

Adopted Rejected

COMMITTEE REPORT

YES: 7
NO: 4

MR. SPEAKER:

*Your Committee on Government and Regulatory Reform, to which was referred House Bill 1369, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 transportation.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 8-15.5-1-2, AS ADDED BY P.L.47-2006,
- 6 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 7 UPON PASSAGE]: Sec. 2. (a) This article contains full and complete
- 8 authority for public-private agreements between the authority and a
- 9 private entity. Except as provided in this article, no law, procedure,
- 10 proceeding, publication, notice, consent, approval, order, or act by the
- 11 authority or any other officer, department, agency, or instrumentality
- 12 of the state or any political subdivision is required for the authority to
- 13 enter into a public-private agreement with a private entity under this

1 article, or for a toll road project that is the subject of a public-private
 2 agreement to be constructed, acquired, maintained, repaired, operated,
 3 financed, transferred, or conveyed.

4 ~~(b) Notwithstanding any other law, after August 1, 2006, neither the~~
 5 ~~authority nor the department may:~~

6 ~~(1) issue a request for proposals for; or~~

7 ~~(2) enter into;~~

8 ~~a public-private agreement under this article that would authorize an~~
 9 ~~operator to impose tolls for the operation of motor vehicles on all or~~
 10 ~~part of a project; unless the general assembly adopts a statute~~
 11 ~~authorizing the imposition of tolls.~~

12 ~~(c) (b) Notwithstanding any other law, neither the authority nor a~~
 13 ~~operator may carry out any of the following activities under this article~~
 14 ~~unless the general assembly enacts a statute authorizing that activity:~~

15 ~~(1) Carrying out construction for Interstate Highway 69 in a~~
 16 ~~township having a population of more than seventy-five thousand~~
 17 ~~(75,000) and less than ninety-three thousand five hundred~~
 18 ~~(93,500).~~

19 ~~(2) Imposing tolls on motor vehicles for use of the part of an~~
 20 ~~interstate highway that connects a consolidated city and a city~~
 21 ~~having a population of more than eleven thousand five hundred~~
 22 ~~(11,500) but less than eleven thousand seven hundred forty~~
 23 ~~(11,740).~~

24 SECTION 2. IC 8-15.5-4-1, AS ADDED BY P.L.47-2006,
 25 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 UPON PASSAGE]: Sec. 1. **(a)** Before entering into a public-private
 27 agreement under this article, the authority must issue a request for
 28 proposals as set forth in this chapter. A request for proposals for a toll
 29 road project may be issued by the authority in one (1) or more phases
 30 and may include a request for qualifications.

31 **(b) The authority may charge and retain an administrative fee**
 32 **for the evaluation of an unsolicited project proposal.**

33 SECTION 3. IC 8-15.5-4-1.5 IS ADDED TO THE INDIANA
 34 CODE AS A NEW SECTION TO READ AS FOLLOWS
 35 [EFFECTIVE UPON PASSAGE]: Sec. 1.5. **(a) As used in this section,**
 36 **the following terms have the following meanings:**

37 **(1) "Adjusted private sector bid" means the estimated bid by**
 38 **a private entity for a project, adjusted for risks retained by**

- 1 the public sector under alternative financing and
2 procurement and for ancillary costs.
- 3 **(2) "Estimated private sector bid" means an estimate of the**
4 **expected bid by a private entity, including financing costs, for**
5 **a particular project using alternative financing and**
6 **procurement delivery methods.**
- 7 **(3) "Public sector comparator" means the estimated total**
8 **costs, including adjustments for risks retained and ancillary**
9 **costs, to the public sector of delivering an infrastructure**
10 **project using traditional procurement processes.**
- 11 **(4) "Value for money" means the difference between the**
12 **public sector comparator and the estimated private sector bid.**
13 **A positive value for money occurs for a project using a**
14 **public-private agreement when the adjusted private sector bid**
15 **is less than the public sector comparator.**
- 16 **(b) The following conditions must be met before the authority**
17 **may issue a request for proposals for a toll road project under this**
18 **chapter:**
- 19 **(1) The proposed project must be in:**
- 20 **(A) the state transportation improvement program**
21 **approved by the Federal Highway Administration and the**
22 **Federal Transit Administration; and**
- 23 **(B) the long range comprehensive transportation plan and**
24 **work program established under IC 8-23-2-5.**
- 25 **If the proposed project is not in one (1) of the programs or**
26 **plans, that program or plan must be amended to include the**
27 **project and approved in accordance with all applicable state**
28 **and federal laws.**
- 29 **(2) The authority must demonstrate a need for the project by**
30 **conducting a feasibility study. The feasibility study must**
31 **include the following:**
- 32 **(A) A topographic map (1:2,000 or other appropriate**
33 **scale) indicating the proposed location or locations of the**
34 **project.**
- 35 **(B) A description of the project, including the conceptual**
36 **design of the project and all proposed interconnections**
37 **with other transportation facilities.**
- 38 **(C) The proposed date for development, operation, or**

- 1 **development and operation of the project.**
- 2 **(D) An estimate of the life cycle cost of the project as**
- 3 **proposed.**
- 4 **(E) A statement setting forth the method by which the**
- 5 **authority proposes to secure any property interests**
- 6 **required for the project.**
- 7 **(F) The following information, as determined in**
- 8 **consultation with the local units of government and**
- 9 **metropolitan planning organizations in which any part of**
- 10 **the proposed project would be located:**
- 11 **(i) Information relating to the current transportation**
- 12 **plans, if any, of each affected jurisdiction.**
- 13 **(ii) A list of all permits and approvals required from**
- 14 **local, state, or federal agencies for the development,**
- 15 **operation, or development and operation of the project,**
- 16 **and a projected schedule for obtaining those permits and**
- 17 **approvals.**
- 18 **(iii) A list of public utility facilities, if any, that will be**
- 19 **crossed by the project, and a statement of the plans to**
- 20 **accommodate those crossings.**
- 21 **(iv) Information on how the project will address the**
- 22 **needs identified in the appropriate state, regional, or**
- 23 **local transportation plans by improving safety, reducing**
- 24 **congestion, increasing capacity, enhancing economic**
- 25 **efficiency, or achieving any combination of these ends.**
- 26 **(v) The estimated fiscal impact of the proposed project**
- 27 **on local units of government, including impacts resulting**
- 28 **from loss of taxable property, costs incurred for**
- 29 **displacement of existing infrastructure, and costs**
- 30 **incurred in reviewing the design of the proposed project**
- 31 **to ensure that local traffic patterns are not adversely**
- 32 **affected.**
- 33 **(G) The names and contact information of the persons who**
- 34 **may be contacted for additional information concerning**
- 35 **the feasibility study.**
- 36 **The authority shall post a copy of the feasibility study on the**
- 37 **authority's Internet web site and shall also provide copies of**
- 38 **the study to the governor, the legislative council (in an**

1 **electronic format under IC 5-14-6), and the county executive**
2 **and county fiscal body of each county in which any part of the**
3 **proposed project is to be located.**

4 **(3) The authority shall prepare a comparative analysis of**
5 **providing the proposed project through the traditional**
6 **method of procurement as compared to a public-private**
7 **agreement under this article. This analysis must use a value**
8 **for money analysis that incorporates a public sector**
9 **comparator.**

10 **(4) The authority shall make a finding, in writing, that the**
11 **proposed project will serve the public purpose of this article.**
12 **The authority may make such a finding if all of the following**
13 **conditions are met:**

14 **(A) There is a public need for the project.**

15 **(B) The project and the proposed interconnections with**
16 **existing transportation facilities, and the plans for**
17 **development, operation, or development and operation of**
18 **the project, are reasonable and will address the needs**
19 **identified in the appropriate state, regional, or local**
20 **transportation plans by such means as improving safety,**
21 **reducing congestion, increasing capacity, and enhancing**
22 **economic efficiency.**

23 **(C) The estimated cost of developing, operating, or**
24 **developing and operating the project is reasonable in**
25 **relation to similar facilities.**

26 **(D) Providing the project by means of an agreement with**
27 **a private entity will result in the timely development,**
28 **operation, or development and operation of the project or**
29 **its more efficient operation.**

30 SECTION 4. IC 8-15.5-4-2, AS ADDED BY P.L.47-2006,
31 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 UPON PASSAGE]: Sec. 2. A request for proposals issued by the
33 authority must include the following:

34 (1) The factors or criteria that will be used in evaluating the
35 proposals.

