

ARTICLE 2.5. PUBLIC-PRIVATE AGREEMENTS

Rule 1. Definitions

135 IAC 2.5-1-1 Definitions

Authority: IC 8-15-2; IC 8-15.5-7; IC 8-15.5-10

Affected: IC 4-4-11; IC 8-15.5-4-11

Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Authority" means the Indiana finance authority, established under IC 4-4-11, and exercising powers granted to it under IC 8-15-2 and IC 8-15.5, both as amended and in effect as of the date hereof, and any successor entity thereto.

(c) "Class 2 user" means any vehicle with two (2) axles, including motorcycles, as described in 135 IAC 2.5-2-1(g).

(d) "Closing date" means the date of the closing of the concession agreement between the authority and the concessionaire.

(e) "Commuter discount users" means class 2 users who, prior to the closing date, obtained a valid commuter identification card issued by the department. Commuter identification cards shall be void on the freeze termination date.

(f) "Commuter identification card" means cards issued by the department that provide users of the toll road discounted fares between certain interchanges on the toll road.

(g) "Concession agreement" means the Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006, by and between the authority and the concessionaire, providing for, among other things, the lease of the toll road to the concessionaire and for the provision of toll road services by the concessionaire for the term of the concession agreement, together with all amendments thereto.

(h) "Concessionaire" means ITR Concession Company LLC, the operator of the toll road as designated by the governor on March 29, 2006, under IC 8-15.5-4-11(b).

(i) "Department" means the Indiana department of transportation and any successor entity thereto.

(j) "Electronic tolling system" means an electronic tolling system to be implemented by the concessionaire pursuant to the concession agreement and includes a barrier-controlled electronic tolling system.

(k) "Eligible electronic transponder users" means class 2 users who utilize electronic toll collection transponders authorized for use on the toll road.

(l) "Freeze termination date" means the date of termination of the toll freeze period.

(m) "Index" means the "Consumer Price Index - U.S. City Averages for all Urban Consumers, All Items" (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics, provided, however, that if the index is changed so that the base year of the index changes, the index shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics; provided, further, that if the index is discontinued or revised during the term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the index had not been discontinued or revised.

(n) "LCV" has the meaning set forth in 135 IAC 2-1-1.

(o) "Maximum toll levels" means the maximum toll levels for each class of users established under 135 IAC 2.5-2-1 and 135 IAC 2.5-5-1.

(p) "Per capita nominal GDP" means the "U.S. Annual Per Capita Gross Domestic Product (in current dollars)" (not seasonally adjusted) as published by the U.S. Department of Commerce, Bureau of Economic Analysis, it being understood that for purposes of using such indicator at a specific point in time, the "U.S. Annual Per Capita Gross Domestic Product (in current dollars)" (not seasonally adjusted) published by the U.S. Department of Commerce, Bureau of Economic Analysis for the calendar year immediately preceding such specific point in time is to be used, provided, however, that if the measurement of per capita nominal GDP is discontinued or revised during the term, such other indicator or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the per capita nominal GDP had not been discontinued or revised.

(q) "Term" means the entire term of the concession agreement, commencing on the closing date and expiring on the seventy-fifth anniversary of the closing date, or such later date as required pursuant to the terms of the concession agreement.

(r) "Through trip" means a trip of the entire length of the toll road, in either direction.

(s) "Toll" or "tolls" has the meaning set forth in 135 IAC 2-1-1.

(t) "Toll freeze period" means the period from the closing date to the earlier of:

(1) the implementation of an electronic tolling system; or

(2) the date that is two (2) years from the closing date.

(u) "Tolling measurement date" shall mean June 30, 2011, and each June 30 thereafter.

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(v) "Toll rebate period" means the period of time beginning on the date immediately following the freeze termination date and ending on the toll rebate period termination date.

(w) "Toll rebate period termination date" means the first to occur of:

(1) June 30, 2016; or

(2) the date determined by the authority pursuant to the concession agreement.

