
HOUSE BILL 1982

State of Washington 60th Legislature 2007 Regular Session

By Representative Ericksen

Read first time 02/02/2007. Referred to Committee on Transportation.

1 AN ACT Relating to public-private agreements for expansion,
2 operation, and maintenance of a portion of the Interstate 5 corridor;
3 amending RCW 46.68.090 and 41.06.142; adding a new section to chapter
4 47.04 RCW; adding a new section to chapter 46.68 RCW; and creating new
5 sections.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds and declares that it
8 is essential for the economic well-being of the state and for the
9 maintenance of a high quality of life that the people of the state have
10 an efficient transportation system. The ability of the state to
11 provide an efficient transportation system will be enhanced by a
12 public-private sector program providing for private entities to
13 undertake the study, planning, design, development, acquisition,
14 installation, construction or improvement, operation, and maintenance
15 of existing transportation systems. In order to ensure the most
16 effective operation of this program, it is appropriate to undertake a
17 pilot project on a portion of the Interstate 5 corridor.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.04 RCW
2 to read as follows:

3 (1) For the purposes of this section, the following definitions
4 apply:

5 (a) "Repair" means any activity that restores or mends to a sound
6 or good condition by replacing or fixing after decay, injury,
7 dilapidation, or partial destruction has occurred;

8 (b) "Maintenance" means to preserve or retain in a condition of
9 good repair or efficiency;

10 (c) "Traffic services" means maintenance activities such as, but
11 not limited to: Pavement striping; pavement marking; raised pavement
12 markers; repairing and replacing highway signage, guideposts, and
13 guardrails; traffic signal maintenance; and highway lighting.

14 (2)(a) The secretary of transportation or the secretary's designee
15 shall solicit proposals and enter into an agreement with a private
16 entity under which the private entity shall conduct all the necessary
17 study, planning, design, construction, operation, and maintenance of
18 the Interstate 5 corridor from the southern border of Skagit county to
19 the northern border of Whatcom county.

20 (b) The agreement must retain state ownership of all existing state
21 facilities.

22 (c) The agreement may provide for private ownership of any new
23 facility during the construction period. After completion and final
24 acceptance of the facility or a discrete segment of the facility, the
25 agreement must provide for state ownership.

26 (d) The department shall negotiate the terms and compensation due
27 to the private entity under the agreement. The total amount of
28 compensation to be agreed upon must be comprised of a mix of funds from
29 the Interstate 5 corridor pilot project trust account created in
30 section 4 of this act and tax credits and incentives described in
31 subsection (3) of this section. The department shall make every effort
32 to maximize compensation from tax incentives and credits, and minimize
33 direct payments from the Interstate 5 corridor pilot project trust
34 account. Payments to private entities must be completed within twenty-
35 five years of the date the project is certified as complete and control
36 is returned to the state.

37 (3) In negotiating an agreement under this section, the department
38 shall propose compensating private sector participants with a

1 combination of funds from the Interstate 5 corridor pilot project trust
2 account and from tax incentives. Tax incentives eligible for
3 compensation include:

4 (a) Proceeds from tax increment financing, based upon new
5 development associated with the project;

6 (b) Property tax deferrals for new development associated with the
7 project;

8 (c) Property tax exemptions for new development associated with the
9 project;

10 (d) Sales tax deferrals for new development associated with the
11 project; and

12 (e) Sales tax exemptions for new development associated with the
13 project.

14 (4) The secretary of transportation or the secretary's designee
15 shall consult with legal, financial, and other experts within and
16 outside of state government in the negotiation and development of the
17 agreement.

18 (5) The tax imposed and collected under chapters 82.08 and 82.12
19 RCW, less any credits allowed under chapter 82.14 RCW, on the initial
20 construction for a transportation project under this section must be
21 transferred to the Interstate 5 corridor pilot project trust account to
22 defray costs on that transportation project.

23 (6) For the purpose of facilitating this project and to assist the
24 private entity in the development, construction, maintenance, and
25 operation of the portion of the Interstate 5 corridor designated in
26 subsection (2)(a) of this section, the agreement must, as required by
27 the private entity, include provisions for the department of
28 transportation to exercise its authority, including the following:
29 Leasing of facilities, rights-of-way, and airspace; exercising the
30 power of eminent domain; granting development rights and opportunities;
31 granting necessary easements and rights of access; issuing permits and
32 other authorizations; granting contractual and real property rights;
33 and negotiating acquisition of rights-of-way in excess of appraised
34 value and any other provision deemed necessary.

