Legislative Issues (Task 8) with Regard to HOT Lanes in Houston

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Executive Summary

This report examines the legislative impediments to the adaptation of Houston's four high occupancy vehicle (HOV) lanes: North Freeway (I-45 north of downtown), Gulf Freeway (I-45 south of downtown), Eastex Freeway (US 59 north of downtown), and Southwest Freeway (US 59 south of downtown) to high occupancy/toll (HOT) lanes. The report examines the legislative issues surrounding:

1. the previous adaptation of two of Houston's HOV lanes to HOT lanes (Northwest Freeway [US-290 northwest of downtown] and Katy Freeway [I-10 west of downtown]),
2. HOT lane adaptation around the United States,
3. the new federal legislation (SAFETEA-LU) with regard to HOT lanes,
4. Texas legislation that may impact HOT lane adaptation, and
5. enforcement of the HOT lanes and cost recovery of enforcement operations.

Overall, no serious legislative impediments to the adaptation of HOV lanes to HOT lanes in Houston were found.

The previous adaptations of HOT lanes in Houston involved allowing HOV2s to pay $2 to use the HOT lane during peak periods when the lane was normally restricted to HOV3+ vehicles. Since single occupant vehicles (SOVs) were still restricted from using the lanes, this adaptation was (legislatively) relatively straight forward. Many of the other HOT lane adaptations from around the country involved allowing SOVs on the lane for a price. This required specific legislation, several safeguards to ensure continued free

flow on the lanes, and a Federal Transit Administration (FTA) allowance for these HOT lanes to retain their fixed-guideway status. Recently adopted FTA rules clarify FTA's current stance on this issue. Basically, a HOT lane can retain its fixed-guideway status if it was formerly classified as such when it was an HOV lane, it is continually monitored to ensure a high level of service, and revenues are used for appropriate purposes (details in Section 3).

The part of the new federal transportation legislation, SAFETEA-LU, that deals with this issue was clearly based on the experiences from these early adaptations of HOV to HOT lanes. In addition, SAFETEA-LU both mainstreams and streamlines the adaptation process. Agencies interested in adaptation of one of their HOV lanes can follow the step by step process outlined in SAFETEA-LU (and included in this report in Section 3.) This is the process recommended if/when proceeding with adaptation of their HOV lanes. Note that prior to this process TxDOT (who ultimately control the lanes) and METRO (who currently operate the HOV lanes and QuickRide) will need to develop specific governing principals and operating guidelines. Then, based on Texas Statues, TxDOT would require the Transportation Commission's approval of these guidelines and tolls.

One last issue that has not been fully addressed in this report is the ability of the HOT lane operator to collect revenues from enforcing the lanes. For example, it is unknown if METRO could enforce the lanes using a "theft of services" concept much as they do their METRORail service. This would provide METRO an opportunity to collect an administrative fee when issuing a citation for unauthorized SOV use of the HOT lane (see details in Section 4). Currently, all fine revenue goes to the local jurisdiction where the offence occurred, with all the costs of enforcement borne by METRO. The outcome of this issue does not preclude the adaptation of the lanes, so the issue was secondary as compared to legal impediments to adaptation. However, if METRO can enforce failure to pay a toll for access to HOT lanes as a "theft of service" the authority may stand to gain significant revenues from this enforcement – potentially allowing them to better enforce the lanes.

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1.0 Introduction

Legislative issues can be critical impediments to the development of high occupancy/toll (HOT) lanes. Since HOT lanes require both occupancy restrictions and tolling, there is a number of legislative issues that must be examined. These issues include the ownership of the potential HOT lanes, the ability/authority of the owner to charge a toll, the ability of the owner to enforce lane restrictions, plus federal and state law regarding tolls, HOV lanes, and HOT lanes. All of these issues were investigated and the results are summarized in this technical memorandum.

In addition to federal, state, and local laws that would impact new HOT lanes in Houston, researchers also examined legislation issues that occurred with:

a) HOT lanes from around the country, and
b) the previous adaptation of HOT lanes on the Katy and Northwest Freeways in Houston.

Overall, no serious legislative impediments to the adaptation of HOV lanes to HOT lanes in Houston were found. This included HOV lanes on the Eastex, North, Gulf, and Southwest Freeways. One minor issue that must be dealt with is that the FTA rules regarding the adaptation of HOV to HOT lanes and their counting toward fixed-guideway miles have just changed. Therefore, it would be prudent that HOV to HOT adaptation in Houston include additional correspondence between METRO and FTA regarding these lanes keeping their fixed-guideway status (see Section 3.1). Otherwise, HOV to HOT lane adaptation should start with TxDOT (who ultimately control the lanes) and METRO (who currently operate the HOV lanes and QuickRide) developing specific governing principals and operating guidelines and then proceed using straight forward FHWA guidelines (see Section 3.1).

2.0 Previous HOT Lane Adaptations

This section of the technical memorandum examines the most important legislative aspects of the HOT lanes that are in operation (or nearly so) from around the country. These include Houston's two current HOT lanes (Katy and Northwest Freeways), SR 167 in Washington State, I-15 in California, I-25 in Colorado, and I-394 in Minnesota.

2.1 Houston HOT Lanes

The development of a high occupancy vehicle (HOV) lane network in the metropolitan Houston region evolved over the last twenty-five years. From its beginning as a single 9.6 mile contraflow demonstration project to its current 100+ mile system of barrier separated HOV lanes, the common threads of the development process were partnerships and flexibility.

The two key local agencies associated with the HOV lane network are the Texas Department of Transportation (TxDOT) and the Metropolitan Transit Authority of Harris County (METRO). The agencies, in turn, pursued funding partnerships with their respective federal agencies, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). Funding of the HOV network varied by corridor, depending upon the specific circumstances of project development.

TxDOT and METRO developed a master agreement governing the daily operation of the system (see Appendix C). Generally, TxDOT was responsible for engineering and construction while METRO was responsible for lane operation and enforcement.

The first HOV project, the I-45 (North Freeway) contraflow lane was funded primarily through a federal Service Methods and Demonstration (SMD) grant. However, the total project including peripheral support facilities incorporated funds from UMTA Section 5,

UMTA Section 6, UMTA Section 9, Federal-Aid Urban System, Federal-Aid Interstate, Federal-Aid Primary, state, and local sources.

When the Katy HOV lane opened in 1984, only transit buses and registered vanpools could use the lane (Bullard, 1991). To make better use of this road capacity, the restrictions were relaxed in stages until any vehicles with two or more occupants (HOV2+) were allowed. The lane soon became congested during peak traffic periods due to the high number of carpool vehicles using the lane. This prompted Houston METRO, the transit agency responsible for the operation of the HOV lanes, and TxDOT to restrict usage to HOV3+ during the morning peak period (6:45 a.m. to 8:15 a.m.) in 1988[1]. Soon after, congestion during the afternoon peak period (5:00 p.m. to 6:00 p.m.) necessitated HOV3+ restrictions then as well. Then the morning peak period (6:45 a.m. to 8:00 a.m.) on the Northwest Freeway (US 290) also changed occupancy restrictions to HOV3+.

Not surprisingly, these occupancy restrictions (HOV3+) resulted in a considerable reduction in peak period traffic and available capacity in the HOV lanes. On the Katy HOV lane, the introduction of the 3+ requirement during part of the morning peak period resulted in an immediate reduction of vehicle use from 1511 to 570 during the peak hour. By 1996, that number grew to 910, 40% less than the pre-3+ occupancy requirement period volume. However, less onerous restrictions (HOV2+) had resulted in excess demand and congestion on the lanes.

TxDOT and METRO initiated study of the feasibility of implementing congestion or priority pricing on the Katy HOV lane in 1996. The team specifically explored the concept of permitting 2+ carpools to use the Katy HOV lane during the 3+ carpool occupancy periods for a price. Such an operation would continue to support development of carpools, increase the use of the lane, and maintain the travel time benefits that the HOV lane afforded. After an assessment of operational, legal, and institutional issues,

[1] The time period changed to 6:45 a.m. to 8:00 a.m. in 1990 and has not changed since.

coupled with a public review, the team implemented the QuickRide program in January 1998.

QuickRide provided 2+ carpools the opportunity to use the Katy HOV lane during the 3+ carpool occupancy period for $2 one-way. QuickRide's implementation took advantage of existing TxDOT infrastructure to gather speed data in the freeway corridor. Individuals interested in using QuickRide were required to register a toll tag account; tags were read by the tag readers that had been installed to help measure freeway speeds. Thus, implementation of the QuickRide program was a simple process. QuickRide was subsequently expanded to the Northwest Freeway HOV lane in November of 2000.

As for the other HOV lanes, the I-45 (Gulf) and U.S. 290 (Northwest) corridors were the next to open. The Gulf HOV lane is the only project that is largely funded by Federal-Aid Interstate funds. Beginning with the Northwest HOV lane and continuing with the development of the HOV lanes along U.S. 59 (Southwest and Eastex), the FTA became the primary funding partner for HOV lane development. The fundamental operating concept governing this HOV system was the desire to offer a travel time and reliability benefit to HOV lane users to encourage increased use of transit, vanpools, and carpools.

The 1997 TTI report "Feasibility of Priority Lane Pricing on the Katy HOV Lane" was examined for any additional legal issues that may not have been resolved. Between the actions already taken to implement QuickRide, and the new SAFETEA-LU (see Section 3.1) all required legislative issues brought up in this report have been successfully dealt with. One important suggestion from this report was:

> "In the event priority lane pricing becomes a widespread feature on HOV lanes, the sponsoring agencies may wish to explore legislation at the state level prohibiting unauthorized use and the use of these facilities without the payment of a toll. The Legislature can direct the payment of tolls and/or fines back to a specified agency and authorize additional enforcement activities that a municipality cannot." (Stockton et al., 1997)

This specific issue has been partially implemented (see Section 4) as METRO currently assesses and collects fines on its METRORail system.

Another important issue is the status of the HOV or HOT lanes as fixed-guideway miles for purposes of FTA funding formulas. Prior to SAFETEA-LU, a HOV lane that had fixed-guideway status needed special permission to retain its fixed-guideway status when it became a HOT lane that allowed SOV travel (see Appendix B for an example letter). Since the Katy and Northwest Freeway HOT lanes do not allow SOV travel, this was not an issue with their adaptation. With SAFETEA-LU the special permission needed was, in theory, no longer necessary as long as the HOT lane met the criteria outlined in Section 3.1. However, FTA policy had to change in order to match SAFETEA-LU. This change has just recently (January 2007) occurred (see Appendix F for the final rule) and now it should be part of the standard adaptation process outlined in Section 3.1. However, due to this being a very recent change, it may prove useful to ensure this with FTA in writing when any of Houston's HOV lanes begin adaptation to HOT lanes.

2.2 HOT Lanes in Washington State

The Washington State DOT (WSDOT) is demonstrating the value of overall highway system management through a carefully developed and orchestrated introduction of HOT lanes. The HOV lane in SR 167 was authorized as a conversion to HOT lane under the Value Pricing program of TEA-21 and by the Washington State legislature in May 2005 (SHB 1179, see Appendix A). It is the staff's vision that their entire network of HOV lanes ultimately could be considered for HOT lane conversion, depending on the success of the early attempts.

The Washington State legislature has authorized SR 167 as a 'pilot' project with two sunset provisions. The first sunset provision required that, if the project was not fully funded for construction within four years of authorization, the authorization would

expire. The project was funded within the four-year limit, so the first sunset provision was moot.

The second sunset provision requires legislative approval to continue operating for more than four years after the initial opening. The purpose of this provision was to require the WSDOT to return to the legislature and demonstrate the effectiveness of the HOT lane. Presumably, that demonstration will prompt the legislature to extend the operating authority.

A key observation by the WSDOT staff was that they would recommend reducing or eliminating any constraints, such as geographic limits to an authorized project, if possible. For example, their authority on SR 167 extends only to the King County line, whereas their approved funding would allow the project to be built even further.

2.3 I-15 in California

In 1993 the San Diego Association of Governments (SANDAG), in cooperation with FTA, FHWA, and various local governments, proposed a demonstration project to implement a congestion pricing mechanism on the I-15 HOV lanes by authorizing single-occupant vehicles to pay a fee to use the excess capacity on the HOV lanes during the peak period. The demonstration project was authorized when the California Assembly passed Assembly Bill (AB) 713 (Chapter 962, Statutes of 1993).

The premise of the demonstration program was to use the congestion pricing mechanism to generate revenues for transit development in the corridor. The I-15 corridor lacked adequate transit service, and SANDAG proposed to use revenues available for, and generated by, the demonstration program to support the development of a transit system in the corridor to benefit lower income and transit dependent individuals.

The legislature approved the demonstration program with the understanding that high-occupancy vehicle access to, and use of, HOV lanes would not be reduced. The legislation specifically required that Level of Service B (as defined by the most recent issue of the Highway Capacity Manual) was to be maintained at all times in the HOV lanes. High-occupancy vehicles were to have unrestricted access at all times. Further, the State legislation called for revenue over and above costs incurred in implementation of the program (including reimbursement of the state's expenses) to be used in the I-15 corridor exclusively for (a) improvement of transit service, and (b) HOV facilities.

SANDAG was required to report to the legislature on the demonstration program in 1998. The I-15 demonstration program was considered a great success and was adopted as a permanent tool for congestion pricing on the express lanes of the corridor.

Subsequent legislation modified the original terms of the demonstration project (see Appendix A, California Streets and Highways Code, Section 149). SANDAG is now authorized to conduct, administer, and operate a value pricing and transit development program on the I-15 HOV expressway. Implementation of the program must ensure that Level of Service C, as measured by the most recent issue of the Highway Capacity Manual, is maintained at all times in the HOV lanes. Exceptions for Level of Service D are permitted on the HOV lanes. If Level of Service D is permitted, the California Department of Transportation and SANDAG must evaluate the impacts of these levels of service of the HOV lanes, and indicate any effects on the mixed-flow lanes. Continuance of Level of Service D operating conditions is subject to the written agreement between the department and SANDAG. With the assistance of the department, SANDAG establishes appropriate traffic flow guidelines for the purpose of ensuring optimal use of the express lanes by HOV vehicles. Agreements provide for reimbursement of state agencies for costs incurred in connection with the implementation or operation of the program. Reimbursement of SANDAG's program-related planning and administrative costs in the operation of the program must not exceed three percent of the revenues. All

remaining revenues are used in the I-15 corridor exclusively for the improvement of transit service and HOV facilities.

One of the issues that came up in the development of the I-15 FasTrak program was whether or not the facility would qualify as a fixed guideway for transit under the FTA funding formulas. The issue was addressed in a letter from FTA to U.S. Representative Randall Cunningham, dated June 10, 2002, concerning the I-15 FasTrak facility in San Diego (see Appendix B). FTA stated:

> "…FTA will recognize, for formula allocation purposes, exclusive fixed guideway transit facilities that permit toll-paying SOVs on an incidental basis [often called high occupancy/toll (HOT) lanes] under the following conditions: the facility must be able to control SOV use so that it does not impede the free flow and high speed of transit and HOV vehicles, and the toll revenues collected must be sued for mass transit purposes."

The "Cunningham letter" became the hallmark of FTA policy with regard to HOV conversion to HOT lanes until a final policy was issued by FTA on January 11, 2007 (see Section 3.1).

The State of California continues to support the development of high-occupancy toll lanes. In May 2006 the Legislature approved AB 1467 which authorizes regional transportation agencies, in cooperation with the California Department of Transportation, to apply to the California Transportation Commission to develop and operate high-occupancy toll lanes, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit. The bill prescribes the procedures for approval of the applications and limits the number of approved projects to four, two in northern California and two in southern California. The legislation creates the opportunity for public-private partnerships, currently under review by the department and regional transportation agencies.

2.4 HOT Lane on I-25 in Colorado

Interest in HOT lanes in Colorado began in earnest when members of the Colorado Transportation Commission visited the California Private Transportation Company officials and their facility, the 91 Express Lanes on SR-91 in California in 1998. Based on the success of SR-91 and local interest in making better use of the recently opened (1995) HOV lanes on I-25, Colorado passed legislation requiring the adaptation of at least one HOV facility to a HOT facility (Senate Bill 99-088, see Appendix A). The Colorado Department of Transportation began pursuing this option and the legislation required to make it happen.

All four HOV facilities in Colorado were examined, and the I-25 corridor was selected as the preferred candidate. However, the I-25 HOV facility was constructed, in part, with FTA funds. FTA's initial position, supported by the local transit authority who was the grantee under the FTA agreement, was that no SOVs would be allowed on the facility unless the remaining value of FTA's investment in the lane was paid back. A joint task force was formed and eventually SOVs were allowed without repaying funds as long as there was no net harm to transit vehicles, as per agreement with FTA and the transit authority. Other aspects of the legislation included the following:

- Only toll revenues may be used to repay capital and operating expenses.
- Excess toll revenue may be used for maintenance, enforcement, and other traffic congestion-relieving options, including transit.
- Level of Service C must be ensured.
- Unrestricted access for carpools, buses, and EPA-certified low-emitting vehicles under 10,000 pounds must be allowed.

Additional legislation concerning photo-enforcement, HOV lane designation and use, plus a wide ranging bill for expanding the DOT's abilities (like Texas' HB 3588) were also passed.

The I-25 HOT lane opened to SOV traffic on June 2, 2006. In the first year of operation, CDOT is on pace to collect $1.5 million by May 2007, with $600,000 in net revenue. During the first five months of operation, the facility has maintained transit vehicle speeds of 55 mph or higher for 99.8 percent of all transit vehicular trips, the key metric for achieving the intent of the FTA agreement.

2.5 I-394 HOT Lane in Minnesota

The idea of using value pricing on a local roadway has been seriously examined in Minneapolis-St. Paul metropolitan area of Minnesota beginning in 1994. However, ideas did not progress beyond the study phase until 2003, primarily due to political objections. In 2003 the state legislature passed Minnesota Statute 160.93 section 7 (see Appendix A), allowing for the adaptation of HOV to HOT lanes on I-394 in May of 2005. This legislation included the following provisions:

- Toll revenues are to first repay the money spent to install, equip, or modify the corridor for a HOT lane, plus the costs of implementing and administering the toll system.
- Any excess toll revenues must be spent as follows:
  - 50% for transportation capital improvements in the corridor, and
  - 50% for bus transit service in the corridor.

3.0 Current HOT Lane Legislation

This section of the report examines the current federal and state legislation regulating the adaptation of HOV lanes to HOT lanes. Due to the evolving nature of this innovative transportation strategy, plus the recent implementation of the national transportation legislation SAFETEA-LU, the legislation and process for HOT lane adaptation has changed since the implementation of the projects described in Section 2. However, the changes have been primarily a streamlining and mainstreaming effort. Therefore, legislation allowing new projects (such as those in Houston) should follow the general path of the projects listed in Section 2, but in a more standardized and streamlined approach. In fact, much of the knowledge gained from these early adaptations can be seen in use in the new legislation described below.

3.1 SAFETEA-LU

On August 10, 2005, President George W. Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). SAFETEA-LU authorizes the federal surface transportation programs for highways, highway safety, and transit for the five-year period 2005–2009. Section 1121 of this act (also known as Section 166 of Title 23 of the United States Code) discusses rules and regulations surrounding HOV lanes and adaptation of HOV lanes to HOT lanes (see Appendix E).

Jessie Yung, Freeway Management Program Manager in the FHWA's Office of Operations, provided the FHWA's requirements for HOV to HOT adaptations based on the SAFETEA-LU legislation. The information the FHWA requires is as follows:

- original HOV lane studies, plans, project agreements, sources, and amounts of funding;
- commitments made in the environmental processing and project approval;

- operational assessment of existing HOV lanes;
- the specific proposed change in operation and the reason for the change;
- analysis of predicted operation of the current and planned future transportation network with the proposed operational change or conversion;
- an assessment of the predicted performance of HOT lane;
- the affected roadways and the geographic extent of the proposed change Identification as a non-attainment or maintenance area, if applicable. Was the HOV lane included in the approved SIP as a TCM, and is a modification of the SIP required?
- results of discussions with other affected agencies (e.g., planning organizations and neighboring operating agencies);
- a program for motorists to enroll and participate in the toll program;
- the system to collect the toll;
- a procedure for managing the demand of the HOV facility by varying the toll amount that is charged; and
- a proposed timeline and implementation strategy for converting prepaid sticker program to electronic toll collection and monitoring (full implementation of Section 166).

The FHWA will also require specific certifications before allowing the adaptation of the HOV lane, including:

1. Use of bicycles…certify that bicycles would cause a safety hazard and therefore would be restricted from HOV facilities.
2. The State must commit to only allow vehicles which meet the Federal requirements established in 23 U.S.C. 166 and the upcoming EPA rulemaking. (This requirement applies to low emission and energy-efficient vehicles or alternate fuel vehicles.)

3. The State must commit to establish, manage, and support a performance monitoring, evaluation, and reporting program as well as an enforcement program consistent with the requirements of 23 U.S.C. 166(d).
4. The State must commit to taking necessary actions to correct degraded operational performance whenever and wherever it occurs, including limiting and discontinuing the use of HOV lanes by single occupant vehicles.
5. The State will annually certify to FHWA that they are continuing to meet all requirements of 23 U.S.C. 166, including those related to vehicle eligibility; performance monitoring, evaluation, and reporting; and enforcement.
6. The State must commit to establish a program that addresses how motorists can enroll and participate in the toll program.
7. The State must commit to develop, manage, and maintain a system that will automatically collect the toll.
8. The State must commit to establish policies and procedures to manage the demand to use of the facility by varying the toll amount that is charged.
9. The State must commit to enforce violations of use of the facility.

Based on the above certifications and requirements it is clear that the FHWA is concerned with the operation of traffic in the lane once SOVs are allowed in the lane. As such, they have set the following minimum average operating speeds for these facilities:

- If the speed limit is 50 mph or greater, than the minimum acceptable travel speed is 45 mph.
- If the speed limit is less than 50 mph, then the minimum acceptable travel speed is 10 mph below the speed limit.

Failure to maintain these minimum speeds at least 90 percent of the time over a 180 day period will necessitate the removal or limitation of SOVs.

There are also specific guidelines on the use of the toll revenue generated by the HOT lane. The following paragraphs detail these obligations and are summarized in Figure 1. They are also shown in the model HOT lane adaptation agreement in Appendix E.

"Limitation on Use of Revenues … all toll revenues received from operation of the toll facility will be used first for debt service, for reasonable return on investment of any private person financing the project, and for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation. If the State certifies annually that the tolled facility is being adequately maintained, the State may use any toll revenues in excess of amounts required under the preceding sentence for any purpose for which Federal funds may be obligated by a State under this title." (Paragraph 3 of Section 129(a) of Title 23, United States Code)

"(3) Excess Toll Revenues.—If a State agency makes a certification under Section 129(a)(3) of Title 23, United States Code, with respect to toll revenues collected under paragraphs (4) and (5) of [Section 166(b) of Title 23, United States Code,] the State, in the use of toll revenues under that sentence, shall give priority consideration to projects for developing alternatives to single occupancy vehicle travel and projects for improving highway safety." (Paragraph 3 of Section 166(c) of Title 23, United States Code)

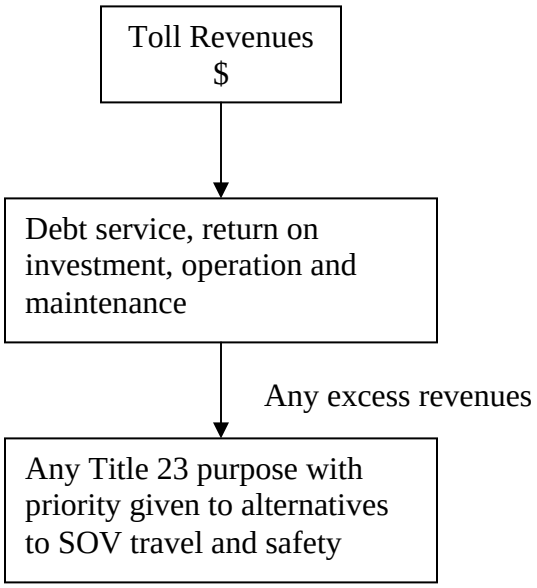

Figure 1: HOT Lane Toll Revenue Use

To summarize, Jessie Yung provided the following checklist for FHWA approval of a HOT lane adaptation:

1. State submits a request to FHWA for a conversion of HOV to HOT lane or a new HOT lane. State is encouraged to submit the request through an Expression of Interest to the Tolling and Pricing Team (see Appendix E) and a copy to the local FHWA Division Office.
2. State evaluates the existing and predicted operational performance of the HOV facilities to determine the availability of excess capacity and the potential impact.
3. State submits a certification to FHWA to ensure compliance with statutory requirements (listed above).
4. FHWA conducts review and ensures all requirements are satisfied. If all requirements are satisfied, FHWA grants approval.
5. Execute a toll agreement.