(x) "Tolling regulation" means the toll schedules set forth in 135 IAC 2.5-2-1 and 135 IAC 2.5-5-1, which incorporates schedule 7.1 attached to and incorporated within the concession agreement, as amended by section 6 of the first amendment to the concession agreement, dated as of April 12, 2006, and section 5 of the fourth amendment to the concession agreement, dated as of February 5, 2008.

(y) "Toll revenues" means all revenues charged by or on behalf of the concessionaire in respect of vehicles using the toll road during the term, including revenues collected through an electronic tolling system.

(z) "Toll road" means the Indiana East-West Toll Road.

(aa) "Toll road rebate rates" means the toll rates for eligible electronic transponder users set forth in 135 IAC 2.5-5-1. (*Indiana Finance Authority; 135 IAC 2.5-1-1; emergency rule filed Jun 14, 2006, 10:50 a.m.: 29 IR 3389; emergency rule filed Mar 20, 2008, 10:35 a.m.: 20080402-IR-135080204ERA*)

Rule 2. Tolls

135 IAC 2.5-2-1 Tolls

Authority: IC 8-15-2; IC 8-15.5-7; IC 8-15.5-10

Affected: IC 8-15.5

Sec. 1. (a) The authority hereby fixes the tolls to be charged and collected by the concessionaire as follows:

(b) Maximum tolls for class 2 users from the closing date through the freeze termination date. The maximum toll levels applicable to class 2 users (other than commuter discount users) from the closing date through the freeze termination date shall be as follows:

		<u>Barrier System</u>		<u>Class 2</u>
		Direction of Travel	Entry Or Exit	Two Axle Vehicles and Motorcycles
Plaza 1	West Point	WB	EXIT	\$0.50
		EB	ENTRY	0.50
Plaza 5	Calumet Ave	WB	EXIT	\$0.25
		EB	ENTRY	0.25
Plaza 10	Cline Ave	WB	EXIT	\$0.25
		EB	ENTRY	0.25
Plaza 17	I-65/Gary East	WB	ENTRY	\$0.15
		EB	EXIT	0.15
Plaza 21	Lake Station/I-94	WB	ENTRY	\$0.30
		EB	EXIT	0.30
Plaza 23	Willow Creek Rd.	WB	ENTRY	\$0.30

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EB EXIT 0.30

	Ticket System													
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	Portage	31	39	49	72	77	83	92	96	101	107	121	144	153
31	Barrier	Valparaiso -	Michigan	LaPorte	South Bend	South Bend	Mishawaka	Elkhart	Elkhart	Bristol -	Middlebury	Howe	Angola	East
39	0.45	Chesterton	City		West	Notre Dame			East	Goshen		LaGrange		Point
49	0.65	0.40	0.40	0.65	0.35	0.35	0.40	0.35	0.35	0.35	0.45	0.75	0.45	
72	1.00	0.65	0.95	0.90	0.45	0.55	0.55	0.40	0.40	0.65	1.10	1.10	1.10	
77	1.55	1.10	1.10	1.10	0.70	0.60	0.55	0.35	0.35	0.40	0.75	0.75	0.75	
83	2.00	1.55	1.30	1.10	0.75	0.70	0.75	0.55	0.40	0.65	0.75	0.65	0.65	
92	2.20	1.75	1.65	1.30	0.90	0.95	0.90	0.40	0.35	1.30	1.10	1.10	1.10	
96	2.35	1.95	1.70	1.40	1.10	1.10	1.10	1.65	1.45	1.65	1.45	1.10	1.10	
101	2.50	2.10	1.85	1.50	1.20	1.30	1.10	1.65	1.45	1.65	1.45	1.10	1.10	
107	2.65	2.30	2.05	1.65	1.30	1.30	1.10	1.65	1.45	1.65	1.45	1.10	1.10	
121	3.05	2.65	2.50	2.10	1.55	1.30	1.10	1.65	1.45	1.65	1.45	1.10	1.10	
144	3.70	3.40	3.20	2.75	2.20	2.00	1.80	1.65	1.45	1.65	1.45	1.10	1.10	
153	4.15	3.85	3.60	3.20	2.65	2.40	2.20	2.00	1.70	1.65	1.45	1.10	1.10	

