

2 2ESHB 1317 - S AMD - 451
3 By Senators Owen and Long

4 ADOPTED 5/23/95

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~~) shall be
30 implemented in cooperation (~~and~~), consultation (~~with~~), and with the
31 support of the affected communities and local jurisdictions.

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

1 evaluate, negotiate, and administer public-private agreements with the
2 private sector relating to the planning, construction, upgrading, or
3 reconstruction of transportation systems and facilities.

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

12 Agreements negotiated under the public-private initiatives program
13 should establish the conditions under which the private developer may
14 secure the approval necessary to develop and operate the proposed
15 transportation facilities; create a framework to attract the private
16 capital necessary to finance their development; ensure that the
17 transportation facilities will be designed, constructed, and operated
18 in accordance with applicable local, regional, state, and federal laws
19 and the applicable standards and policies of the department of
20 transportation; and require a demonstration that the proposed
21 transportation facility has the support of the affected communities and
22 local jurisdictions.

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

34 The department of transportation should be encouraged to take
35 advantage of new opportunities provided by federal legislation under
36 section 1012 of the Intermodal Surface Transportation Efficiency Act of
37 1991 (ISTEA). That section establishes a new program authorizing
38 federal participation in construction or improvement or improvement of
39 publicly or privately owned toll roads, bridges, and tunnels, and

1 allows states to leverage available federal funds as a means for
2 attracting private sector capital.

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

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

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

16 ~~Proposals and demonstration projects may be selected by the public
17 and private sectors at their discretion. All projects designed,
18 constructed, and operated under this authority must comply with all
19 applicable rules and statutes in existence at the time the agreement is
20 executed, including but not limited to the following provisions:
21 Chapter 39.12 RCW, this title, RCW 41.06.380, chapter 47.64 RCW, RCW
22 49.60.180, and 49 C.F.R. Part 21.~~

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

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

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

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

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

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

27 (3) Prior to entering into agreements with private entities under
28 the requirements of RCW 47.46.040 for any project proposal selected
29 before September 1, 1994, or after June 30, 1997, except as provided
30 for in subsections (10) and (11) of this section, the department shall
31 require an advisory vote as provided under subsections (4) through (9)
32 of this section.

33 (4) In preparing for the advisory vote, the department shall
34 conduct a comprehensive analysis of traffic patterns and economic
35 impact to define the geographical boundary of the project area that is
36 affected by the imposition of tolls or user fees authorized under this
37 chapter. The area so defined is referred to in this section as the
38 affected project area. In defining the affected project area, the
39 department shall, at a minimum, undertake: (a) A comparison of the

1 estimated percentage of residents of communities in the vicinity of the
2 project and in other communities impacted by the project who could be
3 subject to tolls or user fees and the estimated percentage of other
4 users and transient traffic that could be subject to tolls or user
5 fees; (b) an analysis of the anticipated traffic diversion patterns;
6 (c) an analysis of the potential economic impact resulting from
7 proposed toll rates or user fee rates imposed on residents, commercial
8 traffic, and commercial entities in communities in the vicinity of and
9 impacted by the project; (d) an analysis of the economic impact of
10 tolls or user fees on the price of goods and services generally; and
11 (e) an analysis of the relationship of the project to state
12 transportation needs and benefits.

13 (5)(a) After determining the definition of the affected project
14 area, the department shall establish a committee comprised of
15 individuals who represent cities and counties in the affected project
16 area; organizations formed to support or oppose the project; and users
17 of the project. The committee shall be named the public-private local
18 involvement committee, and be known as the local involvement committee.

19 (b) The members of the local involvement committee shall be: (i)
20 An elected official from each city within the affected project area;
21 (ii) an elected official from each county within the affected project
22 area; (iii) two persons from each county within the affected project
23 area who represent an organization formed in support of the project, if
24 the organization exists; (iv) two persons from each county within the
25 affected project area who represent an organization formed to oppose
26 the project, if the organization exists; and (v) four public members
27 active in a state-wide transportation organization. If the committee
28 makeup results in an even number of committee members, there shall be
29 an additional appointment of an elected official from the county in
30 which all, or the greatest portion of the project is located.

31 (c) City and county elected officials shall be appointed by a
32 majority of the members of the city or county legislative authorities
33 of each city or county within the affected project area, respectively.
34 The county legislative authority of each county within the affected
35 project area shall identify and validate organizations officially
36 formed in support of or in opposition to the project and shall make the
37 appointments required under this section from a list submitted by the
38 chair of the organizations. Public members shall be appointed by the
39 governor. All appointments to the local involvement committee shall be

1 made and submitted to the department of transportation no later than
2 January 1, 1996, for projects selected prior to September 1, 1994, and
3 no later than thirty days after the affected project area is defined
4 for projects selected after June 30, 1997. Vacancies in the membership
5 of the local involvement committee shall be filled by the appointing
6 authority under (b)(i) through (v) of this subsection for each position
7 on the committee.

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

11 (e) Members of the local involvement committee serve without
12 compensation and may not receive subsistence, lodging expenses, or
13 travel expenses.

14 (6) The department shall conduct a minimum thirty-day public
15 comment period on the definition of the geographical boundary of the
16 project area. The department, in consultation with the local
17 involvement committee, shall make adjustments, if required, to the
18 definition of the geographical boundary of the affected project area,
19 based on comments received from the public. Within fourteen calendar
20 days after the public comment period, the department shall set the
21 boundaries of the affected project area in units no smaller than a
22 precinct as defined in RCW 29.01.120.