Much of this information is available on the Internet at the following websites:

- http://www.ops.fhwa.dot.gov/tolling_pricing/participation.htm
- http://www.ops.fhwa.dot.gov/tolling_pricing/template_download/template.htm
- http://www.fhwa.dot.gov/operations/hovguide01.htm

The FTA issued a final policy statement on HOV lanes converted to HOT lanes on January 11, 2007. This final policy statement (see Appendix F) explains when FTA will (and will not) classify HOV lanes converted to HOT lanes as "fixed-guideway miles" for the purpose of FTA's funding formulas.

Since 2002, FTA's policy has been to continue to classify the lanes of an HOV facility converted to HOT lanes as fixed-guideway miles for funding formula purposes on the condition that the facility meets two requirements: (a) the HOT facility manages SOV use so that it does not impede the free-flow and high speed of transit and HOV vehicles, and (b) toll revenues collected on the facility will be used for mass transit purposes.

The purpose of the January 11, 2007, final policy statement is to promote a uniform approach by the U.S. Department of Transportation operating agencies concerning HOV-to-HOT conversions. In particular, the FTA policy is intended to be consistent with the statutes enacted under Section 112 of SAFETEA-LU applicable to FHWA that are intended to simplify conversion of HOV lanes to HOT lanes. FTA also states the final policy statement will ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes.

FTA will classify HOT lanes as fixed-guideway miles for the purpose of the funding formulas (for FTA Section 5307 and Section 5309 funds) so long as each of the following conditions is satisfied:

- The HOT lanes were previously HOV lanes reported in the National Transit Database as fixed-guideway miles for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307(b) and 49 U.S.C. 5309(a)(E). Facilities that were not eligible HOV lanes will remain ineligible for inclusion as fixed-guideway miles in FTA's funding formulas. Therefore, neither non-HOV facilities converted directly to HOT facilities nor facilities constructed as HOT lanes will be eligible for classification as fixed-guideway miles.
- The HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions. Operational performance standards for an HOV facility converted to a HOT facility are provided in 23 U.S.C. 166(d). FTA will require real-time monitoring of traffic flows to ensure on-going compliance with operational performance standards.
- Program income from the HOT lane facility, including all toll revenue, is used solely for "permissible uses." Permissible uses means any of the following uses with respect to any HOT lane facility, whether operated by a public or private entity:
  a. debt service,
  b. reasonable return on investment of any private financing,

c. costs necessary for the operation and maintenance of such facility, and
d. any other purpose relating to a project carried out under Title 49 U.S.C. 5301 *et seq.* IF the operating entity annually certifies that the facility is being adequately operated and maintained (including the permissible uses described in (a), (b), and (c) above, if applicable, are being duly paid)

In cases where the HOT lane facility has received (or receives) funding from FTA and another Federal agency, such that use of the facility's program income is governed by more than one Federal program, FTA's restrictions concerning permissible use shall not apply to more than transit's available share of the facility's program income. FTA shall not require recipients to assign priority in payment to any permissible use.

FTA shall permit grantees and tolling authorities to develop their own fare structures for transit services and tolls, respectively, on HOT lane facilities.

The Houston HOV lanes were previously reported in the National Transit Database as fixed guideway miles for purposes of the funding formulas administered by FTA. To remain eligible for such funding status the remaining two tests must be met under the FTA final policy. The HOV lanes converted to HOT lanes would have to be monitored and continue to meet performance standards that preserve free flow traffic conditions, and program income from the HOT lane facility must be used solely for "permissible uses."

3.2 State and Local Legislation Regarding HOV, HOT, and Tolling

The development of HOV lanes in Texas was originally a local effort, first in the Houston area and later in the Dallas area. As described in Section 2.1, the key local agencies associated with the HOV lane network in Houston are TxDOT, Houston District, and METRO. There was no state legislation that specifically prescribed the parameters for implementation or operation of the HOV lane system. TxDOT is, of course, the state agency responsible for design, construction, operation, and maintenance of the state

highway system, including Interstate Highways under authority delegated by FHWA. As a metropolitan transit authority authorized by statute, METRO (Transportation Code Chapter 451) has the ability to acquire, construct, develop, own, operate, and maintain a transit authority system. The authority can also impose reasonable and nondiscriminatory fares and tolls for the use of the transit authority system. Given these responsibilities and associated statutory authority, TxDOT and Houston METRO developed an intergovernmental agreement governing the daily operation of the HOV system (see Appendix C).

When TxDOT and METRO first proposed implementation of the QuickRide program (to permit 2+ carpools to use the Katy HOV lane during the 3+ carpool occupancy periods for a price), both agencies reviewed statutes and local ordinances to determine if there were any restrictions or prohibitions for such a program. Finding no such restrictions, the two agencies moved forward to implement the first example of congestion pricing for access to an HOV lane in Texas.

TxDOT is currently constructing a major rehabilitation of the I-10 Katy Freeway. When complete, the project will include managed lanes that will demonstrate variable pricing for congestion management. TxDOT has entered into an agreement with the Harris County Toll Road Authority (HCTRA) to operate and enforce the managed lanes. With the approval of the Texas Transportation Commission, TxDOT may enter into an agreement with another governmental agency or entity, or a political subdivision, to independently or jointly provide services, to study the feasibility of a toll project, or to finance, construct, operate, and maintain a toll project (Transportation Code, Chapter 288). HCTRA was created by the Harris County Commissioner's Court in 1983 as a subdivision of county government to act on behalf of the County in the performance of its essential government purposes, including constructing, maintaining, and operating toll roads in Harris County. As a county toll road authority, HCTRA has the authority of county government to enforce payment of tolls by citing violations as a criminal offense for theft of service. HCTRA pursues violators vigorously and has the authority to exact

penalties in addition to fines. For example, HCTRA can stop an individual with repetitive violations from renewing his license plate registration until the toll transponder is returned and the account settled. Fines and penalties collected as a result of enforcement of toll violations are used to defray the cost of enforcement.

As the agency ultimately in control of these HOV facilities, TxDOT also must follow Texas Administrative Code (Title 43, Part 1, Chapter 25, Subchapter C, see Appendix D) regarding the operation of HOV and toll lanes. This specifically includes any adaptation of HOV lanes to HOT lanes. Additionally, the Transitways master operations and maintenance agreement between TxDOT and METRO (see Appendix C) would also need to be amended based on the operational characteristics of the new HOT lanes.

4.0 Enforcement Funding Review

This review encompasses state legislation directly pertaining to the financing and disbursement of revenue for the funding of enforcement on high occupancy toll (HOT) facilities. Currently, nine states operate HOT facilities: California, Colorado, Georgia, Maryland, Minnesota, Texas, Virginia, Utah, and Washington. Of these nine states, only four provide provisions in state law which enable HOT facilities to self-finance enforcement efforts. The purpose of this review is to summarize extant legislation conducive to funding HOT lane enforcement, and recommend specific elements for future legislation. In addition, an administrative fee approach under a "theft of services" premise is also discussed as an enforcement funding alternative.

4.1 State Legislation Governing HOT Facility Enforcement Funding

Of the nine states reviewed, only four include specific language pertaining to enforcement funding of HOT facilities. These states are California, Colorado, Utah, and Washington. The major elements of pertinent legislation in these states are summarized below and the legislation can be found in Appendix A.

4.1.1 California

The California Streets and Highway Code includes the most comprehensive provisions for funding HOT lane enforcement efforts. In addition to providing reimbursement of the cost of enforcement expenses from revenue[2], the code includes provisions for active participation of enforcement agencies in operational planning for the facility[3]. Specifically, the entities responsible for operations and enforcement "shall identify the respective obligations and liabilities of those entities and assign them responsibilities relating to the" HOT program. The agreements entered into "shall be consistent with

[2] Section 143 (d)(1), California Streets and Highways Code, 2006
[3] Section 143 (e)(1), California Streets and Highways Code, 2006

agreements between the department and the United States Department of Transportation relating to" operation and enforcement programs and "shall include clear and concise procedures for enforcement by the Department of the California Highway Patrol of laws prohibiting the unauthorized use of the high-occupancy vehicle lanes."

California legislation is structured to permit facility operators to contract with enforcement agencies and to be directly responsible for reimbursement of expenses incurred by these agencies[4, 5, 6, 7]. As such, the primary source of revenue for enforcement efforts is the toll revenue generated by the facilities themselves. California and Colorado share the advantage of allowing individual facilities to have a large degree of control in how enforcement revenues should be allocated, as facility operators have direct access to on-going toll revenue from which enforcement efforts can be funded.

4.1.2 Colorado

Colorado legislation requires a portion of excess toll revenue from high occupancy toll lanes to be paid into the state highway fund for exclusive use in the corridor where the high occupancy toll lane is located; the excess revenues generated from a specific HOT facility may be spent for enforcement purposes in that facility itself[8]. These excess revenues are defined as revenue remaining after deduction for the private entity's capital outlay costs for the project, the costs associated with operations, toll collection, administration of the high occupancy toll lane, if any, and a reasonable return on investment to the private entity.

Colorado differs from California in that while toll revenues can be spent for enforcement purposes, they first must pass to the state highway fund, and expenditures shall be

[4] Section 149.1 (e)(1), California Streets and Highways Code, 2006
[5] Section 149.4 (e)(1), California Streets and Highways Code, 2006
[6] Section 149.5 (e)(1), California Streets and Highways Code, 2006
[7] Section 149.6 (e)(1), California Streets and Highways Code, 2006
[8] Section 42-4-1012 (III)(C), Colorado Revised Statutes, 2006

certified by the chief engineer and paid by the state treasurer upon warrants drawn by the state controller[9]. The funds available for enforcement purposes are also conditional, in that they are only available if capital outlay and other costs mentioned above do not exceed the toll revenue generated by the project.

4.1.3 Utah

Utah legislation occupies a middle ground between California and Colorado with respect to dedicated enforcement funding. The Utah Code creates a "Tollway Restricted Special Revenue Fund," which is controlled by the highway commission[10]. Monies from the fund may be authorized by the commission to be spent by the department for enforcement of high occupancy toll lanes. The fund receives funding from multiple sources, including tolls from tollways and high occupancy toll lanes, funds received by the department through tollway development agreements, appropriations from the legislature, contributions from other public and private sources, interest earnings on cash balances, and all monies collected for repayments and interest on fund monies[11].

Additional advantageous features of Utah legislation include provisions guaranteeing that monies deposited into the fund shall stay in the fund unless used (i.e., the funds are nonlapsing), and each toll facility, including a high occupancy toll facility, is entitled to its own subaccount[10].

4.1.4 Washington

Similar to Utah legislation, the Revised Code of Washington specifies that "all revenues received by the department as toll charges collected from high-occupancy toll lane users" shall be deposited with the state treasury into a "high-occupancy toll lanes operations

[9] Section 43-1-219, Colorado Revised Statutes, 2006
[10] Section 72-2-118, Utah Code, 2006
[11] Section 72-2-120, Utah Code, 2006

account"[12]. Monies from this account may be used for "enforcement . . . of high-occupancy toll lanes," although any such expenditures from the operations account must be first appropriated by the state legislature

4.2 Legislative Synthesis

From the review of state legislation, key features have been identified as being advantageous for robust funding of enforcement on HOT facilities. This section of the report summarizes these features, and provides examples of legislative language in tabular form.

4.2.1 Dedicated Funds for Enforcement Efforts

The primary key for dependable enforcement funding is specific legislative language guaranteeing an ongoing source of revenue. Facility operators must consider the potential advantages and disadvantages of the scope and level of control they are to have with respect to an allocated source. Statewide enforcement funds, while being able to draw upon more disparate revenue sources, are also subject to competing demands from multiple facilities. As such, each facility operator is subject to additional compromises with respect to their enforcement needs.

As can be seen from Table 1, California legislation allows revenue generated from a HOT or toll facility to be directly available to the facility operator for direct expenses related to enforcement. These funds are not precluded by any additional federal or state funds that may have been specifically allocated for operation of the HOT or toll facility. In contrast, Colorado legislation requires the revenue from HOT and toll facilities to be first paid to the state highway fund, although these revenues are specifically marked for exclusive use by the contributing facility.

[12] Section 47.66.090, Revised Code of Washington, 2006

Table 1. Legislative Examples for Enforcement Funding

State	Legislative Text Example
California[3, 4, 5, 6]	The revenue generated from the [HOT facility] shall be available to [the facility operator] for the direct expenses related to the operation, including collection and enforcement, maintenance, and administration of the [HOT facility]. The agreements [between the state department of transportation and the facility operator] shall provide for reimbursement of state agencies, from revenues generated by the [facility program], federal funds specifically allocated to [the facility operator] for the [facility program] by the federal government, or other funding sources that are not otherwise available to state agencies for transportation-related projects . . .
Colorado[13]	Any contract entered into between the [state highway department] and a [private HOT facility operator] . . . shall . . .require that any excess toll revenue either be applied to any indebtedness incurred by the [facility operator] with respect to the [HOT] project or be paid into the state highway fund . . . for exclusive use in the corridor where the high occupancy toll lane is located including for maintenance and enforcement purposes in the high occupancy toll lane and for other traffic congestion relieving options including transit.
Utah[10]	**Tollway Restricted Special Revenue Fund** (1) There is created a restricted special revenue fund known as the "Tollway Restricted Special Revenue Fund." The Tollway Restricted Special Revenue Fund shall be funded from the following sources: (a) tolls collected by the [facility operator]; (b) funds received by the department through . . . development agreements; (c) appropriations made to the fund by the Legislature; (d) contributions from other public and private sources for deposit into the fund; (e) interest earnings on cash balances; and (f) all monies collected for repayments and interest on fund monies. (3) All monies appropriated to the fund are nonlapsing. (4) The Division of Finance shall create a subaccount for each [facility] . . . (5) The [State Highway Commission or equivalent] may authorize the monies deposited into the fund to be spent by the [state department of transportation] to establish and operate [HOT facilities], including design, construction, reconstruction, operation, maintenance, enforcement, . . . , and the acquisition of right-of-way.
Washington[11]	**High-occupancy toll lanes operations account** The high-occupancy toll lanes operations account is created in the state treasury. The [state department of transportation] shall deposit all revenues received by the [facility operator] as toll charges collected from high-occupancy toll lane users. Monies in this account may be spent only if appropriated by the legislature. Moneys in this account may be used for, but be not limited to, debt service, planning, administration, construction, maintenance, operation, repair, rebuilding, enforcement, and expansion of high-occupancy toll lanes and to increase transit, vanpool and carpool, and trip reduction services in the corridor.

[13] Section 42-4-1012 (b) (III), Colorado Revised Statutes, 2006

Utah and Washington legislation create specific funds for exclusive use by HOT facilities (Washington), or by HOT facilities and other toll facilities (Utah). While the Utah legislation does not provide a resource unique to HOT facilities, it does specify a greater diversity of revenue sources (special legislative appropriations and private contributions, for example) that may be ultimately used for the funding of enforcement efforts. Both Utah and Washington legislation share the characteristic that disbursements from the special funds must first be approved on the state level. As such, direct local control of revenue is attenuated, especially in the case of the Washington legislation, where disbursements must be obtained from the state legislature.

4.3 Administrative Fee Approach

An alternative to specific legislation that designates HOT lane revenue for enforcement is a "theft of services" concept, similar to METRO's current approach to LRT fare non-payment. Under the existing legislation for public transportation systems, enforcement of fares can be handled through a penalty that does not exceed $100. Appendix G includes the section from the Transportation Code that provides public transportation systems this authority. The "theft of services" approach is used by toll authorities, including HCTRA, and makes a violation a civil rather than criminal offense. By designating the penalty as an administrative fee, the revenue goes directly to the operating agency (METRO) and can be used for enforcement cost recovery. Under the current system violation fines on the HOV lanes accrue to the jurisdiction of the offense.

In considering use of the approach, the HOV lanes can be viewed as selling a service, that service being a fast and reliable trip. With the proposed adaptation to SOV use, the service on the HOV lanes is offered for a price to SOVs. If you are an SOV and do not make the payment to use the service then you have stolen that service.

Use of the current legislation for this purpose will require further legal review by METRO. The key questions are:

- Are the HOV lanes as adapted for HOT operation considered a "public transportation system"? The definition of the transit authority's system under the legislation means property operated for mass transit purposes. With a continuation in priority for buses and carpools and operating parameters that maintain a high level of service for these users, the function of the HOV lanes remains a public transportation function.

Can the toll be considered a "fare"? In one reference in the statute (Transportation Code 451.061), the metropolitan transit authority is authorized to impose "reasonable and nondiscriminatory fares, tolls, charges, rents and other compensation." In the section of the statute that speaks to enforcement of fares (Transportation Code 451.0611) reference is made to failure to pay "the appropriate fare or other charge for use of the public transportation system…" The question for legal review is: does the term "fare or other charge" in the subsection 451.0611 reasonably refer to "fares, tolls, charges" in the section 451.061?

It should be noted that under the current legislation, the use of the public transportation system without possessing evidence of payment and failure to pay the penalty constitutes a criminal offense, so penalties assessed after failure to pay would accrue to the local jurisdiction, not METRO.

In discussions with METRO, a specific approach for cost recovery for enforcement has not been determined, but interest has been expressed in both model legislation for use of revenue for enforcement and an administrative fee approach.

5.0 Conclusion

This report has examined legislative issues surrounding the adaptation of Houston's HOV lanes to HOT lanes. Overall, no serious legislative impediments to the adaptation of HOV lanes to HOT lanes in Houston were found. This included HOV lanes on the Eastex, North, Gulf, and Southwest Freeways. One minor issue that must be dealt with is that the FTA rules regarding the adaptation of HOV to HOT lanes and their counting toward fixed guideway miles have just changed. Therefore, it would be prudent that HOV to HOT adaptation in Houston include additional correspondence between METRO and FTA regarding these lanes keeping their fixed guideway status (see Section 3.1). Otherwise HOV to HOT lane adaptation should be able to proceed using straight forward FHWA guidelines (see Section 3.1).

This report also includes a great deal of legislation and issues faced by other states in development of their HOT lanes. These examples supply some interesting insight, but most of the knowledge gained from these early HOT lane adaptation efforts has been incorporated into the new SAFETEA-LU legislation that streamlines this adaptation process. This includes guidelines on revenue use, minimal operational characteristics, reporting guidelines, etc. (as outlined in Section 3.1).

References

Bullard, D.L. 1991. *An assessment of carpool utilization of the Katy high-occupancy lane and characteristics of Houston's HOV lane users and nonusers*. Report 484-14F. College Station, TX: Texas Transportation Institute.

Stockton, W.R., Hill, C.J., Edmonson, N.R., Grant, C.L., McFarland, F., and M.A. Ogden. 1997. *Feasibility of priority lane pricing on the Katy HOV Lane.* Report 2701-1F. College Station, TX: Texas Transportation Institute.

Appendix A - HOT Lane Legislation from Other States

California Streets and Highways Code (2006):

§143. (a) (1) "Regional transportation agency" means any of the following:

(A) A transportation planning agency as defined in Section 29532 or 29532.1 of the Government Code.

(B) A county transportation commission as defined in Section 130050, 130050.1, or 130050.2 of the Public Utilities Code.

(C) Any other local or regional transportation entity that is designated by statute as a regional transportation agency.

(D) A joint exercise of powers authority as defined in Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, with the consent of a transportation planning agency or a county transportation commission for the jurisdiction in which the transportation project will be developed.

(2) "Transportation project" means one or more of the following: planning, design, development, finance, construction, reconstruction, rehabilitation, improvement, acquisition, lease, operation, or maintenance of highway, public street, rail, or related facilities supplemental to existing facilities currently owned and operated by the department or regional transportation agencies that is consistent with the requirements of paragraph (2) of subdivision (b).

(b) (1) Notwithstanding any other provision of law, only the department, in cooperation with regional transportation agencies, and regional transportation agencies, may solicit proposals, accept unsolicited proposals, negotiate, and enter into comprehensive development lease agreements with public or private entities, or consortia thereof, for transportation projects.

(2) The number of projects authorized pursuant to this section shall be limited to two projects in northern California and two projects in southern California. The California Transportation

Commission shall select the candidate projects from projects nominated by the department or a regional transportation agency. No less than two of the selected projects shall be nominated by a regional transportation agency. The projects shall be primarily designed to improve goods movement, including, but not limited to, exclusive truck lanes and rail access and operational improvements. The projects shall address a known forecast demand, as determined by the department or regional transportation agency.

(3) All negotiated lease agreements shall be submitted to the Legislature for approval or rejection. Prior to submitting a lease agreement to the Legislature, the department or regional transportation agency shall conduct at least one public hearing at a location at or near the proposed facility for purposes of receiving public comment on the lease agreement. Public comments made during this hearing shall be submitted to the Legislature with the lease agreement. Unless the Legislature passes a resolution, with both houses concurring, rejecting a negotiated lease agreement within 60 legislative days of the agreement being submitted to it, the agreement shall be deemed approved. A lease agreement may not be amended by the Legislature.

(c) For the purpose of facilitating those projects, the agreements between the parties may include provisions for the lease of rights-of-way in, and airspace over or under, highways, public streets, rail, or related facilities for the granting of necessary easements, and for the issuance of permits or other authorizations to enable the construction of transportation projects. Facilities subject to an agreement under this section shall, at all times, be owned by the department or the regional transportation agency, as appropriate. For department projects, the commission shall certify the department's determination of the useful life of the project in establishing the lease agreement terms. In consideration therefore, the agreement shall provide for complete reversion of the leased facility, together with the right to collect tolls and user fees, to the department or regional transportation agency, at the expiration of the lease at no charge to the department or regional transportation agency. At time of reversion, the facility shall be delivered to the department or regional transportation agency, as applicable, in a condition that meets the

performance and maintenance standards established by the department and that is free of any encumbrance, lien, or other claims.

(d) (1) The department or a regional transportation agency may exercise any power possessed by it with respect to transportation projects to facilitate the transportation projects pursuant to this section. The department, regional transportation agency, and other state or local agencies may provide services to the contracting entity for which the public entity is reimbursed, including, but not limited to, planning, environmental planning, environmental certification, environmental review, preliminary design, design, right-of-way acquisition, construction, maintenance, and policing of these transportation projects. The department or regional transportation agency, as applicable, shall regularly inspect the facility and require the lessee to maintain and operate the facility according to adopted standards. The lessee shall be responsible for all costs due to development, maintenance, repair, rehabilitation, and reconstruction, and operating costs.

(2) In selecting private entities with which to enter into these agreements, notwithstanding any other provision of law, the department and regional transportation agencies may, but are not limited to, utilizing one or more of the following procurement approaches:

(A) Solicitations of proposals for defined projects and calls for project proposals within defined parameters.

(B) Prequalification and short-listing of proposers prior to final evaluation of proposals.

(C) Final evaluation of proposals based on qualifications, best value, or both. If final evaluation is to be based on best value, the California Transportation Commission shall develop and adopt criteria for making that evaluation prior to evaluation of a proposal.

(D) Negotiations with proposers prior to award.

(E) Acceptance of unsolicited proposals, with issuance of requests for competing proposals.

(3) No agreement entered into pursuant to this section shall infringe on the authority of the department or a regional transportation agency to develop, maintain, repair, rehabilitate, operate, or lease any transportation project. Lease agreements may provide for reasonable compensation to the leaseholder for the adverse effects on toll revenue or user fee revenue due to the development, operation, or lease of supplemental transportation projects with the exception of any of the following:

(A) Projects identified in regional transportation plans prepared pursuant to Section 65080 of the Government Code and submitted to the commission as of the date the commission selected the project to be developed through a lease agreement, as provided in this section, unless provided by the lease agreement approved by the department or regional transportation agency and the commission.

(B) Safety projects.

(C) Improvement projects that will result in incidental capacity increases.

(D) Additional high-occupancy vehicle lanes or the conversion of existing lanes to high-occupancy vehicle lanes.

(E) Projects located outside the boundaries of a public-private partnership project, to be defined by the lease agreement.

However, compensation to a leaseholder shall only be made after a demonstrable reduction in use of the facility resulting in reduced toll or user fee revenues, and may not exceed the reduction in those revenues.

(e) (1) Agreements entered into pursuant to this section shall authorize the contracting entity to impose tolls and user fees for use of a facility constructed by it, and shall require that over the term of the lease the toll revenues and user fees be applied to payment of the capital outlay costs for the project, the costs associated with operations, toll and user fee collection, administration of the facility, reimbursement to the department or other governmental entity for the costs of services to develop and maintain the project, police services, and a reasonable return on investment. The agreement shall require that, notwithstanding Sections 164, 188, and 188.1, any excess toll or user fee revenue either

be applied to any indebtedness incurred by the contracting entity with respect to the project, improvements to the project, or be paid into the State Highway Account, or for all three purposes, except that any excess toll revenue under a lease agreement with a regional transportation agency may be paid to the regional transportation agency for use in improving public transportation in and near the project boundaries.

(2) Lease agreements shall establish specific toll or user fee rates. Any proposed increase in those rates during the term of the agreement shall first be approved by the department or regional transportation agency after at least one public hearing conducted at a location near the proposed or existing facility.