Through trip toll rate: \$4.65

(c) Maximum tolls for commuter discount users from the closing date through the freeze termination date. The maximum toll levels applicable to commuter discount users from the closing date through the freeze termination date shall be as follows:

Barrier System

	Direction of Travel	Entry Or Exit	Type A Commuter Discount Users	Type B Commuter Discount Users
			Two Axle Vehicles including Motorcycles	Two Axle Vehicles including Motorcycles
Plaza 1 West Point	WB	EXIT	\$0.30	\$0.35
	EB	ENTRY	0.30	0.35
Plaza 5 Calumet Ave	WB	EXIT	\$0.10	\$0.15
	EB	ENTRY	0.10	0.15
Plaza 10 Cline Ave	WB	EXIT	\$0.10	\$0.15
	EB	ENTRY	0.10	0.15
Plaza 17 I-65/Gary East	WB	ENTRY	\$0.05	\$0.05
	EB	EXIT	0.05	0.05
Plaza 21 Lake Station/I-94	WB	ENTRY	\$0.15	\$0.15
	EB	EXIT	0.15	0.15
Plaza 23 Willow Creek Rd.	WB	ENTRY	\$0.15	\$0.15
	EB	EXIT	0.15	0.15

For the barrier system, type A commuter discount users can utilize only one (1) toll collection point, and type B commuter discount users can utilize only two (2) collection points. If a commuter discount user utilizes both the ticket and the barrier system for a trip, then they [sic] will be considered as a type B commuter discount user for the barrier system and pay the same tolls as class 2 users in the ticket system.

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Ticket System

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	Portage Barrier	31	39	49	72	77	83	92	96	101	107	121	144	153
31	0.25	Valparaiso - Chesterton	Michigan City	LaPorte	South Bend West	South Bend-Notre Dame	Mishawaka	Elkhart	Elkhart East	Bristol - Goshen	Middlebury	Howe	LaGrange	Angola
39	0.40	0.20	0.20	0.55	0.20	0.20	0.20	0.20	0.20	0.20	0.25	0.45	0.25	0.25
49	0.60	0.40	0.60	0.70	0.25	0.20	0.20	0.20	0.20	0.20	0.20	0.40	0.40	0.25
72	1.00	0.70	0.60	0.40	0.45	0.35	0.25	0.20	0.20	0.20	0.20	0.20	0.20	0.20
77	1.10	0.80	0.70	0.55	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20
83	1.30	1.00	0.80	0.70	0.25	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20
92	1.40	1.10	1.05	0.80	0.40	0.30	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20
96	1.50	1.20	1.10	0.85	0.45	0.35	0.25	0.20	0.20	0.20	0.20	0.20	0.20	0.20
101	1.60	1.35	1.20	0.95	0.55	0.40	0.30	0.20	0.20	0.20	0.20	0.20	0.20	0.20
107	1.70	1.50	1.30	1.05	0.70	0.60	0.45	0.30	0.20	0.20	0.20	0.20	0.20	0.20
121	2.00	1.70	1.60	1.35	1.00	0.80	0.70	0.55	0.50	0.40	0.25	0.25	0.25	0.25
144	2.40	2.20	2.10	1.80	1.40	1.30	1.15	1.05	0.95	0.80	0.70	0.45	0.25	0.25
153	2.70	2.50	2.35	2.10	1.70	1.55	1.40	1.30	1.20	1.05	0.90	0.70	0.25	0.25

Through trip toll rate: \$3.00 for type A commuters; \$3.05 for type B commuters

(d) Maximum toll levels for class 2 users who are not eligible electronic transponder users from the freeze termination date through June 30, 2010. The maximum toll levels applicable to class 2 users (including commuter discount users) who are not eligible electronic transponder users from the freeze termination date through June 30, 2010, shall be as follows:

