
SECOND ENGROSSED SUBSTITUTE HOUSE BILL 1317

State of Washington

54th Legislature

1995 Regular Session

By 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)

Read first time 02/28/95.

1 AN ACT Relating to transportation systems and facilities; amending
2 RCW 47.46.010, 47.46.030, 47.46.040, and 47.46.050; and declaring an
3 emergency.

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

5 **Sec. 1.** RCW 47.46.010 and 1993 c 370 s 1 are each amended to read
6 as follows:

7 The legislature finds and declares:

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

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

17 A public-private initiatives program will provide benefits to both
18 the public and private sectors. Public-private initiatives provide a
19 sound economic investment opportunity for the private sector. Such

1 initiatives will provide the state with increased access to property
2 development and project opportunities, financial and development
3 expertise, and will supplement state transportation revenues, allowing
4 the state to use its limited resources for other needed projects.

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

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

10 The secretary of transportation should be permitted and encouraged
11 to test the feasibility of building privately funded transportation
12 systems and facilities or segments thereof through the use of
13 innovative agreements with the private sector. The secretary of
14 transportation should be vested with the authority to solicit,
15 evaluate, negotiate, and administer public-private agreements with the
16 private sector relating to the planning, construction, upgrading, or
17 reconstruction of transportation systems and facilities.

18 Agreements negotiated under a public-private initiatives program
19 will not bestow on private entities an immediate right to construct and
20 operate the proposed transportation facilities. Rather, agreements
21 will grant to private entities the opportunity to design the proposed
22 facilities, demonstrate public support for proposed facilities, and
23 complete the planning processes required in order to obtain a future
24 decision by the department of transportation and other state and local
25 lead agencies on whether the facilities should be permitted and built.

26 Agreements negotiated under the public-private initiative's program
27 should establish the conditions under which the private developer may
28 secure the approval necessary to develop and operate the proposed
29 transportation facilities; create a framework to attract the private
30 capital necessary to finance their development; and ensure that the
31 transportation facilities will be designed, constructed, and operated
32 in accordance with applicable local, regional, state, and federal laws
33 and the applicable standards and policies of the department of
34 transportation.

35 The legislature finds that the Puget Sound congestion pricing
36 project, selected under this chapter, raises major transportation
37 policy, economic, and equity concerns. These relate to the integrity
38 of the state's high-occupancy vehicle program; the cost-effective
39 movement of freight and goods; the diversion of traffic to local

1 streets and arterials; and possible financial hardship to commuters.
2 The legislature further finds that these potential economic and social
3 impacts require comprehensive legislative review prior to advancement
4 of the project and directs that the secretary not proceed with the
5 implementation of the project without prior approval of the
6 legislature.

7 The department of transportation should be encouraged to take
8 advantage of new opportunities provided by federal legislation under
9 section 1012 of the Intermodal Surface Transportation Efficiency Act of
10 1991 (ISTEA). That section establishes a new program authorizing
11 federal participation in construction or improvement or improvement of
12 publicly or privately owned toll roads, bridges, and tunnels, and
13 allows states to leverage available federal funds as a means for
14 attracting private sector capital.

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

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

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

28 ~~Proposals and demonstration projects may be selected by the public~~
29 ~~and private sectors at their discretion. All projects designed,~~
30 ~~constructed, and operated under this authority must comply with all~~
31 ~~applicable rules and statutes in existence at the time the agreement is~~
32 ~~executed, including but not limited to the following provisions:~~
33 ~~Chapter 39.12 RCW, this title, RCW 41.06.380, chapter 47.64 RCW, RCW~~
34 ~~49.60.180, and 49 C.F.R. Part 21.~~

35 ~~The secretary or a designee shall consult with legal, financial,~~
36 ~~and other experts within and outside state government in the~~
37 ~~negotiation and development of the agreements.)) (2) If projects~~
38 selected prior to September 1, 1994, are terminated by the public or

1 private sectors, no other projects shall be selected as replacement
2 projects until the department develops a public involvement process to
3 identify prospective projects.

