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THIRD ENGROSSED SUBSTITUTE HOUSE BILL 1317

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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; and declaring an  
3 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~~) shall be  
9 implemented in cooperation (~~and~~), consultation (~~with~~), and with the  
10 support of the affected communities and local jurisdictions.

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

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

27 Agreements negotiated under the public-private initiatives program  
28 should establish the conditions under which the private developer may  
29 secure the approval necessary to develop and operate the proposed  
30 transportation facilities; create a framework to attract the private  
31 capital necessary to finance their development; ensure that the  
32 transportation facilities will be designed, constructed, and operated  
33 in accordance with applicable local, regional, state, and federal laws  
34 and the applicable standards and policies of the department of  
35 transportation; and require a demonstration that the proposed  
36 transportation facility has the support of the affected communities and  
37 local jurisdictions.

38 The legislature finds that the Puget Sound congestion pricing  
39 project, selected under this chapter, raises major transportation

1 policy, economic, and equity concerns. These relate to the integrity  
2 of the state's high-occupancy vehicle program; the cost-effective  
3 movement of freight and goods; the diversion of traffic to local  
4 streets and arterials; and possible financial hardship to commuters.  
5 The legislature further finds that these potential economic and social  
6 impacts require comprehensive legislative review prior to advancement  
7 of the project and directs that the secretary not proceed with the  
8 implementation of the project without prior approval of the  
9 legislature.

10 The department of transportation should be encouraged to take  
11 advantage of new opportunities provided by federal legislation under  
12 section 1012 of the Intermodal Surface Transportation Efficiency Act of  
13 1991 (ISTEA). That section establishes a new program authorizing  
14 federal participation in construction or improvement or improvement of  
15 publicly or privately owned toll roads, bridges, and tunnels, and  
16 allows states to leverage available federal funds as a means for  
17 attracting private sector capital.

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

20 (1) The secretary or a designee shall solicit proposals from, and  
21 negotiate and enter into agreements with, private entities to undertake  
22 as appropriate, together with the department and other public entities,  
23 all or a portion of the study, planning, design, construction,  
24 operation, and maintenance of transportation systems and facilities,  
25 using in whole or in part private sources of financing.

26 The public-private initiatives program may develop up to six  
27 demonstration projects. Each proposal shall be weighed on its own  
28 merits, and each of the six agreements shall be negotiated  
29 individually, and as a stand-alone project. ~~((The commission shall~~  
30 ~~approve each of the selected projects.~~

31 ~~Proposals and demonstration projects may be selected by the public~~  
32 ~~and private sectors at their discretion. All projects designed,~~  
33 ~~constructed, and operated under this authority must comply with all~~  
34 ~~applicable rules and statutes in existence at the time the agreement is~~  
35 ~~executed, including but not limited to the following provisions:~~  
36 ~~Chapter 39.12 RCW, this title, RCW 41.06.380, chapter 47.64 RCW, RCW~~  
37 ~~49.60.180, and 49 C.F.R. Part 21.~~

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

4       (2) If project proposals selected prior to September 1, 1994, are  
5 terminated by the public or private sectors, the department shall not  
6 select any new projects, including project proposals submitted to the  
7 department prior to September 1, 1994, and designated by the  
8 transportation commission as placeholder projects, after the effective  
9 date of this act, until June 30, 1997.

10       The department, in consultation with the legislative transportation  
11 committee, shall conduct a program and fiscal audit of the public-  
12 private initiatives program for the biennium ending June 30, 1997. The  
13 department shall submit a progress report to the legislative  
14 transportation committee on the program and fiscal audit by June 30,  
15 1996, with preliminary and final audit reports due December 1, 1996,  
16 and June 30, 1997, respectively.

17       The department shall develop and submit a proposed public  
18 involvement plan to the 1997 legislature to identify the process for  
19 selecting new potential projects and the associated costs of  
20 implementing the plan. The legislature must adopt the public  
21 involvement plan before the department may proceed with any activity  
22 related to project identification and selection. Following legislative  
23 adoption of the public involvement plan, the department is authorized  
24 to implement the plan and to identify potential new projects.

