

1 2723.E AMS TRAN S4203.3

2
3 EHB 2723 - S COMM AMD
4 By Committee on Transportation

5 NOT ADOPTED 02/26/02

6 Strike everything after the enacting clause and insert the
7 following:

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

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

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

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

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

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

9 (3) "1950 Tacoma Narrows bridge" means the bridge crossing the
10 Tacoma Narrows that was opened to vehicle travel in 1950.

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

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

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

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

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

37 ~~The department shall develop and submit a proposed public~~
38 ~~involvement plan to the 1997 legislature to identify the process for~~

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

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

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

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

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

1 seq.—The execution by the department of the advisory vote process
2 established in this section is subject to the prior appropriation of
3 funds by the legislature for the purpose of conducting environmental
4 impact studies, a public involvement program, local involvement
5 committee activities, traffic and economic impact analyses, engineering
6 and technical studies, and the advisory vote.

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

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

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

1 active in a statewide transportation organization. If the committee
2 makeup results in an even number of committee members, there shall be
3 an additional appointment of an elected official from the county in
4 which all, or the greatest portion of the project is located.

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

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

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

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

36 (8) The department, in consultation with the local involvement
37 committee, shall develop a description for selected project proposals.
38 After developing the description of the project proposal, the
39 department shall publish the project proposal description in newspapers

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

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

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

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

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

1 ~~signatures of individuals opposing the project, collected and submitted~~
2 ~~after September 1, 1994, and by thirty calendar days after June 16,~~
3 ~~1995.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (a) Provide annual revenue sufficient to provide for annual
29 operating and maintenance expenses; and

30 (b) Make payments required under this chapter, including insurance
31 costs and the payment of principal and interest on bonds issued for any
32 toll bridge or toll bridges authorized under this chapter.

33 (4) The bond principal and interest payments constitute a first
34 direct and exclusive charge and lien on all tolls and other revenues
35 from the toll bridge concerned, subject to operating and maintenance
36 expenses.

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

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

6 (a) All costs of investigation, financing, acquisition of property,
7 and construction advanced from the motor vehicle fund, except for funds
8 previously expended from a legislative appropriation, have been fully
9 repaid; and

10 (b) Obligations incurred in constructing that facility have been
11 fully paid.

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

15 (3) Notwithstanding subsection (2) of this section, upon
16 satisfaction of the conditions enumerated in subsection (1) of this
17 section:

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

19 (b) The operation, maintenance, upkeep, and repair of the facility
20 must be paid from funds appropriated for the use of the department for
21 the construction and maintenance of the primary state highways of the
22 state of Washington.

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

25 TOLL INCREASES IN EXCESS OF FISCAL GROWTH FACTOR. Pursuant to RCW
26 43.135.055, the legislature authorizes the transportation commission to
27 increase bridge tolls in excess of the fiscal growth factor.

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

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

1 agreement. Modified agreements may provide for the reimbursement of
2 expenses and fees incurred under earlier agreements.

3 NEW SECTION. **Sec. 11.** A new section is added to chapter 47.46 RCW
4 to read as follows:

5 APPLICABLE RULES AND STATUTES. All projects designed, constructed,
6 and operated under this chapter must comply with all applicable rules
7 and statutes in existence at the time the agreement is executed,
8 including but not limited to the following provisions: Chapter 39.12
9 RCW, this title, RCW 41.06.380, chapter 47.64 RCW, RCW 49.60.180, and
10 49 C.F.R. Part 21.

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

13 APPLICATION OF RCW 47.46.040 AND 47.46.050. RCW 47.46.040 and
14 47.46.050 apply only to those agreements that include private sources
15 of financing in whole or in part.

16 **Sec. 13.** RCW 47.46.040 and 2001 c 64 s 14 are each amended to read
17 as follows:

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

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

27 ~~((3))~~ (2) Agreements ~~((shall))~~ may provide for private ownership
28 of the projects during the construction period. After completion and
29 final acceptance of each project or discrete segment thereof, the
30 agreement ~~((shall))~~ may provide for state ownership of the
31 transportation systems and facilities and lease to the private entity
32 unless the state elects to provide for ownership of the facility by the
33 private entity during the term of the agreement.

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

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

15 (~~(5)~~) (4) The plans and specifications for each project
16 constructed under this section shall comply with the department's
17 standards for state projects. A facility constructed by and leased to
18 a private entity is deemed to be a part of the state highway system for
19 purposes of identification, maintenance, and enforcement of traffic
20 laws and for the purposes of applicable sections of this title. Upon
21 reversion of the facility to the state, the project must meet all
22 applicable state standards. Agreements shall address responsibility
23 for reconstruction or renovations that are required in order for a
24 facility to meet all applicable state standards upon reversion of the
25 facility to the state.

26 (~~(6)~~) (5) For the purpose of facilitating these projects and to
27 assist the private entity in the financing, development, construction,
28 and operation of the transportation systems and facilities, the
29 agreements may include provisions for the department to exercise its
30 authority, including the lease of facilities, rights of way, and
31 airspace, exercise of the power of eminent domain, granting of
32 development rights and opportunities, granting of necessary easements
33 and rights of access, issuance of permits and other authorizations,
34 protection from competition, remedies in the event of default of either
35 of the parties, granting of contractual and real property rights,
36 liability during construction and the term of the lease, authority to
37 negotiate acquisition of rights of way in excess of appraised value,
38 and any other provision deemed necessary by the secretary.

