The Honorable Edward G. Rendell  
Governor  
Commonwealth of Pennsylvania  
225 Main Capitol Building  
Harrisburg, PA 17120  

Dear Governor Rendell:

I am writing to provide you with the U.S. Department of Transportation’s (DOT) final decision on the revised joint application submitted by the Pennsylvania Turnpike Commission (PTC) and the Pennsylvania Department of Transportation (PennDOT) to toll Interstate 80 under the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP).

The ISRRPP, as established in Section 1216(b) of the Transportation Equity Act for the 21st Century (TEA-21), includes specific eligibility and selection criteria that must be met prior to approval of an application. After careful consideration of PTC’s and PennDOT’s revised application, the Federal Highway Administration has concluded that the lease payment proposed under this application is inconsistent with ISRRPP statutory requirements. Specifically, the lease payment would have the effect of diverting toll revenues collected from the operation of I-80 to projects on other facilities, which is contrary to the permitted uses of toll revenue under Section 1216(b)(5)(A) of TEA-21. Additional detail and explanation regarding this decision is enclosed.

I regret that we are unable to approve your application. If you have any questions, please feel free to contact me.

Sincerely yours,

Ray LaHood

cc: Mr. Allen D. Biehler  
Mr. Joseph G. Brimmeyer
Attachment to April 6, 2010 Letter to Governor Edward Rendell
from U.S. Secretary of Transportation Ray LaHood
Regarding I-80 Tolling Application

The ISRRPP, as established in Section 1216(b) of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. No. 105-178, 112 Stat. 107, 212 (1998), includes specific eligibility and selection criteria that must be met prior to approval. After careful consideration of PTC’s and PennDOT’s revised application, the Federal Highway Administration (FHWA) has concluded that the lease payment proposed under this application is inconsistent with ISRRPP statutory requirements. Specifically, the lease payment would have the effect of diverting toll revenues collected from the operation of I-80 to projects on other facilities, which is contrary to the permitted uses of toll revenue under Section 1216(b)(5)(A) of TEA-21.

On July 18, 2007, the Commonwealth of Pennsylvania General Assembly enacted P.L. 169, No. 44 (Act 44), which authorized PennDOT to lease I-80 to PTC, and authorized PTC to convert I-80 to a toll road. Act 44 was passed by the Pennsylvania legislature in July 2007 in response to the Governor’s 2007 budget address in which he proposed a $1 billion increase in transportation spending for highways and a $760 million increase for public transportation. Act 44 contemplated two primary funding sources: (1) increased tolls on the Pennsylvania Turnpike, and (2) lease payments by PTC to PennDOT from newly authorized tolls on I-80.

Act 44 requires PennDOT and PTC to enter into a lease agreement providing for the conversion of I-80 to a toll road upon DOT approval. Tolls on I-80 are to be used to support the long-term operation, maintenance and reconstruction of I-80, as well as to fund lease payments to PennDOT to support statewide transportation projects. PTC’s financial projections furnished to the FHWA indicate that over the 50-year term of the lease, approximately $23.8 billion dollars of I-80 toll revenues would be used for lease payments to PennDOT for use on non I-80 projects. These projections amount to approximately 25.3 percent of all tolls to be collected on I-80 during the term of the lease.

Under the ISRRPP, the use of toll revenue collected from the operation of a toll facility is expressly limited to (1) debt service, (2) reasonable return on investment for a private entity financing the project, and (3) the costs necessary for the improvement and proper operation and maintenance of the facility. Section 1216(b)(5)(A) of TEA-21. In examining these restrictions, it is evident from the plain language of the statute as well as its legislative history that Congress intended to ensure that toll revenues under this program be used only for the project costs of the facility being tolled, and not to fund other projects on other facilities. As explained in the Conference Report for section 1216(b) of TEA-21, the ISRRPP requirements were intended “to ensure that no toll revenues are diverted to another facility or purpose.” H.R. Rep. No. 105-550, p. 412 (1998).

23 USC Section 156 does not create an exception to the ISRRPP’s requirement that tolls be used only to cover the costs “necessary for the improvement and proper operation and maintenance of the facility”. Section 1216(b)(5)(A) of TEA-21 (emphasis added). Section 156 requires a state to receive “fair market value” for the lease of any real property acquired with federal assistance and requires that the federal share of net income from the revenues obtained under any such lease be used for title 23 projects. Section 156 does not, however, allow states to toll existing
freeways to pay for any title 23 project. Simply characterizing payments derived from toll revenues as a lease payment permitted under Section 156 cannot suffice to avoid the limitations of the ISRRPP and to allow a state to use toll revenues to fund unrelated projects.

The clear intent of Congress with respect to the use of toll revenue under the ISRRPP is to ensure that the revenues are used solely for the purpose of reconstructing and rehabilitating the facility being tolled and not diverted to be used on other facilities. It is evident that the intent of Act 44 is to raise funding for other statewide transportation needs. Since the I-80 lease arrangement authorized under Act 44 is designed to raise funding for other highway and bridge projects, we have concluded that the proposed lease payments violate the limitations on use of tolls set forth in ISRRPP.