
HOUSE BILL 1974

State of Washington 56th Legislature 1999 Regular Session

By Representatives Lantz, Dunn, Dunshee, Murray and Haigh

Read first time 02/12/1999. Referred to Committee on Transportation.

1 AN ACT Relating to financing of public works projects; amending RCW
2 47.46.010, 47.46.030, 47.46.040, and 47.46.050; and adding a new
3 section to chapter 47.46 RCW.

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

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

7 The legislature finds and declares:

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

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

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

1 initiatives will provide the state with increased access to property
2 development and project opportunities, financial and development
3 expertise, and will supplement state transportation revenues, allowing
4 the state to use its limited resources for other needed projects.

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

8 The public-private initiatives program shall be implemented in
9 cooperation, consultation, and with the support of the affected
10 communities and local jurisdictions.

11 The secretary of transportation should be permitted and encouraged
12 to test the feasibility of building privately (~~funded~~) constructed
13 and operated transportation systems and facilities or segments thereof
14 through the use of innovative agreements with the private sector. The
15 secretary of transportation should be vested with the authority to
16 solicit, evaluate, negotiate, and administer public-private agreements
17 with the private sector relating to the planning, construction,
18 upgrading, or reconstruction of transportation systems and facilities.

19 Agreements negotiated under a public-private initiatives program
20 will not bestow on private entities an immediate right to construct and
21 operate the proposed transportation facilities. Rather, agreements
22 will grant to private entities the opportunity to design the proposed
23 facilities, demonstrate public support for proposed facilities, and
24 complete the planning processes required in order to obtain a future
25 decision by the department of transportation and other state and local
26 lead agencies on whether the facilities should be permitted and built.

27 Agreements negotiated under the public-private initiatives program
28 should establish the conditions under which the private developer may
29 secure the approval necessary to develop and operate the proposed
30 transportation facilities; (~~create a framework to attract the private~~
31 ~~capital necessary to finance their development;~~) ensure that the
32 transportation facilities will be designed, constructed, and operated
33 in accordance with applicable local, regional, state, and federal laws
34 and the applicable standards and policies of the department of
35 transportation; and require a demonstration that the proposed
36 transportation facility has the support of the affected communities and
37 local jurisdictions.

38 The legislature finds that the Puget Sound congestion pricing
39 project, selected under this chapter, raises major transportation

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

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

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

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

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

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

36 The department, in consultation with the legislative transportation
37 committee, shall conduct a program and fiscal audit of the public-
38 private initiatives program for the biennium ending June 30, 1997. The

1 department shall submit a progress report to the legislative
2 transportation committee on the program and fiscal audit by June 30,
3 1996, with preliminary and final audit reports due December 1, 1996,
4 and June 30, 1997, respectively.

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

13 The public involvement plan for projects selected after June 30,
14 1997, shall, at a minimum, identify projects that: (a) Have the
15 potential of achieving overall public support among users of the
16 projects, residents of communities in the vicinity of the projects, and
17 residents of communities impacted by the projects; (b) meet a state
18 transportation need; (c) provide a significant state benefit; and (d)
19 provide competition among proposers and maximum cost benefits to users.
20 Prospective projects may include projects identified by the department
21 or submitted by the private sector.

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

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

37 (4) The advisory vote shall apply to project proposals selected
38 prior to September 1, 1994, or after June 30, 1997, that receive public
39 opposition as demonstrated by the submission to the department of

1 original petitions bearing at least five thousand signatures of
2 individuals opposing the project collected and submitted in accordance
3 with the dates established in subsections (12) and (13) of this
4 section. The advisory vote shall be on the preferred alternative
5 identified under the requirements of chapter 43.21C RCW and, if
6 applicable, the national environmental policy act, 42 U.S.C. 4321 et
7 seq. The execution by the department of the advisory vote process
8 established in this section is subject to the prior appropriation of
9 funds by the legislature for the purpose of conducting environmental
10 impact studies, a public involvement program, local involvement
11 committee activities, traffic and economic impact analyses, engineering
12 and technical studies, and the advisory vote.

