
ENGROSSED SUBSTITUTE HOUSE BILL 1317

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Robertson, Cairnes, B. Thomas, Mitchell, Van Luven, Dyer, Lambert, Radcliff, D. Schmidt, Backlund, Cooke, Reams, Campbell, Stevens, L. Thomas and Koster)

Read first time 02/28/95.

1 AN ACT Relating to transportation systems and facilities; amending
2 RCW 47.46.010, 47.46.030, 47.46.040, and 47.46.050; adding a new
3 section to chapter 47.46 RCW; and declaring an emergency.

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

5 **Sec. 1.** RCW 47.46.010 and 1993 c 370 s 1 are each amended to read
6 as follows:

7 The legislature finds and declares:

8 It is essential for the economic, social, and environmental well-
9 being of the state and the maintenance of a high quality of life that
10 the people of the state have an efficient transportation system.

11 The ability of the state to provide an efficient transportation
12 system will be enhanced by a public-private sector program providing
13 for private entities to undertake all or a portion of the study,
14 planning, design, development, financing, acquisition, installation,
15 construction or improvement, operation, and maintenance of
16 transportation systems and facility projects.

17 A public-private initiatives program will provide benefits to both
18 the public and private sectors. Public-private initiatives provide a
19 sound economic investment opportunity for the private sector. Such

1 initiatives will provide the state with increased access to property
2 development and project opportunities, financial and development
3 expertise, and will supplement state transportation revenues, allowing
4 the state to use its limited resources for other needed projects.

5 The public-private initiatives program, to the fullest extent
6 possible, should encourage and promote business and employment
7 opportunities for Washington state citizens.

8 The public-private initiatives program should be implemented in
9 cooperation and consultation with affected local jurisdictions.

10 The secretary of transportation should be permitted and encouraged
11 to test the feasibility of building privately funded transportation
12 systems and facilities or segments thereof through the use of
13 innovative agreements with the private sector. The secretary of
14 transportation should be vested with the authority to solicit,
15 evaluate, negotiate, and administer public-private agreements with the
16 private sector relating to the planning, construction, upgrading, or
17 reconstruction of transportation systems and facilities.

18 Agreements negotiated under a public-private initiatives program
19 will not bestow on private entities an immediate or vested right to
20 construct and operate the proposed transportation facilities. Rather,
21 agreements will grant to private entities the opportunity to design the
22 proposed facilities, demonstrate public support for proposed
23 facilities, and complete the planning processes required in order to
24 obtain a future decision by the department of transportation and other
25 state and local lead agencies on whether the facilities should be
26 built.

27 The department of transportation should be encouraged to take
28 advantage of new opportunities provided by federal legislation under
29 section 1012 of the Intermodal Surface Transportation Efficiency Act of
30 1991 (ISTEA). That section establishes a new program authorizing
31 federal participation in construction or improvement or improvement of
32 publicly or privately owned toll roads, bridges, and tunnels, and
33 allows states to leverage available federal funds as a means for
34 attracting private sector capital.

35 **Sec. 2.** RCW 47.46.030 and 1993 c 370 s 3 are each amended to read
36 as follows:

37 (1) The secretary or a designee shall solicit proposals from, and
38 negotiate and enter into agreements with, private entities to undertake

1 as appropriate, together with the department and other public entities,
2 all or a portion of the study, planning, design, construction,
3 operation, and maintenance of transportation systems and facilities,
4 using in whole or in part private sources of financing.

5 The public-private initiative program may develop up to six
6 demonstration projects. Each proposal shall be weighed on its own
7 merits, and each of the six agreements shall be negotiated
8 individually, and as a stand-alone project. The commission shall
9 approve each of the selected projects.

10 Proposals and demonstration projects may be selected by the public
11 and private sectors at their discretion.

12 (2) If projects selected prior to September 1, 1994, are terminated
13 by the public or private sectors, no other projects shall be selected
14 as replacement projects until the department develops a public
15 involvement process to identify prospective projects. The public
16 involvement process shall, at a minimum, identify projects that: (a)
17 Have the potential of achieving overall public support among users of
18 such projects, residents of communities in the vicinity of such
19 projects, and residents of communities impacted by such projects; (b)
20 meet a state transportation need; and (c) provide a significant state
21 benefit.

