
SENATE BILL 5766

State of Washington**57th Legislature****2001 Regular Session**

By Senators Oke, B. Sheldon and Haugen; by request of The Blue Ribbon Commission on Transportation

Read first time 02/01/2001. Referred to Committee on Transportation.

1 AN ACT Relating to continuing public-private initiative pilot
2 projects; amending RCW 47.46.030, 47.56.010, 47.56.030, 47.56.240, and
3 47.56.270; creating a new section; repealing RCW 47.56.271; and
4 declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds and declares:

7 It is in the interest of the state and the traveling public to
8 improve the safety and efficiency of state highways and bridges as
9 expeditiously as possible. The existing Tacoma Narrows bridge section
10 of the SR 16 corridor located in Pierce and Kitsap counties, among
11 others, is a threat to public health and safety because of congestion
12 and a high number of accidents, injuries, and fatalities. Millions of
13 dollars are lost annually because of travel delays and accidents that
14 cause personal and property damage. These conditions are the result of
15 insufficient capacity, substandard effective lane widths, lack of
16 emergency shoulders, and no separation of oncoming traffic due to the
17 physical limitation of the existing bridge.

18 The SR 16 corridor provides the only fixed roadway link crossing
19 Puget Sound. SR 16 is classified as an urban principal arterial and a

1 highway of statewide significance because it serves substantial
2 statewide and interstate travel. Further, its national highway system
3 designation as a major strategic highway connector identifies SR 16 as
4 part of the network of highways that is important to the United States
5 strategic defense policy providing defense access, continuity, and
6 emergency capabilities for the movement of personnel, materials, and
7 equipment.

8 The SR 16 corridor is vital to the economic well-being of Pierce
9 and Kitsap counties and the Olympic peninsula. SR 16 is a designated
10 state freight corridor, allowing for the efficient movement of freight,
11 goods, and services to support local, regional, and state economies.

12 The public-private transportation initiatives act, chapter 47.46
13 RCW, is an important component of the state's approach to financing and
14 carrying out additions and improvements to the state transportation
15 system, including improvements to facilities originally financed under
16 chapter 47.56 RCW. Under chapter 47.46 RCW, public-private initiative
17 projects are developed according to state and federal law and other
18 statutorily required processes. The SR 16 corridor project includes
19 the financing, right-of-way acquisition, design-build construction,
20 operations, and maintenance of a new suspension bridge at Tacoma
21 Narrows parallel to the existing bridge and the reconfiguration and
22 seismic rehabilitation of the current bridge. Roadway improvements
23 will also be made on SR 16 from and to the approaches to the bridge.
24 Voters in the affected project area under state law approved the
25 imposition of tolls to pay for these improvements.

26 The state highway systems plan does not provide any other funding
27 solution for this critical transportation project, other than public-
28 private financing under chapter 47.46 RCW. Under RCW 47.46.040, the
29 project has received regulatory approvals, rights-of-way have been
30 acquired, necessary preparations for financing have been made, and a
31 design-build construction price has been determined. There have been
32 significant state appropriations and private funding advanced to
33 develop the project. Delays in commencing this project will cause
34 increases in construction and financing costs and present a clear
35 danger that the state will not be able to proceed to make these vital
36 transportation improvements. This will result in a detrimental effect
37 on the safety of its citizens and the economic welfare of the region.

38 In order to avoid these profound risks, including the profound risk
39 of the project not proceeding, which would adversely affect tens of

1 thousands of citizens, it is necessary that this act be effective
2 immediately. Immediate legislative action is a pressing necessity to
3 support the immediate commencement of work on this project and the SR
4 16 corridor.

5 These facts and findings are a declaration of facts constituting an
6 emergency, and the projects that will be able to proceed under this act
7 are necessary for immediate preservation of the public health, safety,
8 and welfare.

9 **Sec. 2.** RCW 47.46.030 and 1996 c 280 s 1 are each amended to read
10 as follows:

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

17 The public-private initiatives program may develop ((up-to-six))
18 demonstration projects. Each proposal shall be weighed on its own
19 merits, and each ((of the six agreements shall)) agreement must be
20 negotiated individually, and as a stand-alone project.

