

2 **ESHB 1317 - H AMD 933 ADOPTED 5/17/95**

3 By Representatives Robertson and K. Schmidt

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 47.46.010 and 1993 c 370 s 1 are each amended to read
8 as follows:

9 The legislature finds and declares:

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

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

19 A public-private initiatives program will provide benefits to both
20 the public and private sectors. Public-private initiatives provide a
21 sound economic investment opportunity for the private sector. Such
22 initiatives will provide the state with increased access to property
23 development and project opportunities, financial and development
24 expertise, and will supplement state transportation revenues, allowing
25 the state to use its limited resources for other needed projects.

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

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

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

1 private sector relating to the planning, construction, upgrading, or
2 reconstruction of transportation systems and facilities.

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

11 Agreements negotiated under the public-private initiative's program
12 should establish the conditions under which the private developer may
13 secure the approval necessary to develop and operate the proposed
14 transportation facilities; create a framework to attract the private
15 capital necessary to finance their development; and ensure that the
16 transportation facilities will be designed, constructed, and operated
17 in accordance with applicable local, regional, state, and federal laws
18 and the applicable standards and policies of the department of
19 transportation.

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

31 The department of transportation should be encouraged to take
32 advantage of new opportunities provided by federal legislation under
33 section 1012 of the Intermodal Surface Transportation Efficiency Act of
34 1991 (ISTEA). That section establishes a new program authorizing
35 federal participation in construction or improvement or improvement of
36 publicly or privately owned toll roads, bridges, and tunnels, and
37 allows states to leverage available federal funds as a means for
38 attracting private sector capital.

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

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

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

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

21 ~~The secretary or a designee shall consult with legal, financial,
22 and other experts within and outside state government in the
23 negotiation and development of the agreements.))~~ (2) If projects
24 selected prior to September 1, 1994, are terminated by the public or
25 private sectors, no other projects shall be selected as replacement
26 projects until the department develops a public involvement process to
27 identify prospective projects.

28 The public involvement process for replacement projects shall, at
29 a minimum, identify projects that: (a) Have the potential of achieving
30 overall public support among users of the projects, residents of
31 communities in the vicinity of the projects, and residents of
32 communities impacted by the projects; (b) meet a state transportation
33 need; (c) provide a significant state benefit; and (d) have the
34 capability of receiving more than one proposal from private entities to
35 ensure greater competition among proposers and maximum cost benefits to
36 users. Prospective projects may include projects identified by the
37 department or submitted by the private sector.

38 The department shall develop a public involvement plan for
39 identifying replacement projects and the cost of the plan by January 1,

1 1997, and shall submit the plan to the legislative transportation
2 committee for review. Project selections for replacement projects made
3 after September 1, 1994, shall be carried out utilizing the public
4 involvement process developed by the department and reviewed by the
5 legislative transportation committee. Projects that meet the criteria
6 established under this section shall be submitted for review by the
7 Washington state transportation commission. The commission shall
8 submit a list of eligible projects to the legislative transportation
9 committee for its consideration. If within forty-five calendar days of
10 submission the legislative transportation committee has not adopted a
11 resolution recommending that the secretary reject an eligible project,
12 the secretary is authorized to solicit proposals for the eligible
13 project.

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

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

23 (5)(a) Prior to conducting the advisory vote, the department shall
24 establish a committee comprised of individuals who represent cities and
25 counties in the vicinity of the project; organizations formed to
26 support or oppose the project; and users of the project. The committee
27 shall be named the public-private local involvement committee, and be
28 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 county or counties in
31 which the project is located; (ii) an elected official from each county
32 in which the project is located; (iii) two persons from each county in
33 which the project is located who represent an organization formed in
34 support of the project, if the organization exists; (iv) two persons
35 from each county in which the project is located who represent an
36 organization formed to oppose the project, if the organization exists;
37 and (v) two public members active in a state-wide transportation
38 organization. If the committee makeup results in an even number of
39 committee members, there shall be an additional appointment of an

1 elected official from the county in which all, or the greatest portion
2 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 and county legislative authorities
5 of each city and county in which the project is located. The county
6 legislative authority of each county in which the project is located
7 shall identify and validate organizations officially formed in support
8 of or in opposition to the project and shall make the appointments
9 required under this section from a list submitted by the chair of the
10 organizations. Public members shall be appointed by the governor. All
11 appointments to the local involvement committee shall be made and
12 submitted to the department of transportation no later than August 1,
13 1995. Vacancies in the membership of the local involvement committee
14 shall be filled by the appointing authority under (b) of this
15 subsection for each position on the committee.