(3) The collection of tolls and user fees for the use of these facilities may be extended by the commission or regional transportation agency at the expiration of the lease agreement. However, those tolls or user fees may not be used for any purpose other than for the improvement, continued operation, or maintenance of the facility.

(4) Tolls and user fees may not be charged to noncommercial vehicles with three or fewer axles.

(f) The plans and specifications for each transportation project developed, maintained, repaired, rehabilitated, reconstructed, or operated pursuant to this section shall comply with the department's standards for state transportation projects. The lease agreement shall include performance standards, including, but not limited to, levels of service. The agreement shall require facilities on the state highway system to meet all requirements for noise mitigation, landscaping, pollution control, and safety that otherwise would apply if the department were designing, building, and operating the facility. If a facility is on the state highway system, the facility leased pursuant to this section shall, during the term of the lease, be deemed to be a part of the state highway system for purposes of identification, maintenance, enforcement of traffic laws, and for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(g) Failure to comply with the lease agreement in any significant manner shall constitute a default under the agreement and the department or the regional transportation

agency, as appropriate, shall have the option to initiate processes to revert the facility to the public agency.

(h) The assignment authorized by subdivision (c) of Section 130240 of the Public Utilities Code is consistent with this section.

(i) A lease to a private entity pursuant to this section is deemed to be public property for a public purpose and exempt from leasehold, real property, and ad valorem taxation, except for the use, if any, of that property for ancillary commercial purposes.

(j) Nothing in this section is intended to infringe on the authority to develop high-occupancy toll lanes pursuant to Section 149.4, 149.5, or 149.6.

(k) Nothing in this section shall be construed to allow the conversion of any existing nontoll or non-user-fee lanes into tolled or user fee lanes with the exception of a high-occupancy vehicle lane that may be operated as a high-occupancy toll lane for vehicles not otherwise meeting the requirements for use of that lane.

(l) The lease agreement shall require the lessee to provide any information or data requested by the California Transportation Commission or the Legislative Analyst. The commission, in cooperation with the Legislative Analyst, shall annually prepare a report on the progress of each project and ultimately on the operation of the resulting facility. The report shall include, but not be limited to, a review of the performance standards, a financial analysis, and any concerns or recommendations for changes in the future.

(m) No lease agreements may be entered into under this section on or after January 1, 2012.

(n) To the extent that the design-build procurement method is utilized for the award of construction or design contracts for projects authorized under this section, those contracts shall be subject to the requirements, parameters, and processes set forth in Chapter 6.5 (commencing with Section 6800) of Part 1 of Division 2 of the Public Contract Code, if that chapter is added by either Assembly Bill 143 of the 2005-06 Regular Session or Senate Bill 59 of the 2005-06 Regular Session.

§143.1. (a) Notwithstanding any other provision of law, the demonstration toll road project known as State Highway Route 125 (SR 125) in the County of San Diego, authorized pursuant to authority granted to the department by Chapter 107 of the Statutes of 1989, as subsequently amended by Chapter 1115 of the Statutes of 1990 and Chapter 688 of the Statutes of 2002, shall be subject to tolls for a period of up to 45 years under the following additional terms and conditions:

(1) If agreed to by the private entity and the department, and subject to concurrence by the San Diego Association of Governments (SANDAG), the County of San Diego, the City of San Diego, and the City of Chula Vista, by January 2010, all of whom shall exercise their good faith efforts to reach that agreement and concurrence, the SR 125 franchise agreement shall be amended to provide for a lease period of up to 45 years, which shall be reflected in the SR 125 Development Franchise Agreement, dated January 30, 1991, as amended. If an amendment to extend the lease period is agreed to by the parties, the tolls collected during any extension period shall be used for one or more of the following purposes, as specified in the amendment to the agreement:

(A) By the private entity to reimburse it for project costs incurred on behalf of the department or SANDAG.

(B) By the private entity to compensate or reimburse it for project costs or other impacts for which it is entitled to compensation pursuant to the development franchise agreement or other agreements in effect as of June 30, 2006, with or between the private entity and SANDAG concerning SR 125.

(C) By the private entity to reimburse the department or SANDAG for project costs permitted under the development franchise agreement in effect as of June 30, 2006.

(D) By the private entity for one or more of the following purposes: the private entity's capital outlay costs for the project; the costs associated with operations, toll collection, and administration of the facility; reimbursement of the state for the costs of maintenance and police services; or a reasonable return on investment to the private entity.

(E) The development franchise agreement or any amendment thereto shall require that any excess toll revenue either be applied to repayment of the indebtedness incurred by the private entity with respect to the project, or payment into the State Highway Account for the benefit of the San Diego region, or both.

(2) If an amendment to the SR 125 Development Franchise Agreement is not executed by January 31, 2010, or if an amendment to the agreement is executed by January 31, 2010, that extends the lease period for less than 10 additional years, the department and SANDAG may agree, subject to concurrence by the County of San Diego, the City of San Diego, and the City of Chula Vista, to operate and maintain the toll road for any remaining period of time up to a maximum of 10 years following expiration of the agreement. Tolls collected by the department or SANDAG shall be used to reimburse the department or SANDAG, as applicable, for the SR 125 project costs permitted under the development franchise agreement in effect as of June 30, 2006.

(3) Except as specifically amended consistent with this section, the SR 125 Development Franchise Agreement shall remain in full force and effect as set forth therein, and this section shall not be deemed to modify any rights or obligations of the parties thereto.

(b) SANDAG may operate the SR 125 facility and continue the collection of tolls upon the expiration of the SR 125 Development Franchise Agreement or the up to 10-year period specified in paragraph (2) of subdivision (a), as applicable, subject to a 2/3 vote of the SANDAG board, pursuant to a plan that specifies the expenditure of toll revenues for projects within the SR 125 corridor. The operation and toll collection may be done in cooperation with the department or solely by SANDAG, with toll revenues to be available for the costs associated with operations, toll collection, and administration of the facility, and reimbursement of the state for the costs of maintenance and police services. Projects eligible for funding from excess toll revenues shall be limited to projects that improve the operation of SR 125, including highway and street projects, truck-only lanes, and transit services and facilities. Any changes to the plan shall require a 2/3 vote of the SANDAG board.

§149. The department may construct exclusive or preferential lanes for buses only or for buses and other high-occupancy vehicles, and may authorize or permit such exclusive or preferential use of designated lanes on existing highways that are part of the StateHighway System. Prior to constructing such lanes, the department shall conduct competent engineering estimates of the effect of such lanes on safety, congestion, and highway capacity.

To the extent they are available, the department may apply for and use federal aid funds appropriated for the design, construction, and use of such exclusive or preferential lanes, but may also use other State Highway Account funds, including other federal aid funds, for those purposes where proper and desirable.

This section shall be known and may be cited as the Carrell Act.

§149.1. (a) Notwithstanding Sections 149 and 30800 of this code, and Section 21655.5 of the Vehicle Code, the San Diego Association of Governments (SANDAG) may conduct, administer, and operate a value pricing and transit development program on the Interstate Highway Route 15 (I-15) high-occupancy vehicle expressway. The program, under the circumstances described in subdivision (b), may direct and authorize the entry and use of the I-15 high-occupancy vehicle lanes by single-occupant vehicles during peak periods, as defined by SANDAG, for a fee. The amount of the fee shall be established from time to time by SANDAG, and collected in a manner determined by SANDAG.

(b) Implementation of the program shall ensure that Level of Service C, as measured by the most recent issue of the Highway Capacity Manual, as adopted by the Transportation Research Board, is maintained at all times in the high-occupancy vehicle lanes, except that subject to a written agreement between the department and SANDAG that is based on operating conditions of the high-occupancy vehicle lanes, Level of Service D shall be permitted on the high-occupancy vehicle lanes. If Level of Service D is permitted, the department and SANDAG shall evaluate the impacts of these levels of

service of the high-occupancy vehicle lanes, and indicate any effects on the mixed-flow lanes. Continuance of Level of Service D operating conditions shall be subject to the written agreement between the department and SANDAG. Unrestricted access to the lanes by high-occupancy vehicles shall be available at all times. At least annually, the department shall audit the level of service during peak traffic hours and report the results of that audit at meetings of the program management team.

(c) Single-occupant vehicles that are certified or authorized by SANDAG for entry into, and use of, the I-15 high-occupancy vehicle lanes are exempt from Section 21655.5 of the Vehicle Code, and the driver shall not be in violation of the Vehicle Code because of that entry and use.

(d) SANDAG shall carry out the program in cooperation with the department, and shall consult the department in the operation of the project and on matters related to highway design and construction. With the assistance of the department, SANDAG shall establish appropriate traffic flow guidelines for the purpose of ensuring optimal use of the express lanes by high-occupancy vehicles.

(e) (1) Agreements between SANDAG, the department, and the Department of the California Highway Patrol shall identify the respective obligations and liabilities of those entities and assign them responsibilities relating to the program. The agreements entered into pursuant to this section shall be consistent with agreements between the department and the United States Department of Transportation relating to this program and shall include clear and concise procedures for enforcement by the Department of the California Highway Patrol of laws prohibiting the unauthorized use of the high-occupancy vehicle lanes. The agreements shall provide for reimbursement of state agencies, from revenues generated by the program, federal funds specifically allocated to SANDAG for the program by the federal government, or other funding sources that are not otherwise available to state agencies for transportation-related projects, for costs incurred in connection with the implementation or operation of the program. Reimbursement for SANDAG's program-related planning and administrative costs in the operation of the program shall not exceed 3 percent of the revenues.

(2) All remaining revenue shall be used in the I-15 corridor exclusively for

(A) the improvement of transit service, including, but not limited to, support for transit operations, and

(B) high-occupancy vehicle facilities and shall not be used for any other purpose.

(f) SANDAG, the San Diego Metropolitan Transit Development Board, and the department shall cooperatively develop a single transit capital improvement plan for the I-15 corridor.

§149.4. (a) (1) Notwithstanding Sections 149 and 30800 of this code, and Section 21655.5 of the Vehicle Code, the San Diego Association of Governments (SANDAG) may conduct, administer, and operate a value pricing and transit development demonstration program on a maximum of two transportation corridors in San Diego County.

(2) The program, under the circumstances described in subdivision (b), may direct and authorize the entry and use of high-occupancy vehicle lanes in corridors identified in paragraph (1) by single-occupant vehicles during peak periods, as defined by SANDAG, for a fee. The amount of the fee shall be established from time to time by SANDAG, and collected in a manner determined by SANDAG. A high-occupancy vehicle lane may only be operated as a high-occupancy toll (HOT) lane during the hours that the lane is otherwise restricted to use by high-occupancy vehicles.

(b) Implementation of the program shall ensure that Level of Service C, as measured by the most recent issue of the Highway Capacity Manual, as adopted by the Transportation Research Board, is maintained at all times in the high-occupancy vehicle lanes, except that subject to a written agreement between the department and SANDAG that is based on operating conditions of the high-occupancy vehicle lanes, Level of Service D shall be permitted on the high-occupancy vehicle lanes. If Level of Service D is permitted, the

department and SANDAG shall evaluate the impacts of these levels of service of the high-occupancy vehicle lanes, and indicate any effects on the mixed-flow lanes. Continuance of Level of Service D operating conditions shall be subject to the written agreement between the department and SANDAG. Unrestricted access to the lanes by high-occupancy vehicles shall be available at all times. At least annually, the department shall audit the level of service during peak traffic hours and report the results of that audit at meetings of the program management team.

(c) Single-occupant vehicles that are certified or authorized by SANDAG for entry into, and use of, the high-occupancy vehicle lanes identified in paragraph (1) of subdivision (a) are exempt from Section 21655.5 of the Vehicle Code, and the driver shall not be in violation of the Vehicle Code because of that entry and use.

(d) SANDAG shall carry out the program in cooperation with the department pursuant to a cooperative agreement that addresses all matters related to design, construction, maintenance, and operation of state highway system facilities in connection with the value pricing and transit development demonstration program. With the assistance of the department, SANDAG shall establish appropriate traffic flow guidelines for the purpose of ensuring optimal use of the express lanes by high-occupancy vehicles without adversely affecting other traffic on the state highway system.

(e) (1) Agreements between SANDAG, the department, and the Department of the California Highway Patrol shall identify the respective obligations and liabilities of those entities and assign them responsibilities relating to the program. The agreements entered into pursuant to this section shall be consistent with agreements between the department and the United States Department of Transportation relating to this program and shall include clear and concise procedures for enforcement by the Department of the California Highway Patrol of laws prohibiting the unauthorized use of the high-occupancy vehicle lanes. The agreements shall provide for reimbursement of state agencies, from revenues generated by the program, federal funds specifically allocated to SANDAG for the program by the federal government, or other funding sources that are not otherwise

available to state agencies for transportation-related projects, for costs incurred in connection with the implementation or operation of the program.

(2) The revenue generated from the program shall be available to SANDAG for the direct expenses related to the operation (including collection and enforcement), maintenance, and administration of the demonstration program. Administrative expenses shall not exceed 3 percent of the revenues.

(3) All remaining revenue generated by the demonstration program shall be used in the corridor from which the revenue was generated exclusively for preconstruction, construction, and other related costs of high-occupancy vehicle facilities and the improvement of transit service, including, but not limited to, support for transit operations pursuant to an expenditure plan adopted by SANDAG.

(f) Not later than three years after SANDAG first collects revenues from any of the projects described in paragraph (1) of subdivision (a), SANDAG shall submit a report to the Legislature on its findings, conclusions, and recommendations concerning the demonstration program authorized by this section. The report shall include an analysis of the effect of the HOT lanes on the adjacent mixed-flow lanes and any comments submitted by the department and the Department of the California Highway Patrol regarding operation of the lane.

(g) The authority of SANDAG to conduct, administer, and operate a value pricing and transit development program on a transportation corridor pursuant to this section shall terminate on that corridor four years after SANDAG first collects revenues from the HOT lane project on that corridor. SANDAG shall notify the department by letter of the date that revenues are first collected on that corridor.

§149.5. (a) (1) Notwithstanding Sections 149 and 30800 of this code, and Section 21655.5 of the Vehicle Code, the Sunol Smart Carpool Lane Joint Powers Authority (SSCLJPA), consisting of the Alameda County Congestion Management Agency, Alameda County Transportation Improvement Authority, and the Santa Clara Valley

Transportation Authority, may conduct, administer, and operate a value pricing high-occupancy vehicle program on the Sunol Grade segment of State Highway Route 680 (Interstate 680) in Alameda and Santa Clara Counties and the Alameda County Congestion Management Agency may conduct, administer, and operate a program on a corridor within Alameda County for a maximum of two transportation corridors in Alameda County pursuant to this section in coordination with the Metropolitan Transportation Commission and consistent with Section 21655.6 of the Vehicle Code.

(2) The program, under the circumstances described in subdivision (b), may direct and authorize the entry and use of the high-occupancy vehicle lanes in the corridors identified in paragraph (1) by single-occupant vehicles for a fee. The fee structure for each corridor shall be established from time to time by the administering agency. A high-occupancy vehicle lane may only be operated as a high-occupancy toll (HOT) lane during the hours that the lane is otherwise restricted to use by high-occupancy vehicles.

(3) The administering agency for each corridor shall enter into a cooperative agreement with the Bay Area Toll Authority to operate and manage the electronic toll collection system.

(b) Implementation of the program shall ensure that Level of Service C, as measured by the most recent issue of the Highway Capacity Manual, as adopted by the Transportation Research Board, is maintained at all times in the high-occupancy vehicle lanes, except that subject to a written agreement between the department and the administering agency that is based on operating conditions of the high-occupancy vehicle lanes, Level of Service D shall be permitted on the high-occupancy vehicle lanes. If Level of Service D is permitted, the department and the administering agency shall evaluate the impacts of these levels of service of the high-occupancy vehicle lanes, and indicate any effects on the mixed-flow lanes.

Continuance of Level of Service D operating conditions shall be subject to the written agreement between the department and the administering agency. Unrestricted access to the lanes by high-occupancy vehicles shall be available at all times. At least annually,

the department shall audit the level of service during peak traffic hours and report the results of that audit at meetings of the administering agency.

(c) Single-occupant vehicles that are certified or authorized by the administering agency for entry into, and use of, the high-occupancy vehicle lanes identified in paragraph (1) of subdivision (a) are exempt from Section 21655.5 of the Vehicle Code, and the driver shall not be in violation of the Vehicle Code because of that entry and use.

(d) The administering agency shall carry out the program in cooperation with the department pursuant to a cooperative agreement that addresses all matters related to design, construction, maintenance, and operation of state highway system facilities in connection with the value pricing high-occupancy vehicle program.

With the assistance of the department, the administering agency shall establish appropriate traffic flow guidelines for the purpose of ensuring optimal use of the express lanes by high-occupancy vehicles without adversely affecting other traffic on the state highway system.

(e) (1) Agreements between the administering agency, the department, and the Department of the California Highway Patrol shall identify the respective obligations and liabilities of those entities and assign them responsibilities relating to the program. The agreements entered into pursuant to this section shall be consistent with agreements between the department and the United States Department of Transportation relating to programs of this nature. The agreements shall include clear and concise procedures for enforcement by the Department of the California Highway Patrol of laws prohibiting the unauthorized use of the high-occupancy vehicle lanes, which may include the use of video enforcement. The agreements shall provide for reimbursement of state agencies, from revenues generated by the program, or other funding sources that are not otherwise available to state agencies for transportation-related projects, for costs incurred in connection with the implementation or operation of the program.

(2) The revenue generated from the program shall be available to the administering agency for the direct expenses related to the operation (including collection and

enforcement), maintenance, and administration of the demonstration program. Administrative expenses shall not exceed 3 percent of the revenues.

(3) All net revenue generated by the program that remains after payment of direct expenses pursuant to paragraph (2) shall be allocated pursuant to an expenditure plan adopted biennially by the administering agency for transportation purposes within the program area. The expenditure plan may include funding for the following:

(A) The construction of high-occupancy vehicle facilities, including the design, preconstruction, construction, and other related costs of the northbound Interstate 680 Sunol Smart Carpool Lane project.

(B) Transit capital and operations that directly serve the authorized corridors.

(f) Not later than three years after the administering agency first collects revenues from the program authorized by this section, the administering agency shall submit a report to the Legislature on its findings, conclusions, and recommendations concerning the demonstration program authorized by this section. The report shall include an analysis of the effect of the HOT lanes on the adjacent mixed-flow lanes and any comments submitted by the department and the Department of the California Highway Patrol regarding operation of the lane.

(g) The authority of the administering agency to conduct, administer, and operate a value pricing high-occupancy vehicle program pursuant to this section shall terminate on that corridor four years after the administering agency first collects revenues from the HOT lane project on that corridor. The administering agency shall notify the department by letter of the date that revenues are first collected on that corridor.

§149.6. (a) Notwithstanding Sections 149 and 30800, and Section 21655.5 of the Vehicle Code, the Santa Clara Valley Transportation Authority (VTA) created by Part 12 (commencing with Section 100000) of the Public Utilities Code may conduct, administer, and operate a value pricing program on any two of the transportation corridors included in the high-occupancy vehicle lane system in Santa Clara County in coordination with the

Metropolitan Transportation Commission and consistent with Section 21655.6 of the Vehicle Code.

(1) VTA, under the circumstances described in subdivision (b), may direct and authorize the entry and use of those high-occupancy vehicle lanes by single-occupant vehicles for a fee. The fee structure shall be established from time to time by the authority. The fee shall be collected in a manner determined by the authority. A high-occupancy vehicle lane may only be operated as a high-occupancy toll (HOT) lane during the hours that the lane is otherwise restricted to use by high-occupancy vehicles.

(2) VTA shall enter into a cooperative agreement with the Bay Area Toll Authority to operate and manage the electronic toll collection system.

(b) Implementation of the program shall ensure that Level of Service C, as measured by the most recent issue of the Highway Capacity Manual, as adopted by the Transportation Research Board, is maintained at all times in the high-occupancy vehicle lanes, except that subject to a written agreement between the department and VTA that is based on operating conditions of the high-occupancy vehicle lanes, Level of Service D shall be permitted on the high-occupancy vehicle lanes. If Level of Service D is permitted, the department and VTA shall evaluate the impacts of these levels of service of the high-occupancy vehicle lanes, and indicate any effects on the mixed-flow lanes. Continuance of Level of Service D operating conditions shall be subject to the written agreement between the department and VTA. Unrestricted access to the lanes by high-occupancy vehicles shall be available at all times. At least annually, the department shall audit the level of service during peak traffic hours and report the results of that audit at meetings of the program management team.

(c) Single-occupant vehicles that are certified or authorized by the authority for entry into, and use of, the high-occupancy vehicle lanes in Santa Clara County are exempt from Section 21655.5 of the Vehicle Code, and the driver shall not be in violation of the Vehicle Code because of that entry and use.

(d) VTA shall carry out the program in cooperation with the department pursuant to a cooperative agreement that addresses all matters related to design, construction, maintenance, and operation of state highway system facilities in connection with the value pricing program. With the assistance of the department, VTA shall establish appropriate traffic flow guidelines for the purpose of ensuring optimal use of the express lanes by high-occupancy vehicles without adversely affecting other traffic on the state highway system.

(e) (1) Agreements between VTA, the department, and the Department of the California Highway Patrol shall identify the respective obligations and liabilities of those entities and assign them responsibilities relating to the program. The agreements entered into pursuant to this section shall be consistent with agreements between the department and the United States Department of Transportation relating to this program. The agreements shall include clear and concise procedures for enforcement by the Department of the California Highway Patrol of laws prohibiting the unauthorized use of the high-occupancy vehicle lanes, which may include the use of video enforcement. The agreements shall provide for reimbursement of state agencies, from revenues generated by the program, federal funds specifically allocated to the authority for the program by the federal government, or other funding sources that are not otherwise available to state agencies for transportation-related projects, for costs incurred in connection with the implementation or operation of the program.

(2) The revenues generated by the program shall be available to VTA for the direct expenses related to the operation (including collection and enforcement), maintenance, and administration of the program. The VTA's administrative costs in the operation of the program shall not exceed 3 percent of the revenues.

(3) All remaining revenue generated by the demonstration program shall be used in the corridor from which the revenues were generated exclusively for the preconstruction, construction, and other related costs of high-occupancy vehicle facilities and the improvement of transit service, including, but not limited to, support for transit operations pursuant to an expenditure plan adopted by the VTA.

(f) Not later than three years after VTA first collects revenues from any of the projects described in paragraph (1) of subdivision (a), VTA shall submit a report to the Legislature on its findings, conclusions, and recommendations concerning the demonstration program authorized by this section. The report shall include an analysis of the effect of the HOT lanes on adjacent mixed-flow lanes and any comments submitted by the department and the Department of the

California Highway Patrol regarding operation of the lanes.

(g) The authority of VTA to conduct, administer, and operate a value pricing high-occupancy vehicle program on a transportation corridor pursuant to this section shall terminate on that corridor four years after VTA first collects revenues from the HOT lane project on that corridor. VTA shall notify the department by letter of the date that revenues are first collected on that corridor.

§149.7. (a) A regional transportation agency, as defined in Section 143, in cooperation with the department, may apply to the commission to develop and operate high-occupancy toll lanes, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit, consistent with the established standards, requirements, and limitations that apply to those facilities in Sections 149, 149.1, 149.3, 149.4, 149.5 and 149.6.

(b) The commission shall review each application for the development and operation of the facilities described in subdivision (a) according to eligibility criteria established by the commission. For each eligible application, the commission shall conduct at least one public hearing in northern California and one in southern California.

(c) Following public hearings, the commission shall submit an eligible application and any public comments made during the hearings to the Legislature for approval or rejection. Approval shall be achieved by the enactment of a statute. The number of facilities approved under this section shall not exceed four, two in northern California and two in southern California.

(d) A regional transportation agency that develops or operates a facility, or facilities, described in subdivision (a) shall provide any information or data requested by the commission or the Legislative Analyst. The commission, in cooperation with the Legislative Analyst, shall annually prepare a report on the progress of the development and operation of a facility authorized under this section. The commission may submit this report as a section in its annual report to the Legislature required pursuant to Section 14535 of the Government Code.

(e) No applications may be approved under this section on or after January 1, 2012.

160.93, Minnesota Statutes 2006

160.93 USER FEES; HIGH-OCCUPANCY VEHICLE LANES.

Subdivision 1. **Fees authorized.** To improve efficiency and provide more options to individuals traveling in a trunk highway corridor, the commissioner of transportation may charge user fees to owners or operators of single-occupant vehicles using designated high-occupancy vehicle lanes. The fees may be collected using electronic or other toll-collection methods and may vary in amount with the time of day and level of traffic congestion within the corridor. The commissioner shall consult with the Metropolitan Council and obtain necessary federal authorizations before implementing user fees on a high-occupancy vehicle lane. Fees under this section are not subject to section 16A.1283.

Subd. 2. **Deposit of revenues; appropriation.** (a) Money collected from fees authorized under subdivision 1 must be deposited in a high-occupancy vehicle lane user fee account in the special revenue fund. A separate account must be established for each trunk highway corridor. Money in the account is appropriated to the commissioner.

