
SENATE BILL 6066

State of Washington

56th Legislature

1999 Regular Session

By Senator Roach

Read first time 03/01/1999. Referred to Committee on Transportation.

1 AN ACT Relating to public-private transportation initiatives; and
2 amending RCW 47.46.010, 47.46.030, 47.46.040, and 47.46.050.

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

4 **Sec. 1.** RCW 47.46.010 and 1995 2nd sp.s. c 19 s 1 are each amended
5 to read as follows:

6 The legislature finds and declares:

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

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

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

1 development and project opportunities, financial and development
2 expertise, and will supplement state transportation revenues, allowing
3 the state to use its limited resources for other needed projects.

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

7 The public-private initiatives program shall be implemented in
8 cooperation, consultation, and with the support of the affected
9 communities and 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 initiatives 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; 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; and require a demonstration that the proposed
35 transportation facility has the support of the affected communities and
36 local jurisdictions.

37 The legislature finds that the Puget Sound congestion pricing
38 project, selected under this chapter, raises major transportation
39 policy, economic, and equity concerns. These relate to the integrity

1 of the state's high-occupancy vehicle program; the cost-effective
2 movement of freight and goods; the diversion of traffic to local
3 streets and arterials; and possible financial hardship to commuters.
4 The legislature further finds that these potential economic and social
5 impacts require comprehensive legislative review prior to advancement
6 of the project and directs that the secretary not proceed with the
7 implementation of the project without prior approval of the
8 legislature.

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

17 Agreements negotiated under a public-private initiatives program
18 must not limit or encumber the public's current use of existing state
19 transportation systems and facilities by such means as, but not limited
20 to, imposing or increasing tolls or user fees on existing bridges,
21 highways, or facilities or including existing bridges, highways, or
22 facilities as any part of a public-private initiatives project.

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

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

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

35 (2) If project proposals selected prior to September 1, 1994, are
36 terminated by the public or private sectors, the department shall not
37 select any new projects, including project proposals submitted to the
38 department prior to September 1, 1994, and designated by the

1 transportation commission as placeholder projects, after June 16, 1995,
2 until June 30, 1997.

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

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

18 The public involvement plan for projects selected after June 30,
19 1997, shall, at a minimum, identify projects that: (a) Have the
20 potential of achieving overall public support among users of the
21 projects, residents of communities in the vicinity of the projects, and
22 residents of communities impacted by the projects; (b) meet a state
23 transportation need; (c) provide a significant state benefit; and (d)
24 provide competition among proposers and maximum cost benefits to users.
25 Prospective projects may include projects identified by the department
26 or submitted by the private sector.

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

36 (3) Prior to entering into agreements with private entities under
37 the requirements of RCW 47.46.040 for any project proposal selected
38 before September 1, 1994, or after June 30, 1997, except as provided
39 for in subsections (11) and (12) of this section, the department shall

1 require an advisory vote as provided under subsections (5) through
2 ~~((+10))~~ (9) of this section.

3 (4) The advisory vote shall apply to project proposals selected
4 prior to September 1, 1994, or after June 30, 1997, that receive public
5 opposition as demonstrated by the submission to the department of
6 original petitions bearing at least five thousand signatures of
7 individuals opposing the project collected and submitted in accordance
8 with the dates established in subsections (11) and (12) ~~((and +13))~~ of
9 this section. The advisory vote shall be on the ~~((preferred
10 alternative identified under the requirements of chapter 43.21C RCW
11 and, if applicable, the national environmental policy act, 42 U.S.C.
12 4321 et seq. The execution by the department of the advisory vote
13 process established in this section is subject to the prior
14 appropriation of funds by the legislature for the purpose of conducting
15 environmental impact studies, a public involvement program, local
16 involvement committee activities, traffic and economic impact analyses,
17 engineering and technical studies, and the advisory vote))~~ specific
18 project proposed by the private entity and accepted by resolution of
19 the transportation commission.

20 (5)(a) In preparing for the advisory vote, the department shall
21 conduct a comprehensive analysis of traffic patterns and economic
22 impact to define the geographical boundary of the project area that is
23 affected by the imposition of tolls or user fees authorized under this
24 chapter. The area so defined is referred to in this section as the
25 affected project area. In defining the affected project area, the
26 department shall, at a minimum, undertake: ~~((a) A comparison of the
27 estimated percentage of residents of communities in the vicinity of the
28 project and in other communities impacted by the project who could be
29 subject to tolls or user fees and the estimated percentage of other
30 users and transient traffic that could be subject to tolls or user
31 fees; (b))~~ (i) To identify the total number of anticipated users of
32 the proposed project, assign those identified users to their census
33 tracts of residence, rank those census tracts in order of most frequent
34 usage, and include under this criteria, only those voters from within
35 the top two-thirds of the rank-ordered census tracts; (ii) an analysis
36 of the anticipated traffic diversion patterns; ~~((c))~~ (iii) an
37 analysis of the potential economic impact resulting from proposed toll
38 rates or user fee rates imposed on residents, commercial traffic, and
39 commercial entities in communities in the vicinity of and impacted by