36 (2) A statement that a proposal must be accompanied by evidence
37 of financial responsibility as considered appropriate and
38 satisfactory by the authority.

- 1 (3) A statement concerning whether discussions may be
 2 conducted with the offerors for the purpose of clarification to
 3 assure full understanding of and responsiveness to the solicitation
 4 requirements.
- 5 **(4) A statement concerning requirements as to the allocation**
 6 **of any revenue resulting from the proposed project between**
 7 **the authority and the operator, such as:**
- 8 (A) availability payments or performance based payments;
 9 and
 10 (B) amounts required by the authority for purposes of
 11 IC 8-15.5-11-3(j).
- 12 **(5) A statement describing the performance standards that**
 13 **will apply to the operator of the proposed project and**
 14 **requiring each offeror to provide information setting forth the**
 15 **manner by which the offeror will comply with those**
 16 **standards.**
- 17 **(6) A statement:**
- 18 (A) requiring each offeror to provide an operational plan
 19 setting forth the offeror's general plans for developing,
 20 operating, or developing and operating the proposed
 21 project, including identification of any assumptions
 22 concerning revenue sources, public or private, or proposed
 23 debt or equity investments or concessions that are
 24 anticipated to be proposed by the offeror; and
 25 (B) notifying offerors that all or part of the operational
 26 plan provided in the selected offer may be subject to
 27 disclosure under section 6 of this chapter.
- 28 **(7) The name and contact information of the persons who may**
 29 **be contacted for additional information concerning the**
 30 **request for proposals.**
- 31 ~~(4)~~ **(8)** A statement concerning any other information that the
 32 authority may consider in evaluating the proposals.
- 33 ~~(5)~~ **(9)** A statement that, except as otherwise required by law or
 34 under order from a court with jurisdiction, the authority may not
 35 disclose the contents of proposals during:
- 36 (A) discussions; or
 37 (B) negotiations;
- 38 with eligible offerors to other eligible offerors.

1 **(10) A statement that in order to request that the authority**
 2 **treat confidential and proprietary information and trade**
 3 **secrets submitted as part of a proposal or other submission as**
 4 **exempt from disclosure, the offeror must:**

5 **(A) conspicuously label as confidential the parts of the**
 6 **proposal or other submission that the offeror considers to**
 7 **be trade secrets or confidential commercial, financial, or**
 8 **proprietary;**

9 **(B) state the reasons why confidentiality is necessary; and**

10 **(C) fully comply with any applicable state law with respect**
 11 **to information that the offeror contends should be exempt**
 12 **from disclosure.**

13 SECTION 5. IC 8-15.5-4-3, AS ADDED BY P.L.47-2006,
 14 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 UPON PASSAGE]: Sec. 3. Notice of a request for proposals shall be
 16 given by:

17 **(1) a written notice of the authority's intent to issue a request**
 18 **for proposals, mailed to:**

19 **(A) the city-county council, for a county having a**
 20 **consolidated city;**

21 **(B) the county executive, for any other county;**

22 **(C) the common council and the mayor, for a city;**

23 **(D) the town council, for a town; and**

24 **(E) the local metropolitan planning organization, if any;**
 25 **of each county, city, or town in which any part of the**
 26 **proposed project is to be located; and**

27 **(2) publication in accordance with IC 5-3-1 in the city of**
 28 **Indianapolis and in each county in which any part of the**
 29 **proposed project is to be located.**

30 **The written notice required by subdivision (1) must be mailed to**
 31 **each of the entities described in subdivision (1) at least seven (7)**
 32 **days before the anticipated date of the initial publication of the**
 33 **notice required by subdivision (2).**

34 SECTION 6. IC 8-15.5-4-6, AS ADDED BY P.L.47-2006,
 35 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 UPON PASSAGE]: Sec. 6. (a) The authority may not disclose the
 37 contents of proposals during discussions or negotiations with eligible
 38 offerors.

1 (b) The authority may, in its discretion in accordance with
 2 IC 5-14-3, treat as confidential all records relating to discussions or
 3 negotiations between the authority and eligible offerors if those records
 4 are created while discussions or negotiations are in progress.

5 (c) ~~Notwithstanding subsections (a) and (b), and with the exception~~
 6 ~~of parts that are confidential under IC 5-14-3, Except with respect to~~
 7 **information that the authority finds was appropriately designated**
 8 **as confidential by an offeror under section 2 of this chapter,**
 9 **including any such parts of an operational plan,** the terms of the
 10 selected offer negotiated under this article **and all other proposals**
 11 **submitted by eligible offerors in response to the request for**
 12 **proposals** shall be available for inspection and copying under
 13 IC 5-14-3 after negotiations with the offerors have been completed.

14 (d) **Notwithstanding subsections (a) and (b), and except as**
 15 **provided with respect to parts of an operational plan that are**
 16 **confidential under subsection (c), at least sixty (60) days before the**
 17 **hearings required by section 9 of this chapter, the authority shall**
 18 **make the operational plan submitted as part of the proposal for the**
 19 **selected offer under section 2 of this chapter available to the public**
 20 **by:**

21 (1) **posting an electronic copy of the operational plan on the**
 22 **authority's Internet web site in a manner that permits the**
 23 **public to transmit comments on the operational plan to the**
 24 **authority; and**

25 (2) **providing printed copies of the operational plan to:**

26 (A) **the city-county council, for a county having a**
 27 **consolidated city; and**

28 (B) **the county executive, for any other county;**

29 **of each county in which any part of the proposed project is to**
 30 **be located.**

31 ~~(d)~~ (e) When disclosing the terms of the ~~selected offer proposals~~
 32 under subsection (c) **and the operational plan under subsection (d),**
 33 the authority shall certify that the information being disclosed
 34 accurately and completely represents the terms of the ~~selected offer~~
 35 **offers and the operational plan.**

36 SECTION 7. IC 8-15.5-4-9, AS ADDED BY P.L.47-2006,
 37 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 UPON PASSAGE]: Sec. 9. (a) If the authority makes a preliminary

1 selection of an operator under section 8 of this chapter, the authority
 2 shall schedule a public hearing on the preliminary selection ~~and in~~
 3 **each county in which any part of the proposed project is to be**
 4 **located. The authority shall** publish notice of the hearing **in each of**
 5 **the counties** one (1) time in accordance with IC 5-3-1 at least ~~seven (7)~~
 6 **twenty-one (21)** days before the hearing. **The authority shall also**
 7 **mail a copy of the notice to:**

8 (1) **the city-county council, for a county having a consolidated**
 9 **city;**

10 (2) **the county executive, for any other county;**

11 (3) **the common council and the mayor, for a city;**

12 (4) **the town council, for a town; and**

13 (5) **the local metropolitan planning organization, if any;**

14 **of each county, city, or town in which any part of the proposed**
 15 **project is to be located.**

16 (b) ~~The notice~~ **notices required by subsection (a)** must include the
 17 following:

18 (1) The date, time, and place of the hearing.