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

32 (6)(a) After determining the definition of the affected project
33 area, the department shall establish a committee comprised of
34 individuals who represent cities and counties in the affected project
35 area; organizations formed to support or oppose the project; and users
36 of the project. The committee shall be named the public-private local
37 involvement committee, and be known as the local involvement committee.

38 (b) The members of the local involvement committee shall be: (i)
39 An elected official from each city within the affected project area;

1 (ii) an elected official from each county within the affected project
2 area; (iii) two persons from each county within the affected project
3 area who represent an organization formed in support of the project, if
4 the organization exists; (iv) two persons from each county within the
5 affected project area who represent an organization formed to oppose
6 the project, if the organization exists; and (v) four public members
7 active in a state-wide transportation organization. If the committee
8 makeup results in an even number of committee members, there shall be
9 an additional appointment of an elected official from the county in
10 which all, or the greatest portion of the project is located.

11 (c) City and county elected officials shall be appointed by a
12 majority of the members of the city or county legislative authorities
13 of each city or county within the affected project area, respectively.
14 The county legislative authority of each county within the affected
15 project area shall identify and validate organizations officially
16 formed in support of or in opposition to the project and shall make the
17 appointments required under this section from a list submitted by the
18 chair of the organizations. Public members shall be appointed by the
19 governor. All appointments to the local involvement committee shall be
20 made and submitted to the department of transportation no later than
21 January 1, 1996, for projects selected prior to September 1, 1994, and
22 no later than thirty days after the affected project area is defined
23 for projects selected after June 30, 1997. Vacancies in the membership
24 of the local involvement committee shall be filled by the appointing
25 authority under (b)(i) through (v) of this subsection for each position
26 on the committee.

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

30 (e) Members of the local involvement committee serve without
31 compensation and may not receive subsistence, lodging expenses, or
32 travel expenses.

33 (7) The department shall conduct a minimum thirty-day public
34 comment period on the definition of the geographical boundary of the
35 project area. The department, in consultation with the local
36 involvement committee, shall make adjustments, if required, to the
37 definition of the geographical boundary of the affected project area,
38 based on comments received from the public. Within fourteen calendar
39 days after the public comment period, the department shall set the

1 boundaries of the affected project area in units no smaller than a
2 precinct as defined in RCW 29.01.120.

3 (8) The department, in consultation with the local involvement
4 committee, shall develop a description for selected project proposals.
5 After developing the description of the project proposal, the
6 department shall publish the project proposal description in newspapers
7 of general circulation for seven calendar days in the affected project
8 area. Within fourteen calendar days after the last day of the
9 publication of the project proposal description, the department shall
10 transmit a copy of the map depicting the affected project area and the
11 description of the project proposal to the county auditor of the county
12 in which any portion of the affected project area is located.

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

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

35 (11) Notwithstanding any other provision of law, the department may
36 contract with a private developer of a selected project proposal to
37 conduct environmental impact studies, a public involvement program, and
38 engineering and technical studies funded by the legislature. For
39 projects subject to this subsection, the department shall not enter

1 into an agreement under RCW 47.46.040 prior to the advisory vote on the
2 preferred alternative.

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

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

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

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

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

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

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

36 (4) The department may exercise any power possessed by it to
37 facilitate the development, construction, financing operation, and
38 maintenance of transportation projects under this chapter. Agreements

1 for maintenance services entered into under this section shall provide
2 for full reimbursement for services rendered by the department or other
3 state agencies. Agreements for police services for projects, involving
4 state highway routes, developed under agreements shall be entered into
5 with the Washington state patrol. The agreement for police services
6 shall provide that the state patrol will be reimbursed for costs on a
7 comparable basis with the costs incurred for comparable service on
8 other state highway routes. The department may provide services for
9 which it is reimbursed, including but not limited to preliminary
10 planning, environmental certification, and preliminary design of the
11 demonstration projects.

