
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: AMS-4173.4/02 4th draft

ATTY/TYPIST: GR:rmh

BRIEF DESCRIPTION:

2 EHB 2723 - S AMD
3 By Senator

4 ADOPTED AS AMENDED 02/26/02
5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** INTENT. The legislature finds that greater
8 flexibility to provide state financing for projects developed under
9 chapter 47.46 RCW will result in better use of public resources, lower
10 financing costs, and potential savings to taxpayers. The legislature
11 intends to: Clarify the ability of the department of transportation to
12 use public and private financing for projects selected and developed
13 under chapter 47.46 RCW; provide the department with specific means of
14 state financing where that financing is in the public's best interest;
15 provide citizens living in the impacted areas a statutory mechanism to
16 review proposed toll rates and provide input before adoption of toll
17 schedules by the toll authority; and prevent unreasonable delay of
18 critical transportation projects that are essential for public safety
19 and welfare.

20 **Sec. 2.** RCW 47.56.010 and 1984 c 7 s 246 are each amended to read
21 as follows:

22 PROVIDING DEFINITION FOR 1950 TACOMA NARROWS BRIDGE. As used in
23 this chapter:

24 (1) "Toll bridge" means a bridge constructed or acquired under this
25 chapter, upon which tolls are charged, together with all appurtenances,
26 additions, alterations, improvements, and replacements thereof, and the
27 approaches thereto, and all lands and interests used therefor, and
28 buildings and improvements thereon.

29 (2) "Toll road" means any express highway, superhighway, or
30 motorway at such locations and between such termini as may be
31 established by law, and constructed or to be constructed as a limited
32 access highway under the provisions of this chapter by the department,
33 and shall include, but not be limited to, all bridges, tunnels,
34 overpasses, underpasses, interchanges, entrance plazas, approaches,
35 toll houses, service areas, service facilities, communications

1 facilities, and administration, storage, and other buildings that the
2 department may deem necessary for the operation of the project,
3 together with all property, rights, easements, and interests that may
4 be acquired by the department for the construction or the operation of
5 the project, all of which shall be conducted in the same manner and
6 under the same procedure as provided for the establishing,
7 constructing, operating, and maintaining of toll bridges by the
8 department, insofar as those procedures are reasonably consistent and
9 applicable.

10 (3) "1950 Tacoma Narrows bridge" means the bridge crossing the
11 Tacoma Narrows that was opened to vehicle travel in 1950.

12 **Sec. 3.** RCW 47.46.030 and 1996 c 280 s 1 are each amended to read
13 as follows:

14 DEMONSTRATION PROJECTS--SELECTION--PUBLIC INVOLVEMENT. (1) The
15 secretary or a designee shall solicit proposals from, and negotiate and
16 enter into agreements with, private entities to undertake as
17 appropriate, together with the department and other public entities,
18 all or a portion of the study, planning, design, construction,
19 operation, and maintenance of transportation systems and facilities,
20 using in whole or in part public or private sources of financing.

21 The public-private initiatives program may develop up to six
22 demonstration projects. Each proposal shall be weighed on its own
23 merits, and each of the six agreements shall be negotiated
24 individually, and as a stand-alone project.

25 (2) If project proposals selected prior to September 1, 1994, are
26 terminated by the public or private sectors, the department shall not
27 select any new projects, including project proposals submitted to the
28 department prior to September 1, 1994, and designated by the
29 transportation commission as placeholder projects, after June 16, 1995,
30 until June 30, 1997.

31 The department, in consultation with the legislative transportation
32 committee, shall conduct a program and fiscal audit of the public-
33 private initiatives program for the biennium ending June 30, 1997. The
34 department shall submit a progress report to the legislative
35 transportation committee on the program and fiscal audit by June 30,
36 1996, with preliminary and final audit reports due December 1, 1996,
37 and June 30, 1997, respectively.

1 The department shall develop and submit a proposed public
2 involvement plan to the 1997 legislature to identify the process for
3 selecting new potential projects and the associated costs of
4 implementing the plan. The legislature must adopt the public
5 involvement plan before the department may proceed with any activity
6 related to project identification and selection. Following legislative
7 adoption of the public involvement plan, the department is authorized
8 to implement the plan and to identify potential new projects.

9 The public involvement plan for projects selected after June 30,
10 1997, shall, at a minimum, identify projects that: (a) Have the
11 potential of achieving overall public support among users of the
12 projects, residents of communities in the vicinity of the projects, and
13 residents of communities impacted by the projects; (b) meet a state
14 transportation need; (c) provide a significant state benefit; and (d)
15 provide competition among proposers and maximum cost benefits to users.
16 Prospective projects may include projects identified by the department
17 or submitted by the private sector.

18 Projects that meet the minimum criteria established under this
19 section and the requirements of the public involvement plan developed
20 by the department and approved by the legislature shall be submitted to
21 the Washington state transportation commission for its review. The
22 commission, in turn, shall submit a list of eligible projects to the
23 legislative transportation committee for its consideration. Forty-five
24 days after the submission to the legislative transportation committee
25 of the list of eligible projects, the secretary is authorized to
26 solicit proposals for the eligible project.

27 (3) Prior to entering into agreements with private entities under
28 the requirements of RCW 47.46.040 for any project proposal selected
29 before September 1, 1994, or after June 30, 1997, except as provided
30 for in subsections (11) and (12) of this section, the department shall
31 require an advisory vote as provided under subsections (5) through (10)
32 of this section.

