

HOUSE BILL REPORT

ESHB 1317

As Passed House:

March 9, 1995

Title: An act relating to transportation systems and facilities.

Brief Description: Revising the selection process for transportation systems and facilities demonstration projects.

Sponsors: By House Committee on Transportation (originally sponsored by Representatives Robertson, Cairnes, B. Thomas, Mitchell, Van Luven, Dyer, Lambert, Radcliff, D. Schmidt, Backlund, Cooke, Reams, Campbell, Stevens, L. Thomas and Koster).

Brief History:

Committee Activity:

Transportation: 1/30/95, 2/23/95 [DPS].

Floor Activity:

Passed House: 3/9/95, 86-11.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives K. Schmidt, Chairman; Mitchell, Vice Chairman; Skinner, Vice Chairman; R. Fisher, Ranking Minority Member; Hatfield, Assistant Ranking Minority Member; Backlund; Blanton; Brown; Buck; Cairnes; Chandler; Elliot; Hankins; Horn; Johnson; Koster; McMahan; Quall; Robertson; Romero; D. Schmidt and Scott.

Minority Report: Do not pass. Signed by 1 member: Representative Chopp.

Staff: Vicki Fabre (786-7313).

Background: New Partners: Public-Private Initiatives in Transportation (Chapter 47.46 RCW) is a program created by the 1993 Legislature to test the feasibility of privately financed transportation improvements in Washington State. The law provides a wide range of opportunities for private entities to undertake all or a portion of the study, planning, design, finance, construction, operation and maintenance of transportation systems and facilities.

The state Department of Transportation (DOT) is authorized to solicit proposals from the private sector and to select up to six demonstration projects identified by the private sector. Projects are owned by the private sector during construction, turned over to the state, and leased back for operation for up to 50 years.

The private developer is authorized to impose tolls or user fees to recover the private sector's investments and to allow them a reasonable rate of return on investment. After maximum return on investment is reached, the state may continue to charge user fees or tolls for operation or maintenance that may be shared with affected local jurisdictions.

In May of 1994, 14 proposals from 11 private sector consortia were received by the DOT. These were evaluated by a team of technical experts assembled by the DOT. At the end of the evaluation process, the Secretary of Transportation, as required by law, recommended six projects to the Transportation Commission, which the commission adopted on August 18, 1994.

The following projects were selected: State Route (SR) 16-Tacoma Narrows; SR 18 corridor improvements; SR 520 corridor improvements; SR 522 corridor improvements; Puget Sound congestion pricing; and METRO/King County and DOT park and ride capacity enhancements.

Since early fall of 1994, the department and the six private consortia selected for the New Partners Program have been negotiating agreements to develop the transportation facilities described above. These agreements identify the responsibilities and commitments of each party and will drive project development activities.

Public opposition to the process employed to select the demonstration projects, concern about the degree and quality of public involvement in the project development stage, and opposition to the imposition by the private sector of tolls or user fees on these facilities lead the department to terminate further consideration of the proposal on SR 18 corridor improvements. These same concerns, however, continue with respect to the remaining projects.

Summary of Bill:

INTENT SECTION:

The legislative intent section of the public-private initiatives law is amended to clarify that the agreements negotiated under the program do not bestow on private entities an immediate or vested right to construct and operate facilities. Rather, they provide an opportunity for private entities to design, plan and demonstrate public support in order to obtain a future decision by state and local agencies to build transportation facilities selected under the public-private initiatives program.

REPLACEMENT PROJECT IDENTIFICATION AND SELECTION:

If any projects are terminated, no additional or replacement projects may be selected until the Department of Transportation (DOT) develops a public involvement process that identifies projects that: (a) have the potential of achieving overall public support among users, residents of communities impacted by selected projects, and residents of communities in the vicinity of such projects; (b) meet a state transportation need; and (c) provide a significant state benefit.

The DOT is required to develop the public involvement plan for identifying replacement projects by January 1, 1996. This plan must be submitted to the Legislative Transportation Committee (LTC) for review.

Projects that have gone through the public involvement process and that meet the selection criteria [(a) through (c) above] will be submitted to the Transportation Commission for review. The commission, in turn, will submit a list of eligible projects to the LTC for its consideration.

Within 45 days of receiving the commission's list of eligible projects, if the LTC does not adopt a resolution recommending that the Secretary of Transportation reject an eligible project, the secretary is authorized to solicit proposals for such a project.

PROJECT DEVELOPMENT:

Agreements must not extend the term of ownership or lease beyond the period required to pay off private entities' capital outlay costs.

Agreements for projects selected prior to September 1, 1994, must include a process that provides for public involvement in decision making with respect to project development.