35 (7) Operation and maintenance services to be provided by the
36 private entity include, but are not limited to, roadway maintenance and
37 repair, drainage maintenance and slope repair, roadside and landscape

1 maintenance, bridge and urban tunnel maintenance, snow and ice control,
2 traffic services, and rest area maintenance.

3 (8) For the purpose of environmental mitigation of transportation
4 projects constructed under this section, any county may require the
5 department of transportation to participate in the county's purchase of
6 development rights program. If the county requires the department's
7 participation, the department must transfer to the county's purchase of
8 development rights program environmental mitigation moneys for
9 transportation projects constructed under this section. Rights in
10 perpetuity to future development of any open space land, farm and
11 agricultural land, and timber land, which are designated as such by the
12 county, may be used as environmental mitigation moneys for
13 transportation projects in lieu of wetlands or other mitigation
14 required for such a transportation project.

15 **Sec. 3.** RCW 46.68.090 and 2005 c 314 s 103 are each amended to
16 read as follows:

17 (1) All moneys that have accrued or may accrue to the motor vehicle
18 fund from the motor vehicle fuel tax and special fuel tax shall be
19 first expended for purposes enumerated in (a) and (b) of this
20 subsection. The remaining net tax amount shall be distributed monthly
21 by the state treasurer in accordance with subsections (2) through (7)
22 of this section.

23 (a) For payment of refunds of motor vehicle fuel tax and special
24 fuel tax that has been paid and is refundable as provided by law;

25 (b) For payment of amounts to be expended pursuant to
26 appropriations for the administrative expenses of the offices of state
27 treasurer, state auditor, and the department of licensing of the state
28 of Washington in the administration of the motor vehicle fuel tax and
29 the special fuel tax, which sums shall be distributed monthly.

30 (2) All of the remaining net tax amount collected under RCW
31 82.36.025(1) and 82.38.030(1) shall be distributed as set forth in (a)
32 through (~~(j)~~) (k) of this section.

33 (a) For distribution to the motor vehicle fund an amount equal to
34 44.387 percent to be expended for highway purposes of the state as
35 defined in RCW 46.68.130;

36 (b) For distribution to the special category C account, hereby
37 created in the motor vehicle fund, an amount equal to 3.2609 percent to

1 be expended for special category C projects. Special category C
2 projects are category C projects that, due to high cost only, will
3 require bond financing to complete construction.

4 The following criteria, listed in order of priority, shall be used
5 in determining which special category C projects have the highest
6 priority:

7 (i) Accident experience;

8 (ii) Fatal accident experience;

9 (iii) Capacity to move people and goods safely and at reasonable
10 speeds without undue congestion; and

11 (iv) Continuity of development of the highway transportation
12 network.

13 Moneys deposited in the special category C account in the motor
14 vehicle fund may be used for payment of debt service on bonds the
15 proceeds of which are used to finance special category C projects under
16 this subsection (2)(b);

17 (c) For distribution to the Puget Sound ferry operations account in
18 the motor vehicle fund an amount equal to 2.3283 percent;

19 (d) For distribution to the Puget Sound capital construction
20 account in the motor vehicle fund an amount equal to 2.3726 percent;

21 (e) For distribution to the urban arterial trust account in the
22 motor vehicle fund an amount equal to 7.5597 percent;

23 (f) For distribution to the transportation improvement account in
24 the motor vehicle fund an amount equal to 5.6739 percent and expended
25 in accordance with RCW 47.26.086;

26 (g) For distribution to the cities and towns from the motor vehicle
27 fund an amount equal to 10.6961 percent in accordance with RCW
28 46.68.110;

29 (h) For distribution to the counties from the motor vehicle fund an
30 amount equal to 19.2287 percent: (i) Out of which there shall be
31 distributed from time to time, as directed by the department of
32 transportation, those sums as may be necessary to carry out the
33 provisions of RCW 47.56.725; and (ii) less any amounts appropriated to
34 the county road administration board to implement the provisions of RCW
35 47.56.725(4), with the balance of such county share to be distributed
36 monthly as the same accrues for distribution in accordance with RCW
37 46.68.120;