33 (4) The advisory vote shall apply to project proposals selected
34 prior to September 1, 1994, or after June 30, 1997, that receive public
35 opposition as demonstrated by the submission to the department of
36 original petitions bearing at least five thousand signatures of
37 individuals opposing the project collected and submitted in accordance
38 with the dates established in subsections (12) and (13) of this
39 section. The advisory vote shall be on the preferred alternative

1 identified under the requirements of chapter 43.21C RCW and, if
2 applicable, the national environmental policy act, 42 U.S.C. 4321 et
3 seq. The execution by the department of the advisory vote process
4 established in this section is subject to the prior appropriation of
5 funds by the legislature for the purpose of conducting environmental
6 impact studies, a public involvement program, local involvement
7 committee activities, traffic and economic impact analyses, engineering
8 and technical studies, and the advisory vote.

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

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

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

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

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

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

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

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

38 (8) The department, in consultation with the local involvement
39 committee, shall develop a description for selected project proposals.

1 After developing the description of the project proposal, the
2 department shall publish the project proposal description in newspapers
3 of general circulation for seven calendar days in the affected project
4 area. Within fourteen calendar days after the last day of the
5 publication of the project proposal description, the department shall
6 transmit a copy of the map depicting the affected project area and the
7 description of the project proposal to the county auditor of the county
8 in which any portion of the affected project area is located.

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

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

31 (11) Notwithstanding any other provision of law, the department may
32 contract with a private developer of a selected project proposal to
33 conduct environmental impact studies, a public involvement program, and
34 engineering and technical studies funded by the legislature. For
35 projects subject to this subsection, the department shall not enter
36 into an agreement under RCW 47.46.040 prior to the advisory vote on the
37 preferred alternative.

38 (12) Subsections (5) through (10) of this section shall not apply
39 to project proposals selected prior to September 1, 1994, that have no

1 organized public opposition as demonstrated by the submission to the
2 department of original petitions bearing at least five thousand
3 signatures of individuals opposing the project, collected and submitted
4 after September 1, 1994, and by thirty calendar days after June 16,
5 1995.

6 (13) Subsections (5) through (10) of this section shall not apply
7 to project proposals selected after June 30, 1997, that have no
8 organized public opposition as demonstrated by the submission to the
9 department of original petitions bearing at least five thousand
10 signatures of individuals opposing the project, collected and submitted
11 by ninety calendar days after project selection.

12 NEW SECTION. **Sec. 4.** A new section is added to chapter 47.46 RCW
13 to read as follows:

14 USE OF STATE BONDS ON CERTAIN PROJECTS. (1) To the extent that the
15 legislature specifically appropriates funding for a project developed
16 under this chapter using the proceeds of bonds issued by the state, an
17 agreement for the design or construction of the project entered into by
18 the secretary must incorporate provisions that are consistent with the
19 use of the state financing provided by the appropriation.

20 (2) The secretary shall amend existing agreements or execute new
21 agreements to comply with subsection (1) of this section.

22 (3) If the secretary is unable to reach agreement with other
23 parties on contractual provisions providing for state financing, the
24 secretary shall not enter into an agreement, or shall take no action
25 with respect to an agreement, or shall exercise termination provisions.

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

28 STATE TOLL FACILITIES AUTHORIZED FOR PPI PROJECTS. The department
29 may provide for the establishment and construction of state toll bridge
30 facilities upon any public highways of this state together with
31 approaches to them under agreements entered into under this chapter to
32 develop such facilities. A state toll bridge facility authorized under
33 this section includes, but is not limited to, the construction of an
34 additional toll bridge, including approaches, adjacent to and within
35 two miles of an existing bridge, the imposition of tolls on both
36 bridges, and the operation of both bridges as one toll facility.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 47.46 RCW
2 to read as follows:

3 CITIZEN ADVISORY COMMITTEE CREATED. (1) A citizen advisory
4 committee must be created for any project developed under this chapter
5 that imposes toll charges for use of a transportation facility. The
6 governor shall appoint nine members to the committee, all of whom must
7 be permanent residents of the affected project area, as that term is
8 defined by the department.

9 (2) The citizen advisory committee shall serve in an advisory
10 capacity to the commission on all matters related to the imposition of
11 tolls. Members of the committee shall serve without compensation.

12 (3) No toll charge may be imposed or modified unless the citizen
13 advisory committee has been given at least twenty days to review and
14 comment on any proposed toll charge schedule. In setting toll rates,
15 the commission shall give consideration to any recommendations of the
16 citizen advisory committee.

17 NEW SECTION. **Sec. 7.** A new section is added to chapter 47.46 RCW
18 to read as follows:

19 COMMISSION TO ESTABLISH TOLL CHARGES. (1) The commission shall fix
20 the rates of toll and other charges for all toll bridges built under
21 this chapter that are financed primarily by bonds issued by the state.
22 Subject to section 6 of this act, the commission may impose and modify
23 toll charges from time to time as conditions warrant.

24 (2) In establishing toll charges, the commission shall give due
25 consideration to any required costs for operating and maintaining the
26 toll bridge or toll bridges, including the cost of insurance, and to
27 any amount required by law to meet the redemption of bonds and interest
28 payments on them.

