

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WITHDRAWN	Noes _____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

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1729 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert the following:
- 3 "SECTION 1. IC 6-3.5-4-12 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. In the case of a
- 5 county that contains a consolidated city, the city-county council may
- 6 appropriate money derived from the surtax to:
- 7 (1) the department of transportation established by IC 36-3-5-4 for
- 8 use by the department under law; **or**
- 9 (2) the **Indiana transportation finance authority for the**
- 10 **payment of lease rentals under IC 8-14.6.**
- 11 The city-county council may not appropriate money derived from the
- 12 surtax for any other purpose.
- 13 SECTION 2. IC 6-3.5-4-13 IS AMENDED TO READ AS
- 14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) In the case of
- 15 a county that does not contain a consolidated city of the first class, the
- 16 county treasurer shall deposit the surtax revenues in a fund to be known
- 17 as the "_____ County Surtax Fund".
- 18 (b) Before the twentieth day of each month, the county auditor shall
- 19 allocate the money deposited in the county surtax fund during that
- 20 month among the county and the cities and the towns in the county. The
- 21 county auditor shall allocate the money to counties, cities, and towns
- 22 under IC 8-14-2-4(c)(1) through IC 8-14-2-4(c)(3).
- 23 (c) Before the twenty-fifth day of each month, the county treasurer
- 24 shall distribute to the county and the cities and towns in the county the
- 25 money deposited in the county surtax fund during that month. The

1 county treasurer shall base the distribution on allocations made by the
2 county auditor for that month under subsection (b).

3 (d) A county, city, or town may only use the surtax revenues it
4 receives under this section to:

5 (1) construct, reconstruct, repair, or maintain streets and roads
6 under its jurisdiction; **or**

7 (2) **provide funds to the Indiana transportation finance**
8 **authority for the payment of lease rentals under IC 8-14.6.**

9 SECTION 3. IC 6-3.5-5-14 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) In the case of
11 a county that contains a consolidated city, the city-county council may
12 appropriate money derived from the wheel tax to:

13 (1) the department of transportation established by IC 36-3-5-4 for
14 use by the department under law; **or**

15 (2) an authority established under IC 36-7-23; **or**

16 (3) **the Indiana transportation finance authority for the**
17 **payment of lease rentals under IC 8-14.6.**

18 (b) The city-county council may not appropriate money derived
19 from the wheel tax for any other purpose.

20 SECTION 4. IC 6-3.5-5-15 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. (a) In the case of
22 a county that does not contain a consolidated city, the county treasurer
23 shall deposit the wheel tax revenues in a fund to be known as the
24 "County Wheel Tax Fund".

25 (b) Before the twentieth day of each month, the county auditor shall
26 allocate the money deposited in the county wheel tax fund during that
27 month among the county and the cities and the towns in the county. The
28 county auditor shall allocate the money to counties, cities, and towns
29 under IC 8-14-2-4(c)(1) through IC 8-14-2-4(c)(3).

30 (c) Before the twenty-fifth day of each month, the county treasurer
31 shall distribute to the county and the cities and towns in the county the
32 money deposited in the county wheel tax fund during that month. The
33 county treasurer shall base the distribution on allocations made by the
34 county auditor for that month under subsection (b).

35 (d) A county, city, or town may only use the wheel tax revenues it
36 receives under this section:

37 (1) to construct, reconstruct, repair, or maintain streets and roads
38 under its jurisdiction; **or**

39 (2) as a contribution to an authority established under IC 36-7-23;
40 **or**

41 (3) **to provide funds to the Indiana transportation finance**
42 **authority for the payment of lease rentals under IC 8-14.6."**

43 Page 4, line 40, after "revenues." insert "**When issuing grant**
44 **anticipation revenue bonds or notes, the authority is subject to the**
45 **provisions of 25 IAC 5 concerning equal opportunities for minority**
46 **business enterprises and women's business enterprises to**
47 **participate in procurement and contracting processes."**

1 Page 5, between lines 34 and 35, begin a new paragraph and insert:
 2 "SECTION 13. IC 8-14.6 IS ADDED TO THE INDIANA CODE
 3 AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2005]:

5 **ARTICLE 14.6. LEASE FINANCING FOR LOCAL ROAD**
 6 **PROJECTS**

7 **Chapter 1. Legislative Findings of Fact**

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

10 **(1) That there exists in cities, towns, and counties in Indiana**
 11 **a need for construction, acquisition, reconstruction,**
 12 **improvement, and extension of local roads in order to provide**
 13 **for the public welfare and safety by providing safe,**
 14 **dependable, and reliable local roads for vehicular traffic.**

15 **(2) That the development and maintenance of the economy of**
 16 **Indiana's cities, towns, and counties requires an adequate**
 17 **system of local roads in order to provide for the public welfare**
 18 **and to facilitate the creation and maintenance of jobs, the**
 19 **increase and stabilization of the tax base, and the general**
 20 **economic welfare of cities, towns, and counties and their**
 21 **citizens.**

22 **(3) That it is necessary to serve the public interest and to**
 23 **provide for the public welfare by adopting this article for the**
 24 **purposes described in this article.**