25       The public involvement plan for projects selected after June 30,  
26 1997, shall, at a minimum, identify projects that: (a) Have the  
27 potential of achieving overall public support among users of the  
28 projects, residents of communities in the vicinity of the projects, and  
29 residents of communities impacted by the projects; (b) meet a state  
30 transportation need; (c) provide a significant state benefit; and (d)  
31 provide competition among proposers and maximum cost benefits to users.  
32 Prospective projects may include projects identified by the department  
33 or submitted by the private sector.

34       Projects that meet the minimum criteria established under this  
35 section and the requirements of the public involvement plan developed  
36 by the department and approved by the legislature shall be submitted to  
37 the Washington state transportation commission for its review. The  
38 commission, in turn, shall submit a list of eligible projects to the  
39 legislative transportation committee for its consideration. Forty-five

1 days after the submission to the legislative transportation committee  
2 of the list of eligible projects, the secretary is authorized to  
3 solicit proposals for the eligible project.

4 (3) Prior to entering into agreements with private entities under  
5 the requirements of RCW 47.46.040 for any project proposal selected  
6 before September 1, 1994, or after June 30, 1997, except as provided  
7 for in subsections (10) and (11) of this section, the department shall  
8 require an advisory vote as provided under subsections (4) through (9)  
9 of this section.

10 (4) In preparing for the advisory vote, the department shall  
11 conduct a comprehensive analysis of traffic patterns and economic  
12 impact to define the geographical boundary of the project area that is  
13 affected by the imposition of tolls or user fees authorized under this  
14 chapter. The area so defined is referred to in this section as the  
15 affected project area. In defining the affected project area, the  
16 department shall, at a minimum, undertake: (a) A comparison of the  
17 estimated percentage of residents of communities in the vicinity of the  
18 project and in other communities impacted by the project who could be  
19 subject to tolls or user fees and the estimated percentage of other  
20 users and transient traffic that could be subject to tolls or user  
21 fees; (b) an analysis of the anticipated traffic diversion patterns;  
22 (c) an analysis of the potential economic impact resulting from  
23 proposed toll rates or user fee rates imposed on residents, commercial  
24 traffic, and commercial entities in communities in the vicinity of and  
25 impacted by the project; (d) an analysis of the economic impact of  
26 tolls or user fees on the price of goods and services generally; and  
27 (e) an analysis of the relationship of the project to state  
28 transportation needs and benefits.

29 (5)(a) After determining the definition of the affected project  
30 area, the department shall establish a committee comprised of  
31 individuals who represent cities and counties in the affected project  
32 area; organizations formed to support or oppose the project; and users  
33 of the project. The committee shall be named the public-private local  
34 involvement committee, and be known as the local involvement committee.

35 (b) The members of the local involvement committee shall be: (i)  
36 An elected official from each city within the affected project area;  
37 (ii) an elected official from each county within the affected project  
38 area; (iii) two persons from each county within the affected project  
39 area who represent an organization formed in support of the project, if

1 the organization exists; (iv) two persons from each county within the  
2 affected project area who represent an organization formed to oppose  
3 the project, if the organization exists; and (v) four public members  
4 active in a state-wide transportation organization. If the committee  
5 makeup results in an even number of committee members, there shall be  
6 an additional appointment of an elected official from the county in  
7 which all, or the greatest portion of the project is located.

8 (c) City and county elected officials shall be appointed by a  
9 majority of the members of the city or county legislative authorities  
10 of each city or county within the affected project area, respectively.  
11 The county legislative authority of each county within the affected  
12 project area shall identify and validate organizations officially  
13 formed in support of or in opposition to the project and shall make the  
14 appointments required under this section from a list submitted by the  
15 chair of the organizations. Public members shall be appointed by the  
16 governor. All appointments to the local involvement committee shall be  
17 made and submitted to the department of transportation no later than  
18 January 1, 1996, for projects selected prior to September 1, 1994, and  
19 no later than thirty days after the affected project area is defined  
20 for projects selected after June 30, 1997. Vacancies in the membership  
21 of the local involvement committee shall be filled by the appointing  
22 authority under (b)(i) through (v) of this subsection for each position  
23 on the committee.

24 (d) The local involvement committee shall serve in an advisory  
25 capacity to the department on all matters related to the execution of  
26 the advisory vote.

27 (e) Members of the local involvement committee serve without  
28 compensation and may not receive subsistence, lodging expenses, or  
29 travel expenses.