1 (i) For distribution to the county arterial preservation account,
2 hereby created in the motor vehicle fund an amount equal to 1.9565
3 percent. These funds shall be distributed by the county road
4 administration board to counties in proportions corresponding to the
5 number of paved arterial lane miles in the unincorporated area of each
6 county and shall be used for improvements to sustain the structural,
7 safety, and operational integrity of county arterials. The county road
8 administration board shall adopt reasonable rules and develop policies
9 to implement this program and to assure that a pavement management
10 system is used;

11 (j) For distribution to the rural arterial trust account in the
12 motor vehicle fund an amount equal to 2.5363 percent and expended in
13 accordance with RCW 36.79.020;

14 (k) For distribution to the Interstate 5 corridor pilot project
15 trust account in the motor vehicle fund, an amount equal to forty-two
16 percent of the net tax amount collected in Skagit county and forty-four
17 percent of the net tax amount collected in Whatcom county.

18 (3) The remaining net tax amount collected under RCW 82.36.025(2)
19 and 82.38.030(2) shall be distributed to the transportation 2003
20 account (nickel account).

21 (4) The remaining net tax amount collected under RCW 82.36.025(3)
22 and 82.38.030(3) shall be distributed as follows:

23 (a) 8.3333 percent shall be distributed to the incorporated cities
24 and towns of the state in accordance with RCW 46.68.110;

25 (b) 8.3333 percent shall be distributed to counties of the state in
26 accordance with RCW 46.68.120; and

27 (c) The remainder shall be distributed to the transportation
28 partnership account created in RCW 46.68.290.

29 (5) The remaining net tax amount collected under RCW 82.36.025(4)
30 and 82.38.030(4) shall be distributed as follows:

31 (a) 8.3333 percent shall be distributed to the incorporated cities
32 and towns of the state in accordance with RCW 46.68.110;

33 (b) 8.3333 percent shall be distributed to counties of the state in
34 accordance with RCW 46.68.120; and

35 (c) The remainder shall be distributed to the transportation
36 partnership account created in RCW 46.68.290.

37 (6) The remaining net tax amount collected under RCW 82.36.025 (5)

1 and (6) and 82.38.030 (5) and (6) shall be distributed to the
2 transportation partnership account created in RCW 46.68.290.

3 (7) Nothing in this section or in RCW 46.68.130 may be construed so
4 as to violate any terms or conditions contained in any highway
5 construction bond issues now or hereafter authorized by statute and
6 whose payment is by such statute pledged to be paid from any excise
7 taxes on motor vehicle fuel and special fuels.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 46.68 RCW
9 to read as follows:

10 The Interstate 5 corridor pilot project trust account is created in
11 the motor vehicle fund. All receipts from the distributions
12 established under RCW 46.68.090(2)(k) must be deposited in the account.
13 Moneys in the account may be spent only after appropriation.
14 Expenditures from the account may be used only for payments made under
15 an agreement entered into under section 2 of this act.

16 **Sec. 5.** RCW 41.06.142 and 2002 c 354 s 208 are each amended to
17 read as follows:

18 (1) Any department, agency, or institution of higher education may
19 purchase services, including services that have been customarily and
20 historically provided by employees in the classified service under this
21 chapter, by contracting with individuals, nonprofit organizations,
22 businesses, employee business units, or other entities if the following
23 criteria are met:

24 (a) The invitation for bid or request for proposal contains
25 measurable standards for the performance of the contract;

26 (b) Employees in the classified service whose positions or work
27 would be displaced by the contract are provided an opportunity to offer
28 alternatives to purchasing services by contract and, if these
29 alternatives are not accepted, compete for the contract under
30 competitive contracting procedures in subsection (4) of this section;

31 (c) The contract with an entity other than an employee business
32 unit includes a provision requiring the entity to consider employment
33 of state employees who may be displaced by the contract;

34 (d) The department, agency, or institution of higher education has
35 established a contract monitoring process to measure contract

1 performance, costs, service delivery quality, and other contract
2 standards, and to cancel contracts that do not meet those standards;
3 and

4 (e) The department, agency, or institution of higher education has
5 determined that the contract results in savings or efficiency
6 improvements. The contracting agency must consider the consequences
7 and potential mitigation of improper or failed performance by the
8 contractor.

