor, the tolls in amounts sufficient to implement the district’s transportation improvement plan.”

RCW 36.73.065 Taxes, fees, charges, tolls – Voter approval required

(1) “Taxes, fees, charges, and tolls may not be imposed by a district without approval of a majority of the voters in the district voting on a proposition at a general or special election. The proposition must include a specific description of the transportation improvement or improvements proposed by the district and the proposed taxes, fees, charges, and the range of tolls imposed by the district to raise revenue to fund the improvement or improvements.

(2) Voter approval under this section shall be accorded substantial weight regarding the validity of a transportation improvement as defined in RCW 36.73.015.

(3) A district may not increase any taxes, fees, charges, or range of tolls imposed under this chapter once the taxes, fees, charges, or tolls take effect, unless authorized by the district voters pursuant to RCW 36.73.160.”

Chapter 36.120 RCW: Regional transportation investment districts

RCW 36.120.050 Taxes, fees, and tolls*effective 06/07/06*

(1) ”A regional transportation investment district planning committee may, as part of a regional transportation investment plan, recommend the imposition or authorization of some or all of the following revenue sources, which a regional transportation investment district may impose or authorize upon approval of the voters as provided in this chapter:

(g) Vehicle tolls on new or reconstructed local or regional arterials or state or Federal highways within the boundaries of the district, if the following conditions are met:

(i) Any such toll must be approved by the state transportation commission or its successor statewide tolling authority;

(ii) The regional transportation investment plan must identify the facilities that may be tolled; and

(iii) Unless otherwise specified by law, the department shall administer the collection of vehicle tolls on designated facilities, and the state transportation commission, or its successor, shall be the tolling authority.

(2) Taxes, fees, and tolls may not be imposed or authorized without an affirmative vote of the majority of the voters within the boundaries of the district voting on a ballot proposition as set forth in RCW 36.120.070. Revenues from these taxes and fees may be used only to implement the plan as set forth in this chapter. A district may contract with the state department of revenue or other appropriate entities for administration and collection of any of the taxes or fees authorized in this section.”

Chapter 47.29 RCW: Transportation innovative partnerships

RCW 47.29.140 Partnership agreements

(1) ”The following provisions must be included in any agreement to which the state is a party:

(c) If there is a tolling component to the project, then it must be specified that tolling technology used in the project must be consistent with tolling technology standards adopted by the department for transportation-related projects.”

Chapter 47.60 RCW: Puget Sound ferry and toll bridge system

RCW 47.60.010 Ferry system, toll bridges, and facilities authorized – Power to contract, sell and lease back

“The department is authorized to acquire by lease, charter, contract, purchase, condemnation, or construction, and partly by any or all of such means, and to thereafter operate, improve, and extend, a system of ferries on and crossing Puget Sound and any of its tributary waters and connections thereof, and connecting with the public streets and highways in the state. The system of ferries shall include such boats, vessels, wharves, docks, approaches, landings, franchises, licenses, and appurtenances as shall be determined by the department to be necessary or desirable for efficient operation of the ferry system and best serve the public. The department may in like manner acquire by purchase, condemnation, or construction **and include in the ferry system such toll bridges, approaches, and connecting roadways as may be deemed by the department advantageous in channeling traffic to points served by the ferry system.**”

Chapter 53.34 RCW: Toll facilities (Ports)

RCW 53.34.010 Toll bridges, tunnels authorized – Highway approaches

“In addition to all other powers granted to port districts, any such district may, with the consent of the department of transportation, acquire...construct, reconstruct, maintain, operate...any one or more of the following port projects, within or without or partially within and partially without the corporate limits of the district whenever the commission of the district determines that any one or more of such projects are necessary for or convenient to the movement of commercial freight and passenger traffic a part of which traffic moves to, from, or through the territory of the district:

(1) Toll bridges”;

...

“In connection with the acquisition or construction of any one or more of such projects the port district may, with the consent of the state department of transportation, further acquire or construct, maintain, operate, or improve limited or unlimited highway access approaches...to provide means of interconnection of the facilities with public highways and of ingress and egress to any such project, **including plazas and toll booths**...all for the purpose of obtaining revenues for the payment of the cost of the project.”

Chapter 35.74 RCW: Streets – drawbridges (Cities and Towns)

RCW 35.74.050 City may operate as toll bridges

“A city or town may build and maintain toll bridges and charge and collect tolls thereon, and to that end may provide a system and elect or appoint persons to operate the same, or the said bridges may be made free, as it may elect.”

■ Toll Enforcement

RCW 46.61.690 Violations relating to toll facilities

Any person who, at a toll facility or approach thereto, which is clearly marked as a toll facility, “does not pay, refuses to pay, evades or attempts to evade the payment of such tolls, or uses or attempts to use any spurious, counterfeit, or stolen ticket, coupon, token, or electronic device for payment of any such tolls” has committed a traffic infraction.