(b) From this appropriation the commissioner shall first repay the trunk highway fund and any other fund source for money spent to install, equip, or modify the corridor for the purposes of subdivision 1, and then shall pay all the costs of implementing and administering the fee collection system for that corridor.

(c) The commissioner shall spend remaining money in the account as follows:

(1) one-half must be spent for transportation capital improvements within the corridor; and

(2) one-half must be transferred to the Metropolitan Council for expansion and improvement of bus transit services within the corridor beyond the level of service provided on the date of implementation of subdivision 1.

Subd. 3. **Rules exemption.** With respect to this section, the commissioner is exempt from statutory rulemaking requirements, including section 14.386, and from sections 160.84 to 160.92 and 161.162 to 161.167.

Subd. 4. **Prohibition.** No person may operate a single-occupant vehicle in a designated high-occupancy vehicle lane except in compliance with the requirements of the commissioner. A person who violates this subdivision is guilty of a petty misdemeanor and is subject to sections 169.89, subdivisions 1, 2, subdivision 4, and 169.891 and any other provision of chapter 169 applicable to the commission of a petty misdemeanor traffic offense.

History: *1Sp2003 c 19 art 2 s 7*

1999 – Colorado SENATE BILL 99-088

BY SENATORS Andrews, Congrove, Epps, Hillman, Musgrave, Tebedo, and Teck;

also REPRESENTATIVES Young, Coleman, Kester, McKay, Nunez, Pfiffner, Scott, Spence, Spradley, and Swenson.

Concerning high occupancy vehicle lanes.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 42-4-1012 (1), (2), (2.5) (a) (II) (A), and (2.5) (b) (I), Colorado Revised Statutes, are amended to read:

42-4-1012. High occupancy vehicle (HOV) and high occupancy toll (HOT) lanes. (1) (a) The department of transportation and local authorities, with respect to streets and highways under their respective jurisdictions, may designate exclusive or preferential lanes for vehicles that carry a specified number of persons. The occupancy level of vehicles and the time of day when lane usage is restricted to high occupancy vehicles, if applicable, shall be designated by official traffic control devices.

(b) (I) On or before July 1, 2001, the department shall issue a request for proposals to private entities for the purpose of entering into a contract with such an entity for the conversion of an existing high occupancy vehicle lane described in paragraph (a) of this subsection (1) to a high occupancy toll lane and for the purpose of entering into a contract for the operation of the high occupancy toll lane by a private entity; except that the department may convert or operate the high occupancy toll lane, or both, in the event that no proposal by a private entity for such conversion or operation, or both, is acceptable.

(II) The high occupancy toll lane shall be a lane for use by vehicles carrying less than the specified number of persons for such high occupancy vehicle lane that pay a specified toll or fee.

(III) Any contract entered into between the department and a private entity pursuant to subparagraph (I) of this paragraph (b) shall:

(A) Authorize the private entity to impose tolls for use of the high occupancy toll lane;

(B) Require that over the term of such contract only toll revenues be applied to payment of the private entity's capital outlay costs for the project, the costs associated with operations, toll collection, administration of the high occupancy toll lane, if any, and a reasonable return on investment to the private entity, as evidenced by and consistent with the returns on investment to private entities on similar public and private projects;

(C) Require that any excess toll revenue either be applied to any indebtedness incurred by the private entity with respect to the project or be paid into the state highway fund created pursuant to section 43-1-219, C.R.S., for exclusive use in the corridor where the high occupancy toll lane is located including for maintenance and enforcement purposes in the high occupancy toll lane and for other traffic congestion relieving options including transit. Such contract shall define or provide a method for calculating excess toll revenues and shall specify the amount of indebtedness that the private entity may incur and apply excess toll revenues to before such revenues must be paid into the state highway fund. It is not the intent of the general assembly that the conversion of a high occupancy vehicle lane to a high occupancy toll lane shall detract in any way from the possible provision of mass transit options by the regional transportation district or any other agency in the corridor where the high occupancy toll lane is located.

(IV) The department shall structure a variable toll or fee to ensure a level of service C and unrestricted access to the lanes at all times by eligible vehicles, including buses, carpools, and EPA certified low-emitting vehicles with a gross vehicle weight rating over 10,000 pounds.

(V) The department shall not enter into a contract for the conversion of a high occupancy vehicle lane to a high occupancy toll lane if such a conversion will result in the loss or refund of federal funds payable, available, or paid to the state for construction, reconstruction, repairs, improvement, planning, supervision, and maintenance of the state highway system and other public highways.

(VI) The department shall require the private entity entering into a contract pursuant to this section to provide such performance bond or other surety for the project as the department may reasonably require.

(c) Whenever practicable, a high occupancy toll lane described in paragraph (b) of this subsection (1) shall be physically separated from the other lanes of a street or highway so as to minimize the interference between traffic in the designated lanes and traffic in the other lanes.

(d) The department shall develop and adopt functional specifications and standards for an automatic vehicle identification system for use on high occupancy vehicle lanes, high occupancy toll lanes, any public highway constructed and operated under the provisions of part 5 of article 4 of title 43, C.R.S., and any other street or highway where tolls or charges are imposed for the privilege of traveling upon such street or highway. The specifications and standards shall ensure that:

(I) Automatic vehicle identification systems utilized by the state, municipality, or other entity having jurisdiction over the street or highway are compatible with one another;

(II) A vehicle owner shall not be required to purchase or install more than one device to use on all toll facilities;

(III) Toll facility operators have the ability to select from different manufacturers and vendors of automatic vehicle identification systems; and

(IV) There is compatibility between any automatic vehicle identification system in operation on the effective date of this act and any automatic vehicle identification system designed and installed on and after said date.

(2) A motorcycle may be operated upon high occupancy vehicle lanes pursuant to section 163 of Public Law 97-424 or upon high occupancy toll lanes, unless prohibited by official traffic control devices.

(2.5) (a) (II) As used in this subsection (2.5), "inherently low-emission vehicle" or "ILEV" means:

(A) A light-duty vehicle or light-duty truck, regardless of whether such vehicle or truck is part of a motor vehicle fleet, that has been certified by the federal environmental protection agency as conforming to the ILEV guidelines, procedures, and standards as published in the federal register at 58 FR 11888 (March 1, 1993) and 59 FR 50042 (September 30, 1994), as amended from time to time; and

(b) No person shall operate a vehicle upon a high occupancy vehicle lane pursuant to this subsection (2.5) unless the vehicle:

(I) Meets all applicable federal emission standards ~~and labeling requirements~~ set forth in 40 CFR ~~secs.~~ sec. 88.311-93, ~~and 88.312-93,~~ as amended from time to time; and

SECTION 2. 43-1-1202 (1) (a), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

43-1-1202. Department powers. (1) Notwithstanding any other law, the department may: (a) Solicit and consider proposals, enter into agreements, grant benefits, and accept contributions for public-private initiatives pursuant to this part 12 concerning any of the following:

(XIII) Design, financing, construction, operation, maintenance, or improvement of a high occupancy toll lane described in section 42-4-1012 (1), C.R.S.

SECTION 3. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against

this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Colorado Revised Statutes (2006) (UPDATE)

§42-4-1012. High occupancy vehicle (HOV) and high occupancy toll (HOT) lanes.

(1) (a) The department of transportation and local authorities, with respect to streets and highways under their respective jurisdictions, may designate exclusive or preferential lanes for vehicles that carry a specified number of persons. The occupancy level of vehicles and the time of day when lane usage is restricted to high occupancy vehicles, if applicable, shall be designated by official traffic control devices.

(b) (I) On or before July 1, 2001, the department shall issue a request for proposals to private entities for the purpose of entering into a contract with such an entity for the conversion of an existing high occupancy vehicle lane described in paragraph (a) of this subsection (1) to a high occupancy toll lane and for the purpose of entering into a contract for the operation of the high occupancy toll lane by a private entity; except that the department may convert or operate the high occupancy toll lane, or both, in the event that no proposal by a private entity for such conversion or operation, or both, is acceptable.

(II) The high occupancy toll lane shall be a lane for use by vehicles carrying less than the specified number of persons for such high occupancy vehicle lane that pay a specified toll or fee.

(III) Any contract entered into between the department and a private entity pursuant to subparagraph (I) of this paragraph (b) shall:

(A) Authorize the private entity to impose tolls for use of the high occupancy toll lane;

(B) Require that over the term of such contract only toll revenues be applied to payment of the private entity's capital outlay costs for the project, the costs associated with operations, toll collection, administration of the high occupancy toll lane, if any, and a reasonable return on investment to the private entity, as evidenced by and consistent with the returns on investment to private entities on similar public and private projects;

(C) Require that any excess toll revenue either be applied to any indebtedness incurred by the private entity with respect to the project or be paid into the state highway fund created pursuant to section 43-1-219, C.R.S., for exclusive use in the corridor where the high occupancy toll lane is located including for maintenance and enforcement purposes in the high occupancy toll lane and for other traffic congestion relieving options including transit. Such contract shall define or provide a method for calculating excess toll revenues and shall specify the amount of indebtedness that the private entity may incur and apply excess toll revenues to before such revenues must be paid into the state highway fund. It is not the intent of the general assembly that the conversion of a high occupancy vehicle lane to a high occupancy toll lane shall detract in any way from the possible provision of mass transit options by the regional transportation district or any other agency in the corridor where the high occupancy toll lane is located.

(IV) The department shall structure a variable toll or fee to ensure a level of service C and unrestricted access to the lanes at all times by eligible vehicles, including buses, carpools, and EPA certified low-emitting vehicles with a gross vehicle weight rating over ten thousand pounds.

(V) The department shall not enter into a contract for the conversion of a high occupancy vehicle lane to a high occupancy toll lane if such a conversion will result in the loss or refund of federal funds payable, available, or paid to the state for construction, reconstruction, repairs, improvement, planning, supervision, and maintenance of the state highway system and other public highways.

(VI) The department shall require the private entity entering into a contract pursuant to this section to provide such performance bond or other surety for the project as the department may reasonably require.

(c) Whenever practicable, a high occupancy toll lane described in paragraph (b) of this subsection (1) shall be physically separated from the other lanes of a street or highway so as to minimize the interference between traffic in the designated lanes and traffic in the other lanes.

(d) The department shall develop and adopt functional specifications and standards for an automatic vehicle identification system for use on high occupancy vehicle lanes, high occupancy toll lanes, any public highway constructed and operated under the provisions of part 5 of article 4 of title 43, C.R.S., and any other street or highway where tolls or charges are imposed for the privilege of traveling upon such street or highway. The specifications and standards shall ensure that:

(I) Automatic vehicle identification systems utilized by the state, municipality, or other entity having jurisdiction over the street or highway are compatible with one another;

(II) A vehicle owner shall not be required to purchase or install more than one device to use on all toll facilities;

(III) Toll facility operators have the ability to select from different manufacturers and vendors of automatic vehicle identification systems; and

(IV) There is compatibility between any automatic vehicle identification system in operation on August 4, 1999, and any automatic vehicle identification system designed and installed on and after said date; except that the operator of an automatic vehicle identification system in operation on August 4, 1999, may replace such system with a different system that is not compatible with the system in operation on August 4, 1999, subject to the approval of the department. After the department approves such replacement, the specifications and standards developed pursuant to this paragraph (d) shall be amended to require compatibility with the replacement system.

(2) A motorcycle may be operated upon high occupancy vehicle lanes pursuant to section 163 of Public Law 97-424 or upon high occupancy toll lanes, unless prohibited by official traffic control devices.

(2.5) (a) (I) Except as otherwise provided in paragraph (d) of this subsection (2.5), a motor vehicle with a gross vehicle weight of twenty-six thousand pounds or less that is either an inherently low-emission vehicle or a hybrid vehicle may be operated upon high

occupancy vehicle lanes without regard to the number of persons in the vehicle and without payment of a special toll or fee. The exemption relating to hybrid vehicles shall apply only if such exemption does not affect the receipt of federal funds and does not violate any federal laws or regulations.

(II) As used in this subsection (2.5), "inherently low-emission vehicle" or "ILEV" means:

(A) A light-duty vehicle or light-duty truck, regardless of whether such vehicle or truck is part of a motor vehicle fleet, that has been certified by the federal environmental protection agency as conforming to the ILEV guidelines, procedures, and standards as published in the federal register at 58 FR 11888 (March 1, 1993) and 59 FR 50042 (September 30, 1994), as amended from time to time; and

(B) A heavy-duty vehicle powered by an engine that has been certified as set forth in sub-subparagraph (A) of this subparagraph (II).

(III) As used in this subsection (2.5), "hybrid vehicle" has the meaning established in section 39-22-516 (2.5) (a) (II.5), C.R.S.

(b) No person shall operate a vehicle upon a high occupancy vehicle lane pursuant to this subsection (2.5) unless the vehicle:

(I) Meets all applicable federal emission standards set forth in 40 CFR sec. 88.311-93, as amended from time to time, or, subject to subparagraph (I) of paragraph (a) of this subsection (2.5), is a hybrid vehicle; and

(II) Is identified by means of a circular sticker or decal at least four inches in diameter, made of bright orange reflective material, and affixed either to the windshield, to the front of the side-view mirror on the driver's side, or to the front bumper of the vehicle. Said sticker or decal shall be approved by the Colorado department of transportation.

(c) The department of transportation and local authorities, with respect to streets and highways under their respective jurisdictions, shall provide information via official traffic control devices to indicate that ILEVs and, subject to subparagraph (I) of paragraph (a) of this subsection (2.5), hybrid vehicles may be operated upon high occupancy vehicle lanes pursuant to this section. Such information may, but need not, be added to existing printed signs, but as existing printed signs related to high occupancy vehicle lane use are replaced or new ones are erected, such information shall be added. In addition, whenever existing electronic signs are capable of being reprogrammed to carry such information, they shall be so reprogrammed by September 1, 2003.

(d) (I) In consultation with the regional transportation district, the department of transportation and local authorities, with respect to streets and highways under their respective jurisdictions, shall, in connection with their periodic level-of-service evaluation of high occupancy vehicle lanes, perform a level-of-service evaluation of the use of high occupancy vehicle lanes by ILEVs and hybrid vehicles. If the use of high occupancy vehicle lanes by ILEVs or hybrid vehicles is determined to cause a significant decrease in the level of service for other bona fide users of such lanes, then the department of transportation or a local authority may restrict or eliminate use of such lanes by ILEVs or hybrid vehicles.

(II) If the United States secretary of transportation makes a formal determination that, by giving effect to paragraph (a) of this subsection (2.5) on a particular highway or lane, the state of Colorado would disqualify itself from receiving federal highway funds the state would otherwise qualify to receive or would be required to refund federal transportation grant funds it has already received, then said paragraph (a) shall not be effective as to such highway or lane.

(3) (a) Any person who uses a high occupancy vehicle lane in violation of restrictions imposed by the department of transportation or local authorities commits a class A traffic infraction.

(b) Any person convicted of a third or subsequent offense of paragraph (a) of this subsection (3) committed within a twelve-month period shall be subject to an increased penalty pursuant to section 42-4-1701 (4) (a) (I) (K).

2005 – Washington State

CERTIFICATION OF ENROLLMENT
SUBSTITUTE HOUSE BILL 1179
59th Legislature2005 Regular Session
Passed by the House April 18, 2005 CERTIFICATE
Yeas 86 Nays 9 I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is
Speaker of the House of Representatives SUBSTITUTE HOUSE BILL 1179 as passed by the House of Representatives and the Senate on the dates hereon set forth.
Passed by the Senate April 6, 2005Yeas 47 Nays 2

Chief Clerk
President of the Senate
Approved FILED
Secretary of State, State of Washington
Governor of the State of Washington
SUBSTITUTE HOUSE BILL 1179
AS AMENDED BY THE SENATE
Passed Legislature - 2005 Regular Session
State of Washington 59th Legislature 2005 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Murray, Shabro, Wallace, Woods, Jarrett, Simpson, Springer, Dickerson, Quall, Armstrong, Kenney, Clibborn and McIntire; by request of Department of Transportation)

READ FIRST TIME 02/15/05.

AN ACT Relating to high-occupancy toll lanes; amending RCW 43.84.092; reenacting and amending RCW 42.17.310, 42.17.310, and43.84.092; adding new sections to chapter 47.56 RCW; adding a new section to chapter 47.66 RCW; creating new sections; prescribing penalties; providing effective dates; providing expiration dates; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** LEGISLATIVE INTENT. The legislature recognizes that the Puget Sound region is faced with growing traffic congestion and has limited ability to expand freeway capacity due to financial, environmental, and physical constraints. Freeway high occupancy vehicle lanes have been an effective means of providing transit, vanpools, and carpools with a fast trip on congested freeway corridors, but in many cases, these lanes are themselves getting crowded during the peak commute times, while some are being underused at off-peak times.

It is the intent of the legislature to maximize the effectiveness and efficiency of the freeway system. To evaluate methods to accomplish this, it is beneficial to evaluate alternative approaches to managing the use of freeway high-occupancy vehicle lanes, including pilot projects to determine and demonstrate the effectiveness and benefits of implementing high-occupancy toll lanes. The legislature acknowledges that state route 167 provides an ideal test of the high-occupancy toll lane concept because it is a congested corridor, it has underused capacity in the high-occupancy vehicle lane, and it has adequate right of way for improvements needed to test the concept.

Therefore, it is the intent of this act to direct that the department of transportation, as a pilot project, develop and operate a high-occupancy toll lane on state route 167 in King county and to conduct an evaluation of that project to determine impacts on freeway efficiency, effectiveness for transit, feasibility of financing improvements through tolls, and the impacts on freeway users.

NEW SECTION. **Sec. 2.** A new section is added to chapter 47.56 RCW to read as follows: DEFINITION OF HIGH-OCCUPANCY TOLL LANES. For the purposes of RCW 46.61.165 and sections 3 and 4 of this act, "high-occupancy toll lanes" means one or more lanes of a highway that charges tolls as a means of regulating access to or the use of the facility, to maintain travel speed and reliability. Supporting facilities include, but are not limited to, approaches, enforcement areas, improvements, buildings, and equipment.

NEW SECTION. **Sec. 3.** A new section is added to chapter 47.56 RCW to read as follows:

AUTHORITY TO DESIGNATE STATE ROUTE 167 HIGH-OCCUPANCY TOLL LANE PILOT PROJECT. (1) The department may provide for the establishment, construction, and operation of a pilot project of high-occupancy toll lanes on state route 167 high-occupancy vehicle lanes within King county. The department may issue, buy, and redeem bonds, and deposit and expend them; secure and remit financial and other assistance in the construction of high-occupancy toll lanes, carry insurance, and handle any other matters pertaining to the high-occupancy toll lane pilot project.

(2) Tolls for high-occupancy toll lanes will be established as follows:

(a) The schedule of toll charges for high-occupancy toll lanes must be established by the transportation commission and collected in a manner determined by the commission.
(b) Toll charges shall not be assessed on transit buses and vanpool vehicles owned or operated by any public agency.
(c) The department shall establish performance standards for the state route 167 high-occupancy toll lane pilot project. The department must automatically adjust the toll charge, using dynamic tolling, to ensure that toll-paying single-occupant vehicle users are only permitted to enter the lane to the extent that average vehicle speeds in the lane

remain above forty-five miles per hour at least ninety percent of the time during peak hours. The toll charge may vary in amount by time of day, level of traffic congestion within the highway facility, vehicle occupancy, or other criteria, as the commission may deem appropriate. The commission may also vary toll charges for single-occupant inherently low-emission vehicles such as those powered by electric batteries, natural gas, propane, or other clean burning fuels.
(d) The commission shall periodically review the toll charges to determine if the toll charges are effectively maintaining travel time, speed, and reliability on the highway facilities.

(3) The department shall monitor the state route 167 high-occupancy toll lane pilot project and shall annually report to the transportation commission and the legislature on operations and findings. At a minimum, the department shall provide facility use data and review the impacts on:

(a) Freeway efficiency and safety;

(b) Effectiveness for transit;

(c) Person and vehicle movements by mode;

(d) Ability to finance improvements and transportation services through tolls; and

(e) The impacts on all highway users. The department shall analyze aggregate use data and conduct, as needed, separate surveys to assess usage of the facility in relation to geographic, socioeconomic, and demographic information within the corridor in order to ascertain actual and perceived questions of equitable use of the facility.

(4) The department shall modify the pilot project to address identified safety issues and mitigate negative impacts to high occupancy vehicle lane users.

(5) Authorization to impose high-occupancy vehicle tolls for the state route 167 high-occupancy toll pilot project expires if either of the following two conditions apply: (a) If no contracts have been let by the department to begin construction of the toll facilities associated with this pilot project within four years of the effective date of this section; or (b) Four years after toll collection begins under this section.

(6) The department of transportation shall adopt rules that allow automatic vehicle identification transponders used for electronic toll collection to be compatible with other electronic payment devices or transponders from the Washington state ferry system, other public transportation systems, or other toll collection systems to the extent that technology permits.

(7) The conversion of a single existing high-occupancy vehicle lane to a high-occupancy toll lane as proposed for SR-167 must be taken as the exception for this pilot project.

(8) A violation of the lane restrictions applicable to the high-occupancy toll lanes established under this section is a traffic infraction.

(9) Procurement activity associated with this pilot project shall be open and competitive in accordance with chapter 39.29 RCW.

NEW SECTION. **Sec. 4.** A new section is added to chapter 47.66 RCW to read as follows: The high-occupancy toll lanes operations account is created in the state treasury. The department shall deposit all revenues received by the department as toll charges collected from high-occupancy toll lane users. Moneys in this account may be spent only if appropriated by the legislature. Moneys in this account may be used for, but be not limited to, debt service, planning, administration, construction, maintenance, operation, repair, rebuilding, enforcement, and expansion of high-occupancy toll lanes and to increase transit, vanpool and carpool, and trip reduction services in the corridor. A reasonable proportion of the moneys in this account must be dedicated to increase transit, vanpool, carpool, and trip reduction services in the corridor.

A reasonable proportion of the moneys in this account must be dedicated to increase transit, vanpool, carpool, and trip reduction services in the corridor.

Utah Code (2006)

§72-2-120. Tollway Restricted Special Revenue Fund -- Revenue -- Nonlapsing.

(1) There is created a restricted special revenue fund known as the "Tollway Restricted Special Revenue Fund."

(2) The fund shall be funded from the following sources:

(a) tolls collected by the department under Section 72-6-118;

(b) funds received by the department through a tollway development agreement under Section 72-6-203;

(c) appropriations made to the fund by the Legislature;

(d) contributions from other public and private sources for deposit into the fund;

(e) interest earnings on cash balances; and

(f) all monies collected for repayments and interest on fund monies.

(3) All monies appropriated to the fund are nonlapsing.

(4) The Division of Finance shall create a subaccount for each tollway as defined in Section 72-6-118.

(5) The commission may authorize the monies deposited into the fund to be spent by the department to establish and operate tollways and related facilities, including design, construction, reconstruction, operation, maintenance, enforcement, impacts from tollways, and the acquisition of right-of-way.

§72-6-118. Definitions -- Establishment and operation of tollways -- Imposition and collection of tolls -- Amount of tolls -- Rulemaking.

(1) As used in this section:

(a) "High occupancy toll lane" means a high occupancy vehicle lane designated under Section 41-6a-702 that may be used by an operator of a vehicle carrying less than the number of persons specified for the high occupancy vehicle lane if the operator of the vehicle pays a toll or fee.

(b) "Toll" means any tax, fee, or charge assessed for the specific use of a tollway.

(c) "Toll lane" means a designated new highway or additional lane capacity that is constructed, operated, or maintained for which a toll is charged for its use.

(d) (i) "Tollway" means a highway, highway lane, bridge, path, tunnel, or right-of-way designed and used as a transportation route that is constructed, operated, or maintained through the use of toll revenues.

(ii) "Tollway" includes a high occupancy toll lane and a toll lane.

(e) "Tollway development agreement" has the same meaning as defined in Section 72-6-202.

(2) Subject to the provisions of Subsection (3), the department may:

(a) establish, expand, and operate tollways and related facilities for the purpose of funding in whole or in part the acquisition of right-of-way and the design, construction, reconstruction, operation, enforcement, and maintenance of or impacts from a transportation route for use by the public;

(b) enter into contracts, agreements, licenses, franchises, tollway development agreements, or other arrangements to implement this section;

(c) impose and collect tolls on any tollway established under this section; and

(d) grant exclusive or nonexclusive rights to a private entity to impose and collect tolls pursuant to the terms and conditions of a tollway development agreement.

(3) (a) Except as provided under Subsection (3)(d), the department or other entity may not establish or operate a tollway on an existing state highway, except as approved by the commission and the Legislature.

(b) Between sessions of the Legislature, a state tollway may be designated or deleted if:

(i) approved by the commission in accordance with the standards made under this section; and

(ii) the tollways are submitted to the Legislature in the next year for legislative approval or disapproval.

