1125-S
Sponsor(s): House Committee on Transportation (originally sponsored by Representatives Fisher, K. Schmidt, Radcliff, O'Brien, Fortunato, Eickmeyer, Hankins, Cooper, Murray, Wood and Mitchell; by request of Governor Locke)

Brief Title: Funding transportation.

HB 1125-S.E - DIGEST

(DIGEST AS ENACTED)

Provides funding and appropriations for transportation for the 1999-01 biennium.

VETO MESSAGE ON HB 1125-S
May 27, 1999
To the Honorable Speaker and Members,
The House of Representatives of the State of Washington
Ladies and Gentlemen:

I am returning herewith, without my approval as to sections 1(4)(i), (i) and (ii); 103(2); 103(4); 207(2); 210(partial); 215(1); 215(2); 215(3); 215(6); 216(3); 216(7); 219(10); 228(3); 231(2)(partial); 603; 605; and 613, Engrossed Substitute House Bill No. 1125 entitled:

"AN ACT Relating to transportation funding and appropriations;"

Engrossed Substitute House Bill No. 1125 is the state transportation budget for the upcoming biennium. I disagree with some sections and have vetoed them for the following reasons:

Section 1(4)(i), (i) and (ii), pages 2-3, lines 32 through 2 (Definitions)
The Constitution of the State of Washington, Article III, Section 12, makes clear that every act passed the Legislature shall be presented for consideration by the Governor. That section further provides that the Governor may veto less than an entire bill. The definition of "enacted in a form passed by the legislature" contained in this item effectively makes such presentment conditional upon the Governor's approval of the entire referenced bill and incorporates substantive legislation into an appropriations bill. This violates several constitutional principles, including the doctrine of separation of powers, and improperly restricts the Governor's constitutional veto power.

Section 103(2), page 4, lines 27 through 30 (Utilities and Transportation Commission)
Section 103(2) purports to impose a moratorium on the authority of the Utilities and Transportation Commission (UTC) to grant new certificates allowing auto transportation (bus) companies to operate. This subsection attempts to amend parts of 81.68 RCW without setting the amended parts forth in full. The Constitution of the State of Washington, Article II, Section 37 provides that no

act shall ever be amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length. Consequently, section 103(2) would not successfully amend the law. Instead it would create a conflict with 81.68 RCW. This veto removes a legal cloud that would affect pending and future applications for certificates by auto transportation companies. Despite this veto, I expect the UTC will carefully exercise its discretion in a manner that recognizes anticipated public transit service in the same areas as certificate applicants.

If the statutes are to be amended, it must be done properly through an ordinary bill, not in an appropriations act.

Section 103(4), page 4, lines 33 through 36 (Utilities and Transportation Commission)

Section 103(4) provides that the legislative transportation committees shall convene a task force to study issues related to utility siting and fee assessments on railroad rights of way. To avoid duplication, I have vetoed this subsection because the operating budget already requires the Utilities and Transportation Commission (UTC) to conduct such a study. However, in addition to consultations with the chairs and ranking minority members of the Legislature's Energy, Technology and Telecommunications Committees, I request that the UTC also consult with the chairs and ranking minority members of the Transportation Committees in both houses of the Legislature.

Section 207(2), page 9, lines 17 through 24 (Blue Ribbon Commission on Transportation)

Section 207(2) directs the Blue Ribbon Commission on Transportation to develop a modal trade-off model. While such a model may be a useful tool for transportation decision making, I have vetoed this subsection in order to provide maximum flexibility to the Commission to determine its priorities within the available dollars. The agenda for the Commission should not be dictated from Olympia. If the Commission opts to develop such a model, I expect that it will coordinate with other transportation providers who are engaged in similar analyses.

Section 210(line 33 on page 9 through line 11 on page 10) (Freight Mobility Strategic Investment Board)

The provisos in this section specify the manner in which the Freight Mobility Strategic Investment Board shall approve projects. I have vetoed these provisos because the enabling statute that created the Board established certain threshold eligibility criteria and delegated specific refinement to the Board. While the enumerated criteria match those that the Board has adopted, the Legislature has delegated this authority to the Board. This delegation is appropriate since the Board needs flexibility to adjust these criteria as it embarks on the administration of this new program.

Section 215(1), page 13, lines 4 through 8 (Department of Licensing--Vehicle Services)

Section 215(1) stipulates that the $81,000 appropriation from the motor vehicle account-state shall lapse if Senate Bill 5000 is not enacted in the form passed by the Legislature. Senate Bill 5000 was not passed by the Legislature; therefore, I have vetoed this subsection to eliminate any possible confusion.

Section 215(2), page 13, lines 9 through 13 (Department of Licensing--Vehicle Services)
Section 215(2) stipulates that the $273,000 appropriation from the motor vehicle account-state shall lapse if Senate Bill 5280 is not enacted in the form passed by the Legislature. Senate Bill 5280 was not passed by the Legislature; therefore, I have vetoed this subsection to eliminate any possible confusion.