Barrier System

		Direction of Travel	Entry or Exit	Class 2 Two Axle Vehicles and Motorcycles
Plaza 1	West Point	WB	EXIT	1.25
		EB	ENTRY	1.25
Plaza 5	Calumet Ave	WB	EXIT	1.00
		EB	ENTRY	1.00
Plaza 10	Cline Ave	WB	EXIT	0.75
		EB	ENTRY	0.75
Plaza 17	I-65/Gary East	WB	ENTRY	\$0.50
		EB	EXIT	0.50
Plaza 21	Lake Station/I-94	WB	ENTRY	\$0.50
		EB	EXIT	0.50
Plaza 23	Willow Creek Rd.	WB	ENTRY	\$0.50
		EB	EXIT	0.50

Ticket System

	24	31	39	49	72	77	83	92	96	101
31	Portage Barrier	Valparaiso - Chesterton	Michigan City	LaPorte	South Bend West	South Bend Notre Dame	Mishawaka	Elkhart	Elkhart	
39	0.50	0.50	0.50	1.25	0.50	0.50	0.50	0.50	0.50	0.50
49	1.25	1.00	1.75	1.50	0.50	0.50	0.50	0.50	0.50	0.50
72	2.50	2.00	2.00	1.75	0.50	0.50	0.50	0.50	0.50	0.50
77	2.75	2.25	2.25	1.75	0.50	0.50	0.50	0.50	0.50	0.50
83	3.00	2.50	2.25	1.75	0.50	0.50	0.50	0.50	0.50	0.50
92	3.50	3.00	2.75	2.25	1.00	0.75	0.50	0.50	0.50	0.50

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(6) Period from closing date through June 30, 2010, for all users in classes 3 through 7 for non-through trips. The maximum toll levels from users of the toll road in classes 3 through 7 for use of the toll road in each direction for non-through trips for the period from the closing date through June 30, 2010, are the tolls set forth in 135 IAC 2-5-2.1.

(f) Subsequent adjustment to maximum toll levels.

(1) Subsequent adjustment to maximum toll levels on June 30, 2010. On June 30, 2010, the maximum toll levels may be increased by the initial applicable percentage toll increase without further action by the authority. For purposes of this determination, "initial applicable percentage toll increase" means the greater of:

(A) 8.2%; or

(B) the percentage increase compounded annually of the index or per capita nominal GDP;

whichever is greater, measured from each of (i) January 1, 2006, to December 31, 2006; (ii) January 1, 2007, to December 31, 2007; (iii) January 1, 2008, to December 31, 2008; and (iv) January 1, 2009, to December 31, 2009. The following example is for illustrative purposes only:

Indiana Toll Road

Illustrative Calculation of Four Year Look Back

Measurement Dates		2.000%	CPI	GDP/Capita
From	To			
1/1/2006	12/31/2006	2.000%	1.800%	1.650%
1/1/2007	12/31/2007	2.000%	1.750%	1.850%
1/1/2008	12/31/2008	2.000%	2.250%	2.000%
1/1/2009	12/31/2009	2.000%	2.255%	2.275%
Average Change		8.2%	8.3%	8.0%

Implemented on 6/30/2010

8.3%

(2) Subsequent adjustment to maximum toll levels on June 30, 2011, and thereafter. On each tolling measurement date starting June 30, 2011, toll levels may be increased by the subsequent applicable percentage toll increase without further action by the authority. For purposes of this determination, "subsequent applicable percentage toll increase" means the greater of:

(A) two percent (2%); or

(B) the percentage increase of the index or per capita nominal GDP;

whichever is greater, measured from January 1 to December 31 for the calendar year immediately preceding the tolling measurement date. Any adjustment made pursuant to this clause (ii) *[this subdivision]* shall be made to the toll levels calculated without giving effect to any of the rounding described in section 2(h)(1) below *[subsection (h)(1)]* that may have occurred prior to the relevant date of the adjustment. The following example is for illustrative purposes only:

Indiana Toll Road

Illustrative Calculation of One Year Look Back

Measurement Dates		2.000%	CPI	GDP/Capita
From	To			
1/1/2010	12/31/2010	2.000%	2.050%	1.950%

Implemented on 6/30/2011

2.05%

(g) Classifications. For purposes of this article, the following classifications shall apply:

(1) Class 2. Any vehicle with two (2) axles, including motorcycles.