(c) In conjunction with a proposal submitted under Subsection (3)(b)(ii), the department shall provide a description of the tollway project, projected traffic, the anticipated amount of tolls to be charged, and projected toll revenue.

(d) If approved by the commission, the department may:

(i) establish high occupancy toll lanes on existing state highways; and

(ii) establish tollways on new state highways or additional capacity lanes.

(4) (a) Except as provided in Subsection (4)(b), in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall:

(i) set the amount of any toll imposed or collected on a tollway on a state highway; and

(ii) for tolls established under Subsection (4)(b), set:

(A) an increase in a toll rate or user fee above an increase specified in a tollway development agreement; or

(B) an increase in a toll rate or user fee above a maximum toll rate specified in a tollway development agreement.

(b) A toll or user fee and an increase to a toll or user fee imposed or collected on a tollway on a state highway that is the subject of a tollway development agreement shall be set in the tollway development agreement.

(5) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department shall make rules:

(i) necessary to establish and operate tollways on state highways; and

(ii) that establish standards and specifications for automatic tolling systems.

(b) The rules shall:

(i) include minimum criteria for having a tollway; and

(ii) conform to regional and national standards for automatic tolling.

(6) (a) The commission may provide funds for public or private tollway pilot projects or high occupancy toll lanes from General Fund monies appropriated by the Legislature to the commission for that purpose.

(b) The commission may determine priorities and funding levels for tollways designated under this section.

(7) (a) Except as provided in Subsection (7)(b), all revenue generated from a tollway on a state highway shall be deposited into the Tollway Restricted Special Revenue Fund created in Section 72-2-120 and used for acquisition of right-of-way and the design, construction, reconstruction, operation, maintenance, enforcement of transportation facilities, and other facilities used exclusively for the operation of a tollway facility within the corridor served by the tollway.

(b) Revenue generated from a tollway that is the subject of a tollway development agreement

shall be deposited into the Tollway Restricted Special Revenue Fund and used in accordance with Subsection (7)(a) unless:

(i) the revenue is to a private entity through the tollway development agreement; or

(ii) the revenue is identified for a different purpose under the tollway development agreement.

Appendix B - USDOT Letter Regarding HOT Lanes and Fixed Guideway Miles

U.S Department
of Transportation
Federal Transit
Administration

Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

JUN 10 2002

The Honorable Randy "Duke" Cunningham
U.S. House of Representatives
Washington, D.C. 20515-0551

Dear Congressman Cunningham:

Thank you for your letter regarding the Federal Transit Administration's (FTA) interpretation of the term "fixed guideway" and the implications for the San Diego urbanized area's receipt of FTA formula funds based on fixed guideway data reported through the National Transit Database (NTD). FTA had disallowed NTD data for the I-15 HOV lanes for use in the apportionment of FY 2002 funds because the HOV lanes are now open to toll-paying single occupant vehicles (SOV) through the San Diego Association of Governments' (SANDAG) I-15 FasTrak Value Pricing Program.

I regret the delay in responding to you, but your letter raised important and precedent-setting policy considerations regarding incidental use of exclusive fixed guideway transit facilities that have nationwide implications, and I wanted to thoroughly examine all aspects before replying.

You should be aware that for many years, the FTA has viewed the definition of "fixed guideway" contained in 49 U.S.C. Chapter 53, as well as in the NTD Reporting Manual, as prohibiting *any* use by SOVs. This longstanding interpretation was applied to the San Diego case, resulting in the ineligibility determination of the I-15 HOV lanes that now permit SOV use for a fee.

After consulting with FTA's Chief Counsel, with Federal Highway Administrator Mary Peters and her staff, and reviewing the impact of FTA current policy in this area in the context of the Department's broader efforts to promote transit usage and encourage congestion management, I have decided to modify FTA's policy. Effective in Fiscal Year 2003, FTA will recognize, for formula allocation purposes, exclusive fixed guideway transit facilities that permit toll-paying SOVs on an incidental basis (often called high occupancy/toll (HO/T) lanes) under the following conditions: the facility must be able to control SOV use so that it does not impede the free flow and high speed of transit and HOV vehicles; and the toll revenues collected must be used for mass transit purposes. This policy will apply to the FY 2003 apportionment of FTA formula funds. Thus, beginning with the FY 2003 apportionment, FTA will permit the inclusion of the 15.4 directional route miles from the I-15 HO/T facility in the NTD formula apportionment data. My staff will inform SANDAG by letter of this decision.

I appreciate your bringing this issue to my attention and trust that this decision addresses your concerns. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Jennifer L. Dorn

Appendix C - HOV Lanes in Houston: Original Master Operations and Maintenance Agreement

THE STATE OF TEXAS §

COUNTY OF HARRIS §

TRANSITWAYS

MASTER OPERATIONS AND MAINTENANCE AGREEMENT

THIS AGREEMENT, by and between the State of Texas, acting by and through the State Department of Highways and Public Transportation (hereinafter called the "State"), and the metropolitan Transit Authority of Harris County, Texas acting by and through its General Manager (hereinafter called "METRO"), is to become effective when fully executed by both parties.

W I T N E S S E T H

WHEREAS, Article 1118x, Texas Revised Civil Statutes, authorizes METRO to operate public transportation facilities on highways under control of the State; and

WHEREAS, METRO and the State have previously agreed to construct, maintain and operate public transportation facilities known as authorized vehicle lanes (AVL's), high-occupancy vehicle lanes (HOV's), and Transitways (hereinafter called "Transitways") along certain controlled-access highways (freeways) in and around Harris County, Texas, and;

WHEREAS, such controlled-access highways are defined in Articles 6674 W through 6675 W-5, Texas Revised Civil Statutes, and, as provided herein, are under the ultimate control and supervision of the State; and

WHEREAS, the manner that such facilities are to be operated and maintained has heretofore been covered by individual agreements pertaining to each of the Transitways concerned; and

WHEREAS, experience has been gained in operating such facilities on the first two Transitways to become operational in Harris County, Interstate highway 45N (the North Freeway) north of downtown Houston, Texas and Interstate Highway 10W (the Katy Freeway) west of downtown Houston, Texas; and

WHEREAS, such experience indicates that the operation and maintenance of a contemplated system of Transitways along the above-mentioned and other State freeways within METRO's jurisdiction should be uniform and coordinated; and

WHEREAS, METRO and the State desire to accomplish such uniformity and coordination by entering into this "MASTER OPERATION AND MAINTENANCE AGREEMENT' which covers all such Transitways which METRO and the State have agreed, or will agree, to construct by other individual construction agreements, and

WHEREAS, the parties by this Agreement desire to specify the rights and obligations of the respective parties for the operation and maintenance of Transitways along State freeways within METRO's jurisdiction; and

WHEREAS, while METRO is the primary agency responsible for the day-to-day operation and maintenance of Transitways, such Transitways, being part of the controlled-access highways, impact freeway operation and the State therefore has an interest and responsibility in the operation and maintenance of Transitways; and

WHEREAS, it is the intent of the parties to this Agreement that the Transitways be operated safely and effectively;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, METRO and the State do mutually agree as follows:

A G R E E M E N T

Applicability

1. This MASTER OPERATION AND MAINTENANCE AGREEMENT supersedes all agreements or portions of agreements pertaining to the operation and maintenance of Transitways heretofore executed by METRO and the State.

2. When, by execution of separate construction agreements, METRO and the State agree to construct additional Transitways, the operation, and maintenance of same shall be governed by this MASTER OPERATION AND MAINTENANCE AGREEMENT.

Maintenance of Transitways

3. Beginning on the date that final completion of construction is certified, METRO and the State agree to divide the responsibility for maintenance of Transitways as follows:

(a) METRO agrees to maintain the signs, control devices, vehicle impact attenuators, equipment and illumination devices installed as a part of the

Transitway which are clearly identified on As-Built Plans as items to be maintained by Metro. Maintenance shall include the provision, at METRO's expense, of all electrical power and other utilities, required for Transitway operation. METRO shall be responsible for removal of debris or other objects detrimental to safe operation of Transitways that are above and beyond the sweeping and litter pick-up obligations of the State set out below.

(b) METRO agrees to maintain all park-and-ride or transit center facilities to include, but not limited to, the following: pavement, striping, lighting, signing, buildings, sanitary facilities, water, storm sewer, detention ponds and facilities, telephones, utilities, signals and landscaping. METRO's responsibility shall begin at the point the access ramps cross the normal State right-of-way.

(c) The State agrees to maintain all other portions of said segments and fixtures thereto including, without limitation, all paved surfaces, all supporting structures, all traffic control devices not covered by subparagraph (a) of this paragraph 3, all traffic separation facilities not covered by said paragraph (a), and any other device or fixtures not clearly identified on As-Build Plans as items to be maintained by METRO. The State will perform sweeping and litter pick-up on a routine basis.

With respect to the items mentioned above in subparagraphs (a), (b) and (c), the provisions of this paragraph 3 shall be the exclusive expression of the obligations of the parties.

Operation of Transitways

4. METRO, acting through its General Manager, and the State, acting through its District 12 Engineer, shall publish an Operations Plan for each Transitway not less than thirty days prior to the commencement of operations on any segment of such Transitway. Where Operations Plans have already been published for Transitways in operation prior to the execution of this Agreement, such Operations Plans will be reviewed for compliance with the terms of this Agreement, revised as appropriate. Operations Plans shall be filed with both agencies involved in Transitway Operations as well as those which govern Transitway users.

5. Amendments to Operations Plans may be made by consent of both METRO and the State as represented by the following:

(a) State Transitway Engineer – an assigned and identified representative of the State designated by the State's District 12 Engineer.

(b) METRO Transitway Manager – an assigned and identified representative of METRO, designated by the General Manager.

6. The State Transitway Engineer and the METRO Transitway Manager shall constitute the Transitway management Team. They shall meet monthly to: oversee Transitway Operations; monitor policies and procedures promulgated by Operations Plans; interpret and implement the terms of Operations Plans; and review Transitway

operating procedures, rules and regulations established pursuant to Operations Plans. On a semi-annual basis, they shall submit a report to METRO's General manager and the State's District 12 Engineer concerning such matters as Transitway vehicle and passenger usage, operating speeds, accident and incident data, and other matters pertaining to the safe and effective operations of Transitways. The reports may also include recommendations for design modifications of existing Transitways and suggestions regarding the design of future Transitways.

7. Pursuant to the terms of the Operations Plans for each Transitway, the Transitway Management Team will develop for each Transitway:

(a) Transitway Rules and Regulations governing Transitway users in order to assure safe and effective operations consonant with the design, environment and overall traffic conditions pertaining to each Transitway.

(b) A Transitway Operating Manual covering procedures to be used by those agency personnel assigned direct responsibility for day-to-day transitway operation. This Manual shall include, but not be limited to, sections covering:

1. Deployment;

2. Surveillance, Communications and Control (SC&C);

3. Enforcement;

4. Incident Management; and

5. Training.

8. The hours of operation of Transitways are to be proscribed in each Operations Plan.

9. METRO shall arrange for the prompt removal of disabled vehicles from Transitways.

10. During the hours of operation of Transitways, METRO shall be represented in the field on each Transitway by a designated representative who will be responsible for all METRO personnel and all METRO activity within the limits of the Transitway. This METRO representative is responsible for carrying out the policies and procedures defined by, and pursuant to, the Operations Plans under the general direction of the METRO Transitway Manager.

11. Because transitways are intended for use by high occupancy vehicles, only buses, vanpools, carpools, and State or METRO operational maintenance vehicles are to be authorized to use Transitways in accordance with the provision of Operations Plans. The definition of what constitutes a carpool authorized to use a Transitway shall be specified in the Operations Plans. Concurrence in the definition by the METRO Board of Directors and the State is required.

12. METRO Transit Police will be responsible for enforcement of laws and regulations applicable to each Transitway, pursuant to specific enforcement requirements applicable to each Transitway, and procedures promulgated by the Transitway

Management Team. At least one METRO Police Officer will be present on each Transitway during the hours of deployment and operation.

METRO Transit Police will assist in the opening and closing of the lanes as specified in procedures established by the Transitway Management Team. During hours of lane operation, METRO Transit Police will enforce the lane-use procedures developed by the Transitway Management Team.

During periods of normal lane operation, enforcement personnel will stop violators at the termini of the Transitways only. Due to the narrow width of the Transitways, no vehicles will be stopped along the length of the lane by enforcement personnel.

13. The Transitway Management Team will regularly evaluate the effectiveness of the Transitway traffic control devices in achieving the goals to be made as may be necessary to further such goals, reporting on these matters in the semi-annual report mandated in paragraph 6 of this Agreement. To the extent applicable, such Transitway traffic control devices and measures shall conform to the Texas Manual of Uniform Traffic Control Devices.

Use of Facilities

14. The parties acknowledge that the highway facilities upon which Transitways are constructed are under the ultimate control and supervision of the State, however, the parties also acknowledge that the construction, operation and maintenance of Transitways involve the investment of substantial sums for mass transit purposes, by

METRO and the United States Government; therefore, the State agrees that it will exercise its rights of control and supervision so as to recognize the mass transit purposes of Transitways throughout their useful lifetime.

Termination of Transitway Use

15. In the event that METRO determines that operation of any Transitway is no longer necessary to accommodate public transportation, METRO shall cause all specialized equipment which it may have had installed for the operation of such Transitway to be removed from the highway right-of-way, a single median barrier to be installed and appropriate lane markings to be made or such right-of-way to be restored to such other condition as METRO and the State agree, all at the sole expense of METRO, provided that METRO gives notice in writing of such determination and the date of termination of the State at least sixty (60) days prior to such date. To be effective, any such notice shall conform to the form set out in paragraph 28.

16. In the event that the State determines that METRO's continued operation of any Transitway as constructed materially interferes with or adversely affects the general highway use of the pertinent highway, the State will consult with METRO and such modifications or remedial actions as the State may finally determine to be appropriate will be accomplished and shall be at the sole expense of METRO.

Temporary Termination or Modification of Transitway Use

17. The state may temporarily remove any portion of any Transitway facility subject to the provisions of governing laws, by giving sixty (60) days written notice to METRO, when such removal is necessary to repair, construct, reconstruct and/or make changes in said segment. The State agrees to provide for all costs necessary to make such alternations to the Transitway and to restore the Transitway to normal operations as soon as possible.

18. It is understood and agreed that Transitway operations may by necessity be curtailed temporarily in the event of flood, accidents, ice or other causes in order to assure the safety of Transitway users. The State will, in this event, do everything reasonable to provide for rapid and timely repair of any portions of the roadways or other items for which they are responsible, which may be damaged. METRO will do likewise for those items which are its responsibility, so that safe and effective Transitway operation can be reinstated as soon as possible.

Indemnification

19. To the extent permitted by law, METRO agrees to indemnify and save harmless the State, its agents and employees, from all suits, actions or claims and from all liability and damages for any and all injuries or damages sustained by any person or property in consequence of any neglect in the performance of design, construction, maintenance or operation of the Transitway by METRO, its contractor(s) or subcontractor(s), agents and employees, and from any claims or amounts arising or

recovered under the "Worker's Compensation Laws"; the Texas Tort claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as from time to time may be amended. In addition, METRO shall require its contractor(s) and subcontractor(s) to secure a policy of insurance in the maximum statutory limits for tort liability, naming the State as an additional insured under its terms. METRO shall provide necessary safeguards to protect the public on State-maintained highways, and to save the State harmless from damages.

METRO shall require any and all of its contractors engaged in construction, maintenance or operation of the Transitways to maintain adequate insurance for payment of any damages for which they are liable.

Adequate insurance, as a minimum, shall mean Metro's contractors shall furnish the State with the State Department of Highways and Public Transportation's Certificate of Insurance covering the below-listed insurance coverages:

(a) Worker's Compensation Insurance
Amount - Statutory

(b) Comprehensive General Liability Insurance

Amounts – Bodily Injury	$500,000 each person
Property Damage	$100,000 each occurrence
	$100,000 each aggregate

(c) Comprehensive Automobile Liability Insurance

Amounts – Bodily Injury	$250,000 each person
	$500,000 each occurrence
Property Damage	$100,000 each occurrence

The State shall be included as an "Additional Insured" by endorsement to policies issued For coverages listed in subparagraphs (b) and (c) above. A "Waiver of Subrogation Endorsement" in favor of the State shall be a part of each policy for coverages listed in subparagraphs (a), (b) and (c) above. METRO and/or its contractors shall be responsible for any deductions stated in the policies.

Parties in Interest

20. This Agreement shall bind, and shall be for the sole and exclusive benefit of the respective parties and their legal successors.

Assignment

21. Neither party shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other party.

Prohibited Interests

22. No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

23. No member, officer, or employee of the State of Texas or Metropolitan Transit Authority or Harris County or of a local body having jurisdiction during his tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement or the benefits/proceeds thereof.

Legal Compliance

24. This Agreement shall be subject to all laws, ordinances, rules, regulations, and orders of legally constituted authority bearing on its performance. If this Agreement is at variance therewith in any respect, appropriate modifications will be made by agreement of the parties.

25. If any provisions of this Agreement, or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of the Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by the applicable law.

Amendments

26. Execution of any amendment to this Amendment shall be subject to the written approval of the State and METRO.

Default and Remedies

27. Default shall occur only in the event either party fails to adhere to its respective obligations hereunder. In such event, the non-defaulting party shall give the defaulting party written notice of the condition of default. The defaulting party may cure such default, if possible, or alternatively shall commence efforts to cure such default, if possible, within ten (10) days from and after date of receipt of notice of default. In the event of continued failure to cure or continued absence of efforts to cure such default, the non-defaulting party may thereafter notify the defaulting party of its intent to terminate

this Agreement. This Agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

Notices

28. All notices to either party by the other required under this Agreement shall be delivered personally or sent by registered U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:

METRO: Metropolitan Transit Authority of Harris County
500 Jefferson
Post Office Box 61429
Houston, Texas 77028-1429
Attention: General Manager

STATE: State Department of Highways and Public Transportation
Dewitt C. Greer State Highway Building
11th and Brazos Streets
Austin, Texas 78701
Attention: Engineer-Director

And shall be deemed on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided for above.

IN WITNESS WHEREOF, the State of Texas and the Metropolitan Transit Authority of Harris County have executed this Agreement in duplicate on the dates shown hereinbelow, effective on the date last executed.

STATE OF TEXAS

Certified as being executed for the purpose and effect of activating or carrying out the orders, established policies or work programs heretofore approved and authorized by the State Highway and Public Transportation Commission.

APPROVED:

By:_____
Deputy Engineer-Director

Date:_____

Executed and approved for the State Highway and Public Transportation Commission under Authority of Commission Minute Order No. 82513, dated December 19, 1984.

RECOMMENDED FOR APPROVAL:

_____
Deputy-Director

_____
Chief Engineer, Maintenance and Safety Operations

_____
General Counsel

_____
District Engineer, District 12

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY TEXAS

By:_____
General Manager

Date:_____

Executed for and on behalf of The Metropolitan Transit Authority of Harris County, Pursuant to Resolution No. 88-61 of the Board of Directors, passed on the 28th of April 1988, and on file in the office of the Assistant Secretary of METRO.

ATTEST:

_____
Assistant Secretary

APPROVED:

_____
Staff Counsel

_____
Assistant General Manager – Finance

_____
Assistant General Manager – Transit Operations

Appendix D - Texas Legislation Relevant to HOT Lanes

<<Prev
Rule

Texas Administrative Code

TITLE 43 TRANSPORTATION
PART 1 TEXAS DEPARTMENT OF TRANSPORTATION
CHAPTER 25 TRAFFIC OPERATIONS
SUBCHAPTER C CONGESTION MITIGATION FACILITIES
RULE §25.43 **Operation of HOV and Toll Lanes**

(a) Eligibility requirements. The executive director, in cooperation with an HOV authority with which the department contracts under this subchapter, will establish eligibility requirements for vehicles authorized to use HOV lanes on the state highway system, including eligible vehicle classes and occupancy requirements. These requirements may be established based on the type and location of the transportation facility and on the time of day. In establishing these requirements, the executive director will consider:
(1) the level of service on the HOV lanes;
(2) the level of service on general purpose lanes that are part of the highway facility on which HOV lanes are located or are proposed to be located;
(3) the consistency of the requirements with eligibility requirements established for any connecting facilities;
(4) the availability of alternative routes and the level of service on those routes;
(5) the effect of the requirements on transit operating efficiency; and
(6) the effect of the requirements on roadway safety and air quality.

(b) Toll charges.
(1) The commission by minute order, or its designee, will establish charges for the use of toll lanes or the commission will authorize an HOV authority or toll entity with which the department contracts to set the amount of toll charges. Variable toll charges may be established based on severity of congestion, time of day, classification of vehicle, type and location of facility, and vehicle occupancy. In establishing toll charges, the commission or its designee will consider the results of traffic and revenue studies and operational plans prepared by the department or an HOV authority or toll entity with which the department contracts under this subchapter, and the criteria prescribed in subsection (a) of this section.

(2) A governmental entity that contributes substantial funding for a toll lane project may recommend a toll charge to be set by commission minute order or its designee. The commission or its designee will approve the recommended toll charge if the commission, or its designee, determines that the charge:
(A) is consistent with the criteria described in paragraph (1) of this subsection; and
(B) complies with the requirements of any trust agreement, indenture, or other instrument securing debt financing for the project.
(c) Administrative fee. The commission by minute order, or an HOV authority or toll entity with which the department contracts by order of its governing body, will establish an administrative fee charged to owners of vehicles that use toll lanes established under this subchapter without paying the proper toll. In establishing an administrative fee, the commission will consider:
(1) the estimated cost to the department to collect unpaid tolls on tolled lanes on the state highway system; and
(2) the existing or estimated violation rate on tolled lanes on the state highway system.

(d) Operating agreements. The department may enter into an agreement with an HOV authority or toll entity to operate one or more HOV or toll lanes. The agreement will contain terms necessary for the safe and efficient operation of the HOV or toll lane, including, but not limited to:
(1) an operations plan that includes occupancy requirements, hours of operation, and provisions for law enforcement and incident management;
(2) responsibilities for maintenance of the facilities;
(3) insurance and audit requirements;
(4) responsibilities for setting toll charges and administrative fees;
(5) indemnification of the department; and
(6) distribution of revenue between the department and the HOV authority or toll entity.

Source Note: The provisions of this §25.43 adopted to be effective September 19, 2002, 27 TexReg 8778; amended to be effective May 20, 2004, 29 TexReg 4930

SELECTED EXCERPTED TEXT

TRANSPORTATION CODE

SUBTITLE K. MASS TRANSPORTATION

CHAPTER 451. METROPOLITAN RAPID TRANSIT AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

§ 451.001. DEFINITIONS. In this chapter:

(1) "Alternate municipality" means a municipality that:

(A) has a population of more than 60,000;

(B) is located in a metropolitan area the principal municipality of which has a population of more than 1.2 million; and

(C) is not part of the territory of another authority.

(2) "Authority" means a rapid transit authority created under this chapter or under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973.

(3) "Board" means the governing body of an authority.

(4) "Mass transit" means the transportation of passengers and hand-carried packages or baggage of a passenger by a surface, overhead, or underground means of transportation, or a combination of those means, including motorbus, trolley coach, rail, and suspended overhead rail transportation. The term does not include taxicab transportation.

(5) "Metropolitan area" includes only an area in this state that has a population density of not less than 250 persons for each square mile and contains not less than 51 percent of the incorporated territory of a municipality having a population of 230,000 or more. The area may contain other municipalities and the suburban area and environs of other municipalities.

(6) "Motor vehicle" includes only a vehicle that is self-propelled:

(A) by an internal combustion engine or motor;

(B) on two or more wheels; and

(C) over a roadway other than fixed rails and tracks.

(7) "Principal municipality" means the municipality having the largest population in a metropolitan area.

(8) "Transit authority system" means property:

(A) owned, rented, leased, controlled, operated, or held for mass transit purposes by an authority; and

(B) situated on property of the authority for mass transit purposes, including:

(i) for an authority created before 1980 in which the principal municipality has a population of less than 1.2 million, public parking areas and facilities; and

(ii) for an authority in which the principal municipality has a population of more than 1.5 million, the area in boundaries in which service is provided or supported by a general sales and use tax.

(9) "Transportation disadvantaged" means the elderly, persons with disabilities, and low-income individuals.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1038, § 1, eff. Sept. 1, 2001.

SUBCHAPTER B. POWERS OF AUTHORITIES

§ 451.051. POWERS APPLICABLE TO CONFIRMED AUTHORITY. This subchapter applies only to an authority that has been confirmed.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 451.052. NATURE OF AUTHORITY. (a) An authority:

(1) is a public political entity and corporate body;

(2) has perpetual succession; and

(3) exercises public and essential governmental functions.

(b) The exercise of a power granted by this chapter, including a power relating to a station or terminal complex, is for a public purpose and is a matter of public necessity.

