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HOUSE BILL 2195

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State of Washington

56th Legislature

1999 Regular Session

By Representatives Huff, Rockefeller, Clements, Lantz, Talcott, Carrell, Alexander and Wensman

Read first time 02/18/1999. Referred to Committee on Transportation.

1 AN ACT Relating to regulation of public-private partnership  
2 agreements; amending RCW 47.46.040; adding a new section to chapter  
3 34.12 RCW; and adding new sections to chapter 47.46 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 34.12 RCW  
6 to read as follows:

7 When requested by the state auditor, the chief administrative law  
8 judge shall assign a special administrative law judge to conduct an  
9 adjudicative proceeding under section 5 of this act.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.46 RCW  
11 to read as follows:

12 The department and a private entity that is party to an agreement  
13 under this chapter are subject to a periodic fiscal audit, after  
14 agreements entered into under this chapter have been finalized, and  
15 annually after that. The audit must be conducted by an accounting firm  
16 selected by the state auditor and a panel of state legislators that  
17 includes the chairpersons and ranking minority members from each of the  
18 following committees: The house of representatives and senate

1 transportation committees, the house of representatives appropriations  
2 committee, and the senate ways and means committee. A final report of  
3 the audit must be presented to the appropriate legislative standing  
4 committees at their next regularly scheduled meetings.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 47.46 RCW  
6 to read as follows:

7 The state auditor shall review and comment on the necessity and  
8 appropriateness of any toll increases proposed by the private entity  
9 and the department. If revenues from tolls are greater than initially  
10 forecast, the department shall establish procedures for public review  
11 of receipts generated every three years after completion of the  
12 project. The department shall also establish procedures to either  
13 lower the tolls or retire the bonds issued for the project earlier than  
14 originally provided.

15 **Sec. 4.** RCW 47.46.040 and 1995 2nd sp.s. c 19 s 3 are each amended  
16 to read as follows:

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

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

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

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

35 (4) The department may exercise any power possessed by it to  
36 facilitate the development, construction, financing operation, and  
37 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, and any  
34 other provision deemed necessary by the secretary.

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

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

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

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

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

32 ~~(b) The private entity shall conduct a comprehensive public  
33 involvement process that provides, periodically throughout the  
34 development and implementation of the project, users and residents of  
35 communities in the affected project area an opportunity to comment upon  
36 key issues regarding the project including, but not limited to: (i)  
37 Alternative sizes and scopes; (ii) design; (iii) environmental  
38 assessment; (iv) right of way and access plans; (v) traffic impacts;  
39 (vi) tolling or user fee strategies and tolling or user fee ranges;~~

1 ~~(vii) project cost; (viii) construction impacts; (ix) facility~~  
2 ~~operation; and (x) any other salient characteristics.~~

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

17 ~~The agreement may require an advisory vote by users of and~~  
18 ~~residents in the affected project area.~~

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

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

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

36 ~~((11)) Before final execution of negotiated agreements, the~~  
37 ~~agreements must be adopted as rules in compliance with the procedures~~  
38 ~~of chapter 34.05 RCW. Provisions of the agreement that are subject to~~  
39 ~~rule-making procedures include the following: (a) Alternative sizes~~

1 and scopes of the project; (b) design; (c) tolling or user-fee  
2 strategies and tolling or user-fee amounts; (d) project costs and  
3 projected overruns, including anticipated toll increases; and (e)  
4 facility operation.

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

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

11 As used in this section, the term "tolls" includes both tolls and  
12 user fees.

13 If agreements entered into under this chapter contain provisions  
14 allowing adjustments in tolls, those adjustments are subject to the  
15 following procedures:

16 (1) A party seeking adjustments in the tolls shall submit a  
17 petition to the office of the state auditor stating the amount of the  
18 proposed toll adjustment, the specific provisions of the agreement that  
19 permit the proposed adjustment, and the rationale and supporting  
20 evidence for the proposed adjustment.

21 (2) A party submitting a petition for an adjustment in tolls shall  
22 provide reasonable public notice to all persons residing or doing  
23 business within the geographic area most likely to be affected by the  
24 toll adjustment. The notice must set forth, in plain and  
25 understandable language, the essential elements of the petition for  
26 toll adjustment.

27 (3) A person may challenge the proposed toll adjustment by  
28 submitting a letter to the state auditor demanding an adjudicative  
29 proceeding. The demand letter must be received by the state auditor  
30 not more than twenty days after publication of the toll adjustment  
31 petition.

32 (4) If the state auditor does not receive a demand for an  
33 adjudicative proceeding within twenty days of the publication of the  
34 toll adjustment petition, then the auditor shall grant the petition for  
35 a toll adjustment.

36 (5) If a demand for an adjudicative proceeding is received by the  
37 state auditor within the allotted time period, the state auditor shall  
38 request the chief administrative law judge to appoint a special

1 administrative law judge to conduct findings of fact and conclusions of  
2 law on the petition for the proposed toll adjustment.

3 (6) In any adjudication conducted under this section, the office of  
4 the attorney general's public counsel division shall represent the  
5 interests of the toll payers in the most affected geographic area.

6 NEW SECTION. **Sec. 6.** A new section is added to chapter 47.46 RCW  
7 to read as follows:

8 In an adjudicative proceeding under section 5 of this act, the  
9 special administrative law judge's investigation must determine  
10 whether: (1) The proposed toll adjustment is allowable under the terms  
11 of the agreement; and (2) whether the underlying rationale, or data for  
12 the toll adjustment, support the amount of the requested toll  
13 adjustment.

14 At the conclusion of the hearing, the special administrative law  
15 judge shall make findings of fact and conclusions of law, including a  
16 determination on the appropriate amount of toll adjustment, if any.

17 NEW SECTION. **Sec. 7.** A new section is added to chapter 47.46 RCW  
18 to read as follows:

19 In no event may the state auditor entertain a petition for a toll  
20 adjustment more than once in any three-year period, except for  
21 emergencies. For purposes of this section, an emergency is when the  
22 actual revenues from a toll operation are insufficient to meet the  
23 obligations for debt retirement on the construction bonds for the  
24 project.

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