RCW 46.63.075 Toll evasion – Presumption

“(1) In a traffic infraction case involving an infraction detected through the use of a photo enforcement system under RCW 46.63.160, or detected through the use of an automated traffic safety camera under RCW 46.63.170, proof that the particular vehicle described in the notice of traffic infraction was in violation of any such provision of RCW 46.63.160 or 46.63.170, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, constitutes in evidence a prima facie presumption that the registered owner of the vehicle was the person in control of the vehicle at the point where, and for the time during which, the violation occurred.

(2) This presumption may be overcome only if the registered owner states, under oath, in a written statement to the court or in testimony before the court that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner.”

RCW 46.63.160 Electronic toll collection, photo enforcement

This section applies to traffic infractions issued for evading toll collections, under the following toll collection systems: manual cash collection, electronic toll collection, or photo enforcement.

“The department of transportation shall adopt rules that allow an open standard for automatic vehicle identification transponders used for electronic toll collection to be compatible with other electronic payment devices...or other toll collection systems to the extent technology exists.” The rules must also allow for multiple vendors providing the devices or transponders.

Infractions detected through the use of photo enforcement systems are not part of the registered owner’s driving record.

If the registered owner of a vehicle is a rental car business, the business may be liable for the applicable toll and fee if timely response is not made to a written notice of infraction.

RCW 46.16.216 Payment of parking fines required for vehicle license renewal

Under this section, all listed standing, stopping, and parking violations, and other infractions issued under RCW 46.63.030(1)(d) [by **photo enforcement**] must be satisfied before a vehicle license may be renewed. “Listed” infractions include only those violations for which notice has been received by the department at least 120 days before the license expires, and which have been placed in department records.

■ Privacy

RCW 46.63.160 Electronic toll collection, photo enforcement

(6)(b) "The department of transportation may not sell, distribute, or make available in any way, the names and addresses of electronic toll collection system account holders."

(7) "The use of a photo enforcement system for issuance of notices of infraction is subject to the following requirements:

(a) Photo enforcement systems may take photographs, digital photographs, microphotographs, videotapes, or other recorded images of the vehicle and vehicle license plate only.

(c) Notwithstanding any other provision of law, all photographs, digital photographs, microphotographs, videotape, or other recorded images prepared under this chapter are for the exclusive use of the tolling agency and law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this chapter. No photograph, digital photograph, microphotograph, videotape, or other recorded image may be used for any purpose other than enforcement of violations under this chapter nor retained longer than necessary to enforce this chapter or verify that tolls are paid.

(d) All locations where a photo enforcement system is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by a photo enforcement system."

RCW 47.46.105 Tolls - Collection

(1)(c) "No photograph, digital photograph, microphotograph, videotape, or other recorded image may be used for any purpose other than toll enforcement, nor retained longer than necessary to verify that tolls are paid, or to enforce toll evasion violations."

■ Tolls on Federally Funded Facilities

In August 2005, Congress passed the **Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)**. This legislation enabled three new exceptions, and modified one existing exception, to the general prohibition on the imposition of tolls by states on Federally funded facilities. These programs and exceptions permit states and other qualifying agencies to impose tolls on certain Interstate highways, tunnels, and bridges. All tolling and pricing programs are coordinated by the Federal Highway Administration, Office of Operations.

The application process for all tolling and pricing programs is a two-step process. The first step involves submitting an Expression of Interest to the newly established “Tolling and Pricing Team” (which does not approve projects, but acts as a clearinghouse for all applications). After receiving the Expression of Interest, the Tolling and Pricing Team will assist the applicant in identifying the range of available options and will direct the applicant to the most appropriate program office to accomplish the goals stated in the Expression of Interest. The Team will make comments on the Expression of Interest, to which the applicant must respond. The applicant must then formally apply to the appropriate program office for review (second step), in compliance with any specific procedural requirements of the selected program office.

Summarized below are the new programs and other exceptions that permit states to charge and collect tolls on Federally funded facilities. More information about these programs, including contact information, is available at http://ops.fhwa.dot.gov/tolling_pricing/announcement/tolling_announcement.htm.

Express Lanes Demonstration Program

Available: Fiscal years 2005-2009

This program authorizes up to 15 demonstration projects in which tolls are imposed for the purposes of managing high levels of congestion, reducing emissions in a nonattainment or maintenance area, or financing additional Interstate lanes for the purpose of reducing congestion. States, public authorities, or designated public or private entities may collect tolls at an eligible facility (highway, bridge, or tunnel, including on the Interstate). For purposes of tracking the 15 available slots, each agreement executed between an authority and the Federal Highway Administration (“FHWA”) constitutes one “demonstration project,” although more than one facility may be involved.

Eligible facilities include those that accomplish any of the following:

- Managing high levels of congestion by varying the toll price by time of day or by traffic level;
- Reducing emissions in a nonattainment or maintenance area (under Clean Air Act amendments); and
- Financing the expansion of a highway to reduce traffic congestion, by constructing one or more additional lanes (including bridges, tunnels, supports, or other necessary structures) on the Interstate System.

