

2 ESHB 1317 - H AMD 930 WITHDRAWN 5/17/95

3 By Representatives Robertson and K. Schmidt

4

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

7 "Sec. 1. RCW 47.46.010 and 1993 c 370 s 1 are each amended to read  
8 as follows:

9 The legislature finds and declares:

10 It is essential for the economic, social, and environmental well-  
11 being of the state and the maintenance of a high quality of life that  
12 the people of the state have an efficient transportation system.

13 The ability of the state to provide an efficient transportation  
14 system will be enhanced by a public-private sector program providing  
15 for private entities to undertake all or a portion of the study,  
16 planning, design, development, financing, acquisition, installation,  
17 construction or improvement, operation, and maintenance of  
18 transportation systems and facility projects.

19 A public-private initiatives program will provide benefits to both  
20 the public and private sectors. Public-private initiatives provide a  
21 sound economic investment opportunity for the private sector. Such  
22 initiatives will provide the state with increased access to property  
23 development and project opportunities, financial and development  
24 expertise, and will supplement state transportation revenues, allowing  
25 the state to use its limited resources for other needed projects.

26 The public-private initiatives program, to the fullest extent  
27 possible, should encourage and promote business and employment  
28 opportunities for Washington state citizens.

29 The public-private initiatives program should be implemented in  
30 cooperation and consultation with affected local jurisdictions.

31 The secretary of transportation should be permitted and encouraged  
32 to test the feasibility of building privately funded transportation  
33 systems and facilities or segments thereof through the use of  
34 innovative agreements with the private sector. The secretary of  
35 transportation should be vested with the authority to solicit,  
36 evaluate, negotiate, and administer public-private agreements with the

1 private sector relating to the planning, construction, upgrading, or  
2 reconstruction of transportation systems and facilities.

3 Agreements negotiated under a public-private initiatives program  
4 will not bestow on private entities an immediate right to construct and  
5 operate the proposed transportation facilities. Rather, agreements  
6 will grant to private entities the opportunity to design the proposed  
7 facilities, demonstrate public support for proposed facilities, and  
8 complete the planning processes required in order to obtain a future  
9 decision by the department of transportation and other state and local  
10 lead agencies on whether the facilities should be permitted and built.

11 Agreements negotiated under the public-private initiative's program  
12 should establish the conditions under which the private developer may  
13 secure the approval necessary to develop and operate the proposed  
14 transportation facilities; create a framework to attract the private  
15 capital necessary to finance their development; and ensure that the  
16 transportation facilities will be designed, constructed, and operated  
17 in accordance with applicable local, regional, state, and federal laws  
18 and the applicable standards and policies of the department of  
19 transportation.

20 The legislature finds that the Puget Sound congestion pricing  
21 project, selected under this chapter, raises major transportation  
22 policy, economic, and equity concerns. These relate to the integrity  
23 of the state's high-occupancy vehicle program; the cost-effective  
24 movement of freight and goods; the diversion of traffic to local  
25 streets and arterials; and possible financial hardship to commuters.  
26 The legislature further finds that these potential economic and social  
27 impacts require comprehensive legislative review prior to advancement  
28 of the project and directs that the secretary not proceed with the  
29 implementation of the project without prior approval of the  
30 legislature.

31 The department of transportation should be encouraged to take  
32 advantage of new opportunities provided by federal legislation under  
33 section 1012 of the Intermodal Surface Transportation Efficiency Act of  
34 1991 (ISTEA). That section establishes a new program authorizing  
35 federal participation in construction or improvement or improvement of  
36 publicly or privately owned toll roads, bridges, and tunnels, and  
37 allows states to leverage available federal funds as a means for  
38 attracting private sector capital.

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

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

9       The public-private initiative program may develop up to six  
10 demonstration projects. Each proposal shall be weighed on its own  
11 merits, and each of the six agreements shall be negotiated  
12 individually, and as a stand-alone project. ~~((The commission shall  
13 approve each of the selected projects.~~

14       ~~Proposals and demonstration projects may be selected by the public  
15 and private sectors at their discretion. All projects designed,  
16 constructed, and operated under this authority must comply with all  
17 applicable rules and statutes in existence at the time the agreement is  
18 executed, including but not limited to the following provisions:  
19 Chapter 39.12 RCW, this title, RCW 41.06.380, chapter 47.64 RCW, RCW  
20 49.60.180, and 49 C.F.R. Part 21.~~

21       ~~The secretary or a designee shall consult with legal, financial,  
22 and other experts within and outside state government in the  
23 negotiation and development of the agreements.))~~ (2) If projects  
24 selected prior to September 1, 1994, are terminated by the public or  
25 private sectors, no other projects shall be selected as replacement  
26 projects until the department develops a public involvement process to  
27 identify prospective projects.

