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| WITHDRAWN          | Noes _____          |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

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

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

- 1 Page 5, between lines 9 and 10, begin a new paragraph and insert:
- 2 "SECTION 6. IC 8-15.5-7-1, AS ADDED BY P.L.47-2006,
- 3 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2011]: Sec. 1. (a) Notwithstanding IC 8-9.5-8 and
- 5 IC 8-15-2-14(j), the authority may fix and revise the amounts of user
- 6 fees that an operator may charge and collect for the use of any part of
- 7 a toll road project in accordance with the public-private agreement.
- 8 (b) In fixing the amounts referred to in subsection (a), the authority
- 9 may:
- 10 (1) establish maximum amounts for the user fees; and
- 11 (2) provide for increases or decreases of the user fees or the
- 12 maximum amounts established based upon the **following:**
- 13 **(A) For public-private agreements entered into before July**
- 14 **1, 2011, the** indices, methodologies, or other factors that the
- 15 authority considers appropriate.
- 16 **(B) For public-private agreements entered into after June**
- 17 **30, 2011, the Consumer Price Index (CPI).**
- 18 SECTION 7. IC 8-15.5-7-5, AS ADDED BY P.L.47-2006,
- 19 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 20 JULY 1, 2011]: Sec. 5. A public-private agreement may:
- 21 (1) grant an operator a license or franchise to charge and collect
- 22 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

- 1 amounts charged and collected by the operator do not exceed the  
 2 maximum amounts established by the authority under section 1 of  
 3 this chapter;  
 4 (3) provide that any adjustment by the operator permitted under  
 5 subdivision (2) may be based on such indices, methodologies, or  
 6 other factors as described in the public-private agreement or as  
 7 approved by the authority, **if the public-private agreement is**  
 8 **entered into before July 1, 2011;**  
 9 (4) authorize the operator to charge and collect user fees through  
 10 manual and nonmanual methods, including, but not limited to,  
 11 automatic vehicle identification systems, electronic toll collection  
 12 systems, and, to the extent permitted by law, including rules  
 13 adopted by the authority under IC 8-15-2-17.2(a)(10), global  
 14 positioning systems and photo or video based toll collection or  
 15 toll collection enforcement systems; and  
 16 (5) authorize the collection of user fees charges by a third party.

17 **However, a public-private agreement entered into after June 30,**  
 18 **2011, must provide that an adjustment by the operator permitted**  
 19 **under subdivision (2) must be based on the Consumer Price Index**  
 20 **(CPI)."**

21 Page 13, between lines 7 and 8, begin a new paragraph and insert:  
 22 "SECTION 13. IC 8-15.7-5-2, AS ADDED BY P.L.47-2006,  
 23 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2011]: Sec. 2. (a) The department may fix and revise the  
 25 amounts of user fees that an operator may charge and collect for the use  
 26 of any part of a qualifying project in accordance with the public-private  
 27 agreement. In fixing these amounts, the department: ~~may:~~

- 28 (1) ~~may~~ establish maximum amounts for the user fees; ~~and~~  
 29 (2) **for a public-private agreement entered into before July 1,**  
 30 **2011, may** provide for increases or decreases of the maximum  
 31 amounts based upon the indices, methodologies, or other factors  
 32 that the department considers appropriate.

33 **However for a public-private agreement entered into after June 30,**  
 34 **2011, the department must provide for increases or decreases of**  
 35 **the maximum amounts based upon the Consumer Price Index**  
 36 **(CPI).**

37 (b) User fees established by the department for the use of a  
 38 qualifying project must be nondiscriminatory and may:

- 39 (1) include different user fees based on categories such as vehicle  
 40 class, vehicle size, vehicle axles, vehicle weight, volume,  
 41 location, traffic congestion, or other means or classification that  
 42 the department determines to be appropriate;  
 43 (2) vary by time of day or year; and  
 44 (3) be based on one (1) or more factors considered relevant by the  
 45 department, which may include any combination of:

- 46 (A) lease payments;

- 1 (B) financing costs and charges;  
 2 (C) debt repayment, including principal and interest;  
 3 (D) costs of development;  
 4 (E) costs of operation;  
 5 (F) working capital;  
 6 (G) reserves;  
 7 (H) depreciation;  
 8 (I) compensation to the operator;  
 9 (J) compensation to the department; and  
 10 (K) other costs, expenses, and factors set forth in the  
 11 public-private agreement or otherwise considered appropriate  
 12 by the department.
- 13 (c) A public-private agreement may:
- 14 (1) authorize the operator to adjust the user fees for the use of the  
 15 qualifying project, so long as the amounts charged and collected  
 16 by the operator do not exceed the maximum amounts established  
 17 by the department under this chapter;
- 18 (2) provide that any adjustment by the operator permitted under  
 19 subdivision (1) may be based on **the following:**
- 20 **(A) For a public-private agreement that is entered into**  
 21 **before July 1, 2011, the indices, methodologies, or other**  
 22 **factors described in the public-private agreement or approved**  
 23 **by the department.**
- 24 **(B) For a public-private agreement entered into after June**  
 25 **30, 2011, the Consumer Price Index (CPI).**
- 26 (3) authorize the operator to charge and collect user fees through  
 27 manual and nonmanual methods, including, but not limited to,  
 28 automatic vehicle identification systems, electronic toll collection  
 29 systems, and, to the extent permitted by law, including rules  
 30 adopted by the department, global positioning systems and photo  
 31 or video based toll collection enforcement systems; and
- 32 (4) authorize the collection of user fees by a third party.
- 33 (d) A schedule of the current user fees shall be made available by  
 34 the operator to any member of the public on request. User fees and the  
 35 setting of user fee rates are not subject to supervision or regulation by  
 36 any other commission, board, bureau, or agency of the state or any  
 37 municipality, except to the extent set forth in the public-private  
 38 agreement.
- 39 (e) Any action to contest the validity of user fees fixed under this

- 1 chapter may not be brought after the fifteenth day following the
- 2 effective date of a rule fixing the user fees."
- 3 Renumber all SECTIONS consecutively.  
(Reference is to ESB 473 as printed April 8, 2011.)

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Representative Reske