Section 215(3), page 13, lines 14 through 18 (Department of Licensing--Vehicle Services)
Section 215(3) stipulates that the $82,000 appropriation from the motor vehicle account-state shall lapse if Senate Bill 5641 is not enacted in the form passed by the Legislature. Senate Bill 5641 was not passed by the Legislature; therefore, I have vetoed this subsection to eliminate any possible confusion.

Section 215(6), page 13, lines 27 through 28 (Department of Licensing--Vehicle Services)
Section 215(6) provides that the Department of Licensing shall issue license plate emblems at the discretion of the adjutant general. Such issues are more appropriately handled in policy bills that are the subject of specific legislative debate and input by stakeholders, and give further direction to the Department of Licensing about implementation. Furthermore, neither an appropriation nor fee setting authority was provided for this purpose.

Section 216(3), page 14, lines 20 through 24 (Department of Licensing--Driver Services)
Section 216(3) stipulates that the $610,000 highway safety fund-state appropriation shall lapse if House Bill 1147 is not enacted in the form passed by the Legislature. House Bill 1147 was not passed by the Legislature; therefore, I have vetoed this subsection to eliminate any possible confusion.

Section 216(7), page 15, lines 1 through 3 (Department of Licensing--Driver Services)
Section 216(7) stipulates that the $335,000 highway safety fund-state appropriation shall lapse if Senate Bill 6009 is enacted in the form passed by the Legislature. Senate Bill 6009 was passed by the Legislature and I signed it into law on April 28, 1999. However, a reduction was already made to the appropriations in this section to reflect the enactment of Senate Bill 6009. It was not the intent of the Legislature to reduce the appropriation a second time; therefore, I have vetoed this subsection to nullify the second reduction.

Section 219(10), pages 17-18, lines 26 through 2 (Department of

Transportation--Improvements--Program I)
Section 219(10) provides $3,992,000 motor vehicle account-state appropriation for construction of high occupancy vehicle (HOV) lanes on State Route 16, on the eastern and western sides of the Tacoma Narrows Bridge. I have vetoed Section 219 (10) because I believe we need to finish our commitments to extend the core HOV lanes on Interstate 5 prior to embarking on these unconnected segments. Completing the HOV lanes on I-5 is critical for the success of Sound Transit's Regional Express bus component, which will take advantage of 100 continuous miles of HOV lanes on the state system.

Section 228(3), pages 24-25, lines 29 through 23 (Department of Transportation--Washington State Ferries--Program W)
Section 228(3) provides a $1,500,000 motor vehicle account-state appropriation to develop a new class of auto/passenger ferries. I have vetoed this subsection because the need for this class of vessel has not been identified by the Washington State Ferry (WSF) system in its current revenue 10-year capital plan. It does not make sense to develop a new class of vessel now, when it is likely that the design and technology will become obsolete before construction. Additionally, WSF did not spend $500,000 provided in the 1997 - 1999 transportation budget for the exploration and acquisition of a design for constructing a millennium class ferry vessel. In light of this, I think it is premature to commission the study. In the short-term we must focus on passenger-only ferry construction and service, and on maintaining WSF terminals, many of which were built long ago and were not designed to accommodate the types and amounts of service provided today. It is time to reverse the trend of under-investing in these terminals.

Section 231(2)(line 21 (part) through line 30 (part)), page 29 (Department of Natural Resources " Roadway Easement Authority)
This provision attempted to amend 79.91 RCW to temporarily remove part of the authority of the Department of Natural Resources (DNR). Such an amendment is more appropriately done through an ordinary policy bill that is subject to specific legislative debate and input by stakeholders, not in an appropriations act.

The Constitution of the State of Washington, Article II, Section 37 provides that no act shall ever be amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length. The Legislature may not provide sweeping amendments to RCW 79.91.100 without setting forth the section in full for amendment. Consequently, this provision would not successfully amend the law. Instead it would create a conflict with 79.91 RCW. This veto removes a legal cloud that would affect decisions by DNR regarding roadway easements.

In earlier versions of this act the vetoed provision was contained in a separate section, as it normally would be. It was rolled into subsection 231(2) in an obvious attempt to preclude veto. In *Legislature v. Lowry*, the State Supreme Court cautioned against such manipulation of the designation of sections to avoid the veto

power.

Section 603, pages 71-72, lines 32 through 39 (Performance Based Budgeting)

Section 603 outlines performance based budgeting requirements for the transportation agencies. While I support performance based budgeting and commend the Transportation Committees' interest, some elements of the criteria established in this section are inconsistent with current statewide budget and accounting standards. The Office of Financial Management is designated in the Budget and Accounting Act as the agency responsible for establishing budget instructions and developing and maintaining statewide financial systems. The criteria in this section would establish additional and duplicative reporting requirements for transportation agencies. The creation of two separate tracks for the analysis of financial data would make it impossible to provide consistent and connected statewide financial information. It is my expectation that agencies will continue to work with the Office of Financial Management and the Legislative fiscal committees to develop and implement uniform performance based budgeting reporting standards that will be applicable to all state agencies.

