

FINAL BILL REPORT

EHB 2723

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Synopsis as Enacted

Brief Description: Revising Public-Private Transportation Initiatives.

Sponsors: By Representatives Ogden, Rockefeller, Lantz, Jackley, Eickmeyer, Haigh and Chase.

House Committee on Transportation
Senate Committee on Transportation

Background:

The Legislature enacted the Public-Private Initiatives Act (PPIA) in 1993. The PPIA authorizes the Secretary of Transportation to select up to six demonstration projects using the private sector to undertake projects on behalf of the Washington State Department of Transportation (WSDOT). In June of 1999, the WSDOT entered into a public-private initiative (PPI) agreement with United Infrastructure of Washington, Inc. (UIW) to finance, develop, build and operate the Tacoma Narrows Bridge project.

The Peninsula Neighborhood Association (PNA) filed suit, alleging that the PPIA was unconstitutional and that the WSDOT failed to comply with several statutory provisions of the act. On November 9, 2000, the Washington Supreme Court issued a unanimous decision with the following conclusions:

- The PPIA is a constitutional delegation of authority to identify toll bridges and set toll rates.
- The challenge to the advisory election is barred because the PNA delayed its challenge.
- The agreement between the WSDOT and UIW violates state law because it allows tolls on the existing bridge, it allows a private entity to set tolls instead of the Transportation Commission, and it allows tolls to be used for the maintenance and operation costs of the existing bridge.

As a result of the supreme court ruling, the WSDOT and UIW sought legislative relief from the provisions of law found to conflict with their PPI agreement. The specific changes needed are: 1) authorization to toll the existing Tacoma Narrows Bridge; 2) clarification that tolling the existing bridge can be accomplished by the special purpose entity (non-profit board) rather than the Transportation Commission; and 3) authorization

to pay for maintenance and repair of the existing bridge from specific toll revenues, rather than from state transportation funds generally. The WSDOT and UIW have found these changes necessary in order to proceed with private bond issuance and the project as currently designed.

An alternative approach to financing this project has been proposed. This alternative approach would keep the Transportation Commission as the public toll authority; pay for maintenance and repair of the existing bridge from state transportation funds rather than toll revenues; and allow state transportation bonds in lieu of financing provided by the developer.

On December 27, 2001, the WSDOT and United Infrastructure of Washington reached an agreement that commits each party to work toward amending the existing development agreement to incorporate public financing for the project, should legislation be enacted that directs that type of financing.

Summary:

The Public-Private Initiatives Act is amended to allow greater flexibility for PPI projects to be financed with either public or private funds. In those instances where the Legislature specifically provides state financing, the Secretary of Transportation must incorporate public financing provisions into any agreement to which the state is party. If the other parties to the agreement refuse to utilize state financing as directed by the Legislature, the Secretary of Transportation may not proceed with such agreement.

The WSDOT is authorized to provide for the establishment and construction of public toll facilities that are selected for development under the PPIA. The Transportation Commission is authorized to act as toll authority to impose tolls for PPI projects that provide for state-financed toll bridges. The commission is granted legislative approval as required under Initiative 601 to increase bridge tolls in excess of the fiscal growth factor, if necessary to meet the financial obligations of the project.

A special account is created for the Tacoma Narrows PPI project. Toll revenues and bond proceeds must be deposited into this account and used strictly for the Tacoma Narrows PPI project. Tax deferrals that are available to the private partner for this project are made available to the WSDOT if the project is publicly financed.

The prohibition against tolling the existing Tacoma Narrows Bridge is amended to allow tolling so long as any state-provided financing is utilized.

A citizen advisory committee is created to review and make recommendations on proposed changes to toll rates for PPI projects. The committee must be comprised of residents of the affected PPI project area.

A legislative oversight committee is created to monitor the development and implementation of any PPI project. One member from each caucus of the Legislature would be appointed to the oversight committee.

Clarification is provided that any PPI project that has been subject to an open, competitive selection process is not subject to any additional selection processes.

Votes on Final Passage:

House 52 44
Senate 28 21 (Senate amended)
House (House refused to concur)
Senate 42 6 (Senate receded)

Effective: June 13, 2002