

HOUSE BILL REPORT

ESSB 6044

As Reported By House Committee On:
Transportation

Title: An act relating to transportation systems and facilities.

Brief Description: Revising the selection process for transportation systems and facilities demonstration projects.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Owen, Prince and Kohl).

Brief History:

Committee Activity:

Transportation: 3/27/95, 3/30/95 [DPA].

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended. Signed by 17 members: Representatives K. Schmidt, Chairman; Benton, Vice Chairman; Mitchell, Vice Chairman; Skinner, Vice Chairman; Hatfield, Assistant Ranking Minority Member; Backlund; Blanton; Buck; Cairnes; Chandler; Chopp; Elliot; Johnson; Koster; Robertson; D. Schmidt and Scott.

Minority Report: Do not pass. Signed by 8 members: Representatives R. Fisher, Ranking Minority Member; Brown; Hankins; Horn; McMahan; Ogden; Romero and Tokuda.

Staff: Vicki Fabre (786-7313).

Background: New Partners: Public-Private Initiatives in Transportation (Chapter 47.46 RCW) is a program created by the 1993 Legislature to test the feasibility of privately financed transportation improvements in Washington State. The law provides a wide range of opportunities for private entities to undertake all or a portion of the study, planning, design, finance, construction, operation and maintenance of transportation systems and facilities.

The state Department of Transportation (DOT) is authorized to solicit proposals from the private sector and to select up to six demonstration projects identified by the

private sector. Projects are owned by the private sector during construction, turned over to the state, and leased back for operation for up to 50 years.

The private developer is authorized to impose tolls or user fees to recover the private sector's investments and to allow them a reasonable rate of return on investment. After maximum return on investment is reached, the state may continue to charge user fees or tolls for operation or maintenance that may be shared with affected local jurisdictions.

In May of 1994, 14 proposals from 11 private sector consortia were received by the DOT. These were evaluated by a team of technical experts assembled by the DOT. At the end of the evaluation process, the Secretary of Transportation, as required by law, recommended six projects to the Transportation Commission, which the commission adopted on August 18, 1994.

The following projects were selected: State Route (SR) 16-Tacoma Narrows; SR 18 corridor improvements; SR 520 corridor improvements; SR 522 corridor improvements; Puget Sound congestion pricing; and METRO/King County and DOT park and ride capacity enhancements.

Since early fall of 1994, the department and the six private consortia selected for the New Partners Program have been negotiating agreements to develop the transportation facilities described above. These agreements identify the responsibilities and commitments of each party and will drive project development activities.

Public opposition to the process employed to select the demonstration projects, concern about the degree and quality of public involvement in the project development stage, and opposition to the imposition by the private sector of tolls or user fees on these facilities lead the department to terminate further consideration of the proposal on SR 18 corridor improvements. These same concerns, however, continue with respect to the remaining projects.

Summary of Amended Bill: The legislative intent section of the public-private initiatives law is amended to clarify the terms and parameters of the agreements negotiated under the program. The agreements do not bestow on private entities an immediate or vested right to construct and operate facilities. Rather, they provide an opportunity for private entities to design, plan and demonstrate public support in order to obtain a future decision by state and local agencies to build transportation facilities selected under the public-private initiatives program.

The project proposing corridor improvements on SR 522 is terminated, and the Legislature directs that the Secretary of Transportation not proceed with the implementation of the Puget Sound congestion pricing project without prior legislative approval.

The remaining projects selected prior to September 1, 1994, and any replacement projects, if existing projects are terminated, must comply with an approval process that requires a public vote.

The DOT is required to: (1) conduct a comprehensive analysis of traffic patterns and economic impact to define the geographical boundary of the area most affected by tolls or user fees; and (2) establish a public involvement process for decision-making on key issues (project size, cost, right of way, tolling and user fee ranges, environmental assessment, etc.) that are used to establish the project description.

Public comment, public hearings and legislative review through the Legislative Transportation Committee are provided.

The results of the analysis of traffic patterns and economic impact are used to establish the boundaries of the affected project area (by voting precinct) for a vote in a special election on: (1) the project description and characteristics; and (2) the imposition of tolls or user fees.

A simple majority of voters in the affected project area is required for the DOT to solicit proposals for replacement projects or enter into an agreement with a private entity for projects selected prior to September 1, 1994.

A decision by the department not to enter an agreement with the private entity, following a public vote on a project, does not create liability or require reimbursement of the private entity's cost to develop the project.

Tolls or user fees may be used only for payment of a project's capital outlay costs, and the term of the agreement is limited to the time required to pay the capital outlay costs.

The private sector is required to reimburse the DOT for all costs associated with the election.

The DOT is prohibited from imposing tolls after termination of the lease.

The private sector is required to contract with the Washington State Patrol for police service on the projects, and to reimburse these costs on the same basis as is incurred on other state highways.

Projects selected as demonstration projects under the public-private initiatives program and that are included in the department's six-year investment plan, retain their priority status. As state funds become available, such funds must be used toward the capital costs of the projects. If no state funding is required, available funds must be used (a)

to reduce the rate of tolls or user fees imposed on the demonstration project, or (b) for improvements on alternative state or local nontolled routes.

Amended Bill Compared to Engrossed Substitute Bill: The Legislature directs that the Secretary of Transportation not proceed with the implementation of the Puget Sound congestion pricing project without prior legislative approval.

A decision by the department not to enter an agreement with the private entity, following a public vote on a project, does not create liability or require reimbursement of the private entity's cost to develop the project.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: A public involvement process that results in a public vote on both new and existing projects, before the DOT is permitted to solicit proposals for new projects or enter into agreements with the developers of existing projects, is essential in order to ensure meaningful public participation and accountability and to restore public confidence.

Testimony Against: Developers have expended substantial resources to date developing projects selected in 1994 and have negotiated with the department in good faith. An extended public involvement process prior to a public vote, without an agreement in place, may jeopardize projects.

Developers must engage in extensive public involvement requirements currently required under various federal, state and local planning and permitting processes. Projects should be allowed to go forward using these processes to determine if actual construction should result.

The bill may violate state constitutional requirements with respect to equal protection guarantees, the referendum process, and delegation of the Legislature's authority.

Testified: Paul Demetriades, TRUST (pro); Laura Hartman, Citizens Environmental Concerns and CAUGHT (pro); Donna Wandler, SR 18 Coalition (pro); David Krull, private citizen (pro); Jerry Pfeffer, United Infrastructure (con); Richard Page, SR 520 Improvement Association (con); Maynard Arsove, No Expansion of 520 (pro); Gerald Dickson, CAUGHT (pro); Doris Day Barbee, TRUST (pro); Chris Leman, Coalition of Washington Communities (pro); Mike Lanier, ABAM (con); Barry Murphy, 522 Community Highway Association (con); Chris Clifford, TRUST, CAUGHT and SR

18 Coalition (pro); Lisa Snowden, CAUGHT (pro); Frank Durand, private citizen (pro); Nancy Adams, private citizen (pro); and Dick Adams, town of Hunts Point (pro).