30 (6) The department shall conduct a minimum thirty-day public  
31 comment period on the definition of the geographical boundary of the  
32 project area. The department, in consultation with the local  
33 involvement committee, shall make adjustments, if required, to the  
34 definition of the geographical boundary of the affected project area,  
35 based on comments received from the public. Within fourteen calendar  
36 days after the public comment period, the department shall set the  
37 boundaries of the affected project area in units no smaller than a  
38 precinct as defined in RCW 29.01.120.

1       (7) The department, in consultation with the local involvement  
2 committee, shall develop a description for selected project proposals.  
3 After developing the description of the project proposal, the  
4 department shall publish the project proposal description in newspapers  
5 of general circulation for seven calendar days in the affected project  
6 area. Within fourteen calendar days after the last day of the  
7 publication of the project proposal description, the department shall  
8 transmit a copy of the map depicting the affected project area and the  
9 description of the project proposal to the county auditor of the county  
10 in which any portion of the affected project area is located.

11       (8) The department shall provide the legislative transportation  
12 committee with progress reports on the status of the definition of the  
13 affected project area and the description of the project proposal.

14       (9) Upon receipt of the map and the description of the project  
15 proposal, the county auditor shall, within thirty days, verify the  
16 precincts that are located within the affected project area. The  
17 county auditor shall prepare the text identifying and describing the  
18 affected project area and the project proposal using the definition of  
19 the geographical boundary of the affected project area and the project  
20 description submitted by the department and shall set an election date  
21 for the submission of a ballot proposition authorizing the imposition  
22 of tolls or user fees to implement the proposed project within the  
23 affected project area, which date may be the next succeeding general  
24 election to be held in the state, or at a special election, if  
25 requested by the department. The text of the project proposal must  
26 appear in a voter's pamphlet for the affected project area. The  
27 department shall pay the costs of publication and distribution. The  
28 special election date must be the next date for a special election  
29 provided under RCW 29.13.020 that is at least sixty days but, if  
30 authorized under RCW 29.13.020, no more than ninety days after the  
31 receipt of the final map and project description by the auditor. The  
32 department shall pay the cost of an election held under this section.

33       (10) Subsections (4) through (9) of this section shall not apply to  
34 project proposals selected prior to September 1, 1994, that have no  
35 organized public opposition as demonstrated by the submission to the  
36 department of original petitions bearing at least five thousand  
37 signatures of individuals opposing the project, collected and submitted  
38 after September 1, 1994, and by thirty calendar days after the  
39 effective date of this act.

1       (11) Subsections (4) through (9) of this section shall not apply to  
2 project proposals selected after June 30, 1997, that have no organized  
3 public opposition as demonstrated by the submission to the department  
4 of original petitions bearing at least five thousand signatures of  
5 individuals opposing the project, collected and submitted by ninety  
6 calendar days after project selection.

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

9       (1) All projects designed, constructed, and operated under this  
10 authority must comply with all applicable rules and statutes in  
11 existence at the time the agreement is executed, including but not  
12 limited to the following provisions: Chapter 39.12 RCW, this title,  
13 RCW 41.06.380, chapter 47.64 RCW, RCW 49.60.180, and 49 C.F.R. Part 21.

14       (2) The secretary or a designee shall consult with legal,  
15 financial, and other experts within and outside state government in the  
16 negotiation and development of the agreements.

17       (3) Agreements shall provide for private ownership of the projects  
18 during the construction period. After completion and final acceptance  
19 of each project or discrete segment thereof, the agreement shall  
20 provide for state ownership of the transportation systems and  
21 facilities and lease to the private entity unless the state elects to  
22 provide for ownership of the facility by the private entity during the  
23 term of the agreement.

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

27       (4) The department may exercise any power possessed by it to  
28 facilitate the development, construction, financing operation, and  
29 maintenance of transportation projects under this chapter. Agreements  
30 for maintenance services entered into under this section shall provide  
31 for full reimbursement for services rendered by the department or other  
32 state agencies. Agreements for police services for projects, involving  
33 state highway routes, developed under ((the agreement may)) agreements  
34 shall be entered into with ((any qualified law enforcement agency, and  
35 shall provide for full reimbursement for services rendered by that  
36 agency)) the Washington state patrol. The agreement for police  
37 services shall provide that the state patrol will be reimbursed for  
38 costs on a comparable basis with the costs incurred for comparable



1 service on other state highway routes. The department may provide  
2 services for which it is reimbursed, including but not limited to  
3 preliminary planning, environmental certification, and preliminary  
4 design of the demonstration projects.