28       The public involvement process for replacement projects shall, at  
29 a minimum, identify projects that: (a) Have the potential of achieving  
30 overall public support among users of the projects, residents of  
31 communities in the vicinity of the projects, and residents of  
32 communities impacted by the projects; (b) meet a state transportation  
33 need; (c) provide a significant state benefit; and (d) have the  
34 capability of receiving more than one proposal from private entities to  
35 ensure greater competition among proposers and maximum cost benefits to  
36 users. Prospective projects may include projects identified by the  
37 department or submitted by the private sector.

38       The department shall develop a public involvement plan for  
39 identifying replacement projects and the cost of the plan by January 1,

1 1997, and shall submit the plan to the legislative transportation  
2 committee for review. Project selections for replacement projects made  
3 after September 1, 1994, shall be carried out utilizing the public  
4 involvement process developed by the department and reviewed by the  
5 legislative transportation committee. Projects that meet the criteria  
6 established under this section shall be submitted for review by the  
7 Washington state transportation commission. The commission shall  
8 submit a list of eligible projects to the legislative transportation  
9 committee for its consideration. If within forty-five calendar days of  
10 submission the legislative transportation committee has not adopted a  
11 resolution recommending that the secretary reject an eligible project,  
12 the secretary is authorized to solicit proposals for the eligible  
13 project.

14 (3) The department shall require projects selected by the  
15 department prior to and after September 1, 1994, except as provided for  
16 in subsection (12) of this section, to comply with the requirements of  
17 subsections (4) through (11) of this section.

18 (4) Prior to entering into agreements with private entities under  
19 the requirements of RCW 47.46.040 for any project selected before or  
20 after September 1, 1994, except as provided for in subsection (12) of  
21 this section, the department shall require an advisory vote as mandated  
22 under subsections (5) through (11) of this section.

23 (5) Prior to conducting the advisory vote, the department shall  
24 establish a committee comprised of individuals who represent cities and  
25 counties in the vicinity of the project; organizations formed to  
26 support or oppose the project; and users of the project. The committee  
27 shall be named the public-private local involvement committee, and be  
28 known as the local involvement committee.

29 The members of the local involvement committee shall be: (a) An  
30 elected official from each city within the county or counties in which  
31 the project is located; (b) an elected official from each county in  
32 which the project is located; (c) two persons from each county in which  
33 the project is located who represent an organization formed in support  
34 of the project, if the organization exists; (d) two persons from each  
35 county in which the project is located who represent an organization  
36 formed to oppose the project, if the organization exists; and (e) two  
37 public members active in a state-wide transportation organization. If  
38 the committee makeup results in an even number of committee members,  
39 there shall be an additional appointment of an elected official from

1 the county in which all, or the greatest portion of the project is  
2 located.

3 City and county elected officials shall be appointed by a majority  
4 of the members of the city and county legislative authorities of each  
5 city and county in which the project is located. The county  
6 legislative authority of each county in which the project is located  
7 shall identify and validate organizations officially formed in support  
8 of or in opposition to the project and shall make the appointments  
9 required under this section from a list submitted by the chair of the  
10 organizations. Public members shall be appointed by the governor. All  
11 appointments to the local involvement committee shall be made and  
12 submitted to the department of transportation no later than August 1,  
13 1995. Vacancies in the membership of the local involvement committee  
14 shall be filled by the appointing authority under (a) through (e) of  
15 this subsection for each position on the committee.

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

35 (7) After a determination and definition by the department and the  
36 local involvement committee of the affected project area, the  
37 department and the local involvement committee shall conduct a minimum  
38 thirty-day public comment period. The department and the local  
39 involvement committee may make adjustments to the definition of the

1 geographical boundary of the affected project area, based on comments  
2 received from the public. Within fourteen calendar days after the  
3 public comment period, the department and the local involvement  
4 committee shall establish the boundaries of the affected project area  
5 in units no smaller than a precinct as defined in RCW 29.01.120.

