

2 **EHB 2723** - S AMD TO S AMD (S-4173.4/02)AMD 689
3 By Senators Haugen, Long and Benton

4 ADOPTED 02/26/02

5 On page 2, beginning on line 12 of the amendment, strike all of
6 section 3 and insert the following:

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

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

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

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

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

33 The department shall develop and submit a proposed public
34 involvement plan to the 1997 legislature to identify the process for
35 selecting new potential projects and the associated costs of
36 implementing the plan. The legislature must adopt the public

1 involvement plan before the department may proceed with any activity
2 related to project identification and selection. Following legislative
3 adoption of the public involvement plan, the department is authorized
4 to implement the plan and to identify potential new projects.

5 The public involvement plan for projects selected after June 30,
6 1997, shall, at a minimum, identify projects that: (a) Have the
7 potential of achieving overall public support among users of the
8 projects, residents of communities in the vicinity of the projects, and
9 residents of communities impacted by the projects; (b) meet a state
10 transportation need; (c) provide a significant state benefit; and (d)
11 provide competition among proposers and maximum cost benefits to users.
12 Prospective projects may include projects identified by the department
13 or submitted by the private sector.

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

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

29 (4) The advisory vote shall apply to project proposals selected
30 prior to September 1, 1994, or after June 30, 1997, that receive public
31 opposition as demonstrated by the submission to the department of
32 original petitions bearing at least five thousand signatures of
33 individuals opposing the project collected and submitted in accordance
34 with the dates established in subsections (12) and (13) of this
35 section. The advisory vote shall be on the preferred alternative
36 identified under the requirements of chapter 43.21C RCW and, if
37 applicable, the national environmental policy act, 42 U.S.C. 4321 et
38 seq. The execution by the department of the advisory vote process
39 established in this section is subject to the prior appropriation of

1 funds by the legislature for the purpose of conducting environmental
2 impact studies, a public involvement program, local involvement
3 committee activities, traffic and economic impact analyses, engineering
4 and technical studies, and the advisory vote.

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

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

30 (b) The members of the local involvement committee shall be: (i)
31 An elected official from each city within the affected project area;
32 (ii) an elected official from each county within the affected project
33 area; (iii) two persons from each county within the affected project
34 area who represent an organization formed in support of the project, if
35 the organization exists; (iv) two persons from each county within the
36 affected project area who represent an organization formed to oppose
37 the project, if the organization exists; and (v) four public members
38 active in a statewide transportation organization. If the committee
39 makeup results in an even number of committee members, there shall be

1 an additional appointment of an elected official from the county in
2 which all, or the greatest portion of the project is located.

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

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

22 (e) Members of the local involvement committee serve without
23 compensation and may not receive subsistence, lodging expenses, or
24 travel expenses.

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

34 (8) The department, in consultation with the local involvement
35 committee, shall develop a description for selected project proposals.
36 After developing the description of the project proposal, the
37 department shall publish the project proposal description in newspapers
38 of general circulation for seven calendar days in the affected project
39 area. Within fourteen calendar days after the last day of the

1 publication of the project proposal description, the department shall
2 transmit a copy of the map depicting the affected project area and the
3 description of the project proposal to the county auditor of the county
4 in which any portion of the affected project area is located.

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

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

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

34 (12) Subsections (5) through (10) of this section shall not apply
35 to project proposals selected prior to September 1, 1994, that have no
36 organized public opposition as demonstrated by the submission to the
37 department of original petitions bearing at least five thousand
38 signatures of individuals opposing the project, collected and submitted

1 after September 1, 1994, and by thirty calendar days after June 16,
2 1995.

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

9 On page 12, beginning on line 14 of the amendment, strike all of
10 section 16 and insert the following:

11 "Sec. 16. RCW 47.46.040 and 2001 c 64 s 14 are each amended to
12 read as follows:

13 DEMONSTRATION PROJECTS--TERMS OF AGREEMENTS--PUBLIC PARTICIPATION.

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

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

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

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

32 (4) The department may exercise any power possessed by it to
33 facilitate the development, construction, financing operation, and
34 maintenance of transportation projects under this (~~chapter~~) section.
35 Agreements for maintenance services entered into under this section
36 shall provide for full reimbursement for services rendered by the
37 department or other state agencies. Agreements for police services for

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

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

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

32 (7) The agreements entered into under this section may include
33 provisions authorizing the state to grant necessary easements and lease
34 to a private entity existing rights of way or rights of way
35 subsequently acquired with public or private financing. The agreements
36 may also include provisions to lease to the entity airspace above or
37 below the right of way associated or to be associated with the private
38 entity's transportation facility. In consideration for the reversion
39 rights in these privately constructed facilities, the department may

1 negotiate a charge for the lease of airspace rights during the term of
2 the agreement for a period not to exceed fifty years. If, after the
3 expiration of this period, the department continues to lease these
4 airspace rights to the private entity, it shall do so only at fair
5 market value. The agreement may also provide the private entity the
6 right of first refusal to undertake projects utilizing airspace owned
7 by the state in the vicinity of the public-private project.

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

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

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

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

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

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

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

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

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

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

EFFECT: Restores local involvement committee and advisory election requirements to PPI Act.

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