5 (5) The plans and specifications for each project constructed under  
6 this section shall comply with the department's standards for state  
7 projects. A facility constructed by and leased to a private entity is  
8 deemed to be a part of the state highway system for purposes of  
9 identification, maintenance, and enforcement of traffic laws and for  
10 the purposes of applicable sections of this title. Upon reversion of  
11 the facility to the state, the project must meet all applicable state  
12 standards. Agreements shall address responsibility for reconstruction  
13 or renovations that are required in order for a facility to meet all  
14 applicable state standards upon reversion of the facility to the state.

15 (6) For the purpose of facilitating these projects and to assist  
16 the private entity in the financing, development, construction, and  
17 operation of the transportation systems and facilities, the agreements  
18 may include provisions for the department to exercise its authority,  
19 including the lease of facilities, rights of way, and airspace,  
20 exercise of the power of eminent domain, granting of development rights  
21 and opportunities, granting of necessary easements and rights of  
22 access, issuance of permits and other authorizations, protection from  
23 competition, remedies in the event of default of either of the parties,  
24 granting of contractual and real property rights, liability during  
25 construction and the term of the lease, authority to negotiate  
26 acquisition of rights of way in excess of appraised value, and any  
27 other provision deemed necessary by the secretary.

28 (7) The agreements entered into under this section may include  
29 provisions authorizing the state to grant necessary easements and lease  
30 to a private entity existing rights of way or rights of way  
31 subsequently acquired with public or private financing. The agreements  
32 may also include provisions to lease to the entity airspace above or  
33 below the right of way associated or to be associated with the private  
34 entity's transportation facility. In consideration for the reversion  
35 rights in these privately constructed facilities, the department may  
36 negotiate a charge for the lease of airspace rights during the term of  
37 the agreement for a period not to exceed fifty years. If, after the  
38 expiration of this period, the department continues to lease these  
39 airspace rights to the private entity, it shall do so only at fair

1 market value. The agreement may also provide the private entity the  
2 right of first refusal to undertake projects utilizing airspace owned  
3 by the state in the vicinity of the public-private project.

4 (8) Agreements under this section may include any contractual  
5 provision that is necessary to protect the project revenues required to  
6 repay the costs incurred to study, plan, design, finance, acquire,  
7 build, install, operate, enforce laws, and maintain toll highways,  
8 bridges, and tunnels and which will not unreasonably inhibit or  
9 prohibit the development of additional public transportation systems  
10 and facilities. Agreements under this section must secure and maintain  
11 liability insurance coverage in amounts appropriate to protect the  
12 project's viability and may address state indemnification of the  
13 private entity for design and construction liability where the state  
14 has approved relevant design and construction plans.

15 (9) Agreements shall include a process that provides for public  
16 involvement in decision making with respect to the development of the  
17 projects.

18 (10)(a) In carrying out the public involvement process required in  
19 subsection (9) of this section, the private entity shall proactively  
20 seek public participation through a process appropriate to the  
21 characteristics of the project that assesses and demonstrates public  
22 support among: Users of the project, residents of communities in the  
23 vicinity of the project, and residents of communities impacted by the  
24 project.

25 (b) The private entity shall conduct a comprehensive public  
26 involvement process that provides, periodically throughout the  
27 development and implementation of the project, users and residents of  
28 communities in the affected project area an opportunity to comment upon  
29 key issues regarding the project including, but not limited to: (i)  
30 Alternative sizes and scopes; (ii) design; (iii) environmental  
31 assessment; (iv) right of way and access plans; (v) traffic impacts;  
32 (vi) tolling or user fee strategies and tolling or user fee ranges;  
33 (vii) project cost; (viii) construction impacts; (ix) facility  
34 operation; and (x) any other salient characteristics.

