



Reprinted
February 1, 2006

HOUSE BILL No. 1008

DIGEST OF HB 1008 (Updated January 25, 2006 12:25 pm - DI 44)

Citations Affected: IC 4-4; IC 4-22; IC 8-14; IC 8-15; IC 8-15.5; IC 8-15.7; IC 8-23; IC 9-13; IC 9-21; IC 34-13; IC 36-7.6; noncode.

Synopsis: Public-private agreements for transportation. Establishes the major moves construction fund. Provides for the distribution of \$50,000,000 per year during 2006, 2007, and 2008 from the major moves construction fund to the motor vehicle highway account (MVHA). Provides that this money is to be distributed to counties, cities, and towns and used for the same purposes as other distributions that counties, cities, and towns receive from the MVHA. Amends the current laws concerning toll roads and tollways and adds new provisions to authorize the finance authority (authority) to enter into public-private agreements with private entities (operators) concerning: (1) toll road projects; and (2) tollway projects, roads, and bridges.
(Continued next page)

Effective: Upon passage; July 1, 2006.

**Borrer, Duncan, Torr, Buck, Davis,
Cherry, Crouch, Woodruff**

January 10, 2006, read first time and referred to Committee on Ways and Means.
January 25, 2006, amended, reported — Do Pass; Roll Call 42: yeas 50, nays 46.
January 31, 2006, read second time, amended, ordered engrossed.

C
o
p
y



Provides that the public-private agreements may be for any combination of the planning, acquisition, construction, improvement, extension, operation, repair, maintenance, and financing of projects. Provides that a public-private agreement is subject to the approval of the governor after review by the budget committee. Establishes procedures for selection of operators by the authority. Permits the authority to establish user fees and tolls, including maximum tolls and user fees and criteria for the adjustment of those maximums. Provides that, with the approval of the budget director after review by the budget committee, a public-private agreement may include a moral obligation of the state to pay certain costs incurred under the agreement. Provides that a public-private agreement may include provisions concerning electronic toll collection systems and photo or video based toll collection enforcement systems. Authorizes the authority to adopt emergency rules concerning user fees under a public-private agreement and enforcement procedures and assessments for failure to pay required tolls, including electronic and photo or video based collection enforcement. Provides that certain payments required to be made to the northwest Indiana regional development authority (RDA) upon the sale or lease of the Indiana toll road may be made from the state general fund or the proceeds of a public-private agreement (current law provides for payment only from the state general fund). Provides that property leased or acquired by an operator for a public-private project is exempt from property taxes. Provides that an operator's income from a public-private agreement is subject to taxation in the same manner as income received by other private entities. Provides that revenues from a public-private agreement with respect to a toll road shall be deposited in the toll road fund and used to: (1) retire certain outstanding bonds and pay amounts owed by the authority with respect to a public-private agreement; (2) fund projects identified in the department of transportation (INDOT) long range comprehensive transportation plan; (3) fund roads, bridges, public transit facilities and equipment, airports, and other projects designed to facilitate the movement of people, goods, services, and information in the counties that are traversed by a toll road project and the cities and towns in those counties; and (4) fund distributions to the RDA or fund other projects authorized to be undertaken by RDA under existing law. Provides that money remaining in the toll road fund after all other required distributions shall be transferred to the major moves construction fund. Provides for the distribution of revenues from a public-private agreement with respect to a tollway to the major moves construction fund, to the state highway fund, to INDOT for use on other projects designated by INDOT, or to the operator, the authority, or INDOT for debt reduction. Prohibits the operator under a public-private agreement or a person having an interest in the operator from making political contributions to state, local, or legislative candidates or certain political committees. Makes technical corrections and conforming amendments. Validates any action taken with respect to public-private agreements entered into by the authority before the effective date of this bill that would have been valid under this bill. Requires the state board of accounts to audit the accounts and records concerning the operation of each toll road project by the authority for each state fiscal year beginning after June 30, 1996, and ending before July 1, 2006.

**C
O
P
Y**



Reprinted
February 1, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

C
O
P
Y

HOUSE BILL No. 1008

A BILL FOR AN ACT to amend the Indiana Code concerning transportation and to make an appropriation.

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

1 SECTION 1. IC 4-4-10.9-1.2, AS ADDED BY P.L.235-2005,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 1.2. "Affected statutes" means all statutes that
4 grant a power to or impose a duty on the authority, including but not
5 limited to IC 4-4-11, **IC 4-4-11.4**, IC 4-4-21, IC 4-13.5, IC 8-1-33,
6 IC 8-9.5, IC 8-14.5, IC 8-15, **IC 8-15.5**, IC 8-16, IC 13-18-13,
7 IC 13-18-21, IC 13-19-5, IC 14-14, and IC 15-7-5.

8 SECTION 2. IC 4-4-11-15.6, AS ADDED BY P.L.214-2005,
9 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2006]: Sec. 15.6. In addition to the powers listed in section 15
11 of this chapter, the authority may:

12 (1) issue bonds under terms and conditions determined by the
13 authority and use the proceeds of the bonds to acquire obligations
14 issued by any entity authorized to acquire, finance, construct, or
15 lease capital improvements under IC 5-1-17; ~~and~~

HB 1008—LS 7108/DI 44+



- 1 (2) issue bonds under terms and conditions determined by the
- 2 authority and use the proceeds of the bonds to acquire any
- 3 obligations issued by the northwest Indiana regional development
- 4 authority established by IC 36-7.5-2-1; **and**
- 5 **(3) issue bonds under terms and conditions determined by the**
- 6 **authority and use the proceeds of the bonds to acquire any**
- 7 **obligations issued by the northeast Indiana regional**
- 8 **development authority established by IC 36-7.6-2-1.**

9 SECTION 3. IC 4-22-2-37.1, AS AMENDED BY P.L.235-2005,
 10 SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 UPON PASSAGE]: Sec. 37.1. (a) This section applies to a rulemaking
 12 action resulting in any of the following rules:

- 13 (1) An order adopted by the commissioner of the Indiana
- 14 department of transportation under IC 9-20-1-3(d) or
- 15 IC 9-21-4-7(a) and designated by the commissioner as an
- 16 emergency rule.
- 17 (2) An action taken by the director of the department of natural
- 18 resources under IC 14-22-2-6(d) or IC 14-22-6-13.
- 19 (3) An emergency temporary standard adopted by the
- 20 occupational safety standards commission under
- 21 IC 22-8-1.1-16.1.
- 22 (4) An emergency rule adopted by the solid waste management
- 23 board under IC 13-22-2-3 and classifying a waste as hazardous.
- 24 (5) A rule, other than a rule described in subdivision (6), adopted
- 25 by the department of financial institutions under IC 24-4.5-6-107
- 26 and declared necessary to meet an emergency.
- 27 (6) A rule required under IC 24-4.5-1-106 that is adopted by the
- 28 department of financial institutions and declared necessary to
- 29 meet an emergency under IC 24-4.5-6-107.
- 30 (7) A rule adopted by the Indiana utility regulatory commission to
- 31 address an emergency under IC 8-1-2-113.
- 32 (8) An emergency rule adopted by the state lottery commission
- 33 under IC 4-30-3-9.
- 34 (9) A rule adopted under IC 16-19-3-5 that the executive board of
- 35 the state department of health declares is necessary to meet an
- 36 emergency.
- 37 (10) An emergency rule adopted by the Indiana ~~transportation~~
- 38 ~~finance~~ authority under IC 8-21-12.
- 39 (11) An emergency rule adopted by the insurance commissioner
- 40 under IC 27-1-23-7.
- 41 (12) An emergency rule adopted by the Indiana horse racing
- 42 commission under IC 4-31-3-9.

C
o
p
y



- 1 (13) An emergency rule adopted by the air pollution control
- 2 board, the solid waste management board, or the water pollution
- 3 control board under IC 13-15-4-10(4) or to comply with a
- 4 deadline required by federal law, provided:
- 5 (A) the variance procedures are included in the rules; and
- 6 (B) permits or licenses granted during the period the
- 7 emergency rule is in effect are reviewed after the emergency
- 8 rule expires.
- 9 (14) An emergency rule adopted by the Indiana election
- 10 commission under IC 3-6-4.1-14.
- 11 (15) An emergency rule adopted by the department of natural
- 12 resources under IC 14-10-2-5.
- 13 (16) An emergency rule adopted by the Indiana gaming
- 14 commission under IC 4-33-4-2, IC 4-33-4-3, or IC 4-33-4-14.
- 15 (17) An emergency rule adopted by the alcohol and tobacco
- 16 commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or
- 17 IC 7.1-3-20-24.4.
- 18 (18) An emergency rule adopted by the department of financial
- 19 institutions under IC 28-15-11.
- 20 (19) An emergency rule adopted by the office of the secretary of
- 21 family and social services under IC 12-8-1-12.
- 22 (20) An emergency rule adopted by the office of the children's
- 23 health insurance program under IC 12-17.6-2-11.
- 24 (21) An emergency rule adopted by the office of Medicaid policy
- 25 and planning under IC 12-15-41-15.
- 26 (22) An emergency rule adopted by the Indiana state board of
- 27 animal health under IC 15-2.1-18-21.
- 28 (23) An emergency rule adopted by the board of directors of the
- 29 Indiana education savings authority under IC 21-9-4-7.
- 30 (24) An emergency rule adopted by the Indiana board of tax
- 31 review under IC 6-1.1-4-34.
- 32 (25) An emergency rule adopted by the department of local
- 33 government finance under IC 6-1.1-4-33.
- 34 (26) An emergency rule adopted by the boiler and pressure vessel
- 35 rules board under IC 22-13-2-8(c).
- 36 (27) An emergency rule adopted by the Indiana board of tax
- 37 review under IC 6-1.1-4-37(l) or an emergency rule adopted by
- 38 the department of local government finance under
- 39 IC 6-1.1-4-36(j) or IC 6-1.1-22.5-20.
- 40 (28) An emergency rule adopted by the board of the Indiana
- 41 economic development corporation under IC 5-28-5-8.
- 42 (29) A rule adopted by the department of financial institutions

COPY



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

under IC 34-55-10-2.5.

(30) A rule adopted by the Indiana finance authority:

(A) under IC 8-15.5-7 approving user fees (as defined in IC 8-15.5-2-10) provided for in a public-private agreement under IC 8-15.5;

(B) under IC 8-15-2-17.2(a)(10):

(i) establishing enforcement procedures; and

(ii) making assessments for failure to pay required tolls;

or

(C) to make other changes to existing rules related to a toll road project to accommodate the provisions of a public-private agreement under IC 8-15.5.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the secretary of state shall:

(1) accept the rule for filing; and

(2) file stamp and indicate the date and time that the rule is accepted on every duplicate original copy submitted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the rule.

(2) The date and time that the rule is accepted for filing under subsection (e).

(3) The effective date stated by the adopting agency in the rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6,

C
O
P
Y



1 IC 22-8-1.1-16.1, and IC 22-13-2-8(c), and except as provided in
 2 subsections (j), ~~and~~ (k), **and (l)**, a rule adopted under this section
 3 expires not later than ninety (90) days after the rule is accepted for
 4 filing under subsection (e). Except for a rule adopted under subsection
 5 (a)(13), (a)(24), (a)(25), or (a)(27), the rule may be extended by
 6 adopting another rule under this section, but only for one (1) extension
 7 period. The extension period for a rule adopted under subsection
 8 (a)(28) may not exceed the period for which the original rule was in
 9 effect. A rule adopted under subsection (a)(13) may be extended for
 10 two (2) extension periods. Subject to subsection (j), a rule adopted
 11 under subsection (a)(24), (a)(25), or (a)(27) may be extended for an
 12 unlimited number of extension periods. Except for a rule adopted under
 13 subsection (a)(13), for a rule adopted under this section to be effective
 14 after one (1) extension period, the rule must be adopted under:

- 15 (1) sections 24 through 36 of this chapter; or
- 16 (2) IC 13-14-9;
- 17 as applicable.

18 (h) A rule described in subsection (a)(6), (a)(8), (a)(12), or (a)(29)
 19 expires on the earlier of the following dates:

- 20 (1) The expiration date stated by the adopting agency in the rule.
- 21 (2) The date that the rule is amended or repealed by a later rule
- 22 adopted under sections 24 through 36 of this chapter or this
- 23 section.

24 (i) This section may not be used to readopt a rule under IC 4-22-2.5.

25 (j) A rule described in subsection (a)(24) or (a)(25) expires not later
 26 than January 1, 2006.

27 (k) A rule described in subsection (a)(28) expires on the expiration
 28 date stated by the board of the Indiana economic development
 29 corporation in the rule.

30 **(l) A rule described in subsection (a)(30) expires on the**
 31 **expiration date stated by the Indiana finance authority in the rule.**

32 SECTION 4. IC 8-14-14 IS ADDED TO THE INDIANA CODE AS
 33 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
 34 PASSAGE]:

35 **Chapter 14. Major Moves Construction Fund**

36 **Sec. 1. As used in this chapter, "authority" refers to the Indiana**
 37 **finance authority established by IC 4-4-11-4.**

38 **Sec. 2. As used in this chapter, "department" refers to the**
 39 **Indiana department of transportation.**

40 **Sec. 3. As used in this chapter, "fund" refers to the major moves**
 41 **construction fund established by section 5 of this chapter.**

42 **Sec. 4. As used in this chapter, "transportation plan" has the**

C
o
p
y



1 meaning set forth in IC 8-23-1-41.

2 **Sec. 5. (a) The major moves construction fund is established for**

3 **the purpose of:**

4 (1) **funding projects under IC 8-15.7 or IC 8-15-3;**

5 (2) **funding other projects in the department's transportation**

6 **plan; and**

7 (3) **funding other highway facilities and transportation**

8 **infrastructure considered appropriate by the department.**

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

10 (c) **Expenses of administering the fund shall be paid from money**

11 **in the fund or other sources considered appropriate by the**

12 **authority.**

13 (d) **The fund consists of the following:**

14 (1) **Distributions to the fund from the toll road fund under**

15 **IC 8-15.5-11.**

16 (2) **Payments made to the authority or the department from**

17 **operators under IC 8-15.7.**

18 (3) **Appropriations to the fund.**

19 (4) **Gifts, grants, loans, bond proceeds, and other money**

20 **received for deposit in the fund.**

21 (5) **Revenues arising from:**

22 (A) **a tollway under IC 8-15-3 or IC 8-23-7-22; or**

23 (B) **a toll road under IC 8-15-2 or IC 8-23-7-23;**

24 **that the department designates as part of, and deposits in, the**

25 **fund.**

26 (6) **Interest, premiums, or other earnings on the fund.**

27 (e) **Money in the fund shall be deposited, paid, and secured in**

28 **the manner provided by IC 4-4-11-32. Notwithstanding IC 5-13,**

29 **the authority shall invest the money in the fund that is not needed**

30 **to meet the obligations of the fund in the manner provided by an**

31 **investment policy established by resolution of the authority.**

32 (f) **The fund is not part of the state treasury and is considered**

33 **a trust fund for purposes of IC 4-9.1-1-7. Money may not be**

34 **transferred, assigned, or otherwise removed from the fund by the**

35 **state board of finance, the budget agency, or any other state**

36 **agency.**

37 (g) **Money in the fund at the end of a state fiscal year does not**

38 **revert to the state general fund.**

39 **Sec. 6. (a) The authority may distribute money from the fund**

40 **for any of the following purposes:**

41 (1) **The payment of any obligation incurred or amounts owed**

42 **by the authority, the department, or an operator under**

COPY



- 1 **IC 8-15-2, IC 8-15-3, IC 8-15.5, or IC 8-15.7 in connection**
- 2 **with the execution and performance of a public-private**
- 3 **agreement under IC 8-15.5 or IC 8-15.7, including**
- 4 **establishing reserves.**
- 5 **(2) Lease payments to the authority.**
- 6 **(3) To the treasurer of state for deposit in the state highway**
- 7 **fund, for the funding of any project in the department's**
- 8 **transportation plan.**
- 9 **(4) The funding of other highway facilities or transportation**
- 10 **infrastructure determined to be appropriate by the**
- 11 **department.**

12 **(b) In addition to the distributions permitted by subsection (a),**
 13 **the authority shall distribute from the fund fifty million dollars**
 14 **(\$50,000,000) per year during 2006, 2007, and 2008 to the treasurer**
 15 **of state for deposit in the motor vehicle highway account**
 16 **established by IC 8-14-1. Notwithstanding IC 8-14-1, the auditor**
 17 **of state shall distribute the amounts deposited in the motor vehicle**
 18 **highway account under this subsection to each of the counties,**
 19 **cities, and towns eligible to receive a distribution from the motor**
 20 **vehicle highway account under IC 8-14-1 and in the same**
 21 **proportion among the counties, cities, and towns as funds are**
 22 **distributed from the motor vehicle highway account under**
 23 **IC 8-14-1. Money distributed under this subsection may be used**
 24 **only for purposes that money distributed from the motor vehicle**
 25 **highway account may be expended under IC 8-14-1.**

26 **Sec. 7. Money in the fund may be used for a purpose other than**
 27 **a purpose that is specified in this chapter on the effective date of**
 28 **this chapter only if the general assembly authorizes the purpose in**
 29 **a statute approved by at least seventy-five percent (75%) of the**
 30 **members of the house of representatives and by at least**
 31 **seventy-five percent (75%) of the members of the senate.**

32 **SECTION 5. IC 8-15-2-5 IS AMENDED TO READ AS FOLLOWS**
 33 **[EFFECTIVE UPON PASSAGE]: Sec. 5. The authority may do the**
 34 **following:**

- 35 **(1) Construct, maintain, repair, police, and operate toll road**
- 36 **projects (as defined in this chapter), public improvements, and**
- 37 **arterial streets and roads under section 1 of this chapter and**
- 38 **establish rules for the use of any such toll road project, public**
- 39 **improvement, or arterial street or road.**
- 40 **(2) Issue toll road revenue bonds of the state, payable solely from**
- 41 **an allocation of money from the rural transportation road fund**
- 42 **under IC 8-9.5-8-16 or from revenues or from the proceeds of**

**C
O
P
Y**



1 bonds issued under this chapter and earnings thereon, or from all
 2 three (3), for the purpose of paying all or any part of the cost of
 3 any one (1) or more toll road projects or for the purpose of
 4 refunding any other toll road revenue bonds.
 5 (3) Establish reserves from the proceeds of the sale of bonds or
 6 from other funds, or both, to secure the payment of the bonds.
 7 (4) Fix and revise from time to time and charge and collect tolls
 8 for transit over each toll road project constructed by it.
 9 (5) Acquire in the name of the state by purchase or otherwise, on
 10 such terms and conditions and in such manner as it may deem
 11 proper, or by the exercise of the right of condemnation in the
 12 manner as provided by this chapter, such public or private lands,
 13 including public parks, playgrounds or reservations, or parts
 14 thereof or rights therein, rights-of-way, property, rights,
 15 easements, and interests, as it may deem necessary for carrying
 16 out the provisions of this chapter. The authority may also:
 17 (A) sell, transfer, and convey any such land or any interest
 18 therein so acquired, or any portion thereof, whether by
 19 purchase, condemnation, or otherwise, and whether such land
 20 or interest therein had been public or private, when the same
 21 shall no longer be needed for such purposes; and
 22 (B) transfer and convey any such lands or interest therein as
 23 may be necessary or convenient for the construction and
 24 operation of any toll road project, or as otherwise required
 25 under the provisions of this chapter.
 26 (6) Designate the locations and establish, limit, and control such
 27 points of ingress to and egress from each toll road project as may
 28 be necessary or desirable in the judgment of the authority to
 29 ensure the proper operation and maintenance of such projects, and
 30 to prohibit entrance to such project from any point not so
 31 designated. The authority shall not grant, for the operation of
 32 transient lodging facilities, either ingress to or egress from any
 33 project, including the service areas thereof on which are located
 34 service stations and restaurants, and including toll plazas and
 35 paved portions of the right-of-way. The authority shall cause to be
 36 erected, at its cost, at all points of ingress and egress, large and
 37 suitable signs facing traffic from each direction on the toll road.
 38 Such signs shall designate the number and other designations, if
 39 any, of all United States or state highways of ingress or egress, the
 40 names of all Indiana municipalities with a population of five
 41 thousand (5,000) or more within a distance of seventy-five (75)
 42 miles on such roads of ingress or egress, and the distance in miles

C
O
P
Y



1 to such designated municipalities.

2 (7) Make and enter into all contracts and agreements necessary or

3 incidental to the performance of its duties and the execution of its

4 powers under this chapter, ~~or~~ IC 8-9.5-8, **or IC 8-15.5**. When the

5 cost under any such contract or agreement, other than:

6 (A) a contract for compensation for personal services;

7 (B) a contract with the department under IC 8-9.5-8-7; ~~or~~

8 (C) a lease with the department under IC 8-9.5-8-8; **or**

9 (D) **a contract, lease, or other agreement under IC 8-15.5;**

10 involves an expenditure of more than ten thousand dollars

11 (\$10,000), the authority shall make a written contract with the

12 lowest and best bidder after advertisement for not less than two

13 (2) consecutive weeks in a newspaper of general circulation in

14 Marion County, Indiana, and in such other publications as the

15 authority shall determine. Such notice shall state the general

16 character of the work and the general character of the materials to

17 be furnished, the place where plans and specifications therefor

18 may be examined, and the time and place of receiving bids. Each

19 bid shall contain the full name of every person or company

20 interested in it and shall be accompanied by a sufficient bond or

21 certified check on a solvent bank that if the bid is accepted a

22 contract will be entered into and the performance of its proposal

23 secured. The authority may reject any and all bids. A bond with

24 good and sufficient surety shall be required by the authority of all

25 contractors in an amount equal to at least fifty percent (50%) of

26 the contract price, conditioned upon the faithful performance of

27 the contract.

28 (8) Employ consulting engineers, superintendents, managers, and

29 such other engineers, construction and accounting experts, bond

30 counsel, other attorneys with the approval of the attorney general,

31 and other employees and agents as may be necessary in its

32 judgment to carry out the provisions of this chapter, and to fix

33 their compensation. However, all such expenses shall be payable

34 solely from the proceeds of toll road revenue bonds issued under

35 the provisions of this chapter or from revenues.

36 (9) Receive and accept from any federal agency, subject to

37 IC 8-23-3, grants for or in aid of the construction of any toll road

38 project, and receive and accept aid or contributions from any

39 source of either money, property, labor, or other things of value,

40 to be held, used, and applied only for the purposes for which such

41 grants and contributions may be made, and repay any grant to the

42 authority or to the department from a federal agency if such

C
O
P
Y



1 repayment is necessary to free the authority from restrictions
 2 which the authority determines to be in the public interest to
 3 remove.
 4 (10) Establish fees, charges, terms, or conditions for any
 5 expenditures, loans, or other form of financial participation in
 6 projects authorized as public improvements on arterial streets and
 7 roads under section 1 of this chapter.
 8 (11) Accept gifts, devises, bequests, grants, loans, appropriations,
 9 revenue sharing, other financing and assistance, and any other aid
 10 from any source and agree to and comply with conditions attached
 11 to the aid.
 12 (12) Accept transfer of a state highway to the authority under
 13 IC 8-23-7-23 and pay the cost of conversion of the state highway
 14 to a toll road project.
 15 (13) Enter into contracts or leases with the department under
 16 IC 8-9.5-8-7 or IC 8-9.5-8-8 and in connection with the contracts
 17 or leases agree with the department for coordination of the
 18 operation and the repair and maintenance of toll road projects and
 19 tollways which are contiguous parts of the same public road,
 20 including joint toll collection facilities and equitable division of
 21 tolls.
 22 **(14) Enter into public-private agreements under IC 8-15.5 and**
 23 **do all acts and things necessary or proper to carry out the**
 24 **purposes set forth in IC 8-15.5.**
 25 ~~(14)~~ **(15) Do all acts and things necessary or proper to carry out**
 26 **this chapter.**
 27 SECTION 6. IC 8-15-2-14 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) The
 29 authority may:
 30 (1) fix, revise, charge, and collect tolls for the use of each toll
 31 road project by any person, partnership, association, limited
 32 liability company, or corporation desiring the use of any part
 33 thereof, including the right-of-way adjoining the paved portion
 34 and for placing thereon telephone, telegraph, electric light, or
 35 power lines; ~~and~~
 36 (2) fix the terms, conditions, and rates of charge for such use,
 37 **including assessments for the failure to pay required tolls,**
 38 **subject, however, to the state's police power; and**
 39 **(3) collect tolls, user fees, or other charges through manual or**
 40 **nonmanual methods, including, but not limited to, automatic**
 41 **vehicle identification systems, electronic toll collection**
 42 **systems, and, to the extent permitted by law, including rules**

C
o
p
y



1 **adopted by the authority under IC 8-15-2-17.2(a)(10), global**
2 **positioning systems and photo or video based toll collection or**
3 **toll collection enforcement systems.**

4 (b) Notwithstanding subsection (a), no toll or charge shall be made
5 by the authority for:

6 (1) the operation of temporary lodging facilities located upon or
7 adjacent to any project, nor may the authority itself operate or
8 gratuitously permit the operation of such temporary lodging
9 facilities by other persons without any toll or charge; or

10 (2) placing in, on, along, over, or under such project, such
11 telephone, telegraph, electric light or power lines, equipment, or
12 facilities as may be necessary to serve establishments located on
13 the project or as may be necessary to interconnect any public
14 utility facilities on one (1) side of the toll road project with those
15 on the other side.

16 (c) All contracts executed by the authority shall be preserved in the
17 principal office of the authority.

18 (d) In the case of a toll road project that is not leased to the
19 department under IC 8-9.5-8-7, the tolls shall be fixed and adjusted for
20 each toll road project so that the aggregate of the tolls from the project,
21 together with other revenues that are available to the authority without
22 prior restriction or encumbrance, will at least be adequate to pay:

23 (1) the cost of operating, maintaining, and repairing the toll road
24 project, including major repairs, replacements, and
25 improvements;

26 (2) the principal of and the interest on bonds issued in connection
27 with the toll road project, as the principal and interest becomes
28 due and payable, including any reserve or sinking fund required
29 for the project; and

30 (3) the payment of principal of and interest on toll road bonds
31 issued by the authority in connection with any other toll road
32 project, including any reserve or sinking fund required for the
33 project, but only to the extent that the authority provides by
34 resolution and subject to the provisions of any trust agreement
35 relating to the project.

36 (e) Not less than one (1) year before the date that final payment of
37 all such bonds, interest, and reimbursement is expected by the
38 chairman of the authority to be completed, the chairman shall notify the
39 state budget committee in writing of the expected date of final
40 payment.

41 (f) Such tolls shall not be subject to supervision or regulation by any
42 other commission, board, bureau, or agency of the state.

C
O
P
Y



1 (g) The tolls, rents, and all other revenues derived by the authority
2 from the toll road project, **except those received in accordance with**
3 **a public-private agreement under IC 8-15.5**, shall be used as
4 follows:

5 (1) To pay the cost of operating, maintaining, and repairing the
6 toll road project, including major repairs, replacements, and
7 improvements, to the extent that those costs are not paid out of
8 other funds.

9 (2) To the extent provided for in the resolution authorizing the
10 issuance of bonds under this chapter or in the trust agreement
11 securing the bonds, to pay:

12 (A) the principal of and interest on any bonds as the principal
13 and interest become due; or

14 (B) the redemption price or purchase price of the bonds retired
15 by call or purchase.

16 (3) Except as prohibited by the resolution authorizing the issuance
17 of bonds under this chapter or the trust agreement securing them,
18 for any purpose relating to any toll road project, including the
19 subject toll road project, as the authority provides by resolution.

20 (h) Neither the resolution nor any trust agreement by which a pledge
21 is created needs to be filed or recorded except in the records of the
22 authority.

23 (i) The use and disposition of moneys to the credit of any sinking
24 fund shall be subject to the provisions of any resolution or resolutions
25 authorizing the issuance of any bonds or of any trust agreement. Except
26 as may otherwise be provided in this chapter or in any resolution or any
27 trust agreement, any sinking fund shall be a fund for all bonds without
28 distinction or priority of one over another, subject, however, to such
29 priorities as may arise from prior pledges.

30 (j) In the case of a toll road project that is leased to the department
31 under IC 8-9.5-8-8, the lease must require that the department fix tolls
32 for the toll road project that comply with IC 8-9.5-8-8(c)(6).

33 **(k) User fees (as defined in IC 8-15.5-2-10) for a toll road project**
34 **that is subject to a public-private agreement under IC 8-15.5 shall**
35 **be set in accordance with IC 8-15.5-7.**

36 SECTION 7. IC 8-15-2-14.5, AS AMENDED BY P.L.214-2005,
37 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 UPON PASSAGE]: Sec. 14.5. (a) Subject to the provisions and
39 requirements of any trust agreement providing for the issuance of toll
40 road revenue bonds and only to the extent permitted by such trust
41 agreement, the authority shall fix the tolls for any toll road under its
42 jurisdiction.