19 (2) The subject matter of the hearing.

20 (3) A description of the related toll road project and of the
 21 public-private agreement to be awarded.

22 (4) The identity of the offeror that has been preliminarily selected
 23 as the operator for the project.

24 (5) The address and telephone number of the authority.

25 (6) A statement indicating that, subject to section 6 of this
 26 chapter, and except for those portions that are confidential under
 27 ~~IC 5-14-3~~, **section 6 of this chapter**, the selected offer and an
 28 explanation of the basis upon which the preliminary selection was
 29 made are available for public inspection and copying at the
 30 principal office of the authority during regular business hours.

31 SECTION 8. IC 8-15.5-4-10, AS ADDED BY P.L.47-2006,
 32 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 UPON PASSAGE]: Sec. 10. (a) Subject to section 6 of this chapter,
 34 and except for those parts that are confidential under ~~IC 5-14-3~~, **section**
 35 **6 of this chapter**, the selected offer and a written explanation of the
 36 basis upon which the preliminary selection was made shall be made
 37 available for inspection and copying in accordance with IC 5-14-3 at
 38 least seven (7) days before the ~~hearing~~ **hearings** scheduled under

1 section 9 of this chapter.

2 (b) At the ~~hearing~~, **hearings**, the authority shall allow the public to
3 be heard on the preliminary selection.

4 SECTION 9. IC 8-15.5-4-11, AS ADDED BY P.L.47-2006,
5 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 UPON PASSAGE]: Sec. 11. (a) After the procedures required in this
7 chapter have been completed, the authority shall make a determination
8 as to whether the offeror that submitted the selected offer should be
9 designated as the operator for the related toll road project and shall
10 submit the authority's determination to the governor and the budget
11 committee.

12 (b) After review of the authority's determination by the budget
13 committee, the governor may accept or reject the determination of the
14 authority. If the governor accepts the determination of the authority, the
15 governor shall designate the offeror who submitted the selected offer
16 as the operator for the related toll road project. The authority shall
17 publish notice of the designation of the operator for the related toll road
18 project one (1) time **in each county in which any part of the**
19 **proposed project is to be located** in accordance with IC 5-3-1.

20 (c) After the designation of the operator for the related toll road
21 project, the authority may execute the public-private agreement with
22 that operator.

23 SECTION 10. IC 8-15.5-4-11.5 IS ADDED TO THE INDIANA
24 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
25 [EFFECTIVE UPON PASSAGE]: **Sec. 11.5. The authority may not**
26 **execute a public-private agreement for a project unless all of the**
27 **following conditions are met:**

28 **(1) The authority has entered into a memorandum of**
29 **understanding with each county or municipality that contains**
30 **any part of the project concerning reimbursement for costs**
31 **incurred by the county or municipality in relation to the**
32 **project, including:**

33 **(A) costs incurred for displacement of existing**
34 **infrastructure;**

35 **(B) costs incurred to resolve adverse impacts on local**
36 **traffic patterns;**

37 **(C) tax revenues lost as a result of exemptions granted to**
38 **the operator; and**

1 **(D) costs of law enforcement, medical services and**
 2 **materials, fire protection, and other public safety and**
 3 **emergency services provided for the project.**

4 **Each memorandum of understanding entered into under this**
 5 **subdivision is subject to review and approval by the budget**
 6 **committee.**

7 **(2) All environmental analyses of the project required by state**
 8 **and federal law have been completed by the appropriate state**
 9 **and federal agencies.**

10 **(3) The project has been approved in a record of decision**
 11 **issued by the federal highway administration.**

12 SECTION 11. IC 8-15.5-4-12, AS ADDED BY P.L.47-2006,
 13 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 UPON PASSAGE]: Sec. 12. Any action to contest the validity of a
 15 public-private agreement entered into under this chapter may not be
 16 brought after the ~~fifteenth~~ **thirtieth** day following the **completion of**
 17 publication of the notice of the designation of an operator under the
 18 public-private agreement as provided in section 11 of this chapter.

19 SECTION 12. IC 8-15.5-4-14 IS ADDED TO THE INDIANA
 20 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 21 [EFFECTIVE UPON PASSAGE]: **Sec. 14. (a) The authority may**
 22 **retain financial, legal, and other consultants and experts inside or**
 23 **outside the public sector to assist in the evaluation, negotiation, and**
 24 **development of projects under this article. These consultants and**
 25 **experts must have at least five (5) years experience working in that**
 26 **capacity with public-private partnerships.**

27 **(b) The authority may pay expenses that are reasonably**
 28 **necessary for the development of procurements, evaluation of**
 29 **concepts or proposals, negotiation of agreements, and**
 30 **implementation of agreements for development or operation of**
 31 **projects under this article.**

32 SECTION 13. IC 8-15.5-4-15 IS ADDED TO THE INDIANA
 33 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 34 [EFFECTIVE UPON PASSAGE]: **Sec. 15. The authority may pay a**
 35 **stipulated amount to an unsuccessful offeror that submits a**
 36 **responsive proposal in response to a request for proposals under**
 37 **this chapter, in exchange for the work product contained in that**
 38 **proposal. The use by the authority of any design element contained**

1 **in an unsuccessful proposal is at the sole risk and discretion of the**
2 **authority and does not confer liability on the recipient of the**
3 **stipulated amount under this section. After payment of the**
4 **stipulated amount:**

- 5 **(1) the authority and the unsuccessful offeror jointly own the**
- 6 **rights to, and may make use of any work product contained**
- 7 **in, the proposal, including the technologies, techniques,**
- 8 **methods, processes, ideas, and information contained in the**
- 9 **proposal, project design, and project financial plan; and**
- 10 **(2) the use by the unsuccessful offeror of any part of the work**
- 11 **product contained in the proposal is at the sole risk of the**
- 12 **unsuccessful offeror and does not confer liability on the**
- 13 **authority.**

14 SECTION 14. IC 8-15.5-5-1, AS ADDED BY P.L.47-2006,
15 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 UPON PASSAGE]: Sec. 1. (a) Before developing or operating a toll
17 road project, a private entity that has been selected as the operator of
18 a toll road project under this article shall enter into a public-private
19 agreement with the authority setting forth the rights and duties of the
20 operator under this article.

21 (b) A public-private agreement entered into under this article must
22 be approved by **the budget committee and** the governor before its
23 execution.

24 SECTION 15. IC 8-15.5-5-2, AS ADDED BY P.L.47-2006,
25 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 UPON PASSAGE]: Sec. 2. A public-private agreement entered into
27 under this article must provide for the following:

28 (1) The original term of the public-private agreement, which may
29 not exceed ~~seventy-five (75)~~ **fifty (50)** years.