(c) An authority is a governmental unit under Chapter 101, Civil Practice and Remedies Code, and the operations of the authority are not proprietary functions for any purpose, including the application of Chapter 101, Civil Practice and Remedies Code.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 451.053. RESPONSIBILITY FOR CONTROL OF AUTHORITY. Except as provided by Section 451.106, the board is responsible for the management, operation, and control of an authority and its property.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 451.054. GENERAL POWERS OF AUTHORITY. (a) An authority has any power necessary or convenient to carry out this chapter or to effect a purpose of this chapter.

(b) An authority created by an alternate municipality has the powers and duties of an authority in which the principal municipality has a population of more than 1.2 million.

(c) An authority may sue and be sued. An authority may not be required to give security for costs in a suit brought or prosecuted by the authority and may not be required to give a supersedeas or cost bond in an appeal of a judgment.

(d) An authority may hold, use, sell, lease, dispose of, and acquire, by any means, property and licenses, patents, rights, and other interests necessary, convenient, or useful to the exercise of any power under this chapter. Before an authority acquires an interest in real property for more than $20,000, the board shall have the property appraised by two appraisers working independently of each other.

(e) An authority may sell, lease, or dispose of in another manner:

(1) any right, interest, or property of the authority that is not needed for, or, if a lease, is inconsistent with, the efficient operation and maintenance of the transit authority system; or

(2) at any time, surplus materials or other property that is not needed for the requirements of the authority or for carrying out a power under this chapter.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 451.055. CONTRACTS; GRANTS AND LOANS. (a) An authority may contract with any person.

(b) An authority may accept a grant or loan from any person.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 451.056. OPERATION OF TRANSIT AUTHORITY SYSTEM. (a) An authority may:

(1) acquire, construct, develop, own, operate, and maintain a transit authority system in the territory of the authority, including the territory of a political subdivision;

(2) contract with a municipality, county, or other political subdivision for the authority to provide public transportation services outside the authority; and

(3) lease all or a part of the transit authority system to, or contract for the operation of all or a part of the transit authority system by, an operator.

(b) An authority may not lease the entire transit authority system under Subsection (a)(3) without the written approval of the governing body of the principal municipality of the authority.

(c) An authority created by an alternate municipality and an authority in which the principal municipality has a population of more than 1.2 million may contract for service outside each of their respective territories to provide access between the two authorities.

(d) An authority, as the authority determines advisable, shall determine routes.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 451.061. FARES AND OTHER CHARGES. (a) An authority shall impose reasonable and nondiscriminatory fares, tolls, charges, rents, and other compensation for the use of the transit authority system sufficient to produce revenue, together with tax revenue received by the authority, in an amount adequate to:

(1) pay all the expenses necessary to operate and maintain the transit authority system;

(2) pay when due the principal of and interest on, and sinking fund and reserve fund payments agreed to be made with respect to, all bonds that are issued by the authority and payable in whole or part from the revenue; and

(3) fulfill the terms of any other agreement with the holders of bonds described by Subdivision (2) or with a person acting on behalf of the bondholders.

(b) It is intended by this chapter that the compensation imposed under Subsection (a) and taxes imposed by the authority not exceed the amounts necessary to produce revenue sufficient to meet the obligations of the authority under this chapter.

(c) Fares for passenger transportation may be set according to a zone system or other classification that the authority determines to be reasonable.

(d) The fares, tolls, charges, rents, and other compensation established by an authority in which the principal municipality has a population of less than 1.2 million may not take effect until approved by a majority vote of a committee composed of:

(1) five members of the governing body of the principal municipality, selected by that governing body;

(2) three members of the commissioners court of the county having the largest portion of the incorporated territory of the principal municipality, selected by that commissioners court; and

(3) three mayors of municipalities, other than the principal municipality, located in the authority, selected by:

(A) the mayors of all the municipalities, except the principal municipality, located in the authority; or

(B) the mayor of the most populous municipality, other than the principal municipality, in the case of an authority in which the principal municipality has a population of less than 300,000.

(e) This section does not limit the state's power to regulate taxes imposed by an authority or other compensation authorized under this section. The state agrees with holders of bonds issued under this chapter, however, not to alter the power given to an authority under this section to impose taxes, fares, tolls, charges, rents, and other compensation in amounts sufficient to comply with Subsection (a), or to impair the rights and remedies of an authority bondholder, or a person acting on behalf of a bondholder, until the bonds, interest on the bonds, interest on unpaid installments of interest, costs and expenses in connection with an action or proceeding by or on behalf of a bondholder, and other obligations of the authority in connection with the bonds are discharged.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 451.0611. ENFORCEMENT OF FARES AND OTHER CHARGES;

PENALTIES. (a) A board by resolution may prohibit the use of the public transportation system by a person who fails to possess evidence showing that the appropriate fare for the use of the system has been paid and may establish reasonable and appropriate methods to ensure that persons using the public transportation system pay the appropriate fare for that use.

(b) A board by resolution may provide that a fare for or charge for the use of the public transportation system that is not paid incurs a penalty, not to exceed $100.

(c) The authority shall post signs designating each area in which a person is prohibited from using the transportation system without possession of evidence showing that the appropriate fare has been paid.

(d) A person commits an offense if:

(1) the person or another for whom the person is criminally responsible under Section 7.02, Penal Code, uses the public transportation system and does not possess evidence showing that the appropriate fare has been paid; and

(2) the person fails to pay the appropriate fare or other charge for the use of the public transportation system and any penalty on the fare on or before the 30th day after the date the authority notifies the person that the person is required to pay the amount of the fare or charge and the penalty.

(e) The notice required by Subsection (d)(2) may be included in a citation issued to the person under Article 14.06, Code of Criminal Procedure, in connection with an offense relating to the nonpayment of the appropriate fare or charge for the use of the public transportation system.

(f) An offense under Subsection (d) is a Class C misdemeanor.

Added by Acts 2003, 78th Leg., ch. 1113, § 2, eff. Sept. 1, 2003.

Appendix E - Federal Legislation Regarding HOV to HOT Lane Adaptations

No. ____ of _____ Executed
Original Counterparts

AGREEMENT
By and between the
FEDERAL HIGHWAY ADMINISTRATION,
UNITED STATES DEPARTMENT OF TRANSPORTATION

AND

_____DEPARTMENT OF TRANSPORTATION

AND

(insert name of third party toll agency or municipality, if applicable)

_____

THIS AGREEMENT, made and entered into this ____ day of _____ 2006, by and between the _____ DEPARTMENT OF TRANSPORTATION, an agency of the State of _____, (hereinafter referred to as "_____"), _____, a _____ of the State of _____, (hereinafter referred to as "_____") and the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION, (hereinafter referred to as "FHWA") hereby provides as follows:

WITNESSETH:

WHEREAS, the _____ and the _____ desire to toll the high occupancy vehicle ("HOV") lane/s on _____, which is located at _____(hereinafter referred to as the "toll facility"); and

WHEREAS, Section 166(c) of Title 23, United States Code, as amended, permits tolls to be charged on HOV facilities, including HOV facilities on the Interstate System, to "High Occupancy Toll Vehicles" and "Low Emission and Energy Efficient Vehicles" for their use of such facilities, subject to the requirements of Section 129 of Title 23, United States Code; and

WHEREAS, Paragraph 3 of Section 129(a) of Title 23, United States Code, as amended, restricts the use of revenues as follows:

> (3) Limitation on Use of Revenues … all toll revenues received from operation of the toll facility will be used first for debt service, for reasonable return on investment of any private person financing the project, and for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation. If the State certifies annually that the tolled facility is being adequately maintained, the State may use any toll revenues in excess of amounts required under the preceding sentence for any purpose for which Federal funds may be obligated by a State under this title.

WHEREAS, Paragraph 3 of Section 166(c) of Title 23, United States Code, as amended, further restricts the use of revenues as follows:

> (3) Excess Toll Revenues.—If a State agency makes a certification under Section 129(a)(3) of Title 23, United States Code, with respect to toll revenues collected under paragraphs (4) and (5) of [Section 166(b) of Title 23, United States Code,] the State, in the use of toll revenues under that sentence, shall give priority consideration to projects for developing alternatives to single occupancy vehicle travel and projects for improving highway safety.

NOW THEREFORE, the _____, the _____, and FHWA hereby agree as follows:

1. The FHWA agrees that _____ and _____ may charge toll on the toll facility in accordance with the provisions of this Agreement and Section 166 of Title 23, United States Code.

2. The _____ and the _____ agree that the toll revenues from the operation of the toll facility will be used first for debt service, for reasonable return on investment of any private person financing the project, and for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation, as provided in paragraph 3 of Section 129(a) of Title 23, United States Code, as amended.

3. In accordance with Sections 129(a) and 166(c) of Title 23, United States Code, as amended, the _____ and the _____ hereby certify that they can and will comply with the following requirements:

> The _____ and the _____ agree to certify annually that the toll facility is being adequately maintained. Upon such certification, the _____ is entitled to use any toll revenues in excess of the amounts required under paragraph 3 of Section 129(a), as amended, for any purpose for which Federal funds may be obligated by a State under Title 23, United States Code, with priority given to projects for developing alternatives to single occupancy vehicle travel and projects for improving highway safety. One certification submitted by

either party to the FHWA shall be sufficient to satisfy the requirements of this paragraph so long as both parties are bound by such certification.

4. The _____ and the _____ agree, upon reasonable notice, to make all its records pertaining to the toll facility subject to audit by the FHWA. The _____ and the _____ agree to annually audit the records of the toll facility for compliance with the provisions of this agreement and report the results thereof to the FHWA. In lieu of the _____ and the _____ performing said audit, a report of an independent auditor furnished to the FHWA, the _____, and the _____ may satisfy the requirements of this section. Additionally, in the event that excess revenues are used for other Title 23, United States Code, eligible projects, the _____ and the _____ will certify that priority was given to projects for developing alternatives to single occupancy vehicle travel and projects for improving highway safety as part of the annual audit report to be submitted to the FHWA.

5. The _____ and _____ agree to be bound by and comply with the provisions of Section 166 of Title 23, United States Code, as amended, as well as all other applicable Federal laws, rules, and regulations.

6. That this Agreement will be prepared in triplicate originals so that each signatory will have an original Agreement.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be duly executed, the day and year first written above.

STATE OF _____
_____ DEPARTMENT OF TRANSPORTATION

BY: _____,

(Insert Name of Toll Authority, if applicable)

_____

BY: _____

FEDERAL HIGHWAY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION

BY: _____
Frederick G. Wright
Executive Director

U.S. Department of Transportation
Federal Highway Administration

Tolling and Pricing Opportunities
Expression of Interest

If you have any questions completing this form, please contact Wayne Berman at (202) 366-4069. Please complete all applicable information and attach this request via email to TollingandPricingTeam@fhwa.dot.gov or via U.S. mail to:

Tolling and Pricing Team,
Federal Highway Administration
Office of Operations, Attn: Wayne Berman,
400 Seventh Street, SW, Room 3404,
Washington, DC, 20590

Please copy your respective FHWA State Division Office

A) What is the requesting agency, authority, or public company? What is the lead office within the requesting agency, authority, or private company?

Name(s):
Replace and Insert Text Here (boxes will expand if filled out on computer)

Project Website (if applicable) or Your Agency/Company Website: Insert Text Here
(If Websites are not available, please provide a brief description of the requesting agency or agencies)

B) Contact Information

Name: (Point of Contact)
Title:
Address:
Phone:
E-mail:

C) What is the requesting agency seeking? (Please mark appropriate box)

☐ *Funding ONLY* for this project or study (Federal authority already granted or not necessary).
☐ *Federal Tolling Authority ONLY* for this project or study (no funds requested).
☐ *Funding AND tolling authority* for this project or study.
☐ *Other, not listed.*

Please briefly elaborate: Insert Text Here

D) Please provide a brief description of the tolling or pricing project or study. Please identify and describe the subject facility or general area to be tolled, priced or studied (i.e. name of project/study, location, length, level of service, problem to be addressed, etc.)?

Insert Text Here

E) Which type of facility is proposed to be tolled or studied?

☐ *Interstate*

☐ *Non-Interstate*

☐ *Project contains both types of facilities*

☐ *Project is not specific to any type of facility* Explain

F) Does the toll project involve ANY construction?

☐ *No* ☐ *Yes (if so, please mark all that apply)* ☐ *Not applicable*

☐ *New construction* ☐ *Expansion* ☐ *Rehabilitation* ☐ *Reconstruction*

☐ *HOV to HOT Conversion* ☐ *Other not listed.*

Please briefly elaborate Insert Text Here

G) Does an HOV lane(s) currently exist on the facility?

☐ *No* ☐ *Yes* ☐ *Not applicable*

H) What is the timetable to enact the tolling or pricing project or study?

Insert Text Here

I) Are there expressions of support from public officials or the public? Have any public meetings been held? If no public meetings or expressions of support are available, please indicate the agency's plans for ensuring adequate public involvement and seeking public support for the toll project or study.

Insert Text Here

J) Where known (and if applicable), what is plan for implementing tolls or prices and the strategies to vary toll rates or prices (i.e., the formulae for variable pricing)?

Insert Text Here

K) What is the reason(s) of the toll project or study? Please mark all that apply.

☐ *Financing construction*
☐ *Reducing congestion*
☐ *Improving air quality*
☐ *Other not listed.*

Please briefly elaborate: Insert Text Here

L) Please provide a description of the public and/or private agency that will be responsible for operation, maintenance, and/or enforcement for the toll project or study?

Insert Text Here

M) Please provide a description of how, if at all, any private entities are involved in the up-front costs, or will share in project responsibilities, debt retirement, or revenues?

Insert Text Here

N) Please provide any additional information you feel is necessary.

Insert Text Here

SAFETEA_LU

"§ 166. HOV facilities

"(a) IN GENERAL.—

"(1) AUTHORITY OF STATE AGENCIES.—A State agency that has jurisdiction over the operation of a HOV facility shall establish the occupancy requirements of vehicles operating on the facility.

"(2) OCCUPANCY REQUIREMENT.—Except as otherwise provided by this section, no fewer than two occupants per vehicle may be required for use of a HOV facility. "(b) EXCEPTIONS.—

"(1) IN GENERAL.—Notwithstanding the occupancy requirement of subsection (a)(2), the exceptions in paragraphs (2) through (5) shall apply with respect to a State agency operating a HOV facility.

"(2) MOTORCYCLES AND BICYCLES.—

"(A) IN GENERAL.—Subject to subparagraph (B), the State agency shall allow motorcycles and bicycles to use the HOV facility.

"(B) SAFETY EXCEPTION.—

"(i) IN GENERAL.—A State agency may restrict use of the HOV facility by motorcycles or bicycles (or both) if the agency certifies to the Secretary that such use would create a safety hazard and the Secretary accepts the certification.

"(ii) ACCEPTANCE OF CERTIFICATION.—The Secretary may accept a certification under this subparagraph only after the Secretary publishes notice of the certification in the Federal Register and provides an opportunity for public comment.

"(3) PUBLIC TRANSPORTATION VEHICLES.—The State agency may allow public transportation vehicles to use the HOV facility if the agency—

"(A) establishes requirements for clearly identifying the vehicles; and

"(B) establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

"(4) HIGH OCCUPANCY TOLL VEHICLES.—The State agency may allow vehicles not otherwise exempt pursuant to this subsection to use the HOV facility if the operators of the vehicles pay a toll charged by the agency for use of the facility and the agency—

"(A) establishes a program that addresses how motorists can enroll and participate in the toll program; "(B) develops, manages, and maintains a system that will automatically collect the toll; and "(C) establishes policies and procedures to— "(i) manage the demand to use the facility by varying the toll amount that is charged; and "(ii) enforce violations of use of the facility. "(5) LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—

"(A) INHERENTLY LOW EMISSION VEHICLE.—Before September 30, 2009, the State agency may allow vehicles that are certified as inherently low-emission vehicles pursuant to section 88.311–93 of title 40, Code of Federal Regulations (or successor regulations), and are labeled in accordance with section 88.312–93 of such title (or successor regulations), to use the HOV facility if the agency establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

"(B) OTHER LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—Before September 30, 2009, the State agency may allow vehicles certified as low emission and energy-efficient vehicles under subsection (e), and labeled in accordance with subsection (e), to use the HOV facility if the operators of the vehicles pay a toll charged by the agency for use of the facility and the agency—

"(i) establishes a program that addresses the selection of vehicles under this paragraph; and

"(ii) establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

"(C) AMOUNT OF TOLLS.—Under subparagraph (B), a State agency may charge no toll or may charge a toll that is less than tolls charged under paragraph (3).

"(c) REQUIREMENTS APPLICABLE TO TOLLS.—

"(1) IN GENERAL.—Tolls may be charged under paragraphs (4) and (5) of subsection (b) notwithstanding section 301 and, except as provided in paragraphs (2) and (3), subject to the requirements of section 129.

"(2) HOV FACILITIES ON THE INTERSTATE SYSTEM.—Notwith-standing section 129, tolls may be charged under paragraphs (4) and (5) of subsection (b) on a HOV facility on the Interstate System.

"(3) EXCESS TOLL REVENUES.—If a State agency makes a certification under section 129(a)(3) with respect to toll revenues collected under paragraphs (4) and (5) of subsection (b), the State, in the use of toll revenues under that sentence, shall give priority consideration to projects for developing alternatives to single occupancy vehicle travel and projects for improving highway safety. "(d) HOV FACILITY MANAGEMENT, OPERATION, MONITORING, AND ENFORCEMENT.— "(1) IN GENERAL.—A State agency that allows vehicles to use a HOV facility under paragraph (4) or (5) of subsection (b) in a fiscal year shall certify to the Secretary that the agency will carry out the following responsibilities with respect to the facility in the fiscal year:

"(A) Establishing, managing, and supporting a performance monitoring, evaluation, and reporting program for the facility that provides for continuous monitoring, assessment, and reporting on the impacts that the vehicles may have on the operation of the facility and adjacent highways.

"(B) Establishing, managing, and supporting an enforcement program that ensures that the facility is being operated in accordance with the requirements of this section.

"(C) Limiting or discontinuing the use of the facility by the vehicles if the presence of the vehicles has degraded the operation of the facility. "(2) DEGRADED FACILITY.—

"(A) DEFINITION OF MINIMUM AVERAGE OPERATING SPEED.—In this paragraph, the term 'minimum average operating speed' means—

"(i) 45 miles per hour, in the case of a HOV facility with a speed limit of 50 miles per hour or greater; and

"(ii) not more than 10 miles per hour below the speed limit, in the case of a HOV facility with a speed limit of less than 50 miles per hour.

"(B) STANDARD FOR DETERMINING DEGRADED FACILITY.—For purposes of paragraph (1), the operation of a HOV facility shall be considered to be degraded if vehicles operating on the facility are failing to maintain a minimum average operating speed 90 percent of the time over a consecutive 180-day period during morning or evening weekday peak hour periods (or both).

"(C) MANAGEMENT OF LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—In managing the use of HOV lanes by low emission and energy-efficient vehicles that do not meet applicable occupancy requirements, a State agency may increase the percentages described in subsection (f)(3)(B)(i).

"(e) CERTIFICATION OF LOW EMISSION AND ENERGY-EFFICIENT VEHICLES.—Not later than 180 days after the date of enactment of this section, the Administrator of the Environmental Protection Agency shall—

"(1) issue a final rule establishing requirements for certification of vehicles as low emission and energy-efficient vehicles for purposes of this section and requirements for the labeling of the vehicles; and

"(2) establish guidelines and procedures for making the vehicle comparisons and performance calculations described in subsection (f)(3)(B), in accordance with section 32908(b) of title 49. "(f) DEFINITIONS.—In this section, the following definitions apply: "(1) ALTERNATIVE FUEL VEHICLE.—The term 'alternative fuel vehicle' means a vehicle that is operating on—

"(A) methanol, denatured ethanol, or other alcohols;

"(B) a mixture containing at least 85 percent of methanol, denatured ethanol, and other alcohols by volume with gasoline or other fuels;

"(C) natural gas;

"(D) liquefied petroleum gas;

"(E) hydrogen;

"(F) coal derived liquid fuels;

"(G) fuels (except alcohol) derived from biological materials; "(H) electricity (including electricity from solar energy); or

"(I) any other fuel that the Secretary prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits, including fuels regulated under section 490 of title 10, Code of Federal Regulations (or successor regulations).

"(2) HOV FACILITY.—The term 'HOV facility' means a high occupancy vehicle facility.

"(3) LOW EMISSION AND ENERGY-EFFICIENT VEHICLE.—The term 'low emission and energy-efficient vehicle' means a vehicle that—

"(A) has been certified by the Administrator as meeting the Tier II emission level established in regulations prescribed by the Administrator under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)) for that make and model year vehicle; and

"(B)(i) is certified by the Administrator of the Environmental Protection Agency, in consultation with the manufacturer, to have achieved not less than a 50-percent increase in city fuel economy or not less than a 25-percent increase in combined city-highway fuel economy (or such greater percentage of city or city-highway fuel economy as may be determined by a State under subsection (d)(2)(C)) relative to a comparable vehicle that is an internal combustion gasoline fueled vehicle (other than a vehicle that has propulsion energy from onboard hybrid sources); or

"(ii) is an alternative fuel vehicle. "(4) PUBLIC TRANSPORTATION VEHICLE.—The term 'public transportation vehicle' means a vehicle that—

"(A) provides designated public transportation (as defined in section 221 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12141) or provides public school transportation (to and from public or private primary, secondary, or tertiary schools); and

"(B)(i) is owned or operated by a public entity; "(ii) is operated under a contract with a public entity; or

"(iii) is operated pursuant to a license by the Secretary or a State agency to provide motorbus or school vehicle transportation services to the public. "(5) STATE AGENCY.—

"(A) IN GENERAL.—The term 'State agency', as used with respect to a HOV facility, means an agency of a State or local government having jurisdiction over the operation of the facility.

"(B) INCLUSION.—The term 'State agency' includes a State transportation department.".

(b) CONFORMING AMENDMENTS.—

(1) PROGRAM EFFICIENCIES.—Section 102 of title 23, United States Code, is amended—

(A) by striking subsection (a); and

(B) by redesignating subsections (b) and (c) as sub-sections (a) and (b), respectively.

H. R. 3—53

(2) CHAPTER ANALYSIS.—The analysis for such subchapter (as amended by section 1120 of this Act) is amended by adding at the end the following:

"166. HOV facilities.".

(c) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary and the States should provide additional incentives (including the use of high occupancy vehicle lanes on State and Interstate highways) for the purchase and use of hybrid and other fuel efficient vehicles, which have been proven to minimize air emissions and decrease consumption of fossil fuels.

Appendix F - FTA Proposed & Final Rulemaking Regarding HOV to HOT Adaptation and Fixed Guideway Miles

PROPOSED RULE

Federal Register / Vol. 71, No. 173 / Thursday, September 7, 2006 / Notices **52849**

DEPARTMENT OF TRANSPORTATION
Federal Transit Administration
[Docket No: FTA–2006–25750]

Policy Statement on When High-Occupancy Vehicle (HOV) Lanes Converted to High-Occupancy/Toll (HOT) Lanes Shall Be Classified as Fixed Guideway Miles for FTA's Funding Formulas and When HOT Lanes Shall Not Be Classified as Fixed Guideway Miles for FTA's Funding Formulas

AGENCY: Federal Transit Administration (FTA), DOT.
ACTION: Notice of policy statement and request for comment.

SUMMARY: This notice describes the terms and conditions on which the Federal Transit Administration (FTA) proposes to classify High-Occupancy Vehicle (HOV) lanes that are converted to High-Occupancy/Toll (HOT) lanes as ''fixed guideway miles'' for purposes of the transit funding formulas administered by FTA. The notice also describes when HOT lanes would be ineligible for classification as fixed guideway miles in FTA's funding formulas, clarifies which HOT lanes shall not be eligible for reporting as fixed guideway miles in FTA's funding formulas, and seeks comment from interested parties. After consideration of the comments, FTA will issue a second **Federal Register** notice responding to comments received and noting any changes made to the policy statement as a result of comments received.

DATES: Comments must be received by October 10, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: To ensure your comments are not entered more than once into the DOT Docket, please identify your submissions by the following docket number: FTA–2006–25750. Please make your submissions by only one of the following means:

. • Federal eRulemaking Portal: *http:// www.regulations.gov.* Follow the online instructions for making submissions to the DOT electronic docket site.

• Web Site: *http://dms.dot.gov.* Follow the online instructions for making submissions to the DOT electronic docket site.

• Fax: 1–202–493–2478.

. • U.S. Post or Express Mail: Docket Management System, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

. • Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must make reference to the ''Federal Transit Administration'' and include the docket number for this notice set forth above. Due to

security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http:// dms.dot.gov.*

Docket: For access to the DOT docket to read materials relating to this notice, please go to *http://dms.dot.gov* at any time or to the Docket Management System.

