
HOUSE BILL 2195

State of Washington

57th Legislature

2001 Regular Session

By Representatives Lantz, Jackley, Rockefeller, Van Luven, Chopp and Murray

Read first time . Referred to Committee on .

1 AN ACT Relating to public financing for construction and operation
2 of facilities developed under the Public-Private Initiatives Program;
3 amending RCW 47.56.040, 47.56.240, 47.56.245, 47.46.050, and 47.46.060;
4 adding new sections to chapter 47.56 RCW; adding a new section to
5 chapter 47.46 RCW; repealing RCW 47.56.271; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature intends to promote public
8 trust in its laws, accountability in governance, and lowest cost
9 financing for public infrastructure projects. The state supreme court
10 has ruled unanimously that the exclusive authority to impose tolls on
11 the existing Tacoma Narrows bridge rests with the state. The supreme
12 court also ruled that state law requires that typical operations,
13 maintenance, repair, and upkeep of that bridge be paid from statewide
14 transportation revenues. The legislature intends to adhere to this
15 statutory scheme for the imposition of tolls to the greatest extent
16 possible, while still responding to the compelling public need for
17 construction and operation of bridges across the Tacoma Narrows.

18 Furthermore, whereas the supreme court has ruled that the
19 provisions of chapter 47.46 RCW are constitutional, the legislature

1 intends to use all relevant provisions of the agreement developed under
2 that chapter that were not otherwise invalidated by the supreme court,
3 including but not limited to the selection of the design-build
4 contractor for the Tacoma Narrows bridge toll project and the
5 negotiated fixed price for all design, engineering, and construction.

6 NEW SECTION. **Sec. 2.** The state transportation commission, in its
7 lawful capacity as the state's toll bridge authority, may impose tolls
8 consistent with this chapter and, if necessary or desirable, chapter
9 47.58 RCW, for projects that have been selected and developed under
10 chapter 47.46 RCW.

11 **Sec. 3.** RCW 47.56.040 and 1984 c 7 s 248 are each amended to read
12 as follows:

13 The department is empowered, in accordance with the provisions of
14 this chapter or under chapter 47.46 RCW, to provide for the
15 establishment and construction of toll bridges upon any public highways
16 of this state together with approaches thereto wherever it is
17 considered necessary or advantageous and practicable for crossing any
18 stream, body of water, gulch, navigable water, swamp, or other
19 topographical formation whether that formation is within this state or
20 constitutes a boundary between this state and an adjoining state or
21 country. The necessity or advantage and practicability of any such
22 toll bridge shall be determined by the department, and the feasibility
23 of financing any toll bridge in the manner provided by this chapter
24 shall be a primary consideration and determined according to the best
25 judgment of the department. For the purpose of obtaining information
26 for the consideration of the department upon the construction of any
27 toll bridge or any other matters pertaining thereto, any cognizant
28 officer or employee of the state shall, upon the request of the
29 department, make reasonable examination, investigation, survey, or
30 reconnaissance for the determination of material facts pertaining
31 thereto and report this to the department. The cost of any such
32 examination, investigation, survey, or reconnaissance shall be borne by
33 the department or office conducting these activities from the funds
34 provided for that department or office for its usual functions.

35 **Sec. 4.** RCW 47.56.240 and 1984 c 7 s 265 are each amended to read
36 as follows:

1 The commission is hereby empowered to fix the rates of toll and
2 other charges for all toll bridges built under the terms of this
3 chapter or developed under chapter 47.46 RCW. Toll charges so fixed
4 may be changed from time to time as conditions warrant. The
5 commission, in establishing toll charges, shall give due consideration
6 to the cost of operating and maintaining such toll bridge or toll
7 bridges including the cost of insurance, and to the amount required
8 annually to meet the redemption of bonds and interest payments on them.
9 The tolls and charges shall be at all times fixed at rates to yield
10 annual revenue equal to any required annual operating and maintenance
11 expenses including insurance costs and all redemption payments and
12 interest charges of the bonds issued for any particular toll bridge or
13 toll bridges as the bonds become due. The bond redemption and interest
14 payments constitute a first direct and exclusive charge and lien on all
15 such tolls and other revenues and interest thereon. Sinking funds
16 created therefrom received from the use and operation of the toll
17 bridge or toll bridges, and such tolls and revenues together with the
18 interest earned thereon shall constitute a trust fund for the security
19 and payment of such bonds and shall not be used or pledged for any
20 other purpose as long as any of these bonds are outstanding and unpaid.