C
O
P
Y



1 **(b) Subsection (a) does not apply to tolls fixed, authorized, or**
2 **established in accordance with a public-private agreement under**
3 **IC 8-15.5.**

4 SECTION 8. IC 8-15-2-14.7, AS ADDED BY P.L.214-2005,
5 SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 UPON PASSAGE]: Sec. 14.7. (a) As used in this section,
7 "development authority" refers to the development authority
8 established under IC 36-7.5-2-1.

9 (b) Subject to the trust agreement of any outstanding bonds and
10 subject to the requirements of subsection (d), the authority shall
11 distribute to the development authority in calendar year 2006 and
12 calendar year 2007 from revenues accruing to the authority from the
13 toll road at least five million dollars (\$5,000,000) and not more than ten
14 million dollars (\$10,000,000) each year. The amount of the distribution
15 for a year shall be determined by the authority. The amount to be
16 distributed each year shall be distributed in equal quarterly amounts
17 before the last business day of January, April, July, and October of
18 2006 and 2007. The amounts distributed under this subsection shall be
19 deposited in the development authority fund established under
20 IC 36-7.5-4-1.

21 (c) Subject to the trust agreement of any outstanding bonds and
22 subject to the requirements of subsections (d) and (e), after 2007, the
23 authority may distribute to the development authority amounts from
24 revenues accruing to the authority from the toll road. The amount of
25 any distribution for a year shall be determined by the authority. Any
26 amounts to be distributed for the year under this subsection shall be
27 distributed in equal quarterly amounts before the last business day of
28 January, April, July, and October of the year. Any amounts distributed
29 under this subsection shall be deposited in the development authority
30 fund established under IC 36-7.5-4-1.

31 (d) A distribution may be made by the authority to the development
32 authority under subsection (b) or (c) only if all transfers required from
33 cities and counties to the development authority under IC 36-7.5-4-2
34 have been made.

35 (e) A distribution may be made by the authority to the development
36 authority under subsection (c) only after the budget committee has
37 reviewed the development authority's comprehensive strategic
38 development plan under IC 36-7.5-3-4 and the director of the office of
39 management and budget has approved the comprehensive strategic
40 development plan.

41 (f) If the Indiana Toll Road is sold or leased before January 1, 2008
42 (other than a lease to the department), and the sale or lease agreement

C
o
p
y



1 does not require the purchaser or lessee to continue making the
2 distributions required by subsection (b), the treasurer of state shall pay:
3 **(1) for the calendar years 2006 and 2007**, an amount equal to
4 the greater of zero (0) or the result of:
5 ~~(+)~~ **(A)** twenty million dollars (\$20,000,000); minus
6 ~~(-)~~ **(B)** any amounts transferred to the development authority
7 under this ~~subsection~~ **section** before the sale or lease;
8 ~~from the state general fund~~ to the development authority fund
9 established under IC 36-7.5-4-1 ~~from the state general fund or from~~
10 ~~the toll road fund in accordance with IC 8-15.5-11; and~~
11 **(2) for each of the calendar years 2008 through 2015**, an
12 **amount equal to ten million dollars (\$10,000,000) to the**
13 **development authority fund established under IC 36-7.5-4-1**
14 **from the toll road fund in accordance with IC 8-15.5-11.**
15 (g) Amounts distributed or paid to the development authority under
16 this section may be used for any purpose of the development authorized
17 under IC 36-7.5.
18 (h) The amounts necessary to make any distributions or payments
19 required or authorized by this section are appropriated.
20 SECTION 9. IC 8-15-2-14.8 IS ADDED TO THE INDIANA CODE
21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
22 1, 2006]: **Sec. 14.8. (a) As used in this section, "development**
23 **authority" refers to the northeast Indiana regional development**
24 **authority established by IC 36-7.6-2-1.**
25 **(b) Subject to the trust agreement of any outstanding bonds, the**
26 **authority shall distribute to the development authority in calendar**
27 **year 2007 and calendar year 2008 from revenues accruing to the**
28 **authority from the toll road at least five million dollars**
29 **(\$5,000,000) and not more than ten million dollars (\$10,000,000)**
30 **each year. The amount of the distribution for a year shall be**
31 **determined by the authority. The amount to be distributed each**
32 **year shall be distributed in equal quarterly amounts before the last**
33 **business day of January, April, July, and October of 2007 and**
34 **2008. The amounts distributed under this subsection shall be**
35 **deposited in the development authority fund established under**
36 **IC 36-7.6-4-1.**
37 **(c) Subject to the trust agreement for any outstanding bonds**
38 **and subject to the requirements of subsection (d), after 2008 the**
39 **authority may distribute to the development authority amounts**
40 **from revenues accruing to the authority from the toll road. The**
41 **amount of any distribution for a year shall be determined by the**
42 **authority. Any amounts to be distributed for the year under this**

C
o
p
y



1 subsection shall be distributed in equal quarterly amounts before
2 the last business day of January, April, July, and October of the
3 year. Any amounts distributed under this subsection shall be
4 deposited in the development authority fund established under
5 IC 36-7.6-4-1.

6 (d) A distribution may be made by the authority to the
7 development authority under subsection (c) only after the budget
8 committee has reviewed the development authority's
9 comprehensive strategic development plan under IC 36-7.6-3-4 and
10 the director of the office of management and budget has approved
11 the comprehensive strategic development plan.

12 (e) If the Indiana Toll Road is sold or leased before January 1,
13 2008 (other than a lease to the department), and the sale or lease
14 agreement does not require the purchaser or lessee to continue
15 making the distributions required by subsection (b), the treasurer
16 of state shall pay:

17 (1) for the calendar year 2007, an amount equal to the greater
18 of zero (0) or the result of:

- 19 (A) ten million dollars (\$10,000,000); minus
- 20 (B) any amounts transferred to the development authority
- 21 under this section before the sale or lease;
- 22 to the development authority fund established under
- 23 IC 36-7.6-4-1 from the state general fund or from the toll road
- 24 fund in accordance with IC 8-15.5-11; and

25 (2) for each of the calendar years 2008 through 2016, an
26 amount equal to ten million dollars (\$10,000,000) to the
27 development authority fund established under IC 36-7.6-4-1
28 from the toll road fund in accordance with IC 8-15.5-11.

29 (f) Amounts distributed or paid to the development authority
30 under this section may be used for any purpose of the development
31 authority authorized under IC 36-7.6.

32 (g) The amounts necessary to make any distributions or
33 payments required or authorized by this section are appropriated.

34 SECTION 10. IC 8-15-2-15 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) All moneys
36 received pursuant to the authority of this chapter, whether as proceeds
37 from the sale of bonds or as revenues, shall be deemed to be trust
38 funds, to be held and applied solely as provided in this chapter. Such
39 funds shall be kept in depositories as selected by the authority and may
40 be invested until expended, all as provided by law.

41 (b) The resolution authorizing the issuance of bonds of any issue or
42 the trust agreement securing such bonds shall provide that any officer

C
o
p
y



1 to whom, or any bank or trust company to which, such moneys shall be
2 paid shall:

- 3 (1) act as trustee of such moneys; and
- 4 (2) hold and apply the same for the purposes of this chapter,
5 subject to such regulations as this chapter and such resolution or
6 trust agreement may provide.

7 **(c) This section does not apply to money paid or received with**
8 **respect to a toll road project that is the subject of a public-private**
9 **agreement under IC 8-15.5.**

10 SECTION 11. IC 8-15-2-17.2, AS AMENDED BY P.L.151-2005,
11 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 UPON PASSAGE]: Sec. 17.2. (a) Notwithstanding IC 9, the authority
13 may adopt rules:

14 (1) Establishing weight and size limitations for vehicles using a
15 toll road project, subject to the following:

16 (A) The operator of any vehicle exceeding any of the
17 maximum allowable dimensions or weights as set out by the
18 authority in rules and regulations shall apply to the authority
19 in writing, for an application for a special hauling permit,
20 which application must be in compliance with all the terms
21 thereof, and which application must be received at least seven
22 (7) days prior to the time of permitted entry should such permit
23 be granted. Such permit, if granted, will be returned to the
24 applicant in duplicate, properly completed and numbered, and
25 the driver of the vehicle shall have a copy to present to the toll
26 attendant on duty at the point of entry.

27 (B) The authority shall assess a fee for issuing a special
28 hauling permit. In assessing the fee, the authority shall take
29 into consideration the following factors:

- 30 (i) The administrative cost of issuing the permit.
- 31 (ii) The potential damage the vehicle represents to the
32 project.
- 33 (iii) The potential safety hazard the vehicle represents.

34 (2) Establishing the minimum speed that a motor vehicle may be
35 driven on the interstate defense network of dual highways.

36 (3) Designating one-way traffic lanes on a toll road project.

37 (4) Determining the manner of operation of motor vehicles
38 entering and leaving traffic lanes on a toll road project.

39 (5) Determining the regulation of U-turns, of crossing or entering
40 medians, of stopping, parking, or standing, and of passing motor
41 vehicles on a toll road project.

42 (6) Determining the establishment and enforcement of traffic

C
o
p
y



1 control signs and signals for motor vehicles in traffic lanes,
 2 acceleration and deceleration lanes, toll plazas, and interchanges
 3 on a toll road project.
 4 (7) Determining the limitation of entry to and exit from a toll road
 5 project to designated entrances and exits.
 6 (8) Determining the limitation on use of a toll road project by
 7 pedestrians and aircraft and by vehicles of a type specified in such
 8 rules and regulations.
 9 (9) Regulating commercial activity on a toll road project,
 10 including but not limited to:
 11 (A) the offering or display of goods or services for sale;
 12 (B) the posting, distributing, or displaying of signs,
 13 advertisements, or other printed or written material; and
 14 (C) the operation of a mobile or stationary public address
 15 system.
 16 **(10) Establishing enforcement procedures and making**
 17 **assessments for the failure to pay required tolls.**
 18 (b) A person who violates a rule adopted under this section commits
 19 a Class C infraction. However, a violation of a weight limitation
 20 established by the authority under this section is:
 21 (1) a Class B infraction if the total of all excesses of weight under
 22 those limitations is more than five thousand (5,000) pounds but
 23 not more than ten thousand (10,000) pounds; and
 24 (2) a Class A infraction if the total of all excesses of weight under
 25 those limitations is more than ten thousand (10,000) pounds.
 26 (c) It is a defense to the charge of violating a weight limitation
 27 established by the authority under this section that the total of all
 28 excesses of weight under those limitations is less than one thousand
 29 (1,000) pounds.
 30 (d) The court may suspend the registration of a vehicle that violated:
 31 (1) a size or weight limitation established by the authority under
 32 this section; **or**
 33 (2) **a rule adopted under subsection (a)(10);**
 34 for a period of not more than ninety (90) days.
 35 (e) Upon the conviction of a person for a violation of a weight or
 36 size limitation established by the authority under this section, the court
 37 may recommend suspension of the person's current chauffeur's license
 38 only if the violation was committed knowingly.
 39 SECTION 12. IC 8-15-2-19 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) The
 41 authority may, after adopting a resolution and after receiving the
 42 governor's approval, at any time determine under IC 8-23-7 that a toll

C
O
P
Y



1 road project constructed or operated by the authority, **other than a toll**
 2 **road project that is subject to a public-private agreement under**
 3 **IC 8-15.5**, should become a part of the system of state highways free
 4 of tolls or become a tollway under IC 8-15-3.

5 (b) Any resolution as to any project described in subsection (a) shall
 6 not become effective until all bonds to which the revenues of any
 7 project were pledged for payment, together with all interest thereon, is
 8 paid, or a sufficient amount for the payment of all bonds and the
 9 interest thereon to maturity is set aside in trust for the benefit of
 10 bondholders.

11 (c) Until any resolution is adopted by the authority under subsection
 12 (a) and becomes effective as provided in subsection (b), **and subject**
 13 **to the terms of any public-private agreement under IC 8-15.5**, any
 14 project constructed by the authority or its predecessors remains under
 15 the jurisdiction of the authority and the authority shall continue to
 16 maintain and operate the project and levy and collect tolls as provided
 17 in this chapter. **Subject to any agreement entered into by the Secretary**
 18 **of Commerce of the United States; acting by and through the federal**
 19 **highway administrator; the Indiana toll road commission; and the state;**
 20 **acting by and through the Indiana department of transportation;** Tolls
 21 on any project may be continued after the date of the payment of the
 22 principal of and interest on bonds issued for the construction of that
 23 project.

24 SECTION 13. IC 8-15-2-27 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 27. **(a) Except as**
 26 **provided in subsection (b), and** notwithstanding any other provision
 27 of this chapter, funds generated by tolls or any other means from a toll
 28 road project that was in existence and in use on or before January 1,
 29 1986, shall be used exclusively for purposes that are authorized and
 30 described in this chapter.

31 **(b) If the authority enters into a public-private agreement with**
 32 **respect to a toll road project under IC 8-15.5, funds generated by**
 33 **tolls or any other means from that project shall be used as**
 34 **provided in IC 8-15.5.**

35 SECTION 14. IC 8-15-2-28 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 37 UPON PASSAGE]: Sec. 28. **If the authority is a party to a**
 38 **public-private agreement under IC 8-15.5, the authority may**
 39 **authorize the operator under that agreement to exercise any or all**
 40 **of the powers specified in sections 1, 6, 18, and 24 of this chapter,**
 41 **subject to the terms of that agreement.**

42 SECTION 15. IC 8-15-3-2.5 IS ADDED TO THE INDIANA CODE

C
o
p
y



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
2 UPON PASSAGE]: **Sec. 2.5. "Operator" refers to one (1) or more
3 private individuals or entities that enter into a public-private
4 agreement to do one (1) or more of the following with respect to
5 one (1) or more tollways:**

- 6 (1) **Planning.**
- 7 (2) **Design.**
- 8 (3) **Development.**
- 9 (4) **Construction.**
- 10 (5) **Reconstruction.**
- 11 (6) **Maintenance.**
- 12 (7) **Repair.**
- 13 (8) **Financing.**
- 14 (9) **Operation.**

15 **A public entity may provide services to an operator as a
16 subcontractor or subconsultant without affecting the private status
17 of the operator and the entity's or operator's ability to enter into
18 a public-private agreement.**

19 SECTION 16. IC 8-15-3-3.5 IS ADDED TO THE INDIANA CODE
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
21 UPON PASSAGE]: **Sec. 3.5. "Public-private agreement" has the
22 meaning set forth in IC 8-15.7-2-14.**

23 SECTION 17. IC 8-15-3-7 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. As used in this
25 chapter, "tollway" means includes any combination or part of:**

- 26 (1) an express highway, superhighway, **bridge, tunnel,** or motor
27 way, **including express lanes and managed lanes,** constructed
28 under this chapter or **IC 8-15.7** or, **subject to section 10 of this**
29 **chapter,** converted to a tollway under IC 8-23-7-22; ~~The term~~
30 ~~includes~~
- 31 (2) any bridge, tunnel, overpass, underpass, interchange,
32 **structure, ramp, access road, service road,** entrance plaza,
33 approach, tollhouse, **utility corridor, toll gantry, rest stop,**
34 service station, or administration, storage, or other buildings or
35 facilities, **including temporary facilities and buildings,**
36 **facilities, and structures that will not be tolled,** that the
37 department considers **appurtenant to,** necessary, or desirable for
38 the **financing, construction, operation, of the tollway.** ~~The term~~
39 ~~also includes or maintenance of one (1) or more of the items~~
40 **described in subdivision (1); and**
- 41 (3) any subsequent improvement, betterment, enlargement,
42 extension, or reconstruction of ~~a tollway, including any section;~~

C
o
p
y



1 which is one (1) or more items described in this section,
2 including any nontolled part, that are separately designated by
3 name or number.

4 SECTION 18. IC 8-15-3-9 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The governor
6 must approve the location of any tollway.

7 (b) The department may, in any combination, plan, design,
8 develop, construct, reconstruct, maintain, repair, police, finance, and
9 operate tollways, public improvements, and arterial streets and roads
10 at those locations that the governor approves.

11 (c) The department may, in any combination, plan, design,
12 develop, construct, reconstruct, improve, finance, repair, or maintain
13 public improvements such as roads and streets, sewer lines, and water
14 lines, and other utilities if these improvements are:

- 15 (1) adjacent or appurtenant to a tollway; or
- 16 (2) necessary or desirable for the financing, construction,
17 operation, or maintenance of a tollway.

18 (d) The department may, in any combination, plan, design,
19 develop, construct, reconstruct, or improve, maintain, repair,
20 operate, or finance the construction or reconstruction of an arterial
21 highway or an arterial street that:

- 22 (1) is adjacent to, appurtenant to, or interchanges with a
23 tollway; or
- 24 (2) intersects with a road or street that interchanges with a
25 tollway.

26 SECTION 19. IC 8-15-3-12 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. The department
28 may fix, revise, charge, and collect, retain, and use tolls for transit
29 over each tollway the department constructs or converts from a state
30 highway to a tollway under IC 8-23-7-22: or part of a tollway. The
31 tolls and the setting of toll rates are not subject to supervision or
32 regulation by any other commission, board, bureau, or agency of
33 the state.

34 SECTION 20. IC 8-15-3-15 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. The department
36 may transfer to the tollway or lease, license, or otherwise transfer to
37 the authority or the operator of a tollway any real property or
38 interest in real property acquired by it under section 13 or 31 of this
39 chapter, IC 8-23-7, or otherwise that is necessary, desirable, or
40 convenient for the financing, construction, maintenance, and
41 operation of any tollway or part of a tollway, or as otherwise required
42 under this chapter.

C
o
p
y



1 SECTION 21. IC 8-15-3-16 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) Except as
 3 provided in subsection (b), the department may designate the locations
 4 and establish, limit, and control points of ingress and egress from each
 5 tollway as necessary or desirable to:

6 (1) ensure the proper operation and maintenance of the tollway;

7 **(2) finance the tollway;**

8 ~~(2)~~ **(3)** prohibit entrance to the tollway from any point that is not
 9 designated as an entrance; and

10 ~~(3)~~ **(4)** provide for and permit the interconnection of a tollway
 11 with a toll road that is leased or operated by the department.

12 (b) The department may not grant ingress to or egress from any
 13 tollway, service area, or toll collection area having direct access to the
 14 tollway for the operation of transient lodging facilities, including the
 15 service areas on which are located service stations and restaurants and
 16 toll plazas and paved parts of the right-of-way.

17 (c) The department shall erect ~~at its cost~~, at all points of ingress and
 18 egress ~~large and~~ suitable signs facing traffic from each direction on the
 19 tollway. These signs must designate the number and other designations,
 20 if any, of all United States or state highways of ingress or egress, the
 21 names of all Indiana municipalities having a population of at least five
 22 thousand (5,000) within a distance of seventy-five (75) miles on the
 23 roads of ingress or egress, and the distance in miles to those designated
 24 municipalities.

25 SECTION 22. IC 8-15-3-17 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. The department
 27 may make and enter into all **leases, licenses, conveyances**, contracts
 28 and agreements necessary or incidental to the performance of the
 29 department's duties and the execution of the department's powers under
 30 this chapter **and IC 8-15.7**.

31 SECTION 23. IC 8-15-3-18 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. The department
 33 may employ consulting engineers, superintendents, managers, other
 34 engineers, construction ~~and~~ **experts, financial advisers**, accounting
 35 experts, attorneys, ~~(with the approval of the attorney general)~~, and other
 36 **consultants, contractors**, employees, and agents necessary to carry out
 37 this chapter **or IC 8-15.7**, and fix their compensation.

38 SECTION 24. IC 8-15-3-19 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. The department
 40 may receive and accept **in any combination** from any federal **state, or**
 41 **local** agency, subject to ~~IC 8-9.5-6-1~~, **IC 8-23-3, loan proceeds,**
 42 **proceeds from lines of credit, proceeds from credit guarantees, and**

C
O
P
Y



1 grants for or in aid of the **planning, design, construction, financing,**
 2 **repair, rehabilitation, expansion, improvement, operation, or**
 3 **maintenance of all or part of** any tollway, and receive and accept aid
 4 or contributions from any source of either money, property, labor, or
 5 other things of value, to be held, used, and applied only for the
 6 purposes for which those **loan proceeds, proceeds from lines of**
 7 **credit, proceeds from credit guarantees,** grants, or contributions are
 8 made. **The department may distribute any part of loan proceeds,**
 9 **proceeds from lines of credit, proceeds from credit guarantees, and**
 10 **grants received under this section to an operator as permitted by**
 11 **the terms of the loan, line of credit, credit guarantee, or grant.** The
 12 department, **the authority, or an operator, as required by a**
 13 **public-private agreement,** shall repay any **loan, line of credit, credit**
 14 **guarantee, or grant** from a federal, **state, or local** agency, if a
 15 repayment is necessary to free the department from restrictions that the
 16 department determines to be in the public interest to remove.

17 SECTION 25. IC 8-15-3-21 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. The department
 19 may accept gifts, devises, bequests, grants, loans, appropriations,
 20 revenue sharing, and any other financing and assistance from any
 21 source and agree to and comply with conditions attached to it. **Subject**
 22 **to the conditions agreed to by the department, the department may**
 23 **distribute any gifts, devises, bequests, grants, loans,**
 24 **appropriations, revenue sharing, and any other financing and**
 25 **assistance received under this section to an operator, as set forth**
 26 **in a public-private agreement.**

27 SECTION 26. IC 8-15-3-23 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. (a) The
 29 exercise of the powers granted by this chapter **to the department or**
 30 **the authority** must be in all respects for:

- 31 (1) the benefit of the people of Indiana;
- 32 (2) the increase of the commerce and prosperity of Indiana; and
- 33 (3) the improvement of the health and living conditions of the
 34 people of Indiana.

35 (b) Since the operation and maintenance of a tollway by the
 36 department **or the authority** constitutes the performance of essential
 37 governmental functions, **neither** the department **nor the authority** is
 38 ~~not~~ required to pay any taxes or assessments upon a tollway or any
 39 property acquired or used by the department under this chapter **or**
 40 **IC 8-15.7** or upon the income from a tollway.

41 (c) **The operator under a public-private agreement is not**
 42 **required to pay taxes or assessments upon a tollway, any property**

C
O
P
Y



1 or property interest acquired by the operator under a
2 public-private agreement, or any possessory interest in the tollway
3 or in property granted or created by the public-private agreement
4 under this chapter or IC 8-15.7.

5 (d) An operator or any other person purchasing tangible
6 personal property for incorporation or improvement of a structure
7 or facility constituting or becoming part of the land included in:

- 8 (1) a tollway; or
- 9 (2) property granted or created by the public-private
10 agreement;

11 is entitled to the exemption from gross retail tax and use tax
12 provided under IC 6-2.5-4-9(b) and IC 6-2.5-3-2(c), respectively,
13 with respect to that tangible personal property.

14 SECTION 27. IC 8-15-3-24 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 24. (a) Except as
16 provided in subsection (b), the department may:

- 17 (1) fix, revise, charge, and collect tolls, **fees, or charges** for:
 - 18 (A) the use of a tollway or any part of a tollway, including the
 - 19 right-of-way adjoining the paved part of the tollway; ~~and~~
 - 20 (B) placing on a tollway or part of a tollway telephone,
 - 21 telegraph, electric light, **cable, communication, gas, water,**
 - 22 **sewer,** or power lines; ~~and~~
 - 23 (C) **the initiation, administration, and maintenance of**
 - 24 **customer accounts, late payment procedures, credit card**
 - 25 **and other electronic transactions, and enforcement actions**
 - 26 **for collection of unpaid amounts; and**
 - 27 (D) **equipment used by customers in connection with**
 - 28 **electronic tolling, including transponders;**
- 29 (2) fix the terms, conditions, and rates of charge for use of a
30 tollway; **and**
- 31 (3) **retain and use tolls, fees, or charges collected in**
32 **accordance with this article.**

33 (b) A toll or charge may not be made by the department for the
34 following:

- 35 (1) The operation of temporary lodging facilities located upon or
36 adjacent to a tollway.
- 37 (2) Placing in, on, along, over, or under a tollway any telephone,
38 telegraph, electric light, **cable, communication, gas, water,**
39 **sewer,** or power lines, equipment, or facilities that are necessary
40 to serve establishments located on the tollway or that are
41 necessary to interconnect any public utility facilities on one (1)
42 side of the tollway with those on the other side.

C
o
p
y



1 (c) Tollway tolls that are collected shall be deposited in a special
2 fund so that the tolls from each tollway project may be accounted for
3 and used only for the purposes of operating and maintaining the facility
4 from which the tolls were collected.

5 (d) (c) The department shall **may** fix the tolls for a tollway so that;
6 to the extent feasible; the tolls for any class of traffic are substantially
7 uniform according to the mileage between interchanges. A reduced rate
8 of toll is not allowed within a class except through the use of
9 commutation or other tickets or privileges based upon frequency or
10 volume of use. **by establishing maximum amounts and may provide**
11 **that tolls or any maximum tolls established, and any increases or**
12 **decreases to those tolls or maximum tolls, may be based on the**
13 **indices or methodologies that the department considers**
14 **appropriate. The department may set an increased toll for any**
15 **class of traffic for any lane or other part of a tollway if the**
16 **department determines that an increased toll is necessary or**
17 **appropriate for financing the tollway or to reduce traffic**
18 **congestion, increase mobility, improve connectivity, promote fuel**
19 **conservation, achieve operating efficiencies, or promote public**
20 **safety. The department shall specify the times or conditions under**
21 **which an increased toll will be imposed. A reduced rate of toll is**
22 **not allowed within a class, except:**

- 23 (1) through the use of commutation or other tickets or
24 privileges based upon frequency or volume of use;
25 (2) as permitted under an electronic tolling program;
26 (3) as permitted under a managed lane program under section
27 27.5 of this chapter;
28 (4) as necessary, desirable, or appropriate for financing the
29 tollway;
30 (5) on a part of a tollway designated by the department, in its
31 discretion, as an area free of tolls;
32 (6) as determined appropriate by the department; or
33 (7) as permitted under a public-private agreement.

34 (d) A person that passes a toll gate or other area of a tollway
35 where a toll, charge, or fee is due without paying that amount
36 commits a Class C infraction.

37 SECTION 28. IC 8-15-3-26 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 26. (a) The
39 department may adopt rules under IC 4-22-2 for the following:

- 40 (1) The control and regulation of traffic on a tollway.
41 (2) The protection and preservation of property under the
42 department's **or operator's** jurisdiction and control.

C
O
P
Y



1 (3) The maintenance and preservation of good order within the
2 property under the department's **or operator's** control.

3 (b) Rules adopted under this chapter must provide that law
4 enforcement officers be afforded ready access, while in the
5 performance of their official duties, to all property under the
6 department's jurisdiction without the payment of tolls.

7 (c) **A person who violates a rule adopted under this section
8 commits a Class C infraction.**

9 SECTION 29. IC 8-15-3-27.5 IS ADDED TO THE INDIANA
10 CODE AS A NEW SECTION TO READ AS FOLLOWS
11 [EFFECTIVE UPON PASSAGE]: **Sec. 27.5. (a) The rules adopted
12 under section 26 or 27 of this chapter may include restrictions on
13 the use of one (1) or more lanes on any part of a tollway as
14 necessary, appropriate, or desirable for financing the tollway or to
15 reduce congestion, increase mobility, promote fuel conservation,
16 achieve operating efficiencies, or promote public safety. The
17 restrictions may include limiting use of one (1) or more lanes to
18 private vehicles, high occupancy vehicles, vehicles that participate
19 in an electronic tolling program, trucks, commercial vehicles,
20 special fuel vehicles, transit vehicles, or vehicles that pay a higher
21 toll for exclusive use of a dedicated lane. The rules may require a
22 person eligible to use a restricted lane to obtain the permit
23 specified by the department or an operator, as permitted under a
24 public-private agreement.**

25 (b) The department may require that an electronic device or
26 other identification device specified by the department or by an
27 operator as permitted under a public-private agreement be
28 maintained in a vehicle using a restricted lane on a tollway.

29 (c) The department may construct barriers or implement other
30 design, construction, or operational features to implement a
31 managed lane, express lane, or other program under this section.

32 SECTION 30. IC 8-15-3-27.7 IS ADDED TO THE INDIANA
33 CODE AS A NEW SECTION TO READ AS FOLLOWS
34 [EFFECTIVE UPON PASSAGE]: **Sec. 27.7. (a) The rules adopted
35 under section 26 or 27 of this chapter may establish an electronic
36 tolling program. The rules must provide at least the following:**

37 (1) A participant must enter into a written agreement
38 containing the terms and conditions approved by the
39 department.

40 (2) An agreement must require the participant to do the
41 following:

42 (A) Establish the account specified by the department and

C
o
p
y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

maintain the balance of funds in the account specified by the department.

(B) Hold and use any device provided to register use of a tollway that is chargeable to the participant's account in the manner specified in the rules and participant's agreement.

(C) Pay the fees, charges, and tolls specified by the department or an operator, as permitted under a public-private agreement.

(D) Comply with any other necessary or appropriate terms and conditions specified by the department or an operator, as permitted under a public-private agreement.

(3) A method for resolving disputed charges with account holders, including an agreement by the account holder to hold the department and its agents harmless for the payment of any unpaid financial obligation incurred by the account holder.

(4) The program will comply with all applicable federal and state laws, regulations, and rules regulating credit transactions between the entity holding the account and the account holder.