29 (3) The toll charges must be imposed in amounts sufficient to:

30 (a) Provide annual revenue sufficient to provide for annual
31 operating and maintenance expenses;

32 (b) Make payments required under sections 11 and 12 of this act,
33 including insurance costs and the payment of principal and interest on
34 bonds issued for any toll bridge or toll bridges authorized under this
35 chapter; and

36 (c) Repay the motor vehicle fund under sections 8, 11, and 12 of
37 this act.

1 (4) The bond principal and interest payments, including repayment
2 of the motor vehicle fund for amounts transferred from that fund to
3 provide for such principal and interest payments, constitute a first
4 direct and exclusive charge and lien on all tolls and other revenues
5 from the toll bridge concerned, subject to operating and maintenance
6 expenses.

7 NEW SECTION. **Sec. 8.** A new section is added to chapter 47.46 RCW
8 to read as follows:

9 TERM OF TOLLS. (1) The commission shall retain toll charges on any
10 existing and future facilities constructed under this chapter and
11 financed primarily by bonds issued by the state until:

12 (a) All costs of investigation, financing, acquisition of property,
13 and construction advanced from the motor vehicle fund have been fully
14 repaid, except for funds previously expended from a legislative
15 appropriation prior to the effective date of this act;

16 (b) Obligations incurred in constructing that facility have been
17 fully paid; and

18 (c) The motor vehicle fund is fully repaid under section 12 of this
19 act.

20 (2) This section does not prohibit the use of toll revenues to fund
21 maintenance, operations, or management of facilities constructed under
22 this chapter.

23 (3) Notwithstanding the provisions of subsection (2) of this
24 section, upon satisfaction of the conditions enumerated in subsection
25 (1) of this section:

26 (a) The facility must be operated as a toll-free facility; and

27 (b) The operation, maintenance, upkeep, and repair of the facility
28 must be paid from funds appropriated for the use of the department for
29 the construction and maintenance of the primary state highways of the
30 state of Washington.

31 NEW SECTION. **Sec. 9.** A new section is added to chapter 47.46 RCW
32 to read as follows:

33 TOLL INCREASES IN EXCESS OF FISCAL GROWTH FACTOR. Pursuant to RCW
34 43.135.055, the legislature authorizes the transportation commission to
35 increase bridge tolls in excess of the fiscal growth factor.

1 NEW SECTION. Sec. 10. A new section is added to chapter 47.46 RCW
2 to read as follows:

3 USE OF STATE BOND PROCEEDS. Proceeds of the sale of bonds issued
4 by the state for projects constructed under this chapter must be
5 deposited in the state treasury to the credit of a special account
6 designated for those purposes. Those proceeds must be expended only
7 for the purposes enumerated in this chapter, for payment of the expense
8 incurred in the issuance and sale of any such bonds, and to repay the
9 motor vehicle fund, except for funds previously expended from a
10 legislative appropriation prior to the effective date of this act, for
11 any sums advanced to pay the cost of surveys, location, design,
12 development, right-of-way, and other activities related to the
13 financing and construction of the bridge and its approaches.

14 NEW SECTION. Sec. 11. A new section is added to chapter 47.46 RCW
15 to read as follows:

16 TACOMA NARROWS TOLL BRIDGE ACCOUNT CREATED. A special account to
17 be known as the Tacoma Narrows toll bridge account is created in the
18 motor vehicle fund in the state treasury.

19 (1) Deposits to the account must include:

20 (a) All proceeds of bonds issued for construction of the Tacoma
21 Narrows public-private initiative project, including any capitalized
22 interest;

23 (b) All of the toll charges and other revenues received from the
24 operation of the Tacoma Narrows bridge as a toll facility, to be
25 deposited at least monthly; and

26 (c) Any interest that may be earned from the deposit or investment
27 of those revenues.

28 (2) Proceeds of bonds shall be used consistent with section 10 of
29 this act, including the reimbursement of expenses and fees incurred
30 under agreements entered into under RCW 47.46.040 as required by those
31 agreements.

32 (3) Toll charges, other revenues, and interest may be used to:

33 (a) Pay any required costs of financing, operation, maintenance,
34 and management and necessary repairs of the facility; and

35 (b) Repay amounts to the motor vehicle fund as required under
36 section 12 of this act.

37 (4) When repaying the motor vehicle fund under section 12 of this
38 act, the state treasurer shall transfer funds from the Tacoma Narrows

1 toll bridge account to the motor vehicle fund on or before each debt
2 service date for bonds issued for the Tacoma Narrows public-private
3 initiative project in an amount sufficient to repay the motor vehicle
4 fund for amounts transferred from that fund to the highway bond
5 retirement fund to provide for any bond principal and interest due on
6 that date. The state treasurer may establish subaccounts for the
7 purpose of segregating toll charges, bond sale proceeds, and other
8 revenues.

9 NEW SECTION. **Sec. 12.** A new section is added to chapter 47.46 RCW
10 to read as follows:

11 TOLL CHARGES REMAIN ON FACILITY TO REPAY MOTOR VEHICLE FUND. Toll
12 charges must be used to repay the motor vehicle fund consistent with
13 section 11 of this act for any amounts transferred from the motor
14 vehicle fund to the highway bond retirement fund under RCW 47.10.847 to
15 provide for bond retirement and interest on bonds issued for the Tacoma
16 Narrows public-private initiative project. Toll charges must remain on
17 any facility financed by bonds issued by the state for a length of time
18 necessary to repay the motor vehicle fund, except for funds previously
19 expended from a legislative appropriation prior to the effective date
20 of this act, for any amounts expended from that fund for the design,
21 development, right-of-way, financing, construction, maintenance,
22 repair, or operation of the toll facility or for amounts transferred
23 from the motor vehicle fund to the highway bond retirement fund under
24 RCW 47.10.847 to provide for bond retirement and interest on bonds
25 issued for the Tacoma Narrows public-private initiative project.