4 The public involvement process for replacement projects shall, at
5 a minimum, identify projects that: (a) Have the potential of achieving
6 overall public support among users of the projects, residents of
7 communities in the vicinity of the projects, and residents of
8 communities impacted by the projects; (b) meet a state transportation
9 need; (c) provide a significant state benefit; and (d) have the
10 capability of receiving more than one proposal from private entities to
11 ensure greater competition among proposers and maximum cost benefits to
12 users. Prospective projects may include projects identified by the
13 department or submitted by the private sector.

14 The department shall develop a public involvement plan for
15 identifying replacement projects and the cost of the plan by January 1,
16 1997, and shall submit the plan to the legislative transportation
17 committee for review. Project selections for replacement projects made
18 after September 1, 1994, shall be carried out utilizing the public
19 involvement process developed by the department and reviewed by the
20 legislative transportation committee. Projects that meet the criteria
21 established under this section shall be submitted for review by the
22 Washington state transportation commission. The commission shall
23 submit a list of eligible projects to the legislative transportation
24 committee for its consideration. If within forty-five calendar days of
25 submission the legislative transportation committee has not adopted a
26 resolution recommending that the secretary reject an eligible project,
27 the secretary is authorized to solicit proposals for the eligible
28 project.

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

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

38 (5)(a) Prior to conducting the advisory vote, the department shall
39 establish a committee comprised of individuals who represent cities and

1 counties in the vicinity of the project; organizations formed to
2 support or oppose the project; and users of the project. The committee
3 shall be named the public-private local involvement committee, and be
4 known as the local involvement committee.

5 (b) The members of the local involvement committee shall be: (i)
6 An elected official from each city within the county or counties in
7 which the project is located; (ii) an elected official from each county
8 in which the project is located; (iii) two persons from each county in
9 which the project is located who represent an organization formed in
10 support of the project, if the organization exists; (iv) two persons
11 from each county in which the project is located who represent an
12 organization formed to oppose the project, if the organization exists;
13 and (v) two public members active in a state-wide transportation
14 organization. If the committee makeup results in an even number of
15 committee members, there shall be an additional appointment of an
16 elected official from the county in which all, or the greatest portion
17 of the project is located.

18 (c) City and county elected officials shall be appointed by a
19 majority of the members of the city and county legislative authorities
20 of each city and county in which the project is located. The county
21 legislative authority of each county in which the project is located
22 shall identify and validate organizations officially formed in support
23 of or in opposition to the project and shall make the appointments
24 required under this section from a list submitted by the chair of the
25 organizations. Public members shall be appointed by the governor. All
26 appointments to the local involvement committee shall be made and
27 submitted to the department of transportation no later than August 1,
28 1995. Vacancies in the membership of the local involvement committee
29 shall be filled by the appointing authority under (b) of this
30 subsection for each position on the committee.

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

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

11 (7) After a determination and definition by the department and the
12 local involvement committee of the affected project area, the
13 department and the local involvement committee shall conduct a minimum
14 thirty-day public comment period. The department and the local
15 involvement committee may make adjustments to the definition of the
16 geographical boundary of the affected project area, based on comments
17 received from the public. Within fourteen calendar days after the
18 public comment period, the department and the local involvement
19 committee shall establish the boundaries of the affected project area
20 in units no smaller than a precinct as defined in RCW 29.01.120.

21 If after establishing the boundaries of the affected project area,
22 the department and the local involvement committee determine that the
23 membership of the local involvement committee requires modification,
24 the department and the committee shall submit recommendations for
25 modification to the legislative transportation committee for
26 consideration by the house of representatives and senate transportation
27 committees during the next succeeding legislative session.

28 (8) The department and the local involvement committee shall
29 develop a project description for selected projects, using project
30 proposals submitted as a result of solicitations by the department for
31 proposals, technical evaluations of project proposals, and any other
32 salient information. After developing the project description, the
33 department and the local involvement committee shall conduct a thirty-
34 day public comment period. The department and the local involvement
35 committee may make adjustments to the project description based on
36 comments received from the public. Within fourteen calendar days after
37 the public comment period, the department and the local involvement
38 committee shall transmit a copy of the map depicting the affected
39 project area and the project description and characteristics to the

1 county auditor of the county in which any portion of the affected
2 project area, as defined by the department and the local involvement
3 committee, is located.