(5) Notice will be provided to the participant of all federal and state privacy, credit, and other laws, regulations, and policies applicable to an account and the program.

(b) The department may establish reasonable fees and charges to be charged to account holders and business entities participating in the electronic tolling program and to recover costs of administration, account initiation and maintenance, late payments, credit card and other electronic transactions, enforcement, and improvement of the program. The fees and charges shall be deposited in the appropriate special funds account for the tollways covered by the program, as specified by the department, or used, retained, or deposited as permitted under a public-private agreement.

(c) The identifying credit and tollway use information of an electronic tolling program participant may not be used by the department or an operator for commercial purposes not related to the tollway.

SECTION 31. IC 8-15-3-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 32. Subject to any public-private agreement that applies to a tollway, including terms applicable to the financing of the tollway, the department may, after

**C
O
P
Y**



1 issuing an order and after receiving the governor's approval, at any time
2 determine that a tollway under its jurisdiction should become a part of
3 the system of state highways free of tolls.

4 SECTION 32. IC 8-15-3-34 IS ADDED TO THE INDIANA CODE
5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
6 UPON PASSAGE]: **Sec. 34. The department may arrange for the
7 use and employment of police officers to police a tollway. The
8 police officers employed under this section are vested with all
9 necessary police powers to enforce state laws. A police officer
10 employed under this section has the same powers within the
11 property limits of a tollway as a law enforcement officer (as
12 defined in IC 35-41-1-17) within the law enforcement officer's
13 jurisdiction. A warrant of arrest issued by the proper authority of
14 the state may be executed within the property limits of the tollway
15 by a police officer employed by the department or an operator.**

16 SECTION 33. IC 8-15-3-35 IS ADDED TO THE INDIANA CODE
17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
18 UPON PASSAGE]: **Sec. 35. (a) If a public-private agreement is
19 entered into under IC 8-15.7 with respect to a project, the
20 department may authorize:**

- 21 (1) the authority to exercise all or a part of the powers of the
- 22 department under this chapter necessary or desirable to
- 23 accomplish the purposes of this chapter or IC 8-15.7; and
- 24 (2) the operator under the public-private agreement to
- 25 exercise all or a part of the powers of the department under
- 26 sections 9, 16, 29, and 30 of this chapter under the
- 27 public-private agreement.

28 (b) The department may authorize the authority to exercise all
29 or a part of the powers of the department under this chapter
30 necessary or desirable to accomplish the purposes of this chapter.

31 SECTION 34. IC 8-15-3-36 IS ADDED TO THE INDIANA CODE
32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
33 UPON PASSAGE]: **Sec. 36. (a) As used in this section, "toll
34 collection facility" means any booth or collectors' house where
35 drivers are required to pay tolls.**

36 (b) A United States flag shall be displayed at each toll collection
37 facility located on:

- 38 (1) a tollway (as defined in section 7 of this chapter);
- 39 (2) a toll road project (as defined in IC 8-15-2-4(4)); and
- 40 (3) a qualifying project (as defined in IC 8-15.7-2-15).

41 (c) The department shall adopt rules under IC 4-22-2 for the
42 proper care, custody, and display of the United States flag at each

C
o
p
y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

toll collection facility.

SECTION 35. IC 8-15.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

ARTICLE 15.5. PUBLIC-PRIVATE AGREEMENTS FOR TOLL ROAD PROJECTS

Chapter 1. Legislative Findings of Fact

Sec. 1. The general assembly makes the following findings of fact:

(1) The development and maintenance of Indiana's economy requires an adequate transportation system, including toll roads, in order to provide for the public welfare and to facilitate the creation and maintenance of jobs, the increase and stabilization of the tax base, and the general economic welfare of the state and its citizens.

(2) The state has limited resources to fund the maintenance and expansion of the state transportation system, including toll roads, and therefore alternative funding sources should be developed to supplement public revenue sources.

(3) A significant alternative to public revenue sources is a program of public-private sector initiatives permitting private entities to undertake all or part of the study, planning, design, development, financing, acquisition, installation, construction, reconstruction, improvement, expansion, repair, operation, and maintenance of projects for and with respect to the state transportation system, including toll road projects, for the citizens of Indiana in exchange for the right to lease the facilities and obtain a license or franchise to provide toll road service for an agreed upon period and earn a reasonable rate of return through tolls or user fees.

(4) The Indiana finance authority should be authorized to test the feasibility of entering into agreements with the private sector for the purposes described in subdivision (3) and should be authorized to solicit, evaluate, negotiate, and administer such agreements.

(5) It is necessary to serve the public interest and to provide for the public welfare by adopting this article for the purposes described in this article.

Sec. 2. The powers conferred by this article shall be liberally construed in order to accomplish their purposes and are in addition and supplemental to the powers conferred by any other law. If any other law or rule is inconsistent with this article, this

**C
O
P
Y**



1 article is controlling as to any public-private agreement entered
2 into under this article.

3 Sec. 3. This article contains full and complete authority for
4 public-private agreements between the authority and a private
5 entity. Except as provided in this article, no law, procedure,
6 proceeding, publication, notice, consent, approval, order, or act by
7 the authority or any other officer, department, agency, or
8 instrumentality of the state or any political subdivision is required
9 for the authority to enter into a public-private agreement with a
10 private entity under this article, or for a toll road project that is the
11 subject of a public-private agreement to be constructed, acquired,
12 maintained, repaired, operated, financed, transferred, or conveyed.

13 Chapter 2. Definitions

14 Sec. 1. The definitions in this chapter apply throughout this
15 article.

16 Sec. 2. "Authority" refers to the Indiana finance authority.

17 Sec. 3. "Department" refers to the Indiana department of
18 transportation.

19 Sec. 4. "Offeror" means a private entity that has submitted a
20 proposal for a public-private agreement under this article.

21 Sec. 5. "Operator" means a private entity that has entered into
22 a public-private agreement with the authority.

23 Sec. 6. "Private entity" means any individual, sole
24 proprietorship, corporation, limited liability company, joint
25 venture, general partnership, limited partnership, nonprofit entity,
26 or other private legal entity. A public agency may provide services
27 to a private entity without affecting the private status of the private
28 entity and the ability to enter into a public-private agreement.

29 Sec. 7. "Project" or "toll road project" has the meaning set
30 forth in IC 8-15-2-4(4).

31 Sec. 8. "Public-private agreement" means an agreement under
32 this article between a private entity and the authority under which
33 the private entity, acting on behalf of the authority as lessee,
34 licensee, or franchisee, will plan, design, acquire, construct,
35 reconstruct, improve, extend, expand, lease, operate, repair,
36 manage, maintain, or finance a toll road project.

37 Sec. 9. "Request for proposals" means all materials and
38 documents prepared by or on behalf of the authority to solicit
39 proposals from offerors to enter into a public-private agreement.

40 Sec. 10. "User fees" means the rates, tolls, or fees imposed for
41 the use of, or incidental to, all or any part of a toll road project
42 under a public-private agreement.

C
O
P
Y



Chapter 3. Authority to Enter Into Public-Private Agreements

Sec. 1. Subject to the other provisions of this article, the authority and a private entity may enter into a public-private agreement with respect to a toll road project. Subject to the requirements of this article, a public-private agreement may provide that the private entity is partially or entirely responsible for any combination of the following activities with respect to the project:

- (1) Planning.**
- (2) Design.**
- (3) Acquisition.**
- (4) Construction.**
- (5) Reconstruction.**
- (6) Improvement.**
- (7) Extension or expansion.**
- (8) Operation.**
- (9) Repair.**
- (10) Management.**
- (11) Maintenance.**
- (12) Financing.**

Chapter 4. Selection of Operator by Request for Proposals

Sec. 1. Before entering into a public-private agreement under this article, the authority must issue a request for proposals as set forth in this chapter. A request for proposals for a toll road project may be issued by the authority in one (1) or more phases and may include a request for qualifications.

Sec. 2. A request for proposals issued by the authority must include the following:

- (1) The factors or criteria that will be used in evaluating the proposals.**
- (2) A statement that a proposal must be accompanied by evidence of financial responsibility as considered appropriate and satisfactory by the authority.**
- (3) A statement concerning whether discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements.**
- (4) A statement concerning any other information that the authority may consider in evaluating the proposals.**
- (5) A statement that, except as otherwise required by law or under order from a court of competent jurisdiction, the authority may not disclose the contents of proposals during:**

**C
O
P
Y**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

(A) discussions; or
 (B) negotiations;
 with eligible offerors to other eligible offerors.

Sec. 3. Notice of a request for proposals shall be given by publication in accordance with IC 5-3-1.

Sec. 4. As provided in a request for proposals, discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements.

Sec. 5. Eligible offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals.

Sec. 6. (a) The authority may not disclose the contents of proposals during discussions or negotiations with eligible offerors.
 (b) The authority may, in its discretion in accordance with IC 5-14-3, treat as confidential all records relating to discussions or negotiations between the authority and eligible offerors if those records are created while discussions or negotiations are in progress.
 (c) Notwithstanding subsections (a) and (b), and with the exception of portions that are confidential under IC 5-14-3, the terms of the selected offer negotiated under this article shall be available for inspection and copying under IC 5-14-3 after negotiations with the offerors have been completed.
 (d) When disclosing the terms of the selected offer under subsection (c), the authority shall certify that the information being disclosed accurately and completely represents the terms of the selected offer.

Sec. 7. The authority shall negotiate with one (1) or more responsible offerors who submit proposals that are determined to be reasonably capable of being selected for a public-private agreement and may seek to obtain a final offer from one (1) or more responsible offerors.

Sec. 8. After the final offers from responsible offerors have been negotiated under section 7 of this chapter, the authority shall:
 (1) make a preliminary selection of an offeror as the operator for the related toll road project, whose final offer shall be referred to in this article as the "selected offer"; or
 (2) terminate the request for proposal process.

Sec. 9. If the authority makes a preliminary selection of an operator under section 8 of this chapter, the authority shall schedule a public hearing on the preliminary selection and publish

C
O
P
Y



1 notice of the hearing one (1) time in accordance with IC 5-3-1 at
2 least seven (7) days before the hearing. The notice must include the
3 following:

- 4 (1) The date, time, and place of the hearing.
- 5 (2) The subject matter of the hearing.
- 6 (3) A description of the related toll road project and of the
7 public-private agreement to be awarded.
- 8 (4) The identity of the offeror that has been preliminarily
9 selected as the operator for the project.
- 10 (5) The address and telephone number of the authority.
- 11 (6) A statement indicating that, subject to section 6 of this
12 chapter, and except for those portions that are confidential
13 under IC 5-14-3, the selected offer and an explanation of the
14 basis upon which the preliminary selection was made are
15 available for public inspection and copying at the principal
16 office of the authority during regular business hours.

17 Sec. 10. (a) Subject to section 6 of this chapter, and except for
18 those parts that are confidential under IC 5-14-3, the selected offer
19 and a written explanation of the basis upon which the preliminary
20 selection was made shall be made available for inspection and
21 copying in accordance with IC 5-14-3 at least seven (7) days before
22 the hearing scheduled under section 9 of this chapter.

23 (b) At the hearing, the authority shall allow the public to be
24 heard on the preliminary selection.

25 Sec. 11. (a) After the procedures required in this chapter have
26 been completed, the authority shall make a determination as to
27 whether the offeror that submitted the selected offer should be
28 designated as the operator for the related toll road project and
29 shall submit its determination to the governor and the budget
30 committee.

31 (b) After review of the authority's determination by the budget
32 committee, the governor may accept or reject the determination of
33 the authority. If the governor accepts the determination of the
34 authority, the governor shall designate the offeror who submitted
35 the selected offer as the operator for the related toll road project.
36 The authority shall publish notice of the designation of the
37 operator for the related toll road project one (1) time, in
38 accordance with IC 5-3-1.

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

42 Sec. 12. Any action to contest the validity of a public-private

**C
O
P
Y**



1 agreement entered into under this chapter may not be brought
2 after the fifteenth day following the publication of the notice of the
3 designation of an operator under the public-private agreement as
4 provided in section 11 of this chapter.

5 Sec. 13. The authority shall disclose the contents of all
6 proposals, except the portions of the proposals that may be treated
7 as confidential in accordance with IC 5-14-3, when either:

- 8 (1) the request for proposal process is terminated under
- 9 section 8 of this chapter; or
- 10 (2) the public-private agreement has been executed and the
- 11 closing for each financing transaction required to provide
- 12 funding to carry out the agreement has been conducted.

13 Chapter 5. Terms and Conditions of Public-Private Agreements

14 Sec. 1. (a) Before developing or operating a toll road project, a
15 private entity that has been selected as the operator of a toll road
16 project under this article shall enter into a public-private
17 agreement with the authority setting forth the rights and duties of
18 the operator under this article.

19 (b) A public-private agreement entered into under this article
20 must be approved by the governor before its execution.

21 Sec. 2. A public-private agreement entered into under this
22 article must provide for the following:

- 23 (1) The original term of the public-private agreement, which
- 24 may not exceed ninety-nine (99) years.
- 25 (2) Provisions for a:
- 26 (A) lease, franchise, or license of the toll road project and
- 27 the real property owned by the authority upon which the
- 28 toll road project is located or is to be located; or
- 29 (B) management agreement or other contract to operate
- 30 the toll road project and the real property owned by the
- 31 authority upon which the toll road project is located or is
- 32 to be located;

33 for a predetermined period. The public-private agreement
34 must provide for ownership of all improvements and real
35 property by the authority in the name of the state.

36 (3) Monitoring of the operator's maintenance practices by the
37 authority and the taking of actions by the authority that it
38 considers appropriate to ensure that the toll road project is
39 properly maintained.

40 (4) The basis upon which user fees that may be collected by
41 the operator, as determined under this article, are established.

42 (5) Compliance with applicable state and federal laws and

C
O
P
Y



- 1 **local ordinances.**
- 2 **(6) Grounds for termination of the public-private agreement**
- 3 **by the authority or the operator.**
- 4 **(7) The date of termination of the operator's authority and**
- 5 **duties under this article.**
- 6 **(8) Procedures for amendment of the agreement.**
- 7 **Sec. 3. In addition to the requirements of section 2 of this**
- 8 **chapter, a public-private agreement may include additional**
- 9 **provisions concerning:**
- 10 **(1) Review and approval by the authority of the operator's**
- 11 **plans for the development and operation of the toll road**
- 12 **project.**
- 13 **(2) Inspection by the authority of construction of or**
- 14 **improvements to the toll road project.**
- 15 **(3) Maintenance by the operator of a policy or policies of**
- 16 **public liability insurance (copies of which shall be filed with**
- 17 **the authority, accompanied by proofs of coverage) or**
- 18 **self-insurance, each in a form and amount satisfactory to the**
- 19 **authority to insure coverage of tort liability to the public and**
- 20 **employees and to enable the continued operation of the toll**
- 21 **road project.**
- 22 **(4) Filing by the operator, on a periodic basis, of appropriate**
- 23 **financial statements in a form acceptable to the authority.**
- 24 **(5) Filing by the operator, on a periodic basis, of appropriate**
- 25 **traffic reports in a form acceptable to the authority.**
- 26 **(6) Payments to the operator. These payments may consist of**
- 27 **one (1) or more of the following:**
- 28 **(A) The retention by the operator of the revenues collected**
- 29 **by the operator in the operation and management of the**
- 30 **toll road project.**
- 31 **(B) Payments made to the operator by the authority.**
- 32 **(C) Other sources of payment or revenue to the operator,**
- 33 **if any.**
- 34 **(7) Financing obligations of the operator and the authority,**
- 35 **including entering into agreements for the benefit of the**
- 36 **financing parties.**
- 37 **(8) Apportionment of expenses between the operator and the**
- 38 **authority.**
- 39 **(9) The rights and duties of the operator, the authority, and**
- 40 **other state and local governmental entities with respect to use**
- 41 **of the toll road project, including the state police department**
- 42 **and other law enforcement and public safety agencies.**

**C
O
P
Y**



- 1 **(10) Arbitration or other dispute resolution mechanisms or**
- 2 **remedies for the settlement of claims and other disputes**
- 3 **arising under the agreement.**
- 4 **(11) Payment of money to either party upon default or delay,**
- 5 **or upon termination of the public-private agreement, with the**
- 6 **payments to be used:**
 - 7 **(A) in the form of liquidated damages to compensate the**
 - 8 **operator for demonstrated unamortized costs, lost profits,**
 - 9 **or other amounts as provided in the agreement;**
 - 10 **(B) to retire or refinance indebtedness related to the toll**
 - 11 **road project or the public-private agreement; or**
 - 12 **(C) for any other purpose mutually agreeable to the**
 - 13 **operator and the authority.**
- 14 **(12) Indemnification of the operator by the authority under**
- 15 **conditions specified in the agreement.**
- 16 **(13) Assignment, subcontracting, or other delegation of**
- 17 **responsibilities of the operator or the authority under the**
- 18 **agreement to third parties, including other private entities,**
- 19 **the department, and other state agencies.**
- 20 **(14) Sale or lease to the operator of personal property related**
- 21 **to the toll road project.**
- 22 **(15) Other lawful terms and conditions to which the operator**
- 23 **and the authority mutually agree.**
- 24 **Sec. 4. (a) The operator may finance its obligations with respect**
- 25 **to the toll road project and the public-private agreement in the**
- 26 **amounts and upon the terms and conditions determined by the**
- 27 **operator.**
- 28 **(b) The operator may:**
 - 29 **(1) issue debt, equity, or other securities or obligations;**
 - 30 **(2) enter into sale and leaseback transactions; and**
 - 31 **(3) secure any financing with a pledge of, security interest in,**
 - 32 **or lien on any user fees charged and collected for the use of**
 - 33 **the toll road project and any property interest of the operator**
 - 34 **toll road project.**
- 35 **However, any bonds, debt, other securities, or other financing**
- 36 **issued for the purposes of this article shall not be considered to**
- 37 **constitute a debt of the state or any political subdivision of the state**
- 38 **or a pledge of the faith and credit of the state or any political**
- 39 **subdivision.**
- 40 **(c) The operator may deposit the user fees charged and collected**
- 41 **for the use of the toll road project in a separate account held by a**
- 42 **trustee or escrow agent for the benefit of the secured parties of the**

**C
O
P
Y**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

operator.

Sec. 5. Notwithstanding any contrary provision of this article, the authority may enter into a public-private agreement with multiple private entities if the authority determines in writing that it is in the public interest to do so.

Sec. 6. The department or any other state agency may perform any duties and exercise any powers of the authority under this article or the public-private agreement that have been assigned, subcontracted, or delegated to it by the authority.

Chapter 6. Construction and Operating Standards for Toll Road Projects

Sec. 1. The plans and specifications for each toll road project constructed under this article must comply with:

- (1) the authority's standards for other projects of a similar nature, except as otherwise provided in the public-private agreement; and**
- (2) any other applicable state or federal standards.**

Sec. 2. Unless otherwise provided by federal law, the operator or any contractor or subcontractor of the operator engaged in the construction of a toll road project is not required to comply with IC 4-13.6 or IC 5-16 concerning state public works, IC 5-17 concerning purchases of materials and supplies, or other statutes concerning procedures for procurement of public works or personal property as a condition of being awarded and performing work on the project.

Sec. 3. The operator or any contractor or subcontractor of the operator engaged in the construction of a toll road project is subject to:

- (1) the provisions of 25 IAC 5 concerning equal opportunities for minority business enterprises and women's business enterprises to participate in procurement and contracting processes; and**
- (2) the provisions that may be established by the authority in a public-private agreement with respect to awarding contracts to Indiana businesses (as defined in IC 5-22-15-20.5).**

Sec. 4. Each toll road project constructed or operated under this article is considered to be part of the state highway system designated under IC 8-23-4-2 for purposes of identification, maintenance standards, and enforcement of traffic laws.

Sec. 5. An operator may enter into agreements for maintenance or other services under this article with the authority, the

**C
O
P
Y**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

department, or other state agencies. The authority may:

- (1) with the assistance of all applicable state agencies, establish a unified permitting and licensing process for the processing and issuance of all necessary permits and licenses for toll road projects under this article, including, but not limited to, all environmental permits and business and tax licenses; and
- (2) provide other services for which the authority is reimbursed, including, but not limited to, preliminary planning, environmental certification (including the procurement of all necessary environmental permits), and preliminary design of toll road projects under this article.

Sec. 6. The authority shall seek the cooperation of federal and local agencies to expedite all necessary federal and local permits, licenses, and approvals necessary for toll road projects under this article.

Chapter 7. User Fees

Sec. 1. (a) Notwithstanding IC 8-9.5-8 and IC 8-15-2-14(j), and subject to section 8 of this chapter, the authority may fix and revise the amounts of user fees that an operator may charge and collect for the use of any part of a toll road project in accordance with the public-private agreement.

(b) In fixing the amounts referred to in subsection (a), the authority may:

- (1) establish maximum amounts for the user fees; and
- (2) provide for increases or decreases of the user fees or the maximum amounts established based upon the indices, methodologies, or other factors that the authority considers appropriate.

Sec. 2. A schedule of the current user fees shall be made available by the operator to any member of the public on request.

Sec. 3. User fees established by the authority under this article are not subject to supervision or regulation by any other commission, board, bureau, or agency of the state, or by any political subdivision.

Sec. 4. (a) Subject to section 8 of this chapter, user fees established by the authority under section 1 of this chapter for the use of a toll road project must be nondiscriminatory and may:

- (1) include different user fees based on categories such as vehicle class, vehicle size, vehicle axles, vehicle weight, volume, location, or traffic congestion or such other means or classification as the authority determines to be appropriate;

C
o
p
y



- 1 (2) vary by time of day or year; or
- 2 (3) be based on one (1) or more factors considered relevant by
- 3 the authority, which may include any combination of:
- 4 (A) the costs of:
- 5 (i) operation;
- 6 (ii) maintenance; and
- 7 (iii) repair and rehabilitation;
- 8 (B) debt service payments on bonds or other obligations;
- 9 (C) adequacy of working capital;
- 10 (D) depreciation;
- 11 (E) payment of user fees, any state, federal, or local taxes,
- 12 or payments in lieu of taxes; and
- 13 (F) the sufficiency of income to:
- 14 (i) maintain the toll road project in a sound physical and
- 15 financial condition to render adequate and efficient
- 16 service; and
- 17 (ii) induce an operator to enter into a public-private
- 18 agreement.

19 **Sec. 5. Subject to section 8 of this chapter, a public-private**
 20 **agreement may:**

- 21 (1) grant an operator a license or franchise to charge and
- 22 collect tolls for the use of the toll road project;
- 23 (2) authorize the operator to adjust the user fees charged and
- 24 collected for the use of the toll road project, so long as the
- 25 amounts charged and collected by the operator do not exceed
- 26 the maximum amounts established by the authority under
- 27 section 1 of this chapter;
- 28 (3) provide that any adjustment by the operator permitted
- 29 under subdivision (2) may be based on such indices,
- 30 methodologies, or other factors as described in the
- 31 public-private agreement or as approved by the authority;
- 32 (4) authorize the operator to charge and collect user fees
- 33 through manual and nonmanual methods, including, but not
- 34 limited to, automatic vehicle identification systems, electronic
- 35 toll collection systems, and, to the extent permitted by law,
- 36 including rules adopted by the authority under
- 37 IC 8-15-2-17.2(a)(10), global positioning systems and photo or
- 38 video based toll collection or toll collection enforcement
- 39 systems; and
- 40 (5) authorize the collection of user fees charges by a third
- 41 party.

42 **Sec. 6. (a) After expiration of a public-private agreement, the**

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

authority may:

- (1) continue to charge user fees for the use of the toll road project; or
- (2) delegate to a third party the authority to continue to collect the user fees.

(b) Revenues collected under this section must first be used for operations and maintenance of the toll road project. Any revenues determined by the authority to be excess must be paid to the authority for deposit in the toll road fund established by IC 8-15.5-11-5.

Sec. 7. Any action to contest the validity of user fees fixed under this chapter may not be brought after the fifteenth day following the effective date of a rule fixing such user fees adopted under IC 4-22-2-37.1(a)(30).

Sec. 8. (a) As used in this section, "passenger motor vehicle" means:

- (1) a passenger motor vehicle (as defined in IC 9-13-2-123); or
- (2) a truck (as defined in IC 9-13-2-188) that has a declared gross weight of not more than seven thousand (7,000) pounds; that is owned or leased by an individual and is not used for commercial purposes.

(b) The user fees charged by the operator of the Indiana Toll Road under a public-private agreement for the use of the Indiana Toll Road by passenger motor vehicles that are owned or leased by individuals who reside in a county traversed by the Indiana Toll Road may not exceed the user fees for passenger motor vehicles that were in effect January 1, 2006.

(c) The operator of the Indiana Toll Road under a public-private agreement shall take the steps necessary to implement this section. The bureau of motor vehicles and other state agencies shall cooperate with the operator as necessary to implement this section.

(d) This section expires July 1, 2016.

Chapter 8. Taxation of Operators

Sec. 1. A toll road project and tangible personal property used exclusively in connection with a toll road project that are:

- (1) owned by the authority and leased, franchised, licensed or otherwise conveyed to an operator; or
- (2) acquired, constructed, or otherwise provided by an operator in connection with the toll road project;

under the terms of a public-private agreement are considered to be public property devoted to an essential public and governmental

C
O
P
Y



1 function and purpose and the property, and an operator's
2 leasehold estate, franchise, license, and other interests in the
3 property are exempt from all ad valorem property taxes and
4 special assessments levied against property by the state or any
5 political subdivision of the state.

6 Sec. 2. Income received by an operator under the terms of a
7 public-private agreement is subject to taxation in the same manner
8 as income received by other private entities.

9 Sec. 3. An operator or any other person purchasing tangible
10 personal property for incorporation into or improvement of a
11 structure or facility constituting or becoming part of the land
12 included in the toll road project is not exempt from the application
13 of the gross retail or use tax under IC 6-2.5 with respect to such a
14 purchase.

15 Chapter 9. Records of Operators

16 Sec. 1. Records that are provided by an operator to the
17 authority that relate to compliance by an operator with the terms
18 of a public-private agreement are subject to inspection and copying
19 in accordance with IC 5-14-3.

20 Chapter 10. Additional Powers of the Authority Concerning
21 Toll Road Projects

22 Sec. 1. The authority may exercise any powers provided under
23 this article in participation or cooperation with the department or
24 any other governmental entity and enter into any contracts to
25 facilitate that participation or cooperation without compliance
26 with any other statute.

27 Sec. 2. (a) The authority may make and enter into all contracts
28 and agreements necessary or incidental to the performance of the
29 authority's duties and the execution of the authority's powers
30 under this article. These contracts or agreements are not subject
31 to any approvals other than the approval of the authority and may
32 be for any term of years and contain any terms that are considered
33 reasonable by the authority.

34 (b) The:

35 (1) department; and

36 (2) any other state agency;

37 may make and enter into all contracts and agreements necessary
38 or incidental to the performance of the duties and the execution of
39 the powers granted to the department or the state agency in
40 accordance with this article or the public-private agreement. These
41 contracts or agreements are not subject to any approvals other
42 than the approval of the department or state agency and may be

C
o
p
y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

for any term of years and contain any terms that are considered reasonable the department or the state agency.

Sec. 3. (a) The authority may pay any amounts owed by the authority under a public-private agreement entered into under this article from any funds available to the authority under this article or any other statute.

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

- (1) establish a procedure for the authority or a person acting on behalf of the authority to certify to the general assembly the amount needed to pay any amounts owed by the authority under a public-private agreement; or**
- (2) otherwise create a moral obligation of the state to pay any amounts owed by the authority under the public-private agreement.**

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

Sec. 4. For purposes of this article, the authority may authorize an operator under a public-private agreement to perform any of its duties under IC 8-15-2-1, IC 8-15-2-6, IC 8-15-2-18, and IC 8-15-2-24.

Sec. 5. The authority may exercise any of its powers under IC 8-15-2 or any other provision of Indiana Code as necessary or desirable for the performance of the authority's duties and the execution of the authority's powers under this article.

Sec. 6. The authority may not take any action under this chapter that would impair the public-private agreement entered into under this article.

Sec. 7. (a) The authority shall enter into an agreement between and among the operator, the authority, and the state police department concerning the provision of law enforcement assistance with respect to a toll road project that is the subject of a public-private agreement under this article.

(b) The authority may enter into arrangements with the state police department related to costs incurred in providing law enforcement assistance under this article.

(c) All law enforcement officers of the state and any political subdivision have the same powers and jurisdiction within the limits of a toll road project as they have in their respective areas of

**C
O
P
Y**



1 jurisdiction, including the roads and highways of the state. These
 2 law enforcement officers shall have access to a toll road project
 3 that is the subject of a public-private agreement to exercise their
 4 powers and jurisdiction.

5 **Chapter 11. Toll Road Fund**

6 **Sec. 1.** As used in this chapter, "account" refers to an account
 7 established within the fund.

8 **Sec. 2.** As used in this chapter, "eligible political subdivision"
 9 refers to:

- 10 (1) counties through which a toll road project traverses; and
 11 (2) cities and towns in those counties.

