

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Appropriations, to which was referred Senate Bill No. 473, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 2, reset in roman lines 37 through 42.
- 2 Page 2, line 37, after "(1)" insert "**This subdivision does not apply**
- 3 **before July 1, 2015.**".
- 4 Page 3, reset in roman lines 1 through 5.
- 5 Page 3, line 6, reset in roman "(2)".
- 6 Page 3, line 6, delete "(1)".
- 7 Page 3, line 10, reset in roman "(3)".
- 8 Page 3, line 10, delete "(2)".
- 9 Page 3, reset in roman lines 27 through 32.
- 10 Page 3, line 33, reset in roman "after".
- 11 Page 3, line 33, after "August 1, 2006," insert "**June 30, 2015,**".
- 12 Page 3, line 33, reset in roman "neither the authority nor the
- 13 department may:".
- 14 Page 3, reset in roman lines 34 through 39.
- 15 Page 3, line 40, reset in roman "(c)".
- 16 Page 3, line 40, delete "(b)".
- 17 Page 4, between lines 9 and 10, begin a new paragraph and insert:
- 18 "SECTION 4. IC 8-15.5-4-11, AS ADDED BY P.L.47-2006,
- 19 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 20 JULY 1, 2011]: Sec. 11. (a) After the procedures required in this

1 chapter have been completed, the authority shall make a determination
 2 as to whether the offeror that submitted the selected offer should be
 3 designated as the operator for the related toll road project and shall
 4 submit the authority's determination to the governor and the budget
 5 committee.

6 (b) After review of the authority's determination by the budget
 7 committee, the governor may accept or reject the determination of the
 8 authority. If the governor accepts the determination of the authority, the
 9 governor shall designate the offeror who submitted the selected offer
 10 as the operator for the related toll road project. The authority shall
 11 publish notice of the designation of the operator for the related toll road
 12 project one (1) time, in accordance with IC 5-3-1.

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

16 **(d) The budget committee shall hold a meeting and conduct a**
 17 **review of the determination not later than ninety (90) days after**
 18 **the date the authority's determination is submitted for review.**

19 SECTION 5. IC 8-15.5-10-3, AS ADDED BY P.L.47-2006,
 20 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2011]: Sec. 3. (a) The authority may pay any amounts owed
 22 by the authority under a public-private agreement entered into under
 23 this article from any funds available to the authority under this article
 24 or any other statute.

25 (b) Subject to review by the budget committee established by
 26 IC 4-12-1-3 and approval by the budget director appointed under
 27 IC 4-12-1-3, a public-private agreement entered into under this article
 28 may:

29 (1) establish a procedure for the authority or a person acting on
 30 behalf of the authority to certify to the general assembly the
 31 amount needed to pay any amounts owed by the authority under
 32 a public-private agreement; or

33 (2) otherwise create a moral obligation of the state to pay any
 34 amounts owed by the authority under the public-private
 35 agreement.

36 (c) The authority may issue bonds under IC 4-4-11 or IC 8-15-2 to
 37 provide funds for any amounts identified under this section without
 38 complying with IC 8-9.5-8-10.

39 **(d) If the agreement that is submitted for review provides for**
 40 **any tolls, the budget committee shall hold a meeting and conduct**
 41 **a review of the agreement not later than ninety (90) days after the**
 42 **date the agreement is submitted for review."**

1 Page 4, reset in roman lines 24 through 33.

2 Page 4, line 24, after "(1)" insert "**This subdivision does not apply**
3 **before July 1, 2015.**".

4 Page 4, line 34, reset in roman "(2)".

5 Page 4, line 34, delete "(1)".

6 Page 4, line 38, reset in roman "(3)".

7 Page 4, line 38, delete "(2)".

8 Page 5, between lines 10 and 11, begin a new paragraph and insert:
9 "SECTION 7. IC 8-15.7-4-1, AS AMENDED BY P.L.85-2010,
10 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2011]: Sec. 1. (a) The department may request proposals from
12 private entities for all or part of the development, financing, and
13 operation of one (1) or more projects.