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- (2) Class 3. Any vehicle or combination with three (3) axles.
- (3) Class 4. Any vehicle or combination with four (4) axles.
- (4) Class 5. Any vehicle or combination with five (5) axles.
- (5) Class 6. Any vehicle or combination with six (6) axles.
- (6) Class 7. Any vehicle or combination with seven (7) or more axles and all LCVs.

(h) Application of maximum toll levels. The toll levels determined in accordance with this section represent the maximum toll levels which the concessionaire shall be authorized to charge. Subject to the notice provisions of 135 IAC 2.5-3-1, the concessionaire shall be authorized to charge toll levels which are less than the applicable maximum toll levels at its discretion, including providing for lower toll levels at determined times during the day, or for commuters, trucking companies, or other frequent users of the toll road. In addition, anytime after June 30, 2010, so long as (A) the aggregate charge for a through trip does not exceed the applicable maximum level; (B) the charge for any non-through trip is not less than the maximum toll levels set forth herein as of June 29, 2010; and (C) any increase in the toll level charged by the concessionaire on the toll road is allocated to all segments of the toll road such that the highest per mile increase does not exceed three (3) times the lowest per mile increase; the concessionaire at its discretion shall be permitted to set the maximum toll level for any segment of the toll road to any level it determines. For purposes of determining different toll levels for the various segments of the toll road anytime after June 30, 2010, the following shall apply:

- (1) Notwithstanding the toll levels determined in accordance with this section, the actual tolls charged by the concessionaire will be rounded to:
 - (A) the nearest \$0.01 if the toll is collected using an electronic tolling system; and
 - (B) the nearest \$0.10 in the event that such toll is not collected using an electronic tolling system.
- (2) The maximum toll for any journey will be calculated as the sum of the tolls for each segment of the toll road included in the journey, subject to the following:
 - (A) Tolls at Westpoint (MP 1) and at ramp plazas to and from the east at Calumet Avenue (MP 5) and Cline Avenue (MP 10) will be computed assuming the trips were to/from Portage (MP 24).
 - (B) Tolls at ramp plazas to and from the west at I-65 Gary East (MP 17), I-94/Lake Station (MP 21) and Willow Creek (MP 23) will be computed assuming the trips were to/from Buchanan Street (MP 13).

(i) The table below presents the mileage that shall be used when determining maximum (or minimum) toll levels for any segment of the toll road, provided that if the location of any of the toll plazas is changed or a new toll plaza is added, then the segment lengths shall be adjusted to reflect such change in a manner consistent with the methodology used in preparation of the table below:

Toll Plaza	Mileage Used		Segment Length
	From	To	
Westpoint	0.0	3.0	3.0
S.R. 912	3.0	5.0	2.0
Calumet Ave	5.0	10.0	5.0
Cline Ave	10.0	13.0	3.0
Buchanan St.	13.0	15.0	2.0
Broadway	15.0	17.0	2.0
I-65 Gary East	17.0	21.0	4.0
Burns Harbor/I-94	21.0	23.0	2.0
Willowcreek Rd.	23.0	24.0	1.0
Portage	24.0	31.0	7.0
S.R. 49/Valparaiso	31.0	39.0	8.0
U.S. 421/Michigan City	39.0	49.0	10.0
S. R. 39/LaPorte	49.0	72.0	23.0
U.S. 31 Bypass	72.0	77.0	5.0
U.S. 31-33/South Bend	77.0	83.0	6.0
Mishawaka/Fir Rd	83.0	92.0	9.0
S. R. 19/Elkhart	92.0	96.0	4.0
Elkhart East	96.0	101.0	5.0
S. R. 15/Bristol/Goshen	101.0	107.0	6.0