1 ~~((7))~~ (6) The agreements entered into under this section may
2 include provisions authorizing the state to grant necessary easements
3 and lease to a private entity existing rights of way or rights of way
4 subsequently acquired with public or private financing. The agreements
5 may also include provisions to lease to the entity airspace above or
6 below the right of way associated or to be associated with the private
7 entity's transportation facility. In consideration for the reversion
8 rights in these privately constructed facilities, the department may
9 negotiate a charge for the lease of airspace rights during the term of
10 the agreement for a period not to exceed fifty years. If, after the
11 expiration of this period, the department continues to lease these
12 airspace rights to the private entity, it shall do so only at fair
13 market value. The agreement may also provide the private entity the
14 right of first refusal to undertake projects utilizing airspace owned
15 by the state in the vicinity of the public-private project.

16 ~~((8))~~ (7) Agreements under this section may include any
17 contractual provision that is necessary to protect the project revenues
18 required to repay the costs incurred to study, plan, design, finance,
19 acquire, build, install, operate, enforce laws, and maintain toll
20 highways, bridges, and tunnels and which will not unreasonably inhibit
21 or prohibit the development of additional public transportation systems
22 and facilities. Agreements under this section must secure and maintain
23 liability insurance coverage in amounts appropriate to protect the
24 project's viability and may address state indemnification of the
25 private entity for design and construction liability where the state
26 has approved relevant design and construction plans.

27 ~~((9))~~ Agreements shall include a process that provides for public
28 involvement in decision making with respect to the development of the
29 projects.

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

37 ~~(b)~~ The private entity shall conduct a comprehensive public
38 involvement process that provides, periodically throughout the
39 development and implementation of the project, users and residents of

1 communities in the affected project area an opportunity to comment upon
2 key issues regarding the project including, but not limited to: (i)
3 Alternative sizes and scopes; (ii) design; (iii) environmental
4 assessment; (iv) right of way and access plans; (v) traffic impacts;
5 (vi) tolling or user fee strategies and tolling or user fee ranges;
6 (vii) project cost; (viii) construction impacts; (ix) facility
7 operation; and (x) any other salient characteristics.

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

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

24 (d) In seeking public participation, the private entity shall
25 establish a local involvement committee or committees comprised of
26 residents of the affected project area, individuals who represent
27 cities and counties in the affected project area, organizations formed
28 to support or oppose the project, if such organizations exist, and
29 users of the project. The private entity shall, at a minimum,
30 establish a committee as required under the specifications of RCW
31 47.46.030(6)(b) (ii) and (iii) and appointments to such committee shall
32 be made no later than thirty days after the project area is defined.

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

37 (f) The department and the private entity shall provide the
38 legislative transportation committee and local involvement committees

1 with progress reports on the status of the public involvement process
2 including the results of an advisory vote, if any occurs.

3 ~~(11))~~ (8) Nothing in this chapter limits the right of the
4 secretary and his or her agents to render such advice and to make such
5 recommendations as they deem to be in the best interests of the state
6 and the public.

7 **Sec. 14.** RCW 47.46.050 and 1995 2nd sp.s. c 19 s 4 are each
8 amended to read as follows:

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

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

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

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

37 (a) The capital outlay costs for the project, including ((project
38 development costs, interest expense,)) the costs associated with

1 planning, design, development, financing, construction, improvement,
2 operations, toll collection, maintenance, and administration of the
3 project((7))i ~~((reimbursement to the state for all costs associated~~
4 ~~with an election as required under RCW 47.46.0307))~~

5 (b) The costs of project review and oversight, and technical and
6 law enforcement services((7))i

7 (c) The establishment of a fund to assure the adequacy of
8 maintenance expenditures((7))i and

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

13 **Sec. 15.** RCW 47.46.060 and 1998 c 179 s 4 are each amended to read
14 as follows:

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

28 (2) The department of revenue shall issue a sales and use tax
29 deferral certificate for state and local sales and use taxes due under
30 chapters 82.08, 82.12, and 82.14 RCW on the project. ~~((The use of the~~
31 ~~certificate shall be governed by rules established by the department of~~
32 ~~revenue.))~~

33 (3) The department of transportation or a private entity granted a
34 tax deferral under this section shall begin paying the deferred taxes
35 in the fifth year after the date certified by the department of revenue
36 as the date on which the project is operationally complete. The first
37 payment is due on December 31st of the fifth calendar year after such
38 certified date, with subsequent annual payments due on December 31st of

1 the following nine years. Each payment shall equal ten percent of the
2 deferred tax. The project is operationally complete under this section
3 when the collection of tolls is commenced for the state route number 16
4 improvements covered by the deferral.

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

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

15 (6) Applications and any other information received by the
16 department of revenue under this section are not confidential and are
17 subject to disclosure. Chapter 82.32 RCW applies to the administration
18 of this section.