The private sector must establish a public involvement process that is appropriate to the characteristics of a project or, in the case of a project developed in phases or segments, such phase or segment.

In seeking public participation, the private entity must establish a Public-Private Local Involvement Committee, comprised of individuals representing cities and counties in the vicinity of and impacted by the project, phase or segment, organizations formed to support or oppose the project, phase or segment and users of the same. Committee members are appointed by the secretary of the Department of Transportation and advise the department and the private entity on issues related to the development and implementation of the public involvement process.

The department and the private entity, in consultation with the Legislative Transportation Committee must, by August 1, 1995, determine and define the geographical boundaries of the project, phase or segment, known as the project, phase or segment area.

The definition of the project, phase or segment area must, at a minimum, include users, and cities and counties in the vicinity of and impacted by the project, phase or segment, and identify areas with the largest percentage of normal, daily usage by residents of communities in the vicinity of and impacted by the project, phase or segment.

The private entity must conduct a comprehensive inventory of public positions of users and residents as identified under the definition of the project, phase or segment area established by the department and the private entity.

The public involvement process must assess overall public support among users and residents by providing them an opportunity to comment on key issues, including, but not limited to: alternative sizes and scopes, design, traffic impacts, right of way and access plans, environmental assessment, tolling or user fee strategies and tolling or user fee ranges, and project cost.

The inventory is conducted by an independent accountant or other independent professional, jointly selected and supervised by the DOT and the private entity, in consultation with the LTC and the Local Involvement Committee. The results of the inventory are subject to public review and comment.

The comprehensive inventory of public positions may include an advisory vote by residents and users in the project, phase or segment area.

The DOT and the private entity are required to give progress reports to the LTC and the Local Involvement Committee on the status of the public involvement process and the inventory of public positions and the results of the inventory, including public comment, is forwarded to the LTC and the Local Involvement Committee for their review.

Within 15 calendar days, the Local Involvement Committee is required to submit a report to the LTC and DOT supporting or opposing the results of the inventory. Within 45 calendar days, the LTC must hold a public hearing on the results of the inventory and the report of the Local Involvement Committee. The LTC may adopt a resolution making a recommendation to the secretary regarding the disposition of the agreement for the project, phase or segment.

Any action by the secretary in response to the LTC recommendation must be taken within 30 calendar days after receipt of the recommendation and must be carried out

in accordance with the terms and conditions established in the agreement for the project, phase or segment.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: Legislation is needed to guarantee meaningful public involvement in the study and development of projects selected in August 1994 under the Public-Private Initiatives Program, and in the identification and selection of replacement projects.

Testimony Against: Significant public opposition to the Department of Transportation's implementation of the Public-Private Initiatives Program and to the possibility of tolls or user fees on some of the selected projects necessitate the repeal of the program.

Projects selected and developed under the Public-Private Initiatives Program should be subject to approval by the full Legislature.

Testified: (Original Bill) Paul Demitriades, Tolls Represent Unfair State Taxes (TRUST) (pro); Susan Potts, Medina City Council (pro); Jan Brekke, Hunts Point Council (pro); Paul Wilcox, Hero Point (pro); Gerald Pfeffer, United Infrastructure Washington (con); Richard Carr, SR 522 Community Highway Association (con); Jared Smith, Washington Transportation Partners (con); Fred McConkey, Hunts Point SR 520 Ad Hoc Committee (pro, with amendment); Cornelius Peck, No Expansion of 520 (pro); Dan Foster, Citizens Against Unfair Gouging Highway Tolls (CAUGHT) (pro); Maggi Fimia, King County Council (con); Mayor Gretchen Swayze-Wilbert, city of Gig Harbor (con); Win Granlund, Kitsap County Commission (con); Maynard Arsove, Mountlake Community Club (pro); Chris Clifford, TRUST and CAUGHT (pro, with amendment); Bob Campbell, Lehman Brothers (con); Robert Dilger, Washington State Building and Construction Trades Council (con); Randy Pozdena, ECO Northwest (con); Duke Schaub, Associated General Contractors (neutral); Elizabeth Schrag, SR 18 Coalition (pro, with reservations); David Fields, citizen (pro); Gerald Dickson, CAUGHT (pro); Steve Preston, citizen (pro); Jeff Kuney, Max J. Kuney Construction Company (con); Dick Page, 520 Improvement Association (con); Andrew Laycock, MC Parcel Delivery (con); Janet Ray, AAA Washington (pro); Jorgen Bader, Ravenna-Bryant Community Association (pro); and Allan Fackenthall, citizen (neutral).