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**SENATE BILL 6753**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** Senators Oke, Prince, Prentice, Sheldon, Swecker, Wojahn, Deccio, Schow, A. Anderson, Sellar, Winsley, Strannigan, Finkbeiner, Moyer, McDonald, Haugen, Wood and Rasmussen

Read first time 01/31/96. Referred to Committee on Transportation.

1 AN ACT Relating to agreements, advisory vote procedures, and  
2 funding for the Tacoma Narrows bridge under the public-private  
3 transportation initiatives program; amending RCW 47.46.030 and  
4 47.46.040; and making an appropriation.

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

6 **Sec. 1.** RCW 47.46.030 and 1995 2nd sp.s. c 19 s 2 are each amended  
7 to read as follows:

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

14 The public-private initiatives program may develop up to six  
15 demonstration projects. Each proposal shall be weighed on its own  
16 merits, and each of the six agreements shall be negotiated  
17 individually, and as a stand-alone project.

18 (2) If project proposals selected prior to September 1, 1994, are  
19 terminated by the public or private sectors, the department shall not

1 select any new projects, including project proposals submitted to the  
2 department prior to September 1, 1994, and designated by the  
3 transportation commission as placeholder projects, after June 16, 1995,  
4 until June 30, 1997.

5 The department, in consultation with the legislative transportation  
6 committee, shall conduct a program and fiscal audit of the public-  
7 private initiatives program for the biennium ending June 30, 1997. The  
8 department shall submit a progress report to the legislative  
9 transportation committee on the program and fiscal audit by June 30,  
10 1996, with preliminary and final audit reports due December 1, 1996,  
11 and June 30, 1997, respectively.

12 The department shall develop and submit a proposed public  
13 involvement plan to the 1997 legislature to identify the process for  
14 selecting new potential projects and the associated costs of  
15 implementing the plan. The legislature must adopt the public  
16 involvement plan before the department may proceed with any activity  
17 related to project identification and selection. Following legislative  
18 adoption of the public involvement plan, the department is authorized  
19 to implement the plan and to identify potential new projects.

20 The public involvement plan for projects selected after June 30,  
21 1997, shall, at a minimum, identify projects that: (a) Have the  
22 potential of achieving overall public support among users of the  
23 projects, residents of communities in the vicinity of the projects, and  
24 residents of communities impacted by the projects; (b) meet a state  
25 transportation need; (c) provide a significant state benefit; and (d)  
26 provide competition among proposers and maximum cost benefits to users.  
27 Prospective projects may include projects identified by the department  
28 or submitted by the private sector.

29 Projects that meet the minimum criteria established under this  
30 section and the requirements of the public involvement plan developed  
31 by the department and approved by the legislature shall be submitted to  
32 the Washington state transportation commission for its review. The  
33 commission, in turn, shall submit a list of eligible projects to the  
34 legislative transportation committee for its consideration. Forty-five  
35 days after the submission to the legislative transportation committee  
36 of the list of eligible projects, the secretary is authorized to  
37 solicit proposals for the eligible project.

38 (3) Prior to entering into agreements with private entities under  
39 the requirements of RCW 47.46.040 for any project proposal selected

1 before September 1, 1994, or after June 30, 1997, except as provided  
2 for in subsections (10) (~~and~~), (11), and (12) of this section, the  
3 department shall require an advisory vote as provided under subsections  
4 (4) through (9) of this section.

5 (4) In preparing for the advisory vote, the department shall  
6 conduct a comprehensive analysis of traffic patterns and economic  
7 impact to define the geographical boundary of the project area that is  
8 affected by the imposition of tolls or user fees authorized under this  
9 chapter. The area so defined is referred to in this section as the  
10 affected project area. In defining the affected project area, the  
11 department shall, at a minimum, undertake: (a) A comparison of the  
12 estimated percentage of residents of communities in the vicinity of the  
13 project and in other communities impacted by the project who could be  
14 subject to tolls or user fees and the estimated percentage of other  
15 users and transient traffic that could be subject to tolls or user  
16 fees; (b) an analysis of the anticipated traffic diversion patterns;  
17 (c) an analysis of the potential economic impact resulting from  
18 proposed toll rates or user fee rates imposed on residents, commercial  
19 traffic, and commercial entities in communities in the vicinity of and  
20 impacted by the project; (d) an analysis of the economic impact of  
21 tolls or user fees on the price of goods and services generally; and  
22 (e) an analysis of the relationship of the project to state  
23 transportation needs and benefits.

24 (5)(a) After determining the definition of the affected project  
25 area, the department shall establish a committee comprised of  
26 individuals who represent cities and counties in the affected project  
27 area; organizations formed to support or oppose the project; and users  
28 of the project. The committee shall be named the public-private local  
29 involvement committee, and be known as the local involvement committee.