12 **Sec. 3.** As used in this chapter, "eligible project" means:

13 (1) with respect to an eligible political subdivision, the
 14 acquisition, construction, renovation, improvement, and
 15 equipping of projects designed to facilitate the movement of
 16 people, goods, services, and information, including, but not
 17 limited to:

- 18 (A) roads;
 19 (B) trails and bike paths;
 20 (C) intermodal freight facilities;
 21 (D) airports;
 22 (E) bridges;
 23 (F) public transit facilities and equipment;
 24 (G) pipes and pumping stations for the transportation of
 25 gases and liquids; and
 26 (H) cabling and other transmission equipment for data,
 27 voice, and electricity;

28 (2) with respect to the northwest Indiana regional
 29 development authority:

- 30 (A) all or part of a distribution described in IC 8-15-2-14.7;
 31 and

32 (B) the acquisition, construction, renovation, improvement,
 33 and equipping of a project (as defined in IC 36-7.5-1);

34 (3) with respect to the northeast Indiana regional
 35 development authority:

- 36 (A) all or part of a distribution described in IC 8-15-2-14.8;
 37 and

38 (B) the acquisition, construction, renovation, improvement,
 39 and equipping of a project (as defined in IC 36-7.6-1); and

40 (4) with respect to the department, the acquisition,
 41 construction, renovation, improvement, and equipping of
 42 projects identified in the department's current long range

C
O
P
Y



1 **comprehensive transportation plan.**

2 **Sec. 4. As used in this chapter, "fund" refers to the toll road**
3 **fund established by section 5 of this chapter.**

4 **Sec. 5. (a) The toll road fund is established to provide funds to:**

5 **(1) pay or defease certain bonds in the manner provided by**
6 **this chapter;**

7 **(2) pay amounts owed by the authority in connection with the**
8 **execution and performance of a public-private agreement**
9 **under this article; and**

10 **(3) make distributions for eligible projects to:**

11 **(A) the department;**

12 **(B) the northwest Indiana regional development authority**
13 **established in IC 36-7.5-2;**

14 **(C) the northeast Indiana regional development authority**
15 **established in IC 36-7.6-2; and**

16 **(D) eligible political subdivisions.**

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

18 **(c) Expenses of administering the fund shall be paid from money**
19 **in the fund.**

20 **(d) The fund consists of the following:**

21 **(1) Money received from an operator under a public-private**
22 **agreement.**

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

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

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

26 **(e) The authority shall establish the following separate accounts**
27 **within the fund:**

28 **(1) The bond retirement account.**

29 **(2) The administration account.**

30 **(3) The eligible project account.**

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

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

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

C
O
P
Y



1 **Sec. 6. (a) Before any distributions are made from the fund**
 2 **under this chapter, the authority shall determine:**

3 **(1) the extent to which outstanding bonds issued by the**
 4 **authority under IC 8-14.5-6 or IC 8-15-2 should be repaid,**
 5 **defeased, or otherwise retired;**

6 **(2) the total amount necessary to repay, defease, or otherwise**
 7 **retire the bonds selected by the authority for repayment,**
 8 **defeasance, or retirement; and**

9 **(3) the total amount necessary to pay the amounts owed by the**
 10 **authority related to the execution and performance of a**
 11 **public-private agreement under this article, including**
 12 **establishing reserves.**

13 **(b) Before making any distributions from the fund under**
 14 **subsection (c), (d), or (e), the authority shall allocate the amount**
 15 **determined under subsection (a)(2) to the bond retirement account.**
 16 **Money in this account may only be used for the purpose described**
 17 **in section 5(a)(1) of this chapter.**

18 **(c) After making the allocation required by subsection (b) and**
 19 **before making the allocations required by subsections (d) and (e),**
 20 **the authority shall allocate the amount determined under**
 21 **subsection (a)(3) to the administration account. Money in this**
 22 **account may only be used for the purpose described in section**
 23 **5(a)(2) of this chapter.**

24 **(d) After making the allocations required by subsections (b) and**
 25 **(c), thirty-four percent (34%) of the remaining money received**
 26 **during each state fiscal year under a public-private agreement**
 27 **under this article shall be allocated to the eligible project account.**
 28 **Money in this account may only be used for the purposes described**
 29 **in section 5(a)(3) of this chapter.**

30 **(e) After making the allocations required by subsections (b), (c),**
 31 **and (d), the authority shall transfer all remaining money received**
 32 **during each state fiscal year under a public-private agreement**
 33 **under this article to the major moves construction fund established**
 34 **by IC 8-14-14.**

35 **Sec. 7. (a) The money allocated to the eligible project account**
 36 **must be used to make distributions to:**

37 **(1) the department;**

38 **(2) the northwest Indiana regional development authority;**

39 **(3) the northeast Indiana regional development authority; and**

40 **(4) eligible political subdivisions;**

41 **for eligible projects located in eligible political subdivisions.**

42 **(b) Before July 1, 2006, and each year thereafter, the**

C
O
P
Y



1 department shall submit to the authority a list of the eligible
2 projects that:

- 3 (1) are to be carried out by the department during the state
4 fiscal year beginning on July 1 of that year; and
5 (2) require a distribution of money from the eligible project
6 account.

7 The list must include the amount of distributions required for each
8 project during the fiscal year, the total amount of distributions
9 required for all projects during the fiscal year, and the schedule of
10 distributions required for each project. Upon a determination by
11 the authority that the department's request complies with this
12 chapter, the authority shall make the distributions in the amounts
13 and in accordance with the schedule of projects provided by the
14 department. The authority shall pay the distributions from the
15 eligible project account to the treasurer of state for deposit in the
16 state highway fund.

17 (c) Before July 1, 2006, and every year thereafter, the northwest
18 Indiana regional development authority may submit to the
19 authority a request for a distribution from the eligible project
20 account. The request must include a list of the eligible projects
21 that:

- 22 (1) are to be carried out by the northwest Indiana regional
23 development authority during the state fiscal year beginning
24 on July 1 of that year; and
25 (2) require a distribution of money from the eligible project
26 account.

27 The list must include the amount of distributions requested for
28 each project during the fiscal year, the total amount of
29 distributions requested for all projects during the fiscal year, and
30 the proposed schedule of distributions for each project. The
31 authority may approve, modify and approve, or reject a request
32 made under this section. The authority shall make any
33 distributions in the amounts and in accordance with the schedule
34 as approved by the authority and shall pay the distributions from
35 the eligible project account to the northwest Indiana regional
36 development authority for deposit in the general account of the
37 development authority fund established under IC 36-7.5-4-1.

38 (d) Before July 1, 2006, and every year thereafter, the northeast
39 Indiana regional development authority may submit to the
40 authority a request for a distribution from the eligible project
41 account. The request must include a list of the eligible projects
42 that:

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- (1) are to be carried out by the northeast Indiana regional development authority during the state fiscal year beginning on July 1 of that year; and
- (2) require a distribution of money from the eligible project account.

The list must include the amount of distributions requested for each project during the fiscal year, the total amount of distributions requested for all projects during the fiscal year, and the proposed schedule of distributions for each project. The authority may approve, modify and approve, or reject a request made under this section. The authority shall make any distributions in the amounts and in accordance with the schedule as approved by the authority and shall pay the distributions from the eligible project account to the northeast Indiana regional development authority for deposit in the general account of the development authority fund established under IC 36-7.6-4-1.

(e) Before July 1, 2006, and each year thereafter, eligible political subdivisions may submit to the department a request for a distribution from the eligible project account. The request must include a list of the eligible projects that:

- (1) are to be carried out by the eligible political subdivision during the state fiscal year beginning on July 1 of that year; and
- (2) require a distribution of money from the eligible project account.

The list must include the amount of distributions requested for each project during the fiscal year, the total amount of distributions requested for all projects during the fiscal year, and the proposed schedule of distributions for each project. The department may approve, modify and approve, or reject a request made under this section. Upon a determination by the authority that the department's request complies with the provisions of this chapter, the authority shall make any distributions approved by the department in the amounts and in accordance with the schedule of projects approved by the department. The authority shall pay the distributions from the eligible project account to the fiscal officer (as defined in IC 36-1-2-7) of the city, town, or county.

(e) Any use or withdrawal of money from the toll road fund, which would result in the inability of the treasurer of state to distribute the money required to be distributed to the northwest Indiana regional development authority pursuant to IC 8-15-2-14.7 or to the northeast Indiana regional development authority

C
O
P
Y



1 pursuant to IC 8-15-2-14.8, must be made by an act passed by at
 2 least seventy-five percent (75%) of the members of the house of
 3 representatives and by at least seventy-five percent (75%) of the
 4 members of the senate, and the use or withdrawal may not occur
 5 until the bill is enacted and becomes effective.

6 **Sec. 8. Money in the fund may be used for a purpose other than**
 7 **a purpose that is specified in this chapter on the effective date of**
 8 **this chapter only if the general assembly authorizes the purpose in**
 9 **a statute approved by at least seventy-five percent (75%) of the**
 10 **members of the house of representatives and by at least**
 11 **seventy-five percent (75%) of the members of the senate.**

12 **Chapter 12. Prohibited Local Action**

13 **Sec. 1. A political subdivision (as defined in IC 36-1-2-13) may**
 14 **not take any action that would have the effect of impairing a**
 15 **public-private agreement under this article.**

16 **Chapter 13. Prohibited Political Contributions**

17 **Sec. 1. The definitions in IC 3-5-2 apply to this chapter to the**
 18 **extent they do not conflict with the definitions in this article.**

19 **Sec. 2. As used in this chapter, "candidate" refers to any of the**
 20 **following:**

- 21 (1) A candidate for a state office.
- 22 (2) A candidate for a legislative office.
- 23 (3) A candidate for a local office.

24 **Sec. 3. As used in this chapter, "committee" refers to any of the**
 25 **following:**

- 26 (1) A candidate's committee.
- 27 (2) A regular party committee.
- 28 (3) A committee organized by a legislative caucus of the house
- 29 of representatives of the general assembly.
- 30 (4) A committee organized by a legislative caucus of the senate
- 31 of the general assembly.

32 **Sec. 4. As used in this chapter, "officer" refers only to either of**
 33 **the following:**

- 34 (1) An individual listed as an officer of a corporation in the
- 35 corporation's most recent annual report.
- 36 (2) An individual who is a successor to an individual described
- 37 in subdivision (1).

38 **Sec. 5. For purposes of this chapter, a person is considered to**
 39 **have an interest in an operator if the person satisfies any of the**
 40 **following:**

- 41 (1) The person holds any interest in an operator.
- 42 (2) The person is an officer of an operator.

C
O
P
Y



1 (3) The person is an officer of a person that holds any interest
 2 in an operator.
 3 (4) The person is a political action committee of an operator.
 4 **Sec. 6. An operator is considered to have made a contribution**
 5 **if a contribution is made by a person who has an interest in the**
 6 **operator.**
 7 **Sec. 7. An operator or a person who has an interest in an**
 8 **operator may not make a contribution to a candidate or a**
 9 **committee during the following periods:**
 10 (1) The term during which the operator is a party to a
 11 public-private agreement entered into under this article.
 12 (2) The three (3) years following the final expiration or
 13 termination of the public-private agreement described in
 14 subdivision (1).
 15 **Sec. 8. A person who knowingly or intentionally violates this**
 16 **chapter commits a Class D felony.**
 17 SECTION 36. IC 8-15.7 IS ADDED TO THE INDIANA CODE AS
 18 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON
 19 PASSAGE]:
 20 **ARTICLE 15.7. PUBLIC-PRIVATE PARTNERSHIPS**
 21 **Chapter 1. General Provisions**
 22 **Sec. 1. The general assembly finds the following:**
 23 (1) There is a public need for timely development and
 24 operation of transportation facilities in Indiana that address
 25 the needs identified by the department, through the
 26 department's transportation plan and otherwise, by
 27 accelerating project delivery, improving safety, reducing
 28 congestion, increasing mobility, improving connectivity,
 29 increasing capacity, enhancing economic efficiency,
 30 promoting economic development, or any combination of
 31 those methods.
 32 (2) This public need may not be wholly satisfied by existing
 33 methods of procurement and project delivery in which
 34 transportation facilities are developed, financed, or operated.
 35 (3) Authorizing private entities to do all or part of the
 36 development, planning, design, construction, maintenance,
 37 repair, rehabilitation, expansion, financing, and operation of
 38 one (1) or more transportation facilities may result in the
 39 availability of the transportation facilities to the public in a
 40 more timely, more efficient, or less costly fashion, thereby
 41 serving the public safety and welfare.
 42 **Sec. 2. An action, other than an approval by the authority or the**

C
O
P
Y



1 department under IC 8-15.7-4, serves the public purpose of this
2 article if the action facilitates the timely development, planning,
3 design, construction, maintenance, repair, rehabilitation,
4 expansion, financing, or operation of a qualifying project.

5 Sec. 3. It is the intent of this article to:

6 (1) encourage investment in Indiana by private entities that
7 facilitates the development, planning, design, construction,
8 maintenance, repair, rehabilitation, expansion, financing, and
9 operation of transportation facilities; and

10 (2) grant public and private entities the greatest possible
11 flexibility in contracting with each other for the provision of
12 the public services that are the subject of this article.

13 Sec. 4. The powers conferred by this article shall be liberally
14 construed in order to accomplish their purposes and are in
15 addition and supplemental to the powers conferred by any other
16 law. If any other law or rule is inconsistent with this article, this
17 article is controlling as to any public-private agreement entered
18 into under this article.

19 Sec. 5. This article contains full and complete authority for
20 agreements and leases with private entities to carry out the
21 activities described in this article. No procedure, proceeding,
22 publication, notice, consent, approval, order, or act by the
23 authority, the department, or any other state or local agency or
24 official is required to enter into an agreement or lease, and no law
25 to the contrary affects, limits, or diminishes the authority for
26 agreements and leases with private entities, except as provided by
27 this article.

28 Sec. 6. To the extent that this article permits or requires the
29 authority, the department, or a private entity to carry out any law
30 other than this article under a public-private agreement, the action
31 shall be carried out in conformity with this article.

32 Chapter 2. Definitions

33 Sec. 1. The definitions in this chapter apply throughout this
34 article.

35 Sec. 2. "Affected jurisdiction" means the following:

36 (1) Any county, city, or town in which all or a part of a
37 qualifying project is located.

38 (2) Any other public entity directly affected by the qualifying
39 project.

40 Sec. 3. "Authority" or "Indiana finance authority" refers to the
41 Indiana finance authority established by IC 4-4-11-4.

42 Sec. 4. "Develop" or "development" means to do one (1) or

C
O
P
Y



- 1 **more of the following:**
- 2 (1) **Plan.**
- 3 (2) **Design.**
- 4 (3) **Develop.**
- 5 (4) **Lease.**
- 6 (5) **Acquire.**
- 7 (6) **Install.**
- 8 (7) **Construct.**
- 9 (8) **Reconstruct.**
- 10 (9) **Rehabilitate.**
- 11 (10) **Extend.**
- 12 (11) **Expand.**

13 **Sec. 5. "Highway, street, or road" has the meaning set forth in**
 14 **IC 8-23-1-23.**

15 **Sec. 6. "Law enforcement officer" has the meaning set forth in**
 16 **IC 35-41-1-17.**

17 **Sec. 7. "Maintenance" includes ordinary maintenance, repair,**
 18 **rehabilitation, capital maintenance, maintenance replacement, and**
 19 **any other categories of maintenance that may be designated by the**
 20 **authority.**

21 **Sec. 8. "Offeror" means a private entity that has submitted a**
 22 **qualification submittal or a proposal for a public-private**
 23 **agreement under this article.**

24 **Sec. 9. "Operate" or "operation" means to do one (1) or more**
 25 **of the following:**

- 26 (1) **Maintain.**
- 27 (2) **Improve.**
- 28 (3) **Equip.**
- 29 (4) **Modify.**
- 30 (5) **Otherwise operate.**

31 **Sec. 10. "Operator" means a private entity that has entered into**
 32 **a public-private agreement with the authority to provide services**
 33 **to or on behalf of the authority.**

34 **Sec. 11. "Political subdivision" has the meaning set forth in**
 35 **IC 36-1-2-13.**

36 **Sec. 12. "Private entity" means any combination of one (1) or**
 37 **more individuals, corporations, general partnerships, limited**
 38 **liability companies, limited partnerships, joint ventures, business**
 39 **trusts, nonprofit entities, or other business entities that are parties**
 40 **to a proposal for a qualifying project or a public-private agreement**
 41 **related to a qualifying project. A public agency may provide**
 42 **services to an operator as a subcontractor or subconsultant**

C
O
P
Y



1 without affecting the private status of the private entity and the
2 entity's or operator's ability to enter into a public-private
3 agreement.

4 **Sec. 13. "Project" means all or part of the following:**

5 (1) A limited access facility (as defined in IC 8-23-1-28).

6 (2) A tollway (as defined in IC 8-15-3-7).

7 (3) Roads and bridges.

8 (4) All or part of a bridge, tunnel, overpass, underpass,
9 interchange, structure, ramp, access road, service road,
10 entrance plaza, approach, tollhouse, utility corridor, toll
11 gantry, rest stop, service area, or administration, storage, or
12 other building or facility, including temporary facilities and
13 buildings or facilities and structures that will not be tolled,
14 that the authority determines is appurtenant, necessary, or
15 desirable for the development, financing, or operation of the
16 facilities described in subdivisions (1), (2) and (3).

17 (5) An improvement, betterment, enlargement, extension, or
18 reconstruction of all or part of any of the facilities described
19 in this section, including a nontolled part, that is separately
20 designated by name or number.

21 **Sec. 14. "Public-private agreement" means the public-private**
22 **agreement between the operator and the authority that relates to**
23 **any combination of the development, financing, or operation of a**
24 **qualifying project and is entered into under this article.**

25 **Sec. 15. "Qualifying project" means one (1) or more projects**
26 **developed, financed, or operated by an operator under this article.**

27 **Sec. 16. "Request for proposals" means all materials and**
28 **documents prepared by or on behalf of the authority to solicit**
29 **proposals from offerors to enter into a public-private agreement.**

30 **Sec. 17. "Request for qualifications" means all materials and**
31 **documents prepared by or on behalf of the authority to solicit**
32 **qualification submittals from offerors to enter into a public-private**
33 **agreement.**

34 **Sec. 18. "Revenues" means all revenues, including any**
35 **combination of:**

36 (1) income;

37 (2) earnings and interest;

38 (3) user fees;

39 (4) lease payments;

40 (5) allocations;

41 (6) federal, state, and local appropriations, grants, loans, lines
42 of credit, and credit guarantees;

C
O
P
Y



1 (7) bond proceeds;
 2 (8) equity investments; or
 3 (9) other receipts;
 4 arising out of or in connection with a qualifying project, including
 5 the development, financing, and operation of a qualifying project.
 6 The term includes money received as grants, loans, lines of credit,
 7 credit guarantees, or otherwise in aid of a qualifying project from
 8 the federal government, the state, a political subdivision, or any
 9 agency or instrumentality of the federal government, the state, or
 10 a political subdivision.

11 Sec. 19. "Transportation plan" has the meaning set forth in
 12 IC 8-23-1-41.

13 Sec. 20. "User fees" means the rates, tolls, or fees imposed for
 14 use of, or incidental to, all or part of a qualifying project under a
 15 public-private agreement.

16 Chapter 3. Formation of an Agreement

17 Sec. 1. The authority may exercise the powers granted by this
 18 article to carry out:

- 19 (1) the development;
- 20 (2) the financing;
- 21 (3) the operation; or
- 22 (4) any combination of the development, financing, and
 23 operation;

24 of all or part of one (1) or more projects through public-private
 25 agreements with one (1) or more private entities. The parties to a
 26 public-private agreement that relates to a tollway (as defined in
 27 IC 8-15-3-7) or a project that otherwise charges user fees may
 28 exercise any of the powers granted to the party under IC 8-15-3.
 29 The authority may use the revenues arising out of one (1) project
 30 or public-private agreement for all or part of the development,
 31 financing, and operation of any part of one (1) or more other
 32 projects through public-private agreements with one (1) or more
 33 private entities or as otherwise considered appropriate by the
 34 authority.

35 Sec. 2. An operator has:

- 36 (1) all powers allowed by law generally to a private entity
 37 having the same form of organization as the operator; and
- 38 (2) the power to develop, finance, and operate the qualifying
 39 project and impose user fees in connection with the use of the
 40 qualifying project.

41 Tolls or user fees may not be imposed by the operator except as set
 42 forth in a public-private agreement. User fees and the setting of

C
 O
 P
 Y



1 user fee rates are not subject to supervision or regulation by any
2 commission, board, bureau, or agency of the state or any
3 municipality, other than the authority to the extent set forth in the
4 public-private agreement.

5 Sec. 3. The operator may own, lease, or acquire any property
6 interest or other right to develop, finance, or operate the qualifying
7 project.

8 Sec. 4. In operating the qualifying project, the operator may do
9 the following:

10 (1) Make user classifications as permitted in the
11 public-private agreement.

12 (2) As permitted in the public-private agreement or otherwise
13 with the consent of the authority or the department, as
14 applicable, make and enforce reasonable rules to the same
15 extent that the authority or the department may make and
16 enforce rules with respect to a similar project.

17 Sec. 5. The authority shall establish a program to facilitate
18 participation in qualifying projects by:

19 (1) small businesses that qualify for a small business set-aside
20 under IC 4-13.6-2-11;

21 (2) businesses certified under IC 4-13-16.5 as a minority
22 business enterprise;

23 (3) businesses certified under IC 4-13-16.5 as a women's
24 business enterprise;

25 (4) businesses treated as disadvantaged business enterprises
26 under federal or state law; and

27 (5) businesses defined under IC 5-22-15-20.5 as Indiana
28 businesses, to the extent permitted by applicable federal and
29 state law and regulations.

30 **Chapter 4. Procurement Process**

31 Sec. 1. The authority may request proposals from private
32 entities for all or part of the development, financing, and operation
33 of one (1) or more projects.

34 Sec. 2. (a) This section establishes the competitive proposal
35 procedure that the authority shall use to enter into a public-private
36 agreement with an operator under this article.

37 (b) The authority may pursue a competitive proposal procedure
38 using a request for qualifications and a request for proposals
39 process or proceed directly to a request for proposals.

40 (c) If the authority elects to use a request for qualifications
41 phase, it must provide a public notice of the request for
42 qualifications, for the period considered appropriate by the

C
O
P
Y



1 authority, before the date set for receipt of submittals in response
2 to the solicitation. The authority shall provide the notice by posting
3 in a designated public area and publication in a newspaper of
4 general circulation, in the manner provided by IC 5-3-1. In
5 addition, submittals in response to the solicitation may be solicited
6 directly from potential offerors.

7 (d) The authority shall evaluate qualification submittals based
8 on the requirements and evaluation criteria set forth in the request
9 for qualifications.

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

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

23 (g) The authority shall submit a draft of the request for
24 proposals to the budget committee for its review before the
25 issuance by the authority of the request for proposals to potential
26 offerors. The request for proposals must:

- 27 (1) indicate in general terms the scope of work, goods, and
28 services sought to be procured;
- 29 (2) contain or incorporate by reference the specifications and
30 contractual terms and conditions applicable to the
31 procurement and the qualifying project;
- 32 (3) specify the factors, criteria, and other information that
33 will be used in evaluating the proposals;
- 34 (4) specify any requirements or goals for use of:
 - 35 (A) minority business enterprises and women's business
36 enterprises certified under IC 4-13-16.5;
 - 37 (B) disadvantaged business enterprises under federal or
38 state law;
 - 39 (C) businesses defined under IC 5-22-15-20.5 as Indiana
40 businesses, to the extent permitted by applicable federal
41 and state law and regulations; and
 - 42 (D) businesses that qualify for a small business set aside

**C
O
P
Y**



- 1 under IC 4-13.6-2-11;
- 2 (5) contain or incorporate by reference the other applicable
- 3 contractual terms and conditions; and
- 4 (6) contain or incorporate by reference any other provisions,
- 5 materials, or documents that the authority considers
- 6 appropriate.
- 7 (h) The authority shall determine the evaluation criteria that
- 8 are appropriate for each project and shall set those criteria forth
- 9 in the request for proposals. The authority may use a selection
- 10 process that results in selection of the proposal offering the best
- 11 value to the public, a selection process that results in selection of
- 12 the proposal offering the lowest price or cost or the highest
- 13 payment to, or revenue sharing with, the authority, or any other
- 14 selection process that the authority determines is in the best
- 15 interests of the state and the public.
- 16 (i) The authority shall evaluate proposals based on the
- 17 requirements and evaluation criteria set forth in the request for
- 18 proposals.
- 19 (j) The authority may select one (1) or more offerors for
- 20 negotiations based on the evaluation criteria set forth in the
- 21 request for proposals. If the authority believes that negotiations
- 22 with the selected offeror or offerors are not likely to result in a
- 23 public-private agreement, or, in the case of a best value selection
- 24 process, no longer reflect the best value to the state and the public,
- 25 the authority may commence negotiations with other responsive
- 26 offerors, if any, and may suspend, terminate, or continue
- 27 negotiations with the original offeror or offerors. If negotiations
- 28 are unsuccessful, the authority shall terminate the procurement,
- 29 may not award the public-private agreement, and may commence
- 30 a new procurement for a public-private agreement. If the authority
- 31 determines that negotiations with an offeror have been successfully
- 32 completed, the authority shall, subject to the other requirements of
- 33 this article, award the public-private agreement to the offeror.
- 34 (k) Before awarding a public-private agreement to an operator,
- 35 the authority shall schedule a public hearing on the proposed
- 36 public-private agreement and publish notice of the hearing one (1)
- 37 time in accordance with IC 5-3-1 at least seven (7) days before the
- 38 hearing. The notice must include the following:
- 39 (1) The date, time, and place of the hearing.
- 40 (2) The subject matter of the hearing.
- 41 (3) A description of the agreement to be awarded.
- 42 (4) The recommendation that has been made to award the

C

O

P

Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

agreement to an identified offeror or offerors.

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

(l) At the hearing, the authority shall allow the public to be heard on the proposed public-private agreement.

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

Sec. 3. (a) After the procedures required in this chapter have been completed, the authority shall make a determination as to whether the successful offeror should be designated as the operator for the project and shall submit its decision to the governor and the budget committee.

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

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

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

Sec. 4. The authority may pay a stipulated amount to an unsuccessful offeror that submits a responsive proposal in response to a request for proposals under this chapter, in exchange for the work product contained in that proposal. The use by the authority or the department of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority or the department and does not confer liability on the recipient of the stipulated amount under this section. After payment of the stipulated amount:

(1) the authority, the department, and the unsuccessful offeror jointly own the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the proposal, project design, and project financial plan; and

C
O
P
Y



1 (2) the use by the unsuccessful offeror of any part of the work
2 product contained in the proposal is at the sole risk of the
3 unsuccessful offeror and does not confer liability on the
4 authority or the department.

5 Sec. 5. In addition to any other rights under this article, in
6 connection with any procurement under this chapter, the authority
7 may:

8 (1) withdraw a request for qualifications or a request for
9 proposals at any time and, in its discretion, publish a new
10 request for qualifications or request for proposals;

11 (2) decline to award a public-private agreement for any
12 reason;

13 (3) request clarifications to any qualification submittal or
14 request for proposals or seek one (1) or more revised
15 proposals or one (1) or more best and final offers;

16 (4) modify the terms, provisions, and conditions of a request
17 for qualification, request for proposals, technical
18 specifications, or form of public-private agreement during the
19 pendency of a procurement; and

20 (5) interview offerors.

21 Sec. 6. (a) After the execution of a public-private agreement and
22 the completion of the process of negotiating all phases or aspects of
23 the agreement, the authority shall make available, upon request,
24 procurement records in accordance with this section. Before the
25 completion of a procurement under this article, all procurement
26 records are confidential and are not subject to disclosure or
27 inspection under IC 5-14-3. Except as provided by this section, all
28 proceedings, records, contracts, and other records relating to
29 procurement under this article are public records.