25 **Sec. 2. This article provides an additional and alternative**
 26 **method for doing the things authorized by this article, and is**
 27 **supplemental and additional to powers conferred by other laws and**
 28 **not in derogation of any other powers.**

29 **Sec. 3. This article is necessary for the welfare of the cities,**
 30 **towns, and counties of Indiana and their inhabitants, and shall be**
 31 **liberally construed to effect the purposes of this article.**

32 **Chapter 2. Definitions**

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

35 **Sec. 2. "Authority" refers to the Indiana transportation finance**
 36 **authority established under IC 8-9.5-8-2.**

37 **Sec. 3. "Bonds" refers to bonds of the authority issued under**
 38 **IC 8-14.6-6.**

39 **Sec. 4. "Capitalized interest" means interest cost on bonds or**
 40 **notes before and during the period of construction of the local road**
 41 **project for which the bonds or notes were issued, and for a period**
 42 **not to exceed one (1) year after completion of construction.**

43 **Sec. 5. "Construction" means the construction, acquisition,**
 44 **reconstruction, improvement, and extension of a local road project.**

45 **Sec. 6. "Costs" as applied to any local road project includes any**
 46 **item or cost of a capital nature incurred in the construction of a**

- 1 **local road project, including:**
- 2 (1) the cost of construction;
- 3 (2) the cost of acquisition of all land, rights-of-way, property,
- 4 rights, easements, and any other legal or equitable interests
- 5 acquired by the authority for the construction, including the
- 6 cost of any relocations incident to the acquisition;
- 7 (3) the cost of demolishing or removing any buildings,
- 8 structures, or improvements on property acquired by the
- 9 authority, including the cost of:
- 10 (A) acquiring any property to which the buildings,
- 11 structures, or improvements may be moved; or
- 12 (B) acquiring any property that may be exchanged for
- 13 property acquired by the authority;
- 14 (4) financing charges;
- 15 (5) costs of issuance of bonds or notes, including costs of credit
- 16 enhancement, such as bond or note insurance;
- 17 (6) remarketing or conversion fees;
- 18 (7) bond or note discount;
- 19 (8) capitalized interest;
- 20 (9) the cost of funding any reserves to secure the payment of
- 21 bonds or notes;
- 22 (10) engineering and legal expenses, costs of plans,
- 23 specifications, surveys, estimates, and any necessary feasibility
- 24 studies;
- 25 (11) other expenses necessary or incident to determining the
- 26 feasibility or practicability of constructing any local road
- 27 project;
- 28 (12) administrative expenses of the authority or one (1) or
- 29 more local units relating to any local road project financed by
- 30 bonds or notes;
- 31 (13) reimbursement of one (1) or more local units for:
- 32 (A) any cost, obligation, or expense incurred by the local
- 33 unit or units relating to a local road project;
- 34 (B) advances relating to a local road project from the local
- 35 unit or units to the authority for surveys, borings,
- 36 preparation of plans and specifications, or engineering
- 37 services; or
- 38 (C) any other cost of construction incurred by the local
- 39 unit or units or paid from advances; and
- 40 (14) other expenses the authority finds necessary or incident
- 41 to the construction of the local road project, the financing of
- 42 the construction, and the placing of the local road project in
- 43 operation.
- 44 **Sec. 7. "Local road project" means any:**
- 45 (1) road;
- 46 (2) street;

- 1 **(3) motorway;**
 2 **(4) bridge;**
 3 **(5) tunnel;**
 4 **(6) overpass;**
 5 **(7) underpass;**
 6 **(8) interchange;**
 7 **(9) entrance;**
 8 **(10) approach; or**
 9 **(11) other public way;**
 10 **that is part of the arterial road system, local county roads, arterial**
 11 **street system, or local streets for a local unit for purposes of**
 12 **IC 8-14-2. The term includes all land, rights-of-way, property,**
 13 **rights, easements, materials, and legal or equitable interests**
 14 **necessary for the construction of the local road project.**
 15 **Sec. 8. "Local unit" means a city, town, or county acting**
 16 **through its fiscal body (as defined in IC 36-1-2-6).**
 17 **Sec. 9. "Notes" refers to notes of the authority issued under**
 18 **IC 8-14.6-6 and includes any evidences of indebtedness of the**
 19 **authority except bonds.**
 20 **Sec. 10. "Property owner" means all individuals,**
 21 **copartnerships, associations, governmental units or entities,**
 22 **corporations, limited liability companies, or other legal entities**
 23 **having any title or interest in any land, rights-of-way, property,**
 24 **rights, easements, or legal or equitable interests that may be**
 25 **acquired by the authority.**
 26 **Sec. 11. "Weighted average life" of an issue of bonds or notes**
 27 **means:**
 28 **(1) the sum of the products of the face amount of each**
 29 **maturity and the number of years to maturity (determined**
 30 **separately for each maturity and by taking into account**
 31 **mandatory sinking fund redemptions); divided by**
 32 **(2) the face amount of the entire issue of bonds or notes.**
 33 **Sec. 12. "Weighted average useful life" of a local road project**
 34 **or local road projects means:**
 35 **(1) the sum of the products of the cost of each asset comprising**
 36 **the local road project or local road projects and the useful life**
 37 **of the respective asset; divided by**
 38 **(2) the total cost of all the assets comprising the local road**
 39 **project or local road projects.**
 40 **For purposes of this computation, the useful life of land is fifty (50)**
 41 **years. The useful life of all other assets comprising the local road**
 42 **project shall be conclusively evidenced by a certificate of the local**
 43 **unit, supported by a statement from the local unit's consulting**
 44 **engineer. The weighted average useful life of any local road project**
 45 **shall be determined as of the later of the date on which the local**
 46 **road project is expected to be placed in service and the date on**

1 which the bonds or notes are issued.

