

Initiative Measure No.588 filed April 10, 2013

BILL REQUEST - CODE REVISER'S OFFICE

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ATTY/TYPIST: BP:seg

BRIEF DESCRIPTION:

Initiative Measure No.588

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AN ACT Relating to the termination of the Alaskan Way deep bore tunnel project; adding a new chapter to Title 47 RCW; and repealing RCW 47.01.402.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (1) The people of the state of Washington find that the original financial framework for the Alaskan Way deep bore tunnel project as set out in RCW 47.01.402 is no longer in effect nor is it effectively controlling the cost of the project.

(2) The people also find as follows:

(a) The state's project finance plan no longer complies with the budgetary limits of RCW 47.01.402. The state's mandated base budget for the project of two billion four hundred million dollars augmented by no more than four hundred million dollars in toll revenue has been summarily proven by the state to be infeasible. Instead, the legislature's and the department of transportation's funding plan for the project now exceeds two billion four hundred million dollars due

to the collapse of the tolling plan for the project. Those project funds that were to be used solely to build a replacement tunnel, as described in RCW 47.01.402(1), are in part being diverted in the name of "mitigation for the project" and used to bolster the operational budget of King county metro service, for example, and to sustain planning for the central seawall or waterfront promenade improvements in Seattle.

(b) In contravention to the legislative mandates in RCW 47.01.402(5), no single source of accountability for the integration, coordination, and tracking of information regarding all requisite components of the replacement project has been established, and no minimal requirements of RCW 47.01.402(5) have been met. More specifically, a master schedule of all subprojects included in the full replacement project or program has not been made available in a timely or accurate manner, and a single point of contact for the public, media, stakeholders, and other interested parties has not been established either. Consequently, the public has not had and does not have timely and accurate accessibility to information related to all aspects of the Alaskan Way viaduct replacement project.

(c) It is also highly unlikely that the legislature's mandate in RCW 47.01.402(6)(b), that any costs in excess of two billion eight hundred million dollars shall be borne by property owners in the Seattle area who benefit from replacement of the existing viaduct with the deep bore tunnel, will be honored by the city of Seattle or, in the alternative, held to be legally valid.

(d)(i) In addition to the radical departure from the legislated financial plan for the project, the same financial plan that was also incorporated in, validated in, and made a condition of the project by the August 2011 "U.S. Department of Transportation/Federal Highway Administration FHWA-WA-EIS-04-01-F Record of Decision," the state's current estimates show that nearly two-thirds of the one hundred ten thousand vehicles a day that use the viaduct will not use the tunnel, and that traffic diversion related to avoiding tolling of the tunnel will substantially increase traffic on downtown Seattle streets, clogging the streets of Pioneer Square, a historic district with

narrow, fragile pedestrian streets, and will cause increased congestion along all of the Alaskan Way and downtown Seattle street corridors, impacting the accessibility to and the character of the center city, particularly in the vicinity of Pioneer Square and the Seattle Center/South Lake Union areas.

(ii) The congestion and longer travel times that will result from the tunnel in operation will also cause longer travel times for transit riders and cause economic hardship for businesses and decreased mobility for freight and other motor vehicle operators.

(e) The net effect if the deep bore tunnel project is to continue is that billions of dollars will be spent to make the traffic in the Alaskan Way transportation corridor worse, the economy of the local area worse, and, more importantly, the quality of life of Seattle's residents and stakeholders worse.

(f) The city of Seattle, which has pledged to provide nine hundred thirty million dollars towards the cost of the deep bore tunnel project, is regularly running an annual budget deficit, has, at a minimum, a backlog of one billion eight hundred million dollars in critical transportation infrastructure replacement and maintenance projects that are unfunded and unlikely to be funded in the near future, and, therefore, is unable to mitigate any of the traffic impacts of the tunnel once it is in operation.

(g) The source of funding for the port of Seattle's pledged three hundred million dollars towards the project remains unsettled.

(h) King county metro, another partner in the project, is running perennial budget deficits.

(3) Therefore, for all the reasons listed under subsection (2) of this section, stated and inherent to the existing economy and practical state and effect of the deep bore tunnel project, the people recognize the need to immediately terminate the project indefinitely if not permanently.

NEW SECTION. **Sec. 2.** On the effective date of this section, the department must terminate the design-build contract, for the state route number 99 bored tunnel alternative design-build project, between

the department and Seattle tunnel partners, respectively signed on December 28, 2010, and January 6, 2011, by the parties, in accordance with section 15 of the design-build contract titled, "Termination for Convenience."

NEW SECTION. **Sec. 3.** Any unobligated remaining balances available as of the effective date of this section are rescinded and permanently canceled. Any amounts made available under the conditions specified in RCW 47.01.402 must continue to be governed by any provisions of state or federal law applicable to such amounts that are in effect immediately before the termination of the Alaskan Way deep bore tunnel project.