26 NEW SECTION. **Sec. 13.** A new section is added to chapter 47.46 RCW
27 to read as follows:

28 ALTERATION DOES NOT CONSTITUTE NEW PROPOSAL. If a proposal is or
29 has been selected for the design, development, construction,
30 maintenance, or operation of transportation systems or facilities under
31 this chapter, subsequent agreements may be made to implement portions
32 of the proposal that modify the proposal or that do not incorporate all
33 the features of the proposal. Any such modified agreement does not
34 require the solicitation or consideration of additional proposals for
35 all or any portion of the services rendered under that modified
36 agreement. Modified agreements may provide for the reimbursement of
37 expenses and fees incurred under earlier agreements.

1 NEW SECTION. **Sec. 14.** A new section is added to chapter 47.46 RCW
2 to read as follows:

3 APPLICABLE RULES AND STATUTES. All projects designed, constructed,
4 and operated under this chapter must comply with all applicable rules
5 and statutes in existence at the time the agreement is executed,
6 including but not limited to the following provisions: Chapter 39.12
7 RCW, this title, RCW 41.06.380, chapter 47.64 RCW, RCW 49.60.180, and
8 49 C.F.R. Part 21.

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

11 APPLICATION OF RCW 47.46.040 AND 47.46.050. RCW 47.46.040 and
12 47.46.050 apply only to those agreements that include private sources
13 of financing in whole or in part.

14 **Sec. 16.** RCW 47.46.040 and 2001 c 64 s 14 are each amended to read
15 as follows:

16 DEMONSTRATION PROJECTS--TERMS OF AGREEMENTS--PUBLIC PARTICIPATION.
17 (1) All projects designed, constructed, and operated under this
18 authority must comply with all applicable rules and statutes in
19 existence at the time the agreement is executed, including but not
20 limited to the following provisions: Chapter 39.12 RCW, this title,
21 RCW 41.06.380, chapter 47.64 RCW, RCW 49.60.180, and 49 C.F.R. Part 21.

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

25 (3) Agreements (~~shall~~) may provide for private ownership of the
26 projects during the construction period. After completion and final
27 acceptance of each project or discrete segment thereof, the agreement
28 (~~shall~~) may provide for state ownership of the transportation systems
29 and facilities and lease to the private entity unless the state elects
30 to provide for ownership of the facility by the private entity during
31 the term of the agreement.

32 The state (~~shall~~) may lease each of the demonstration projects,
33 or applicable project segments, to the private entities for operating
34 purposes for up to fifty years.

35 (4) The department may exercise any power possessed by it to
36 facilitate the development, construction, financing operation, and
37 maintenance of transportation projects under this (~~chapter~~) section.

1 Agreements for maintenance services entered into under this section
2 shall provide for full reimbursement for services rendered by the
3 department or other state agencies. Agreements for police services for
4 projects, involving state highway routes, developed under agreements
5 shall be entered into with the Washington state patrol. The agreement
6 for police services shall provide that the state patrol will be
7 reimbursed for costs on a comparable basis with the costs incurred for
8 comparable service on other state highway routes. The department may
9 provide services for which it is reimbursed, including but not limited
10 to preliminary planning, environmental certification, and preliminary
11 design of the demonstration projects.

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

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

35 (7) The agreements entered into under this section may include
36 provisions authorizing the state to grant necessary easements and lease
37 to a private entity existing rights of way or rights of way
38 subsequently acquired with public or private financing. The agreements
39 may also include provisions to lease to the entity airspace above or

1 below the right of way associated or to be associated with the private
2 entity's transportation facility. In consideration for the reversion
3 rights in these privately constructed facilities, the department may
4 negotiate a charge for the lease of airspace rights during the term of
5 the agreement for a period not to exceed fifty years. If, after the
6 expiration of this period, the department continues to lease these
7 airspace rights to the private entity, it shall do so only at fair
8 market value. The agreement may also provide the private entity the
9 right of first refusal to undertake projects utilizing airspace owned
10 by the state in the vicinity of the public-private project.

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

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

25 (10)(a) In carrying out the public involvement process required in
26 subsection (9) of this section, the private entity shall proactively
27 seek public participation through a process appropriate to the
28 characteristics of the project that assesses and demonstrates public
29 support among: Users of the project, residents of communities in the
30 vicinity of the project, and residents of communities impacted by the
31 project.

32 (b) The private entity shall conduct a comprehensive public
33 involvement process that provides, periodically throughout the
34 development and implementation of the project, users and residents of
35 communities in the affected project area an opportunity to comment upon
36 key issues regarding the project including, but not limited to: (i)
37 Alternative sizes and scopes; (ii) design; (iii) environmental
38 assessment; (iv) right of way and access plans; (v) traffic impacts;
39 (vi) tolling or user fee strategies and tolling or user fee ranges;

1 (vii) project cost; (viii) construction impacts; (ix) facility
2 operation; and (x) any other salient characteristics.