2 **Chapter 3. General Provisions**

3 **Sec. 1. The authority shall contract with one (1) or more local**
4 **units for construction, ownership, maintenance, and operation of**
5 **local road projects.**

6 **Sec. 2. The authority shall finance local road projects in**
7 **accordance with this article.**

8 **Sec. 3. The authority may exercise any powers provided under**
9 **this article in participation or cooperation with any governmental**
10 **entity and enter into any contracts to facilitate that participation or**
11 **cooperation without compliance with any other statute. This article**
12 **constitutes complete authority for the authority to carry out its**
13 **powers and duties under this article. No law, procedure,**
14 **proceedings, publications, notices, consents, approvals, orders, or**
15 **acts by the authority or any other officer, department, agency, or**
16 **instrumentality of the state or any political subdivision are**
17 **required for the authority to carry out its powers and duties, except**
18 **as prescribed in this article.**

19 **Sec. 4. The authority may pay the cost of construction of a local**
20 **road project from any funds available to the authority under this**
21 **article or any other law.**

22 **Sec. 5. The authority may sell, transfer, lease, or otherwise**
23 **convey any land, rights-of-way, property, rights, easements, or**
24 **legal or equitable interest it considers necessary or convenient for**
25 **carrying out this article, including disposal of unused or surplus**
26 **property.**

27 **Sec. 6. The authority may acquire by purchase, whenever it**
28 **considers a purchase expedient, any land, rights-of-way, property,**
29 **rights, easements, or other legal or equitable interests as it**
30 **considers necessary or convenient for the construction and**
31 **operation of any local road project. A purchase under this section**
32 **shall be made upon the terms and at the price agreed upon between**
33 **the authority and the property owner.**

34 **Sec. 7. The authority may make and enter into all contracts and**
35 **agreements necessary or incidental to the performance of its duties**
36 **and the execution of its powers under this article or any other law.**
37 **These contracts or agreements are not subject to any approvals**
38 **other than the approval of the authority and may be for any term**
39 **of years and contain any terms that are considered reasonable by**
40 **the authority.**

41 **Sec. 8. The authority may employ and fix the compensation of**
42 **financial advisors and underwriters, bond counsel, other attorneys**
43 **with the approval of the attorney general, and other employees,**
44 **independent contractors, and agents as necessary in its judgment**
45 **to carry out this article. The authority is subject to the provisions**
46 **of 25 IAC 5 concerning equal opportunities for minority business**

1 enterprises and women's business enterprises to participate in
2 procurement and contracting processes.

3 **Sec. 9.** The authority may accept gifts, devises, bequests, grants,
4 appropriations, revenue sharing, other financing and assistance,
5 and any other aid from any source and agree to and comply with
6 conditions attached to the aid.

7 **Sec. 10.** The authority may accept the transfer of any local road
8 project to the authority.

9 **Sec. 11. (a)** Except as provided in subsection (b), the authority
10 may, in the manner provided by IC 8-23-7, acquire by
11 appropriation any land, rights-of-way, property, rights, easements,
12 or other legal or equitable interests necessary or convenient for the
13 construction or the efficient operation of any local road project.
14 However, compensation for the property taken shall first be made
15 in money as provided by law.

16 **(b)** The authority may take or disturb property or facilities that:

17 (1) belong to any public utility or to a common carrier
18 engaged in interstate commerce;

19 (2) are required for the proper and convenient operation of
20 the public utility or common carrier; and

21 (3) are not located within the limits of local road projects
22 being constructed under this article;

23 only if provision is made for the restoration, relocation, or
24 duplication of the property or facilities elsewhere at the cost of the
25 authority.

26 **Sec. 12.** The authority may do all things necessary or proper to
27 carry out this article.

28 **Sec. 13.** A local unit may convey, transfer, lease, or sell, with or
29 without consideration, real property of any nature (including
30 buildings, structures, improvements, land, rights-of-way,
31 easements, and legal or equitable interests), title to which is held in
32 the name of the local unit, to the authority, without being required
33 to advertise or solicit bids or proposals, in order to accomplish the
34 governmental purposes of this article.

35 **Sec. 14.** All property of the authority is public property devoted
36 to an essential public and governmental function and purpose and
37 is exempt from all taxes and special assessments of the state or any
38 political subdivision of the state.