22 (3) The department shall develop a public involvement plan for
23 identifying replacement projects by January 1, 1996, and shall submit
24 such plan to the legislative transportation committee for review.
25 Project selections made after September 1, 1994, shall be carried out
26 utilizing the public involvement process developed by the department
27 and reviewed by the legislative transportation committee. Projects
28 that meet the criteria established in subsection (2) of this section
29 shall be submitted for review by the Washington state transportation
30 commission. The commission shall submit a list of eligible projects to
31 the legislative transportation committee for its consideration. If
32 within forty-five calendar days of such submission the legislative
33 transportation committee has not adopted a resolution recommending that
34 the secretary reject an eligible project, the secretary is authorized
35 to solicit proposals for such eligible project.

36 (4) All projects designed, constructed, and operated under this
37 authority must comply with all applicable rules and statutes in
38 existence at the time the agreement is executed, including but not

1 limited to the following provisions: Chapter 39.12 RCW, this title,
2 RCW 41.06.380, chapter 47.64 RCW, RCW 49.60.180, and 49 C.F.R. Part 21.

3 (5) The secretary or a designee shall consult with legal,
4 financial, and other experts within and outside state government in the
5 negotiation and development of the agreements.

6 **Sec. 3.** RCW 47.46.040 and 1993 c 370 s 4 are each amended to read
7 as follows:

8 Agreements shall provide for private ownership of the projects
9 during the construction period. After completion and final acceptance
10 of each project or discrete segment thereof, the agreement shall
11 provide for state ownership of the transportation systems and
12 facilities and lease to the private entity unless the state elects to
13 provide for ownership of the facility by the private entity during the
14 term of the agreement.

15 The state shall lease each of the demonstration projects, or
16 applicable project segments, to the private entities for operating
17 purposes for up to fifty years.

18 The department may exercise any power possessed by it to facilitate
19 the development, construction, financing, operation, and maintenance of
20 transportation projects under this chapter. Agreements for maintenance
21 services entered into under this section shall provide for full
22 reimbursement for services rendered by the department or other state
23 agencies. Agreements for police services for projects developed under
24 ((the)) agreements may be entered into with any qualified law
25 enforcement agency, and shall provide for full reimbursement for
26 services rendered by that agency. The department may provide services
27 for which it is reimbursed, including but not limited to preliminary
28 planning, environmental certification, and preliminary design of the
29 demonstration projects.

30 The plans and specifications for each project constructed under
31 this section shall comply with the department's standards for state
32 projects. A facility constructed by and leased to a private entity is
33 deemed to be a part of the state highway system for purposes of
34 identification, maintenance, and enforcement of traffic laws and for
35 the purposes of applicable sections of this title. Upon reversion of
36 the facility to the state, the project must meet all applicable state
37 standards. Agreements shall address responsibility for reconstruction

1 or renovations that are required in order for a facility to meet all
2 applicable state standards upon reversion of the facility to the state.

3 For the purpose of facilitating these projects and to assist the
4 private entity in the financing, development, construction, and
5 operation of the transportation systems and facilities, the agreements
6 may include provisions for the department to exercise its authority,
7 including the lease of facilities, rights of way, and airspace,
8 exercise of the power of eminent domain, granting of development rights
9 and opportunities, granting of necessary easements and rights of
10 access, issuance of permits and other authorizations, protection from
11 competition, remedies in the event of default of either of the parties,
12 granting of contractual and real property rights, liability during
13 construction and the term of the lease, authority to negotiate
14 acquisition of rights of way in excess of appraised value, and any
15 other provision deemed necessary by the secretary.

16 The agreements entered into under this section may include
17 provisions authorizing the state to grant necessary easements and lease
18 to a private entity existing rights of way or rights of way
19 subsequently acquired with public or private financing. The agreements
20 may also include provisions to lease to the entity airspace above or
21 below the right of way associated or to be associated with the private
22 entity's transportation facility. In consideration for the reversion
23 rights in these privately constructed facilities, the department may
24 negotiate a charge for the lease of airspace rights during the term of
25 the agreement for a period not to exceed fifty years. If, after the
26 expiration of this period, the department continues to lease these
27 airspace rights to the private entity, it shall do so only at fair
28 market value. The agreement may also provide the private entity the
29 right of first refusal to undertake projects utilizing airspace owned
30 by the state in the vicinity of the public-private project.