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

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

23 (a) The department of transportation shall have full charge of the
24 construction of all toll bridges and other toll facilities including
25 the Washington state ferries, and the operation and maintenance
26 thereof.

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

33 (c) The department shall have full charge of design of all toll
34 facilities.

35 (d) Except as provided in this section, the department shall
36 proceed with the construction of such toll bridges and other facilities
37 and the approaches thereto by contract in the manner of state highway
38 construction immediately upon there being made available funds for such

1 work and shall prosecute such work to completion as rapidly as
2 practicable. The department is authorized to negotiate contracts for
3 any amount without bid under ~~((a))~~ (d)(i) and ~~((b))~~ (ii) of this
4 subsection:

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

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

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

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

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

1 delivery; delivery schedule offered; installation cost; cost of spare
2 parts; availability of parts and service offered; and the following:

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

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

7 (iii) Whether the proposer can perform the contract within the time
8 specified;

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

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

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

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

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

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

1 **Sec. 17.** RCW 47.56.270 and 1983 c 3 s 129 are each amended to read
2 as follows:

3 LAKE WASHINGTON AND 1950 TACOMA NARROWS BRIDGE MADE PART OF PRIMARY
4 HIGHWAYS. The Lake Washington bridge (~~((and the Tacoma Narrows bridge))~~)
5 in chapter 47.17 RCW made a part of the primary state highways of the
6 state of Washington, shall, upon completion, be operated, maintained,
7 kept up, and repaired by the department in the manner provided in this
8 chapter, and the cost of such operation, maintenance, upkeep, and
9 repair shall be paid from funds appropriated for the use of the
10 department for the construction and maintenance of the primary state
11 highways of the state of Washington.

12 **Sec. 18.** RCW 47.56.271 and 1983 c 3 s 130 are each amended to read
13 as follows:

14 1950 TACOMA NARROWS BRIDGE TO REMAIN TOLL-FREE--EXCEPTION. Except
15 as otherwise provided in this section, the 1950 Tacoma Narrows bridge
16 hereinbefore by the provisions of RCW 47.17.065 and 47.56.270 made a
17 part of the primary state highways of the state shall be operated and
18 maintained by the department as a toll-free facility at such time as
19 the ((present)) bonded indebtedness relating ((thereto)) to the
20 construction of the 1950 Tacoma Narrows bridge is wholly retired and
21 tolls equaling the ((present)) indebtedness of the toll bridge
22 authority incurred for the construction of the 1950 Tacoma Narrows
23 bridge to the county of Pierce have been collected. ((It is the
24 express intent of the legislature that the provisions of RCW 47.56.245
25 (section 47.56.245, chapter 13, Laws of 1961) shall not be applicable
26 to the Tacoma Narrows bridge.)) Toll charges may be imposed upon the
27 1950 Tacoma Narrows bridge only if that bridge is included as part of
28 a public toll bridge facility that includes an additional toll bridge
29 adjacent to the 1950 Tacoma Narrows bridge and constructed under
30 section 5 of this act.

31 NEW SECTION. **Sec. 19.** LEGISLATIVE OVERSIGHT COMMITTEE. The
32 department of transportation shall provide staff support to a
33 legislative oversight committee that will manage a study of public-
34 private partnerships in transportation. The legislative oversight
35 committee will consist of three members from each caucus in each house
36 of the legislature, appointed by the leadership of the legislators'
37 respective caucus. The legislative oversight committee must analyze

1 and make recommendations on: (1) The barriers that prevent the private
2 sector from providing transportation services, which could include
3 ferry, bus, or monorail; (2) the use of public-private partnerships
4 nationally and the experiences of other states in using public-private
5 partnerships; (3) the public-private opportunities for transportation
6 projects in Washington; and (4) the advantages and disadvantages of the
7 financing options available for public-private partnerships. The
8 legislative oversight committee shall report its findings and
9 recommendations to the legislature by December 1, 2003.

10 NEW SECTION. Sec. 20. CAPTIONS. Captions used in this act do not
11 constitute any part of the law.

12 NEW SECTION. Sec. 21. If Senate Bill No. 6349, as may be amended,
13 does not pass into law during any 2002 regular or special legislative
14 session, this act is null and void in its entirety."

15 EHB 2723 - S COMM AMD
16 By Committee on Transportation

17 NOT ADOPTED 02/26/02

18 In line 3 of the title, after "facilities;" strike the remainder of
19 the title and insert "amending RCW 47.56.010, 47.46.030, 47.46.040,
20 47.46.050, 47.46.060, 47.56.030, 47.56.270, and 47.56.271; adding new
21 sections to chapter 47.46 RCW; and creating new sections."

EFFECT: (1) Authorizes the use of tolls to pay for maintenance on
the existing Tacoma Narrows Bridge.
(2) Removes references to funds appropriated as a nonreimbursable
state financial contribution.
(3) Removes requirements for advisory election and local
involvement committees in current public-private initiative chapter.
(4) Authorizes a legislative study regarding future public-private
initiative opportunities.

--- END ---