Section 605, pages 74-75, lines 5 through 6 (Surface Transportation Program Statewide Flexible fund distribution)

Section 605 enumerates a distribution scheme for expenditure of Surface Transportation Program (STP) Statewide Flexible funds. Specifically, it provides 40% to the Department of Transportation (DOT), 38% for a statewide competitive grant program and 22% for rural economic development.

I have vetoed this section in order to allow implementation of the majority recommendation of the TEA 21 (Transportation Equity Act for the 21st Century) Steering Committee. The Steering Committee recommendation divides the STP Statewide Flexible funds into four categories: (1) rural economic development (22%); (2) statewide competitive grant program (22%); (3) regions/areas (22%); and (4) DOT (34%).

With this veto the Secretary of Transportation can immediately implement the Steering Committee recommendation, to which DOT was a party, as most of these are funds now available in DOT's non-appropriated, miscellaneous transportation programs account.

The Legislature has granted sufficient appropriation authority to DOT to achieve the DOT distribution, which is subject to appropriation, in other sections of this budget.

In accordance with the Steering Committee recommendation, the aforementioned distributions are for the following activities:

Rural Economic Development. This category will make funds available for transportation improvements necessary for rural economic development in counties with a population density of less than 100 people per square mile, and in urban community empowerment

zones. The goal is to facilitate a rapid response to emerging economic opportunities. The Community Economic Revitalization Board (CERB) will select eligible projects, with staff support as appropriate, from DOT to facilitate distribution of the funds.

In the event that eligible economic development projects do not materialize by the time the funds must be obligated each year, the remaining funds will revert to eligible rural counties for other regional transportation needs. Project selection for reverted funds will be by the appropriate body in each county for selecting projects funded with regional surface transportation funds, typically the metropolitan planning organization (MPO) or regional transportation planning organization (RTPO).

Statewide Competitive Grant Program. This category was originally established by the State's transportation partners at the beginning of ISTEA (Intermodal Surface Transportation Efficiency Act of 1991) implementation. The Transportation Improvement Board will continue as the selection body, and will emphasize the regional significance of projects in making its decisions.

Regions/Areas. Under this category STP flexible dollars would be distributed to the appropriate body in each county that is responsible for selecting projects funded with regional surface transportation funds, typically the MPO or RTPO.

Department of Transportation. This category provides for a direct distribution to DOT.

It is important to note that DOT would be eligible to lead projects in any and all of the categories above. Historically, DOT has competed well in the statewide competitive grant program and regions/areas categories. Often an MPO's top regional priority is a project on the state's transportation system.

Section 613, page 83, lines 6 through 28, (Washington State Patrol Retirement System Contribution)

This section amends the statute prescribing the contribution rate members must pay to fund the Washington State Patrol Retirement System (WSPRS). The amendment provides that for the 1999-2001 biennium, the rate paid by employees to support their pensions should be equal to that paid by their employer. The employer rate for the biennium, already established by the state's Pension Funding Council, is zero percent. This zero rate results from the plan gradually attaining a measure of financial stability; historically over the fifty-two year life of the plan, the rate paid by the employer has averaged 19.6 percent of total payroll.

This amendment effectively postpones most payments into the WSPRS for a full two-year period, which is contrary to accepted practices for the financial management of a pension plan. Most importantly, this language would result in only those WSPRS members whose positions are funded by the state patrol highway account of the motor vehicle fund receiving the benefit of the reduced

contribution rate. All other officer members (about 10 percent of the members) whose positions are funded by other sources would continue to pay the statutorily required 7 percent contribution. It is unclear what rate would be paid by members whose salaries are paid partially from the state patrol highway account and partially from other accounts.

Meanwhile, section 614 of this legislation requires the Joint Committee on Pension Policy (JCPP) to study and recommend a new method for setting employee and employer contribution rates for the WSPRS. I have vetoed section 613 in anticipation of the JCPP formulating a permanent solution to this problem, rather than supporting a temporary fix that could potentially raise questions in bond markets and other financial communities regarding the appropriateness of the state's financial management practices.

For these reasons, I have vetoed sections 1(4)(i), (i) and (ii); 103(2); 103(4); 207(2); 210(partial); 215(1); 215(2); 215(3); 215(6); 216(3); 216(7); 219(10); 228(3); 231(2)(partial); 603; 605; and 613 of Engrossed Substitute House Bill No. 1125.

With the exception of sections 1(4)(i), (i) and (ii); 103(2); 103(4); 207(2); 210(partial); 215(1); 215(2); 215(3); 215(6); 216(3); 216(7); 219(10); 228(3); 231(2)(partial); 603; 605; and 613, Engrossed Substitute House Bill No. 1125 is approved.

Respectfully submitted,
Gary Locke
Governor