30 (b) The authority shall declare as confidential under IC 5-14-3-4
31 and take appropriate action to protect:

32 (1) confidential proprietary records that are:

33 (A) voluntarily provided by an offeror under a
34 qualifications submittal or proposal filed with the
35 authority or an affected jurisdiction under this chapter
36 under a promise of confidentiality from the authority or
37 affected jurisdiction; and

38 (B) used by the authority or affected jurisdiction for
39 purposes related to the development, financing, or
40 operation of a qualifying project; and

41 (2) memoranda, working papers, or other records related to
42 qualification submittals and proposals filed under this

C
O
P
Y



1 chapter, if the authority determines that if the records were
 2 made public, the financial or competitive interest of the
 3 authority or offeror would be adversely affected.
 4 (c) Before the authority may consider whether information
 5 submitted by an offeror or under this section is confidential, the
 6 offeror must do the following:
 7 (1) Invoke the exclusion upon submission of the data or other
 8 materials for which protection from disclosure is sought.
 9 (2) Identify the data or other materials for which protection
 10 is sought.
 11 (3) State the reasons why protection is necessary.
 12 (d) Procurement records shall not be interpreted to include
 13 proprietary, commercial, or financial information, balance sheets,
 14 financial statements, escrowed proposal or bid documents,
 15 financial models, or trade secrets provided by the operator with or
 16 in connection with its qualification submittal or proposal. All such
 17 materials:
 18 (1) shall be considered confidential;
 19 (2) are not subject to disclosure, inspection, or copying under
 20 IC 5-14-3; and
 21 (3) are not subject to disclosure, discovery, subpoena, or other
 22 means of legal compulsion for their release.
 23 (e) An inspection of procurement records under this section is
 24 subject to reasonable restrictions to ensure the security and
 25 integrity of the records.
 26 Sec. 7. (a) This section applies to a metropolitan statistical area,
 27 as defined by the United States Office of Management and Budget,
 28 in Indiana that is served by more than one (1) interstate system
 29 highway, street, or road.
 30 (b) As used in this section, "interstate system" has the meaning
 31 set forth in IC 8-23-1-25.
 32 (c) In establishing the route of a qualified project through a
 33 metropolitan statistical area, the authority shall consider routes
 34 that have the least disruptive influence on established businesses
 35 and residents. To the extent practicable, the authority shall
 36 consider using:
 37 (1) an established interstate system highway, street, or road
 38 in the metropolitan statistical area; or
 39 (2) a route that is west of established business corridors in a
 40 less densely used part of the metropolitan statistical area;
 41 as the route of a qualified project to avoid the disruption of
 42 neighborhoods and business areas.

COPY



Chapter 5. Public-Private Agreements

Sec. 1. (a) Before beginning:

- (1) the development;**
- (2) the financing;**
- (3) the operation; or**
- (4) any combination of the development, financing, or operation;**

of a qualifying project, the operator must enter into a public-private agreement with the authority. Subject to the other provisions of this article, the authority and a private entity may enter into a public-private agreement with respect to a project. Subject to the requirements of this article, a public-private agreement may provide that the private entity, acting on behalf of the authority, is partially or entirely responsible for any combination of developing, financing, or operating the qualifying project.

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

- (1) Delivery of performance and payment bonds or other performance security determined suitable by the authority, including letters of credit, United States bonds and notes, parent guaranties, and cash collateral, in connection with the development, financing, or operation of the qualifying project, in the forms and amounts set forth in the public-private agreement or otherwise determined as satisfactory by the authority to protect the authority and payment bond beneficiaries who have a direct contractual relationship with the operator or a subcontractor of the operator to supply labor or material. A payment or performance bond or alternative form of performance security required under a public-private agreement shall not be required for the part of a public-private agreement that includes only design, planning, or financing services, the performance of preliminary studies, or the acquisition of real property.**
- (2) Review of plans for any development or operation, or both, of the qualifying project by the authority.**
- (3) Inspection of any construction of or improvements to the qualifying project by the authority or another entity designated by the authority or under the public-private agreement to ensure that the construction or improvements conform to the standards set forth in the public-private**

**C
O
P
Y**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

agreement or are otherwise acceptable to the authority.

(4) Maintenance of:

(A) one (1) or more policies of public liability insurance (copies of which shall be filed with the authority accompanied by proofs of coverage); or

(B) self-insurance;

each in the form and amount required by the public-private agreement or otherwise satisfactory to the authority as reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.

(5) If operations are included within the operator's obligations under the public-private agreement, monitoring of the maintenance practices of the operator by the authority or another entity designated by the authority or under the public-private agreement, and the taking of the actions that the authority finds appropriate to ensure that the qualifying project is properly maintained.

(6) Reimbursement to be paid to the authority as set forth in the public-private agreement for services provided by the authority.

(7) Filing of appropriate financial statements and reports as set forth in the public-private agreement or as otherwise in a form acceptable to the authority on a periodic basis.

(8) Compensation or payments to the operator. Compensation or payments may include one (1) or more of the following:

(A) A development fee, payable on a lump sum basis, progress payment basis, time and materials basis, or any other basis considered appropriate by the authority.

(B) An operations fee, payable on a lump sum basis, time and material basis, periodic basis, or any other basis considered appropriate by the authority.

(C) All or part of the revenues, if any, arising out of operation of the qualifying project.

(D) A maximum rate of return on investment or return on equity or a combination of the two (2).

(E) In kind services, materials, property, equipment, or other items.

(F) Compensation in the event of any termination.

(G) Other compensation set forth in the public-private agreement or otherwise considered appropriate by the authority.

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

(9) Compensation or payments to the authority, if any. Compensation or payments may include one (1) or more of the following:

(A) A concession payment, lease payment, or other fee, which may be payable in a lump sum, on a periodic basis, or on any other basis considered appropriate by the authority.

(B) Sharing of revenues, if any, from the operation of the qualifying project.

(C) Payment for any services, materials, equipment, personnel, or other items provided by the authority to the operator under the public-private agreement or in connection with the qualifying project.

(D) Other compensation set forth in the public-private agreement or otherwise considered appropriate by the authority.

(10) The date and terms of termination of the operator's authority and duties under this article, and circumstances under which the operator's authority and duties may be terminated before that date.

(11) Reversion of the qualifying project to the authority at the termination or expiration of the public-private agreement.

(12) Rights and remedies of the authority if the operator defaults or otherwise fails to comply with the terms of the public-private agreement.

Sec. 2. (a) In addition to the authority's rights under section 1 of this chapter, the authority may enter into a public-private agreement that is preliminary and that does not include a complete price or cost to, or payment to or revenue sharing with, the authority.

(b) A public-private agreement described in subsection (a) must:

(1) include within the operator's scope of services all or part of the:

- (A) project planning;**
- (B) advance right-of-way acquisition;**
- (C) design and engineering;**
- (D) environmental analysis and mitigation;**
- (E) surveying;**
- (F) conducting transportation and revenue studies; and**
- (G) ascertaining the availability of financing;**

for the proposed qualifying project;

(2) establish the process and schedule for the negotiation of a

**C
O
P
Y**



1 supplement to the public-private agreement that:
 2 (A) sets forth the complete price or cost to, or payment to
 3 or revenue sharing with, the authority; and
 4 (B) may include the provisions described in section 1 of this
 5 chapter and other provisions required or permitted under
 6 this chapter; and
 7 (3) contain any other provisions related to any aspect of the
 8 development, financing, and operation of a qualifying project
 9 that the parties determine to be appropriate.
 10 (c) Until a supplement to the public-private agreement
 11 described in subsection (b)(2) has been executed, the operator may
 12 not commence active construction, complete development, or
 13 commence operation of a qualifying project or acquire any
 14 leasehold rights or other real property rights in a qualifying
 15 project.
 16 Sec. 3. (a) The authority may fix and revise the amounts of user
 17 fees that an operator may charge and collect for the use of any part
 18 of a qualifying project in accordance with the public-private
 19 agreement. In fixing these amounts, the authority may:
 20 (1) establish maximum amounts for the user fees; and
 21 (2) provide for increases or decreases of the maximum
 22 amounts based upon the indices, methodologies, or other
 23 factors that the authority considers appropriate.
 24 (b) User fees established by the authority for the use of a
 25 qualifying project must be nondiscriminatory and may:
 26 (1) include different user fees based on categories such as
 27 vehicle class, vehicle size, vehicle axles, vehicle weight,
 28 volume, location, traffic congestion, or other means or
 29 classification that the authority determines to be appropriate;
 30 (2) vary by time of day or year; and
 31 (3) be based on one (1) or more factors considered relevant by
 32 the authority, which may include any combination of:
 33 (A) lease payments;
 34 (B) financing costs and charges;
 35 (C) debt repayment, including principal and interest;
 36 (D) costs of development;
 37 (E) costs of operation;
 38 (F) working capital;
 39 (G) reserves;
 40 (H) depreciation;
 41 (I) compensation to the operator;
 42 (J) compensation to the authority; and

C
O
P
Y



1 (K) other costs, expenses, and factors set forth in the
2 public-private agreement or otherwise considered
3 appropriate by the authority.
4 (c) A public-private agreement may:
5 (1) authorize the operator to adjust the user fees for the use of
6 the qualifying project, so long as the amounts charged and
7 collected by the operator do not exceed the maximum
8 amounts established by the authority under this chapter;
9 (2) provide that any adjustment by the operator permitted
10 under subdivision (1) may be based on indices, methodologies,
11 or other factors described in the public-private agreement or
12 approved by the authority;
13 (3) authorize the operator to charge and collect user fees
14 through manual and nonmanual methods, including, but not
15 limited to, automatic vehicle identification systems, electronic
16 toll collection systems, and, to the extent permitted by law,
17 including rules adopted by the authority, global positioning
18 systems and photo or video based toll collection enforcement
19 systems; and
20 (4) authorize the collection of user fees by a third party.
21 (d) A schedule of the current user fees shall be made available
22 by the operator to any member of the public on request. User fees
23 and the setting of user fee rates are not subject to supervision or
24 regulation by any other commission, board, bureau, or agency of
25 the state or any municipality, except to the extent set forth in the
26 public-private agreement.
27 (e) Any action to contest the validity of user fees fixed under this
28 chapter may not be brought after the fifteenth day following the
29 effective date of a rule fixing the user fees.
30 Sec. 4. In the public-private agreement, the authority may agree
31 to make grants or loans for the development or operation, or both,
32 of the qualifying project from amounts received from the federal
33 government, any agency or instrumentality of the federal
34 government, or any state or local agency.
35 Sec. 5. The public-private agreement must incorporate the
36 duties of the operator under this article and may contain the other
37 terms and conditions that the authority determines serve the public
38 purpose of this article. Without limitation, the public-private
39 agreement may contain provisions under which the authority
40 agrees to provide notice of default and cure rights for the benefit
41 of the operator and the persons or entities described in the
42 public-private agreement that are providing financing for the

COPY



1 qualifying project. The public-private agreement may contain any
 2 other lawful term or condition to which the operator and the
 3 authority mutually agree, including provisions regarding change
 4 orders, dispute resolution, required upgrades to the qualifying
 5 project, tolling policies, changes and modifications to the qualifying
 6 project, unavoidable delays, or provisions for a loan or grant of
 7 public funds for the development or operation, or both, of one (1)
 8 or more qualifying projects.

9 Sec. 6. To the extent that the authority receives any payment or
 10 compensation under the public-private agreement other than
 11 repayment of a loan or grant or reimbursement for services
 12 provided by the authority or the department to the operator, the
 13 payment or compensation shall be distributed at the direction of
 14 the authority to the:

- 15 (1) major moves construction fund established under
- 16 IC 8-14-14;
- 17 (2) department for deposit in the state highway fund
- 18 established by IC 8-23-9-54;
- 19 (3) department for use on other projects designated by the
- 20 department; or
- 21 (4) operator or the authority for debt reduction.

22 Sec. 7. (a) Upon the termination or expiration of the
 23 public-private agreement, including a termination for default, the
 24 authority may take over the qualifying project and succeed to all
 25 of the right, title, and interest in the qualifying project. The
 26 authority may agree to accept the qualifying project subject to any
 27 liens on revenues previously granted by the operator to any person
 28 providing financing for the qualifying project.

29 (b) If the authority elects to take over a qualifying project, the
 30 authority may do all or part of the following:

- 31 (1) Develop, finance, or operate the project.
- 32 (2) Impose, collect, retain, and use user fees, if any, for the
- 33 project.

34 (c) The authority may use any revenues collected under this
 35 section for any lawful purpose, including:

- 36 (1) making payments to individuals or entities in connection
- 37 with the financing of the qualifying project;
- 38 (2) paying development costs of the project;
- 39 (3) paying current operation costs of the project or facilities,
- 40 including compensation to the authority or the department for
- 41 the services of the authority or the department in operating
- 42 the qualifying project;

C
O
P
Y



1 (4) paying the operator for any compensation or payment
 2 owing upon termination; and
 3 (5) paying for all or part of the development, financing, or
 4 operation of any other project the authority considers
 5 appropriate.
 6 (d) The full faith and credit of the state or any political
 7 subdivision or the authority is not pledged to secure any financing
 8 of the operator by the election to take over the qualifying project.
 9 Assumption of development or operation, or both, of the qualifying
 10 project does not obligate the state or any political subdivision or
 11 the authority to pay any obligation of the operator.
 12 Sec. 8. Any changes in the terms of the public-private agreement
 13 agreed to by the parties shall be added to the public-private
 14 agreement by written amendment.
 15 Sec. 9. Notwithstanding any other provision of this article, the
 16 authority may enter into a public-private agreement with multiple
 17 private entities if the authority determines in writing that it is in
 18 the public interest to do so.
 19 Sec. 10. The public-private agreement may provide for all or
 20 part of the development, financing, or operation of phases or
 21 segments of the qualifying project.
 22 Sec. 11. The department and the authority may enter into one
 23 (1) or more memoranda of understanding with respect to the
 24 implementation and administration of a public-private agreement.
 25 The memoranda may provide that the department has
 26 responsibility for, and shall administer and oversee certain aspects
 27 of the implementation of, the public-private agreement under this
 28 article, including:
 29 (1) undertaking any oversight and monitoring of the operator
 30 on behalf of the authority as provided under the
 31 public-private agreement;
 32 (2) reviewing plans for development and operation, as
 33 applicable, on behalf of the authority as provided under the
 34 public-private agreement;
 35 (3) granting or denying all consents and approvals on behalf
 36 of the authority as provided under the public-private
 37 agreement, except for consents and approvals relating to
 38 financial matters that the department is not permitted to
 39 grant or deny under applicable law, in which case the
 40 authority shall execute the consents and approvals prepared
 41 by the department;
 42 (4) receiving all development, operations, and financial

C
O
P
Y



- 1 reports prepared by the operator or others, on behalf of the
- 2 authority as provided under the public-private agreement;
- 3 (5) preparing, negotiating, and executing any change orders
- 4 and amendments to the public-private agreement, except
- 5 where the authority is the contracting party, in which case the
- 6 authority shall execute the change orders and amendments
- 7 prepared and negotiated by the department;
- 8 (6) issuing other written correspondence and communications
- 9 on behalf of the authority as provided under the
- 10 public-private agreement;
- 11 (7) preparing and issuing noncompliance letters and reports,
- 12 warning notices, and default letters to the operator on behalf
- 13 of the authority as provided under the public-private
- 14 agreement; and
- 15 (8) exercising rights and remedies for a breach or default by
- 16 the operator on behalf of the authority as provided under the
- 17 public-private agreement, except for rights and remedies
- 18 relating to financial matters that the department is not
- 19 permitted to exercise under applicable law, in which case the
- 20 authority shall exercise the rights and remedies.

Chapter 6. Development and Operations Standards for Projects

Sec. 1. The plans and specifications, if any, for each project developed under this article must comply with:

- (1) the department's standards for other projects of a similar nature, except as otherwise provided in the public-private agreement; and
- (2) any other applicable state or federal standards.

Sec. 2. Unless otherwise provided by federal law, the operator or any contractor or subcontractor of the operator engaged in the construction of a project is not required to comply with IC 4-13.6 or IC 5-16 concerning state public works, IC 5-17 concerning purchases of materials and supplies, or other statutes concerning procedures for procurement of public works or personal property as a condition of being awarded and performing work on the project.

Sec. 3. Each project constructed or operated under this article is considered to be part of the state highway system designated under IC 8-23-4-2 for purposes of identification, maintenance standards, and enforcement of traffic laws.

Sec. 4. An operator may enter into agreements for maintenance or other services under this article with the department and other local or state agencies. The authority or the department may:

**C
O
P
Y**



1 (1) with the assistance of all applicable local and state
2 agencies, establish a unified permitting and licensing process
3 for the processing and issuance of all necessary permits and
4 licenses for projects under this article, including, but not
5 limited to, all environmental permits and business and tax
6 licenses; and

7 (2) provide other services for which the authority or the
8 department may be reimbursed, including, but not limited to,
9 preliminary planning, environmental certification (including
10 the procurement of all necessary environmental permits),
11 right-of-way acquisition, utility relocations and adjustments,
12 and preliminary design of projects under this article.

13 Sec. 5. The authority shall seek the cooperation of federal and
14 local agencies to expedite all necessary federal and local permits,
15 licenses, and approvals necessary for projects under this article.

16 Chapter 7. Taxation of Operators

17 Sec. 1. A project under this article and tangible personal
18 property used exclusively in connection with a project that are:

- 19 (1) owned by the authority or the department and leased,
20 licensed, financed, or otherwise conveyed to an operator; or
- 21 (2) acquired, constructed, or otherwise provided by an
22 operator on behalf of the authority or the department;

23 under the terms of a public-private agreement are considered to be
24 public property devoted to an essential public and governmental
25 function and purpose. The property, and an operator's leasehold
26 estate or interests in the property, are exempt from all ad valorem
27 property taxes and special assessments levied against property by
28 the state or any political subdivision of the state.

29 Sec. 2. An operator or any other person purchasing tangible
30 personal property for incorporation into or improvement of a
31 structure or facility constituting or becoming part of the land
32 included in a project is entitled to the exemption from gross retail
33 tax and use tax provided under IC 6-2.5-4-9(b) and IC 6-2.5-3-2(c),
34 respectively, with respect to that tangible personal property.

35 Sec. 3. Income received by an operator under the terms of a
36 public-private agreement is subject to taxation in the same manner
37 as income received by other private entities.

38 Chapter 8. Financial Arrangements

39 Sec. 1. The authority or the department may do any
40 combination of applying for, executing, or endorsing applications
41 submitted by private entities to obtain federal, state, or local credit
42 assistance for qualifying projects developed, financed, or operated

C
o
p
y



1 under this article, including grants, loans, lines of credit, and
2 guarantees.

3 Sec. 2. The authority or the department may take any action to
4 obtain federal, state, or local assistance for a qualifying project
5 that serves the public purpose of this article and may enter into
6 any contracts required to receive the assistance. The authority or
7 the department may determine that it serves the public purpose of
8 this article for all or part of the costs of a qualifying project to be
9 paid, directly or indirectly, from the proceeds of a grant, loan, line
10 of credit, or loan guarantee made by a local, state, or federal
11 government or any agency or instrumentality of a local, state, or
12 federal government.

13 Sec. 3. The authority or the department may agree to make
14 grants or loans for any combination of the development, financing,
15 or operation of a qualifying project from amounts received from
16 the federal, state, or local government or any agency or
17 instrumentality of the federal, state, or local government.

18 Sec. 4. The financing of a qualifying project may be in the
19 amounts and upon the terms and conditions that are determined by
20 the parties to the public-private agreement.

21 Sec. 5. For the purpose of financing a qualifying project, the
22 operator and the authority or the department may do the
23 following:

- 24 (1) Propose to use all or part of the revenues available to
25 them.
- 26 (2) Enter into grant agreements.
- 27 (3) Access any designated transportation trust funds.
- 28 (4) Access any other funds available to the authority or the
29 department and the operator.
- 30 (5) Accept grants from the authority, the port commission,
31 any other state infrastructure bank, or any other agency or
32 entity.

33 Sec. 6. (a) For the purpose of financing a qualifying project, the
34 authority may enter into agreements, leases, or subleases with the
35 department or an operator, or both, and do the following:

- 36 (1) Issue bonds, debt, or other obligations under IC 4-4-11,
37 IC 8-15-2, or IC 8-15.7-9.
- 38 (2) Enter into loan agreements or other credit facilities.
- 39 (3) Secure any financing with a pledge of, security interest in,
40 or lien on all or part of a property subject to the agreement,
41 including all of the party's property interests in the qualifying
42 project.

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

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

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

(B) otherwise create a moral obligation of the state to pay all or part of any costs incurred by the authority under a public-private agreement.

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

Sec. 7. Public funds may be used for the purpose of financing a qualifying project and may be mixed and aggregated with funds provided by or on behalf of the operator or other private entities.

Sec. 8. For the purpose of financing a qualifying project, the authority, the department, and the operator may apply for, obtain, issue, and use private activity bonds available under any federal law or program.

Sec. 9. Any bonds, debt, other securities, or other financing issued for the purposes of this article shall not be considered to constitute a debt of the state or any political subdivision of the state or a pledge of the faith and credit of the state or any political subdivision.

Chapter 9. Issuance of Debt by Authority

Sec. 1. (a) The authority may, by resolution, issue and sell bonds or notes of the authority for the purpose of providing funds to carry out the provisions of this article with respect to the development, financing, or operation of a project or projects or the refunding of any bonds or notes, together with any costs associated with a transaction.

(b) Bonds or notes issued under this chapter shall be issued in accordance with IC 8-14.5-6 except that the bonds or notes are not required to comply with IC 8-14.5-6-2, IC 8-14.5-6-3, or IC 8-14.5-6-5(b).

Sec. 2. (a) The authority may enter into a lease with the department or the operator, or both, of a project or projects financed under this chapter. The department may lease a project financed under this chapter to the authority or an operator under a public-private agreement.

(b) A lease of a project to the department under this chapter

**C
O
P
Y**



1 must comply with IC 8-14.5-5 except that:
 2 (1) the lease is not required to comply with
 3 IC 8-14.5-5-3(a)(1); and
 4 (2) notwithstanding IC 8-14.5-5-2(a)(2), a lease under this
 5 chapter may be extended from biennium to biennium, with
 6 the extensions not to exceed a lease term of ninety-nine (99)
 7 years unless the department gives notice of nonextension at
 8 least six (6) months before the end of the biennium, in which
 9 event the lease expires at the end of the biennium in which the
 10 notice is given.

11 **Sec. 3.** The department shall pay lease rentals for leases that the
 12 department has entered into under this chapter that secure bonds
 13 issued under this chapter from any legally available revenues,
 14 including:

- 15 (1) payments received from an operator;
- 16 (2) federal highway revenues, subject to the limitations in
 17 IC 8-14.5-7;
- 18 (3) distributions from the motor vehicle highway account
 19 under IC 8-14-1-3; and
- 20 (4) other funds available to the department for such purpose.

21 **Sec. 4.** The bonds or notes issued under this chapter:

- 22 (1) constitute the corporate obligations of the authority;
- 23 (2) do not constitute an indebtedness of the state within the
 24 meaning or application of any constitutional provision or
 25 limitation; and
- 26 (3) are payable solely as to both principal and interest from:
 27 (A) the revenues from a lease to the department, if any;
 28 (B) proceeds of bonds or notes, if any;
 29 (C) investment earnings on proceeds of bonds or notes; or
 30 (D) other funds available to the authority for such purpose.

31 **Chapter 10. Acquisition of Property**

32 **Sec. 1. (a)** A public entity may dedicate any property interest
 33 that it has for public use as a qualifying project if the public entity
 34 finds that dedication of the property interest will serve the public
 35 purpose of this article. In connection with the dedication, a public
 36 entity may convey any property interest that the public entity has
 37 to the operator, subject to the:

- 38 (1) conditions imposed by general law governing conveyances;
 39 and
- 40 (2) provisions of this article;

41 for the consideration that the public entity considers appropriate.

42 (b) Consideration for a transfer under this section may include

**C
O
P
Y**



1 an agreement with the operator to develop, finance, or operate the
2 qualifying project. The property interests that the public entity
3 may convey to the operator in connection with a dedication under
4 this section may include licenses, franchises, easements, or any
5 other right or interest that the public entity considers appropriate.

6 Sec. 2. The authority, the department, and an operator may
7 enter into the leases, licenses, easements, and other grants of
8 property interests that the authority determines necessary to carry
9 out this article.

10 Chapter 11. Law Enforcement

11 Sec. 1. All law enforcement officers of the state and of each
12 affected jurisdiction have the same powers and jurisdiction within
13 the limits of the qualifying project as they have in their respective
14 areas of jurisdiction.

15 Sec. 2. Law enforcement officers shall have access to the
16 qualifying project at any time for the purpose of exercising the law
17 enforcement officer's powers and jurisdiction. This authority does
18 not extend to the private offices, buildings, garages, and other
19 improvements of the operator to any greater degree than the police
20 power extends to any other private buildings and improvements.

21 Sec. 3. (a) The traffic and motor vehicle laws of Indiana or, if
22 applicable, any local jurisdiction apply to conduct on a qualifying
23 project to the same extent as they apply to conduct on similar
24 projects in Indiana or the local jurisdiction.

25 (b) Punishment for infractions and offenses shall be as
26 prescribed by law for conduct occurring on similar projects in
27 Indiana or the local jurisdiction.

28 Chapter 12. Resolution of Disputes

29 Sec. 1. The authority has exclusive jurisdiction to adjudicate all
30 matters specifically committed to the authority's jurisdiction by
31 this article.

32 Sec. 2. The authority shall establish an expedited method for
33 resolving disputes between the authority and the parties to a
34 public-private agreement and shall set forth that method in the
35 public-private agreement.

36 Sec. 3. The authority may pay, pursue, mediate, and settle any
37 claim arising out of a public-private agreement.

38 Sec. 4. A public-private agreement may permit a party to the
39 agreement to submit any claim arising under the agreement to
40 arbitration or alternative dispute resolution under IC 34-57.

41 Chapter 13. Term of Agreement; Reversion of Property to State

42 Sec. 1. The term of a public-private agreement, including all

C
o
p
y



1 extensions, may not exceed ninety-nine (99) years. For purposes of
2 measuring the term, the term begins on the date on which
3 operations of a part of the qualifying project by the operator
4 commences.

5 Sec. 2. The authority shall terminate the operator's authority
6 and duties under the public-private agreement on the date set forth
7 in the public-private agreement.

8 Sec. 3. Upon termination of the public-private agreement, the
9 authority and duties of the operator under this article cease, except
10 for any duties and obligations that extend beyond the termination
11 as set forth in the public-private agreement, and the qualifying
12 project reverts to the authority and shall be dedicated to the
13 authority for public use.

14 Chapter 14. Additional Powers of the Authority and the
15 Department With Respect to Qualifying Projects

16 Sec. 1. The authority or the department may exercise any
17 powers provided under this article in participation or cooperation
18 with any governmental entity and enter into any contracts to
19 facilitate that participation or cooperation without compliance
20 with any other statute.

21 Sec. 2. The authority or the department may make and enter
22 into all contracts and agreements necessary or incidental to the
23 performance of the authority's or department's duties and the
24 execution of the authority's or department's powers under this
25 article. These contracts or agreements are not subject to any
26 approvals other than the approval of the authority or the
27 department, as applicable, and may be for any term of years and
28 contain any terms that are considered reasonable by the authority
29 or the department.

30 Sec. 3. The authority or the department may pay the costs
31 incurred under a public-private agreement entered into under this
32 article from any funds legally available to the authority or the
33 department under this article or any other statute.

34 Sec. 4. For purposes of this article, the authority or the
35 department may authorize an operator under a public-private
36 agreement to perform any of its duties under IC 8-15-3-9,
37 IC 8-15-3-16, IC 8-15-3-29, IC 8-15-3-30, and IC 8-15-3-33.

38 Sec. 5. The authority may exercise any of its powers under
39 IC 8-15-3 as necessary or desirable for the performance of its
40 duties and the execution of the its powers under this article.

41 Sec. 6. The department may exercise any of its powers under
42 IC 8-15-3 as necessary or desirable for the performance of its

C
o
p
y



1 duties and the execution of its powers under this article.
 2 Sec. 7. The authority or the department may not take any action
 3 under this chapter that would impair the public-private agreement
 4 entered into under this article.
 5 Sec. 8. (a) The authority may enter into an agreement between
 6 and among the operator, the authority, and the state police
 7 department concerning the provision of law enforcement assistance
 8 with respect to a qualifying project that is the subject of a
 9 public-private agreement under this article.
 10 (b) The authority may enter into arrangements with the state
 11 police department related to costs incurred in providing law
 12 enforcement assistance under this article.
 13 Chapter 15. Prohibited Local Action
 14 Sec. 1. A political subdivision (as defined in IC 36-1-2-13) may
 15 not take any action that would impair a public-private agreement
 16 under this article.
 17 Chapter 16. Prohibited Political Contributions
 18 Sec. 1. The definitions in IC 3-5-2 apply to this chapter to the
 19 extent they do not conflict with the definitions in this article.
 20 Sec. 2. As used in this chapter, "candidate" refers to any of the
 21 following:
 22 (1) A candidate for a state office.
 23 (2) A candidate for a legislative office.
 24 (3) A candidate for a local office.
 25 Sec. 3. As used in this chapter, "committee" refers to any of the
 26 following:
 27 (1) A candidate's committee.
 28 (2) A regular party committee.
 29 (3) A committee organized by a legislative caucus of the house
 30 of representatives of the general assembly.
 31 (4) A committee organized by a legislative caucus of the senate
 32 of the general assembly.
 33 Sec. 4. As used in this chapter, "officer" refers only to either of
 34 the following:
 35 (1) An individual listed as an officer of a corporation in the
 36 corporation's most recent annual report.
 37 (2) An individual who is a successor to an individual described
 38 in subdivision (1).
 39 Sec. 5. For purposes of this chapter, a person is considered to
 40 have an interest in an operator if the person satisfies any of the
 41 following:
 42 (1) The person holds any interest in an operator.

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- (2) The person is an officer of an operator.
- (3) The person is an officer of a person that holds any interest in an operator.
- (4) The person is a political action committee of an operator.