39 **Chapter 4. Contracts With Local Units**

40 **Sec. 1.** The authority is responsible for the construction, leasing,
41 and ownership of local road projects. With respect to each local
42 road project, the authority and one (1) or more local units may
43 enter into a contract for the purposes set forth in this chapter. If
44 the authority and the local unit or units decide to enter into a
45 contract under this chapter, the authority and the local unit or
46 units may enter into a separate contract for each local road project

1 or a master contract for several local road projects.

2 **Sec. 2. A contract under this chapter must:**

3 (1) provide for the construction and ownership of the local
4 road project; and

5 (2) describe the local road project or local road projects,
6 setting forth in general terms principal features such as
7 geographic location, widths of rights-of-way, number of lanes
8 in each direction, width of traffic lanes, widths of shoulders,
9 location and nature of tunnels, overpasses, underpasses,
10 interchanges, bridges, approaches, and connecting roads,
11 streets, and highways.

12 **Sec. 3. The contract may include the following:**

13 (1) Provisions for payment by the authority to the local unit or
14 units of all costs incurred by the local unit or units in the
15 performance of the contracts, including all costs of
16 construction, salaries, wages, and associated costs of personnel
17 attributable to performance of the contract.

18 (2) Other terms and conditions that the authority and the local
19 unit or units consider appropriate.

20 **Sec. 4. Notwithstanding any other law, a local unit may enter**
21 **into a contract with the authority by negotiating the contract with**
22 **the authority and without complying with the requirements of any**
23 **other law. A local unit shall observe any existing contractual**
24 **commitments to the holders of bonds or notes or other persons**
25 **when entering into a contract.**

26 **Chapter 5. Leases With Local Units**

27 **Sec. 1. (a) In addition to its other powers, one (1) or more local**
28 **units may enter into a lease or leases with the authority under**
29 **section 2 or 3 of this chapter for any or all of the purposes set forth**
30 **in this article. Notwithstanding any other law, a local unit may**
31 **enter into a lease with the authority by negotiating the lease with**
32 **the authority and without complying with the requirements of any**
33 **other law. A local unit shall observe any existing contractual**
34 **commitments to the holders of bonds or notes or other persons**
35 **when entering into a lease.**

36 **(b) The authority has all the powers necessary and incidental to**
37 **carry out the terms and conditions of leases under this chapter.**

38 **(c) If the authority and one (1) or more local units decide to**
39 **enter into a lease under this chapter, the authority and the local**
40 **unit or units may enter into a separate lease for each local road**
41 **project or may enter into one (1) or more master leases for several**
42 **local road projects.**

43 **Sec. 2. (a) A lease entered into under this section must include**
44 **the following:**

45 (1) A statement that the term of the lease is for a period
46 coextensive with the biennium used for state budgetary and

- 1 appropriation purposes with a fractional period when the
2 lease begins, if necessary.
- 3 **(2) A statement that the term of the lease is extended from**
4 **biennium to biennium, with the extensions not to exceed a**
5 **lease term of twenty-five (25) years, unless either the authority**
6 **or the local unit or units give notice of nonextension at least**
7 **six (6) months before the end of a biennium, in which event**
8 **the lease expires at the end of the biennium in which the notice**
9 **is given.**
- 10 **(3) A provision plainly stating that the lease does not**
11 **constitute an indebtedness of the state or any local unit within**
12 **the meaning or application of any constitutional provision or**
13 **limitation, and that lease rentals are payable by the local unit**
14 **or units solely from the sources described in section 6 of this**
15 **chapter, for the actual use or availability for use of local road**
16 **projects provided by the authority, with payment commencing**
17 **not earlier than the time the use or availability commences.**
- 18 **(4) Provisions requiring the local unit or units to pay rent at**
19 **times and in amounts sufficient to pay in full:**
- 20 **(A) the debt service payable under the terms of any bonds**
21 **or notes issued by the authority and outstanding with**
22 **respect to any local road project, including any required**
23 **additions to reserves for the bonds or notes maintained by**
24 **the authority; and**
- 25 **(B) additional rent as provided by the lease;**
26 **subject to the appropriation of money by the local unit or**
27 **units to pay lease rentals.**
- 28 **(5) Provisions requiring the local unit or units to operate and**
29 **maintain the local road project or local road projects during**
30 **the term of the lease.**
- 31 **(6) A provision in each master lease for two (2) or more local**
32 **road projects requiring that each local road project added to**
33 **the master lease shall be covered by a supplemental lease**
34 **describing the particular local road project, stating the**
35 **additional rental payable and providing that all lease**
36 **covenants, including the obligation to pay the original and**
37 **additional rent under any supplement, shall be unitary and**
38 **include all local road projects covered, whether by the master**
39 **lease or a supplemental lease.**
- 40 **(b) A lease entered into under this section may contain other**
41 **terms and conditions that the authority and the local unit or units**
42 **consider appropriate.**
- 43 **(c) The fiscal officer (as defined in IC 36-1-2-7) of the local unit**
44 **shall request an appropriation from the local unit for payment of**
45 **lease rentals on any lease entered into under this section in writing**
46 **at a time sufficiently in advance of the date for payment of the lease**

1 rentals so that an appropriation may be made in the normal
2 budgetary process of the local unit.