31 Agreements under this section may include any contractual provision
32 that is necessary to protect the project revenues required to repay the
33 costs incurred to study, plan, design, finance, acquire, build,
34 install, operate, enforce laws, and maintain toll highways, bridges,
35 and tunnels and which will not unreasonably inhibit or prohibit the
36 development of additional public transportation systems and facilities.
37 Agreements under this section must secure and maintain liability
38 insurance coverage in amounts appropriate to protect the project's
39 viability and may address state indemnification of the private entity

1 for design and construction liability where the state has approved
2 relevant design and construction plans.

3 The department shall not enter into an agreement with a private
4 entity for a project selected prior to September 1, 1994, unless that
5 agreement includes a process that provides for public involvement in
6 decision making with respect to the development of such project.

7 Nothing in this chapter limits the right of the secretary and his
8 or her agents to render such advice and to make such recommendations as
9 they deem to be in the best interests of the state and the public.

10 **Sec. 4.** RCW 47.46.050 and 1993 c 370 s 5 are each amended to read
11 as follows:

12 (1) The department may enter into agreements using federal, state,
13 and local financing in connection with the projects, including without
14 limitation, grants, loans, and other measures authorized by section
15 1012 of ISTEPA, and to do such things as necessary and desirable to
16 maximize the funding and financing, including the formation of a
17 revolving loan fund to implement this section.

18 (2) Agreements entered into under this section shall authorize the
19 private entity to lease the facilities within a designated area or
20 areas from the state and to impose user fees or tolls within the
21 designated area to allow a reasonable rate of return on investment, as
22 established through a negotiated agreement between the state and the
23 private entity. The negotiated agreement shall determine a maximum
24 rate of return on investment, based on project characteristics. If the
25 negotiated rate of return on investment is not affected, the private
26 entity may establish and modify toll rates and user fees.

27 (3) Agreements may establish "incentive" rates of return beyond the
28 negotiated maximum rate of return on investment. The incentive rates
29 of return shall be designed to provide financial benefits to the
30 affected public jurisdictions and the private entity, given the
31 attainment of various safety, performance, or transportation demand
32 management goals. The incentive rates of return shall be negotiated in
33 the agreement.

34 (4) Agreements shall require that over the term of the ownership or
35 lease the user fees or toll revenues be applied to payment of the
36 private entity's capital outlay costs for the project, including
37 interest expense, the costs associated with operations, toll
38 collection, maintenance and administration of the facility,

1 reimbursement to the state for the costs of project review and
2 oversight, technical and law enforcement services, establishment of a
3 fund to assure the adequacy of maintenance expenditures, and a
4 reasonable return on investment to the private entity. The use of any
5 excess toll revenues or user fees may be negotiated between the
6 parties, but a negotiated agreement shall not extend the term of the
7 ownership or lease beyond the period of time required for payment of
8 the private entity's capital outlay costs for the project under this
9 subsection.

10 ~~((After expiration of the lease of a facility to a private entity,~~
11 ~~the secretary may continue to charge user fees or tolls for the use of~~
12 ~~the facility, with these revenues to be used for operations and~~
13 ~~maintenance of the facility, or to be paid to the local transportation~~
14 ~~planning agency, or any combination of such uses.))~~

15 NEW SECTION. **Sec. 5.** A new section is added to chapter 47.46 RCW
16 to read as follows:

17 (1) In carrying out the public involvement process required in RCW
18 47.46.040, the private entity shall proactively seek public
19 participation through a process appropriate to the characteristics of
20 such project, or in the case of a project developed in phases or
21 segments, such phase or segment, that assesses overall public support
22 among: Users of such project, phase, or segment; residents of
23 communities in the vicinity of such project, phase, or segment; and
24 residents of communities impacted by such project, phase, or segment.
25 Such public involvement process shall provide opportunities for users
26 and residents to comment upon key issues regarding such project, phase,
27 or segment, including, but not limited to: (a) Alternative sizes and
28 scopes; (b) design; (c) environmental assessment; (d) right of way and
29 access plans; (e) traffic impacts; (f) tolling or user fee strategies
30 and tolling or user fee ranges; (g) project cost; (h) construction
31 impacts; (i) facility operation; and (j) any other salient
32 characteristics.