30 (2) Provisions for a:

31 (A) lease, franchise, or license of the toll road project and the
32 real property owned by the authority upon which the toll road
33 project is located or is to be located; or

34 (B) management agreement or other contract to operate the toll
35 road project and the real property owned by the authority upon
36 which the toll road project is located or is to be located;

37 for a predetermined period. The public-private agreement must
38 provide for ownership of all improvements and real property by

- 1 the authority in the name of the state.
- 2 (3) Monitoring of the operator's maintenance practices by the
- 3 authority and the taking of actions by the authority that it
- 4 considers appropriate to ensure that the toll road project is
- 5 properly maintained.
- 6 (4) The basis upon which user fees that may be collected by the
- 7 operator, as determined under this article, are established.
- 8 (5) Compliance with applicable state and federal laws and local
- 9 ordinances.
- 10 (6) Grounds for termination of the public-private agreement by
- 11 the authority or the operator.
- 12 (7) The date of termination of the operator's authority and duties
- 13 under this article.
- 14 (8) Procedures for amendment of the agreement.
- 15 **(9) A requirement that the operator and any contractor or**
- 16 **subcontractor engaged in a project for the construction of the**
- 17 **toll road project enter into a project labor agreement as a**
- 18 **condition of being awarded and performing work on the**
- 19 **project.**
- 20 **(10) A statement that the agreement does not limit the ability**
- 21 **of the authority, the state, or any unit of local government to**
- 22 **develop, maintain, operate, or lease any other transportation**
- 23 **project. However, the agreement may provide for reasonable**
- 24 **compensation to the operator for adverse effects on revenues**
- 25 **due to the development or leasing of another transportation**
- 26 **project, except:**
 - 27 **(A) projects that are identified in regional transportation**
 - 28 **plans;**
 - 29 **(B) projects that relate to safety;**
 - 30 **(C) improvements that result in incidental capacity**
 - 31 **increases;**
 - 32 **(D) newly created or converted high-occupancy vehicle**
 - 33 **lanes;**
 - 34 **(E) projects more than ten (10) miles from the operator's**
 - 35 **project; and**
 - 36 **(F) existing non-tolled lanes that are converted to**
 - 37 **high-occupancy toll lanes.**

38 SECTION 16. IC 8-15.5-6-2, AS ADDED BY P.L.47-2006,

1 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 2 UPON PASSAGE]: Sec. 2. **(a)** Unless otherwise provided by federal
 3 law **or this article**, the operator or any contractor or subcontractor of
 4 the operator engaged in the construction of a toll road project is not
 5 required to comply with IC 4-13.6 or IC 5-16 concerning state public
 6 works, IC 5-17 concerning purchases of materials and supplies, or
 7 other statutes concerning procedures for procurement of public works
 8 or personal property as a condition of being awarded and performing
 9 work on the project.

10 **(b) IC 5-16-7, concerning the common construction wage,**
 11 **applies to the operator or any contractor or subcontractor of the**
 12 **operator engaged in a project for the construction of a toll road**
 13 **project.**

14 SECTION 17. IC 8-15.5-11-3, AS ADDED BY P.L.47-2006,
 15 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 UPON PASSAGE]: Sec. 3. (a) The toll road fund is established to
 17 provide funds to:

18 (1) pay or defease certain bonds in the manner provided by this
 19 chapter;

20 (2) pay amounts owed by the authority in connection with the
 21 execution and performance of a public-private agreement under
 22 this article, including operating expenses of the authority; and

23 (3) make distributions to the next generation trust fund and the
 24 major moves construction fund.

25 (b) The authority shall hold, administer, and manage the fund.

26 (c) Expenses of administering the fund shall be paid from money in
 27 the fund.

28 (d) The fund consists of the following:

29 (1) Money received from an operator under a public-private
 30 agreement **concerning the Indiana Toll Road.**

31 (2) Appropriations, if any, made by the general assembly.

32 (3) Grants and gifts intended for deposit in the fund.

33 (4) Interest, premiums, gains, or other earnings on the fund.

34 (5) Amounts transferred to the fund under subsection (i).

35 (6) Amounts transferred to the fund under IC 8-14-14-6(a)(5).

36 (e) The authority shall establish the following separate accounts
 37 within the fund:

38 (1) The bond retirement account.

1 (2) The administration account.

2 (3) The eligible project account.

3 (f) Money in the fund shall be deposited, paid, and secured in the
4 manner provided by IC 4-4-11-32. Notwithstanding IC 5-13, the
5 authority shall invest the money in the fund that is not needed to meet
6 the obligations of the fund in the manner provided by an investment
7 policy established by resolution of the authority.

8 (g) The fund is not part of the state treasury and is considered a trust
9 fund for purposes of IC 4-9.1-1-7. Money may not be transferred,
10 assigned, or otherwise removed from the fund by the state board of
11 finance, the budget agency, or any other state agency.

12 (h) Money in the fund at the end of a state fiscal year does not revert
13 to the state general fund.

14 (i) As soon as practicable after a public-private agreement
15 concerning the Indiana Toll Road has been executed and the closing for
16 each financing transaction required to provide funding to carry out the
17 agreement has been conducted, the authority shall determine the total
18 balance remaining in all toll road funds and accounts established under
19 IC 8-15-2. Subject to any applicable trust indentures securing toll road
20 bonds, the authority may retain from those funds and accounts the
21 amounts necessary to pay outstanding obligations with respect to the
22 operation of the Indiana Toll Road incurred before the effective date of
23 the public-private agreement, and shall transfer all remaining balances
24 in the toll road funds and accounts to the fund.

25 **(j) To the extent that the authority receives any payment or**
26 **compensation under a public-private agreement concerning a**
27 **project other than the Indiana Toll Road, other than repayment of**
28 **a loan or grant or reimbursement for services provided by the**
29 **authority to the operator, the payment or compensation shall be**
30 **distributed by the authority as follows:**

31 **(1) To counties and municipalities as required under the**
32 **terms of a memorandum of understanding entered into under**
33 **IC 8-15.5-4-11.5 for that project.**

34 **(2) To reimburse the authority, the department, and local**
35 **governmental entities for costs incurred in evaluating**
36 **proposals for the project.**

37 **(3) To the extent that any amounts remain after the**
38 **distributions required by subdivisions (1) and (2), to be**

1 **retained in a separate account to be maintained by the**
2 **authority, subject to appropriation by the general assembly.**

3 SECTION 18. IC 8-15.7-1-5, AS AMENDED BY P.L.203-2007,
4 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 UPON PASSAGE]: Sec. 5. (a) This article contains full and complete
6 authority for agreements and leases with private entities to carry out the
7 activities described in this article. Except as provided in this article, no
8 procedure, proceeding, publication, notice, consent, approval, order, or
9 act by the authority, the department, or any other state or local agency
10 or official is required to enter into an agreement or lease, and no law to
11 the contrary affects, limits, or diminishes the authority for agreements
12 and leases with private entities, except as provided by this article.

13 (b) Notwithstanding any other law, the department, the authority, or
14 an operator may not carry out any of the following activities under this
15 article unless the general assembly enacts a statute authorizing that
16 activity:

17 ~~(1) Issuing a request for proposals for, or entering into, a~~
18 ~~public-private agreement concerning a project other than~~
19 ~~Interstate Highway 69 between Interstate Highway 465 and~~
20 ~~Interstate Highway 64.~~

21 ~~(2)~~ **(1)** Carrying out construction for Interstate Highway 69 in a
22 township having a population of more than seventy-five thousand
23 (75,000) and less than ninety-three thousand five hundred
24 (93,500).