3 **Sec. 3. (a) A lease entered into under this section must include**
4 **the following:**

5 (1) The term of the lease, which may not exceed the weighted
6 average useful life of the local road project or local road
7 projects.

8 (2) A provision plainly stating that the lease does not
9 constitute an indebtedness of the state or any local unit within
10 the meaning or application of any constitutional provision or
11 limitation, and that lease rentals are payable by the local unit
12 or units solely for the annual use or availability for use of local
13 road projects provided by the authority, with payment
14 commencing not earlier than the time the use or availability
15 commences.

16 (3) Provisions requiring the local unit or units to pay rent at
17 times and in amounts sufficient to pay in full the following:

18 (A) The debt service payable under the terms of any bonds
19 or notes issued by the authority and outstanding with
20 respect to any local road project, including any required
21 additions to reserves for the bonds or notes maintained by
22 the authority.

23 (B) Additional rent as provided by the lease.

24 (4) Provisions requiring the local unit or units to operate and
25 maintain the local road project or local road projects during
26 the term of the lease.

27 (5) A provision in each master lease for two (2) or more local
28 road projects requiring that each local road project added to
29 the master lease shall be covered by a supplemental lease
30 describing the particular local road project, stating the
31 additional rental payable and providing that all lease
32 covenants, including the obligation to pay the original and
33 additional rent under any supplement, shall be unitary and
34 include all local road projects covered, whether by the master
35 lease or a supplemental lease.

36 (b) A lease entered into under this section may contain other
37 terms and conditions that the authority and the local unit or units
38 consider appropriate.

39 **Sec. 4. If a local unit fails at any time to pay to the authority**
40 **when due any lease rentals on any lease under this chapter, the**
41 **chairman of the authority shall immediately report the unpaid**
42 **amount in writing to the general assembly and the governor.**

43 **Sec. 5. A local unit or units may lease any property under its**
44 **control to the authority for construction of a local road project,**
45 **which local road project may be leased to the local unit or units.**

46 **Sec. 6. (a) A local unit shall pay lease rentals for leases entered**

1 into under this chapter from revenues from any combination of the
2 following sources:

3 (1) Money payable to the local unit from the motor vehicle
4 highway account.

5 (2) Money payable to the local unit from the local road and
6 street account.

7 (3) Revenues from the county motor vehicle excise surtax.

8 (4) Revenues from the county wheel tax.

9 (5) Federal transportation revenues apportioned or allocated
10 to the state and distributed to the local unit by the Indiana
11 department of transportation.

12 (6) Any other source of revenues (other than property taxes)
13 that is legally available to the local unit.

14 (b) A local unit may, in the manner provided by IC 5-1-14-4,
15 pledge the revenues described in this section for the payment of
16 lease rentals. However, in making a pledge the local unit shall not
17 commit money required to provide adequate funding for other
18 local road needs.

19 Sec. 7. If a local unit pledges money from the motor vehicle
20 highway account or the local road and street account, or both, for
21 the payment of lease rentals for leases entered into under this
22 chapter, the local unit shall immediately provide the auditor of
23 state with a written notice setting forth the terms of the pledge and
24 directing the auditor of state to:

25 (1) withhold the amounts pledged from the distributions that
26 are otherwise payable to the local unit under IC 8-14-1-3 or
27 IC 8-14-2-4, or both; and

28 (2) pay the amounts withheld to the authority.

29 Notwithstanding IC 8-14-1-3 and IC 8-14-2-4, the auditor of state
30 shall withhold and pay to the authority the amounts specified in the
31 notice.

32 Sec. 8. Notwithstanding any other provision of law, to the extent
33 that any department or agency of the state, including the treasurer
34 of state, is the custodian of money payable to a local unit (other
35 than for goods or services provided by the local unit), at any time
36 after written notice to the department or agency head from the
37 authority that the local unit is in default on the payment of lease
38 rentals for a lease entered into under this chapter, the department
39 or agency shall withhold the payment of that money from the local
40 unit and pay over the money to the authority for the purpose of
41 paying the lease rentals.

42 Sec. 9. The requirements of sections 7 and 8 of this chapter to
43 withhold amounts due under a lease do not create a debt of the
44 state or a local unit for purposes of the Constitution of the State of
45 Indiana.