9 (2) Any provision contrary to or in conflict with this section in
10 any collective bargaining agreement in effect on July 1, 2005, is not
11 effective beyond the expiration date of the agreement.

12 (3) Contracting for services that is expressly mandated by the
13 legislature or was authorized by law prior to July 1, 2005, including
14 contracts and agreements between public entities, shall not be subject
15 to the processes set forth in subsections (1) and (4) through (6) of
16 this section.

17 (4) Competitive contracting shall be implemented as follows:

18 (a) At least ninety days prior to the date the contracting agency
19 requests bids from private entities for a contract for services
20 provided by classified employees, the contracting agency shall notify
21 the classified employees whose positions or work would be displaced by
22 the contract. The employees shall have sixty days from the date of
23 notification to offer alternatives to purchasing services by contract,
24 and the agency shall consider the alternatives before requesting bids.

25 (b) If the employees decide to compete for the contract, they shall
26 notify the contracting agency of their decision. Employees must form
27 one or more employee business units for the purpose of submitting a bid
28 or bids to perform the services.

29 (c) The director of personnel, with the advice and assistance of
30 the department of general administration, shall develop and make
31 available to employee business units training in the bidding process
32 and general bid preparation.

33 (d) The director of general administration, with the advice and
34 assistance of the department of personnel, shall, by rule, establish
35 procedures to ensure that bids are submitted and evaluated in a fair
36 and objective manner and that there exists a competitive market for the
37 service. Such rules shall include, but not be limited to: (i)
38 Prohibitions against participation in the bid evaluation process by

1 employees who prepared the business unit's bid or who perform any of
2 the services to be contracted; (ii) provisions to ensure no bidder
3 receives an advantage over other bidders and that bid requirements are
4 applied equitably to all parties; and (iii) procedures that require the
5 contracting agency to receive complaints regarding the bidding process
6 and to consider them before awarding the contract. Appeal of an
7 agency's actions under this subsection is an adjudicative proceeding
8 and subject to the applicable provisions of chapter 34.05 RCW, the
9 administrative procedure act, with the final decision to be rendered by
10 an administrative law judge assigned under chapter 34.12 RCW.

11 (e) An employee business unit's bid must include the fully
12 allocated costs of the service, including the cost of the employees'
13 salaries and benefits, space, equipment, materials, and other costs
14 necessary to perform the function. An employee business unit's cost
15 shall not include the state's indirect overhead costs unless those
16 costs can be attributed directly to the function in question and would
17 not exist if that function were not performed in state service.

18 (f) A department, agency, or institution of higher education may
19 contract with the department of general administration to conduct the
20 bidding process.

21 (5) As used in this section:

22 (a) "Employee business unit" means a group of employees who perform
23 services to be contracted under this section and who submit a bid for
24 the performance of those services under subsection (4) of this section.

25 (b) "Indirect overhead costs" means the pro rata share of existing
26 agency administrative salaries and benefits, and rent, equipment costs,
27 utilities, and materials associated with those administrative
28 functions.

29 (c) "Competitive contracting" means the process by which classified
30 employees of a department, agency, or institution of higher education
31 compete with businesses, individuals, nonprofit organizations, or other
32 entities for contracts authorized by subsection (1) of this section.

33 (6) The joint legislative audit and review committee shall conduct
34 a performance audit of the implementation of this section, including
35 the adequacy of the appeals process in subsection (4)(d) of this
36 section, and report to the legislature by January 1, 2007, on the
37 results of the audit.

1 (7) An agreement with a private entity entered into under section
2 2 of this act is exempt from the requirements of this section.

3 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
4 conflict with federal requirements that are a prescribed condition to
5 the allocation of federal funds to the state, the conflicting part of
6 this act is inoperative solely to the extent of the conflict and with
7 respect to the agencies directly affected, and this finding does not
8 affect the operation of the remainder of this act in its application to
9 the agencies concerned. Rules adopted under this act must meet federal
10 requirements that are a necessary condition to the receipt of federal
11 funds by the state.

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