3 (c) If the affected project area has not been defined, the private
4 entity shall define the affected project area by conducting, at a
5 minimum: (i) A comparison of the estimated percentage of residents of
6 communities in the vicinity of the project and in other communities
7 impacted by the project who could be subject to tolls or user fees and
8 the estimated percentage of other users and transient traffic that
9 could be subject to tolls or user fees; (ii) an analysis of the
10 anticipated traffic diversion patterns; (iii) an analysis of the
11 potential economic impact resulting from proposed toll rates or user
12 fee rates imposed on residents, commercial traffic, and commercial
13 entities in communities in the vicinity of and impacted by the project;
14 (iv) an analysis of the economic impact of tolls or user fees on the
15 price of goods and services generally; and (v) an analysis of the
16 relationship of the project to state transportation needs and benefits.

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

19 (d) In seeking public participation, the private entity shall
20 establish a local involvement committee or committees comprised of
21 residents of the affected project area, individuals who represent
22 cities and counties in the affected project area, organizations formed
23 to support or oppose the project, if such organizations exist, and
24 users of the project. The private entity shall, at a minimum,
25 establish a committee as required under the specifications of RCW
26 47.46.030(6)(b) (ii) and (iii) and appointments to such committee shall
27 be made no later than thirty days after the project area is defined.

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

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

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

1 **Sec. 17.** RCW 47.46.050 and 1995 2nd sp.s. c 19 s 4 are each
2 amended to read as follows:

3 FINANCIAL ARRANGEMENTS. (1) The department may enter into
4 agreements using federal, state, and local financing in connection with
5 the projects, including without limitation, grants, loans, and other
6 measures authorized by (~~section 1012 of ISTEAA~~) federal law, and to do
7 such things as necessary and desirable to maximize the funding and
8 financing, including the formation of a revolving loan fund to
9 implement this section.

10 (2) Agreements entered into under this section (~~shall~~) may
11 authorize the private entity to lease the facilities within a
12 designated area or areas from the state and to impose user fees or
13 tolls within the designated area to allow a reasonable rate of return
14 on investment, as established through a negotiated agreement between
15 the state and the private entity. The negotiated agreement shall
16 determine a maximum development fee and, where appropriate, a maximum
17 rate of return on investment, based on project and financing
18 characteristics. If the negotiated rate of return on investment or
19 development fee is not affected, the private entity may establish and
20 modify toll rates and user fees.

21 (3) Agreements that include a maximum rate of return may establish
22 "incentive" rates of return beyond the negotiated maximum rate of
23 return on investment. The incentive rates of return shall be designed
24 to provide financial benefits to the affected public jurisdictions and
25 the private entity, given the attainment of various safety,
26 performance, or transportation demand management goals. The incentive
27 rates of return shall be negotiated in the agreement.

28 (4) Agreements shall require that over the term of the ownership or
29 lease the user fees or toll revenues be applied only to payment of
30 (~~the private entity's~~):

31 (a) The capital outlay costs for the project, including (~~project~~
32 ~~development costs, interest expense,~~) the costs associated with
33 planning, design, development, financing, construction, improvement,
34 operations, toll collection, maintenance, and administration of the
35 project(~~()~~);

36 (b) The reimbursement to the state for all costs associated with
37 (~~an election as required under RCW 47.46.030, the costs of~~) project
38 review and oversight(~~()~~) and technical and law enforcement
39 services(~~()~~);

1 (c) The establishment of a fund to assure the adequacy of
2 maintenance expenditures(~~(7)~~); and

3 (d) A reasonable return on investment to the private entity. A
4 negotiated agreement shall not extend the term of the ownership or
5 lease beyond the period of time required for payment of the private
6 entity's capital outlay costs for the project under this subsection.

7 **Sec. 18.** RCW 47.46.060 and 1998 c 179 s 4 are each amended to read
8 as follows:

9 DEFERRAL OF TAXES. (1) Any person, including the department of
10 transportation and any private entity (~~(that is party to an agreement~~
11 ~~under this chapter)) or entities, may apply for deferral of taxes on
12 the site preparation for, the construction of, the acquisition of any
13 related machinery and equipment which will become a part of, and the
14 rental of equipment for use in the state route number 16 corridor
15 improvements project under this chapter. Application shall be made to
16 the department of revenue in a form and manner prescribed by the
17 department of revenue. The application shall contain information
18 regarding estimated or actual costs, time schedules for completion and
19 operation, and other information required by the department of revenue.
20 The department of revenue shall approve the application within sixty
21 days if it meets the requirements of this section.~~

22 (2) The department of revenue shall issue a sales and use tax
23 deferral certificate for state and local sales and use taxes due under
24 chapters 82.08, 82.12, and 82.14 RCW on the project. (~~The use of the~~
25 ~~certificate shall be governed by rules established by the department of~~
26 ~~revenue.))~~

27 (3) The department of transportation or a private entity granted a
28 tax deferral under this section shall begin paying the deferred taxes
29 in the fifth year after the date certified by the department of revenue
30 as the date on which the project is operationally complete. The first
31 payment is due on December 31st of the fifth calendar year after such
32 certified date, with subsequent annual payments due on December 31st of
33 the following nine years. Each payment shall equal ten percent of the
34 deferred tax. The project is operationally complete under this section
35 when the collection of tolls is commenced for the state route number 16
36 improvements covered by the deferral.

1 (4) The department of revenue may authorize an accelerated
2 repayment schedule upon request of the department of transportation or
3 a private entity granted a deferral under this section.

4 (5) Interest shall not be charged on any taxes deferred under this
5 section for the period of deferral, although all other penalties and
6 interest applicable to delinquent excise taxes may be assessed and
7 imposed for delinquent payments under this section. The debt for
8 deferred taxes is not extinguished by insolvency or other failure of
9 the private entity. Transfer of ownership does not terminate the
10 deferral.