46 Chapter 6. Issuance of Bonds and Notes

1 **Sec. 1. Subject to sections 2 and 5 of this chapter, and before**
 2 **July 1, 2008, the authority shall, by resolution, issue and sell bonds**
 3 **or notes of the authority to provide funds to carry out this article**
 4 **with respect to the construction of a local road project or local road**
 5 **projects or the refunding of any bonds or notes, together with any**
 6 **reasonable costs associated with a refunding.**

7 **Sec. 2. Before the issuance of bonds or notes, the authority must**
 8 **receive the approval of the budget agency.**

9 **Sec. 3. (a) The construction of a local road project may not be**
 10 **financed under this article, if at the time the lease with respect to**
 11 **the local road project is initially entered into, the weighted average**
 12 **useful life of the local road project is less than five (5) years.**

13 **(b) For purposes of this section and section 5 of this chapter, a**
 14 **certificate of the local unit, supported by a statement from the local**
 15 **unit's consulting engineer, as to the weighted average useful life of**
 16 **the local road project is conclusive with respect to the matters**
 17 **contained in the certificate.**

18 **(c) If any bonds or notes bear interest at a variable or adjustable**
 19 **rate, lease rentals under any lease or leases attributable to debt**
 20 **service shall be fixed over the term of the lease or leases based on**
 21 **the fair and reasonable value of the local road project or local road**
 22 **projects leased.**

23 **Sec. 4. (a) Before issuing a series of bonds or notes, the authority**
 24 **shall publish a notice of its determination to issue the bonds or**
 25 **notes. The notice shall be published:**

26 **(1) one (1) time in two (2) newspapers published and of**
 27 **general circulation in the city of Indianapolis; and**

28 **(2) one (1) time in one (1) newspaper published and of general**
 29 **circulation in each local unit that proposes to enter into a lease**
 30 **of the local road projects to be financed by the bonds or notes.**

31 **(b) No action to contest the validity of:**

32 **(1) any contract entered into by one (1) or more local units**
 33 **and the authority before the bonds or notes are issued;**

34 **(2) any lease entered into by one (1) or more local units and**
 35 **the authority before the bonds or notes are issued to secure a**
 36 **series of bonds or notes; or**

37 **(3) a series of bonds or notes issued by the authority;**

38 **may be brought against the authority after the fifteenth day**
 39 **following publication of the notice required by subsection (a)(1) or**
 40 **against a local unit after the fifteenth day following publication of**
 41 **the notice under subsection (a)(2).**

42 **(c) If a lease or contract is entered into under this chapter after**
 43 **bonds or notes relating to the lease or contract are issued, the**
 44 **authority may publish notice of execution of the lease or contract**
 45 **as set forth in subsection (a). No action against the authority to**
 46 **contest the validity of such a lease or contract may be brought after**

1 the fifteenth day following publication of the notice under
2 subsection (a)(1) or against a local unit after the fifteenth day
3 following publication of the notice under subsection (a)(2).

4 (d) If an action against the authority or a local unit challenging
5 a lease, a contract, bonds, or notes is not brought within the time
6 prescribed by this section, the lease, contract, bonds, or notes shall
7 be conclusively presumed to be fully authorized and valid under
8 the laws of the state and any person or entity is estopped from
9 further questioning the authorization, validity, execution, delivery,
10 or issuance of the contract, lease, bonds, or notes.

11 Sec. 5. (a) The bonds or notes must indicate on their face:

- 12 (1) the maturity date or dates, as determined under subsection
- 13 (b);
- 14 (2) the interest rate or rates (whether fixed, variable, or a
- 15 combination of fixed and variable) or the manner in which the
- 16 interest rate or rates will be determined if variable or
- 17 adjustable rates are used;
- 18 (3) registration privileges and place of payment, including
- 19 provisions for book entry obligations as set forth in IC 5-1-15;
- 20 (4) the conditions and terms under which the bonds or notes
- 21 may be redeemed or prepaid before maturity; and
- 22 (5) the source of payment as set forth in section 10 of this
- 23 chapter.

24 (b) The weighted average life of the bonds or notes may not
25 exceed the sum of:

- 26 (1) the weighted average useful life of the local road project or
- 27 local road projects to be financed from the proceeds of the
- 28 bonds or notes; plus
- 29 (2) the period of construction of the local road project or local
- 30 road projects.

31 Sec. 6. The bonds or notes:

- 32 (1) shall be executed by the manual or facsimile signature of
- 33 the chairman or vice chairman of the authority;
- 34 (2) shall be attested by the manual or facsimile signature of
- 35 the secretary-treasurer or assistant secretary-treasurer of the
- 36 authority;
- 37 (3) shall be imprinted or impressed with the seal of the
- 38 authority by any means;
- 39 (4) may be authenticated by a trustee, registrar, or paying
- 40 agent; and
- 41 (5) constitute valid and binding obligations of the authority,
- 42 even if the chairman, vice chairman, secretary-treasurer, or
- 43 assistant secretary-treasurer whose manual or facsimile
- 44 signature appears on the bonds or notes no longer holds that
- 45 office.

46 Sec. 7. The bonds or notes, when issued, have all the qualities of

1 negotiable instruments, subject to provisions for registration, under
2 IC 26 and are incontestable in the hands of a bona fide purchaser
3 or owner of the bonds or notes for value.

4 Sec. 8. The bonds or notes may be sold by the authority at a
5 public or a negotiated sale at a time or times determined by the
6 authority and at a premium or discount as determined by the
7 authority. In determining the amount of bonds or notes to be issued
8 and sold, the authority may include the costs of construction or of
9 refunding bonds or notes, including reasonable debt service
10 reserves, and all other expenses necessary or incident to the
11 construction of the local road project, a refunding, or the issuance
12 of the bonds or notes.