6 If after establishing the boundaries of the affected project area,  
7 the department and the local involvement committee determine that the  
8 membership of the local involvement committee requires modification,  
9 the department and the committee shall submit recommendations for  
10 modification to the legislative transportation committee for  
11 consideration by the house of representatives and senate transportation  
12 committees during the next succeeding legislative session.

13 (8) The department and the local involvement committee shall  
14 develop a project description for selected projects, using project  
15 proposals submitted as a result of solicitations by the department for  
16 proposals, technical evaluations of project proposals, and any other  
17 salient information. After developing the project description, the  
18 department and the local involvement committee shall conduct a thirty-  
19 day public comment period. The department and the local involvement  
20 committee may make adjustments to the project description based on  
21 comments received from the public. Within fourteen calendar days after  
22 the public comment period, the department and the local involvement  
23 committee shall transmit a copy of the map depicting the affected  
24 project area and the project description and characteristics to the  
25 county auditor of the county in which any portion of the affected  
26 project area, as defined by the department and the local involvement  
27 committee, is located.

28 (9) The department and the local involvement committee shall  
29 provide the legislative transportation committee with progress reports  
30 on the status of the definition of the affected project area and  
31 project description and characteristics.

32 (10) Upon receipt of the map and the project description and  
33 characteristics, the county auditor shall, within sixty days, verify  
34 the precincts that are located within the affected project area. The  
35 county auditor shall prepare the text identifying and describing the  
36 affected project area and the project and shall set an election date  
37 for the submission of a ballot proposition authorizing the imposition  
38 of tolls or user fees to implement the proposed project within the  
39 affected project area, which date may be the next succeeding general

1 election to be held in the state, or at a special election, if  
2 requested by the department. The text of the project must appear in a  
3 voter's pamphlet for the affected project area. The department shall  
4 pay the costs of publication and distribution. The special election  
5 date must be the next date for a special election provided under RCW  
6 29.13.020 that is at least sixty days but, if authorized under RCW  
7 29.13.020, no more than ninety days after the receipt of the final map  
8 and project description and characteristics by the auditor. The  
9 department shall pay the cost of an election held under this section.

10 (11) The department and the local involvement committee shall  
11 submit the results of the advisory vote on any project selected under  
12 this chapter, along with any other pertinent information, to the  
13 legislative transportation committee within seven calendar days of  
14 certification of the vote. No later than thirty days prior to the next  
15 legislative session, the legislative transportation committee shall  
16 adopt a resolution making a recommendation to the department regarding  
17 the disposition of the project proposals.

18 (12) Subsections (5) through (11) of this section shall not apply  
19 to projects selected prior to September 1, 1994, that have no organized  
20 public opposition as demonstrated by the submission to the department  
21 of petitions bearing at least five thousand signatures opposing the  
22 project, collected after September 1, 1994, and by thirty calendar days  
23 after the effective date of this act.

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

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

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

34 (3) Agreements shall provide for private ownership of the projects  
35 during the construction period. After completion and final acceptance  
36 of each project or discrete segment thereof, the agreement shall  
37 provide for state ownership of the transportation systems and  
38 facilities and lease to the private entity unless the state elects to

1 provide for ownership of the facility by the private entity during the  
2 term of the agreement.

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

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

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

32 (6) For the purpose of facilitating these projects and to assist  
33 the private entity in the financing, development, construction, and  
34 operation of the transportation systems and facilities, the agreements  
35 may include provisions for the department to exercise its authority,  
36 including the lease of facilities, rights of way, and airspace,  
37 exercise of the power of eminent domain, granting of development rights  
38 and opportunities, granting of necessary easements and rights of  
39 access, issuance of permits and other authorizations, protection from

1 competition, remedies in the event of default of either of the parties,  
2 granting of contractual and real property rights, liability during  
3 construction and the term of the lease, authority to negotiate  
4 acquisition of rights of way in excess of appraised value, and any  
5 other provision deemed necessary by the secretary.