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

17 (1) Except as provided by subsection (c), the department shall
18 cause to be prepared a preliminary feasibility study and an
19 economic impact study on that part of the project consisting of a
20 tollway by a firm or firms internationally recognized in the
21 preparation of studies or reports on the financial feasibility and
22 economic impact of proposed toll road projects. Before the
23 preparation of the preliminary feasibility study and the economic
24 impact study, the department must conduct a public hearing on
25 the proposed studies in the county seat of the county in which the
26 proposed project would be located. At least ten (10) days before
27 each public hearing, the authority shall:

28 (A) post notice of the public hearing on the department's
29 Internet web site;

30 (B) publish notice of the public hearing one (1) time in
31 accordance with IC 5-3-1 in two (2) newspapers of general
32 circulation in the county in which the proposed project would
33 be located; and

34 (C) include in the notices under clauses (A) and (B):

35 (i) the date, time, and place of the hearing;

36 (ii) the subject matter of the hearing;

37 (iii) a description of the purpose of the proposed preliminary
38 feasibility study and economic impact study; and

39 (iv) a description of the proposed project and its location.

40 At the hearing, the department shall allow the public to be heard
41 on the proposed studies and the proposed project.

42 (2) The preliminary feasibility study must be based upon a

1 public-private financial and project delivery structure. The
 2 economic impact study must, at a minimum, include an analysis
 3 of the following matters with respect to the proposed project:

4 (A) Economic impacts on existing commercial and industrial
 5 development.

6 (B) Potential impacts on employment.

7 (C) Potential for future development near the project area,
 8 including consideration of locations for interchanges that will
 9 maximize opportunities for development.

10 (D) Fiscal impacts on revenues to local units of government.

11 (E) Demands on government services, such as public safety,
 12 public works, education, zoning and building, and local
 13 airports.

14 The department shall post copies of the preliminary feasibility
 15 study and the economic impact study on the department's Internet
 16 web site and shall also provide copies of the studies to the
 17 governor and to the legislative council (in an electronic format
 18 under IC 5-14-6).

19 (3) After the completion of the preliminary feasibility study and
 20 the economic impact statement, the department shall schedule a
 21 public hearing on the proposed project and the studies in the
 22 county seat of the county that would be an affected jurisdiction for
 23 purposes of the proposed project. At least ten (10) days before the
 24 public hearing, the department shall:

25 (A) post notice of the public hearing on the department's
 26 Internet web site;

27 (B) publish notice of the hearing one (1) time in accordance
 28 with IC 5-3-1 in two (2) newspapers of general circulation in
 29 the county; and

30 (C) include the following in the notices under clauses (A) and
 31 (B):

32 (i) The date, time, and place of the hearing.

33 (ii) The subject matter of the hearing.

34 (iii) A description of the proposed project, its location, the
 35 part of the project consisting of a tollway, and, consistent
 36 with the assessments reached in the preliminary feasibility
 37 study, the estimated total cost of the acquisition,
 38 construction, installation, equipping, and improving of the
 39 proposed project, as well as the part of the project consisting
 40 of a tollway.

41 (iv) The address and telephone number of the department.

42 (v) A statement concerning the availability of the

1 preliminary feasibility study and the economic impact study
2 on the department's Internet web site.

3 (4) At the hearing, the department shall allow the public to be
4 heard on the proposed project, the preliminary feasibility study,
5 and the economic impact study.

6 (5) After the completion of the public hearings described in
7 subdivision (3), the department shall submit the preliminary
8 feasibility study and the economic impact study to the budget
9 committee for its review before the commencement of the
10 procurement process under this chapter. **If the preliminary
11 feasibility study or the economic impact study submitted for
12 review provides for any tolls, the budget committee shall hold
13 a meeting and conduct a review of the preliminary feasibility
14 study and the economic impact study not later than ninety
15 (90) days after the date the preliminary feasibility study and
16 the economic impact study are submitted for review.**

17 (c) The following provisions apply if the department determines that
18 a feasibility study for the Illiana Expressway that was prepared before
19 March 15, 2010, meets the requirements of subsection (b) concerning
20 the preparation of a preliminary feasibility study:

21 (1) The department is not required to prepare an additional
22 preliminary feasibility study.

23 (2) The requirement under subsection (b)(1) for a public hearing
24 before preparation of a preliminary feasibility study does not
25 apply. However, the requirement under subsection (b)(1) for a
26 public hearing on the economic impact study does apply.

27 (3) The feasibility study prepared before March 15, 2010, is
28 considered to be the preliminary feasibility study for purposes of
29 subsection (b)(3) through (b)(5).

30 SECTION 8. IC 8-15.7-4-2, AS AMENDED BY P.L.85-2010,
31 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2011]: Sec. 2. (a) This section establishes the competitive
33 proposal procedure that the department shall use to enter into a
34 public-private agreement with an operator under this article.