13 Sec. 9. The proceeds of the bonds or notes are appropriated for
14 the purpose for which the bonds or notes may be issued and the
15 proceeds shall be deposited and disbursed in accordance with any
16 provisions and restrictions that the authority may provide in the
17 resolution or trust agreement authorizing the issuance of the bonds
18 or notes. The maturities of the bonds or notes, the rights of the
19 owners, and the rights, duties, and obligations of the authority are
20 governed in all respects by this article and the resolution or trust
21 agreement.

22 Sec. 10. The bonds or notes:
23 (1) constitute the corporate obligations of the authority;
24 (2) do not constitute an indebtedness of the state or any local
25 unit within the meaning or application of any constitutional
26 provision or limitation; and
27 (3) are payable solely as to both principal and interest from:
28 (A) the revenues from a lease to one (1) or more local units,
29 if any;
30 (B) proceeds of bonds or notes, if any; or
31 (C) investment earnings on proceeds of bonds or notes.

32 Sec. 11. The provisions of this article and the covenants and
33 undertakings of the authority as expressed in any proceedings
34 preliminary to or in connection with the issuance of the bonds or
35 notes may be enforced, subject to the provisions of any resolution
36 or trust agreement, by a bond or note owner by action for
37 injunction or mandamus against the authority or any officer, agent,
38 or employee of the authority. However, no action for monetary
39 judgment may be brought against the state for any violations of this
40 article or for payment of the bonds or notes of the authority.

41 Sec. 12. All bonds or notes issued under this article are issued by
42 a body corporate and politic of this state, but not a state agency,
43 and for an essential public and governmental purpose. The bonds
44 and notes, the interest on the bonds and notes, the proceeds
45 received by an owner from the sale of the bonds or notes to the
46 extent of the owner's cost of acquisition, proceeds received upon

1 redemption for maturity, proceeds received at maturity, and the
2 receipt of the interest and proceeds are exempt from taxation for
3 all purposes except the financial institutions tax imposed under
4 IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

5 **Sec. 13.** Notwithstanding any other law, all financial institutions,
6 investment companies, insurance companies, insurance
7 associations, executors, administrators, guardians, trustees, and
8 other fiduciaries may legally invest sinking funds, money, or other
9 funds belonging to them or within their control in bonds or notes
10 issued under this chapter.

11 **Sec. 14.** Bonds or notes issued under this chapter are exempt
12 from the registration requirements of IC 23-2-1 and any other state
13 securities registration statutes.

14 **Sec. 15.** A pledge of lease rentals, proceeds of bonds or notes,
15 investment earnings on those proceeds, or other money pledged by
16 the authority is binding from the time the pledge is made. Lease
17 rentals, proceeds of bonds or notes, investment earnings on those
18 proceeds, or other money pledged by the authority and thereafter
19 received by the authority or its trustee or fiduciary is immediately
20 subject to the lien of the pledge without any further act, and the
21 lien of the pledge is binding against all parties having claims of any
22 kind in tort, contract, or otherwise against the authority, regardless
23 of whether the parties have notice of the lien. A resolution, trust
24 agreement, or any other instrument by which a pledge is created is
25 required to be filed or recorded only in the records of the
26 authority.

27 **Sec. 16.** The authority may obtain from a department or an
28 agency of the state or of the United States, or from a
29 nongovernmental insurer, available insurance or guaranty for the
30 payment or repayment of interest or principal, or both, or any part
31 of interest or principal, or any debt service reserve funds, on bonds
32 or notes issued by the authority, or on securities purchased or held
33 by the authority.

34 **Sec. 17.** The authority may enter into agreements with an entity
35 to provide credit enhancement or liquidity support for any bonds
36 or notes issued by the authority, or for any debt service reserves
37 securing any bonds or notes, with terms that are reasonable and
38 proper, in the discretion of the authority, and not in violation of
39 law. The authority may execute and deliver notes to evidence its
40 obligation to make payments under such an agreement, but these
41 notes must conform to this article in all respects.

42 **Sec. 18.** The authority may enter into agreements or contracts
43 with any financial institution as may be necessary, desirable, or
44 convenient in the opinion of the authority for rendering services in
45 connection with:

- 46 (1) the care, custody, or safekeeping of securities or other

1 investments held or owned by the authority;

2 (2) the payment or collection of amounts payable as to
3 principal or interest; and

4 (3) the delivery to the authority of securities or other
5 investments purchased or sold by it.

6 The authority may also, in connection with any of the services
7 rendered by a financial institution as to custody and safekeeping of
8 its securities or investments, require security in the form of
9 collateral bonds, surety agreements, or security agreements as, in
10 the opinion of the authority, is necessary or desirable.

11 Sec. 19. (a) In the discretion of the authority, any bonds and
12 notes issued under this chapter may be secured by a trust
13 agreement by and between the authority and a corporate trustee,
14 which may be any trust company or bank having the powers of a
15 trust company in Indiana. Such a trust agreement may also provide
16 for a cotrustee, which may be any trust company or bank in
17 Indiana or another state.