21 **Sec. 5.** RCW 47.56.245 and 1984 c 7 s 267 are each amended to read
22 as follows:

23 The ((department)) commission shall retain toll charges on all
24 existing and future facilities until all costs of investigation,
25 financing, acquisition of property, and construction advanced from the
26 motor vehicle fund, and obligations incurred under RCW 47.56.250 and
27 chapter 16, Laws of 1945 have been fully paid. With respect to every
28 facility completed after March 19, 1953, costs of maintenance,
29 management, and operation ((shall)) may be paid periodically out of the
30 revenues of the facility in which such costs were incurred.

31 NEW SECTION. **Sec. 6.** Toll revenues generated from any facility
32 developed under chapter 47.46 RCW after January 1, 2001, may be used
33 for costs necessary or incident to operation of the toll facilities,
34 including maintenance and preservation of the facilities.

1 NEW SECTION. **Sec. 7.** Pursuant to RCW 43.135.055, the legislature
2 authorizes the transportation commission to increase bridge tolls in
3 excess of the fiscal growth factor.

4 NEW SECTION. **Sec. 8.** The issuance, sale, and retirement of bonds
5 authorized in RCW 47.10.843 through 47.10.848 (Referendum 49 bonds), is
6 under the supervision and control of the state finance committee,
7 which, upon request of the department of transportation shall provide
8 for the issuance, sale, and retirement of coupon or registered bonds to
9 be dated, issued, and sold from time to time in such amounts as the
10 department of transportation determines to be necessary to meet the
11 purposes specified in this chapter.

12 NEW SECTION. **Sec. 9.** Money arising from the sale of bonds under
13 RCW 47.10.843 through 47.10.848 for the purposes authorized under
14 section 1 of this act must be deposited in the state treasury to the
15 credit of the Tacoma Narrows toll bridge account created in section 10
16 of this act. Those funds are available only for the purposes
17 enumerated in this chapter, for payment of the expense incurred in the
18 issuance and sale of any such bonds, and to repay the motor vehicle
19 fund for any sums advanced to pay the cost of surveys, location,
20 design, right-of-way, and all other things necessary for the
21 construction of the bridge and its approaches.

22 NEW SECTION. **Sec. 10.** A special account to be known as the Tacoma
23 Narrows toll bridge account is created in the motor vehicle fund in the
24 state treasury. Any capitalized interest from the proceeds of the
25 bonds authorized under RCW 47.10.843, and at least monthly all of the
26 tolls and other revenues received from the operation of the toll bridge
27 and from any interest that may be earned from the deposit or investment
28 of these revenues after the payment of costs of operation, maintenance,
29 management, and necessary repairs of the facility must be deposited
30 into this account.

31 NEW SECTION. **Sec. 11.** All tolls or other revenues received from
32 the operation of the Tacoma Narrows toll bridge constructed with the
33 proceeds of bonds issued and sold under RCW 47.10.843 through 47.10.848
34 must be paid by the department to the state treasurer, who shall
35 deposit them as demand deposits in a depository or depositories

1 authorized by law to receive deposits of state funds, to the credit of
2 the Tacoma Narrows toll bridge account.

3 NEW SECTION. **Sec. 12.** Tolls must remain on the facility for a
4 length of time necessary to repay the motor vehicle fund for any
5 amounts expended on the design, development, construction, maintenance,
6 repair, or operation of the Tacoma Narrows toll bridge project. Funds
7 specifically appropriated as a state financial contribution to the
8 project do not require repayment.

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

11 RCW 47.46.010 authorizes private entities to undertake either all
12 or a portion of the study, planning, design, development, financing,
13 acquisition, installation, construction or improvement, operation, and
14 maintenance of transportation projects developed under the public-
15 private initiative program. RCW 47.46.040(4) authorizes the state to
16 exercise any power it possesses to facilitate the development of the
17 project, including any powers related to financing and operation.
18 While still upholding the constitutionality of this chapter, the state
19 supreme court unanimously held that the contractual method proposed for
20 a private entity to impose tolls on the existing Tacoma Narrows bridge,
21 as well as proposed uses of the toll revenues, violate state law.
22 Therefore, the legislature intends to rely upon existing state laws to
23 provide a public toll authority and public financing, while allowing
24 the remainder of the project proposed under this chapter to proceed.