25 ~~(3)~~ **(2)** Imposing user fees on motor vehicles for use of the part of
26 an interstate highway that connects a consolidated city and a city
27 having a population of more than eleven thousand five hundred
28 (11,500) but less than eleven thousand seven hundred forty
29 (11,740).

30 (c) Notwithstanding subsection (b) or any other law, the department
31 or the authority may enter into a public-private agreement concerning
32 a project consisting of a passenger or freight railroad system described
33 in IC 8-15.7-2-14(a)(4). Such an agreement is subject to review and
34 appropriation by the general assembly. However, this subsection does
35 not prohibit the department from:

- 36 (1) conducting preliminary studies that the department considers
37 necessary to determine the feasibility of such a project; or
38 (2) issuing a request for qualifications or a request for proposals,

1 or both, under IC 8-15.7-4 for such a project.

2 SECTION 19. IC 8-15.7-3-1, AS ADDED BY P.L.47-2006,
3 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: Sec. 1. (a) Subject to IC 8-15.7-1-5, the
5 department may exercise the powers granted by this article to carry out:

- 6 (1) the development;
 - 7 (2) the financing;
 - 8 (3) the operation; or
 - 9 (4) any combination of the development, financing, and operation;
- 10 of all or part of one (1) or more projects through public-private
11 agreements with one (1) or more private entities. The parties to a
12 public-private agreement that relates to a tollway or a project that
13 otherwise charges user fees may exercise any of the powers granted to
14 the party under IC 8-15-3. The department may use the revenues
15 arising out of one (1) project or public-private agreement for all or part
16 of the development, financing, and operation of any part of one (1) or
17 more other projects through public-private agreements with one (1) or
18 more private entities or as otherwise considered appropriate by the
19 department.

20 **(b) The department may retain financial, legal, and other**
21 **consultants and experts inside or outside the public sector to assist**
22 **in the evaluation, negotiation, and development of projects under**
23 **this article. These consultants and experts must have at least five**
24 **(5) years experience working in that capacity with public-private**
25 **partnerships.**

26 **(c) The department may pay expenses that are reasonably**
27 **necessary for the development of procurements, evaluation of**
28 **concepts or proposals, negotiation of agreements, and**
29 **implementation of agreements for development or operation of**
30 **projects under this article.**

31 SECTION 20. IC 8-15.7-4-1, AS ADDED BY P.L.47-2006,
32 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 UPON PASSAGE]: Sec. 1. (a) The department may request proposals
34 from private entities for all or part of the development, financing, and
35 operation of one (1) or more projects.

36 (b) If all or part of the project will consist of a tollway, the
37 department shall take the following steps before the commencement of
38 the procurement process under this chapter:

1 (1) The department shall cause to be prepared a preliminary
2 feasibility study on that part of the project consisting of a tollway
3 by a firm or firms internationally recognized in the preparation of
4 studies or reports on the financial feasibility of proposed toll road
5 projects. The preliminary feasibility study must be based upon a
6 public-private financial and project delivery structure: **include the**
7 **following:**

8 (A) **A topographic map (1:2,000 or other appropriate**
9 **scale) indicating the proposed location or locations of the**
10 **project.**

11 (B) **A description of the project, including the conceptual**
12 **design of the project and all proposed interconnections**
13 **with other transportation facilities.**

14 (C) **The proposed date for development, operation, or**
15 **development and operation of the project.**

16 (D) **An estimate of the life cycle cost of the project as**
17 **proposed.**

18 (E) **A statement setting forth the method by which the**
19 **department proposes to secure any property interests**
20 **required for the project.**

21 (F) **The following information, as determined in**
22 **consultation with the local units of government and**
23 **metropolitan planning organizations in which any part of**
24 **the proposed project would be located:**

25 (i) **Information relating to the current transportation**
26 **plans, if any, of each affected jurisdiction.**

27 (ii) **A list of all permits and approvals required from**
28 **local, state, or federal agencies for the development,**
29 **operation, or development and operation of the project,**
30 **and a projected schedule for obtaining those permits and**
31 **approvals.**

32 (iii) **A list of public utility facilities, if any, that will be**
33 **crossed by the project, and a statement of the plans to**
34 **accommodate those crossings.**

35 (iv) **Information on how the project will address the**
36 **needs identified in the appropriate state, regional, or**
37 **local transportation plans by improving safety, reducing**
38 **congestion, increasing capacity, enhancing economic**

1 **efficiency, or achieving any combination of these ends.**
 2 **(v) The estimated fiscal impact of the proposed project**
 3 **on local units of government, including impacts resulting**
 4 **from loss of taxable property, costs incurred for**
 5 **displacement of existing infrastructure, and costs**
 6 **incurred in reviewing the design of the proposed project**
 7 **to ensure that local traffic patterns are not adversely**
 8 **affected.**

9 **(G) The names and contact information of the persons who**
 10 **may be contacted for additional information concerning**
 11 **the feasibility study.**

12 **The department shall post a copy of the feasibility study on**
 13 **the department's Internet web site and shall also provide**
 14 **copies of the study to the governor, the legislative council (in**
 15 **an electronic format under IC 5-14-6), and the county**
 16 **executive and county fiscal body of each county in which any**
 17 **part of the proposed project is to be located.**

18 (2) After the completion of the preliminary feasibility study, the
 19 department shall schedule a public hearing on the proposed
 20 project and the preliminary feasibility study and publish notice of
 21 the hearing one (1) time in accordance with IC 5-3-1 at least
 22 seven (7) days before the hearing. The notice must include the
 23 following:

- 24 (A) The date, time, and place of the hearing.
- 25 (B) The subject matter of the hearing.
- 26 (C) A description of the proposed project, its location, the part
 27 of the project consisting of a tollway, and, consistent with the
 28 assessments reached in the preliminary feasibility study, the
 29 estimated total cost of the acquisition, construction,
 30 installation, equipping, and improving of the proposed project,
 31 as well as the part of the project consisting of a tollway.

32 (D) The address and telephone number of the department.
 33 (3) At the hearing, the department shall allow the public to be
 34 heard on the proposed project and the preliminary feasibility
 35 study.

36 (4) After the public hearing described in subdivision (2), the
 37 department shall submit the preliminary feasibility study to the
 38 budget committee for its review before the commencement of the

1 procurement process under this chapter.