21 (2) If project proposals selected prior to September 1, 1994, are
22 terminated by the public or private sectors, the department shall not
23 select any new projects, including project proposals submitted to the
24 department prior to September 1, 1994, and designated by the
25 transportation commission as placeholder projects, after June 16, 1995,
26 until June 30, 1997.

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

34 The department shall develop and submit a proposed public
35 involvement plan to the ((1997)) 2002 legislature to identify the
36 process for selecting new potential projects and the associated costs
37 of implementing the plan. The legislature must adopt the public
38 involvement plan before the department may proceed with any activity

1 related to project identification and selection. Following legislative
2 adoption of the public involvement plan, the department is authorized
3 to implement the plan and to identify potential new projects.

4 The public involvement plan for projects selected after June 30,
5 1997, shall, at a minimum, identify projects that: (a) Have the
6 potential of achieving overall public support among users of the
7 projects, residents of communities in the vicinity of the projects, and
8 residents of communities impacted by the projects; (b) meet a state
9 transportation need; (c) provide a significant state benefit; and (d)
10 provide competition among proposers and maximum cost benefits to users.
11 Prospective projects may include projects identified by the department
12 or submitted by the private sector.

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

22 (3) Prior to entering into agreements with private entities under
23 the requirements of RCW 47.46.040 for any project proposal selected
24 before September 1, 1994, or after June 30, 1997, except as provided
25 for in subsections ((11) and)) (12) and (13) of this section, the
26 department shall require an advisory vote as provided under subsections
27 (5) through (10) of this section.

28 (4) The advisory vote shall apply to project proposals selected
29 prior to September 1, 1994, or after June 30, 1997, that receive public
30 opposition as demonstrated by the submission to the department of
31 original petitions bearing at least five thousand signatures of
32 individuals opposing the project collected and submitted in accordance
33 with the dates established in subsections (12) and (13) of this
34 section. The advisory vote shall be on the preferred alternative
35 identified under the requirements of chapter 43.21C RCW and, if
36 applicable, the national environmental policy act, 42 U.S.C. 4321 et
37 seq. The execution by the department of the advisory vote process
38 established in this section is subject to the prior appropriation of
39 funds by the legislature for the purpose of conducting environmental

1 impact studies, a public involvement program, local involvement
2 committee activities, traffic and economic impact analyses, engineering
3 and technical studies, and the advisory vote.

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

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

29 (b) The members of the local involvement committee shall be: (i)
30 An elected official from each city within the affected project area;
31 (ii) an elected official from each county within the affected project
32 area; (iii) two persons from each county within the affected project
33 area who represent an organization formed in support of the project, if
34 the organization exists; (iv) two persons from each county within the
35 affected project area who represent an organization formed to oppose
36 the project, if the organization exists; and (v) four public members
37 active in a statewide transportation organization. If the committee
38 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 (7) 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 (8) 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 (9) 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 (10) 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 (11) Notwithstanding any other provision of law, the department may
28 contract with a private developer of a selected project proposal to
29 conduct environmental impact studies, a public involvement program, and
30 engineering and technical studies funded by the legislature. For
31 projects subject to this subsection, the department shall not enter
32 into an agreement under RCW 47.46.040 prior to the advisory vote on the
33 preferred alternative.

34 (12) Subsections (5) through (10) of this section shall not apply
35 to project proposals selected prior to September 1, 1994, that have no
36 organized public opposition as demonstrated by the submission to the
37 department of original petitions bearing at least five thousand
38 signatures of individuals opposing the project, collected and submitted

1 after September 1, 1994, and by thirty calendar days after June 16,
2 1995.

3 (13) Subsections (5) through (10) of this section shall not apply
4 to project proposals selected after June 30, 1997, that have no
5 organized public opposition as demonstrated by the submission to the
6 department of original petitions bearing at least five thousand
7 signatures of individuals opposing the project, collected and submitted
8 by ninety calendar days after project selection.

9 **Sec. 3.** RCW 47.56.010 and 1984 c 7 s 246 are each amended to read
10 as follows:

11 "Bridge" means a bridge constructed or acquired under this
12 chapter, upon which tolls are charged, together with all appurtenances,
13 additions, alterations, improvements, and replacements thereof, and the
14 approaches thereto, and all lands and interests used therefor, and
15 buildings and improvements thereon.