4 (9) The department and the local involvement committee shall
5 provide the legislative transportation committee with progress reports
6 on the status of the definition of the affected project area and
7 project description and characteristics.

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

25 (11) The department and the local involvement committee shall
26 submit the results of the advisory vote on any project selected under
27 this chapter, along with any other pertinent information, to the
28 legislative transportation committee within seven calendar days of
29 certification of the vote. No later than thirty days prior to the next
30 legislative session, the legislative transportation committee shall
31 adopt a resolution making a recommendation to the department regarding
32 the disposition of the project proposals.

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

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

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

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

11 (3) Agreements shall provide for private ownership of the projects
12 during the construction period. After completion and final acceptance
13 of each project or discrete segment thereof, the agreement shall
14 provide for state ownership of the transportation systems and
15 facilities and lease to the private entity unless the state elects to
16 provide for ownership of the facility by the private entity during the
17 term of the agreement.

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

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

37 (5) The plans and specifications for each project constructed under
38 this section shall comply with the department's standards for state
39 projects. A facility constructed by and leased to a private entity is

1 deemed to be a part of the state highway system for purposes of
2 identification, maintenance, and enforcement of traffic laws and for
3 the purposes of applicable sections of this title. Upon reversion of
4 the facility to the state, the project must meet all applicable state
5 standards. Agreements shall address responsibility for reconstruction
6 or renovations that are required in order for a facility to meet all
7 applicable state standards upon reversion of the facility to the state.

8 (6) For the purpose of facilitating these projects and to assist
9 the private entity in the financing, development, construction, and
10 operation of the transportation systems and facilities, the agreements
11 may include provisions for the department to exercise its authority,
12 including the lease of facilities, rights of way, and airspace,
13 exercise of the power of eminent domain, granting of development rights
14 and opportunities, granting of necessary easements and rights of
15 access, issuance of permits and other authorizations, protection from
16 competition, remedies in the event of default of either of the parties,
17 granting of contractual and real property rights, liability during
18 construction and the term of the lease, authority to negotiate
19 acquisition of rights of way in excess of appraised value, and any
20 other provision deemed necessary by the secretary.

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

36 (8) Agreements under this section may include any contractual
37 provision that is necessary to protect the project revenues required to
38 repay the costs incurred to study, plan, design, finance, acquire,
39 build, install, operate, enforce laws, and maintain toll highways,

1 bridges, and tunnels and which will not unreasonably inhibit or
2 prohibit the development of additional public transportation systems
3 and facilities. Agreements under this section must secure and maintain
4 liability insurance coverage in amounts appropriate to protect the
5 project's viability and may address state indemnification of the
6 private entity for design and construction liability where the state
7 has approved relevant design and construction plans.

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

11 (10)(a) In carrying out the public involvement process required in
12 subsection (9) of this section, the private entity shall proactively
13 seek public participation through a process appropriate to the
14 characteristics of the project that assesses and demonstrates overall
15 public support among: Users of the project, residents of communities
16 in the vicinity of the project, and residents of communities impacted
17 by the project. The public involvement process shall provide
18 opportunities for users and residents to comment upon key issues
19 regarding the project including, but not limited to: (i) Alternative
20 sizes and scopes; (ii) design; (iii) environmental assessment; (iv)
21 right of way and access plans; (v) traffic impacts; (vi) tolling or
22 user fee strategies and tolling or user fee ranges; (vii) project cost;
23 (viii) construction impacts; (ix) facility operation; and (x) any other
24 salient characteristics.

25 (b) The private entity shall cause to be conducted on one or more
26 occasions, a comprehensive inventory of public positions of users and
27 of residents of communities in the affected project area. If the
28 affected project area has not been defined, the private entity shall
29 define the affected project area by conducting, at a minimum: (i) A
30 comparison of the estimated percentage of residents of communities in
31 the vicinity of and impacted by the project who could be subject to
32 tolls or user fees and the estimated percentage of other users and
33 transient traffic that could be subject to tolls or user fees; (ii) an
34 analysis of the anticipated traffic diversion patterns; (iii) an
35 analysis of the potential economic impact resulting from proposed toll
36 rates or user fee rates imposed on residents, commercial traffic, and
37 commercial entities in communities in the vicinity of and impacted by
38 the project; (iv) an analysis of the economic impact of tolls or user
39 fees on the price of goods and services generally; and (v) an analysis

1 of the relationship of the project to state transportation needs and
2 benefits.