1 the project; ~~((d))~~ (iv) an analysis of the economic impact of tolls
2 or user fees on the price of goods and services generally; and ~~((e))~~
3 (v) an analysis of the relationship of the project to state
4 transportation needs and benefits.

5 (b) In defining the economic impact of the proposed project, the
6 department shall prepare an estimated initial detailed cost analysis of
7 the proposed project to include all known and anticipated costs. Based
8 on this cost analysis, the department shall prepare a projected toll or
9 user fee rate analysis that provides for a sufficient payback of all
10 hard and soft costs associated with the proposed project. If any
11 revenue or funds other than tolls or user fees are identified within
12 this initial cost analysis, the source of those funds together with
13 nonrevocable authorization must also be identified.

14 ~~(6)((a) After determining the definition of the affected project~~
15 ~~area, the department shall establish a committee comprised of~~
16 ~~individuals who represent cities and counties in the affected project~~
17 ~~area; organizations formed to support or oppose the project; and users~~
18 ~~of the project. The committee shall be named the public private local~~
19 ~~involvement committee, and be known as the local involvement committee.~~

20 ~~(b) The members of the local involvement committee shall be: (i)~~
21 ~~An elected official from each city within the affected project area;~~
22 ~~(ii) an elected official from each county within the affected project~~
23 ~~area; (iii) two persons from each county within the affected project~~
24 ~~area who represent an organization formed in support of the project, if~~
25 ~~the organization exists; (iv) two persons from each county within the~~
26 ~~affected project area who represent an organization formed to oppose~~
27 ~~the project, if the organization exists; and (v) four public members~~
28 ~~active in a state wide transportation organization. If the committee~~
29 ~~makeup results in an even number of committee members, there shall be~~
30 ~~an additional appointment of an elected official from the county in~~
31 ~~which all, or the greatest portion of the project is located.~~

32 ~~(c) City and county elected officials shall be appointed by a~~
33 ~~majority of the members of the city or county legislative authorities~~
34 ~~of each city or county within the affected project area, respectively.~~
35 ~~The county legislative authority of each county within the affected~~
36 ~~project area shall identify and validate organizations officially~~
37 ~~formed in support of or in opposition to the project and shall make the~~
38 ~~appointments required under this section from a list submitted by the~~
39 ~~chair of the organizations. Public members shall be appointed by the~~

1 governor. All appointments to the local involvement committee shall be
2 made and submitted to the department of transportation no later than
3 January 1, 1996, for projects selected prior to September 1, 1994, and
4 no later than thirty days after the affected project area is defined
5 for projects selected after June 30, 1997. Vacancies in the membership
6 of the local involvement committee shall be filled by the appointing
7 authority under (b)(i) through (v) of this subsection for each position
8 on the committee.

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

12 (e) Members of the local involvement committee serve without
13 compensation and may not receive subsistence, lodging expenses, or
14 travel expenses.

15 (7)) The department shall conduct a minimum thirty-day public
16 comment period on the definition of the geographical boundary of the
17 project area. The department((, in consultation with the local
18 involvement committee,)) shall make adjustments, if required, to the
19 definition of the geographical boundary of the affected project area,
20 based on comments received from the public. Within fourteen calendar
21 days after the public comment period, the department shall set the
22 boundaries of the affected project area in units no smaller than a
23 precinct as defined in RCW 29.01.120.

24 ((8) The department, in consultation with the local involvement
25 committee, shall develop a description for selected project proposals.
26 After developing the description of the project proposal,)) (7) The
27 department shall publish the project proposal description as contained
28 in the resolution of approval by the commission, in newspapers of
29 general circulation for seven calendar days in the affected project
30 area. Within fourteen calendar days after the last day of the
31 publication of the project proposal description, the department shall
32 transmit a copy of the map depicting the affected project area and the
33 description of the project proposal to the county auditor of the county
34 in which any portion of the affected project area is located.

35 ((9)) (8) The department shall provide the legislative
36 transportation committee with progress reports on the status of the
37 definition of the affected project area and the description of the
38 project proposal.