2 **(c) In addition to the other requirements of this article, the**
3 **following conditions must be met before the department may issue**
4 **a request for proposals for a project under this chapter:**

5 **(1) The proposed project must be in:**

6 **(A) the state transportation improvement program**
7 **approved by the Federal Highway Administration and the**
8 **Federal Transit Administration; and**

9 **(B) the long range comprehensive transportation plan and**
10 **work program established under IC 8-23-2-5.**

11 **If the proposed project is not in one (1) of the programs or**
12 **plans, that program or plan must be amended to include the**
13 **project and approved in accordance with all applicable state**
14 **and federal laws.**

15 **(2) The department must prepare a comparative analysis of**
16 **providing the proposed project through the traditional**
17 **method of procurement as compared to a public-private**
18 **agreement under this article. This analysis must use a value**
19 **for money analysis that incorporates a public sector**
20 **comparator. As used in this subdivision, the following terms**
21 **have the following meanings:**

22 **(A) "Adjusted private sector bid" means the estimated bid**
23 **by a private entity for a project, adjusted for risks retained**
24 **by the public sector under alternative financing and**
25 **procurement and for ancillary costs.**

26 **(B) "Estimated private sector bid" means an estimate of**
27 **the expected bid by a private entity, including financing**
28 **costs, for a particular project using alternative financing**
29 **and procurement delivery methods.**

30 **(C) "Public sector comparator" means the estimated total**
31 **costs, including adjustments for risks retained and**
32 **ancillary costs, to the public sector of delivering an**
33 **infrastructure project using traditional procurement**
34 **processes.**

35 **(D) "Value for money" means the difference between the**
36 **public sector comparator and the estimated private sector**
37 **bid. A positive value for money occurs for a project using**
38 **a public-private agreement when the adjusted private**

- 1 **sector bid is less than the public sector comparator.**
- 2 **(3) The department must make a finding, in writing, that the**
- 3 **proposed project will serve the public purpose of this article.**
- 4 **The department may make such a finding if all of the**
- 5 **following conditions are met:**
- 6 **(A) There is a public need for the project.**
- 7 **(B) The project and the proposed interconnections with**
- 8 **existing transportation facilities, and the plans for**
- 9 **development, operation, or development and operation of**
- 10 **the project, are reasonable and will address the needs**
- 11 **identified in the appropriate state, regional, or local**
- 12 **transportation plans by such means as improving safety,**
- 13 **reducing congestion, increasing capacity, and enhancing**
- 14 **economic efficiency.**
- 15 **(C) The estimated cost of developing, operating, or**
- 16 **developing and operating the project is reasonable in**
- 17 **relation to similar facilities.**
- 18 **(D) Providing the project by means of an agreement with**
- 19 **a private entity will result in the timely development,**
- 20 **operation, or development and operation of the project or**
- 21 **its more efficient operation.**

22 SECTION 21. IC 8-15.7-4-2, AS ADDED BY P.L.47-2006,
 23 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 UPON PASSAGE]: Sec. 2. (a) This section establishes the competitive
 25 proposal procedure that the department shall use to enter into a
 26 public-private agreement with an operator under this article.

27 (b) The department may pursue a competitive proposal procedure
 28 using a request for qualifications and a request for proposals process or
 29 proceed directly to a request for proposals.

30 (c) If the department elects to use a request for qualifications phase,
 31 it must provide a public notice of the request for qualifications, for the
 32 period considered appropriate by the department, before the date set for
 33 receipt of submittals in response to the solicitation. The department
 34 shall provide the notice by:

- 35 **(1) posting in a designated public area;**
- 36 **(2) mailing a written copy of the notice at least seven (7) days**
- 37 **before the anticipated date of the initial publication of the**
- 38 **notice required by subdivision (3) to:**

- 1 **(A) the city-county council, for a county having a**
 2 **consolidated city;**
 3 **(B) the county executive, for any other county;**
 4 **(C) the common council and the mayor, for a city;**
 5 **(D) the town council, for a town; and**
 6 **(E) the local metropolitan planning organization, if any;**
 7 **of each county, city, or town that would be an affected**
 8 **jurisdiction for purposes of the proposed project; and**
 9 **(3) publication in a newspaper of general circulation, in the**
 10 **manner provided by IC 5-3-1, in the city of Indianapolis and in**
 11 **each county that would be an affected jurisdiction for**
 12 **purposes of the proposed project.**

13 In addition, submittals in response to the solicitation may be solicited
 14 directly from potential offerors.

15 (d) The department shall evaluate qualification submittals based on
 16 the requirements and evaluation criteria set forth in the request for
 17 qualifications.

18 (e) If the department has undertaken a request for qualifications
 19 phase resulting in one (1) or more prequalified or shortlisted offerors,
 20 the request for proposals shall be limited to those offerors that have
 21 been prequalified or shortlisted.

22 (f) If the department has not issued a request for qualifications and
 23 intends to use only a one (1) phase request for proposals procurement,
 24 the department must provide a public notice of the request for
 25 proposals for the period considered appropriate by the department,
 26 before the date set for receipt of proposals. The department shall
 27 provide the notice by:

- 28 **(1) posting in a designated public area;**
 29 **(2) mailing a written copy of the notice at least seven (7) days**
 30 **before the anticipated date of the initial publication of the**
 31 **notice required by subdivision (3) to:**

- 32 **(A) the city-county council, for a county having a**
 33 **consolidated city;**
 34 **(B) the county executive, for any other county;**
 35 **(C) the common council and the mayor, for a city;**
 36 **(D) the town council, for a town; and**
 37 **(E) the local metropolitan planning organization, if any;**
 38 **of each county, city, or town that would be an affected**

1 **jurisdiction for purposes of the proposed project; and**
 2 **(3) publication in a newspaper of general circulation, in the**
 3 **manner provided by IC 5-3-1, in the city of Indianapolis and in**
 4 **each county that would be an affected jurisdiction for**
 5 **purposes of the proposed project.**

6 In addition, proposals may be solicited directly from potential offerors.

7 (g) The department shall submit a draft of the request for proposals
 8 to the budget committee for its review before the issuance by the
 9 department of the request for proposals to potential offerors. The
 10 request for proposals must:

11 (1) indicate in general terms the scope of work, goods, and
 12 services sought to be procured;

13 (2) contain or incorporate by reference the specifications and
 14 contractual terms and conditions applicable to the procurement
 15 and the qualifying project;

16 (3) specify the factors, criteria, and other information that will be
 17 used in evaluating the proposals;

18 (4) specify any requirements or goals for use of:

19 (A) minority business enterprises and women's business
 20 enterprises certified under IC 4-13-16.5;

21 (B) disadvantaged business enterprises under federal or state
 22 law;

23 (C) businesses defined under IC 5-22-15-20.5 as Indiana
 24 businesses, to the extent permitted by applicable federal and
 25 state law and regulations; and

26 (D) businesses that qualify for a small business set-aside under
 27 IC 4-13.6-2-11;

28 (5) if all or part of the project will consist of a tollway, require any
 29 offeror to submit a proposal based upon that part of the project
 30 that will consist of a tollway, as set forth in the request for
 31 proposals, and permit any offeror to submit one (1) or more
 32 alternative proposals based upon the assumption that a different
 33 part or none of the project will consist of a tollway;

34 (6) contain or incorporate by reference the other applicable
 35 contractual terms and conditions; ~~and~~

36 (7) contain or incorporate by reference any other provisions,
 37 materials, or documents that the department considers
 38 appropriate;

- 1 **(8) contain a statement concerning requirements as to the**
- 2 **allocation of any revenue resulting from the proposed project**
- 3 **between the department and the operator, such as:**
- 4 **(A) availability payments or performance based payments;**
- 5 **and**
- 6 **(B) amounts required by the authority for purposes of**
- 7 **section 2.5(a)(1) of this chapter.**
- 8 **(9) contain a statement describing the performance standards**
- 9 **that will apply to the operator of the proposed project and**
- 10 **requiring each offeror to provide information setting forth the**
- 11 **manner by which the offeror will comply with those**
- 12 **standards;**
- 13 **(10) contain a statement:**
- 14 **(A) requiring each offeror to provide an operational plan**
- 15 **setting forth the offeror's general plans for developing,**
- 16 **operating, or developing and operating the proposed**
- 17 **project, including identification of any assumptions**
- 18 **concerning revenue sources, public or private, or proposed**
- 19 **debt or equity investments or concessions that are**
- 20 **anticipated to be proposed by the offeror; and**
- 21 **(B) notifying offerors that the operational plan provided in**
- 22 **the selected offer may be subject to disclosure under**
- 23 **section 6 of this chapter;**
- 24 **(11) contain the name and contact information of the persons**
- 25 **who may be contacted for additional information concerning**
- 26 **the request for proposals; and**
- 27 **(12) contain a statement that in order to request that the**
- 28 **department treat confidential and proprietary information**
- 29 **and trade secrets submitted as part of a proposal or other**
- 30 **submission as exempt from disclosure, the offeror must:**
- 31 **(A) conspicuously label as confidential the parts of the**
- 32 **proposal or other submission that the offeror considers to**
- 33 **be trade secrets or confidential commercial, financial, or**
- 34 **proprietary;**
- 35 **(B) state the reasons why confidentiality is necessary; and**
- 36 **(C) fully comply with any applicable state law with respect**
- 37 **to information that the offeror contends should be exempt**
- 38 **from disclosure.**