23 (7) The department, in consultation with the local involvement
24 committee, shall develop a description for selected project proposals.
25 After developing the description of the project proposal, the
26 department shall publish the project proposal description in newspapers
27 of general circulation for seven calendar days in the affected project
28 area. Within fourteen calendar days after the last day of the
29 publication of the project proposal description, the department shall
30 transmit a copy of the map depicting the affected project area and the
31 description of the project proposal to the county auditor of the county
32 in which any portion of the affected project area is located.

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

36 (9) Upon receipt of the map and the description of the project
37 proposal, the county auditor shall, within thirty days, verify the
38 precincts that are located within the affected project area. The
39 county auditor shall prepare the text identifying and describing the

1 affected project area and the project proposal using the definition of
2 the geographical boundary of the affected project area and the project
3 description submitted by the department and shall set an election date
4 for the submission of a ballot proposition authorizing the imposition
5 of tolls or user fees to implement the proposed project within the
6 affected project area, which date may be the next succeeding general
7 election to be held in the state, or at a special election, if
8 requested by the department. The text of the project proposal must
9 appear in a voter's pamphlet for the affected project area. The
10 department shall pay the costs of publication and distribution. The
11 special election date must be the next date for a special election
12 provided under RCW 29.13.020 that is at least sixty days but, if
13 authorized under RCW 29.13.020, no more than ninety days after the
14 receipt of the final map and project description by the auditor. The
15 department shall pay the cost of an election held under this section.

16 (10) Subsections (4) through (9) of this section shall not apply to
17 project proposals selected prior to September 1, 1994, that have no
18 organized public opposition as demonstrated by the submission to the
19 department of original petitions bearing at least five thousand
20 signatures of individuals opposing the project, collected and submitted
21 after September 1, 1994, and by thirty calendar days after the
22 effective date of this act.

23 (11) Subsections (4) through (9) of this section shall not apply to
24 project proposals selected after June 30, 1997, that have no organized
25 public opposition as demonstrated by the submission to the department
26 of original petitions bearing at least five thousand signatures of
27 individuals opposing the project, collected and submitted by ninety
28 calendar days after project selection.

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

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

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

1 (3) Agreements shall provide for private ownership of the projects
2 during the construction period. After completion and final acceptance
3 of each project or discrete segment thereof, the agreement shall
4 provide for state ownership of the transportation systems and
5 facilities and lease to the private entity unless the state elects to
6 provide for ownership of the facility by the private entity during the
7 term of the agreement.

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

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

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

37 (6) For the purpose of facilitating these projects and to assist
38 the private entity in the financing, development, construction, and
39 operation of the transportation systems and facilities, the agreements

1 may include provisions for the department to exercise its authority,
2 including the lease of facilities, rights of way, and airspace,
3 exercise of the power of eminent domain, granting of development rights
4 and opportunities, granting of necessary easements and rights of
5 access, issuance of permits and other authorizations, protection from
6 competition, remedies in the event of default of either of the parties,
7 granting of contractual and real property rights, liability during
8 construction and the term of the lease, authority to negotiate
9 acquisition of rights of way in excess of appraised value, and any
10 other provision deemed necessary by the secretary.

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

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

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

1 (10)(a) In carrying out the public involvement process required in
2 subsection (9) of this section, the private entity shall proactively
3 seek public participation through a process appropriate to the
4 characteristics of the project that assesses and demonstrates public
5 support among: Users of the project, residents of communities in the
6 vicinity of the project, and residents of communities impacted by the
7 project.

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

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

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

34 (d) In seeking public participation, the private entity shall
35 establish a local involvement committee or committees comprised of
36 residents of the affected project area, individuals who represent
37 cities and counties in the affected project area, organizations formed
38 to support or oppose the project, if such organizations exist, and
39 users of the project. The private entity shall, at a minimum,

1 establish a committee as required under the specifications of RCW
2 47.46.030(5)(b) (ii) and (iii) and appointments to such committee shall
3 be made no later than thirty days after the project area is defined.

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

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

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

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

18 (1) The department may enter into agreements using federal, state,
19 and local financing in connection with the projects, including without
20 limitation, grants, loans, and other measures authorized by section
21 1012 of ISTEA, and to do such things as necessary and desirable to
22 maximize the funding and financing, including the formation of a
23 revolving loan fund to implement this section.

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

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

1 management goals. The incentive rates of return shall be negotiated in
2 the agreement.

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

15 ~~After expiration of the lease of a facility to a private entity,~~
16 ~~the secretary may continue to charge user fees or tolls for the use of~~
17 ~~the facility, with these revenues to be used for operations and~~
18 ~~maintenance of the facility, or to be paid to the local transportation~~
19 ~~planning agency, or any combination of such uses.)) A negotiated~~

20 agreement shall not extend the term of the ownership or lease beyond
21 the period of time required for payment of the private entity's capital
22 outlay costs for the project under this subsection.

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

27 2ESHB 1317 - S AMD - 451
28 By Senators Owen and Long

29 ADOPTED 5/23/95

30 On page 1, line 1 of the title, after "facilities;" strike the
31 remainder of the title and insert "amending RCW 47.46.010, 47.46.030,
32 47.46.040, and 47.46.050; and declaring an emergency."

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