

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 473 be amended to read as follows:

- 1 Page 4, between lines 30 and 31, begin a new paragraph and insert:
- 2 "SECTION 5. IC 8-15.5-5-3, AS ADDED BY P.L.47-2006,
- 3 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2011]: Sec. 3. (a) In addition to the requirements of section 2
- 5 of this chapter, a public-private agreement may include additional
- 6 provisions concerning the following:
- 7 (1) Review and approval by the authority of the operator's plans
- 8 for the development and operation of the toll road project.
- 9 (2) Inspection by the authority of construction of or improvements
- 10 to the toll road project.
- 11 (3) Maintenance by the operator of a policy or policies of public
- 12 liability insurance (copies of which shall be filed with the
- 13 authority, accompanied by proofs of coverage) or self-insurance,
- 14 each in a form and amount satisfactory to the authority to insure
- 15 coverage of tort liability to the public and employees and to
- 16 enable the continued operation of the toll road project.
- 17 (4) Filing by the operator, on a periodic basis, of appropriate
- 18 financial statements in a form acceptable to the authority.
- 19 (5) Filing by the operator, on a periodic basis, of appropriate
- 20 traffic reports in a form acceptable to the authority.
- 21 (6) Payments to the operator. **Subject to subsection (b)**, these
- 22 payments may consist of one (1) or more of the following:
- 23 (A) The retention by the operator of the revenues collected by
- 24 the operator in the operation and management of the toll road

- 1 project.
- 2 (B) Payments made to the operator by the authority.
- 3 (C) Other sources of payment or revenue to the operator, if
- 4 any.
- 5 (7) Financing obligations of the operator and the authority,
- 6 including entering into agreements for the benefit of the financing
- 7 parties.
- 8 (8) Apportionment of expenses between the operator and the
- 9 authority.
- 10 (9) The rights and duties of the operator, the authority, and other
- 11 state and local governmental entities with respect to use of the toll
- 12 road project, including the state police department and other law
- 13 enforcement and public safety agencies.
- 14 (10) Arbitration or other dispute resolution mechanisms or
- 15 remedies for the settlement of claims and other disputes arising
- 16 under the agreement.
- 17 (11) Payment of money to either party upon default or delay, or
- 18 upon termination of the public-private agreement, with the
- 19 payments to be used:
- 20 (A) in the form of liquidated damages to compensate the
- 21 operator for demonstrated unamortized costs, lost profits, or
- 22 other amounts as provided in the agreement;
- 23 (B) to retire or refinance indebtedness related to the toll road
- 24 project or the public-private agreement; or
- 25 (C) for any other purpose mutually agreeable to the operator
- 26 and the authority.
- 27 (12) Indemnification of the operator by the authority under
- 28 conditions specified in the agreement.
- 29 (13) Assignment, subcontracting, or other delegation of
- 30 responsibilities of the operator or the authority under the
- 31 agreement to third parties, including other private entities, the
- 32 department, and other state agencies.
- 33 (14) Sale or lease to the operator of personal property related to
- 34 the toll road project.
- 35 (15) Other lawful terms and conditions to which the operator and
- 36 the authority mutually agree.
- 37 **(b) This subsection applies to a public-private agreement**
- 38 **entered into after June 30, 2011. A public-private agreement,**
- 39 **including any amendment to a public-private agreement, may not**
- 40 **obligate or permit the department, the authority, or any other**
- 41 **governmental entity or instrumentality to reimburse an operator**
- 42 **or another private entity for:**
- 43 **(1) lost tolls or other user fees; or**
- 44 **(2) the difference between the actual amount of any tolls or**
- 45 **other user fees collected and any amount of any tolls or other**
- 46 **user fees projected in any way, regardless of whether the**

1 **projection is called an estimate, a forecast, or any other name,**
 2 **for the same period."**

3 Page 13, between lines 7 and 8, begin a new paragraph and insert:
 4 "SECTION 12. IC 8-15.7-5-1, AS ADDED BY P.L.47-2006,
 5 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2011]: Sec. 1. (a) Before beginning:

- 7 (1) the development;
 8 (2) the financing;
 9 (3) the operation; or
 10 (4) any combination of the development, financing, or operation;
 11 of a qualifying project, the operator must enter into a public-private
 12 agreement with the department. Subject to the other provisions of this
 13 article, the department and a private entity may enter into a
 14 public-private agreement with respect to a project. Subject to the
 15 requirements of this article, a public-private agreement may provide
 16 that the private entity, acting on behalf of the department or the
 17 authority, is partially or entirely responsible for any combination of
 18 developing, financing, or operating the qualifying project.