16 "Road" means any express highway, superhighway, or motorway at
17 such locations and between such termini as may be established by law,
18 and constructed or to be constructed as a limited access highway under
19 the provisions of this chapter by the department, and shall include,
20 but not be limited to, all bridges, tunnels, overpasses, underpasses,
21 interchanges, entrance plazas, approaches, toll houses, service areas,
22 service facilities, communications facilities, and administration,
23 storage, and other buildings that the department may deem necessary for
24 the operation of the project, together with all property, rights,
25 easements, and interests that may be acquired by the department for the
26 construction or the operation of the project, all of which shall be
27 conducted in the same manner and under the same procedure as provided
28 for the establishing, constructing, operating, and maintaining of toll
29 bridges by the department, insofar as those procedures are reasonably
30 consistent and applicable.

31 "Bridge" and "road" as used in this chapter does not
32 include a facility that is developed, financed, constructed,
33 reconstructed, upgraded, maintained, or operated under chapter 47.46
34 RCW and for which funds have been appropriated under RCW 47.46.030,
35 notwithstanding the fact that the facility was originally constructed
36 under this chapter.

1 **Sec. 4.** RCW 47.56.030 and 1995 1st sp.s. c 4 s 1 are each amended
2 to read as follows:

3 The department of transportation shall have full charge of the
4 construction of all toll bridges and other toll facilities including
5 the Washington state ferries, and the operation and maintenance
6 thereof. The transportation commission shall determine and establish
7 the tolls and charges thereon, and shall perform all duties and
8 exercise all powers relating to the financing, refinancing, and fiscal
9 management of all toll bridges and other toll facilities including the
10 Washington state ferries, and bonded indebtedness in the manner
11 provided by law. However, once bonds issued by the commission for
construction of a toll bridge or other toll facility have been paid,
redeemed, or defeased in full, the toll bridge or other toll facility
may be thereafter included in projects that have been authorized under
chapter 47.46 RCW and for which funds have been appropriated under RCW
47.46.030, and tolls on the facilities must be established as provided
by chapter 47.46 RCW. The department shall have full charge of design
18 of all toll facilities. The department shall proceed with the
19 construction of such toll bridges and other facilities and the
20 approaches thereto by contract in the manner of state highway
21 construction immediately upon there being made available funds for such
22 work and shall prosecute such work to completion as rapidly as
23 practicable. The department is authorized to negotiate contracts for
24 any amount without bid in order to make repairs to ferries or ferry
25 terminal facilities or removal of such facilities whenever continued
26 use of ferries or ferry terminal facilities constitutes a real or
27 immediate danger to the traveling public or precludes prudent use of
28 such ferries or facilities.

29 The department shall proceed with the procurement of materials,
30 supplies, services, and equipment needed for the support, maintenance,
31 and use of a ferry, ferry terminal, or other facility operated by
32 Washington state ferries, in accordance with chapter 43.19 RCW except
33 as follows:

34 (1) When the secretary of the department of transportation
35 determines in writing that the use of invitation for bid is either not
36 practicable or not advantageous to the state and it may be necessary to
37 make competitive evaluations, including technical or performance
38 evaluations among acceptable proposals to complete the contract award,
39 a contract may be entered into by use of a competitive sealed proposals

1 method, and a formal request for proposals solicitation. Such formal
2 request for proposals solicitation shall include a functional
3 description of the needs and requirements of the state and the
4 significant factors.

5 (2) When purchases are made through a formal request for proposals
6 solicitation the contract shall be awarded to the responsible proposer
7 whose competitive sealed proposal is determined in writing to be the
8 most advantageous to the state taking into consideration price and
9 other evaluation factors set forth in the request for proposals. No
10 significant factors may be used in evaluating a proposal that are not
11 specified in the request for proposals. Factors that may be considered
12 in evaluating proposals include but are not limited to: Price
13 maintainability; reliability; commonality; performance levels; life
14 cycle cost if applicable under this section; cost of transportation or
15 delivery; delivery schedule offered; installation cost; cost of spare
16 parts; availability of parts and service offered; and the following:

17 (a) The ability, capacity, and skill of the proposer to perform the
18 contract or provide the service required;

19 (b) The character, integrity, reputation, judgment, experience, and
20 efficiency of the proposer;

21 (c) Whether the proposer can perform the contract within the time
22 specified;

23 (d) The quality of performance of previous contracts or services;

24 (e) The previous and existing compliance by the proposer with laws
25 relating to the contract or services;

26 (f) Objective, measurable criteria defined in the request for
27 proposal. These criteria may include but are not limited to items such
28 as discounts, delivery costs, maintenance services costs, installation
29 costs, and transportation costs; and

30 (g) Such other information as may be secured having a bearing on
31 the decision to award the contract.