11 (6) Applications and any other information received by the
12 department of revenue under this section are not confidential and are
13 subject to disclosure. Chapter 82.32 RCW applies to the administration
14 of this section.

15 **Sec. 19.** RCW 47.56.030 and 2001 c 59 s 1 are each amended to read
16 as follows:

17 DEPARTMENT'S POWERS AND DUTIES REGARDING TOLL FACILITIES. (1)
18 Except as permitted under chapter 47.46 RCW:

19 (a) The department of transportation shall have full charge of the
20 construction of all toll bridges and other toll facilities including
21 the Washington state ferries, and the operation and maintenance
22 thereof.

23 (b) The transportation commission shall determine and establish the
24 tolls and charges thereon, and shall perform all duties and exercise
25 all powers relating to the financing, refinancing, and fiscal
26 management of all toll bridges and other toll facilities including the
27 Washington state ferries, and bonded indebtedness in the manner
28 provided by law.

29 (c) The department shall have full charge of design of all toll
30 facilities.

31 (d) Except as provided in this section, the department shall
32 proceed with the construction of such toll bridges and other facilities
33 and the approaches thereto by contract in the manner of state highway
34 construction immediately upon there being made available funds for such
35 work and shall prosecute such work to completion as rapidly as
36 practicable. The department is authorized to negotiate contracts for
37 any amount without bid under ~~((a))~~ (d)(i) and ~~((b))~~ (ii) of this
38 subsection:

1 (~~(a)~~) (i) Emergency contracts, in order to make repairs to
2 ferries or ferry terminal facilities or removal of such facilities
3 whenever continued use of ferries or ferry terminal facilities
4 constitutes a real or immediate danger to the traveling public or
5 precludes prudent use of such ferries or facilities; and

6 (~~(b)~~) (ii) Single source contracts for vessel dry dockings, when
7 there is clearly and legitimately only one available bidder to conduct
8 dry dock-related work for a specific class or classes of vessels. The
9 contracts may be entered into for a single vessel dry docking or for
10 multiple vessel dry dockings for a period not to exceed two years.

11 (2) The department shall proceed with the procurement of materials,
12 supplies, services, and equipment needed for the support, maintenance,
13 and use of a ferry, ferry terminal, or other facility operated by
14 Washington state ferries, in accordance with chapter 43.19 RCW except
15 as follows:

16 (a) Except as provided in (d) of this subsection, when the
17 secretary of the department of transportation determines in writing
18 that the use of invitation for bid is either not practicable or not
19 advantageous to the state and it may be necessary to make competitive
20 evaluations, including technical or performance evaluations among
21 acceptable proposals to complete the contract award, a contract may be
22 entered into by use of a competitive sealed proposals method, and a
23 formal request for proposals solicitation. Such formal request for
24 proposals solicitation shall include a functional description of the
25 needs and requirements of the state and the significant factors.

26 (b) When purchases are made through a formal request for proposals
27 solicitation the contract shall be awarded to the responsible proposer
28 whose competitive sealed proposal is determined in writing to be the
29 most advantageous to the state taking into consideration price and
30 other evaluation factors set forth in the request for proposals. No
31 significant factors may be used in evaluating a proposal that are not
32 specified in the request for proposals. Factors that may be considered
33 in evaluating proposals include but are not limited to: Price;
34 maintainability; reliability; commonality; performance levels; life
35 cycle cost if applicable under this section; cost of transportation or
36 delivery; delivery schedule offered; installation cost; cost of spare
37 parts; availability of parts and service offered; and the following:

38 (i) The ability, capacity, and skill of the proposer to perform the
39 contract or provide the service required;

1 (ii) The character, integrity, reputation, judgment, experience,
2 and efficiency of the proposer;

3 (iii) Whether the proposer can perform the contract within the time
4 specified;

5 (iv) The quality of performance of previous contracts or services;

6 (v) The previous and existing compliance by the proposer with laws
7 relating to the contract or services;

8 (vi) Objective, measurable criteria defined in the request for
9 proposal. These criteria may include but are not limited to items such
10 as discounts, delivery costs, maintenance services costs, installation
11 costs, and transportation costs; and

12 (vii) Such other information as may be secured having a bearing on
13 the decision to award the contract.

14 (c) When purchases are made through a request for proposal process,
15 proposals received shall be evaluated based on the evaluation factors
16 set forth in the request for proposal. When issuing a request for
17 proposal for the procurement of propulsion equipment or systems that
18 include an engine, the request for proposal must specify the use of a
19 life cycle cost analysis that includes an evaluation of fuel
20 efficiency. When a life cycle cost analysis is used, the life cycle
21 cost of a proposal shall be given at least the same relative importance
22 as the initial price element specified in the request of proposal
23 documents. The department may reject any and all proposals received.
24 If the proposals are not rejected, the award shall be made to the
25 proposer whose proposal is most advantageous to the department,
26 considering price and the other evaluation factors set forth in the
27 request for proposal.

28 (d) If the department is procuring large equipment or systems
29 (e.g., electrical, propulsion) needed for the support, maintenance, and
30 use of a ferry operated by Washington state ferries, the department
31 shall proceed with a formal request for proposal solicitation under
32 this subsection (2) without a determination of necessity by the
33 secretary.