35 (b) The department may pursue a competitive proposal procedure
36 using a request for qualifications and a request for proposals process or
37 proceed directly to a request for proposals.

38 (c) If the department elects to use a request for qualifications phase,
39 it must provide a public notice of the request for qualifications, for the
40 period considered appropriate by the department, before the date set for
41 receipt of submittals in response to the solicitation. The department
42 shall provide the notice by posting in a designated public area and

1 publication in a newspaper of general circulation, in the manner
2 provided by IC 5-3-1. In addition, submittals in response to the
3 solicitation may be solicited directly from potential offerors.

4 (d) The department shall evaluate qualification submittals based on
5 the requirements and evaluation criteria set forth in the request for
6 qualifications.

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

11 (f) If the department has not issued a request for qualifications and
12 intends to use only a one (1) phase request for proposals procurement,
13 the department must provide a public notice of the request for
14 proposals for the period considered appropriate by the department,
15 before the date set for receipt of proposals. The department shall
16 provide the notice by posting in a designated public area and
17 publication in a newspaper of general circulation, in the manner
18 provided by IC 5-3-1. In addition, proposals may be solicited directly
19 from potential offerors.

20 (g) The department shall submit a draft of the request for proposals
21 to the budget committee for its review before the issuance by the
22 department of the request for proposals to potential offerors. The
23 request for proposals must:

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

26 (2) contain or incorporate by reference the specifications and
27 contractual terms and conditions applicable to the procurement
28 and the qualifying project;

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

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

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

34 (B) disadvantaged business enterprises under federal or state
35 law;

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

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

41 (5) if all or part of the project will consist of a tollway, require any
42 offeror to submit a proposal based upon that part of the project

1 that will consist of a tollway, as set forth in the request for
2 proposals, and permit any offeror to submit one (1) or more
3 alternative proposals based upon the assumption that a different
4 part or none of the project will consist of a tollway;

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

7 (7) contain or incorporate by reference any other provisions,
8 materials, or documents that the department considers
9 appropriate.

10 **If the draft of the request for proposals submitted for review**
11 **provides for any tolls, the budget committee shall hold a meeting**
12 **and conduct a review of the draft of the request for proposals not**
13 **later than ninety (90) days after the date the draft request for**
14 **proposals is submitted for review.**

15 (h) The department shall determine the evaluation criteria that are
16 appropriate for each project and shall set those criteria forth in the
17 request for proposals. The department may use a selection process that
18 results in selection of the proposal offering the best value to the public,
19 a selection process that results in selection of the proposal offering the
20 lowest price or cost or the highest payment to, or revenue sharing with,
21 the department, or any other selection process that the department
22 determines is in the best interests of the state and the public.

23 (i) The department shall evaluate proposals based on the
24 requirements and evaluation criteria set forth in the request for
25 proposals.

26 (j) The department may select one (1) or more offerors for
27 negotiations based on the evaluation criteria set forth in the request for
28 proposals. If the department believes that negotiations with the selected
29 offeror or offerors are not likely to result in a public-private agreement,
30 or, in the case of a best value selection process, no longer reflect the
31 best value to the state and the public, the department may commence
32 negotiations with other responsive offerors, if any, and may suspend,
33 terminate, or continue negotiations with the original offeror or offerors.
34 If negotiations are unsuccessful, the department shall terminate the
35 procurement, may not award the public-private agreement, and may
36 commence a new procurement for a public-private agreement. If the
37 department determines that negotiations with an offeror have been
38 successfully completed, the department shall, subject to the other
39 requirements of this article, award the public-private agreement to the
40 offeror.

41 (k) Before awarding a public-private agreement to an operator, the
42 department shall schedule a public hearing on the preliminary selection