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

8 The comprehensive inventory of public positions shall be conducted
9 by an independent accountant or other independent professional jointly
10 selected and supervised by the private entity and the department in
11 consultation with the local involvement committee and the legislative
12 transportation committee. The independent accountant or other
13 independent professional must have a proven history and expertise in
14 assessing public opinion and shall not have a direct or indirect
15 interest in such project. The results of the inventory of public
16 positions shall be made available for public review and comment.

17 (c) In seeking public participation, the private entity shall
18 involve the local involvement committee established under RCW
19 47.46.030. If no local involvement committee has been established for
20 the project prior to entering into the agreement, the private entity
21 shall, at a minimum, establish the committee as required under the
22 specifications of RCW 47.46.030(5) (b) and (c). Additions to the
23 committee may be made as a result of defining the affected project area
24 as required under subsection (10)(b) of this section.

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

29 (e) The department and the private entity shall provide the
30 legislative transportation committee and the local involvement
31 committee with progress reports on the status of the public involvement
32 process and the inventory of public positions. The results of the
33 inventory of public positions, including public comment on such
34 inventory of public positions, shall be forwarded to the legislative
35 transportation committee and the local involvement committee for their
36 review.

37 (11) Nothing in this chapter limits the right of the secretary and
38 his or her agents to render such advice and to make such

1 recommendations as they deem to be in the best interests of the state
2 and the public.

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

5 (1) The department may enter into agreements using federal, state,
6 and local financing in connection with the projects, including without
7 limitation, grants, loans, and other measures authorized by section
8 1012 of ISTEPA, and to do such things as necessary and desirable to
9 maximize the funding and financing, including the formation of a
10 revolving loan fund to implement this section.

11 (2) Agreements entered into under this section shall authorize the
12 private entity to lease the facilities within a designated area or
13 areas from the state and to impose user fees or tolls within the
14 designated area to allow a reasonable rate of return on investment, as
15 established through a negotiated agreement between the state and the
16 private entity. The negotiated agreement shall determine a maximum
17 rate of return on investment, based on project characteristics. If the
18 negotiated rate of return on investment is not affected, the private
19 entity may establish and modify toll rates and user fees.

20 (3) Agreements may establish "incentive" rates of return beyond the
21 negotiated maximum rate of return on investment. The incentive rates
22 of return shall be designed to provide financial benefits to the
23 affected public jurisdictions and the private entity, given the
24 attainment of various safety, performance, or transportation demand
25 management goals. The incentive rates of return shall be negotiated in
26 the agreement.

27 (4) Agreements shall require that over the term of the ownership or
28 lease the user fees or toll revenues be applied only to payment of the
29 private entity's capital outlay costs for the project, including
30 project development costs, interest expense, the costs associated with
31 design, construction, operations, toll collection, maintenance and
32 administration of the ((facility)) project, reimbursement to the state
33 for all costs associated with an election as required under RCW
34 47.46.030, the costs of project review and oversight, technical and law
35 enforcement services, establishment of a fund to assure the adequacy of
36 maintenance expenditures, and a reasonable return on investment to the
37 private entity. ((The use of any excess toll revenues or user fees may
38 be negotiated between the parties.

1 ~~After expiration of the lease of a facility to a private entity,~~
2 ~~the secretary may continue to charge user fees or tolls for the use of~~
3 ~~the facility, with these revenues to be used for operations and~~
4 ~~maintenance of the facility, or to be paid to the local transportation~~
5 ~~planning agency, or any combination of such uses.))~~ A negotiated
6 agreement shall not extend the term of the ownership or lease beyond
7 the period of time required for payment of the private entity's capital
8 outlay costs for the project under this subsection.

9 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and shall take
12 effect immediately.

--- END ---