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

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

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

35 (10)(a) In carrying out the public involvement process required in  
36 subsection (9) of this section, the private entity shall proactively  
37 seek public participation through a process appropriate to the  
38 characteristics of the project that assesses and demonstrates overall  
39 public support among: Users of the project, residents of communities

1 in the vicinity of the project, and residents of communities impacted  
2 by the project. The public involvement process shall provide  
3 opportunities for users and residents to comment upon key issues  
4 regarding the project including, but not limited to: (i) Alternative  
5 sizes and scopes; (ii) design; (iii) environmental assessment; (iv)  
6 right of way and access plans; (v) traffic impacts; (vi) tolling or  
7 user fee strategies and tolling or user fee ranges; (vii) project cost;  
8 (viii) construction impacts; (ix) facility operation; and (x) any other  
9 salient characteristics.

10 (b) The private entity shall cause to be conducted on one or more  
11 occasions, a comprehensive inventory of public positions of users and  
12 of residents of communities in the affected project area. If the  
13 affected project area has not been defined, the private entity shall  
14 define the affected project area using the mechanism established in RCW  
15 47.46.030(6).

16 The agreement may require an advisory vote by users of and  
17 residents in the affected project area under the terms and conditions  
18 established for the vote in RCW 47.46.030(5) through (10), except that  
19 the private entity shall pay all costs associated with the advisory  
20 vote.

21 The comprehensive inventory of public positions shall be conducted  
22 by an independent accountant or other independent professional jointly  
23 selected and supervised by the private entity and the department in  
24 consultation with the local involvement committee and the legislative  
25 transportation committee. The independent accountant or other  
26 independent professional must have a proven history and expertise in  
27 assessing public opinion and shall not have a direct or indirect  
28 interest in such project. The results of the inventory of public  
29 positions shall be made available for public review and comment.

30 (c) In seeking public participation, the private entity shall  
31 involve the local involvement committee established under RCW  
32 47.46.030. If no local involvement committee has been established for  
33 the project prior to entering into the agreement, the department shall  
34 establish the committee as required under the specifications of RCW  
35 47.46.030.

36 (d) The local involvement committee shall act in an advisory  
37 capacity to the department and the private entity on all issues related  
38 to the development and implementation of the public involvement process  
39 established under this section.

1       (e) The department and the private entity shall provide the  
2 legislative transportation committee and the local involvement  
3 committee with progress reports on the status of the public involvement  
4 process and the inventory of public positions. The results of the  
5 inventory of public positions, including public comment on such  
6 inventory of public positions, shall be forwarded to the legislative  
7 transportation committee and the local involvement committee for their  
8 review.

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

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

15       (1) The department may enter into agreements using federal, state,  
16 and local financing in connection with the projects, including without  
17 limitation, grants, loans, and other measures authorized by section  
18 1012 of ISTEPA, and to do such things as necessary and desirable to  
19 maximize the funding and financing, including the formation of a  
20 revolving loan fund to implement this section.

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

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

37       (4) Agreements shall require that over the term of the ownership or  
38 lease the user fees or toll revenues be applied only to payment of the

1 private entity's capital outlay costs for the project, including  
2 project development costs, interest expense, the costs associated with  
3 design, construction, operations, toll collection, maintenance and  
4 administration of the ((facility)) project, reimbursement to the state  
5 for all costs associated with an election as required under RCW  
6 47.46.030, the costs of project review and oversight, technical and law  
7 enforcement services, establishment of a fund to assure the adequacy of  
8 maintenance expenditures, and a reasonable return on investment to the  
9 private entity. ~~((The use of any excess toll revenues or user fees may~~  
10 ~~be negotiated between the parties.~~

11 ~~After expiration of the lease of a facility to a private entity,~~  
12 ~~the secretary may continue to charge user fees or tolls for the use of~~  
13 ~~the facility, with these revenues to be used for operations and~~  
14 ~~maintenance of the facility, or to be paid to the local transportation~~  
15 ~~planning agency, or any combination of such uses.)) A negotiated  
16 agreement shall not extend the term of the ownership or lease beyond  
17 the period of time required for payment of the private entity's capital  
18 outlay costs for the project under this subsection.~~

19 NEW SECTION. Sec. 5. This act is necessary for the immediate  
20 preservation of the public peace, health, or safety, or support of the  
21 state government and its existing public institutions, and shall take  
22 effect immediately."

23 ESHB 1317 - H AMD  
24 By Representative

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26 On page 1, line 1 of the title, after "facilities;" strike the  
27 remainder of the title and insert "amending RCW 47.46.010, 47.46.030,  
28 47.46.040, and 47.46.050; and declaring an emergency."

--- END ---