Sec. 6. An operator is considered to have made a contribution if a contribution is made by a person who has an interest in the operator.

Sec. 7. An operator or a person who has an interest in an operator may not make a contribution to a candidate or a committee during the following periods:

- (1) The term during which the operator is a party to a public-private agreement entered into under this article.
- (2) The three (3) years following the final expiration or termination of the public-private agreement described in subdivision (1).

Sec. 8. A person who knowingly or intentionally violates this chapter commits a Class D felony.

SECTION 37. IC 8-23-2-4.1, AS AMENDED BY P.L.235-2005, SECTION 122, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.1. The department is responsible for the following activities:

- (1) The identification, development, coordination, and implementation of the state's transportation policies.
- (2) The approval of applications for federal transportation grants from funds allocated to the state:
 - (A) from the Highway Trust Fund (23 U.S.C.);
 - (B) from the Aviation Trust Fund (49 U.S.C.);
 - (C) through the Federal Transit Administration (49 U.S.C. 5301 et seq.); or
 - (D) from any other federal grant that has a transportation component.
- (3) The review, revision, adoption, and submission of budget proposals.
- (4) The construction, reconstruction, improvement, maintenance, and repair of:
 - (A) state highways; and
 - (B) a toll road project or toll bridge in accordance with a contract or lease entered into with the Indiana finance authority under IC 8-9.5-8-7 or IC 8-9.5-8-8.
- (5) The administration of programs as required by law, including the following:
 - (A) IC 8-3-1 (railroads).

C
o
p
y



1 (B) IC 8-3-1.5 (rail preservation).

2 (C) IC 8-21-1 (aeronautics).

3 (D) IC 8-21-9 (airports).

4 (E) IC 8-21-11 (aviation development program).

5 **(6) The approval of certain distributions from the toll road**
6 **fund, as provided by IC 8-15.5.**

7 SECTION 38. IC 8-23-7-23 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. (a) The
9 department may, after issuing an order and receiving the governor's
10 approval, determine that a state highway should become a toll road. An
11 order under this section does not become effective unless the authority
12 adopts a resolution to accept the designated state highway, or part of
13 the highway, as a toll road project under the conditions contained in the
14 order. An order issued by the department under this section must set
15 forth the conditions upon which the transfer of the state highway, or
16 part of the highway, to the authority must occur, including the
17 following:

18 (1) The consideration, if any, to be paid by the authority to the
19 department.

20 (2) A requirement that the authority:

21 (A) enter into a contract or lease with the department with
22 respect to the toll road project under IC 8-9.5-8-7 or
23 IC 8-9.5-8-8; or

24 **(B) enter into a public-private agreement with an operator**
25 **with respect to the toll road under IC 8-15.5.**

26 (b) To complete a transfer under this section, the department must,
27 with the governor's approval, execute a certificate describing the real
28 and personal property constituting or to be transferred with the state
29 highway that is to become a toll road project. Upon delivery of the
30 certificate to the authority, the real and personal property described in
31 the certificate is under the jurisdiction and control of the authority.

32 SECTION 39. IC 8-23-9-54 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 54. (a) To provide
34 funds for carrying out the provisions of this chapter, there is created a
35 state highway fund from the following sources:

36 (1) All money in the general fund to the credit of the state
37 highway account.

38 (2) All money that is received from the Department of
39 Transportation or other federal agency and known as federal aid.

40 (3) All money paid into the state treasury to reimburse the state
41 for money paid out of the state highway fund.

42 (4) All money provided by Indiana law for the construction,

C
o
p
y



- 1 maintenance, reconstruction, repair, and control of public
- 2 highways, as provided under this chapter.
- 3 (5) All money that on May 22, 1933, was to be paid into the state
- 4 highway fund under contemplation of any statute in force as of
- 5 May 22, 1933.
- 6 (6) All money that may at any time be appropriated from the state
- 7 treasury.
- 8 (7) Any part of the state highway fund unexpended at the
- 9 expiration of any fiscal year, which shall remain in the fund and
- 10 be available for the succeeding years.
- 11 (8) Any money credited to the state highway fund from the motor
- 12 vehicle highway account under IC 8-14-1-3(4).
- 13 (9) Any money credited to the state highway fund from the
- 14 highway road and street fund under IC 8-14-2-3.
- 15 (10) Any money credited to the state highway fund under
- 16 IC 6-6-1.1-801.5, IC 6-6-4.1-5, or IC 8-16-1-17.1.
- 17 **(11) Any money distributed to the state highway fund under**
- 18 **IC 8-14-14, IC 8-15.5, or IC 8-15.7.**

19 (b) All expenses incurred in carrying out this chapter shall be paid
 20 out of the state highway fund.

21 SECTION 40. IC 9-13-2-6.3 IS ADDED TO THE INDIANA CODE
 22 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
 23 UPON PASSAGE]: **Sec. 6.3. "Automated traffic law enforcement**
 24 **system", for purposes of IC 9-21, has the meaning set forth in**
 25 **IC 9-21-3.5-2.**

26 SECTION 41. IC 9-21-3.5 IS ADDED TO THE INDIANA CODE
 27 AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE
 28 UPON PASSAGE]:

29 **Chapter 3.5. Automated Traffic Law Enforcement System**

30 **Sec. 1. As used in this chapter, "authority" refers to the Indiana**
 31 **finance authority.**

32 **Sec. 2. As used in this chapter, "automated traffic law**
 33 **enforcement system" means a device that:**

- 34 (1) has one (1) or more motor vehicle sensors; and
- 35 (2) is capable of producing a photographically recorded image
- 36 of a motor vehicle, including an image of the vehicle's front or
- 37 rear license plate, as the vehicle proceeds through a tollgate,
- 38 toll zone, or other area on a tollway, qualifying project, or toll
- 39 road that is marked as required by the department, the
- 40 authority, or an operator as a place where a person using the
- 41 tollway, qualifying project, or toll road must pay a toll or is
- 42 otherwise subject to a fee for using the tollway, qualifying

C
O
P
Y



- 1 project, or toll road.
- 2 Sec. 3. As used in this chapter, "department" refers to the
3 Indiana department of transportation.
- 4 Sec. 4. As used in this chapter, "operator" has the meaning set
5 forth in IC 8-15.5-2-5 or IC 8-15.7-2-10.
- 6 Sec. 5. As used in this chapter, "owner" means a person in
7 whose name a motor vehicle is registered under:
- 8 (1) IC 9-18;
- 9 (2) the laws of another state;
- 10 (3) the laws of a foreign country; or
- 11 (4) the International Registration Plan.
- 12 Sec. 6. As used in this chapter, "qualifying project" has the
13 meaning set forth in IC 8-15.7-2-15.
- 14 Sec. 7. As used in this chapter, "toll road" has the meaning set
15 forth in IC 8-15-2-4(4).
- 16 Sec. 8. As used in this chapter, "tollway" has the meaning set
17 forth in IC 8-15-3-7.
- 18 Sec. 9. The owner of a motor vehicle, other than an authorized
19 emergency vehicle, that is driven or towed through a toll collection
20 facility on a toll road, tollway, or qualifying project shall pay the
21 proper toll.
- 22 Sec. 10. The department or the authority may adopt and enforce
23 rules concerning:
- 24 (1) the placement and use of automated traffic law
25 enforcement systems to enforce collection of user fees;
- 26 (2) required notification to owners of toll violations;
- 27 (3) the process for collection and enforcement of unpaid
28 amounts;
- 29 (4) the amount of fines, charges, and assessments for toll
30 violations; and
- 31 (5) other matters relating to automated traffic law
32 enforcement systems that the department or the authority
33 considers appropriate.
- 34 Sec. 11. Before enforcing a rule adopted under section 10 of this
35 chapter, the department, the authority, or an operator must install
36 advance warning signs along the tollways, toll roads, or qualifying
37 projects proceeding to the location at which an automated traffic
38 law enforcement system is located.
- 39 Sec. 12. (a) In the prosecution of a toll violation, proof that the
40 motor vehicle was driven or towed through the toll collection
41 facility without payment of the proper toll may be shown by a
42 video recording, a photograph, an electronic recording, or other

C
O
P
Y



1 appropriate evidence, including evidence obtained by an
2 automated traffic law enforcement system.

3 (b) In the prosecution of a toll violation:
4 (1) it is presumed that any notice of nonpayment was received
5 on the fifth day after the date of mailing; and
6 (2) a computer record of the department, the authority, or the
7 operator of the registered owner of the vehicle is prima facie
8 evidence of its contents and that the toll violator was the
9 registered owner of the vehicle at the time of the underlying
10 event of nonpayment.

11 Sec. 13. (a) For purposes of this section, "transponder" means
12 a device, placed on or within a motor vehicle, that is capable of
13 transmitting information used to assess or collect tolls. A
14 transponder is "insufficiently funded" when there are no
15 remaining funds in the account in connection with which the
16 transponder was issued.

17 (b) Any police officer of this state may seize a stolen or
18 insufficiently funded transponder and return it to the department,
19 the authority, or an operator, except that an insufficiently funded
20 transponder may not be seized from the holder of an account
21 sooner than the thirtieth day after the date the department, the
22 authority, or an operator has sent a notice of delinquency to the
23 holder of the account.

24 (c) The department or the authority may enter into an
25 agreement with one (1) or more persons to market and sell
26 transponders for use on tollways, toll roads, or qualifying projects.

27 (d) The department, the authority, or an operator may charge
28 reasonable fees for initiating, administering, and maintaining
29 electronic toll collection customer accounts.

30 (e) Electronic toll collection customer account information,
31 including contact and payment information and trip data, is
32 confidential and not subject to disclosure under IC 5-14-3. A
33 contract for the acquisition, construction, maintenance, or
34 operation of a tollway, toll road, or qualifying project must ensure
35 the confidentiality of all electronic toll collection customer account
36 information.

37 SECTION 42. IC 34-13-3-3, AS AMENDED BY P.L.208-2005,
38 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 UPON PASSAGE]: Sec. 3. A governmental entity or an employee
40 acting within the scope of the employee's employment is not liable if
41 a loss results from the following:

42 (1) The natural condition of unimproved property.

C
o
p
y



- 1 (2) The condition of a reservoir, dam, canal, conduit, drain, or
- 2 similar structure when used by a person for a purpose that is not
- 3 foreseeable.
- 4 (3) The temporary condition of a public thoroughfare or extreme
- 5 sport area that results from weather.
- 6 (4) The condition of an unpaved road, trail, or footpath, the
- 7 purpose of which is to provide access to a recreation or scenic
- 8 area.
- 9 (5) The design, construction, control, operation, or normal
- 10 condition of an extreme sport area, if all entrances to the extreme
- 11 sport area are marked with:
- 12 (A) a set of rules governing the use of the extreme sport area;
- 13 (B) a warning concerning the hazards and dangers associated
- 14 with the use of the extreme sport area; and
- 15 (C) a statement that the extreme sport area may be used only
- 16 by persons operating extreme sport equipment.
- 17 This subdivision shall not be construed to relieve a governmental
- 18 entity from liability for the continuing duty to maintain extreme
- 19 sports areas in a reasonably safe condition.
- 20 (6) The initiation of a judicial or an administrative proceeding.
- 21 (7) The performance of a discretionary function; however, the
- 22 provision of medical or optical care as provided in IC 34-6-2-38
- 23 shall be considered as a ministerial act.
- 24 (8) The adoption and enforcement of or failure to adopt or enforce
- 25 a law (including rules and regulations), unless the act of
- 26 enforcement constitutes false arrest or false imprisonment.
- 27 (9) An act or omission performed in good faith and without
- 28 malice under the apparent authority of a statute which is invalid
- 29 if the employee would not have been liable had the statute been
- 30 valid.
- 31 (10) The act or omission of anyone other than the governmental
- 32 entity or the governmental entity's employee.
- 33 (11) The issuance, denial, suspension, or revocation of, or failure
- 34 or refusal to issue, deny, suspend, or revoke any permit, license,
- 35 certificate, approval, order, or similar authorization, where the
- 36 authority is discretionary under the law.
- 37 (12) Failure to make an inspection, or making an inadequate or
- 38 negligent inspection, of any property, other than the property of
- 39 a governmental entity, to determine whether the property
- 40 complied with or violates any law or contains a hazard to health
- 41 or safety.
- 42 (13) Entry upon any property where the entry is expressly or

C
o
p
y



- 1 impliedly authorized by law.
- 2 (14) Misrepresentation if unintentional.
- 3 (15) Theft by another person of money in the employee's official
- 4 custody, unless the loss was sustained because of the employee's
- 5 own negligent or wrongful act or omission.
- 6 (16) Injury to the property of a person under the jurisdiction and
- 7 control of the department of correction if the person has not
- 8 exhausted the administrative remedies and procedures provided
- 9 by section 7 of this chapter.
- 10 (17) Injury to the person or property of a person under supervision
- 11 of a governmental entity and who is:
- 12 (A) on probation; or
- 13 (B) assigned to an alcohol and drug services program under
- 14 IC 12-23, a minimum security release program under
- 15 IC 11-10-8, a pretrial conditional release program under
- 16 IC 35-33-8, or a community corrections program under
- 17 IC 11-12.
- 18 (18) Design of a highway (as defined in IC 9-13-2-73), **toll road**
- 19 **project (as defined in IC 8-15-2-4(4)), tollway (as defined in**
- 20 **IC 8-15-3-7), or project (as defined in IC 8-15.7-2-13)** if the
- 21 claimed loss occurs at least twenty (20) years after the public
- 22 highway, **toll road project, tollway, or project** was designed or
- 23 substantially redesigned; except that this subdivision shall not be
- 24 construed to relieve a responsible governmental entity from the
- 25 continuing duty to provide and maintain public highways in a
- 26 reasonably safe condition.
- 27 (19) Development, adoption, implementation, operation,
- 28 maintenance, or use of an enhanced emergency communication
- 29 system.
- 30 (20) Injury to a student or a student's property by an employee of
- 31 a school corporation if the employee is acting reasonably under a
- 32 discipline policy adopted under IC 20-33-8-7(b).
- 33 (21) An error resulting from or caused by a failure to recognize
- 34 the year 1999, 2000, or a subsequent year, including an incorrect
- 35 date or incorrect mechanical or electronic interpretation of a date,
- 36 that is produced, calculated, or generated by:
- 37 (A) a computer;
- 38 (B) an information system; or
- 39 (C) equipment using microchips;
- 40 that is owned or operated by a governmental entity. However, this
- 41 subdivision does not apply to acts or omissions amounting to
- 42 gross negligence, willful or wanton misconduct, or intentional

COPY



1 misconduct. For purposes of this subdivision, evidence of gross
2 negligence may be established by a party by showing failure of a
3 governmental entity to undertake an effort to review, analyze,
4 remediate, and test its electronic information systems or by
5 showing failure of a governmental entity to abate, upon notice, an
6 electronic information system error that caused damage or loss.
7 However, this subdivision expires June 30, 2003.

8 (22) An act or omission performed in good faith under the
9 apparent authority of a court order described in IC 35-46-1-15.1
10 that is invalid, including an arrest or imprisonment related to the
11 enforcement of the court order, if the governmental entity or
12 employee would not have been liable had the court order been
13 valid.

14 (23) An act taken to investigate or remediate hazardous
15 substances, petroleum, or other pollutants associated with a
16 brownfield (as defined in IC 13-11-2-19.3) unless:

- 17 (A) the loss is a result of reckless conduct; or
- 18 (B) the governmental entity was responsible for the initial
- 19 placement of the hazardous substances, petroleum, or other
- 20 pollutants on the brownfield.

21 SECTION 43. IC 36-7.6 IS ADDED TO THE INDIANA CODE AS
22 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
23 2006]:

24 **ARTICLE 7.6. NORTHEAST INDIANA REGIONAL**
25 **DEVELOPMENT AUTHORITY**

26 **Chapter 1. Definitions**

27 **Sec. 1. Except as otherwise provided, the definitions in this**
28 **chapter apply throughout this article.**

29 **Sec. 2. "Airport authority" refers to an airport authority**
30 **established under IC 8-22-3.**

31 **Sec. 3. "Airport authority project" means a project that can be**
32 **financed with the proceeds of bonds issued by an airport authority**
33 **under IC 8-22-3.**

34 **Sec. 4. "Bonds" means bonds, notes, or other evidences of**
35 **indebtedness issued by the development authority.**

36 **Sec. 5. "Development authority" refers to the northeast Indiana**
37 **regional development authority established by IC 36-7.6-2-1.**

38 **Sec. 6. "Development board" refers to the governing body**
39 **appointed under IC 36-7.6-2-3.**

40 **Sec. 7. "Economic development project" means an economic**
41 **development project described in IC 6-3.5-7-13.1(c).**

42 **Sec. 8. "Eligible county" refers to the following counties:**

C
o
p
y



1 (1) A county having a population of more than one hundred
 2 eighty-two thousand seven hundred ninety (182,790) but less
 3 than two hundred thousand (200,000).
 4 (2) A county having a population of more than thirty-four
 5 thousand nine hundred (34,900) but less than thirty-four
 6 thousand nine hundred fifty (34,950).
 7 (3) A county having a population of more than thirty-three
 8 thousand two hundred (33,200) but less than thirty-three
 9 thousand six hundred (33,600).
 10 **Sec. 9. "Eligible political subdivision" means the following:**
 11 (1) An airport authority.
 12 (2) A regional transportation authority.
 13 **Sec. 10. "Project" means an airport authority project, an**
 14 **economic development project, or a regional transportation**
 15 **authority project.**
 16 **Sec. 11. "Regional transportation authority" means a regional**
 17 **transportation authority established under IC 36-9-3-2.**
 18 **Sec. 12. "Regional transportation authority project" means a**
 19 **project that can be financed with the proceeds of bonds issued by**
 20 **a regional transportation authority under IC 36-9-3.**
 21 **Chapter 2. Development Authority and Board**
 22 **Sec. 1. The northeast Indiana regional development authority is**
 23 **established as a separate body corporate and politic to carry out**
 24 **the purposes of this article by:**
 25 (1) acquiring, constructing, equipping, owning, leasing, and
 26 financing projects and facilities for lease to or for the benefit
 27 of eligible political subdivisions under this article; and
 28 (2) funding and developing airport authority projects and
 29 services, regional transportation authority projects and
 30 services, and economic development projects in the eligible
 31 counties.
 32 **Sec. 2. The development authority may carry out its powers and**
 33 **duties under this article in an eligible county.**
 34 **Sec. 3. (a) The development authority is governed by the**
 35 **development board appointed under this section.**
 36 **(b) The development board is composed of the following nine (9)**
 37 **members:**
 38 (1) Three (3) members appointed by the governor.
 39 (2) The following members from a county having a population
 40 of more than one hundred eighty-two thousand seven hundred
 41 ninety (182,790) but less than two hundred thousand
 42 (200,000):

C
O
P
Y



- 1 (A) One (1) member appointed by the county executive.
- 2 (B) One (1) member appointed by county fiscal body.
- 3 (3) The following members from a county having a population
- 4 of more than thirty-four thousand nine hundred (34,900) but
- 5 less than thirty-four thousand nine hundred fifty (34,950):
- 6 (A) One (1) member appointed by the county executive.
- 7 (B) One (1) member appointed by the county fiscal body.
- 8 (4) The following members from a county having a county
- 9 having a population of more than thirty-three thousand two
- 10 hundred (33,200) but less than thirty-three thousand six
- 11 hundred (33,600):
- 12 (A) One (1) member appointed by the county executive.
- 13 (B) One (1) member appointed by the county fiscal body.
- 14 (c) A member appointed to the development board must have
- 15 knowledge of and at least five (5) years professional work
- 16 experience in at least one (1) of the following:
- 17 (1) Air transportation.
- 18 (2) Regional transportation development.
- 19 (3) Regional economic development.
- 20 (4) Business or finance.
- 21 (d) An individual or entity required to make an appointment
- 22 under subsection (b) must make the initial appointment before
- 23 September 1, 2006. If an individual or entity does not make an
- 24 initial appointment under subsection (b) before September 1, 2006,
- 25 the governor shall instead make the initial appointment.
- 26 Sec. 4. (a) Except as provided in subsection (b) for the initial
- 27 appointments to the development board, a member appointed to
- 28 the development board serves a four (4) year term. However, a
- 29 member serves at the pleasure of the appointing authority. A
- 30 member may be reappointed to subsequent terms.
- 31 (b) The terms of the initial members appointed to the
- 32 development board are as follows:
- 33 (1) Each initial member appointed by the governor shall serve
- 34 a term of four (4) years.
- 35 (2) The initial member appointed under section 3(b)(2)(A) of
- 36 this chapter shall serve a term of three (3) years.
- 37 (3) The initial member appointed under section 3(b)(3)(A) of
- 38 this chapter shall serve a term of three (3) years.
- 39 (4) The initial member appointed under section 3(b)(2)(B) of
- 40 this chapter shall serve a term of two (2) years.
- 41 (5) The initial member appointed under section 3(b)(3)(B) of
- 42 this chapter shall serve a term of two (2) years.

C
o
p
y



1 (c) If a vacancy occurs on the development board, the
 2 appointing authority that made the initial appointment shall fill the
 3 vacancy by appointing a new member for the remainder of the
 4 vacated term.

5 (d) Each member appointed to the development board, before
 6 entering upon the duties of office, must take and subscribe an oath
 7 of office under IC 5-4-1, which shall be endorsed upon the
 8 certificate of appointment and filed with the records of the
 9 development board.

10 (e) A member appointed to the development board is not
 11 entitled to receive any compensation for performance of the
 12 member's duties. However, a member is entitled to a per diem
 13 from the development authority for the member's participation in
 14 development board meetings. The amount of the per diem is equal
 15 to the amount of the per diem provided under IC 4-10-11-2.1(b).

16 Sec. 5. (a) The governor shall designate a member of the
 17 development board appointed by the governor to serve as chair of
 18 the development board until January 2013. At the election under
 19 subsection (b) in 2013 and each year thereafter, the chair shall be
 20 elected from among the members of the development board.

21 (b) In January of each year, the development board shall hold
 22 an organizational meeting at which the development board shall
 23 elect the following officers from the members of the development
 24 board:

- 25 (1) After December 31, 2012, a chair.
- 26 (2) A vice chair.
- 27 (3) A secretary-treasurer.

28 (c) Not more than two (2) members from any particular county
 29 may serve as an officer described in subsection (a) or elected under
 30 subsection (b). The affirmative vote of at least five (5) members of
 31 the development board is necessary to elect an officer under
 32 subsection (b).

33 (d) An officer elected under subsection (b) serves from the date
 34 of the officer's election until the officer's successor is elected and
 35 qualified.

36 Sec. 6. (a) The development board shall meet at least quarterly.

37 (b) The chair of the development board or any two (2) members
 38 of the development board may call a special meeting of the
 39 development board.

40 (c) Five (5) members of the development board constitute a
 41 quorum.

42 (d) The affirmative votes of at least five (5) members of the

C
O
P
Y



1 development board are necessary to authorize any action of the
2 development authority.

3 (e) Notwithstanding any other provision of this article, the
4 minimum of five (5) affirmative votes required under subsection
5 (d) to take any of the following actions before January 1, 2013,
6 must include the affirmative vote of the member designated by the
7 governor to serve as the chair of the board:

- 8 (1) Making loans, loan guarantees, or grants or providing any
9 other funding or financial assistance for projects.
- 10 (2) Acquiring or condemning property.
- 11 (3) Entering into contracts.
- 12 (4) Employing an executive director or any consultants or
13 technical experts.
- 14 (5) Issuing bonds or entering into a lease of a project.

15 Sec. 7. The development board may adopt the bylaws and rules
16 that the development board considers necessary for the proper
17 conduct of the development board's duties and the safeguarding of
18 the development authority's funds and property.

19 Sec. 8. (a) The development authority must comply with
20 IC 5-16-7 (common construction wage), IC 5-22 (public
21 purchasing), IC 36-1-12 (public work projects), and any applicable
22 federal bidding statutes and regulations. An eligible political
23 subdivision that receives a loan, a grant, or other financial
24 assistance from the development authority or enters into a lease
25 with the development authority must comply with applicable
26 federal, state, and local public purchasing and bidding laws and
27 regulations. However, a purchasing agency (as defined in
28 IC 5-22-2-25) of an eligible political subdivision may:

- 29 (1) assign or sell a lease for property to the development
30 authority; or
- 31 (2) enter into a lease for property with the development
32 authority;

33 at any price and under any other terms and conditions as may be
34 determined by the eligible political subdivision and the
35 development authority. However, before making an assignment or
36 sale of a lease or entering into a lease under this section that would
37 otherwise be subject to IC 5-22, the eligible political subdivision or
38 its purchasing agent must obtain or cause to be obtained a
39 purchase price for the property to be subject to the lease from the
40 lowest responsible and responsive bidder in accordance with the
41 requirements for the purchase of supplies under IC 5-22.

42 (b) In addition to the provisions of subsection (a), with respect

C
O
P
Y



1 to projects undertaken by the development authority, the
 2 development authority shall set a goal for participation by
 3 minority business enterprises of fifteen percent (15%) and
 4 women's business enterprises of five percent (5%), consistent with
 5 the goals of delivering the project on time and within the budgeted
 6 amount and, insofar as possible, using Indiana businesses for
 7 employees, goods, and services. In fulfilling the goals under this
 8 subsection, the authority shall take into account historical
 9 precedents in the same market.

10 **Sec. 9.** The office of management and budget shall contract with
 11 a certified public accountant for an annual financial audit of the
 12 development authority. The certified public accountant may not
 13 have a significant financial interest, as determined by the office of
 14 management and budget, in a project, facility, or service funded by
 15 or leased by or to the development authority. The certified public
 16 accountant shall present an audit report not later than four (4)
 17 months after the end of the development authority's fiscal year and
 18 shall make recommendations to improve the efficiency of
 19 development authority operations. The certified public accountant
 20 shall also perform a study and evaluation of internal accounting
 21 controls and shall express an opinion on the controls that were in
 22 effect during the audit period. The development authority shall pay
 23 the cost of the annual financial audit. In addition, the state board
 24 of accounts may at any time conduct an audit of any phase of the
 25 operations of the development authority. The development
 26 authority shall pay the cost of any audit by the state board of
 27 accounts.

28 **Chapter 3. Development Authority Powers and Duties**

29 **Sec. 1.** The development authority shall do the following:

- 30 (1) Assist in the coordination of local efforts concerning
- 31 projects.
- 32 (2) Assist an airport authority and a regional transportation
- 33 authority in coordinating regional transportation and
- 34 economic development efforts.
- 35 (3) Fund projects as provided in this article.

36 **Sec. 2. (a)** The development authority may do any of the
 37 following:

- 38 (1) Finance, improve, construct, reconstruct, renovate,
- 39 purchase, lease, acquire, and equip land and projects located
- 40 in an eligible county.
- 41 (2) Lease land or a project to an eligible political subdivision.
- 42 (3) Finance and construct additional improvements to

**C
O
P
Y**



- 1 projects or other capital improvements owned by the
- 2 development authority and lease them to or for the benefit of
- 3 an eligible political subdivision.
- 4 (4) Acquire land or all or a part of one (1) or more projects
- 5 from an eligible political subdivision by purchase or lease and
- 6 lease the land or projects back to the eligible political
- 7 subdivision, with any additional improvements that may be
- 8 made to the land or projects.
- 9 (5) Acquire all or a part of one (1) or more projects from an
- 10 eligible political subdivision by purchase or lease to fund or
- 11 refund indebtedness incurred on account of the projects to
- 12 enable the eligible political subdivision to make a savings in
- 13 debt service obligations or lease rental obligations or to obtain
- 14 relief from covenants that the eligible political subdivision
- 15 considers to be unduly burdensome.
- 16 (6) Make loans, loan guarantees, and grants or provide other
- 17 financial assistance to or on behalf of an airport authority or
- 18 a regional transportation authority.
- 19 (7) Provide funding to assist an airport authority located in an
- 20 eligible county in the construction, reconstruction, renovation,
- 21 purchase, lease, acquisition, and equipping of an airport
- 22 facility or airport project.
- 23 (8) Provide funding for economic development projects in an
- 24 eligible county.
- 25 (9) Hold, use, lease, rent, purchase, acquire, and dispose of by
- 26 purchase, exchange, gift, bequest, grant, condemnation, lease,
- 27 or sublease, on the terms and conditions determined by the
- 28 development authority, any real or personal property located
- 29 in an eligible county.
- 30 (10) After giving notice, enter upon any lots or lands for the
- 31 purpose of surveying or examining them to determine the
- 32 location of a project.
- 33 (11) Make or enter into all contracts and agreements
- 34 necessary or incidental to the performance of the development
- 35 authority's duties and the execution of the development
- 36 authority's powers under this article.
- 37 (12) Sue, be sued, plead, and be impleaded.
- 38 (13) Design, order, contract for, construct, reconstruct, and
- 39 renovate a project or improvements to a project.
- 40 (14) Appoint an executive director and employ appraisers,
- 41 real estate experts, engineers, architects, surveyors, attorneys,
- 42 accountants, auditors, clerks, construction managers, and any

COPY



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

consultants or employees that are necessary or desired by the development authority in exercising its powers or carrying out its duties under this article.

