

IC 8-15.5-5

Chapter 5. Terms and Conditions of Public-Private Agreements

IC 8-15.5-5-1

Public-private agreement by operator; approval by governor

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

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

As added by P.L.47-2006, SEC.39. Amended by P.L.205-2013, SEC.149.

IC 8-15.5-5-2

Required provisions of public-private agreement

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

(1) The original term of the public-private agreement, which may not exceed seventy-five (75) years.

(2) Provisions for a:

(A) lease, franchise, or license of the project and the real property owned by the authority upon which the project is located or is to be located; or

(B) management agreement or other contract to operate the project and the real property owned by the authority upon which the project is located or is to be located;

for a predetermined period. The public-private agreement must provide for ownership of all improvements and real property by the authority in the name of the state or by a governmental entity, or both.

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

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

(5) Compliance with applicable state and federal laws and local ordinances.

(6) Grounds for termination of the public-private agreement by the authority or the operator.

(7) The date of termination of the operator's authority and duties under this article.

(8) Procedures for amendment of the agreement.

(9) Provisions requiring the completion of all environmental analyses of the project required by state and federal law in the manner and at the times required by the appropriate state and

federal agencies.

(10) An expedited method for resolving disputes between or among the authority, the parties to the public-private agreement, and units of local government that contain any part of the project, as required by IC 8-15.5-10-8.

As added by P.L.47-2006, SEC.39. Amended by P.L.85-2010, SEC.9; P.L.205-2013, SEC.150; P.L.91-2014, SEC.26.

IC 8-15.5-5-3

Other permitted provisions of public-private agreement

Sec. 3. In addition to the requirements of section 2 of this chapter, a public-private agreement may include additional provisions concerning the following:

(1) Review and approval by the authority of the operator's plans for the development and operation of the project.

(2) Inspection by the authority of construction of or improvements to the project.

(3) Maintenance by the operator of a policy or policies of public liability insurance (copies of which shall be filed with the authority, accompanied by proofs of coverage) or self-insurance, each in a form and amount satisfactory to the authority to insure coverage of tort liability to the public and employees and to enable the continued operation of the project.

(4) Filing by the operator, on a periodic basis, of appropriate financial statements in a form acceptable to the authority.

(5) Filing by the operator, on a periodic basis, of appropriate traffic reports in a form acceptable to the authority.

(6) Payments to the operator. These payments may consist of one (1) or more of the following:

(A) The retention by the operator of the user fees collected by the operator in the operation and management of a toll road project or a facility project, if applicable.

(B) Payments made to the operator by the authority.

(C) Other sources of payment or revenue to the operator, if any.

(7) Financing obligations of the operator and the authority, including entering into agreements for the benefit of the financing parties.

(8) Apportionment of expenses between the operator and the authority.

(9) The rights and duties of the operator, the authority, and other state and local governmental entities with respect to use of the project, including the state police department and other law enforcement and public safety agencies.

(10) Arbitration or other dispute resolution mechanisms or remedies for the settlement of claims and other disputes arising under the agreement.

(11) Payment of money to either party upon default or delay, or

upon termination of the public-private agreement, with the payments to be used:

- (A) in the form of liquidated damages to compensate the operator for demonstrated unamortized costs, lost profits, or other amounts as provided in the agreement;
 - (B) to retire or refinance indebtedness related to the project or the public-private agreement; or
 - (C) for any other purpose mutually agreeable to the operator and the authority.
- (12) Indemnification of the operator by the authority under conditions specified in the agreement.
- (13) Assignment, subcontracting, or other delegation of responsibilities of the operator or the authority under the agreement to third parties, including other private entities, the department, and other state agencies.
- (14) Sale or lease to the operator of personal property related to the project.
- (15) Provisions for private commercial development or private use for a facility project.
- (16) Other lawful terms and conditions to which the operator and the authority mutually agree.

As added by P.L.47-2006, SEC.39. Amended by P.L.205-2013, SEC.151; P.L.213-2015, SEC.111.

IC 8-15.5-5-4

Financing of obligations by operator; no state or local debt or pledge

Sec. 4. (a) The operator may finance its obligations with respect to the project and the public-private agreement in the amounts and upon the terms and conditions determined by the operator.

(b) The operator may:

- (1) issue debt, equity, or other securities or obligations;
- (2) enter into sale and leaseback transactions; and
- (3) secure any financing with a pledge of, security interest in, or lien on any user fees charged and collected for the use of a toll road project or a facility project and any property interest of the operator in a toll road project or a facility project.

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.

(c) The operator may deposit any user fees charged and collected for the use of a toll road project or a facility project in a separate account held by a trustee or escrow agent for the benefit of the secured parties of the operator.

As added by P.L.47-2006, SEC.39. Amended by P.L.205-2013, SEC.152; P.L.213-2015, SEC.112.

IC 8-15.5-5-5

Public-private agreement with multiple entities

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

As added by P.L.47-2006, SEC.39. Amended by P.L.91-2014, SEC.27.

IC 8-15.5-5-6

Exercise of powers delegated or assigned by authority

Sec. 6. The department or any other state agency or governmental entity 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.

As added by P.L.47-2006, SEC.39. Amended by P.L.91-2014, SEC.28.

IC 8-15.5-5-7

Freeway project; construction in sections

Sec. 7. A freeway project may be constructed or extended in sections as determined by the authority. Each separate section must be separately designated by a name or number, which must also apply to any freeway project to subsequently improve, better, enlarge, extend, or reconstruct the section.

As added by P.L.205-2013, SEC.153.

IC 8-15.5-5-8

Freeway project; excluded facilities

Sec. 8. Neither:

(1) the construction, maintenance, or operation of transient lodging facilities on or adjacent to a freeway project; nor

(2) a contract for any purpose described in subdivision (1);

is considered a freeway project.

As added by P.L.205-2013, SEC.154.

IC 8-15.5-5-9

Freeway project; user fees

Sec. 9. A freeway project is not subject to user fees otherwise authorized by this article.

As added by P.L.205-2013, SEC.155.