30 (b) The members of the local involvement committee shall be: (i)  
31 An elected official from each city within the affected project area;  
32 (ii) an elected official from each county within the affected project  
33 area; (iii) two persons from each county within the affected project  
34 area who represent an organization formed in support of the project, if  
35 the organization exists; (iv) two persons from each county within the  
36 affected project area who represent an organization formed to oppose  
37 the project, if the organization exists; and (v) four public members  
38 active in a state-wide transportation organization. If the committee  
39 makeup results in an even number of committee members, there shall be

1 an additional appointment of an elected official from the county in  
2 which all, or the greatest portion of the project is located.

3 (c) City and county elected officials shall be appointed by a  
4 majority of the members of the city or county legislative authorities  
5 of each city or county within the affected project area, respectively.  
6 The county legislative authority of each county within the affected  
7 project area shall identify and validate organizations officially  
8 formed in support of or in opposition to the project and shall make the  
9 appointments required under this section from a list submitted by the  
10 chair of the organizations. Public members shall be appointed by the  
11 governor. All appointments to the local involvement committee shall be  
12 made and submitted to the department of transportation no later than  
13 January 1, 1996, for projects selected prior to September 1, 1994, and  
14 no later than thirty days after the affected project area is defined  
15 for projects selected after June 30, 1997. Vacancies in the membership  
16 of the local involvement committee shall be filled by the appointing  
17 authority under (b)(i) through (v) of this subsection for each position  
18 on the committee.

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

22 (e) Members of the local involvement committee serve without  
23 compensation and may not receive subsistence, lodging expenses, or  
24 travel expenses.

25 (6) The department shall conduct a minimum thirty-day public  
26 comment period on the definition of the geographical boundary of the  
27 project area. The department, in consultation with the local  
28 involvement committee, shall make adjustments, if required, to the  
29 definition of the geographical boundary of the affected project area,  
30 based on comments received from the public. Within fourteen calendar  
31 days after the public comment period, the department shall set the  
32 boundaries of the affected project area in units no smaller than a  
33 precinct as defined in RCW 29.01.120.

34 (7) The department, in consultation with the local involvement  
35 committee, shall develop a description for selected project proposals.  
36 After developing the description of the project proposal, the  
37 department shall publish the project proposal description in newspapers  
38 of general circulation for seven calendar days in the affected project  
39 area. Within fourteen calendar days after the last day of the

1 publication of the project proposal description, the department shall  
2 transmit a copy of the map depicting the affected project area and the  
3 description of the project proposal to the county auditor of the county  
4 in which any portion of the affected project area is located.

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

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

27 (10) Subsections (4) through (9) of this section shall not apply to  
28 project proposals selected prior to September 1, 1994, that have no  
29 organized public opposition as demonstrated by the submission to the  
30 department of original petitions bearing at least five thousand  
31 signatures of individuals opposing the project, collected and submitted  
32 after September 1, 1994, and by thirty calendar days after June 16,  
33 1995.

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

1       (12) Subsections (4) through (9) of this section shall not apply to  
2 project proposals selected prior to September 1, 1994, that have  
3 received public opposition as demonstrated by the submission to the  
4 department of original petitions bearing at least five thousand  
5 signatures of individuals opposing the project, collected and submitted  
6 after September 1, 1994, and by July 16, 1995, and for which the  
7 legislature has appropriated funds under RCW 47.10.834 to conduct  
8 environmental impact studies, a public involvement program, and  
9 engineering and technical studies. Selected project proposals meeting  
10 the requirements of this subsection shall be required to conduct an  
11 advisory vote as required under RCW 47.46.040(10)(e).

12       **Sec. 2.** RCW 47.46.040 and 1995 2nd sp.s. c 19 s 3 are each amended  
13 to read as follows:

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

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

22       (3) Agreements shall provide for private ownership of the projects  
23 during the construction period. After completion and final acceptance  
24 of each project or discrete segment thereof, the agreement shall  
25 provide for state ownership of the transportation systems and  
26 facilities and lease to the private entity unless the state elects to  
27 provide for ownership of the facility by the private entity during the  
28 term of the agreement.

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

32       (4) The department may exercise any power possessed by it to  
33 facilitate the development, construction, financing operation, and  
34 maintenance of transportation projects under this chapter. Agreements  
35 for maintenance services entered into under this section shall provide  
36 for full reimbursement for services rendered by the department or other  
37 state agencies. Agreements for police services for projects, involving  
38 state highway routes, developed under agreements shall be entered into

1 with the Washington state patrol. The agreement for police services  
2 shall provide that the state patrol will be reimbursed for costs on a  
3 comparable basis with the costs incurred for comparable service on  
4 other state highway routes. The department may provide services for  
5 which it is reimbursed, including but not limited to preliminary  
6 planning, environmental certification, and preliminary design of the  
7 demonstration projects.

8 (5) The plans and specifications for each project constructed under  
9 this section shall comply with the department's standards for state  
10 projects. A facility constructed by and leased to a private entity is  
11 deemed to be a part of the state highway system for purposes of  
12 identification, maintenance, and enforcement of traffic laws and for  
13 the purposes of applicable sections of this title. Upon reversion of  
14 the facility to the state, the project must meet all applicable state  
15 standards. Agreements shall address responsibility for reconstruction  
16 or renovations that are required in order for a facility to meet all  
17 applicable state standards upon reversion of the facility to the state.