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

27 (1) The department may enter into agreements using federal, state,
28 and local financing in connection with the projects, including without
29 limitation, grants, loans, and other measures authorized by section
30 1012 of ISTEPA, and to do such things as necessary and desirable to
31 maximize the funding and financing, including the formation of a
32 revolving loan fund to implement this section.

33 (2) Agreements entered into under this section (~~shall~~) may
34 authorize the private entity to lease the facilities within a
35 designated area or areas from the state and to impose user fees or
36 tolls within the designated area to allow a reasonable rate of return

1 on investment, as established through a negotiated agreement between
2 the state and the private entity. The negotiated agreement shall
3 determine a maximum rate of return on investment, based on project
4 characteristics. If the negotiated rate of return on investment is not
5 affected, the private entity may establish and modify toll rates and
6 user fees.

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

14 (4) Agreements (~~(shall)~~) may require that over the term of the
15 ownership or lease the user fees or toll revenues be applied only to
16 payment of the (~~(private entity's)~~) capital outlay costs for the
17 project, including project development costs, interest expense, the
18 costs associated with design, construction, operations, toll
19 collection, maintenance and administration of the project,
20 reimbursement to the state for all costs associated with an election as
21 required under RCW 47.46.030, the costs of project review and
22 oversight, technical and law enforcement services, establishment of a
23 fund to assure the adequacy of maintenance expenditures, and a
24 reasonable return on investment to the private entity. A negotiated
25 agreement shall not extend the term of the ownership or lease beyond
26 the period of time required for payment of the private entity's capital
27 outlay costs for the project under this subsection.

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

30 (1) Either the department of transportation or a private entity
31 that is party to an agreement under this chapter may apply for deferral
32 of taxes on the site preparation for, the construction of, the
33 acquisition of any related machinery and equipment which will become a
34 part of, and the rental of equipment for use in the state route number
35 16 corridor improvements project under this chapter. Application shall
36 be made to the department of revenue in a form and manner prescribed by
37 the department of revenue. The application shall contain information
38 regarding estimated or actual costs, time schedules for completion and

1 operation, and other information required by the department of revenue.
2 The department of revenue shall approve the application within sixty
3 days if it meets the requirements of this section.

4 (2) The department of revenue shall issue a sales and use tax
5 deferral certificate for state and local sales and use taxes due under
6 chapters 82.08, 82.12, and 82.14 RCW on the project. The use of the
7 certificate shall be governed by rules established by the department of
8 revenue.

9 (3) The department of transportation or a private entity granted a
10 tax deferral under this section shall begin paying the deferred taxes
11 in the fifth year after the date certified by the department of revenue
12 as the date on which the project is operationally complete. The first
13 payment is due on December 31st of the fifth calendar year after such
14 certified date, with subsequent annual payments due on December 31st of
15 the following nine years. Each payment shall equal ten percent of the
16 deferred tax.

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

20 (5) Interest shall not be charged on any taxes deferred under this
21 section for the period of deferral, although all other penalties and
22 interest applicable to delinquent excise taxes may be assessed and
23 imposed for delinquent payments under this section. The debt for
24 deferred taxes is not extinguished by insolvency or other failure of
25 the private entity.

26 (6) Applications and any other information received by the
27 department of revenue under this section are not confidential and are
28 subject to disclosure. Chapter 82.32 RCW applies to the administration
29 of this section.

30 NEW SECTION. Sec. 16. RCW 47.56.271 (Tacoma Narrows bridge--Toll
31 free facility) and 1983 c 3 s 130 & 1965 c 50 s 1 are each repealed.

32 NEW SECTION. Sec. 17. Sections 1, 2, and 6 through 12 of this act
33 are added to chapter 47.56 RCW.

34 NEW SECTION. Sec. 18. This act is necessary for the immediate
35 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

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