32 When purchases are made through a request for proposal process,
33 proposals received shall be evaluated based on the evaluation factors
34 set forth in the request for proposal. When a life cycle cost analysis
35 is used, the life cycle cost of a proposal shall be given at least the
36 same relative importance as the initial price element specified in the
37 request of proposal documents. The department may reject any and all
38 proposals received. If the proposals are not rejected, the award shall
39 be made to the proposer whose proposal is most advantageous to the

1 department, considering price and the other evaluation factors set
2 forth in the request for proposal.

3 (3) The legislative transportation committee shall review the
4 secretary's use of the request for proposals solicitation for
5 Washington state ferries projects to determine if the process
6 established under chapter 4, Laws of 1995 1st sp. sess. is appropriate.
7 The results of the review, including recommendations for modification
8 of the request for proposal process, shall be reported to the house of
9 representatives and senate transportation committees by January 1,
10 1997.

11 **Sec. 5.** RCW 47.56.240 and 1984 c 7 s 265 are each amended to read
12 as follows:

13 The commission is hereby empowered to fix the rates of toll and
14 other charges for all toll bridges built under the terms of this
15 chapter. Toll charges so fixed may be changed from time to time as
16 conditions warrant. The commission, in establishing toll charges,
17 shall give due consideration to the cost of operating and maintaining
18 such toll bridge or toll bridges including the cost of insurance, and
19 to the amount required annually to meet the redemption of bonds and
20 interest payments on them. The tolls and charges shall be at all times
21 fixed at rates to yield annual revenue equal to annual operating and
22 maintenance expenses including insurance costs and all redemption
23 payments and interest charges of the bonds issued for any particular
24 toll bridge or toll bridges as the bonds become due. The bond
25 redemption and interest payments constitute a first direct and
26 exclusive charge and lien on all such tolls and other revenues and
27 interest thereon. Sinking funds created therefrom received from the
28 use and operation of the toll bridge or toll bridges, and such tolls
29 and revenues together with the interest earned thereon shall constitute
30 a trust fund for the security and payment of such bonds and shall not
31 be used or pledged for any other purpose as long as any of these bonds
32 are outstanding and unpaid.

33 However, once bonds issued by the commission for construction of a
34 toll bridge or other toll facility have been paid, redeemed, or
35 defeased in full, the toll bridge or other toll facility may be
36 thereafter included in projects that have been authorized under chapter
37 47.46 RCW and for which funds have been appropriated under RCW

1 47.46.030, and tolls on the facilities must be established as provided
2 by chapter 47.46 RCW.

3 **Sec. 6.** RCW 47.56.270 and 1983 c 3 s 129 are each amended to read
4 as follows:

5 The Lake Washington bridge ((and the Tacoma Narrows bridge)) in
6 chapter 47.17 RCW made a part of the primary state highways of the
7 state of Washington, shall, upon completion, be operated, maintained,
8 kept up, and repaired by the department in the manner provided in this
9 chapter, and the cost of such operation, maintenance, upkeep, and
10 repair shall be paid from funds appropriated for the use of the
11 department for the construction and maintenance of the primary state
12 highways of the state of Washington.

13 NEW SECTION. **Sec. 7.** RCW 47.56.271 (Tacoma Narrows bridge--Toll
14 free facility) and 1983 c 3 s 130 & 1965 c 50 s 1 are each repealed.

15 NEW SECTION. **Sec. 8.** For all reasons, declarations, and facts
16 stated in section 1 of this act, the legislature declares that an
17 emergency exists and that this act is necessary for the immediate
18 preservation of the public peace, health, or safety, or support of the
19 state government and its existing public institutions, and takes effect
20 immediately.

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