18 (b) The trust agreement or the resolution providing for the
19 issuance of the bonds or notes may contain provisions for
20 protecting and enforcing the rights and remedies of the owners of
21 bonds or notes as may be reasonable and proper, in the discretion
22 of the authority, and not in violation of law.

23 (c) The trust agreement or resolution may set forth the rights
24 and remedies of the owners of any bonds or notes of the trustee and
25 may restrict the individual right of action by the owners.

26 (d) Any trust agreement or resolution may contain other
27 provisions that the authority considers reasonable and proper for
28 the security of the owners of bonds or notes.

29 (e) All expenses incurred in carrying out the provisions of the
30 trust agreement or resolution may be paid from money pledged or
31 assigned to the payment of the principal of and interest on bonds
32 or notes or from any other funds available to the authority.

33 Sec. 20. The authority may purchase bonds or notes of the
34 authority out of its funds or money available for the purchase of its
35 own bonds or notes. The authority may hold, cancel, or resell the
36 bonds or notes subject to, and in accordance with, agreements with
37 owners of its bonds or notes. Unless canceled, bonds or notes so
38 held shall be considered to be held for resale or transfer and the
39 obligation evidenced by the bonds or notes shall not be considered
40 to be extinguished.

41 Sec. 21. Funds or money held by the authority under any trust
42 agreement or resolution may be invested pending disbursement as
43 provided in the trust agreement or the resolution. Such an
44 investment is not restricted by or subject to the provisions of any
45 other law.

46 Chapter 7. Reserve Fund for Bonds and Notes

1 **Sec. 1. (a) The authority may establish and maintain a reserve**
 2 **fund for each issue of bonds or notes in which there shall be**
 3 **deposited or transferred:**

4 **(1) all money appropriated by the general assembly for the**
 5 **purpose of the fund in accordance with section 3(a) of this**
 6 **chapter;**

7 **(2) all proceeds of bonds or notes required to be deposited in**
 8 **the fund under the terms of:**

9 **(A) a contract between the authority and the holders of the**
 10 **bonds or notes; or**

11 **(B) a resolution of the authority with respect to the**
 12 **proceeds of bonds or notes;**

13 **(3) all other money appropriated by the general assembly to**
 14 **a reserve fund; and**

15 **(4) any other money or funds of the authority that it decides**
 16 **to deposit in the fund.**

17 **(b) Subject to section 3(b) of this chapter, money in any reserve**
 18 **fund shall be held and applied solely to the payment of the interest**
 19 **on and principal of bonds or notes of the authority as the interest**
 20 **and principal become due and payable and for the retirement of**
 21 **bonds or notes. The money may not be withdrawn if a withdrawal**
 22 **would reduce the amount in the reserve fund to an amount less**
 23 **than the required debt service reserve, except for payment of**
 24 **interest then due and payable on bonds or notes and the principal**
 25 **of bonds or notes then maturing and payable, whether by reason**
 26 **of maturity or mandatory redemption, for which payments other**
 27 **money of the bank is not then available. As used in this chapter,**
 28 **"required debt service reserve" means, as of the date of**
 29 **computation, the amount required to be on deposit in the reserve**
 30 **fund as provided by resolution or trust agreement of the authority.**

31 **(c) Money in any reserve fund that exceeds the required debt**
 32 **service reserve, whether by reason of investment or otherwise, may**
 33 **be withdrawn at any time by the authority and transferred to**
 34 **another fund or account of the authority, subject to the provisions**
 35 **of any agreement with the holders of any bonds or notes.**

36 **Sec. 2. For purposes of valuation, investments in the reserve**
 37 **fund shall be valued at par, or if purchased at less than par, at cost**
 38 **unless otherwise provided by resolution or trust agreement of the**
 39 **authority. Valuation on a particular date shall include the amount**
 40 **of interest then earned or accrued to that date on the money or**
 41 **investments in the reserve fund.**

42 **Sec. 3. (a) In order to assure the maintenance of the required**
 43 **debt service reserve in any reserve fund, the general assembly may**
 44 **annually appropriate to the authority for deposit in one (1) or more**
 45 **of the funds the sum, certified by the authority to the general**
 46 **assembly, that is necessary to restore one (1) or more of the funds**

1 to an amount equal to the required debt service reserve. Before
2 December 1 of each year, the authority shall make and deliver to
3 the general assembly a certificate stating the sum required to
4 restore the funds to that amount. Nothing in this subsection creates
5 a debt or liability of the state to make any appropriation.

6 (b) All amounts received on account of money appropriated by
7 the state to any reserve fund shall be held and applied in
8 accordance with section 1(b) of this chapter. However, at the end
9 of each fiscal year, if the amount in any reserve fund exceeds the
10 required debt service reserve, any amount representing earnings
11 or income received on account of any money appropriated to the
12 reserve fund that exceeds the expenses of the authority for that
13 fiscal year may be transferred to the state general fund.

14 Sec. 4. Subject to the provisions of any agreement with its
15 holders, the bank may combine a reserve fund established for an
16 issue of bonds or notes into one (1) or more reserve funds."

17 Renumber all SECTIONS consecutively.

(Reference is to HB 1729 as printed February 9, 2005.)

Representative Van Haaften