

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WITHDRAWN	Noes _____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) **subject to subsection (c)**, provide for increases or decreases
12 of the user fees or the maximum amounts established based upon
13 the indices, methodologies, or other factors that the authority
14 considers appropriate.
15 **(c) For a public-private agreement entered into after June 30,**
16 **2011, the department may not use:**
17 **(1) a methodology based on toll collection success rates; or**
18 **(2) other factors internal to the operator;**
19 **that could result in increases of the maximum amounts due to**
20 **actual toll collection rates that are below estimated or anticipated**
21 **toll collection rates.**
22 SECTION 7. IC 8-15.5-7-5, AS ADDED BY P.L.47-2006,
23 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2011]: Sec. 5. A public-private agreement may:

- 1 (1) grant an operator a license or franchise to charge and collect
 2 tolls for the use of the toll road project;
- 3 (2) authorize the operator to adjust the user fees charged and
 4 collected for the use of the toll road project, so long as the
 5 amounts charged and collected by the operator do not exceed the
 6 maximum amounts established by the authority under section 1 of
 7 this chapter;
- 8 (3) provide that any adjustment by the operator permitted under
 9 subdivision (2) may be based on such indices, methodologies, or
 10 other factors as described in the public-private agreement **or**
 11 **section 1 of this chapter** or as approved by the authority, **as**
 12 **applicable**;
- 13 (4) authorize the operator to charge and collect user fees through
 14 manual and nonmanual methods, including, but not limited to,
 15 automatic vehicle identification systems, electronic toll collection
 16 systems, and, to the extent permitted by law, including rules
 17 adopted by the authority under IC 8-15-2-17.2(a)(10), global
 18 positioning systems and photo or video based toll collection or
 19 toll collection enforcement systems; and
- 20 (5) authorize the collection of user fees charges by a third party."
- 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) establish maximum amounts for the user fees; and
 29 (2) **subject to subsection (b)**, provide for increases or decreases
 30 of the maximum amounts based upon the indices, methodologies,
 31 or other factors that the department considers appropriate.
- 32 **(b) For a public-private agreement entered into after June 30,**
 33 **2011, the department may not use:**
- 34 **(1) a methodology based on toll collection success rates; or**
 35 **(2) other factors internal to the operator;**
 36 **that could result in increases of the maximum amounts due to**
 37 **actual toll collection rates that are below estimated or anticipated**
 38 **toll collection rates.**
- 39 ~~(b)~~ **(c)** User fees established by the department for the use of a
 40 qualifying project must be nondiscriminatory and may:
- 41 (1) include different user fees based on categories such as vehicle
 42 class, vehicle size, vehicle axles, vehicle weight, volume,
 43 location, traffic congestion, or other means or classification that
 44 the department determines to be appropriate;
- 45 (2) vary by time of day or year; and
 46 (3) be based on one (1) or more factors considered relevant by the

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

Representative Clere