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S.R. 13/U.S. 31/Middlebury	107.0	121.0	14.0
S. R. 9 Howe/LaGrange	121.0	144.0	23.0
I-69 Angola	144.0	157.0	13.0
Eastpoint (although located at milepost 153, for tolling purposes the toll plaza is assumed to end at milepost 157)	157.0	NA	NA

(j) Tolls as only imposable charges as of closing date. The only charges that the concessionaire may impose on toll road users are the tolls authorized pursuant to this section and 135 IAC 2.5-5-1. For avoidance of doubt and in confirmation and furtherance of the foregoing, as of the closing date, the concessionaire may not charge administration fees related to use of the toll road nor impose interest rates on unpaid tolls or fees related to use of the toll road. (*Indiana Finance Authority; 135 IAC 2.5-2-1; emergency rule filed Jun 14, 2006, 10:50 a.m.: 29 IR 3391; emergency rule filed Mar 20, 2008, 10:35 a.m.: 20080402-IR-135080204ERA*)

Rule 3. Notice Requirements

135 IAC 2.5-3-1 Notice Requirements

Authority: IC 8-15-2-14; IC 8-15-2-17; IC 8-15-2-17.2; IC 8-15.5-7; IC 8-15.5-10

Affected: IC 8-15-2; IC 8-15.5

Sec. 3. Notice Requirements. The concessionaire will provide written notice to the authority of the date on which the electronic tolling system will be fully implemented (and operational) as far in advance of such date as is reasonably practicable, but in no event less than 28 days prior to such date. For purposes of determining the freeze termination date, the electronic tolling system shall be deemed to have been implemented at such time as (i) a class 2 user fitted with an electronic transponder can traverse the entire round trip length of the toll road with the tolls payable by such class 2 user being registered automatically by such transponder at each toll plaza without the need for such class 2 user to pay such tolls in cash as it passes through such toll plazas; and (ii) the receipt by the authority of written notice from the concessionaire of such implementation (which notice may be given at the concessionaire's discretion). (*Indiana Finance Authority; 135 IAC 2.5-3-1; emergency rule filed Jun 14, 2006, 10:50 a.m.: 29 IR 3396*)

Rule 4. Fees and Charges Related to Electronic Tolling System

135 IAC 2.5-4-1 Fees and charges related to electronic tolling system

Authority: IC 8-15-2; IC 8-15.5-7; IC 8-15.5-10

Affected: IC 8-15.5

Sec. 1. (a) Notwithstanding 135 IAC 2.5-2-1 and 135 IAC 2.5-5-1, upon implementation of the electronic tolling system, the authority may:

- (1) establish, collect, and enforce reasonable administration fees and reasonable fees to commence or appeal any dispute proceedings;
- (2) establish reasonable interest rates to be charged on unpaid tolls and fees and collect interest charged as such rates;
- (3) establish reasonable terms and conditions, including reasonable fees, for the registration and distribution of toll devices; and
- (4) require reasonable security for the provision of any toll devices.

All revenues to be derived from the foregoing shall be deemed to be toll revenues. The sole purpose of any fees or charges implemented pursuant to this section shall be to enable the concessionaire to recover its reasonable, out-of-pocket, and documented costs and expenses that are directly incurred with respect to the items listed in clauses (1), (2), (3), and (4) of this section [subdivisions (1) through (4)]. The amount of any such fees or charges shall not exceed the amount reasonably necessary for the concessionaire to recover its reasonable, out-of-pocket, and documented costs and expenses that are directly incurred with respect to the items listed in clauses (1), (2), (3), and (4) of this section [subdivisions (1) through (4)].

(b) Upon implementation of the electronic tolling system, the state shall assess fines against persons who run toll gates and the concessionaire shall receive 50% of such fines. (*Indiana Finance Authority; 135 IAC 2.5-4-1; emergency rule filed Jun 14, 2006, 10:50 a.m.: 29 IR 3397; emergency rule filed Mar 20, 2008, 10:35 a.m.: 20080402-IR-135080204ERA*)

Rule 5. Eligible Electronic Transponder Users

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