(15) Accept loans, grants, and other forms of financial assistance from the federal government, the state government, a political subdivision, or any other public or private source.

(16) Use the development authority's funds to match federal grants or make loans, loan guarantees, or grants to carry out the development authority's powers and duties under this article.

(17) Except as prohibited by law, take any action necessary to carry out this article.

(b) If the development authority is unable to agree with the owners, lessees, or occupants of any real property selected for the purposes of this article, the development authority may proceed under IC 32-24-1 to procure the condemnation of the property. The development authority may not institute a proceeding until it has adopted a resolution that:

- (1) describes the real property sought to be acquired and the purpose for which the real property is to be used;
- (2) declares that the public interest and necessity require the acquisition by the development authority of the property involved; and
- (3) sets out any other facts that the development authority considers necessary or pertinent.

The resolution is conclusive evidence of the public necessity of the proposed acquisition.

Sec. 3. The development authority shall before November 1 of each year issue a report to the legislative council, the budget committee, and the governor concerning the operations and activities of the development authority during the preceding state fiscal year. The report to the legislative council must be in an electronic format under IC 5-14-6.

Sec. 4. (a) The development authority shall prepare a comprehensive strategic development plan that includes detailed information concerning the following:

- (1) The proposed projects to be undertaken or financed by the development authority.
- (2) The following information for each project included under subdivision (1):
 - (A) Timeline and budget.
 - (B) The return on investment.

C
O
P
Y



1 (C) The projected or expected need for an ongoing subsidy.
 2 (D) Any projected or expected federal matching funds.
 3 (b) The development authority shall before January 1, 2009,
 4 submit the comprehensive strategic development plan for review
 5 by the budget committee and approval by the director of the office
 6 of management and budget.
 7 Chapter 4. Financing; Issuance of Bonds; Leases
 8 Sec. 1. (a) The development board shall establish and administer
 9 a development authority fund.
 10 (b) The development authority fund consists of the following:
 11 (1) Amounts distributed under IC 8-15-2-14.8.
 12 (2) Funds received from the federal government.
 13 (3) Appropriations to the fund by the general assembly.
 14 (4) Other local revenue appropriated to the fund by a political
 15 subdivision.
 16 (5) Gifts, donations, and grants to the fund.
 17 (c) The development authority fund shall be administered by the
 18 development authority.
 19 (d) Money in the development authority fund shall be used by
 20 the development authority to carry out this article and does not
 21 revert to any other fund.
 22 Sec. 2. (a) Subject to subsection (h), the development authority
 23 may issue bonds for the purpose of obtaining money to pay the cost
 24 of:
 25 (1) acquiring real or personal property, including existing
 26 capital improvements;
 27 (2) acquiring, constructing, improving, reconstructing, or
 28 renovating one (1) or more projects; or
 29 (3) funding or refunding bonds issued under this chapter,
 30 IC 8-22-3, IC 36-9-3, or prior law.
 31 (b) The bonds are payable solely from:
 32 (1) the lease rentals from the lease of the projects for which
 33 the bonds were issued, insurance proceeds, and any other
 34 funds pledged or available; and
 35 (2) except as otherwise provided by law, revenue received by
 36 the development authority and amounts deposited in the
 37 development authority fund.
 38 (c) The bonds must be authorized by a resolution of the
 39 development board.
 40 (d) The terms and form of the bonds must either be set out in
 41 the resolution or in a form of trust indenture approved by the
 42 resolution.

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

(e) The bonds must mature within forty (40) years.

(f) The board shall sell the bonds only to the Indiana finance authority established by IC 4-4-11-4 upon the terms determined by the development board and the Indiana finance authority.

(g) All money received from any bonds issued under this chapter shall be applied solely to the payment of the cost of acquiring, constructing, improving, reconstructing, or renovating one (1) or more projects, or the cost of refunding or refinancing outstanding bonds, for which the bonds are issued. The cost may include:

- (1) planning and development of equipment or a facility and all buildings, facilities, structures, equipment, and improvements related to the facility;
- (2) acquisition of a site and clearing and preparing the site for construction;
- (3) equipment, facilities, structures, and improvements that are necessary or desirable to make the project suitable for use and operations;
- (4) architectural, engineering, consultant, and attorney's fees;
- (5) incidental expenses in connection with the issuance and sale of bonds;
- (6) reserves for principal and interest;
- (7) interest during construction;
- (8) financial advisory fees;
- (9) insurance during construction;
- (10) municipal bond insurance, debt service reserve insurance, letters of credit, or other credit enhancement; and
- (11) in the case of refunding or refinancing, payment of the principal of, redemption premiums (if any) for, and interest on the bonds being refunded or refinanced.

(h) The development authority may not issue bonds under this article unless the development authority first finds that each contract for the construction of a facility and all buildings, facilities, structures, and improvements related to that facility to be financed in whole or in part through the issuance of the bonds requires payment of the common construction wage required by IC 5-16-7.

Sec. 3. This chapter contains full and complete authority for the issuance of bonds. No law, procedure, proceedings, publications, notices, consents, approvals, orders, or acts by the development board or any other officer, department, agency, or instrumentality of the state or of any political subdivision is required to issue any

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

bonds, except as prescribed in this article.

Sec. 4. (a) The development authority may secure bonds issued under this chapter by a trust indenture between the development authority and a corporate trustee, which may be any trust company or national or state bank in Indiana that has trust powers.

(b) The trust indenture may:

- (1) pledge or assign revenue received by the development authority, amounts deposited in the development authority fund, and lease rentals, receipts, and income from leased projects, but may not mortgage land or projects;**
- (2) contain reasonable and proper provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants setting forth the duties of the development authority and development board;**
- (3) set forth the rights and remedies of bondholders and trustees; and**
- (4) restrict the individual right of action of bondholders.**

(c) Any pledge or assignment made by the development authority under this section is valid and binding in accordance with IC 5-1-14-4 from the time that the pledge or assignment is made, against all persons whether they have notice of the lien or not. Any trust indenture by which a pledge is created or an assignment made need not be filed or recorded. The lien is perfected against third parties in accordance with IC 5-1-14-4.

Sec. 5. (a) Bonds issued under IC 8-22-3, IC 36-9-3, or prior law may be refunded as provided in this section.

(b) An eligible political subdivision may:

- (1) lease all or a part of land or a project or projects to the development authority, which may be at a nominal lease rental with a lease back to the eligible political subdivision, conditioned upon the development authority assuming bonds issued under IC 8-22-3, IC 36-9-3, or prior law and issuing its bonds to refund those bonds; and**
- (2) sell all or a part of land or a project or projects to the development authority for a price sufficient to provide for the refunding of those bonds and lease back the land or project or projects from the development authority.**

Sec. 6. (a) Before a lease may be entered into by an eligible political subdivision under this chapter, the eligible political subdivision must find that the lease rental provided for is fair and reasonable.

**C
O
P
Y**



- 1 **(b) A lease of land or a project from the development authority**
- 2 **to an eligible political subdivision:**
- 3 **(1) may not have a term exceeding forty (40) years;**
- 4 **(2) may not require payment of lease rentals for a newly**
- 5 **constructed project or for improvements to an existing**
- 6 **project until the project or improvements to the project have**
- 7 **been completed and are ready for occupancy or use;**
- 8 **(3) may contain provisions:**
 - 9 **(A) allowing the eligible political subdivision to continue to**
 - 10 **operate an existing project until completion of the**
 - 11 **acquisition, improvements, reconstruction, or renovation**
 - 12 **of that project or any other project; and**
 - 13 **(B) requiring payment of lease rentals for land, for an**
 - 14 **existing project being used, reconstructed, or renovated, or**
 - 15 **for any other existing project;**
 - 16 **(4) may contain an option to renew the lease for the same or**
 - 17 **a shorter term on the conditions provided in the lease;**
 - 18 **(5) must contain an option for the eligible political subdivision**
 - 19 **to purchase the project upon the terms stated in the lease**
 - 20 **during the term of the lease for a price equal to the amount**
 - 21 **required to pay all indebtedness incurred on account of the**
 - 22 **project, including indebtedness incurred for the refunding of**
 - 23 **that indebtedness;**
 - 24 **(6) may be entered into before acquisition or construction of**
 - 25 **a project;**
 - 26 **(7) may provide that the eligible political subdivision shall**
 - 27 **agree to:**
 - 28 **(A) pay any taxes and assessments on the project;**
 - 29 **(B) maintain insurance on the project for the benefit of the**
 - 30 **development authority;**
 - 31 **(C) assume responsibility for utilities, repairs, alterations,**
 - 32 **and any costs of operation; and**
 - 33 **(D) pay a deposit or series of deposits to the development**
 - 34 **authority from any funds legally available to the eligible**
 - 35 **political subdivision before the commencement of the lease**
 - 36 **to secure the performance of the eligible political**
 - 37 **subdivision's obligations under the lease; and**
 - 38 **(8) must provide that the lease rental payments by the eligible**
 - 39 **political subdivision shall be made from the development**
 - 40 **authority fund established under section 1 of this chapter and**
 - 41 **may provide that the lease rental payments by the eligible**
 - 42 **political subdivision shall be made from:**

COPY



- 1 (A) net revenues of the project;
 2 (B) any other funds available to the eligible political
 3 subdivision; or
 4 (C) both sources described in clauses (A) and (B).

5 **Sec. 7. This chapter contains full and complete authority for**
 6 **leases between the development authority and an eligible political**
 7 **subdivision. No law, procedure, proceedings, publications, notices,**
 8 **consents, approvals, orders, or acts by the development authority**
 9 **or the eligible political subdivision or any other officer,**
 10 **department, agency, or instrumentality of the state or any political**
 11 **subdivision is required to enter into any lease, except as prescribed**
 12 **in this article.**

13 **Sec. 8. If the lease provides for a project or improvements to a**
 14 **project to be constructed by the development authority, the plans**
 15 **and specifications shall be submitted to and approved by all**
 16 **agencies designated by law to pass on plans and specifications for**
 17 **public buildings.**

18 **Sec. 9. The development authority and an eligible political**
 19 **subdivision may enter into common wall (party wall) agreements**
 20 **or other agreements concerning easements or licenses. These**
 21 **agreements shall be recorded with the recorder of the county in**
 22 **which the project is located.**

23 **Sec. 10. (a) An eligible political subdivision may lease for a**
 24 **nominal lease rental, or sell to the development authority, one (1)**
 25 **or more projects or parts of a project or land upon which a project**
 26 **is located or is to be constructed.**

27 **(b) Any lease of all or a part of a project by an eligible political**
 28 **subdivision to the development authority must be for a term equal**
 29 **to the term of the lease of that project back to the eligible political**
 30 **subdivision.**

31 **(c) An eligible political subdivision may sell property to the**
 32 **development authority for the amount the eligible political**
 33 **subdivision determines to be in the best interest of the eligible**
 34 **political subdivision. The development authority may pay that**
 35 **amount from the proceeds of bonds of the development authority.**

36 **Sec. 11. If an eligible political subdivision exercises its option to**
 37 **purchase leased property, the eligible political subdivision may**
 38 **issue its bonds as authorized by statute.**

39 **Sec. 12. (a) All:**

- 40 (1) property owned by the development authority;
 41 (2) revenues of the development authority; and
 42 (3) bonds issued by the development authority, the interest on

C
O
P
Y



1 the bonds, the proceeds received by a holder from the sale of
2 bonds to the extent of the holder's cost of acquisition,
3 proceeds received upon redemption before maturity, proceeds
4 received at maturity, and the receipt of interest in proceeds;
5 are exempt from taxation in Indiana for all purposes except the
6 financial institutions tax imposed under IC 6-5.5 or a state
7 inheritance tax imposed under IC 6-4.1.

8 (b) All securities issued under this chapter are exempt from the
9 registration requirements of IC 23-2-1 and other securities
10 registration statutes.

11 Sec. 13. Bonds issued under this chapter are legal investments
12 for private trust funds and the funds of banks, trust companies,
13 insurance companies, building and loan associations, credit unions,
14 savings banks, private banks, loan and trust and safe deposit
15 companies, rural loan and savings associations, guaranty loan and
16 savings associations, mortgage guaranty companies, small loan
17 companies, industrial loan and investment companies, and other
18 financial institutions organized under Indiana law.

19 Sec. 14. An action to contest the validity of bonds to be issued
20 under this chapter may not be brought after the time limitations
21 set forth in IC 5-1-14-13.

22 Sec. 15. The general assembly covenants that it will not:

23 (1) repeal or amend this article in a manner that would
24 adversely affect owners of outstanding bonds, or the payment
25 of lease rentals, secured by the amounts pledged under this
26 chapter; or

27 (2) in any way impair the rights of owners of bonds of the
28 development authority, or the owners of bonds secured by
29 lease rentals, secured by a pledge of revenues under this
30 chapter.

31 SECTION 44. [EFFECTIVE UPON PASSAGE] Actions taken
32 with respect to a public-private agreement before the effective date
33 of this act that would have been valid under IC 8-15.5, as added by
34 this act, are legalized and validated.

35 SECTION 45. [EFFECTIVE UPON PASSAGE] (a) As used in this
36 SECTION, "authority" and "user fees" have the meanings set
37 forth in IC 8-15.5-2, as added by this act.

38 (b) The authority shall adopt a rule under IC 4-22-2-37.1, as
39 amended by this act, fixing user fees, including a schedule of the
40 user fees provided for under a public-private agreement entered
41 into under IC 8-15.5-4, as added by this act, on or before January
42 1, 2007.



C
O
P
Y

1 (c) This SECTION expires July 1, 2007.

2 SECTION 46. [EFFECTIVE UPON PASSAGE] (a) As used in this

3 SECTION, "toll road project" has the meaning set forth in

4 IC 8-15-2-4(4).

5 (b) The state board of accounts shall audit or cause to be

6 audited the accounts, books, and records of the Indiana

7 transportation finance authority and its successor, the Indiana

8 finance authority, for the operation of each toll road project for

9 each state fiscal year beginning after June 30, 1996, and ending

10 before July 1, 2006. The audit must include a complete operating

11 and financial statement for each toll road project during each state

12 fiscal year covered by the audit.

13 (c) The cost of the audit required by this SECTION must be

14 paid by the Indiana finance authority and may be treated as a part

15 of the cost of a toll road project.

16 (d) The state board of accounts shall submit the audit required

17 by this SECTION to the governor, the budget committee, and the

18 general assembly before November 1, 2007. An audit submitted

19 under this SECTION to the general assembly must be in an

20 electronic format under IC 5-14-6.

21 (e) This SECTION expires January 1, 2008.

22 SECTION 47. [EFFECTIVE UPON PASSAGE] The department

23 of transportation may adopt temporary rules in the manner

24 provided for the adoption of emergency rules under IC 4-22-2-37.1

25 to implement IC 8-15-3, as amended by this act, and IC 8-15.7, as

26 added by this act. A temporary rule adopted under this SECTION

27 expires on the earliest of the following:

28 (1) The date that another temporary rule adopted under this

29 SECTION supersedes or repeals the previously adopted

30 temporary rule.

31 (2) The date that a permanent rule adopted under IC 4-22-2

32 supersedes or repeals the temporary rule.

33 (3) The date specified in the temporary rule.

34 (4) January 1, 2008.

35 SECTION 48. [EFFECTIVE JULY 1, 2006] (a) As used in this

36 SECTION, "eligible county" has the meaning set forth in

37 IC 36-7.6-1-8, as added by this act.

38 (b) The general assembly finds the following:

39 (1) Each eligible county faces unique and distinct challenges

40 and opportunities related to transportation and economic

41 development that are different in scope and type than those

42 faced by other units of local government in Indiana.

C
O
P
Y



1 **(2) A unique approach is required to fully take advantage of**
2 **the economic development potential of northeastern Indiana.**
3 **(3) The powers and responsibilities provided to the northeast**
4 **Indiana regional development authority established by**
5 **IC 36-7.6-2-1, as added by this act, are appropriate and**
6 **necessary to carry out the public purposes of encouraging**
7 **economic development and further facilitating the provision**
8 **of air and other regional transportation services, projects, and**
9 **facilities, and economic development projects in the eligible**
10 **counties.**
11 **SECTION 49. An emergency is declared for this act.**

C
O
P
Y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1008, 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:

Page 6, line 23, after "Sec. 6." insert "(a)".

Page 6, line 23, delete "at the".

Page 6, line 24, delete "request of the department".

Page 6, line 25, after "incurred" insert "**or amounts owed**".

Page 6, line 25, after "authority" insert "**, the department, or an operator under IC 8-15-2, IC 8-15-3, IC 8-15.5, or IC 8-15.7 in connection with the execution and performance of a public-private agreement under IC 8-15.5 or IC 8-15.7, including establishing reserves.**".

Page 6, delete lines 26 through 27.

Page 6, line 29, delete "The" and insert "**To the treasurer of state for deposit in the state highway fund, for the**".

Page 6, between lines 33 and 34, begin a new paragraph and insert:

"(b) In addition to the distributions permitted by subsection (a), the authority shall distribute from the fund fifty million dollars (\$50,000,000) per year during 2006, 2007, and 2008 to the treasurer of state for deposit in the motor vehicle highway account established by IC 8-14-1. Notwithstanding IC 8-14-1, the auditor of state shall distribute the amounts deposited in the motor vehicle highway account under this subsection to each of the counties, cities, and towns eligible to receive a distribution from the motor vehicle highway account under IC 8-14-1 and in the same proportion among the counties, cities, and towns as funds are distributed from the motor vehicle highway account under IC 8-14-1. Money distributed under this subsection may be used only for purposes that money distributed from the motor vehicle highway account may be expended under IC 8-14-1."

Page 30, line 23, delete "selected offeror commences operations under the" and insert "**public-private agreement has been executed and the closing for each financing transaction required to provide funding to carry out the agreement has been conducted.**".

Page 30, delete line 24.

Page 40, line 34, delete "(c) or (d)," and insert "**(c), (d), or (e),"**

Page 40, line 39, delete "allocation" and insert "**allocations**".

Page 40, line 39, delete "subsection (d)," and insert "**subsections (d) and (e),"**

Page 41, line 3, delete "all" and insert "**thirty-four percent (34%)**

C
O
P
Y



of the".

Page 41, line 3, after "received" insert "**during each state fiscal year**".

Page 41, line 6, delete "5(a)(2) and".

Page 41, delete lines 7 through 9, begin a new paragraph and insert:

"(e) After making the allocations required by subsections (b), (c), and (d), the authority shall transfer all remaining money received during each state fiscal year under a public-private agreement under this article to the major moves construction fund established by IC 8-14-14."

Page 41, line 10, delete "Thirty-four percent (34%) of the" and insert "**The**".

Page 41, line 11, after "distributions to" insert ":".

Page 41, delete lines 12 through 14, begin a new line block indented and insert:

"(1) the department;

(2) the northwest Indiana regional development authority;
and

(3) eligible political subdivisions;

for eligible projects located in eligible political subdivisions."

Page 42, between lines 35 and 36, begin a new paragraph and insert:

"Chapter 13. Prohibited Political Contributions

Sec. 1. The definitions in IC 3-5-2 apply to this chapter to the extent they do not conflict with the definitions in this article.

Sec. 2. As used in this chapter, "candidate" refers to any of the following:

(1) A candidate for a state office.

(2) A candidate for a legislative office.

(3) A candidate for a local office.

Sec. 3. As used in this chapter, "committee" refers to any of the following:

(1) A candidate's committee.

(2) A regular party committee.

(3) A committee organized by a legislative caucus of the house of representatives of the general assembly.

(4) A committee organized by a legislative caucus of the senate of the general assembly.

Sec. 4. As used in this chapter, "officer" refers only to either of the following:

(1) An individual listed as an officer of a corporation in the corporation's most recent annual report.

(2) An individual who is a successor to an individual described

C
O
P
Y



in subdivision (1).

Sec. 5. For purposes of this chapter, a person is considered to have an interest in an operator if the person satisfies any of the following:

- (1) The person holds any interest in an operator.**
- (2) The person is an officer of an operator.**
- (3) The person is an officer of a person that holds any interest in an operator.**
- (4) The person is a political action committee of an operator.**

Sec. 6. An operator is considered to have made a contribution if a contribution is made by a person who has an interest in the operator.

Sec. 7. An operator or a person who has an interest in an operator may not make a contribution to a candidate or a committee during the following periods:

- (1) The term during which the operator is a party to a public-private agreement entered into under this article.**
- (2) The three (3) years following the final expiration or termination of the public-private agreement described in subdivision (1).**

Sec. 8. A person who knowingly or intentionally violates this chapter commits a Class D felony."

Page 45, line 26, delete "Intermodal facilities, roads, airports, transit facilities and" and insert "**Roads and bridges.**".

Page 45, delete lines 27 through 28.

Page 48, line 24, delete "or" and insert "**and**".

Page 48, line 25, delete "or both,".

Page 48, line 41, after "area" delete "or" and insert "**and**".

Page 48, line 41, delete "or both,".

Page 67, between lines 17 and 18, begin a new paragraph and insert: "**Chapter 16. Prohibited Political Contributions**

Sec. 1. The definitions in IC 3-5-2 apply to this chapter to the extent they do not conflict with the definitions in this article.

Sec. 2. As used in this chapter, "candidate" refers to any of the following:

- (1) A candidate for a state office.**
- (2) A candidate for a legislative office.**
- (3) A candidate for a local office.**

Sec. 3. As used in this chapter, "committee" refers to any of the following:

- (1) A candidate's committee.**
- (2) A regular party committee.**

**C
O
P
Y**



(3) A committee organized by a legislative caucus of the house of representatives of the general assembly.

(4) A committee organized by a legislative caucus of the senate of the general assembly.

Sec. 4. As used in this chapter, "officer" refers only to either of the following:

(1) An individual listed as an officer of a corporation in the corporation's most recent annual report.

(2) An individual who is a successor to an individual described in subdivision (1).

Sec. 5. For purposes of this chapter, a person is considered to have an interest in an operator if the person satisfies any of the following:

(1) The person holds any interest in an operator.

(2) The person is an officer of an operator.

(3) The person is an officer of a person that holds any interest in an operator.

(4) The person is a political action committee of an operator.

Sec. 6. An operator is considered to have made a contribution if a contribution is made by a person who has an interest in the operator.

Sec. 7. An operator or a person who has an interest in an operator may not make a contribution to a candidate or a committee during the following periods:

(1) The term during which the operator is a party to a public-private agreement entered into under this article.

(2) The three (3) years following the final expiration or termination of the public-private agreement described in subdivision (1).

Sec. 8. A person who knowingly or intentionally violates this chapter commits a Class D felony."

Page 68, between lines 31 and 32, begin a new paragraph and insert:

"SECTION 36. IC 8-23-9-54 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 54. (a) To provide funds for carrying out the provisions of this chapter, there is created a state highway fund from the following sources:

(1) All money in the general fund to the credit of the state highway account.

(2) All money that is received from the Department of Transportation or other federal agency and known as federal aid.

(3) All money paid into the state treasury to reimburse the state for money paid out of the state highway fund.

C
O
P
Y



(4) All money provided by Indiana law for the construction, maintenance, reconstruction, repair, and control of public highways, as provided under this chapter.

(5) All money that on May 22, 1933, was to be paid into the state highway fund under contemplation of any statute in force as of May 22, 1933.

(6) All money that may at any time be appropriated from the state treasury.

(7) Any part of the state highway fund unexpended at the expiration of any fiscal year, which shall remain in the fund and be available for the succeeding years.

(8) Any money credited to the state highway fund from the motor vehicle highway account under IC 8-14-1-3(4).

(9) Any money credited to the state highway fund from the highway road and street fund under IC 8-14-2-3.

(10) Any money credited to the state highway fund under IC 6-6-1.1-801.5, IC 6-6-4.1-5, or IC 8-16-1-17.1.

(11) Any money distributed to the state highway fund under IC 8-14-14, IC 8-15.5, or IC 8-15.7.

(b) All expenses incurred in carrying out this chapter shall be paid out of the state highway fund."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1008 as introduced.)

ESPICH, Chair

Committee Vote: yeas 14, nays 10.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1008 be amended to read as follows:

Page 50, line 25, after "(g)" insert "**The authority shall submit a draft of the request for proposals to the budget committee for its review before the issuance by the authority of the request for proposals to potential offerors.**"

(Reference is to HB 1008 as printed January 26, 2006.)

HEIM



C
O
P
Y

HOUSE MOTION

Mr. Speaker: I move that House Bill 1008 be amended to read as follows:

Page 35, line 2, after "IC 8-15-2-14(j)," insert "**and subject to section 8 of this chapter,**".

Page 35, line 19, delete "User" and insert "**Subject to section 8 of this chapter, user**".

Page 36, line 2, delete "A" and insert "**Subject to section 8 of this chapter, a**".

Page 36, between lines 38 and 39, begin a new paragraph and insert: "**Sec. 8. (a) As used in this section, "passenger motor vehicle" means:**

- (1) a passenger motor vehicle (as defined in IC 9-13-2-123); or**
- (2) a truck (as defined in IC 9-13-2-188) that has a declared gross weight of not more than seven thousand (7,000) pounds; that is owned or leased by an individual and is not used for commercial purposes.**

(b) The user fees charged by the operator of the Indiana Toll Road under a public-private agreement for the use of the Indiana Toll Road by passenger motor vehicles that are owned or leased by individuals who reside in a county traversed by the Indiana Toll Road may not exceed the user fees for passenger motor vehicles that were in effect January 1, 2006.

(c) The operator of the Indiana Toll Road under a public-private agreement shall take the steps necessary to implement this section. The bureau of motor vehicles and other state agencies shall cooperate with the operator as necessary to implement this section.

(d) This section expires July 1, 2016."

(Reference is to HB 1008 as printed January 26, 2006.)

NEESE

C
O
P
Y

HOUSE MOTION

Mr. Speaker: I move that House Bill 1008 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning transportation and to make an appropriation.

HB 1008—LS 7108/DI 44+



Page 1, between lines 7 and 8, begin a new paragraph and insert:
 "SECTION 2. IC 4-4-11-15.6, AS ADDED BY P.L.214-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 15.6. In addition to the powers listed in section 15 of this chapter, the authority may:

- (1) issue bonds under terms and conditions determined by the authority and use the proceeds of the bonds to acquire obligations issued by any entity authorized to acquire, finance, construct, or lease capital improvements under IC 5-1-17; ~~and~~
- (2) issue bonds under terms and conditions determined by the authority and use the proceeds of the bonds to acquire any obligations issued by the northwest Indiana regional development authority established by IC 36-7.5-2-1; **and**
- (3) issue bonds under terms and conditions determined by the authority and use the proceeds of the bonds to acquire any obligations issued by the northeast Indiana regional development authority established by IC 36-7.6-2-1."**

Page 7, between lines 9 and 10, begin a new paragraph and insert:
"Sec. 7. Money in the fund may be used for a purpose other than a purpose that is specified in this chapter on the effective date of this chapter only if the general assembly authorizes the purpose in a statute approved by at least seventy-five percent (75%) of the members of the house of representatives and by at least seventy-five percent (75%) of the members of the senate."

Page 13, line 22, after "pay" insert ":

- (1) for the calendar years 2006 and 2007,"**

Page 13, line 24, beginning with "(1)", begin a new line double block indented.

Page 13, line 24, strike "(1)" and insert "(A)".

Page 13, line 25, beginning with "(2)", begin a new line double block indented.

Page 13, line 25, strike "(2)" and insert "(B)".

Page 13, line 28, after "IC 36-7.5-4-1" delete ". A payment required by this".

Page 13, line 29, delete "subsection may be made".

Page 13, line 30, after "IC 8-15.5-11" delete "." and insert "; **and**

- (2) for each of the calendar years 2008 through 2015, an amount equal to ten million dollars (\$10,000,000) to the development authority fund established under IC 36-7.5-4-1 from the toll road fund in accordance with IC 8-15.5-11."**

Page 13, between lines 35 and 36, begin a new paragraph and insert:
 "SECTION 10. IC 8-15-2-14.8 IS ADDED TO THE INDIANA

C
O
P
Y



CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 14.8. (a)** As used in this section, "development authority" refers to the northeast Indiana regional development authority established by IC 36-7.6-2-1.

(b) Subject to the trust agreement of any outstanding bonds, the authority shall distribute to the development authority in calendar year 2007 and calendar year 2008 from revenues accruing to the authority from the toll road at least five million dollars (\$5,000,000) and not more than ten million dollars (\$10,000,000) each year. The amount of the distribution for a year shall be determined by the authority. The amount to be distributed each year shall be distributed in equal quarterly amounts before the last business day of January, April, July, and October of 2007 and 2008. The amounts distributed under this subsection shall be deposited in the development authority fund established under IC 36-7.6-4-1.

(c) Subject to the trust agreement for any outstanding bonds and subject to the requirements of subsection (d), after 2008 the authority may distribute to the development authority amounts from revenues accruing to the authority from the toll road. The amount of any distribution for a year shall be determined by the authority. Any amounts to be distributed for the year under this subsection shall be distributed in equal quarterly amounts before the last business day of January, April, July, and October of the year. Any amounts distributed under this subsection shall be deposited in the development authority fund established under IC 36-7.6-4-1.