1 (h) The department shall determine the evaluation criteria that are
 2 appropriate for each project and shall set those criteria forth in the
 3 request for proposals. The department may use a selection process that
 4 results in selection of the proposal offering the best value to the public,
 5 a selection process that results in selection of the proposal offering the
 6 lowest price or cost or the highest payment to, or revenue sharing with,
 7 the department, or any other selection process that the department
 8 determines is in the best interests of the state and the public.

9 (i) The department shall evaluate proposals based on the
 10 requirements and evaluation criteria set forth in the request for
 11 proposals.

12 (j) The department may select one (1) or more offerors for
 13 negotiations based on the evaluation criteria set forth in the request for
 14 proposals. If the department believes that negotiations with the selected
 15 offeror or offerors are not likely to result in a public-private agreement,
 16 or, in the case of a best value selection process, no longer reflect the
 17 best value to the state and the public, the department may commence
 18 negotiations with other responsive offerors, if any, and may suspend,
 19 terminate, or continue negotiations with the original offeror or offerors.
 20 If negotiations are unsuccessful, the department shall terminate the
 21 procurement, may not award the public-private agreement, and may
 22 commence a new procurement for a public-private agreement. If the
 23 department determines that negotiations with an offeror have been
 24 successfully completed, the department shall, subject to the other
 25 requirements of this article, award the public-private agreement to the
 26 offeror.

27 (k) Before awarding a public-private agreement to an operator, the
 28 department shall schedule a public hearing on the proposed
 29 public-private agreement **and in each county that would be an**
 30 **affected jurisdiction under the proposed agreement. The**
 31 **department shall** publish notice of the hearing one (1) time in
 32 accordance with IC 5-3-1 at least ~~seven (7)~~ **twenty-one (21)** days
 33 before the hearing. **The department shall also mail a copy of the**
 34 **notice to:**

- 35 (1) **the city-county council, for a county having a consolidated**
 36 **city;**
 37 (2) **the county executive, for any other county;**
 38 (3) **the common council and the mayor, for a city;**

1 **(4) the town council, for a town; and**
2 **(5) the local metropolitan planning organization, if any;**
3 **of each county, city, or town that would be an affected jurisdiction**
4 **under the proposed agreement.**

5 **(l) The ~~notice~~ notices required by subsection (k) must include the**
6 **following:**

- 7 (1) The date, time, and place of the hearing.
- 8 (2) The subject matter of the hearing.
- 9 (3) A description of the agreement to be awarded.
- 10 (4) The recommendation that has been made to award the
- 11 agreement to an identified offeror or offerors.
- 12 (5) The address and telephone number of the department.

13 ~~(j)~~ **(m) At the hearing, the department shall allow the public to be**
14 **heard on the proposed public-private agreement.**

15 ~~(m)~~ **(n) When the terms and conditions of multiple awards are**
16 **specified in the request for proposals, awards may be made to more**
17 **than one (1) offeror.**

18 **(o) The department may charge and retain an administrative fee**
19 **for the evaluation of an unsolicited project proposal.**

20 SECTION 22. IC 8-15.7-4-2.5 IS ADDED TO THE INDIANA
21 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
22 [EFFECTIVE UPON PASSAGE]: **Sec. 2.5. (a) The department may**
23 **not execute a public-private agreement for a project unless all of**
24 **the following conditions are met:**

25 **(1) The department has entered into a memorandum of**
26 **understanding with each county or municipality that contains**
27 **any part of the project concerning reimbursement for costs**
28 **incurred by the county or municipality in relation to the**
29 **project, including:**

- 30 **(A) costs incurred for displacement of existing**
- 31 **infrastructure;**
- 32 **(B) costs incurred to resolve adverse impacts on local**
- 33 **traffic patterns;**
- 34 **(C) tax revenues lost as a result of exemptions granted to**
- 35 **the operator; and**
- 36 **(D) costs of law enforcement, medical services and**
- 37 **materials, fire protection, and other public safety and**
- 38 **emergency services provided for the project.**

1 **Each memorandum of understanding entered into under this**
 2 **subdivision is subject to review and approval by the budget**
 3 **committee.**

4 **(2) All environmental analyses of the project required by state**
 5 **and federal law have been completed by the appropriate state**
 6 **and federal agencies.**

7 **(3) The project has been approved in a record of decision**
 8 **issued by the federal highway administration.**

9 SECTION 23. IC 8-15.7-4-3, AS ADDED BY P.L.47-2006,
 10 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 UPON PASSAGE]: Sec. 3. (a) After the procedures required in this
 12 chapter have been completed, the department shall make a
 13 determination as to whether the successful offeror should be designated
 14 as the operator for the project and shall submit its decision to the
 15 governor and the budget committee.

16 (b) After review of the department's determination by the budget
 17 committee, the governor may accept or reject the determination of the
 18 department. If the governor accepts the determination of the
 19 department, the governor shall designate the successful offeror as the
 20 operator for the project. The department shall publish notice of the
 21 designation of the operator one (1) time **in each county that would be**
 22 **an affected jurisdiction under the proposed public-private**
 23 **agreement**, in accordance with IC 5-3-1.

24 (c) After the designation of the successful offeror as the operator for
 25 the project **and review and approval of the proposed public-private**
 26 **agreement by the budget committee and the governor**, the
 27 department may execute the public-private agreement.

28 (d) An action to contest the validity of a public-private agreement
 29 entered into under this chapter may not be brought after the ~~fifteenth~~
 30 **thirtieth** day following **completion of** the publication of the notice of
 31 the designation of the operator under the public-private agreement
 32 under subsection (b).

33 SECTION 24. IC 8-15.7-4-6, AS ADDED BY P.L.47-2006,
 34 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 UPON PASSAGE]: Sec. 6. (a) The department may not disclose the
 36 contents of proposals during discussions or negotiations with potential
 37 offerors.

38 (b) The department may, in its discretion in accordance with

1 IC 5-14-3, treat as confidential all records relating to discussions or
 2 negotiations between the department and potential offerors if those
 3 records are created while discussions or negotiations are in progress.

4 (c) ~~Notwithstanding subsections (a) and (b); and with the exception~~
 5 ~~of portions that are confidential under IC 5-14-3; Except with respect~~
 6 **to information that the department finds was appropriately**
 7 **designated as confidential by an offeror under section 2(g)(12) of**
 8 **this chapter, including any such parts of an operational plan, the**
 9 terms of the selected offer negotiated under this article **and all other**
 10 **proposals submitted by eligible offerors in response to the request**
 11 **for proposals** shall be available for inspection and copying under
 12 IC 5-14-3 after negotiations with the offerors have been completed.