16 (6) In preparing for the advisory vote the department and the local
17 involvement committee shall conduct a comprehensive analysis of traffic
18 patterns and economic impact to determine and define the geographical
19 boundary of the project area that is most affected by the imposition of
20 tolls or user fees authorized under this chapter. The area so defined
21 is referred to in this section as the affected project area. In
22 defining the affected project area, the department and the local
23 involvement committee shall, at a minimum, undertake: (a) A comparison
24 of the estimated percentage of residents of communities in the vicinity
25 of and impacted by the project who could be subject to tolls or user
26 fees and the estimated percentage of other users and transient traffic
27 that could be subject to tolls or user fees; (b) an analysis of the
28 anticipated traffic diversion patterns; (c) an analysis of the
29 potential economic impact resulting from proposed toll rates or user
30 fee rates imposed on residents, commercial traffic, and commercial
31 entities in communities in the vicinity of and impacted by the project;
32 (d) an analysis of the economic impact of tolls or user fees on the
33 price of goods and services generally; and (e) an analysis of the
34 relationship of the project to state transportation needs and benefits.

35 (7) After a determination and definition by the department and the
36 local involvement committee of the affected project area, the
37 department and the local involvement committee shall conduct a minimum
38 thirty-day public comment period. The department and the local
39 involvement committee may make adjustments to the definition of the

1 geographical boundary of the affected project area, based on comments
2 received from the public. Within fourteen calendar days after the
3 public comment period, the department and the local involvement
4 committee shall establish the boundaries of the affected project area
5 in units no smaller than a precinct as defined in RCW 29.01.120.

6 If after establishing the boundaries of the affected project area,
7 the department and the local involvement committee determine that the
8 membership of the local involvement committee requires modification,
9 the department and the committee shall submit recommendations for
10 modification to the legislative transportation committee for
11 consideration by the house of representatives and senate transportation
12 committees during the next succeeding legislative session.

13 (8) The department and the local involvement committee shall
14 develop a project description for selected projects, using project
15 proposals submitted as a result of solicitations by the department for
16 proposals, technical evaluations of project proposals, and any other
17 salient information. After developing the project description, the
18 department and the local involvement committee shall conduct a thirty-
19 day public comment period. The department and the local involvement
20 committee may make adjustments to the project description based on
21 comments received from the public. Within fourteen calendar days after
22 the public comment period, the department and the local involvement
23 committee shall transmit a copy of the map depicting the affected
24 project area and the project description and characteristics to the
25 county auditor of the county in which any portion of the affected
26 project area, as defined by the department and the local involvement
27 committee, is located.

28 (9) The department and the local involvement committee shall
29 provide the legislative transportation committee with progress reports
30 on the status of the definition of the affected project area and
31 project description and characteristics.

32 (10) Upon receipt of the map and the project description and
33 characteristics, the county auditor shall, within sixty days, verify
34 the precincts that are located within the affected project area. The
35 county auditor shall prepare the text identifying and describing the
36 affected project area and the project and shall set an election date
37 for the submission of a ballot proposition authorizing the imposition
38 of tolls or user fees to implement the proposed project within the
39 affected project area, which date may be the next succeeding general

1 election to be held in the state, or at a special election, if
2 requested by the department. The text of the project must appear in a
3 voter's pamphlet for the affected project area. The department shall
4 pay the costs of publication and distribution. The special election
5 date must be the next date for a special election provided under RCW
6 29.13.020 that is at least sixty days but, if authorized under RCW
7 29.13.020, no more than ninety days after the receipt of the final map
8 and project description and characteristics by the auditor. The
9 department shall pay the cost of an election held under this section.

10 (11) The department and the local involvement committee shall
11 submit the results of the advisory vote on any project selected under
12 this chapter, along with any other pertinent information, to the
13 legislative transportation committee within seven calendar days of
14 certification of the vote. No later than thirty days prior to the next
15 legislative session, the legislative transportation committee shall
16 adopt a resolution making a recommendation to the department regarding
17 the disposition of the project proposals.

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

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

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

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

34 (3) Agreements shall provide for private ownership of the projects
35 during the construction period. After completion and final acceptance
36 of each project or discrete segment thereof, the agreement shall
37 provide for state ownership of the transportation systems and
38 facilities and lease to the private entity unless the state elects to

1 provide for ownership of the facility by the private entity during the
2 term of the agreement.

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

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

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

32 (6) For the purpose of facilitating these projects and to assist
33 the private entity in the financing, development, construction, and
34 operation of the transportation systems and facilities, the agreements
35 may include provisions for the department to exercise its authority,
36 including the lease of facilities, rights of way, and airspace,
37 exercise of the power of eminent domain, granting of development rights
38 and opportunities, granting of necessary easements and rights of
39 access, issuance of permits and other authorizations, protection from

1 competition, remedies in the event of default of either of the parties,
2 granting of contractual and real property rights, liability during
3 construction and the term of the lease, authority to negotiate
4 acquisition of rights of way in excess of appraised value, and any
5 other provision deemed necessary by the secretary.

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

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

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

35 (10)(a) In carrying out the public involvement process required in
36 subsection (9) of this section, the private entity shall proactively
37 seek public participation through a process appropriate to the
38 characteristics of the project that assesses and demonstrates overall
39 public support among: Users of the project, residents of communities

1 in the vicinity of the project, and residents of communities impacted
2 by the project. The public involvement process shall provide
3 opportunities for users and residents to comment upon key issues
4 regarding the project including, but not limited to: (i) Alternative
5 sizes and scopes; (ii) design; (iii) environmental assessment; (iv)
6 right of way and access plans; (v) traffic impacts; (vi) tolling or
7 user fee strategies and tolling or user fee ranges; (vii) project cost;
8 (viii) construction impacts; (ix) facility operation; and (x) any other
9 salient characteristics.