34 **Sec. 20.** RCW 47.56.270 and 1983 c 3 s 129 are each amended to read
35 as follows:

36 LAKE WASHINGTON AND 1950 TACOMA NARROWS BRIDGE MADE PART OF PRIMARY
37 HIGHWAYS. The Lake Washington bridge (~~and the Tacoma Narrows bridge~~)
38 in chapter 47.17 RCW made a part of the primary state highways of the

1 state of Washington, shall, upon completion, be operated, maintained,
2 kept up, and repaired by the department in the manner provided in this
3 chapter, and the cost of such operation, maintenance, upkeep, and
4 repair shall be paid from funds appropriated for the use of the
5 department for the construction and maintenance of the primary state
6 highways of the state of Washington.

7 **Sec. 21.** RCW 47.56.271 and 1983 c 3 s 130 are each amended to read
8 as follows:

9 1950 TACOMA NARROWS BRIDGE TO REMAIN TOLL-FREE--EXCEPTION. Except
10 as otherwise provided in this section, the 1950 Tacoma Narrows bridge
11 hereinbefore by the provisions of RCW 47.17.065 and 47.56.270 made a
12 part of the primary state highways of the state shall be operated and
13 maintained by the department as a toll-free facility at such time as
14 the ((present)) bonded indebtedness relating ((thereto)) to the
15 construction of the 1950 Tacoma Narrows bridge is wholly retired and
16 tolls equaling the ((present)) indebtedness of the toll bridge
17 authority incurred for the construction of the 1950 Tacoma Narrows
18 bridge to the county of Pierce have been collected. ((It is the
19 express intent of the legislature that the provisions of RCW 47.56.245
20 {section 47.56.245, chapter 13, Laws of 1961} shall not be applicable
21 to the Tacoma Narrows bridge.)) Toll charges may be imposed upon the
22 1950 Tacoma Narrows bridge only if that bridge is included as part of
23 a public toll bridge facility that includes an additional toll bridge
24 adjacent to the 1950 Tacoma Narrows bridge and constructed under
25 section 5 of this act.

26 **Sec. 22.** RCW 39.46.070 and 1983 c 167 s 7 are each amended to read
27 as follows:

28 BONDS--PAYMENT OF COSTS OF ISSUANCE AND SALE. (1) Except as
29 provided in subsection (2) of this section, the proceeds of any bonds
30 issued by the state or a local government may be used to pay incidental
31 costs and costs related to the sale and issuance of the bonds. Such
32 costs include payments for fiscal and legal expenses, obtaining bond
33 ratings, printing, engraving, advertising, establishing and funding
34 reserve accounts and other accounts, an amount for working capital,
35 capitalized interest for up to six months after completion of
36 construction, necessary and related engineering, architectural,

1 planning, and inspection costs, and other similar activities or
2 purposes.

3 (2) In addition to the costs enumerated in subsection (1) of this
4 section, costs authorized under this section include capitalized
5 interest for up to seventy-two months from the date of issuance for
6 bonds issued by the state for the construction of a public toll bridge
7 under chapter 47.46 RCW.

8 **Sec. 23.** RCW 47.56.245 and 1984 c 7 s 267 are each amended to read
9 as follows:

10 TOLL CHARGES RETAINED UNTIL COSTS PAID. The department shall
11 retain toll charges on all existing and future facilities until all
12 costs of investigation, financing, acquisition of property, and
13 construction advanced from the motor vehicle fund, except for funds
14 previously expended from a legislative appropriation prior to the
15 effective date of this act, and obligations incurred under RCW
16 47.56.250 and chapter 16, Laws of 1945 have been fully paid.

17 With respect to every facility completed after March 19, 1953,
18 costs of maintenance(~~(, management,)~~) and operation shall be paid
19 periodically out of the revenues of the facility in which such costs
20 were incurred.

21 **Sec. 24.** RCW 43.84.092 and 2001 2nd sp.s. c 14 s 608, 2001 c 273
22 s 6, 2001 c 141 s 3, and 2001 c 80 s 5 are each reenacted and amended
23 to read as follows:

24 (1) All earnings of investments of surplus balances in the state
25 treasury shall be deposited to the treasury income account, which
26 account is hereby established in the state treasury.

27 (2) The treasury income account shall be utilized to pay or receive
28 funds associated with federal programs as required by the federal cash
29 management improvement act of 1990. The treasury income account is
30 subject in all respects to chapter 43.88 RCW, but no appropriation is
31 required for refunds or allocations of interest earnings required by
32 the cash management improvement act. Refunds of interest to the
33 federal treasury required under the cash management improvement act
34 fall under RCW 43.88.180 and shall not require appropriation. The
35 office of financial management shall determine the amounts due to or
36 from the federal government pursuant to the cash management improvement
37 act. The office of financial management may direct transfers of funds

1 between accounts as deemed necessary to implement the provisions of the
2 cash management improvement act, and this subsection. Refunds or
3 allocations shall occur prior to the distributions of earnings set
4 forth in subsection (4) of this section.

5 (3) Except for the provisions of RCW 43.84.160, the treasury income
6 account may be utilized for the payment of purchased banking services
7 on behalf of treasury funds including, but not limited to, depository,
8 safekeeping, and disbursement functions for the state treasury and
9 affected state agencies. The treasury income account is subject in all
10 respects to chapter 43.88 RCW, but no appropriation is required for
11 payments to financial institutions. Payments shall occur prior to
12 distribution of earnings set forth in subsection (4) of this section.