1 (~~(10)~~) (9) Upon receipt of the map and the description of the
2 project proposal, the county auditor shall, within thirty days, verify
3 the precincts that are located within the affected project area. The
4 (~~county auditor~~) department shall prepare the text identifying and
5 describing the affected project area and the project proposal using the
6 definition of the geographical boundary of the affected project area
7 and the project description (~~submitted by the department~~) and shall
8 set an election date for the submission of a ballot proposition
9 authorizing the imposition of tolls or user fees to implement the
10 proposed project within the affected project area, which date may be
11 the next succeeding general election to be held in the state, or at a
12 special election, if requested by the department. The text of the
13 project proposal description, approved by the commission and as
14 contained within their resolution of approval, must appear in a voter's
15 pamphlet for the affected project area, together with the toll rate or
16 user fee rate established in the cost analysis detailed in subsection
17 (5)(b) of this section. The department shall pay the costs of
18 publication and distribution. The special election date must be the
19 next date for a special election provided under RCW 29.13.020 that is
20 at least sixty days but, if authorized under RCW 29.13.020, no more
21 than ninety days after the receipt of the final map and project
22 description by the auditor. The department shall pay the cost of an
23 election held under this section.

24 (~~(11)~~) (10) Notwithstanding any other provision of law, the
25 department may contract with a private developer of a selected project
26 proposal to conduct environmental impact studies, a public involvement
27 program, and engineering and technical studies funded by the
28 legislature. For projects subject to this subsection, the department
29 shall not enter into an agreement under RCW 47.46.040 prior to the
30 advisory vote on the (~~preferred alternative~~) proposed project
31 description.

32 (~~(12)~~) (11) Subsections (5) through (~~(10)~~) (9) of this section
33 shall not apply to project proposals selected prior to September 1,
34 1994, that have no organized public opposition as demonstrated by the
35 submission to the department of original petitions bearing at least
36 five thousand signatures of individuals opposing the project, collected
37 and submitted after September 1, 1994, and by thirty calendar days
38 after June 16, 1995.

1 (~~(13)~~) (12) Subsections (5) through (~~(10)~~) (9) of this section
2 shall not apply to project proposals selected after June 30, 1997, that
3 have no organized public opposition as demonstrated by the submission
4 to the department of original petitions bearing at least five thousand
5 signatures of individuals opposing the project, collected and submitted
6 by ninety calendar days after project selection.

7 (13) A project selected under this chapter in which subsections (5)
8 through (9) of this section apply must complete the advisory vote
9 process within five years of the date of the commission resolution
10 approving the project or the project is automatically terminated
11 without need for further action.

12 (14) A project proceeding through the advisory vote process must
13 receive approval from the voters before the secretary may complete
14 contract or franchise negotiations with the private entity under RCW
15 47.46.040. The contract or franchise agreement must have final
16 approval by the commission, which approval may not occur before a
17 thirty-day public comment period and hearing on the terms and
18 conditions of the final agreement and legislative appropriation of any
19 identified funds necessary to complete the proposed project, other than
20 tolls or user fees approved by the voters.

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

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

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

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

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

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

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

28 (6) For the purpose of facilitating these projects and to assist
29 the private entity in the financing, development, construction, and
30 operation of the transportation systems and facilities, the agreements
31 may include provisions for the department to exercise its authority,
32 including the lease of facilities, rights of way, and airspace,
33 exercise of the power of eminent domain, granting of development rights
34 and opportunities, granting of necessary easements and rights of
35 access, issuance of permits and other authorizations, protection from
36 competition, remedies in the event of default of either of the parties,
37 granting of contractual and real property rights, liability during
38 construction and the term of the lease, authority to negotiate

1 acquisition of rights of way in excess of appraised value, and any
2 other provision deemed necessary by the secretary.

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

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

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

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

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

11 (c) If the affected project area has not been defined, the private
12 entity shall define the affected project area by ~~((conducting))~~
13 undertaking, at a minimum: (i) ~~((A comparison of the estimated~~
14 ~~percentage of residents of communities in the vicinity of the project~~
15 ~~and in other communities impacted by the project who could be subject~~
16 ~~to tolls or user fees and the estimated percentage of other users and~~
17 ~~transient traffic that could be subject to tolls or user fees))~~ To
18 identify the total number of anticipated users of the proposed project,
19 assign those identified users to their census tracts of residence, rank
20 those census tracts in order of most frequent usage, and include under
21 this criteria, only those voters from within the top two-thirds of the
22 rank-ordered census tracts; (ii) an analysis of the anticipated traffic
23 diversion patterns; (iii) an analysis of the potential economic impact
24 resulting from proposed toll rates or user fee rates imposed on
25 residents, commercial traffic, and commercial entities in communities
26 in the vicinity of and impacted by the project; (iv) an analysis of the
27 economic impact of tolls or user fees on the price of goods and
28 services generally; and (v) an analysis of the relationship of the
29 project to state transportation needs and benefits.