10 (b) The private entity shall cause to be conducted on one or more
11 occasions, a comprehensive inventory of public positions of users and
12 of residents of communities in the affected project area. If the
13 affected project area has not been defined, the private entity shall
14 define the affected project area by conducting, at a minimum: (i) A
15 comparison of the estimated percentage of residents of communities in
16 the vicinity of and impacted by the project who could be subject to
17 tolls or user fees and the estimated percentage of other users and
18 transient traffic that could be subject to tolls or user fees; (ii) an
19 analysis of the anticipated traffic diversion patterns; (iii) an
20 analysis of the potential economic impact resulting from proposed toll
21 rates or user fee rates imposed on residents, commercial traffic, and
22 commercial entities in communities in the vicinity of and impacted by
23 the project; (iv) an analysis of the economic impact of tolls or user
24 fees on the price of goods and services generally; and (v) an analysis
25 of the relationship of the project to state transportation needs and
26 benefits.

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

32 The comprehensive inventory of public positions shall be conducted
33 by an independent accountant or other independent professional jointly
34 selected and supervised by the private entity and the department in
35 consultation with the local involvement committee and the legislative
36 transportation committee. The independent accountant or other
37 independent professional must have a proven history and expertise in
38 assessing public opinion and shall not have a direct or indirect

1 interest in such project. The results of the inventory of public
2 positions shall be made available for public review and comment.

3 (c) In seeking public participation, the private entity shall
4 involve the local involvement committee established under RCW
5 47.46.030. If no local involvement committee has been established for
6 the project prior to entering into the agreement, the private entity
7 shall, at a minimum, establish the committee as required under the
8 specifications of RCW 47.46.030(5) (b) and (c). Additions to the
9 committee may be made as a result of defining the affected project area
10 as required under subsection (10)(b) of this section.

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

15 (e) The department and the private entity shall provide the
16 legislative transportation committee and the local involvement
17 committee with progress reports on the status of the public involvement
18 process and the inventory of public positions. The results of the
19 inventory of public positions, including public comment on such
20 inventory of public positions, shall be forwarded to the legislative
21 transportation committee and the local involvement committee for their
22 review.

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

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

29 (1) The department may enter into agreements using federal, state,
30 and local financing in connection with the projects, including without
31 limitation, grants, loans, and other measures authorized by section
32 1012 of ISTEPA, and to do such things as necessary and desirable to
33 maximize the funding and financing, including the formation of a
34 revolving loan fund to implement this section.

35 (2) Agreements entered into under this section shall authorize the
36 private entity to lease the facilities within a designated area or
37 areas from the state and to impose user fees or tolls within the
38 designated area to allow a reasonable rate of return on investment, as

1 established through a negotiated agreement between the state and the
2 private entity. The negotiated agreement shall determine a maximum
3 rate of return on investment, based on project characteristics. If the
4 negotiated rate of return on investment is not affected, the private
5 entity may establish and modify toll rates and user fees.

6 (3) Agreements may establish "incentive" rates of return beyond the
7 negotiated maximum rate of return on investment. The incentive rates
8 of return shall be designed to provide financial benefits to the
9 affected public jurisdictions and the private entity, given the
10 attainment of various safety, performance, or transportation demand
11 management goals. The incentive rates of return shall be negotiated in
12 the agreement.

13 (4) Agreements shall require that over the term of the ownership or
14 lease the user fees or toll revenues be applied only to payment of the
15 private entity's capital outlay costs for the project, including
16 project development costs, interest expense, the costs associated with
17 design, construction, operations, toll collection, maintenance and
18 administration of the ((facility)) project, reimbursement to the state
19 for all costs associated with an election as required under RCW
20 47.46.030, the costs of project review and oversight, technical and law
21 enforcement services, establishment of a fund to assure the adequacy of
22 maintenance expenditures, and a reasonable return on investment to the
23 private entity. ~~((The use of any excess toll revenues or user fees may~~
24 ~~be negotiated between the parties.~~

25 ~~After expiration of the lease of a facility to a private entity,~~
26 ~~the secretary may continue to charge user fees or tolls for the use of~~
27 ~~the facility, with these revenues to be used for operations and~~
28 ~~maintenance of the facility, or to be paid to the local transportation~~
29 ~~planning agency, or any combination of such uses.)) A negotiated~~
30 ~~agreement shall not extend the term of the ownership or lease beyond~~
31 ~~the period of time required for payment of the private entity's capital~~
32 ~~outlay costs for the project under this subsection.~~

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

1 **ESHB 1317** - H AMD
2 By Representative

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4 On page 1, line 1 of the title, after "facilities;" strike the
5 remainder of the title and insert "amending RCW 47.46.010, 47.46.030,
6 47.46.040, and 47.46.050; and declaring an emergency."

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