(d) A distribution may be made by the authority to the development authority under subsection (c) only after the budget committee has reviewed the development authority's comprehensive strategic development plan under IC 36-7.6-3-4 and the director of the office of management and budget has approved the comprehensive strategic development plan.

(e) If the Indiana Toll Road is sold or leased before January 1, 2008 (other than a lease to the department), and the sale or lease agreement does not require the purchaser or lessee to continue making the distributions required by subsection (b), the treasurer of state shall pay:

(1) for the calendar year 2007, an amount equal to the greater of zero (0) or the result of:

(A) ten million dollars (\$10,000,000); minus

(B) any amounts transferred to the development authority

**C
O
P
Y**



under this section before the sale or lease;
 to the development authority fund established under IC 36-7.6-4-1 from the state general fund or from the toll road fund in accordance with IC 8-15.5-11; and
 (2) for each of the calendar years 2008 through 2016, an amount equal to ten million dollars (\$10,000,000) to the development authority fund established under IC 36-7.6-4-1 from the toll road fund in accordance with IC 8-15.5-11.

(f) Amounts distributed or paid to the development authority under this section may be used for any purpose of the development authority authorized under IC 36-7.6.

(g) The amounts necessary to make any distributions or payments required or authorized by this section are appropriated."

Page 39, line 38, after ";" delete "and".

Page 39, between lines 38 and 39, begin a new line block indented and insert:

"(3) with respect to the northeast Indiana regional development authority:

(A) all or part of a distribution described in IC 8-15-2-14.8; and

(B) the acquisition, construction, renovation, improvement, and equipping of a project (as defined in IC 36-7.6-1); and"

Page 39, line 39, delete "(3)" and insert "(4)".

Page 40, line 12, delete "and".

Page 40, between lines 12 and 13, begin a new line double block indented and insert:

"(C) the northeast Indiana regional development authority established in IC 36-7.6-2; and"

Page 40, line 13, delete "(C)" and insert "(D)".

Page 41, line 36, delete "and" and insert **"(3) the northeast Indiana regional development authority; and"**.

Page 41, line 37, delete "(3)" and insert "(4)".

Page 42, between lines 34 and 35, begin a new paragraph and insert:

"(d) Before July 1, 2006, and every year thereafter, the northeast Indiana regional development authority may submit to the authority a request for a distribution from the eligible project account. The request must include a list of the eligible projects that:

(1) are to be carried out by the northeast Indiana regional development authority during the state fiscal year beginning

**C
O
P
Y**



on July 1 of that year; and

(2) require a distribution of money from the eligible project account.

The list must include the amount of distributions requested for each project during the fiscal year, the total amount of distributions requested for all projects during the fiscal year, and the proposed schedule of distributions for each project. The authority may approve, modify and approve, or reject a request made under this section. The authority shall make any distributions in the amounts and in accordance with the schedule as approved by the authority and shall pay the distributions from the eligible project account to the northeast Indiana regional development authority for deposit in the general account of the development authority fund established under IC 36-7.6-4-1."

Page 42, line 35, delete "(d)" and insert "(e)".

Page 43, between lines 13 and 14, begin a new paragraph and insert:

"(e) Any use or withdrawal of money from the toll road fund, which would result in the inability of the treasurer of state to distribute the money required to be distributed to the northwest Indiana regional development authority pursuant to IC 8-15-2-14.7 or to the northeast Indiana regional development authority pursuant to IC 8-15-2-14.8, must be made by an act passed by at least seventy-five percent (75%) of the members of the house of representatives and by at least seventy-five percent (75%) of the members of the senate, and the use or withdrawal may not occur until the bill is enacted and becomes effective.

Sec. 8. Money in the fund may be used for a purpose other than a purpose that is specified in this chapter on the effective date of this chapter only if the general assembly authorizes the purpose in a statute approved by at least seventy-five percent (75%) of the members of the house of representatives and by at least seventy-five percent (75%) of the members of the senate."

Page 77, between lines 2 and 3, begin a new paragraph and insert:

"SECTION 42. IC 36-7.6 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

ARTICLE 7.6. NORTHEAST INDIANA REGIONAL DEVELOPMENT AUTHORITY

Chapter 1. Definitions

Sec. 1. Except as otherwise provided, the definitions in this chapter apply throughout this article.

Sec. 2. "Airport authority" refers to an airport authority

C
o
p
y



established under IC 8-22-3.

Sec. 3. "Airport authority project" means a project that can be financed with the proceeds of bonds issued by an airport authority under IC 8-22-3.

Sec. 4. "Bonds" means bonds, notes, or other evidences of indebtedness issued by the development authority.

Sec. 5. "Development authority" refers to the northeast Indiana regional development authority established by IC 36-7.6-2-1.

Sec. 6. "Development board" refers to the governing body appointed under IC 36-7.6-2-3.

Sec. 7. "Economic development project" means an economic development project described in IC 6-3.5-7-13.1(c).

Sec. 8. "Eligible county" refers to the following counties:

- (1) A county having a population of more than one hundred eighty-two thousand seven hundred ninety (182,790) but less than two hundred thousand (200,000).**
- (2) A county having a population of more than thirty-four thousand nine hundred (34,900) but less than thirty-four thousand nine hundred fifty (34,950).**
- (3) A county having a population of more than thirty-three thousand two hundred (33,200) but less than thirty-three thousand six hundred (33,600).**

Sec. 9. "Eligible political subdivision" means the following:

- (1) An airport authority.**
- (2) A regional transportation authority.**

Sec. 10. "Project" means an airport authority project, an economic development project, or a regional transportation authority project.

Sec. 11. "Regional transportation authority" means a regional transportation authority established under IC 36-9-3-2.

Sec. 12. "Regional transportation authority project" means a project that can be financed with the proceeds of bonds issued by a regional transportation authority under IC 36-9-3.

Chapter 2. Development Authority and Board

Sec. 1. The northeast Indiana regional development authority is established as a separate body corporate and politic to carry out the purposes of this article by:

- (1) acquiring, constructing, equipping, owning, leasing, and financing projects and facilities for lease to or for the benefit of eligible political subdivisions under this article; and**
- (2) funding and developing airport authority projects and services, regional transportation authority projects and**

**C
O
P
Y**



services, and economic development projects in the eligible counties.

Sec. 2. The development authority may carry out its powers and duties under this article in an eligible county.

Sec. 3. (a) The development authority is governed by the development board appointed under this section.

(b) The development board is composed of the following nine (9) members:

(1) Three (3) members appointed by the governor.

(2) The following members from a county having a population of more than one hundred eighty-two thousand seven hundred ninety (182,790) but less than two hundred thousand (200,000):

(A) One (1) member appointed by the county executive.

(B) One (1) member appointed by county fiscal body.

(3) The following members from a county having a population of more than thirty-four thousand nine hundred (34,900) but less than thirty-four thousand nine hundred fifty (34,950):

(A) One (1) member appointed by the county executive.

(B) One (1) member appointed by the county fiscal body.

(4) The following members from a county having a county having a population of more than thirty-three thousand two hundred (33,200) but less than thirty-three thousand six hundred (33,600):

(A) One (1) member appointed by the county executive.

(B) One (1) member appointed by the county fiscal body.

(c) A member appointed to the development board must have knowledge of and at least five (5) years professional work experience in at least one (1) of the following:

(1) Air transportation.

(2) Regional transportation development.

(3) Regional economic development.

(4) Business or finance.

(d) An individual or entity required to make an appointment under subsection (b) must make the initial appointment before September 1, 2006. If an individual or entity does not make an initial appointment under subsection (b) before September 1, 2006, the governor shall instead make the initial appointment.

Sec. 4. (a) Except as provided in subsection (b) for the initial appointments to the development board, a member appointed to the development board serves a four (4) year term. However, a member serves at the pleasure of the appointing authority. A

**C
O
P
Y**



member may be reappointed to subsequent terms.

(b) The terms of the initial members appointed to the development board are as follows:

- (1) Each initial member appointed by the governor shall serve a term of four (4) years.
- (2) The initial member appointed under section 3(b)(2)(A) of this chapter shall serve a term of three (3) years.
- (3) The initial member appointed under section 3(b)(3)(A) of this chapter shall serve a term of three (3) years.
- (4) The initial member appointed under section 3(b)(2)(B) of this chapter shall serve a term of two (2) years.
- (5) The initial member appointed under section 3(b)(3)(B) of this chapter shall serve a term of two (2) years.

(c) If a vacancy occurs on the development board, the appointing authority that made the initial appointment shall fill the vacancy by appointing a new member for the remainder of the vacated term.

(d) Each member appointed to the development board, before entering upon the duties of office, must take and subscribe an oath of office under IC 5-4-1, which shall be endorsed upon the certificate of appointment and filed with the records of the development board.

(e) A member appointed to the development board is not entitled to receive any compensation for performance of the member's duties. However, a member is entitled to a per diem from the development authority for the member's participation in development board meetings. The amount of the per diem is equal to the amount of the per diem provided under IC 4-10-11-2.1(b).

Sec. 5. (a) The governor shall designate a member of the development board appointed by the governor to serve as chair of the development board until January 2013. At the election under subsection (b) in 2013 and each year thereafter, the chair shall be elected from among the members of the development board.

(b) In January of each year, the development board shall hold an organizational meeting at which the development board shall elect the following officers from the members of the development board:

- (1) After December 31, 2012, a chair.
- (2) A vice chair.
- (3) A secretary-treasurer.

(c) Not more than two (2) members from any particular county may serve as an officer described in subsection (a) or elected under

**C
O
P
Y**



subsection (b). The affirmative vote of at least five (5) members of the development board is necessary to elect an officer under subsection (b).

(d) An officer elected under subsection (b) serves from the date of the officer's election until the officer's successor is elected and qualified.

Sec. 6. (a) The development board shall meet at least quarterly.

(b) The chair of the development board or any two (2) members of the development board may call a special meeting of the development board.

(c) Five (5) members of the development board constitute a quorum.

(d) The affirmative votes of at least five (5) members of the development board are necessary to authorize any action of the development authority.

(e) Notwithstanding any other provision of this article, the minimum of five (5) affirmative votes required under subsection (d) to take any of the following actions before January 1, 2013, must include the affirmative vote of the member designated by the governor to serve as the chair of the board:

- (1) Making loans, loan guarantees, or grants or providing any other funding or financial assistance for projects.
- (2) Acquiring or condemning property.
- (3) Entering into contracts.
- (4) Employing an executive director or any consultants or technical experts.
- (5) Issuing bonds or entering into a lease of a project.

Sec. 7. The development board may adopt the bylaws and rules that the development board considers necessary for the proper conduct of the development board's duties and the safeguarding of the development authority's funds and property.

Sec. 8. (a) The development authority must comply with IC 5-16-7 (common construction wage), IC 5-22 (public purchasing), IC 36-1-12 (public work projects), and any applicable federal bidding statutes and regulations. An eligible political subdivision that receives a loan, a grant, or other financial assistance from the development authority or enters into a lease with the development authority must comply with applicable federal, state, and local public purchasing and bidding laws and regulations. However, a purchasing agency (as defined in IC 5-22-2-25) of an eligible political subdivision may:

- (1) assign or sell a lease for property to the development

C
O
P
Y



authority; or

(2) enter into a lease for property with the development authority;

at any price and under any other terms and conditions as may be determined by the eligible political subdivision and the development authority. However, before making an assignment or sale of a lease or entering into a lease under this section that would otherwise be subject to IC 5-22, the eligible political subdivision or its purchasing agent must obtain or cause to be obtained a purchase price for the property to be subject to the lease from the lowest responsible and responsive bidder in accordance with the requirements for the purchase of supplies under IC 5-22.

(b) In addition to the provisions of subsection (a), with respect to projects undertaken by the development authority, the development authority shall set a goal for participation by minority business enterprises of fifteen percent (15%) and women's business enterprises of five percent (5%), consistent with the goals of delivering the project on time and within the budgeted amount and, insofar as possible, using Indiana businesses for employees, goods, and services. In fulfilling the goals under this subsection, the authority shall take into account historical precedents in the same market.

Sec. 9. The office of management and budget shall contract with a certified public accountant for an annual financial audit of the development authority. The certified public accountant may not have a significant financial interest, as determined by the office of management and budget, in a project, facility, or service funded by or leased by or to the development authority. The certified public accountant shall present an audit report not later than four (4) months after the end of the development authority's fiscal year and shall make recommendations to improve the efficiency of development authority operations. The certified public accountant shall also perform a study and evaluation of internal accounting controls and shall express an opinion on the controls that were in effect during the audit period. The development authority shall pay the cost of the annual financial audit. In addition, the state board of accounts may at any time conduct an audit of any phase of the operations of the development authority. The development authority shall pay the cost of any audit by the state board of accounts.

Chapter 3. Development Authority Powers and Duties

Sec. 1. The development authority shall do the following:

**C
O
P
Y**



- (1) Assist in the coordination of local efforts concerning projects.**
- (2) Assist an airport authority and a regional transportation authority in coordinating regional transportation and economic development efforts.**
- (3) Fund projects as provided in this article.**

Sec. 2. (a) The development authority may do any of the following:

- (1) Finance, improve, construct, reconstruct, renovate, purchase, lease, acquire, and equip land and projects located in an eligible county.**
- (2) Lease land or a project to an eligible political subdivision.**
- (3) Finance and construct additional improvements to projects or other capital improvements owned by the development authority and lease them to or for the benefit of an eligible political subdivision.**
- (4) Acquire land or all or a part of one (1) or more projects from an eligible political subdivision by purchase or lease and lease the land or projects back to the eligible political subdivision, with any additional improvements that may be made to the land or projects.**
- (5) Acquire all or a part of one (1) or more projects from an eligible political subdivision by purchase or lease to fund or refund indebtedness incurred on account of the projects to enable the eligible political subdivision to make a savings in debt service obligations or lease rental obligations or to obtain relief from covenants that the eligible political subdivision considers to be unduly burdensome.**
- (6) Make loans, loan guarantees, and grants or provide other financial assistance to or on behalf of an airport authority or a regional transportation authority.**
- (7) Provide funding to assist an airport authority located in an eligible county in the construction, reconstruction, renovation, purchase, lease, acquisition, and equipping of an airport facility or airport project.**
- (8) Provide funding for economic development projects in an eligible county.**
- (9) Hold, use, lease, rent, purchase, acquire, and dispose of by purchase, exchange, gift, bequest, grant, condemnation, lease, or sublease, on the terms and conditions determined by the development authority, any real or personal property located in an eligible county.**

**C
O
P
Y**



(10) After giving notice, enter upon any lots or lands for the purpose of surveying or examining them to determine the location of a project.

(11) Make or enter into all contracts and agreements necessary or incidental to the performance of the development authority's duties and the execution of the development authority's powers under this article.

(12) Sue, be sued, plead, and be impleaded.

(13) Design, order, contract for, construct, reconstruct, and renovate a project or improvements to a project.

(14) Appoint an executive director and employ appraisers, real estate experts, engineers, architects, surveyors, attorneys, accountants, auditors, clerks, construction managers, and any consultants or employees that are necessary or desired by the development authority in exercising its powers or carrying out its duties under this article.

(15) Accept loans, grants, and other forms of financial assistance from the federal government, the state government, a political subdivision, or any other public or private source.

(16) Use the development authority's funds to match federal grants or make loans, loan guarantees, or grants to carry out the development authority's powers and duties under this article.

(17) Except as prohibited by law, take any action necessary to carry out this article.

(b) If the development authority is unable to agree with the owners, lessees, or occupants of any real property selected for the purposes of this article, the development authority may proceed under IC 32-24-1 to procure the condemnation of the property. The development authority may not institute a proceeding until it has adopted a resolution that:

(1) describes the real property sought to be acquired and the purpose for which the real property is to be used;

(2) declares that the public interest and necessity require the acquisition by the development authority of the property involved; and

(3) sets out any other facts that the development authority considers necessary or pertinent.

The resolution is conclusive evidence of the public necessity of the proposed acquisition.

Sec. 3. The development authority shall before November 1 of each year issue a report to the legislative council, the budget

**C
O
P
Y**



committee, and the governor concerning the operations and activities of the development authority during the preceding state fiscal year. The report to the legislative council must be in an electronic format under IC 5-14-6.

Sec. 4. (a) The development authority shall prepare a comprehensive strategic development plan that includes detailed information concerning the following:

- (1) The proposed projects to be undertaken or financed by the development authority.
- (2) The following information for each project included under subdivision (1):
 - (A) Timeline and budget.
 - (B) The return on investment.
 - (C) The projected or expected need for an ongoing subsidy.
 - (D) Any projected or expected federal matching funds.

(b) The development authority shall before January 1, 2009, submit the comprehensive strategic development plan for review by the budget committee and approval by the director of the office of management and budget.

Chapter 4. Financing; Issuance of Bonds; Leases

Sec. 1. (a) The development board shall establish and administer a development authority fund.

(b) The development authority fund consists of the following:

- (1) Amounts distributed under IC 8-15-2-14.8.
- (2) Funds received from the federal government.
- (3) Appropriations to the fund by the general assembly.
- (4) Other local revenue appropriated to the fund by a political subdivision.
- (5) Gifts, donations, and grants to the fund.

(c) The development authority fund shall be administered by the development authority.

(d) Money in the development authority fund shall be used by the development authority to carry out this article and does not revert to any other fund.

Sec. 2. (a) Subject to subsection (h), the development authority may issue bonds for the purpose of obtaining money to pay the cost of:

- (1) acquiring real or personal property, including existing capital improvements;
- (2) acquiring, constructing, improving, reconstructing, or renovating one (1) or more projects; or
- (3) funding or refunding bonds issued under this chapter,

**C
O
P
Y**



IC 8-22-3, IC 36-9-3, or prior law.

(b) The bonds are payable solely from:

- (1) the lease rentals from the lease of the projects for which the bonds were issued, insurance proceeds, and any other funds pledged or available; and
- (2) except as otherwise provided by law, revenue received by the development authority and amounts deposited in the development authority fund.

(c) The bonds must be authorized by a resolution of the development board.

(d) The terms and form of the bonds must either be set out in the resolution or in a form of trust indenture approved by the resolution.

(e) The bonds must mature within forty (40) years.

(f) The board shall sell the bonds only to the Indiana finance authority established by IC 4-4-11-4 upon the terms determined by the development board and the Indiana finance authority.

(g) All money received from any bonds issued under this chapter shall be applied solely to the payment of the cost of acquiring, constructing, improving, reconstructing, or renovating one (1) or more projects, or the cost of refunding or refinancing outstanding bonds, for which the bonds are issued. The cost may include:

- (1) planning and development of equipment or a facility and all buildings, facilities, structures, equipment, and improvements related to the facility;
- (2) acquisition of a site and clearing and preparing the site for construction;
- (3) equipment, facilities, structures, and improvements that are necessary or desirable to make the project suitable for use and operations;
- (4) architectural, engineering, consultant, and attorney's fees;
- (5) incidental expenses in connection with the issuance and sale of bonds;
- (6) reserves for principal and interest;
- (7) interest during construction;
- (8) financial advisory fees;
- (9) insurance during construction;
- (10) municipal bond insurance, debt service reserve insurance, letters of credit, or other credit enhancement; and
- (11) in the case of refunding or refinancing, payment of the principal of, redemption premiums (if any) for, and interest

C
O
P
Y



on the bonds being refunded or refinanced.

(h) The development authority may not issue bonds under this article unless the development authority first finds that each contract for the construction of a facility and all buildings, facilities, structures, and improvements related to that facility to be financed in whole or in part through the issuance of the bonds requires payment of the common construction wage required by IC 5-16-7.

Sec. 3. This chapter contains full and complete authority for the issuance of bonds. No law, procedure, proceedings, publications, notices, consents, approvals, orders, or acts by the development board or any other officer, department, agency, or instrumentality of the state or of any political subdivision is required to issue any bonds, except as prescribed in this article.

Sec. 4. (a) The development authority may secure bonds issued under this chapter by a trust indenture between the development authority and a corporate trustee, which may be any trust company or national or state bank in Indiana that has trust powers.

(b) The trust indenture may:

- (1) pledge or assign revenue received by the development authority, amounts deposited in the development authority fund, and lease rentals, receipts, and income from leased projects, but may not mortgage land or projects;
- (2) contain reasonable and proper provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants setting forth the duties of the development authority and development board;
- (3) set forth the rights and remedies of bondholders and trustees; and
- (4) restrict the individual right of action of bondholders.

(c) Any pledge or assignment made by the development authority under this section is valid and binding in accordance with IC 5-1-14-4 from the time that the pledge or assignment is made, against all persons whether they have notice of the lien or not. Any trust indenture by which a pledge is created or an assignment made need not be filed or recorded. The lien is perfected against third parties in accordance with IC 5-1-14-4.

Sec. 5. (a) Bonds issued under IC 8-22-3, IC 36-9-3, or prior law may be refunded as provided in this section.

(b) An eligible political subdivision may:

- (1) lease all or a part of land or a project or projects to the

C
O
P
Y



development authority, which may be at a nominal lease rental with a lease back to the eligible political subdivision, conditioned upon the development authority assuming bonds issued under IC 8-22-3, IC 36-9-3, or prior law and issuing its bonds to refund those bonds; and

(2) sell all or a part of land or a project or projects to the development authority for a price sufficient to provide for the refunding of those bonds and lease back the land or project or projects from the development authority.

Sec. 6. (a) Before a lease may be entered into by an eligible political subdivision under this chapter, the eligible political subdivision must find that the lease rental provided for is fair and reasonable.

(b) A lease of land or a project from the development authority to an eligible political subdivision:

(1) may not have a term exceeding forty (40) years;

(2) may not require payment of lease rentals for a newly constructed project or for improvements to an existing project until the project or improvements to the project have been completed and are ready for occupancy or use;

(3) may contain provisions:

(A) allowing the eligible political subdivision to continue to operate an existing project until completion of the acquisition, improvements, reconstruction, or renovation of that project or any other project; and

(B) requiring payment of lease rentals for land, for an existing project being used, reconstructed, or renovated, or for any other existing project;

(4) may contain an option to renew the lease for the same or a shorter term on the conditions provided in the lease;

(5) must contain an option for the eligible political subdivision to purchase the project upon the terms stated in the lease during the term of the lease for a price equal to the amount required to pay all indebtedness incurred on account of the project, including indebtedness incurred for the refunding of that indebtedness;

(6) may be entered into before acquisition or construction of a project;

(7) may provide that the eligible political subdivision shall agree to:

(A) pay any taxes and assessments on the project;

(B) maintain insurance on the project for the benefit of the

**C
O
P
Y**



development authority;

(C) assume responsibility for utilities, repairs, alterations, and any costs of operation; and

(D) pay a deposit or series of deposits to the development authority from any funds legally available to the eligible political subdivision before the commencement of the lease to secure the performance of the eligible political subdivision's obligations under the lease; and

(8) must provide that the lease rental payments by the eligible political subdivision shall be made from the development authority fund established under section 1 of this chapter and may provide that the lease rental payments by the eligible political subdivision shall be made from:

(A) net revenues of the project;

(B) any other funds available to the eligible political subdivision; or

(C) both sources described in clauses (A) and (B).

Sec. 7. This chapter contains full and complete authority for leases between the development authority and an eligible political subdivision. No law, procedure, proceedings, publications, notices, consents, approvals, orders, or acts by the development authority or the eligible political subdivision or any other officer, department, agency, or instrumentality of the state or any political subdivision is required to enter into any lease, except as prescribed in this article.

Sec. 8. If the lease provides for a project or improvements to a project to be constructed by the development authority, the plans and specifications shall be submitted to and approved by all agencies designated by law to pass on plans and specifications for public buildings.

Sec. 9. The development authority and an eligible political subdivision may enter into common wall (party wall) agreements or other agreements concerning easements or licenses. These agreements shall be recorded with the recorder of the county in which the project is located.

Sec. 10. (a) An eligible political subdivision may lease for a nominal lease rental, or sell to the development authority, one (1) or more projects or parts of a project or land upon which a project is located or is to be constructed.

(b) Any lease of all or a part of a project by an eligible political subdivision to the development authority must be for a term equal to the term of the lease of that project back to the eligible political

C
O
P
Y



subdivision.

(c) An eligible political subdivision may sell property to the development authority for the amount the eligible political subdivision determines to be in the best interest of the eligible political subdivision. The development authority may pay that amount from the proceeds of bonds of the development authority.

Sec. 11. If an eligible political subdivision exercises its option to purchase leased property, the eligible political subdivision may issue its bonds as authorized by statute.

Sec. 12. (a) All:

(1) property owned by the development authority;
(2) revenues of the development authority; and
(3) bonds issued by the development authority, the interest on the bonds, the proceeds received by a holder from the sale of bonds to the extent of the holder's cost of acquisition, proceeds received upon redemption before maturity, proceeds received at maturity, and the receipt of interest in proceeds; are exempt from taxation in Indiana for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

(b) All securities issued under this chapter are exempt from the registration requirements of IC 23-2-1 and other securities registration statutes.

Sec. 13. Bonds issued under this chapter are legal investments for private trust funds and the funds of banks, trust companies, insurance companies, building and loan associations, credit unions, savings banks, private banks, loan and trust and safe deposit companies, rural loan and savings associations, guaranty loan and savings associations, mortgage guaranty companies, small loan companies, industrial loan and investment companies, and other financial institutions organized under Indiana law.

Sec. 14. An action to contest the validity of bonds to be issued under this chapter may not be brought after the time limitations set forth in IC 5-1-14-13.

Sec. 15. The general assembly covenants that it will not:

- (1) repeal or amend this article in a manner that would adversely affect owners of outstanding bonds, or the payment of lease rentals, secured by the amounts pledged under this chapter; or
- (2) in any way impair the rights of owners of bonds of the development authority, or the owners of bonds secured by lease rentals, secured by a pledge of revenues under this

C
O
P
Y



chapter."

Page 78, between lines 6 and 7, begin a new paragraph and insert:
"SECTION 48. [EFFECTIVE JULY 1, 2006] (a) As used in this SECTION, "eligible county" has the meaning set forth in IC 36-7.6-1-8, as added by this act.

(b) The general assembly finds the following:

(1) Each eligible county faces unique and distinct challenges and opportunities related to transportation and economic development that are different in scope and type than those faced by other units of local government in Indiana.

(2) A unique approach is required to fully take advantage of the economic development potential of northeastern Indiana.

(3) The powers and responsibilities provided to the northeast Indiana regional development authority established by IC 36-7.6-2-1, as added by this act, are appropriate and necessary to carry out the public purposes of encouraging economic development and further facilitating the provision of air and other regional transportation services, projects, and facilities, and economic development projects in the eligible counties."

Re-number all SECTIONS consecutively.

(Reference is to HB 1008 as printed January 26, 2006.)

WALORSKI

HOUSE MOTION

Mr. Speaker: I move that House Bill 1008 be amended to read as follows:

Page 33, between lines 23 and 24, begin a new line blocked left and insert:

"However, any bonds, debt, other securities, or other financing issued for the purposes of this article shall not be considered to constitute a debt of the state or any political subdivision of the state or a pledge of the faith and credit of the state or any political subdivision."

(Reference is to HB 1008 as printed January 26, 2006.)

BUDAK



C
O
P
Y

HOUSE MOTION

Mr. Speaker: I move that House Bill 1008 be amended to read as follows:

Page 54, between lines 24 and 25, begin a new paragraph and insert:

"Sec. 7. (a) This section applies to a metropolitan statistical area, as defined by the United States Office of Management and Budget, in Indiana that is served by more than one (1) interstate system highway, street, or road.

(b) As used in this section, "interstate system" has the meaning set forth in IC 8-23-1-25.

(c) In establishing the route of a qualified project through a metropolitan statistical area, the authority shall consider routes that have the least disruptive influence on established businesses and residents. To the extent practicable, the authority shall consider using:

- (1) an established interstate system highway, street, or road in the metropolitan statistical area; or**
- (2) a route that is west of established business corridors in a less densely used part of the metropolitan statistical area;**

as the route of a qualified project to avoid the disruption of neighborhoods and business areas."

(Reference is to HB 1008 as printed January 26, 2006.)

FRIZZELL

HOUSE MOTION

Mr. Speaker: I move that House Bill 1008 be amended to read as follows:

Page 25, between lines 32 and 33, begin a new paragraph and insert:

"SECTION 32. IC 8-15-3-36 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 36. (a) As used in this section, "toll collection facility" means any booth or collectors' house where drivers are required to pay tolls.

(b) A United States flag shall be displayed at each toll collection facility located on:

- (1) a tollway (as defined in section 7 of this chapter);**
- (2) a toll road project (as defined in IC 8-15-2-4(4)); and**

HB 1008—LS 7108/DI 44+

C
O
P
Y



(3) a qualifying project (as defined in IC 8-15.7-2-15).

(c) The department shall adopt rules under IC 4-22-2 for the proper care, custody, and display of the United States flag at each toll collection facility."

Renumber all SECTIONS consecutively.

(Reference is to HB 1008 as printed January 26, 2006.).

STILWELL

**C
o
p
y**