30 The agreement may require an advisory vote by users of and
31 residents in the affected project area.

32 (d) In seeking public participation, the private entity shall
33 establish a local involvement committee or committees comprised of
34 residents of the affected project area, individuals who represent
35 cities and counties in the affected project area, organizations formed
36 to support or oppose the project, if such organizations exist, and
37 users of the project. The private entity shall, at a minimum,
38 establish a committee as required under the specifications of ~~((RCW~~
39 ~~47.46.030(5)(b) —(ii) and —(iii))~~ (g) of this subsection, and

1 appointments to such committee shall be made, and the committee shall
2 hold its first meeting, no later than ((thirty)) ninety days after
3 ((the project area is defined)) final approval of the proposed project
4 by the transportation commission.

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

9 (f) The department and the private entity shall provide the
10 legislative transportation committee and local involvement committees
11 with progress reports on the status of the public involvement process
12 including the results of an advisory vote, if any occurs.

13 (g) The members of the local involvement committee must be: (i) An
14 elected official from each city within the affected project area; (ii)
15 an elected official from each county within the affected project area;
16 (iii) two persons from each county within the affected project area who
17 represent an organization formed in support of the project, if the
18 organization exists; (iv) two persons from each county within the
19 affected project area who represent an organization formed to oppose
20 the project, if the organization exists; and (v) four public members
21 active in a state-wide transportation organization. If the committee
22 makeup results in an even number of committee members, an additional
23 appointment of an elected official from the county in which the
24 greatest portion of the project is located must be made.

25 (h) City and county elected officials must be appointed by a
26 majority of the members of the city or county legislative authorities
27 of each city or county within the affected project area, respectively.
28 The county legislative authority of each county within the affected
29 project area shall identify and validate organizations officially
30 formed in support of or in opposition to the project and shall make the
31 appointments required under this section from a list submitted by the
32 chair of the organizations. The governor shall appoint the public
33 members. All appointments to the local involvement committee must be
34 made and submitted to the department of transportation no later than
35 thirty days after the affected project area is defined for projects
36 selected after June 30, 1997. Vacancies in the membership of the local
37 involvement committee must be filled by the appointing authority under
38 (g)(i) through (v) of this subsection for each position on the
39 committee.

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

5 **Sec. 4.** RCW 47.46.050 and 1995 2nd sp.s. c 19 s 4 are each amended
6 to read as follows:

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

13 (2) Agreements entered into under this section shall authorize the
14 private entity to lease the facilities within a designated area or
15 areas from the state and to impose user fees or tolls within the
16 designated area to allow a reasonable rate of return on investment, as
17 established through a negotiated agreement between the state and the
18 private entity. The negotiated agreement shall determine a maximum
19 rate of return on investment, based on project characteristics. If the
20 negotiated rate of return on investment is not affected, the private
21 entity may establish and modify toll rates and user fees. However, a
22 modification that would result in a toll rate or user fee rate in
23 excess of the rate established in the advisory vote will automatically
24 place that individual public-private initiatives project, from that
25 date forward, under the control and governance of the Washington state
26 utilities and transportation commission as if the private entity under
27 contract with the state were a "service company" required to comply
28 with all laws, rules, and regulations established by the utilities and
29 transportation commission.

30 (3) Agreements may establish "incentive" rates of return beyond the
31 negotiated maximum rate of return on investment. The incentive rates
32 of return shall be designed to provide financial benefits to the
33 affected public jurisdictions and the private entity, given the
34 attainment of various safety, performance, or transportation demand
35 management goals. The incentive rates of return shall be negotiated in
36 the agreement.

37 (4) Agreements shall require that over the term of the ownership or
38 lease the user fees or toll revenues be applied only to payment of the

1 private entity's capital outlay costs for the project, including
2 project development costs, interest expense, the costs associated with
3 design, construction, operations, toll collection, maintenance and
4 administration of the project, reimbursement to the state for all costs
5 associated with an election as required under RCW 47.46.030, the costs
6 of project review and oversight, technical and law enforcement
7 services, establishment of a fund to assure the adequacy of maintenance
8 expenditures, and a reasonable return on investment to the private
9 entity. A negotiated agreement shall not extend the term of the
10 ownership or lease beyond the period of time required for payment of
11 the private entity's capital outlay costs for the project under this
12 subsection.

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