18 (6) For the purpose of facilitating these projects and to assist  
19 the private entity in the financing, development, construction, and  
20 operation of the transportation systems and facilities, the agreements  
21 may include provisions for the department to exercise its authority,  
22 including the lease of facilities, rights of way, and airspace,  
23 exercise of the power of eminent domain, granting of development rights  
24 and opportunities, granting of necessary easements and rights of  
25 access, issuance of permits and other authorizations, protection from  
26 competition, remedies in the event of default of either of the parties,  
27 granting of contractual and real property rights, liability during  
28 construction and the term of the lease, authority to negotiate  
29 acquisition of rights of way in excess of appraised value, and any  
30 other provision deemed necessary by the secretary.

31 (7) The agreements entered into under this section may include  
32 provisions authorizing the state to grant necessary easements and lease  
33 to a private entity existing rights of way or rights of way  
34 subsequently acquired with public or private financing. The agreements  
35 may also include provisions to lease to the entity airspace above or  
36 below the right of way associated or to be associated with the private  
37 entity's transportation facility. In consideration for the reversion  
38 rights in these privately constructed facilities, the department may  
39 negotiate a charge for the lease of airspace rights during the term of

1 the agreement for a period not to exceed fifty years. If, after the  
2 expiration of this period, the department continues to lease these  
3 airspace rights to the private entity, it shall do so only at fair  
4 market value. The agreement may also provide the private entity the  
5 right of first refusal to undertake projects utilizing airspace owned  
6 by the state in the vicinity of the public-private project.

7 (8) Agreements under this section may include any contractual  
8 provision that is necessary to protect the project revenues required to  
9 repay the costs incurred to study, plan, design, finance, acquire,  
10 build, install, operate, enforce laws, and maintain toll highways,  
11 bridges, and tunnels and which will not unreasonably inhibit or  
12 prohibit the development of additional public transportation systems  
13 and facilities. Agreements under this section must secure and maintain  
14 liability insurance coverage in amounts appropriate to protect the  
15 project's viability and may address state indemnification of the  
16 private entity for design and construction liability where the state  
17 has approved relevant design and construction plans.

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

21 (10)(a) In carrying out the public involvement process required in  
22 subsection (9) of this section, the private entity shall proactively  
23 seek public participation through a process appropriate to the  
24 characteristics of the project that assesses and demonstrates public  
25 support among: Users of the project, residents of communities in the  
26 vicinity of the project, and residents of communities impacted by the  
27 project.

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

38 (c) If the affected project area has not been defined, the private  
39 entity shall define the affected project area by conducting, at a

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

13 ~~((The agreement may require an advisory vote by users of and  
14 residents in the affected project area.))~~

15 (d) For project proposals selected before September 1, 1994, or  
16 after June 30, 1997, that have no organized public opposition as  
17 demonstrated by the submission to the department of original petitions  
18 bearing at least five thousand signatures of individuals opposing the  
19 project, collected and submitted by the dates required under RCW  
20 47.46.030, the agreement may require an advisory vote by users of and  
21 residents in the affected project area.

22 (e) For project proposals selected before September 1, 1994, or  
23 after June 30, 1997, that have organized public opposition as  
24 demonstrated by the submission to the department of petitions bearing  
25 at least five thousand signatures of individuals opposing the project,  
26 collected and submitted by the dates required under RCW 47.46.030, and  
27 for which the state has appropriated funds under RCW 47.10.834 for  
28 environmental impact studies, public involvement programs, and  
29 engineering and technical studies, the agreement shall require an  
30 advisory vote on the preferred alternative identified under the  
31 requirements of chapter 43.21C RCW and the national environmental  
32 policy act, 42 U.S.C. 4321 et seq., by users of and residents in the  
33 affected project area.

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

8 ~~((f))~~ (h) 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 NEW SECTION. **Sec. 3.** The sum of ten million dollars, or as much  
17 thereof as may be necessary, is appropriated for the biennium ending  
18 June 30, 1997, from the revenue generated from the sale of bonds  
19 authorized under RCW 47.10.834 to the motor vehicle fund for the  
20 department of transportation to be used as follows:

21 (1) Up to five million dollars is for all forms of cash  
22 contributions or the payment of other costs incident to environmental  
23 studies, a public involvement program, an advisory vote, and  
24 administrative costs associated with the SR 16 corridor improvements  
25 contained in the proposal selected prior to September 1, 1994, under  
26 the public-private transportation initiative program; and

27 (2) Up to five million dollars is for the department's share, which  
28 is one-half, of engineering and technical studies conducted for SR 16  
29 corridor improvements contained in the proposal for that corridor  
30 selected prior to September 1, 1994, under the public-private  
31 transportation initiative program.

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