- 1 of the operator and the terms of the proposed public-private agreement.
 2 The hearing shall be conducted in the county seat of the county that
 3 would be an affected jurisdiction for purposes of the proposed project.
 4 The department shall do the following:
- 5 (1) At least ten (10) days before the public hearing, post on the
 6 department's Internet web site:
 - 7 (A) the proposal submitted by the offeror that has been
 8 preliminarily selected as the operator for the project, except for
 9 those parts of the proposal that are confidential under this
 10 article; and
 - 11 (B) the proposed public-private agreement for the project.
 - 12 (2) At least ten (10) days before the public hearing:
 - 13 (A) post notice of the public hearing on the department's
 14 Internet web site; and
 - 15 (B) publish notice of the hearing one (1) time in accordance
 16 with IC 5-3-1 in two (2) newspapers of general circulation in
 17 the county that would be an affected jurisdiction for purposes
 18 of the proposed project.
 - 19 (3) Include the following in the notices required by subdivision
 20 (2):
 - 21 (A) The date, time, and place of the hearing.
 - 22 (B) The subject matter of the hearing.
 - 23 (C) A description of the agreement to be awarded.
 - 24 (D) The recommendation that has been made to award the
 25 agreement to an identified offeror or offerors.
 - 26 (E) The address and telephone number of the department.
 - 27 (F) A statement indicating that, subject to section 6 of this
 28 chapter, and except for those portions that are confidential
 29 under IC 5-14-3, the following are available on the
 30 department's Internet web site and are also available for public
 31 inspection and copying at the principal office of the
 32 department during regular business hours:
 - 33 (i) The selected offer.
 - 34 (ii) An explanation of the basis upon which the preliminary
 35 selection was made.
 - 36 (iii) The proposed public-private agreement for the project.
 - 37 (l) At the hearing, the department shall allow the public to be heard
 38 on the preliminary selection of the operator and the terms of the
 39 proposed public-private agreement.
 - 40 (m) When the terms and conditions of multiple awards are specified
 41 in the request for proposals, awards may be made to more than one (1)
 42 offeror.

1 SECTION 9. IC 8-15.7-4-3, AS ADDED BY P.L.47-2006,
 2 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2011]: Sec. 3. (a) After the procedures required in this chapter
 4 have been completed, the department shall make a determination as to
 5 whether the successful offeror should be designated as the operator for
 6 the project and shall submit its decision to the governor and the budget
 7 committee.

8 (b) After review of the department's determination by the budget
 9 committee, the governor may accept or reject the determination of the
 10 department. If the governor accepts the determination of the
 11 department, the governor shall designate the successful offeror as the
 12 operator for the project. The department shall publish notice of the
 13 designation of the operator one (1) time, in accordance with IC 5-3-1.

14 (c) After the designation of the successful offeror as the operator for
 15 the project, the department may execute the public-private agreement.

16 (d) An action to contest the validity of a public-private agreement
 17 entered into under this chapter may not be brought after the fifteenth
 18 day following the publication of the notice of the designation of the
 19 operator under the public-private agreement under subsection (b).

20 **(e) If the department's determination submitted for review**
 21 **provides for any tolls, the budget committee shall hold a meeting**
 22 **and conduct a review of the determination not later than ninety**
 23 **(90) days after the date the determination is submitted for review.**

24 SECTION 10. IC 8-15.7-8-6, AS ADDED BY P.L.47-2006,
 25 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2011]: Sec. 6. (a) For the purpose of financing a qualifying
 27 project, the authority may enter into agreements, leases, or subleases
 28 with the department or an operator, or both, and do the following:

29 (1) Issue bonds, debt, or other obligations under IC 4-4-11,
 30 IC 8-15-2, or IC 8-15.7-9.

31 (2) Enter into loan agreements or other credit facilities.

32 (3) Secure any financing with a pledge of, security interest in, or
 33 lien on all or part of a property subject to the agreement, including
 34 all of the party's property interests in the qualifying project.

35 (4) Subject to review by the budget committee established in
 36 IC 4-12-1-3 and approval by the budget director appointed under
 37 IC 4-12-1-3:

38 (A) establish a procedure for the authority or a person acting
 39 on behalf of the authority to certify to the general assembly the
 40 amount needed to pay costs incurred under a public-private
 41 agreement; or

42 (B) otherwise create a moral obligation of the state to pay all

1 or part of any costs incurred by the authority under a
2 public-private agreement.

3 (b) The department and an operator may transfer any interest in
4 property that the department or operator has to the authority to secure
5 the financing.

6 **(c) If items submitted for review under subsection (a)(4) provide**
7 **for any tolls, the budget committee shall hold a meeting and**
8 **conduct a review of the items not later than ninety (90) days after**
9 **the date the items are submitted for review."**

10 Page 5, reset in roman lines 28 through 39.

11 Page 5, line 28, after "(1)" insert "**This subdivision does not apply**
12 **before July 1, 2015."**

13 Page 5, line 40, reset in roman "(2)".

14 Page 5, line 40, delete "(1)".

15 Page 6, line 2, reset in roman "(3)".

16 Page 6, line 2, delete "(2)".

17 Renumber all SECTIONS consecutively.

(Reference is to SB 473 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 9, Nays 3.

Senator Kenley, Chairperson