FOR FURTHER INFORMATION CONTACT:

David B. Horner, Esq., Chief Counsel, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. E-mail: *David.Horner@dot.gov.* Telephone: (202) 366–4040; or

Robert J. Tuccillo, Associate Administrator, Office of Budget & Policy, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. E-mail: *Robert.Tuccillo@dot.gov.* Telephone: (202) 366–4050. Office hours are from 8:30 a.m. to 6 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Since the early 1980s, transportation officials have sought to manage traffic congestion and increase vehicle occupancy by means of High-Occupancy Vehicle (HOV) lanes—highway lanes reserved for the exclusive use of car pools and transit vehicles. Today, there are over 130 freeway HOV facilities in metropolitan areas in the U.S.[1] of which approximately 10 have received funding through FTA's Major Capital Investment program and approximately 80 are counted as ''fixed guideway miles'' for purposes of FTA's formula grant programs[2]. Since 1990, however, HOV mode share in 36 of the 40 largest metropolitan areas has steadily declined,[3] while both excess capacity on HOV lanes and congestion have increased.[4]

An increasing number of metropolitan areas are considering new demand management strategies as alternatives to HOV lanes. One emerging alternative is the variably-priced High-Occupancy/ Toll (HOT) lane. HOT lanes combine HOV and pricing strategies by allowing Single-Occupant Vehicles (SOVs) to access HOV lanes by paying a toll. The lanes are ''managed'' through pricing to maintain free flow conditions even during the height of rush hours.

HOT lanes provide multiple benefits to metropolitan areas that are experiencing severe and worsening congestion and significant transportation funding shortages. First, variably-priced HOT lanes expand mobility options in congested urban areas by providing an opportunity for reliable travel times for users prepared to pay a significant premium for this service. HOT lanes also improve the efficiency of HOV facilities by allowing toll-paying SOVs to utilize excess lane capacity on HOVs. In addition, HOT

lanes generate new revenue which can be used to pay for transportation improvements, including enhanced transit service.

In August of 2005, recognizing the advantages of HOT lanes, Congress enacted section 112 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), codified at 23 U.S.C. 166, to authorize States to permit use of HOV lanes by SOVs, so long as the performance of the HOV lanes is continuously monitored and continues to meet specified performance standards. The Department has strongly endorsed the conversion of HOV lanes to variably-priced HOT lanes, most recently in its *Initiative to Reduce Congestion on the Nation's Transportation Network.* It is the Department's policy to encourage jurisdictions to consider ''HOV-to-HOT'' conversion as a means of congestion relief and possible revenue enhancement.

The ability of HOT lanes to introduce additional traffic to existing HOV facilities, while using pricing and other management techniques to control the number of additional motorists, maintain high service levels and provide new revenue, make HOT lanes an effective means of reducing congestion and improving mobility. For this reason, and given the new authority enacted by Congress to promote ''HOV-to-HOT'' conversions, many States, transportation agencies and metropolitan areas are seriously considering applying variable pricing to both new and existing roadways. For example, the current long-range transportation plan for the Washington, DC, metropolitan area includes four new HOT lanes along 15 miles of the Capital Beltway in Virginia, and six new variably-priced lanes along 18 miles on the Inter-County Connector in Montgomery and Prince George's Counties in Maryland.[5] Virginia is also exploring the possibility of converting existing HOV lanes along the I–95/395 corridor into HOT lanes.[6] Maryland is considering express toll lanes along I– 495, I–95 and I–270, as well as along other facilities.[7] Similarly, in San Francisco, the Metropolitan Transportation Commission's Transportation 2030 Plan advocates development of a HOT network that would convert that region's existing HOV lanes to HOT lanes; [8] Houston's 2025 Regional Transportation Plan includes plans to implement peak period pricing within the managed HOT lanes of the major freeway corridors in the region; [9] and the Miami-Dade, Florida 2030 Transportation Plan includes conversion of existing HOV lanes to reversible HOV/HOT lanes to provide additional capacity to I–95 in Miami-Dade County.[10] Other jurisdictions are exploring the potential for HOT lanes with grants provided by the Department's Value Pricing Pilot Program.[11] These include the Port Authority of New York/New Jersey; San Antonio, Texas; Seattle, Washington; Atlanta, Georgia; and Portland, Oregon.[12]

While an increasing number of metropolitan planning organizations and State departments of transportation are studying the HOT lane concept as a strategy to improve mobility, six HOT lane facilities currently operate in the United States: State Route 91 (SR 91) Express Lanes in Orange County, California; the I–15 FasTrak in San Diego, California; the Katy Freeway QuickRide and the Northwest Freeway (US 290) in Harris County, Texas; I–394 in Minneapolis and St. Paul, Minnesota; and I–25 in Denver,

Colorado.

Prior FTA Policy

Since 2002, FTA's policy has been to continue to classify the lanes of an HOV facility converted to HOT lanes as ''fixed guideway miles'' for funding formula purposes on the condition that the facility meets two requirements: (i) The HOT facility manages SOV use so that it does not impede the free-flow and high speed of transit and high-occupancy vehicles and (ii) toll revenues collected on the facility will be used for mass transit purposes.[13] FTA has considered requiring as an additional condition for eligibility that the lowest toll payable by SOVs on a HOT facility be not less than the fare charged for transit services on the HOT facility.

Proposed FTA Policy

(a) *Purpose of Revised Policy.* The proposed FTA policy described below would help ensure that federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes in an effort by localities to reduce congestion, improve air quality, and maximize throughput using excess HOV lane capacity. The revised FTA policy would also promote a uniform approach by the Department's operating agencies concerning HOV-to-HOT conversions. In particular, FTA policy would be coordinated with the statutes enacted by Congress under section 112 of SAFETEA–LU applicable to the Federal Highway Administration intended to simplify conversion of HOV lanes to HOT lanes. The policy statement would also support the Administration's policy of encouraging HOV-to-HOT conversions.

(b) *Proposed Policy.* FTA would classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. § 5307(b) and 49 U.S.C. § 5309(a)(E), so long as each of the following conditions is satisfied:

(i) The HOT lanes were previously HOV lanes reported in the National Transit Database as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307(b) and 49 U.S.C. 5309(a)(E). Facilities that were not eligible HOV lanes prior to being converted to HOT lanes would remain ineligible for inclusion as fixed guideway miles in FTA's funding formulas. Therefore, neither non-HOV facilities converted directly to HOT facilities nor facilities constructed as HOT lanes would be eligible for classification as ''fixed guideway miles.''

(ii) The HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in 23 U.S.C. 166(d). 23 U.S.C. 166(d) provides operational performance standards for an HOV facility converted to a HOT facility. It also requires that the performance of the facility be continuously monitored and that it continue to meet specified performance standards. Due to original project commitments, HOV facilities constructed using capital funds available under 49 U.S.C. 5309(d) or (e) could be required, when converted to HOT lanes, to achieve a higher performance standard than required under 23 U.S.C. 166(d). Standards for operational performance and determining degradation of operational performance for facilities constructed with funds from FTA's New Starts program would be determined by FTA on a case-by-case basis. FTA would require real-time monitoring of traffic flows to ensure on-going compliance with operational performance

standards.

(iii) *Program income from the HOT lane facility, including all toll revenue, is used solely for ''permissible uses.''*

''Permissible uses'' could mean any of the following uses with respect to any HOT lane facility, whether operated by a public or private entity: (a) Debt service, (b) a reasonable return on investment of any private financing, (c) the costs necessary for the proper operation and maintenance of such facility (including reconstruction and rehabilitation), and (d) if the operating entity annually certifies that the facility is being adequately operated and maintained (including that the permissible uses described in (a), (b) and (c) above, if applicable, are being duly paid), any other purpose relating to a project carried out under Title 49 U.S.C. 5301 et seq. (''transit law''). In cases where the HOT lane facility has received (or receives) funding from FTA and another Federal agency, such that use of the facility's program income is governed by more than one Federal program, FTA's restrictions concerning permissible use would not apply to more than *transit's allocable share* [14] of the facility's program income. FTA would not require recipients to assign priority in payment to any permissible use.

(c) *Transit Fares and Tolls on HOT Lane Facilities.* FTA would not condition reporting of HOT lanes as fixed guideway miles following conversion from HOV lanes or condition any approval or waiver under a Full Funding Grant Agreement on a grantee's adopting transit fare policies or a tolling authority's adopting of tolling policies concerning, respectively, the price of transit services on the HOT lane facility and the tolls payable by SOVs. Instead, FTA would allow grantees and tolling authorities to develop their own fare structures for transit services and tolls, respectively, on HOT lane facilities. Transit fares would remain subject to 49 U.S.C. 5332 (Nondiscrimination) and 49 U.S.C. 5307 (Urbanized area formula grants).

(d) *No Return of Funds under Full Funding Grant Agreements.* In the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA would not require the grantee to return such funds so long as the facility complied with the conditions set forth in this guidance.

James S. Simpson,
Administrator.
[FR Doc. E6–14796 Filed 9–6–06; 8:45 am]
BILLING CODE 4910–57–P

Endnotes:
1. Office of Operations, Federal Highway Administration, U.S. Department of Transportation
2. National Transit Database
3. *Journey to Work Trends in the United States and its Major Metropolitan Areas 1960–2000*, Publication No. FHWA–EP–03–058 Prepared for: U.S. Department of Transportation, Federal Highway Administration, Office of Planning, Prepared by: Nancy McGuckin, Consultant, Nanda Srinivasan, Cambridge Systematics, Inc.

4. Office of Operations, Federal Highway Administration, U.S. Department of Transportation. Demand for highway travel by Americans continues to grow as population increases, particularly in metropolitan areas. Construction of new highway capacity to accommodate this growth in travel has not kept pace. Between 1980 and 1999, route miles of highways increased 1.5 percent while vehicle miles of travel increased 76 percent. The Texas Transportation Institute estimates that, in 2000, the 75 largest metropolitan areas experienced 3.6 billion vehicle-hours of delay, resulting in 5.7 billion gallons in wasted fuel and $67.5 billion in lost productivity. And traffic volumes are projected to continue to grow. The volume of freight movement alone is forecast to nearly double by 2020. Congestion is largely thought of as a big city problem, but delays are becoming increasingly common in small cities and some rural areas as well.
5. Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.
6. Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.
7. Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.
8. A Vision for the Future Transportation 2030, February 2005, Chapter 1, Page 6.
9. 2025 Regional Transportation Plan Houston-Galveston Area, June 2005, Page 31.
10. Miami-Dade Transportation Plan (to the Year 2030) December 2004, FINAL DRAFT, Page 24.
11. Federal Highway Administration, U.S. Department of Transportation. The Department's Value Pricing Pilot Program (VPPP), initially authorized by the Intermodal Surface Transportation Efficiency Act as the Congestion Pricing Pilot Program and continued as the VPPP under SAFETEA–LU, encourages implementation and evaluation of value pricing pilot projects, offering flexibility to encompass a variety of innovative applications including areawide pricing, pricing of multiple or single facilities or corridors, single lane pricing, and implementation of other market-based strategies.
12. Federal Highway Administration, U.S. Department of Transportation.
13. In a Letter to U.S. Representative Randall Cunningham, dated June 10, 2002, concerning the I–15 FasTrak facility in San Diego, FTA stated: ''* * * FTA will recognize, for formula allocation purposes, exclusive fixed guideway transit facilities that permit toll-paying SOVs on an incidental basis (often called high occupancy/toll (HOT) lanes) under the following conditions: the facility must be able to control SOV use so that it does not impede the free flow and high speed of transit and HOV vehicles, and the toll revenues collected must be used for mass transit purposes.''
14. *Transit's allocable share* of the facility's program income shall be an amount equal to the facility's total program income, for any period, multiplied by a ratio, (a) the numerator of which shall be the cumulative amount of funds contributed to the facility through a program established by transit law, and (b) the denominator of which shall be the cumulative amount of all Federal funds contributed to the facility, in each case at the time transit's allocable share is calculated.

FINAL RULE

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–25750]

Final Policy Statement on When High-Occupancy Vehicle (HOV) Lanes Converted to High-Occupancy/Toll (HOT) Lanes Shall Be Classified as Fixed Guideway Miles for FTA's Funding Formulas and When HOT Lanes Shall Not Be Classified as Fixed Guideway Miles for FTA's Funding Formulas

AGENCY: Federal Transit Administration (FTA), DOT.
ACTION: Final policy statement.

SUMMARY: This Final Policy Statement describes the terms and conditions on which the Federal Transit Administration (FTA) will classify High-Occupancy Vehicle (HOV) lanes that are converted to High-Occupancy/ Toll (HOT) lanes as ''fixed guideway miles'' for purposes of the transit funding formulas administered by FTA. The Final Policy Statement also describes when HOT lanes shall not be classfied as fixed guideway miles in FTA's funding formulas.

DATES: *Effective Date:* The effective data of this Final Policy Statement is January 1, 2007.

ADDRESSES: *Availability of the Final Policy Statement and Comments:* Copies of this Final Policy Statement and comments and material received frot he public, as well as any documents indicated in the preamble as being available in the docket, are part of docket number FTA–2006–25750. For access to the DOT docket, please go to *http://dms.dot.gov* at any time or to the Docket Management System facility,
U.S. Department of Transportation, Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington , DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:
David B. Horner, Esq., Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4040, *david.horner@dot.gov* or Robert J. Tuccillo, Associate Administrator, Office of Budget & Policy, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590– 0001, (202) 366–4050, *robert.tuccillo@dot.gov*. Office hours are from 8:30 a.. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2006, the Federal Transit Administration (FTA) published in the **Federal Register** a proposed Policy Statement on When High-occupancy Vehicle (HOV) Lanes Converted to High-Occupancy/Toll (HOT) Lanes Shall Be Classified as Fixed Guideway Miles for FTA's Funding Formulas and When Hot Lanes Shall Not Be Classified as Fixed Guideway Miles for FTA'S Funding Formulas and When HOT Lanes Shall Not Be Classified as Fixed Guideway Miles for FTA's Funding Formulas (Notice of Proposed Policy) (71 FR 528490). In its Notice of Proposed Policy, FTA proposed the following terms and conditions on which it would classify HOV lanes that are converted to HOT lanes as ''fixed guideway miles'' for purposes of the transit funding formulas administered by FTA:

FTA would classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of the following conditions is satisfied: (i) The HOT lanes were previously HOV lanes reported in the National Transit Databased as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 49 U.S.C. 5309; (ii) The HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in 23 U.S.C. 166(d); and (iii) Program income from the HOT lane facility, including all toll revenue, is used solely for 'permissible uses.'

In its Notice of Proposed Policy, FTA also discussed whether it would require certain transit and tolling policies with respect to HOT lanes classified as fixed guideway miles, and whether FTA would require the return of funds made available under Full Funding Grant Agreements made available for the construction of HOV lanes that have later converted to HOT lanes in accordance with this Final Policy Statement.

34 parties submitted comments in response to FTA's Notice of Proposed Policy. FTA hereby responds to these comments by topic and in the folllowing order: (a) Policy Statement Generally; (b) HOT Lanes as ''Fixed Guideway Miles''; (c) Monitoring and Performance Standards; (d) Program Income and Toll Revenues; (e) Transit Fares and Tolls; (f) Return of Funds under Full Funding Grant Agreements; and (g) Miscellaneous Comments.

(a) Policy Statement Generally

The intended purpose of the Proposed Statement of Policy was to ensure that Federal transit funding for congested urban areas is not decreased when HOV facilitates are converted to variably-priced HOT lanes. The proposed policy also suggested a uniform approach by the Department of Transportation's (the Department's) operating agencies concerning HOV-to-HOT conversions, and supported the Department's policy of encouraging HOV-to-HOT conversions. Eight commenters agreed generally with FTA's Notice of Proposed Policy, Six parties submitted general comments. Four commenters asked FTA to defer its final policy determination until the impacts are more apparent. One commenter articulated four policy principles that discuss ways to integrate transit

into toll roads and HOT lanes.[1] Another commenter stated that one of FTA's top priorities in developing this policy statement should be to foster an increase in alternative transportation ridership, whether that alternative is carpool, transit, or other shared-mode, and suggested four ways this policy statement could better support this end.[2]

FTA Response: The commenters that ask FTA to defer its final policy determination until the impacts are more apparent appear to misunderstand the scope of FTA's Notice of Proposed Policy FTA's HOV-to-HOT policy will *not* result in *all* HOT lane facilities being classified as ''fixed guideway miles'' for purposes of FTA's funding formulas. Rather, only those HOT lane facilities converted from HOV lanes that have been previously classified as ''fixed guideway miles'' shall qualify for continued classification as such, subject to the conditions set forth in this Final Policy Statement.

FTA recognizes the four policy principles summarized at footnote (1) and responds by reminding the commenter that without this Final Policy Statement transit formula funding for congested urban areas would decrease if existing HOV facilities were converted to variably-priced HOT lanes. For this reason, FTA believes that this policy statement (1) Gives states greater latitude to use tolling without negatively impacting available transit resources; (2) enhances existing transportation funding through the collection of toll revenues; (3) grants project sponsors discretion to use toll revenues for any ''permissible use''; and (4) encourages variably-priced HOT lanes as a long-term strategy consistent with the policy of the Department.

In response to the commenter that believes FTA should consider fostering an increase in alternative transportation ridership as one of its top priorities in developing this guidance, FTA reemphasizes its primary in drafting this guidance (l) to ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to HOT lanes. FTA responds to the commenter's four suggestions summarized at footnote (2) in turn with respect to the first suggestion, this policy statement supports HOV usage, but recognizes that many HOV facilities are underutilized; the ability of HOT lanes to introduce additional traffic to existing HOV facilities, while using pricing and other management techniques to control the number of additional motorists, maintain high service levels and provide new revenue, make HOT lanes an effective means of reducing congestion and improving mobility. With respect to the second and third suggestions, FTA will rely on the management, operation, monitoring and enforcement provisions of 23 U.S.C. 166(d). with respect to the fourth suggestions, this guidance does not modify or enhance language at 23 U.S.C. 166(c)(3).

Accordingly, FTA adopts as final the general provisions of its Notice of Proposed Policy.

(b) HOT Lanes Were Previously HOV lanes reported in the National Transit Database as ''Fixed Guideway Miles''

In its Notice of Proposed Policy, FTA requested comments on its proposal to classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered

under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of three conditions is satisfied. The first condition is that the HOT lanes were previously HOV lanes reported in the National Transit Database as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 49 U.S.C. 5309. FTA received thirty five comments on this condition, with some parties offering multiple comments. Eight commenters favored FTA's proposed policy to classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA so long as each of three conditions is satisfied. Eighteen commenters asked FTA to expand its policy to classify *all* lanes as ''fixed guideway miles0z4 for purposes of the funding formulas administered by FTA, regardless of whether the HOT lane facility is newly constructed or was converted from an existing HOV facility. Seven commenters asked FTA not to fund HOT lane facilities at a level that would dilute the pool of transit funding available for existing ''fixed guideway'' facilities. Two commenters proposed that FTA require converted HOV lanes to have operated as HOV lanes for seven years prior to conversion to HOT lanes and before FTA would classify them as ''fixed guideway miles'' for purposes of its funding formulas.

FTA Response: FTA recognizes that all HOT lanes provide similar benefits to metropolitan areas that are experiencing severe and worsening congestion, regardless of whether the facility is newly constructed or converted from HOV or general purpose lanes. However, the purpose of this policy statement is to ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes in an effort by localities to reduce congestion, improve air quality, or maximize throughput using excess HOV lane capacity and to promote a uniform approach by the Department's operating agencies concerning HOV-to-HOT conversions. If FTA were to classify all HOT lanes as ''fixed guideway mile'' without a commensurate increase in overall funding levels, it could negatively impact the ability of many transit operators to finance needed capital maintenance on existing infrastructure. For this reason, FTA limited the scope of this policy statement to classify as ''fixed guideway miles'' only those HOT lane facilities that are converted from HOV lanes that previously have been classified as ''fixed guideway miles.'' In this way, FTA will ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes. FTA believes it appropriate to leave for Congress, and not to determine on an administrative basis, the question of whether and on what terms facilities newly constructed as HOT lanes or general purpose lanes converted directly to HOT lanes shall be classified as ''fixed guideway miles'' given the substantial reallocation of formula funds among transit authorities that might result over time if such facilities were classified as ''fixed guideway miles.''

FTA has added the following language by footnote to section (b)(1) of its Final Statement of Policy in response to the recommendation that FTA require HOV lanes to have operated as HOV lanes for seven years before they may be converted to HOT lanes and remain classified as ''fixed guideway miles:''

FTA apportions amounts made available for fixed guideway modernization under 49

U.S.C. 5309 pursuant to fixed guideway factors detailed at 49 U.S.C. 5337. One of these fixed guideway factors, located at 49 U.S.C. 5337(a)(5)(B), apportions a percentage of the available fixed guideway modernization funds to 'fixed guideway systems placed in revenue service at least 7 years before the fiscal year in which amounts are made available.' For purposes of 49 U.S.C. 5337(a)(5)(B), (i) no HOV facility that has been in revenue service at least 7 years shall forfeit its eligibility for fixed guideway modernization funds because it is converted to a HOT lane facility in accordance with this Final Policy Statement; and (ii) no HOV facility that has been in revenue service for less than seven years shall forfeit the years it has accrued there under because it is converted to a HOT lane facility and for so long as the HOT lane facility maintains its ✖fixed guideway'' classification in accordance with this policy statement, it shall continue to accrue years there under.

Accordingly, FTA will not require that converted HOV lanes operate as HOV lanes for seven years before they may be converted to HOT lanes and remain classified as ''fixed guideway miles'' Pursuant to this Final Policy Statement.

(c) Monitoring and Performance Standards

In its Notice of Proposed Policy, FTA requested comments on its proposal to classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of three conditions is satisfied. The second condition is that the HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in 23 U.S.C. 166(d). FTA received twenty comments on this topic. Four commenters favored FTA's proposed position. Seven commenters proposed that FTA require a minimum level of transit service on a HOT land facility before its lanes could be classified as ''fixed guideway miles'' for purposes of the funding formulas administered by FTS. Five commenters requested that FTA adopt more exacting performance standards. One commenter requested that FTA state explicitly that local agencies may increase HOV occupancy levels as necessary to ensure free-flow conditions needed for transit bus service. Another commenter asked FTA to amend its policy to state that single occupant vehicles may be permitted on HOT lanes that are classified as ''guideway miles,'' provided that the lanes satisfy the conditions set forth FTA's Final Policy Statement. One commenter requested that FTA acknowledge that compliance with state law governing performance standards for HOT lanes suffices in terms of meeting the condition that the HOT lanes are continuously monitored and continue to meet performance standards that preserve free fow traffic conditions as specified in 23 U.S.C. 166(d). One commenter asked FTA to require a study on degradation of transit service before an HOV facility may convert to a HOT lane facility and be classified as ''fixed guideway miles'' for purposes of funding formulas administered by FTA.

FTA Response: A number of commenters recommend a more exacting performance standard, including a minimum level of transit service. FTA recognizes that a more exacting standard would be necessary if all HOT land facilities were eligible for

classification as ‘‘fixed guideway miles,’’ for under this scenario rural or suburban HOT lane facilities with little or no transit service could receive a portion of the Federal transit funds needed by the Nation’s largest transit providers to maintain their current infrastructure. For this reason, FTA has limited the benefits of this policy to HOV lanes that have already been classified as ‘‘fixed guideway miles.’’ Current designation as a ‘‘fixed guideway mile’’ indicates that a facility has a minimum level of transit service. FTA believes that compliance with the performance standards codified at 23 U.S.C. 166(d) is sufficient to ensure free flow traffic conditions and to avoid degradation of transit service on these facilities when converted from HOV lanes to HOT lane facilities. Moreover, HOV facilities constructed using capital funds available under 49 U.S.C. 5309(d) and (e) could be required, when an HOV facility converts to a HOT lane facility, to achieve a higher performance standard than required under 23 U.S.C. 166(d). In all circumstances, FTA shall require real-time monitoring of traffic flows to ensure on-going compliance with 23 U.S.C. 166(d).

FTA will not acknowledge that compliance with state law governing HOT land performance standards will satisfy FTA’s requirements in all circumstances. Rather, FTA shall require all HOT land facilities to comply with the statutory requirements of 23 U.S.C. 166 to be classified as ‘‘fixed guideway miles’’ for purposes of FTA’s funding formulas. It may be the case that the laws of certain states require a higher level of performance than the Federal standard articulated here. In these instances, the lesser Federal standard should present no obstacle to HOT conversion.

With respect to the request that FTA require a study on the degradation of transit service before an HOV facility may convert to a HOT facility, FTA (i) believes that compliance with the free flow traffic requirements of 23 U.S.C. 166 is sufficient to avoid the degradation of transit service on these facilities and (ii) will not require that project sponsors incur the additional expense of a formal study on the degradation of transit service.