13 (d) ~~Notwithstanding subsections (a) and (b), and except as~~
 14 ~~provided with respect to parts of an operational plan that are~~
 15 ~~confidential under subsection (c), at least sixty (60) days before the~~
 16 ~~hearings required by section 2 of this chapter, the department shall~~
 17 ~~make the entire operational plan or plans submitted as part of the~~
 18 ~~proposal for the selected offer or offers under section 2 of this~~
 19 ~~chapter available to the public by:~~

20 (1) ~~posting an electronic copy of the business plan or plans on~~
 21 ~~the department's Internet web site in a manner that permits~~
 22 ~~the public to transmit comments on the operational plan to~~
 23 ~~the department; and~~

24 (2) ~~providing printed copies of the operational plan or plans~~
 25 ~~to:~~

26 (A) ~~the city-county council, for a county having a~~
 27 ~~consolidated city; and~~

28 (B) ~~the county executive, for any other county;~~

29 ~~of each county that would be an affected jurisdiction under~~
 30 ~~the proposed public-private agreement.~~

31 ~~(d) (e) When disclosing the terms of the selected offer proposals~~
 32 ~~under subsection (c) and the operational plan under subsection (d),~~
 33 the department shall certify that the information being disclosed
 34 accurately and completely represents the terms of the ~~selected offer:~~
 35 **offers and the operational plan.**

36 ~~(e) The department shall disclose the contents of all proposals;~~
 37 ~~except the parts of the proposals that may be treated as confidential in~~
 38 ~~accordance with IC 5-14-3; when either:~~

- 1 (1) the request for proposal process is terminated under section 5
 2 of this chapter; or
 3 (2) the public-private agreement has been executed and the
 4 closing for each financing transaction required to provide funding
 5 to carry out the agreement has been conducted.

6 SECTION 25. IC 8-15.7-5-1.5 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE UPON PASSAGE]: **Sec. 1.5. In addition to the other**
 9 **requirements of this article, a public-private agreement entered**
 10 **into under this article must provide for all of the following:**

11 (1) **A requirement that the operator and any contractor or**
 12 **subcontractor engaged in the construction of the project enter**
 13 **into a project labor agreement as a condition of being**
 14 **awarded and performing work on the project.**

15 (2) **A statement that the agreement does not limit the ability**
 16 **of the state or any unit of local government to develop,**
 17 **maintain, operate, or lease any other transportation project.**
 18 **However, the agreement may provide for reasonable**
 19 **compensation to the operator for adverse effects on revenues**
 20 **due to the development or leasing of another transportation**
 21 **project, except:**

22 (A) **projects that are identified in regional transportation**
 23 **plans;**

24 (B) **projects that relate to safety;**

25 (C) **improvements that result in incidental capacity**
 26 **increases;**

27 (D) **newly created or converted high-occupancy vehicle**
 28 **lanes;**

29 (E) **projects more than ten (10) miles from the operator's**
 30 **project; and**

31 (F) **existing non-tolled lanes that are converted to**
 32 **high-occupancy toll lanes.**

33 SECTION 26. IC 8-15.7-5-5, AS AMENDED BY P.L.203-2007,
 34 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 UPON PASSAGE]: **Sec. 5. (a) To the extent that the department**
 36 **receives any payment or compensation under ~~the~~ a public-private**
 37 **agreement entered into before July 1, 2010, other than repayment of**
 38 **a loan or grant or reimbursement for services provided by the**

1 department to the operator, the payment or compensation shall be
2 distributed at the direction of the department to the:

- 3 (1) major moves construction fund established under IC 8-14-14;
- 4 (2) department for deposit in the state highway fund established
5 by IC 8-23-9-54;
- 6 (3) alternative transportation construction fund established under
7 IC 8-14-17; or
- 8 (4) operator or the authority for debt reduction.

9 **(b) To the extent that the department receives any payment or**
10 **compensation under a public-private agreement entered into after**
11 **June 30, 2010, other than repayment of a loan or grant or**
12 **reimbursement for services provided by the department to the**
13 **operator, the payment or compensation shall be distributed by the**
14 **department as follows:**

15 (1) **To counties and municipalities as required under the**
16 **terms of a memorandum of understanding entered into under**
17 **IC 8-15.7-4-2.5(1) for that project.**

18 (2) **To reimburse the authority, the department, and local**
19 **governmental entities for costs incurred in evaluating**
20 **proposals for the project.**

21 (3) **To the extent that any amounts remain after the**
22 **distributions required by subdivisions (1) and (2), to be**
23 **retained in a separate account to be maintained by the**
24 **department, subject to appropriation by the general assembly.**

25 SECTION 27. IC 8-15.7-6-2, AS ADDED BY P.L.47-2006,
26 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 UPON PASSAGE]: Sec. 2. (a) Unless otherwise provided by federal
28 law **or this article**, the operator or any contractor or subcontractor of
29 the operator engaged in the construction of a project is not required to
30 comply with IC 4-13.6 or IC 5-16 concerning state public works,
31 IC 5-17 concerning purchases of materials and supplies, or other
32 statutes concerning procedures for procurement of public works or
33 personal property as a condition of being awarded and performing work
34 on the project.

35 (b) **IC 5-16-7, concerning the common construction wage,**
36 **applies to the operator or any contractor or subcontractor of the**
37 **operator engaged in a project for the construction of a project.**

38 SECTION 28. IC 8-15.7-9-2, AS ADDED BY P.L.47-2006,

1 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 2 UPON PASSAGE]: Sec. 2. (a) The authority may enter into a lease
 3 with the department or the operator, or both, of a project or projects
 4 financed under this chapter. The department may lease a project
 5 financed under this chapter to the authority or an operator under a
 6 public-private agreement.

7 (b) A lease of a project to the department under this chapter must
 8 comply with IC 8-14.5-5 except that:

9 (1) the lease is not required to comply with IC 8-14.5-5-3(a)(1);
 10 and

11 (2) notwithstanding IC 8-14.5-5-2(a)(2), a lease under this chapter
 12 may be extended from biennium to biennium, with the extensions
 13 not to exceed a lease term of ~~seventy-five (75)~~ **fifty (50)** years
 14 unless the department gives notice of nonextension at least six (6)
 15 months before the end of the biennium, in which event the lease
 16 expires at the end of the biennium in which the notice is given.

17 SECTION 29. IC 8-15.7-13-1, AS ADDED BY P.L.47-2006,
 18 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 UPON PASSAGE]: Sec. 1. The term of a public-private agreement,
 20 including all extensions, may not exceed ~~seventy-five (75)~~ **fifty (50)**
 21 years. For purposes of measuring the term, the term begins on the date
 22 on which operations of a part of the qualifying project by the operator
 23 commences.

24 SECTION 30. IC 8-15.5-4-13 IS REPEALED [EFFECTIVE UPON
 25 PASSAGE].

26 SECTION 31. [EFFECTIVE UPON PASSAGE] **This act applies**
 27 **only to public-private agreements entered into under IC 8-15.5 or**
 28 **IC 8-15.7 after March 14, 2010.**

29 SECTION 32. **An emergency is declared for this act.**

(Reference is to HB 1369 as introduced.)

and when so amended that said bill do pass.

Representative Bartlett