33 (2) In seeking public participation, the private entity shall
34 establish a committee comprised of individuals who represent cities and
35 counties in the vicinity of and that are impacted by the project,
36 phase, or segment; organizations formed to support or oppose the
37 project, phase, or segment; and users of the project, phase, or

1 segment. The committee shall be named the public-private local
2 involvement committee, and be known as the local involvement committee.

3 The members of the local involvement committee shall be: (a) An
4 elected official from each city within the project, phase, or segment
5 area as defined by the department and the private entity under the
6 requirements of subsection (3) of this section; (b) an elected official
7 from each county within the project, phase, or segment area as defined
8 under the requirements of subsection (3) of this section; two
9 representatives from an organization formed in support of the project,
10 phase, or segment; two representatives of an organization formed to
11 oppose the project, phase, or segment; and two public members active in
12 a state-wide transportation organization. If the appointments result
13 in an even number of committee members, there shall be an additional
14 appointment of an elected official from the county in which all, or the
15 greatest portion of the project, phase, or segment is located.

16 All members of the local involvement committee shall be appointed
17 by the secretary of the department by August 1, 1995. City and county
18 appointees shall be chosen from a list nominated by the association of
19 Washington cities for city members and by the Washington state
20 association of counties for county members. Persons representing
21 organizations in support of or opposed to the project, phase, or
22 segment shall be selected from a list submitted by the chair of such
23 organizations. Public members shall be chosen from a list submitted by
24 the governor.

25 The local involvement committee shall act in an advisory capacity
26 to the department and the private entity on all issues related to the
27 development and implementation of the public involvement process
28 established under this section.

29 (3) The department and the private entity, in consultation with the
30 legislative transportation committee and the local involvement
31 committee, shall, by August 1, 1995, determine and define the
32 geographical boundaries of the project, phase, or segment, known as the
33 project, phase, or segment area. The definition of such project,
34 phase, or segment area shall, at a minimum, identify and include users
35 of the project, phase, or segment; cities and counties in the vicinity
36 of the project, phase, or segment; and cities and counties impacted by
37 the project, phase, or segment. In formulating such definition, the
38 department and the private entity shall identify areas with the largest
39 percentage of normal, daily usage by residents of communities in the

1 vicinity of the project, phase, or segment and residents of communities
2 impacted by the project, phase, or segment.

3 (4) The private entity shall cause to be conducted on one or more
4 occasions, a comprehensive inventory of public positions of users and
5 of residents of communities in the vicinity of and impacted by such
6 project, phase, or segment as identified under the definition of the
7 project, phase, or segment area established by the department and the
8 private entity. The comprehensive inventory of public positions may
9 include an advisory vote by users of the project, phase, or segment and
10 by residents in the project, phase, or segment area.

11 The comprehensive inventory of public positions shall be conducted
12 by an independent accountant or other independent professional jointly
13 selected and supervised by the private entity and the department in
14 consultation with the local involvement committee and the legislative
15 transportation committee. The independent accountant or other
16 independent professional must have a proven history and expertise in
17 assessing public opinion and shall not have a direct or indirect
18 interest in such project. The results of the inventory of public
19 positions shall be made available for public review and comment.

20 (5) The department and the private entity shall provide the
21 legislative transportation committee and the local involvement
22 committee with progress reports on the status of the public involvement
23 process and the inventory of public positions. The results of the
24 inventory of public positions, including public comment on such
25 inventory of public positions, shall be forwarded to the legislative
26 transportation committee and the local involvement committee for their
27 review.

28 Within fifteen calendar days of submission of such information for
29 a project, phase, or segment, the local involvement committee shall
30 submit a report to the department and the legislative transportation
31 committee supporting or opposing the results of the inventory of public
32 positions. Within forty-five calendar days of submission of the report
33 of the local involvement committee, the legislative transportation
34 committee shall conduct a public hearing regarding the results of the
35 inventory and the report of the local involvement committee.

36 Taking into account the information submitted, the legislative
37 transportation committee may adopt a resolution making a recommendation
38 to the secretary regarding the disposition of the agreement for such
39 project, phase, or segment. Any action by the secretary in response to

1 the recommendation of the legislative transportation committee shall be
2 taken within thirty calendar days of receipt of such recommendation and
3 shall be carried out in accordance with the terms and conditions
4 established in the agreement for such project, phase, or segment.

5 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and shall take
8 effect immediately.

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