Qualified Demonstration Projects may include:

- Variable pricing by time of day or traffic level, as appropriate to manage congestion or improve air quality (required if an HOV facility is tolled, optional for non-HOV facility);
- Motor vehicles with fewer than two occupants may be permitted to use HOV lanes as part of a variable toll pricing program;

- **Automatic toll collection is required in express lanes;** and
- Toll revenue may only be used for debt service, reasonable rate of return on private financing, O&M costs, or any eligible Title 23 or Title 49 project if the facility is being adequately maintained.

Interstate System Construction Toll Pilot Program

Application Deadline: August 10, 2015

This program authorizes up to three facilities on the Interstate System to toll for the purpose of financing the construction of new Interstate highways. States or interstate compacts of states are eligible for this program. Each state or compacts of states may submit a single candidate project under this program. There is no special funding authorized for this program.

There is no requirement that facilities be in different states. Tolling must be the “most efficient and economical way” to finance the project, but doesn’t have to be the only way. Other requirements include:

- A facility management plan must be submitted;
- **Automatic toll collection is required;**
- Noncompete agreements between the state and a private entity, under which the state is prevented from improving or expanding the capacity of public roads in the vicinity of the toll facility, are prohibited;
- Revenues may only be used for debt service, reasonable return on private financing, and O&M costs (regular audits will be conducted); and
- Interstate Maintenance funds may not be used on the facility while it is tolled.

Value Pricing Pilot (VPP) Program

Available: Through fiscal year 2009

Funding: \$12 million maximum per fiscal year

Application Deadline: October 1 for funding the following year (Expression of Interest must be submitted by August 1)

Note: This program provides grant funds, and therefore applicants must comply with the requirements for timely solicitation, review, and award of grants.

This program authorizes the FHWA to enter into cooperative agreements with up to 15 states, local governments, or other public authorities to establish, maintain, and monitor value pricing pilot programs, each including an unlimited number of projects. There are currently 14 established VPP programs, so only one open slot remains.

“Value pricing” describes a number of strategies to reduce traffic congestion on highways, including tolling of highway facilities. It also encompasses nontolling methods such as mileage-based charges for insurance, taxes, leasing fees, and car sharing. Simply put, the concept is to assess relatively higher prices for travel during peak periods than for travel during nonpeak periods. Charges may vary by time of day, location, severity of congestion, vehicle occupancy, or type of facility.

Funds available for this program may be used for pre-implementation studies as well as for project implementation costs. States may permit toll-paying vehicles with fewer than two occupants to operate in HOV lanes, if the vehicles are part of a local value pricing pilot program. Possible mitigation measures may be required to offset the financial impact of VPP projects on low-income drivers, but such measures may be included as part of the project implementation costs.

Examples of potential project types include:

- Applications of value pricing that are comprehensive or regional and involve currently free facilities, such as regional or areawide pricing, pricing of multiple facilities and/or corridors, and combinations of road and parking pricing;
- Pricing at key traffic bottlenecks, such as tunnels and bridges, including “queue jumps”;
- Innovative strategies, such as time-of-day pricing or charges reflective of congestion conditions;
- Pay-as-you-drive pricing;
- Projects that do not have adverse effects on alternative routes, or on low-income or other transportation-disadvantaged groups;
- Projects that lead to substantial reduction of congestion and supplement existing tax-based approaches for generating transportation revenues; and
- Projects that result in free-flow peak-period roadway conditions, where motorists earn credit for their discretionary use, allowing them a limited amount of free or discounted access before having to pay full fees.

Other provisions permitting tolling of Federally funded highway facilities

- **23 U.S.C. 129 (Toll Agreements)** permits the imposition of tolls on free non-Interstate highways, bridges and tunnels and on free Interstate bridges and tunnels in accordance with Title 23 U.S.C. 129(a)(1). Federal participation is allowed in the following five types of toll activities:

- Initial construction (except on the Interstate System) of toll highways, bridges, and tunnels, including the approaches to these facilities;
- Reconstructing, resurfacing, restoring, and rehabilitation work on any existing toll facility;
- Reconstruction or replacement of free bridges or tunnels and conversion to toll facilities;
- Reconstruction of a free Federal-aid highway (except on the Interstate System) and conversion to a toll facility; and
- Preliminary studies to determine the feasibility of the above toll construction activities.

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 to a toll facility a free highway, bridge or tunnel previously constructed with Federal-aid funds, a toll agreement must be executed. There is no limit to the number of agreements that may be executed.

- The **Interstate System Reconstruction and Rehabilitation Pilot Program** permits up to three existing Interstate facilities (highway, bridge, or tunnel) to be tolled, for funding reconstruction or rehabilitation on Interstate highway corridors that could not otherwise be maintained or functionally improved without the collection of tolls. Each of the three facilities must be in a different state. There is no special funding authorized for this program. Interstate maintenance funds may not be used on a facility for which tolls are being collected under this program. Currently, only one open slot remains.
- The **HOV Facilities Program** authorizes states to create High-Occupancy Toll (HOT) lanes. It also permits states to charge tolls to vehicles that do not meet the established occupancy requirements to use an HOV lane, if the state establishes a program that addresses the selection of certified vehicles and procedures for enforcing the restrictions. Tolls may be imposed under this section on both Interstate and non-Interstate facilities. There is no limit on the number of projects or the number of states that may participate.