NEW SECTION. **Sec. 4.** Any unspent proceeds not affected by the termination of the deep bore tunnel project and received from outstanding bonds issued and sold to fund the deep bore tunnel project must be redirected or reprogrammed to:

(1) Settle any contractual obligations pursuant to section 15 of the design-build contract; or

(2) Defray the expenses of terminating the deep bore tunnel project, specifically for expenditures the state must make that are not directly associated with section 15 of the design-build contract but are necessary in order to restore state route number 99 to its precontract functionality as a state highway including, but not limited to, returning the entire length of state route number 99 between Mercer Street at its north end and S. Nevada Street at its south end to levels of surface and traffic-handling volumes that were occurring just prior to the commencement of the design-build contract and in accordance with section 5 of this act.

NEW SECTION. **Sec. 5.** (1) The state is not obligated to reconstruct the portions of the Alaskan Way viaduct demolished as of the effective date of this section; however, the state must ensure that those state route number 99 highway sections, including the roadways and appurtenances thereto, that were either demolished or

affected by the deep bore tunnel project, or added as part of the project, are (a) made compatible with the Atlantic Street overpass project, (b) made compatible with the viaduct's south end replacement projects (the "SR 99 - S. Holgate Street to King Street Viaduct Replacement" projects), and (c) designed, engineered, constructed, reconstructed, relocated, or otherwise configured in a manner that allows for state route number 99, between Mercer Street at its north end and S. Nevada Street at its south end, to return to the same or higher levels of surface and have road capacity that accommodates the same or higher volumes of traffic that existed prior to project implementation in January 2010.

(2) The state is also obligated to ensure that the state-owned portions of the nonhighway areas of the deep bore tunnel project limits, which include, but are not limited to, the bicycle and pedestrian paths along state route number 99 that connect to existing downtown trails, the waterfront, stadiums, and local business areas, are restored, improved, or otherwise constructed or reconstructed to include environmentally, ecologically, and urban appropriate plantings, landscaping, or other topographical improvements that enhance the environment or aesthetics of the project area.

NEW SECTION. **Sec. 6.** The state must not, on or after the effective date of this section, (1) incur any additional debt, (2) accept or use any federal funds, (3) provide or use any state funds, or (4) accept or use any local funds for the deep bore tunnel project, except as necessary for the orderly termination of the project in accordance with section 15 of the design-build contract, or as necessary for the restoration or reconstruction of state route number 99 that is required in order to accomplish the requirements of sections 4 and 5 of this act.

NEW SECTION. **Sec. 7.** All contracts and agreements entered into by or on behalf of the state relating to the deep bore tunnel project, other than agreements related to the issuance and repayment of previously issued bonds under RCW 47.01.402, are terminated as of the

effective date of this section and must be terminated in a timely and orderly fashion, consistent with any applicable terms and conditions in any contracts or agreements affected by this chapter, or subject to any state or federal requirements in effect prior to the effective date of this section.

NEW SECTION. **Sec. 8.** (1) The department must by public auction or private contract dispose of all parcels of lands, pier structures and shoreline rights, and any other real property rights or interests of every kind it acquired between 2001 and 2013 that were necessary for the facilitation of or for the location of the deep bore tunnel project, and any facilities or appurtenances thereto, to the highest bidder or purchaser, public or private. The department must also by public auction dispose of all materials and property of every kind including, but not limited to, instruments, equipment, machinery, tools, and systems of every kind related to the deep bore tunnel project.

(2) The proceeds of the department's sales of real property and project-specific property under this section must be used to pay any costs associated with the termination of the deep bore tunnel project and are governed by any provisions of state or federal law applicable to such amounts that are in effect immediately before the termination of the deep bore tunnel project.

NEW SECTION. **Sec. 9.** (1) The department must:

- (a) Ensure that all provisions of section 15 of the design-build contract are complied with by Seattle tunnel partners and the state;
- (b) Produce an audit of all aspects of the entire Alaskan Way viaduct replacement project between 1998 to 2013 in conjunction with both an independent auditor panel and the state auditor; and
- (c) Release online to the public all documents associated with the project.

(2) On the date the department completes the final acts necessary to complete the termination of the deep bore tunnel project, the secretary of transportation and the assistant secretary of

transportation must transmit to the governor and legislature a certification that they have faithfully and entirely complied with all the requirements of this chapter.

NEW SECTION. **Sec. 10.** RCW 47.01.402 (Alaskan Way viaduct replacement project--Deep bore tunnel option--Funding, accountability, and responsibility) and 2009 c 458 s 1 are each repealed.

NEW SECTION. **Sec. 11.** This act must be liberally construed to effectuate the intent, policies, and purposes of this act.

NEW SECTION. **Sec. 12.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 13.** This act may be known and cited as the deep bored tunnel termination act of 2013.

NEW SECTION. **Sec. 14.** Sections 1 through 9 and 11 through 13 of this act constitute a new chapter in Title 47 RCW.