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

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

36 (7) The agreements entered into under this section may include
37 provisions authorizing the state to grant necessary easements and lease
38 to a private entity existing rights of way or rights of way
39 subsequently acquired with public (~~or private~~) financing. The

1 agreements may also include provisions to lease to the entity airspace
2 above or below the right of way associated or to be associated with the
3 private entity's transportation facility. In consideration for the
4 reversion rights in these privately constructed facilities, the
5 department may negotiate a charge for the lease of airspace rights
6 during the term of the agreement for a period not to exceed fifty
7 years. If, after the expiration of this period, the department
8 continues to lease these airspace rights to the private entity, it
9 shall do so only at fair market value. The agreement may also provide
10 the private entity the right of first refusal to undertake projects
11 utilizing airspace owned by the state in the vicinity of the public-
12 private project.

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

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

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

34 (b) The private entity shall conduct a comprehensive public
35 involvement process that provides, periodically throughout the
36 development and implementation of the project, users and residents of
37 communities in the affected project area an opportunity to comment upon
38 key issues regarding the project including, but not limited to: (i)
39 Alternative sizes and scopes; (ii) design; (iii) environmental

1 assessment; (iv) right of way and access plans; (v) traffic impacts;
2 (vi) tolling or user fee strategies and tolling or user fee ranges;
3 (vii) project cost; (viii) construction impacts; (ix) facility
4 operation; and (x) any other salient characteristics.

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

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

21 (d) In seeking public participation, the private entity shall
22 establish a local involvement committee or committees comprised of
23 residents of the affected project area, individuals who represent
24 cities and counties in the affected project area, organizations formed
25 to support or oppose the project, if such organizations exist, and
26 users of the project. The private entity shall, at a minimum,
27 establish a committee as required under the specifications of RCW
28 47.46.030(~~(+5)~~) (6)(b) (ii) and (iii) and appointments to such
29 committee shall be made no later than thirty days after the project
30 area is defined.

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

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

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))~~ collect user fees or tolls on
16 behalf of the department within the designated area ~~((to allow a~~
17 ~~reasonable rate of return on investment,))~~ as established through a
18 negotiated agreement between the state and the private entity. ~~((The~~
19 ~~negotiated agreement shall determine a maximum rate of return on~~
20 ~~investment, based on project characteristics. If the negotiated rate~~
21 ~~of return on investment is not affected, the private entity may~~
22 ~~establish and modify toll rates and user fees.))~~

23 (3) Agreements may establish "incentive" ~~((rates of return beyond~~
24 ~~the negotiated maximum rate of return on investment))~~ payments beyond
25 the cost of development, construction, and operation of the
26 transportation system and facility project. The ~~((incentive rates of~~
27 ~~return))~~ payments shall be designed to provide financial benefits to
28 the affected public jurisdictions and the private entity, given the
29 attainment of various safety, performance, or transportation demand
30 management goals. The incentive ~~((rates of return))~~ payments shall be
31 negotiated in the agreement.

32 (4) Agreements shall require that over the term of the ownership or
33 lease the user fees or toll revenues be applied only to payment of the
34 ~~((private entity's))~~ capital outlay costs for the project, including
35 project development costs, interest and indebtedness expense, the costs
36 associated with design, construction, operations, toll collection,
37 maintenance and administration of the project, reimbursement to the
38 state for all costs associated with an election as required under RCW

1 47.46.030, the costs of project review and oversight, technical and law
2 enforcement services, and establishment of a fund to assure the
3 adequacy of maintenance expenditures(~~(, and a reasonable return on~~
4 ~~investment to the private entity. A negotiated agreement shall not~~
5 ~~extend the term of the ownership or lease beyond the period of time~~
6 ~~required for payment of the private entity's capital outlay costs for~~
7 ~~the project under this subsection)).~~

8 NEW SECTION. Sec. 5. A new section is added to chapter 47.46 RCW
9 to read as follows:

10 The department may issue bonds or other forms of indebtedness
11 authorized in chapter 47.56 RCW to finance transportation systems and
12 facilities authorized in this chapter. Any request resulting in a toll
13 or user fee increase that would exceed the initial rate established in
14 the advisory vote places that specific public-private initiatives
15 program, from the date of the request forward, under the control and
16 governance of the Washington utilities and transportation commission as
17 if the private entity were a service company. Thereafter the private
18 entity shall comply with chapter 81.04 RCW.

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