35 (c) If the affected project area has not been defined, the private  
36 entity shall define the affected project area by conducting, at a  
37 minimum: (i) A comparison of the estimated percentage of residents of  
38 communities in the vicinity of the project and in other communities  
39 impacted by the project who could be subject to tolls or user fees and

1 the estimated percentage of other users and transient traffic that  
2 could be subject to tolls or user fees; (ii) an analysis of the  
3 anticipated traffic diversion patterns; (iii) an analysis of the  
4 potential economic impact resulting from proposed toll rates or user  
5 fee rates imposed on residents, commercial traffic, and commercial  
6 entities in communities in the vicinity of and impacted by the project;  
7 (iv) an analysis of the economic impact of tolls or user fees on the  
8 price of goods and services generally; and (v) an analysis of the  
9 relationship of the project to state transportation needs and benefits.

10 The agreement may require an advisory vote by users of and  
11 residents in the affected project area.

12 (d) In seeking public participation, the private entity shall  
13 establish a local involvement committee or committees comprised of  
14 residents of the affected project area, individuals who represent  
15 cities and counties in the affected project area, organizations formed  
16 to support or oppose the project, if such organizations exist, and  
17 users of the project. The private entity shall, at a minimum,  
18 establish a committee as required under the specifications of RCW  
19 47.46.030(5)(b) (ii) and (iii) and appointments to such committee shall  
20 be made no later than thirty days after the project area is defined.

21 (e) Local involvement committees shall act in an advisory capacity  
22 to the department and the private entity on all issues related to the  
23 development and implementation of the public involvement process  
24 established under this section.

25 (f) The department and the private entity shall provide the  
26 legislative transportation committee and local involvement committees  
27 with progress reports on the status of the public involvement process  
28 including the results of an advisory vote, if any occurs.

29 (11) Nothing in this chapter limits the right of the secretary and  
30 his or her agents to render such advice and to make such  
31 recommendations as they deem to be in the best interests of the state  
32 and the public.

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

35 (1) The department may enter into agreements using federal, state,  
36 and local financing in connection with the projects, including without  
37 limitation, grants, loans, and other measures authorized by section  
38 1012 of ISTEPA, and to do such things as necessary and desirable to

1 maximize the funding and financing, including the formation of a  
2 revolving loan fund to implement this section.

3       (2) Agreements entered into under this section shall authorize the  
4 private entity to lease the facilities within a designated area or  
5 areas from the state and to impose user fees or tolls within the  
6 designated area to allow a reasonable rate of return on investment, as  
7 established through a negotiated agreement between the state and the  
8 private entity. The negotiated agreement shall determine a maximum  
9 rate of return on investment, based on project characteristics. If the  
10 negotiated rate of return on investment is not affected, the private  
11 entity may establish and modify toll rates and user fees.

12       (3) Agreements may establish "incentive" rates of return beyond the  
13 negotiated maximum rate of return on investment. The incentive rates  
14 of return shall be designed to provide financial benefits to the  
15 affected public jurisdictions and the private entity, given the  
16 attainment of various safety, performance, or transportation demand  
17 management goals. The incentive rates of return shall be negotiated in  
18 the agreement.

19       (4) Agreements shall require that over the term of the ownership or  
20 lease the user fees or toll revenues be applied only to payment of the  
21 private entity's capital outlay costs for the project, including  
22 project development costs, interest expense, the costs associated with  
23 design, construction, operations, toll collection, maintenance and  
24 administration of the ((facility)) project, reimbursement to the state  
25 for all costs associated with an election as required under RCW  
26 47.46.030, the costs of project review and oversight, technical and law  
27 enforcement services, establishment of a fund to assure the adequacy of  
28 maintenance expenditures, and a reasonable return on investment to the  
29 private entity. ~~((The use of any excess toll revenues or user fees may  
30 be negotiated between the parties.~~

31       ~~After expiration of the lease of a facility to a private entity,~~  
32 ~~the secretary may continue to charge user fees or tolls for the use of~~  
33 ~~the facility, with these revenues to be used for operations and~~  
34 ~~maintenance of the facility, or to be paid to the local transportation~~  
35 ~~planning agency, or any combination of such uses.)) A negotiated  
36 agreement shall not extend the term of the ownership or lease beyond  
37 the period of time required for payment of the private entity's capital  
38 outlay costs for the project under this subsection.~~

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

--- END ---