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HOUSE BILL 3066

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State of Washington

55th Legislature

1998 Regular Session

By Representatives Lantz, Gardner, Dunshee, Eickmeyer and Ogden

Read first time 01/28/98. Referred to Committee on House Government Reform & Land Use.

1 AN ACT Relating to avoiding duplicate analysis of major actions  
2 significantly affecting the environment including project proposals  
3 considered under the public-private transportation initiatives;  
4 amending RCW 47.46.030, 47.46.040, and 43.21C.150; and creating a new  
5 section.

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

7 NEW SECTION. **Sec. 1.** The purposes of this act are to: (1) Avoid  
8 a duplication of efforts by clarifying that efforts under different  
9 laws to develop information about a major action significantly  
10 affecting the environment may be used as part of the requirements to  
11 make a threshold determination and prepare a detailed statement under  
12 the state environmental policy act; (2) recognize that information  
13 developed under the public-private transportation initiative may  
14 provide the department of transportation with a portion of the required  
15 information necessary to meet the requirements of the state  
16 environmental policy act; and (3) expand the express authority of the  
17 department of transportation to contract with a private developer under  
18 the public-private transportation initiatives to include information  
19 beyond that required to be developed under chapter 47.46 RCW that will

1 enable the department to meet its responsibilities to consider  
2 alternatives and other matters under the state environmental policy  
3 act.

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

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

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

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

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

29 The department shall develop and submit a proposed public  
30 involvement plan to the 1997 legislature to identify the process for  
31 selecting new potential projects and the associated costs of  
32 implementing the plan. The legislature must adopt the public  
33 involvement plan before the department may proceed with any activity  
34 related to project identification and selection. Following legislative  
35 adoption of the public involvement plan, the department is authorized  
36 to implement the plan and to identify potential new projects.

37 The public involvement plan for projects selected after June 30,  
38 1997, shall, at a minimum, identify projects that: (a) Have the

1 potential of achieving overall public support among users of the  
2 projects, residents of communities in the vicinity of the projects, and  
3 residents of communities impacted by the projects; (b) meet a state  
4 transportation need; (c) provide a significant state benefit; and (d)  
5 provide competition among proposers and maximum cost benefits to users.  
6 Prospective projects may include projects identified by the department  
7 or submitted by the private sector.

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

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

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

38 (5) In preparing for the advisory vote, the department shall  
39 conduct a comprehensive analysis of traffic patterns and economic

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

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

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

36 (c) City and county elected officials shall be appointed by a  
37 majority of the members of the city or county legislative authorities  
38 of each city or county within the affected project area, respectively.  
39 The county legislative authority of each county within the affected

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

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

16 (e) Members of the local involvement committee serve without  
17 compensation and may not receive subsistence, lodging expenses, or  
18 travel expenses.

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

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

1 (9) The department shall provide the legislative transportation  
2 committee with progress reports on the status of the definition of the  
3 affected project area and the description of the project proposal.

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

23 (11) Notwithstanding any other provision of law, the department may  
24 contract with a private developer of a selected project proposal to  
25 conduct environmental impact studies, a public involvement program, and  
26 engineering and technical studies funded by the legislature, including  
27 matters such as: (a) Alternatives to the proposal that are required to  
28 be addressed under a threshold determination and detailed statement but  
29 are not required to be addressed under this chapter; and (b)  
30 maintaining records of the advisory vote based upon the overall result  
31 and the vote by residents of communities in the vicinity of the  
32 project, as part of the measure of potential impacts from the selected  
33 project proposal. For projects subject to this subsection, the  
34 department shall not enter into an agreement under RCW 47.46.040 prior  
35 to the advisory vote on the preferred alternative.

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

1 signatures of individuals opposing the project, collected and submitted  
2 after September 1, 1994, and by thirty calendar days after June 16,  
3 1995.

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

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

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

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

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

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

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

1 comparable basis with the costs incurred for comparable service on  
2 other state highway routes. The department may provide services for  
3 which it is reimbursed, including but not limited to preliminary  
4 planning, environmental certification, and preliminary design of the  
5 demonstration projects.

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

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

29 (7) The agreements entered into under this section may include  
30 provisions authorizing the state to grant necessary easements and lease  
31 to a private entity existing rights of way or rights of way  
32 subsequently acquired with public or private financing. The agreements  
33 may also include provisions to lease to the entity airspace above or  
34 below the right of way associated or to be associated with the private  
35 entity's transportation facility. In consideration for the reversion  
36 rights in these privately constructed facilities, the department may  
37 negotiate a charge for the lease of airspace rights during the term of  
38 the agreement for a period not to exceed fifty years. If, after the  
39 expiration of this period, the department continues to lease these



1 airspace rights to the private entity, it shall do so only at fair  
2 market value. The agreement may also provide the private entity the  
3 right of first refusal to undertake projects utilizing airspace owned  
4 by the state in the vicinity of the public-private project.

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

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

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

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

38 (c) The private entity may conduct a comprehensive public  
39 involvement process that provides, periodically throughout the

1 development and implementation of the project, users of the project,  
2 residents of communities in the vicinity of the project, residents of  
3 communities impacted by the project, and the general public with an  
4 opportunity to comment upon key issues regarding alternatives to the  
5 project, including those items specified under (b) of this subsection  
6 relating to alternatives to the project, that are necessary to meet the  
7 requirements of chapter 43.21C RCW.

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

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

24 ~~((d))~~ (e) In seeking public participation, the private entity  
25 shall establish a local involvement committee or committees comprised  
26 of residents of the affected project area, individuals who represent  
27 cities and counties in the affected project area, organizations formed  
28 to support or oppose the project, if such organizations exist, and  
29 users of the project. The private entity shall, at a minimum,  
30 establish a committee as required under the specifications of RCW  
31 47.46.030~~((+5))~~ (6)(b) (ii) and (iii) and appointments to such  
32 committee shall be made no later than thirty days after the project  
33 area is defined. To assist in making an adequate threshold  
34 determination and adequate detailed statement under chapter 43.21C RCW,  
35 the private entity may distinguish in its records the public  
36 participation by users of the project, residents of communities in the  
37 vicinity of the project, residents of communities impacted by the  
38 project, and the general public.

1       (~~(e)~~) (f) Local involvement committees shall act in an advisory  
2 capacity to the department and the private entity on all issues related  
3 to the development and implementation of the public involvement process  
4 established under this section.

5       (~~(f)~~) (g) The department and the private entity shall provide the  
6 legislative transportation committee and local involvement committees  
7 with progress reports on the status of the public involvement process  
8 including the results of an advisory vote, if any occurs.

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

13       **Sec. 4.** RCW 43.21C.150 and 1975 1st ex.s. c 206 s 1 are each  
14 amended to read as follows:

15       The requirements of RCW 43.21C.030(2)(c) pertaining to the  
16 preparation of a detailed statement by branches of government shall not  
17 apply when an adequate detailed statement has been previously prepared  
18 pursuant to the national environmental policy act of 1969, in which  
19 event said prepared statement may be utilized in lieu of a separately  
20 prepared statement under RCW 43.21C.030(2)(c). Issues addressed in a  
21 major investment study, prepared under the national environmental  
22 policy act of 1969, may be included as a portion of the broader  
23 analysis required for a threshold determination or detailed statement  
24 under this chapter.

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