19 (b) The public-private agreement may, as determined appropriate by
 20 the department for the particular qualifying project, provide for all or
 21 part of the following:

- 22 (1) Delivery of performance and payment bonds or other
 23 performance security determined suitable by the department,
 24 including letters of credit, United States bonds and notes, parent
 25 guaranties, and cash collateral, in connection with the
 26 development, financing, or operation of the qualifying project, in
 27 the forms and amounts set forth in the public-private agreement
 28 or otherwise determined as satisfactory by the department to
 29 protect the department and payment bond beneficiaries who have
 30 a direct contractual relationship with the operator or a
 31 subcontractor of the operator to supply labor or material. A
 32 payment or performance bond or alternative form of performance
 33 security required under a public-private agreement shall not be
 34 required for the part of a public-private agreement that includes
 35 only design, planning, or financing services, the performance of
 36 preliminary studies, or the acquisition of real property.
 37 (2) Review of plans for any development or operation, or both, of
 38 the qualifying project by the department.
 39 (3) Inspection of any construction of or improvements to the
 40 qualifying project by the department or another entity designated
 41 by the department or under the public-private agreement to ensure
 42 that the construction or improvements conform to the standards
 43 set forth in the public-private agreement or are otherwise
 44 acceptable to the department.
 45 (4) Maintenance of:
 46 (A) one (1) or more policies of public liability insurance

- 1 (copies of which shall be filed with the department
2 accompanied by proofs of coverage); or
3 (B) self-insurance;
4 each in the form and amount required by the public-private
5 agreement or otherwise satisfactory to the department as
6 reasonably sufficient to insure coverage of tort liability to the
7 public and employees and to enable the continued operation of the
8 qualifying project.
- 9 (5) If operations are included within the operator's obligations
10 under the public-private agreement, monitoring of the
11 maintenance practices of the operator by the department or
12 another entity designated by the department or under the
13 public-private agreement, and the taking of the actions that the
14 department finds appropriate to ensure that the qualifying project
15 is properly maintained.
- 16 (6) Reimbursement to be paid to the department as set forth in the
17 public-private agreement for services provided by the department.
- 18 (7) Filing of appropriate financial statements and reports as set
19 forth in the public-private agreement or as otherwise in a form
20 acceptable to the department on a periodic basis.
- 21 (8) Compensation or payments to the operator, attorneys, bankers,
22 financial advisors, or other professionals. **Subject to subsection**
23 **(d)**, compensation or payments may include one (1) or more of the
24 following:
- 25 (A) A development fee, payable on a lump sum basis, progress
26 payment basis, time and materials basis, or any other basis
27 considered appropriate by the department.
- 28 (B) An operations fee, payable on a lump sum basis, time and
29 material basis, periodic basis, or any other basis considered
30 appropriate by the department.
- 31 (C) All or part of the revenues, if any, arising out of operation
32 of the qualifying project.
- 33 (D) A maximum rate of return on investment or return on
34 equity or a combination of the two (2).
- 35 (E) In kind services, materials, property, equipment, or other
36 items.
- 37 (F) Compensation in the event of any termination.
- 38 (G) A cash payment to pay part of the project cost.
- 39 (H) Other compensation set forth in the public-private
40 agreement or otherwise considered appropriate by the
41 department.
- 42 (9) Compensation or payments to the department, if any.
43 Compensation or payments may include one (1) or more of the
44 following:
- 45 (A) A concession payment, lease payment, or other fee, which
46 may be payable in a lump sum, on a periodic basis, or on any

- 1 other basis considered appropriate by the department.
 2 (B) Sharing of revenues, if any, from the operation of the
 3 qualifying project.
 4 (C) Payment for any services, materials, equipment, personnel,
 5 or other items provided by the department to the operator
 6 under the public-private agreement or in connection with the
 7 qualifying project.
 8 (D) Other compensation set forth in the public-private
 9 agreement or otherwise considered appropriate by the
 10 department.
- 11 (10) The date and terms of termination of the operator's authority
 12 and duties under this article, and circumstances under which the
 13 operator's authority and duties may be terminated before that date.
 14 (11) Reversion of the qualifying project to the department at the
 15 termination or expiration of the public-private agreement.
 16 (12) Rights and remedies of the department if the operator
 17 defaults or otherwise fails to comply with the terms of the
 18 public-private agreement.
- 19 (c) A public-private agreement may not provide that the state or the
 20 department is responsible for any debt incurred by an operator in
 21 connection with the delivery of a project.
- 22 **(d) This subsection applies to a public-private agreement**
 23 **entered into after June 30, 2011. A public-private agreement,**
 24 **including any amendment to a public-private agreement, may not**
 25 **obligate or permit the department, the authority, or any other**
 26 **governmental entity or instrumentality to reimburse an operator**
 27 **or another private entity for:**
 28 **(1) lost tolls or other user fees; or**
 29 **(2) the difference between the actual amount of any tolls or**
 30 **other user fees collected and any amount of any tolls or other**
 31 **user fees projected in any way, regardless of whether the**
 32 **projection is called an estimate, a forecast, or any other name,**
 33 **for the same period."**
- 34 Renumber all SECTIONS consecutively.
 (Reference is to ESB 473 as printed April 8, 2011.)

Representative Austin