(d) Program Income and Toll Revenues

In its Notice of Proposed Policy, FTA requested comments on its proposal to classify HOT lanes as ‘‘fixed guideway miles’’ for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as each of three conditions is satisfied. The third condition is that program income from the HOT lane facility, including all toll revenue, is used solely for ‘‘permissible uses.’’ FTA received twenty five comments on this condition. Five commenters favored FTA’s proposed policy. Seven commenters requested that FTA expressly state in its final policy that grantees may use toll revenues for transit operating costs. Four commenters stated that FTA funds should not be used for the maintenance and/or construction of HOT lane facilities. Four commenters asked that FTA require all Federal transit funds generated by HOT lane facilities because of their classification as ‘‘fixed guideway miles’’ be directed to the ‘‘designated receipt’’ for Federal transit funding. Three commenters stated that FTA should not permit the operators of HOT lane facilities to finance a HOT lane facility’s operating losses with Federal funds generated by the facility’s operating losses with Federal funds generated by the facility’s classification as ‘‘fixed guideway

miles.'' One commenter asked that FTA not limit the use of HOT lane toll revenues to transit. Another commenter asked FTA to require that priority of payment be provided for in the project implementation documents.

FTA Response: Based on the recommendation of several commenters that FTA expressly state that grantees may use toll revenues for transit operating costs, and pursuant to CFR 18.25, which states that FTA ''grantees may retain program income for allowable capital or operating expenses,'' FTA as added transit operating costs to its description of ''permissible uses'' at section (iii)(b) of its Final Policy Statement.

FTA disagrees with the comment that its grantees should not use Federal transit funds for the maintenance and/ or construction of HOT lane facilities. The commenter did not indicate whether it referred to the use of grant funds or program income. While FTA recognizes both HOV and HOT lanes as permissible incidental uses of FTA-funded assets, FTA grant funds shall not be used to construct a HOT lane facility beyond what is allowed by 49 U.S.C. 5302(a)(4), as implemented by FTA's regulations, as amended from time to time.[3] Any facility that converts from an HOV to a HOT facility, and retains its classification as a ''fixed guideway'' by satisfying the conditions of this policy statement, may use program income in accordance with this Final Policy Statement, the Department's regulation at 49 CFR 18.25, and other applicable statutes, regulations and requirements.

Similarly, FTA disagrees with the comment that it should limit the use of HOT lane toll revenues to transit. In many cases, a HOT lane facility may have received (or receives) funding from FTA and another Federal agency, such that use of the facility's program income is governed by more than one Federal program. In these instance, FTA's restrictions concerning permissible use shall not apply to more than transit's allocable share of the facility's program income, as described elsewhere in this Final Policy Statement. FTA will not require recipients to assign priority in payment to any permissible use.

Federal transit law requires FTA to disburse certain funds to the designated recipient. The designated recipient for FTA formula funds shall not be changed because the grantee converted an HOV facility to a HOT facility, so long as the facility maintains its classification as a ''fixed guideway'' by satisfying the conditions of this Final Policy Statement. FTA shall not prevent such designated recipients from using the funds for eligible activities in accordance with the process for programming transit funds described at 23 CFR 450.324(1) of the joint FTA– FHWA planning regulations.

(e) Transit Fares and Tolls

In its Notice of Proposed Policy, FTA requested comments on transit fares and tolls on HOT lane facilities. FTA stated that it would not condition the receipt of Federal transit funds by a qualifying HOT lane facility on the tolling authority's adoption of policies concerning the price of transit services on the HOT lane facility or the tolls payable by single occupant vehicles. FTA would allow grantees and tolling authorities to develop

their own fare structures for transit services and tools on HOT lane facilities. FTA received sixteen comments on this topic. Without further comment, five commenters agreed with FTA's proposed policy not to regulate toll prices. Ten commenters stated that transit vehicles should be exempt from tolls charged on federally-funded HOT lane facilities for its lanes to be classified as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA. One commenter asked FTA to require that transit fares and tolls remain competitive.

FTA Response: Federal transit law prohibits FTA from regulating the ''rates, fares, tolls, rentals, or other charges prescribed by any provider of public transportation.'' 49 U.S.C. 5334(b)(1). Accordingly, FTA shall not condition the receipt of Federal transit funds by a qualifying HOT lane facility on the tolling authority's adoption of policies concerning the price of transit services on the HOT lane facility or the tolls payable by single occupant vehicles. FTA will allow grantees and tolling authorities to develop their own fare structures for transit services and tolls, respectively, on HOT lane facilities. Transit fares shall remain subject to 49 U.S.C. 5332 (Nondiscrimination) and 49 U.S.C. 5307 (Urbanized area formula grants).

(f) Return of Funds under Full Funding Grant Agreements

In its Notice of Proposed Policy, FTA requested comments on its proposed policy that, in the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA would not require the grantee to return such funds so long as the facility complied with the conditions set forth in the Notice of Proposed Policy. FTA received one comment on this topic. The commenter expressed concern that, when the grantee is not also the tolling authority, the tolling authority may make business decisions contrary to the interest of the grantee/transit provider, thus forcing the grantee/transit provider to repay New Starts funding to FTA.

FTA Response: It appears that the commenter misunderstands the scope of FTA's proposed policy, which states that ''in the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA would *not* require the grantee to return such funds so long as the facility complied with the conditions set forth in this guidance.'' If a grantee wishes to convert an existing HOV facility to a HOT lane facility and maintain the classification of its facility as a ''fixed guideway for purposes of FTA's funding formulas, it must comply with the conditions set forth in this Final Policy Statement. To the extent that the facility is subject to a Full Funding Grant Agreement, the grantee is obligated to abide by the requirements thereof, just as it is bound to any other contractual or legal obligation.''

(g) Miscellaneous Comments

FTA received seven miscellaneous comments in response to its Notice of Proposed Policy. One commenter asked FTA to address a circumstance where a previously eligible HOV lane (or a portion of an HOV lane) is temporarily or permanently taken out of service in order to be reconstructed and expanded into an improved HOT lane facility

in the same corridor. A second commenter requested that FTA indicate whether it would classify as ‘‘fixed guideway miles’’ bus-only shoulders converted to HOT lanes when the bus-only shoulders are currently classified as ‘‘fixed guideway miles.’’ Another commenter asked FTA to clarify its policy with respect to variable-priced express lanes. Two commenters asked FTA to require coordination between privately operated HOT lane facilities and public transportation agencies. One commenter asked FTA to connect this policy with transit supportive land use. And another commenter argued that FTA’[s policy should not affect New Starts project eligibility criteria.

FTA Response: FTA recognizes that it may be necessary to temporarily remove an HOV lane from service in order to convert it into a HOT lane facility. South a HOT lane facility will not lose its classification as a ‘‘fixed guideway’’ so long as it satisfies the conditions of this Final Policy Statement.

FTA agrees with the proposal that it classify as ‘‘fixed guideway miles’’ bus-only shoulders converted to HOT lanes as long as the bus-only shoulders are currently classified as ‘‘fixed guideway miles’’ and satisfy the conditions of this Final Policy Statement. Accordingly, FTA has added the following language to its Final Policy Statement by footnote at section (b)(1):

FTA shall classify HOT lane facilities converted from bus-only shoulders as ‘‘fixed guideway miles,’’ so long as such HOT lanes satisfy conditions (ii) and (iii) of this Final Policy Statement and were bus-only shoulders previously reported in the National Transit Database as ‘‘fixed guideway miles’’ for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 5309.

The commenter that asked FTA to consider variably-priced express lanes did not provide enough information for FTA to determine whether such facility could satisfy the conditions of its Proposed Statement of Policy. FTA responds by reiterating its statement at section (b)(i) of the Final Policy Statement, that with the exception of bus-only shoulders, ‘‘neither non-HOV facilities nor facilities constructed as HOT lanes would be eligible for classification as fixed ‘guideway miles.’’’

The comment requesting that FTA require coordination between privately operated HOT lane facilities and public transportation is beyond the scope of this policy statement. FTA’s Planning and Assistance Standards are located at 49 CFR part 613.

Similarly, the comments requesting that FTA connect this policy with transit supportive land and that this policy not affect FTA’s New Starts project eligibility criteria are beyond the scope of this policy statement, which is limited to the classification of HOT lane facilities as ‘‘fixed guideway miles’’ for purposes for FTA’s funding formulas.

Final Policy Statement on HOV-to-HOT Conversion

The following Final Policy Statement explains when FTA shall classify HOV lanes

converted to HOT lanes as ''fixed guideway miles'' for FTA's funding formulas and when FTA shall not classify HOT lanes as ''fixed guideway miles'' for its funding formulas.

Background

Since the early 1980s, transportation officials have sought to manage traffic congestion and increase vehicle occupancy by means of High-Occupancy Vehicle (HOV) lanes—highway lanes reserved for the exclusive use of car pools and transit vehicles. Today, there are over 130 freeway HOV facilities in metropolitan areas in the US,[4] of which approximately 10 have received funding through FTA's Major Capital Investment program and approximately 80 are counted as ''fixed guideway miles'' for purposes of FTA's formula grant programs.[5] Since 1990, however, HOV mode share in 26 of the 40 largest metropolitan areas has steadily declined,[6] while both excess capacity on HOV lanes and congestion on general purpose lanes have increased.[7]

An increasing number of metropolitan areas are considering new demand management strategies as alternative to HOB lanes. One emerging alternative is the variably-priced High-Occupancy/ Toll (HOT) lane. HOT lanes combine HOV and pricing strategies by allowing Single-Occupant Vehicles (SOVs) to access HOV lanes by paying a toll. The lanes are ''managed'' through pricing to maintain free flow conditions even during the height of rush hours.

HOT lanes provide multiple benefits to metropolitan areas that are experiencing severe and worsening congestion and significant transportation funding shortages. First, variably-priced HOT lanes expand mobility options in congested urban areas by providing an opportunity for reliable travel times for users prepared to pay a premium for this service. HOT lanes also improve the efficiency of HOV facilities by allowing toll-paying SOVs to utilize excess lane capacity on HOVs. In addition, HOT lanes generate new revenue which can be used to pay for transportation improvements, including enhanced transit service.

In August of 2005, recognizing the advantages of HOT lanes, Congress enacted Section 112 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), codified at 23 U.S.C. 166, to authorize States to permit use of HOV lanes by SOVs, so long as the performance of the HOV lanes is continuously monitored and continues to meet specified performance standards. The U.S. Department of Transportation (Department) has strongly endorsed the conversion of HOV lanes to variably HOT lanes, most recently in its *Initiative to Reduce Congestion on the Nation's Transportation Network.* It is the Department's policy to encourage jurisdictions to consider ''HOV-to-HOT'' conversion as a means of congestion relief and possible revenue enhancement.

The ability of HOT lanes to introduce additional traffic to existing HOV facilities, while using pricing and other management techniques to control the number of additional motorists, maintain high service levels and provide new revenue, make HOT lanes an effective means of reducing congestion and improving mobility. For this reason, and given the new authority enacted by Congress to promote ''HOV-to-HOT'' conversions,

many States, transportation agencies and metropolitan areas are seriously considering applying variable pricing to both new and existing roadways. For example, the current long-range transportation plan for the Washington, DC, metropolitan area includes four new HOT lanes along 15 miles of the Capital Beltway in Virginia, and six new variably lanes along 18 miles on the Inter-County Connector in Montgomery and Prince George's Counties in Maryland.[8] Virginia is also exploring the possibility of converting existing HOV lanes along the I–95/395 corridor into HOT lanes.[9] Maryland is considering express toll lanes along I– 495, I–270, as well as along other facilities.[10] Similarly, in San Francisco, the Metropolitan Transportation Commission's Transportation 2030 Plan advocates development of a HOT network that would convert that region's existing HOV lanes to HOT lanes;[11] Houston's 2025 Regional Transportation Plan includes plans to implement peak period pricing within the managed HOT lanes of the major freeway corridors in the region;[12] and the Miami-Dade, Florida 2030 Transportation Plan includes conversion of existing HOV lanes to reversible HOV/HOT lanes to provide additional capacity to I–95 in Miami-Dade County.[13] Other jurisdictions are exploring the potential for HOT lanes with grants provided by the Department's Value Pricing Pilot Program.[14] These include the Port Authority of New York/New Jersey; San Antonio, Texas; Seattle, Washington; Atlanta, Georgia; and Portland, Oregon.[15]

While an increasing number of metropolitan planning organization and State departments of transportation are study the HOT lane concept as a strategy to improve mobility, six HOT lane facilities currently operate in the United States: State Route 91 (SR 91) Express Lanes in Orange County, California; the I 15 FasTrak in San Diego, California; the Katy Freeway QuickRide and the Northwest Freeway (US 290) in Harris County, Texas; I 394 in Minneapolis and St. Paul, Minnesota; and I 25 in Denver, Colorado.

Prior FTA Policy

Since 2002, FTA's policy has been to continue to classify the lanes of an HOV facility converted to HOT lanes as ''fixed guideway miles'' for funding formula purposes on the condition that the facility meets two requirements: (i) the HOT facility manages SOV use so that it does not impede the free-flow and high speed of transit and high-occupancy vehicles and (ii) toll revenues collected on the facility will be used for mass transit purposes.[16] FTA has considered requiring as an additional condition for eligibility that the lowest toll payable by SOVs on a HOT facility be not less than the fare charged for transit services on the HOT facility.

Final FTA Policy

(a) *Purpose of Final Policy.* This Final Statement of Policy will help ensure that Federal transit funding for congested urban areas is not decreased when existing HOV facilities are converted to variably-priced HOT lanes in an effort by localities to reduce congestion, improve air quality, and maximize throughput using excess HOV lane capacity. The revised FTA policy will also promote a uniform approach by the Department's operating agencies concerning HOV-t0-HOT conversions. In particular, FTA's policy will be coordinated with the statutes enacted by Congress under Section

112 of SAFETEA–LU applicable to the Federal Highway Administration intended to simplify conversion of HOV lanes to HOT lanes. The policy statement will also support the Department's policy of encouraging HOV-to-HOT conversions.

Final Policy. FTA shall classify HOT lanes as ''fixed guideway miles'' for purposes of the funding formulas administered under 49 U.S.C. 5307 and 49 U.S.C. 5309, so long as *each* of the following conditions is satisfied:

The HOT lanes were previously [17] HOV lanes reported in the National Transit Database as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 *U.S.C. 5307(b) and 49 U.S.C. 5309(a)(E).*[18] Facilities that were not eligible HOV lanes prior to being converted to HOT lanes will remain ineligible for inclusion as fixed guideway miles in FTA's funding formulas. Therefore, neither non-HOV facilities converted directly to HOT facilities nor facilities constructed as HOT lanes will be eligible for classification as ''fixed guideway miles.'' [19]

(ii) The HOT lanes are continuously monitored and continue to meet performance standards that preserve free flow traffic conditions as specified in 23 U.S.C. 166(d) 23 U.S.C. 166(d) provides operational performance standards for an HOV facility converted to a HOT facility. It also requires that the performance of the facility be continuously monitored and that it continue to meet specified performance Transit Database (''HTD'') as ''fixed guideway miles,'' HOV facilities classified as ''fixed guideway miles'' in the NTD on or before data of the publication of this Final Policy Statement shall satisfy this requirement. With data of publication of this Final Policy Statement, such HOV lanes may not be converted to HOT lanes and maintain their classification as ''fixed guideway miles'' unless: (i) the HOV lanes have reported to the NTD as ''fixed guideway miles'' for three years to their conversion to HOT lanes, (ii) users of public transportation have accounted for at least 50% of the passenger miles traveled on the HOV lanes in their last twelve months of service (or once the HOV lanes are converted to HOT lanes, users of public transportation are reasonably expected to account for at least 50% of the passenger miles traveled on the HOT lanes in their twelve months of service), or (iii) in his or her discretion, the Administrator so approves. standards. Due to original project commitments, HOV facilities constructed using capital funds available under 49 U.S.C. 5309(d) or (e) may be required, when converted to HOT lanes, to achieve a higher performance standard than required under 23 U.S.C. 166(d). Standards for operational performance and determining degradation of operational performance for facilities constructed with funds from FTA's New Starts program shall be determined by FTA on a case-by-case basis. FTA will require real-time monitoring of traffic flows to ensure on-going compliance with operational performance standards.

(iii) *Program income from the HOT lane facility, including all toll revenue, is used solely for ''permissible uses.''* ''Permissible uses'' means any of the following uses with respect to any HOT lane facility, whether operated by a public or private entity: (a) Debt service, (b) a reasonable return on investment of any private financing, (c) the costs necessary for the proper operation and maintenance of such facility,[20] and (d) if the operating entity annually certifies that the facility is being adequately operated and maintained (including that the permissible uses described in (a), (b) and (c) above, if

applicable, are being duly paid), any other purpose relating to a project carried out under Title 49 U.S.C. 5301 *et seq.* In cases where the HOT lane facility has received (or receives) funding from FTA and another Federal agency, such that use of the facility's program income is governed by more than one Federal program, FTA's restrictions concerning permissible use shall not apply to more than *transit's allocable share* [21] of the facility's program income. FTA shall not require recipients to assign priority in payment to any permissible use.

(c) *Transit Fares and Tolls on HOT Lane Facilities.* FTA shall not condition the classification of HOT lanes converted from HOV lanes as ''fixed guideway miles,'' or condition any approval or waiver under a Full Funding Grant Agreement, on a grantee's adopting transit fare policies or a tolling authority's adopting of tolling policies concerning, respectively, the price of transit services on the HOT lane facility and the tolls payable by SOVs. Instead, FTA shall permit grantees and tolling authorities to develop their own fare structures for transit services and tolls, respectively, on HOT lane facilities. Transit fares shall remain subject to 49 U.S.C. 5332 (Nondiscrimination) and 49 U.S.C. 5307 (Urbanized area formula grants).

(d) *No Return of Funds under Full Funding Grant Agreements.* In the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA shall not require the grantee to return such funds so long as the facility complies with the conditions set forth in this guidance and the original grant agreement or Full Funding Grant Agreement, as applicable.

Issued on the 21st day of December, 2006.

James S. Simpson,

Administrator.

[FR Doc. 06–9873 Filed 12–26–06; 8:45 am]

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End Notes:

1. The suggested policy principles are as follows: (1) Metropolitan areas and states should have greater latitude to use roadway tolling; (2) Tolling should be a supplement to and not a substitution for existing transportation funding; (3) Local sponsors should have the discretion to fund public transportation with toll revenues; and (4) Tolling should be permitted as a long-term strategy.
2. The four suggestions on how FTA's policy statement could foster alternative transportation ridership are as follows: (1) The policy statement should support transportation demand management and HOV usage; (2) Greater emphasis on enforcement should be considered; (3) FTA should tie fixed guideway qualification to integrity of lane; and (4) FTA should emphasize language at 23 U.S.C. 166(c)(3), which section requests that States, in the use of toll revenues, give priority consideration to projects for developing alternatives to single occupancy vehicle and projects for improving highway safety.
3.

4. Office of Operations, Federal Highway Administration, U.S. Department of Transportation.
5. National Transit Database.
6. Journey to Work Trends in the United States and its Major Metropolitan Areas 1960–2000, Publication No. FHWA–EP–03–058 Prepared for: US Department of Transportation, Federal Highway Administration, Office of Planning, Prepared by: Nancy McGuckin, Consultant, Nanda Srinivasan, Cambridge Systematics, Inc.
7. Office of Operations, Federal Highway Administration, U.S. Department of Transportation. Demand for highway travel by Americans continues to grow as population increases, particularly in metropolitan areas. Construction of new highway capacity to accommodate this growth in travel has not kept pace. Between 1980 and 1999, route miles of highways increased 1.5 percent while vehicle miles of travel increased 76 percent. The Texas Transportation Institute estimates that, in 200, the 75 largest metropolitan areas experienced 3.6 billion vehicle-hours of delay, resulting in 5.7 billion gallons in wasted fuel and $67.5 billion in lost productivity. And traffic volumes are projected to continue to grow. The volume of freight movement alone is forecast to nearly double by 2020. Congestion is largely thought of as a big city problem, but delays are becoming increasingly common in small cities and some rural areas as well.
8. Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.
9. Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.
10. Letter to U.S. Department of Transportation, August 28, 2006, from National Capital Region Transportation Planning Board.
11. A Vision for the Future Transportation 2030, February 2005, Chapter 1, Page 6.
12. 2025 Regional Transportation Plan Houston-Galveston Area, June 2005, Page 31.
13. Miami-Dade Transportation Plan (to the Year 2030) December 2004, FINAL DRAFT, Page 24.
14. Federal Highway Administration, U.S. Department of Transportation. The Department's Value Pricing Pilot Program (VPPP), initially authorized by the Intermodal Surface Transportation Efficiency Act as the Congestion Pricing Pilot Program and continued as the VPPP under SAFETEA–LU, encourages implementation and evaluation of value pricing pilot projects, offering flexibility to encompass a variety of innovative applications including areawide pricing, pricing of multiple or single facilities or corridors, single lane pricing, and implementation of other market-based strategies.
15. Federal Highway Administration, U.S. Department of Transportation.
16. In a Letter to U.S. Representative Randall Cunningham, dated June 10, 2002, concerning the I–15 FasTrak facility in San Diego, FTA stated: ''* * * FTA will recognize, for formula allocation purposes, exclusive fixed guideway transit facilities that permit toll-paying SOVs on an incidental basis (often called high occupancy/toll (HOT) lanes) under the following conditions: the facility must be able to control SOV use so that it does not impede the free flow and high speed of transit and HOV vehicles, and the toll revenues collected must be used for mass

transit purposes.''

17. With respect to whether HOT lanes were previously HOV lanes reported in the National
18. FTA apportions amounts made available for fixed guideway modernization under 49 U.S.C. 5309 pursuant to fixed guideway factors detailed at 49 U.S.C. 5337. One off these fixed guideway factors, located at 49 U.S.C. 5337(a)(5)(B), apportions a percentage of the available fixed guideway modernization funds to 'fixed guideway systems placed in revenue service at least 7 years before the fiscal year in which amounts are made available.' For purposes of 49 U.S.C. 5337(a)(5)(B), (i) no HOV facility that has been in revenue service at least 7 years shall forfeit its eligibility for fixed guideway modernization funds because it is converted to a HOT lane facility in accordance with this Final Policy Statement; and (ii) no HOV facility that has been in revenue service for less than seven years shall forfeit the years it has accrued thereunder because it is converted to a HOT lane facility and for so long as the HOT lane facility maintains its ''fixed guideway'' in accordance with this Final Policy Statement, it shall continue to accrue years thereunder.
19. FTA recognizes one exception to this statement—bus-only shoulders. Accordingly, FTA shall classify HOT lane facilities converted from bus-only shoulders as ''fixed guideway miles,'' so long as such HOT lanes satisfy conditions (ii) and (iii) of this Final Policy Statement and were bus-only shoulders previously reported in the National Transit Database as ''fixed guideway miles'' for purposes of the funding formulas administered by FTA under 49 U.S.C. 5307 and 5309.
20. The costs necessary for the proper operation and maintenance of a HOT lane facility may include reconstruction, rehabilitation, and the costs associated with operating transit service on the facility.
21. Transit's allocable share of the facility's program income shall be an amount equal to the facility's total program income, for any period, multiplied by a ratio, (a) the numerator of which shall be the cumulative amount of funds contributed to the facility through a program established by transit law, and (b) the denominator of which shall be the cumulative amount of all Federal, State and local capital funds contributed to the facility, in each case at the time transit's allocable share is calculated. For purposes of 49 CFR 18.25, (i) amounts other than transit's allocable share shall not constitute program income and (ii) any expenditure of transit's allocable share that is not deducted from outlays made under transit law shall be deemed an ''alternative'' under 49 U.S.C. 18.25(g) and deemed by FTA a term of the grant agreement.

Appendix G - Houston METRO’s Violation Policy on their Light Rail Line

TRANSPORTATION CODE

SUBTITLE K. MASS TRANSPORTATION

CHAPTER 451. METROPOLITAN RAPID TRANSIT AUTHORITIES

Sec. 451.0611. ENFORCEMENT OF FARES AND OTHER CHARGES; PENALTIES. (a) A board by resolution may prohibit the use of the public transportation system by a person who fails to possess evidence showing that the appropriate fare for the use of the system has been paid and may establish reasonable and appropriate methods to ensure that persons using the public transportation system pay the appropriate fare for that use.

(b) A board by resolution may provide that a fare for or charge for the use of the public transportation system that is not paid incurs a penalty, not to exceed $100.

(c) The authority shall post signs designating each area in which a person is prohibited from using the transportation system without possession of evidence showing that the appropriate fare has been paid.

(d) A person commits an offense if:

(1) the person or another for whom the person is criminally responsible under Section 7.02, Penal Code, uses the public transportation system and does not possess evidence showing that the appropriate fare has been paid; and

(2) the person fails to pay the appropriate fare or other charge for the use of the public transportation system and any penalty on the fare on or before the 30th day after the date the authority notifies the person that the person is required to pay the amount of the fare or charge and the penalty.

(e) The notice required by Subsection (d)(2) may be included in a citation issued to the person under Article 14.06, Code of Criminal Procedure, in connection with an offense relating to the nonpayment of the appropriate fare or charge for the use of the public transportation system.

(f) An offense under Subsection (d) is a Class C misdemeanor.

Added by Acts 2003, 78th Leg., ch. 1113, Sec. 2, eff. Sept. 1, 2003.