

SENATE BILL REPORT

ESHB 1317

As Reported By Senate Committee On:
Transportation, April 3, 1995

Title: An act relating to transportation systems and facilities.

Brief Description: Revising the selection process for transportation systems and facilities demonstration projects.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Robertson, Cairnes, B. Thomas, Mitchell, Van Luven, Dyer, Lambert, Radcliff, D. Schmidt, Backlund, Cooke, Reams, Campbell, Stevens, L. Thomas and Koster).

Brief History:

Committee Activity: Transportation: 3/29/95, 4/3/95 [DPA, DNP].

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended.

Signed by Senators Owen, Chair; Heavey, Vice Chair; Fairley, Kohl, Morton, Prentice, Prince, Rasmussen, Schow and Wood.

Minority Report: Do not pass.

Signed by Senator Haugen.

Staff: Vicki Fabre (786-7313)

Background: New Partners: Public-Private Initiatives in Transportation (Chapter 47.46 RCW) is a program created by the 1993 Legislature to test the feasibility of privately financed transportation improvements in Washington State. The law provides a wide range of opportunities for private entities to undertake all or a portion of the study, planning, design, finance, construction, operation and maintenance of transportation systems and facilities.

The state Department of Transportation (DOT) is authorized to solicit proposals from the private sector and to select up to six demonstration projects identified by the private sector. Projects are owned by the private sector during construction, turned over to the state, and leased back for operation for up to 50 years.

The private developer is authorized to impose tolls or user fees to recover the private sector's investments and to allow them a reasonable rate of return on investment. After maximum return on investment is reached, the state may continue to charge user fees or tolls for operation or maintenance that may be shared with affected local jurisdictions.

In May of 1994, 14 proposals from 11 private sector consortia were received by the DOT. These were evaluated by a team of technical experts assembled by the DOT. At the end of

the evaluation process, the Secretary of Transportation, as required by law, recommended six projects to the Transportation Commission, which the commission adopted on August 18, 1994.

The following projects were selected: State Route (SR) 16-Tacoma Narrows; SR 18 corridor improvements; SR 520 corridor improvements; SR 522 corridor improvements; Puget Sound congestion pricing; and METRO/King County and DOT park and ride capacity enhancements.

Since early fall of 1994, the department and the six private consortia selected for the New Partners Program have been negotiating agreements to develop the transportation facilities described above. These agreements identify the responsibilities and commitments of each party and will drive project development activities.

Public opposition to the process employed to select the demonstration projects, concern about the degree and quality of public involvement in the project development stage, and opposition to the imposition by the private sector of tolls or user fees on these facilities lead the department to terminate further consideration of the proposal on SR 18 corridor improvements. These same concerns, however, continue with respect to the remaining projects.

Summary of Amended Bill: The legislative intent section of the public-private initiatives law is amended to clarify the terms and parameters of the agreements negotiated under the program. The agreements do not bestow on private entities an immediate or vested right to construct and operate facilities. Rather, they provide an opportunity for private entities to design, plan and demonstrate public support in order to obtain a future decision by state and local agencies to build transportation facilities selected under the public-private initiatives program.

The project proposing corridor improvements on State Route 522 is terminated. The remaining four projects selected prior to September 1, 1994 and any replacement projects, if existing projects are terminated, must comply with an approval process that includes a public vote.

DOT is required to: (1) conduct a comprehensive analysis of traffic patterns and economic impact to define the geographical boundary of the area most affected by tolls or user fees; and (2) establish a public involvement process for decision-making on key issues (project size, cost, right-of-way, tolling and user fee ranges, environmental assessment, etc.) that are used to establish the project description.

Public comment, public hearings and legislative review through the Legislative Transportation Committee are provided.

The results of the analysis of traffic patterns and economic impact are used to establish the boundaries of the affected project area (by voting precinct) for a vote in a special election on: (1) the project description and characteristics; and (2) the imposition of tolls or user fees.

A simple majority of voters in the affected project area is required for DOT to solicit proposals for replacement projects or enter into an agreement with a private entity for projects selected prior to September 1, 1994.

Tolls or user fees may be used only for payment of a project's capital outlay costs, and the term of the agreement is limited to the time required to pay the capital outlay costs.

The private sector is required to reimburse DOT for all costs associated with the election.

The DOT is prohibited from imposing tolls after termination of the lease.

The private sector is required to contract with the Washington State Patrol for police service on the projects, and to reimburse these costs on the same basis as is incurred on other state highways.

Projects selected as demonstration projects under the public-private initiatives program and that are included in the department's six-year investment plan, retain their priority status. As state funds become available, such funds must be used toward the capital costs of the projects. If no state funding is required, available funds must be used (a) to reduce the rate of tolls or user fees imposed on the demonstration project or (b) for improvements on alternative state or local nontolled routes.

Amended Bill Compared to Substitute Bill: The amended bill replaces the House bill (ESHB 1317) with the Senate's version (ESSB 6044) of revisions to the public-private initiatives program (Chapter 47.46 RCW).

The House and Senate bills differ with respect to the public involvement process required to identify and select replacement projects and to negotiate agreements with private entities for existing projects. The Senate bill requires a public vote, in a special election, following the public involvement process and prior to either the solicitation of proposals by the secretary for replacement projects or negotiation of agreements with private entities for existing projects. Under the House bill, the public involvement process used to solicit public input and to gauge public approval for existing projects authorizes an advisory vote.

The public involvement process established in the House bill for developing existing projects provides for a public-private local involvement committee comprised of users, local elected officials and residents in the affected project area. The committee serves in an advisory capacity to the DOT and private entities with respect to the development and implementation of the public involvement process.

The Senate bill also contains the following provisions which are not in the House bill:

Requirement for the DOT to pay all election costs, with reimbursement of such costs by the private sector.

Requirement that tolls or user fees only be applied to the payment of the private entities' capital outlay costs.

Prohibition against the negotiation between the parties of the use of excess revenue from the projects.

Requirement that contracts for police services on public-private projects be with the Washington State Patrol.

Requirement that state highways selected as public-private projects and that are designated by the Transportation Commission as prioritized improvement projects under the six-year investment plan for state highway routes cannot be reprioritized. State funding available under the investment plan must be used toward public-private project costs. If state funds are not required, available funding must be used to reduce tolls, or for improvements on alternative free access routes.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: The establishment of a public involvement process for existing projects (selected prior to September 1, 1994), which includes local participation by elected local officials, proponents and users in the affected project area, ensures local decision making on key issues associated with public-private partnership projects.

Private entities selected to develop the five remaining public-private partnership projects are committed to the implementation of a public involvement process and should be allowed to enter into agreements with the department to further develop the selected projects.

Testimony Against: A public involvement process requiring an inventory of public positions and providing for an advisory vote is not an adequate and reliable mechanism for determining public approval of existing projects.

Testified: Representative Robertson, original prime sponsor; Jerry Ellis, WSDOT; Gerald Pfeffer, United Infrastructure (pro); Dick Page, 520 Association (pro); Barry Murphy, 522 Community Highway Association (pro); Bob Dilger, WA State Building Trades Council (pro); Allen Darr, Operating Engineers (pro); Maynard Arsove, No Expansion of 520 (con); Frank Durand (con); Chris Leman, Coalition of WA Communities (con); Donna Wandler, SR 18 Coalition (con); Dan Bray, Jim Barbee, David Krull, Doris Barbee, Steve Preston, TRUST (con); Chris Clifford, TRUST/CAUGHT (con); Neil Peterson, Seattle Transportation Group (concerns); Mike Lanier, Perini-Abam (concerns).