13 (4) Monthly, the state treasurer shall distribute the earnings
14 credited to the treasury income account. The state treasurer shall
15 credit the general fund with all the earnings credited to the treasury
16 income account except:

17 (a) The following accounts and funds shall receive their
18 proportionate share of earnings based upon each account's and fund's
19 average daily balance for the period: The capitol building
20 construction account, the Cedar River channel construction and
21 operation account, the Central Washington University capital projects
22 account, the charitable, educational, penal and reformatory
23 institutions account, the common school construction fund, the county
24 criminal justice assistance account, the county sales and use tax
25 equalization account, the data processing building construction
26 account, the deferred compensation administrative account, the deferred
27 compensation principal account, the department of retirement systems
28 expense account, the drinking water assistance account, the drinking
29 water assistance administrative account, the drinking water assistance
30 repayment account, the Eastern Washington University capital projects
31 account, the education construction fund, the emergency reserve fund,
32 the federal forest revolving account, the health services account, the
33 public health services account, the health system capacity account, the
34 personal health services account, the state higher education
35 construction account, the higher education construction account, the
36 highway infrastructure account, the industrial insurance premium refund
37 account, the judges' retirement account, the judicial retirement
38 administrative account, the judicial retirement principal account, the
39 local leasehold excise tax account, the local real estate excise tax

1 account, the local sales and use tax account, the medical aid account,
2 the mobile home park relocation fund, the multimodal transportation
3 account, the municipal criminal justice assistance account, the
4 municipal sales and use tax equalization account, the natural resources
5 deposit account, the oyster reserve land account, the perpetual
6 surveillance and maintenance account, the public employees' retirement
7 system plan 1 account, the public employees' retirement system combined
8 plan 2 and plan 3 account, the public health supplemental account, the
9 Puyallup tribal settlement account, the resource management cost
10 account, the site closure account, the special wildlife account, the
11 state employees' insurance account, the state employees' insurance
12 reserve account, the state investment board expense account, the state
13 investment board commingled trust fund accounts, the supplemental
14 pension account, the Tacoma Narrows toll bridge account, the teachers'
15 retirement system plan 1 account, the teachers' retirement system
16 combined plan 2 and plan 3 account, the tobacco prevention and control
17 account, the tobacco settlement account, the transportation
18 infrastructure account, the tuition recovery trust fund, the University
19 of Washington bond retirement fund, the University of Washington
20 building account, the volunteer fire fighters' and reserve officers'
21 relief and pension principal fund, the volunteer fire fighters' and
22 reserve officers' administrative fund, the Washington fruit express
23 account, the Washington judicial retirement system account, the
24 Washington law enforcement officers' and fire fighters' system plan 1
25 retirement account, the Washington law enforcement officers' and fire
26 fighters' system plan 2 retirement account, the Washington school
27 employees' retirement system combined plan 2 and 3 account, the
28 Washington state health insurance pool account, the Washington state
29 patrol retirement account, the Washington State University building
30 account, the Washington State University bond retirement fund, the
31 water pollution control revolving fund, and the Western Washington
32 University capital projects account. Earnings derived from investing
33 balances of the agricultural permanent fund, the normal school
34 permanent fund, the permanent common school fund, the scientific
35 permanent fund, and the state university permanent fund shall be
36 allocated to their respective beneficiary accounts. All earnings to be
37 distributed under this subsection (4)(a) shall first be reduced by the
38 allocation to the state treasurer's service fund pursuant to RCW
39 43.08.190.

1 (b) The following accounts and funds shall receive eighty percent
2 of their proportionate share of earnings based upon each account's or
3 fund's average daily balance for the period: The aeronautics account,
4 the aircraft search and rescue account, the county arterial
5 preservation account, the department of licensing services account, the
6 essential rail assistance account, the ferry bond retirement fund, the
7 grade crossing protective fund, the high capacity transportation
8 account, the highway bond retirement fund, the highway safety account,
9 the motor vehicle fund, the motorcycle safety education account, the
10 pilotage account, the public transportation systems account, the Puget
11 Sound capital construction account, the Puget Sound ferry operations
12 account, the recreational vehicle account, the rural arterial trust
13 account, the safety and education account, the special category C
14 account, the state patrol highway account, the transportation equipment
15 fund, the transportation fund, the transportation improvement account,
16 the transportation improvement board bond retirement account, and the
17 urban arterial trust account.

18 (5) In conformance with Article II, section 37 of the state
19 Constitution, no treasury accounts or funds shall be allocated earnings
20 without the specific affirmative directive of this section.

21 NEW SECTION. **Sec. 25.** LEGISLATIVE OVERSIGHT COMMITTEE. The
22 department of transportation shall provide staff support to a
23 legislative oversight committee that will manage a study of public-
24 private partnerships in transportation. The legislative oversight
25 committee will consist of three members from each caucus in each house
26 of the legislature, appointed by the leadership of the legislators'
27 respective caucus. The legislative oversight committee shall analyze
28 and make recommendations on: (1) The barriers that prevent the private
29 sector from providing transportation services, which could include
30 ferry, bus, or monorail; (2) the use of public-private partnerships
31 nationally and the experiences of other states in using public-private
32 partnerships; (3) the public-private opportunities for transportation
33 projects in Washington; and (4) the advantages and disadvantages of the
34 financing options available for public-private partnerships. The
35 legislative oversight committee shall report its findings and
36 recommendations to the legislature by December 1, 2003.

