
ENGROSSED SUBSTITUTE SENATE BILL 6044

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Transportation (originally sponsored by Senators Owen, Prince and Kohl)

Read first time 03/06/95.

1 AN ACT Relating to transportation systems and facilities; amending
2 RCW 47.46.010, 47.46.030, 47.46.040, and 47.46.050; and adding a new
3 section to chapter 47.05 RCW.

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

5 **Sec. 1.** RCW 47.46.010 and 1993 c 370 s 1 are each amended to read
6 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 should be implemented in
9 cooperation and consultation with affected local jurisdictions.

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

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

26 The legislature finds that in the case of Highway 522, selected
27 under this chapter, public support has not been demonstrated and
28 therefore the secretary shall not proceed. Among the demonstrations of
29 nonsupport for inclusion of Highway 522 are:

30 (1) Over sixteen thousand citizens have signed petitions in
31 opposition to the toll project;

32 (2) The majority of city councilmembers in Monroe, Duvall, and
33 Index have made public statements opposing the toll project, and that
34 the Woodinville chamber of commerce has officially opposed the toll
35 project;

36 (3) No city council or chamber of commerce in the area has favored
37 the toll project;

1 (4) Of the five hundred individuals who attended the public
2 information hearings on the toll proposal, four hundred fifty-eight
3 signed a petition requesting that the proposal be rejected;

4 (5) Businesses in Monroe, Woodinville, Duvall, Snohomish, Sultan,
5 Startup, Gold Bar, Index, Skykomish, and Stevens Pass are extremely
6 dependent on Highway 522 for commerce, that due to the rural nature of
7 these areas no alternative for commerce exists, and that a toll on
8 Highway 522 would severely inhibit their ability to stay in business;
9 and

10 (6) In an informal poll of residents who currently use Highway 522
11 to shop, eighty-one and one-half percent of the respondents claimed
12 they would be unlikely to continue shopping at these stores if a toll
13 were imposed.

14 Agreements negotiated under the public-private initiative's program
15 should establish the conditions under which the private developer may
16 secure the approval necessary to develop and operate the proposed
17 transportation facilities; create a framework to attract the private
18 capital necessary to finance their development; and ensure that the
19 transportation facilities will be designed, constructed, and operated
20 in accordance with applicable local, regional, state, and federal laws
21 and the applicable standards and policies of the department of
22 transportation.

23 The department of transportation should be encouraged to take
24 advantage of new opportunities provided by federal legislation under
25 section 1012 of the Intermodal Surface Transportation Efficiency Act of
26 1991 (ISTEA). That section establishes a new program authorizing
27 federal participation in construction or improvement or improvement of
28 publicly or privately owned toll roads, bridges, and tunnels, and
29 allows states to leverage available federal funds as a means for
30 attracting private sector capital.

31 **Sec. 2.** RCW 47.46.030 and 1993 c 370 s 3 are each amended to read
32 as follows:

33 (1) The secretary or a designee shall solicit proposals from, and
34 negotiate and enter into agreements with, private entities to undertake
35 as appropriate, together with the department and other public entities,
36 all or a portion of the study, planning, design, construction,
37 operation, and maintenance of transportation systems and facilities,
38 using in whole or in part private sources of financing.

1 The public-private initiative program may develop up to six
2 demonstration projects. Each proposal shall be weighed on its own
3 merits, and each of the six agreements shall be negotiated
4 individually, and as a stand-alone project. The commission shall
5 approve each of the selected projects.

6 ~~((Proposals and demonstration projects may be selected by the
7 public and private sectors at their discretion.))~~

8 (2) A state transportation system or facility selected as a
9 demonstration project under this chapter, that is designated by the
10 commission as a prioritized improvement project under the comprehensive
11 six-year investment program set forth in RCW 47.05.051, shall not be
12 reprioritized as a result of its selection as a demonstration project.
13 As state funds become available, the funds must be used toward the
14 capital costs of the demonstration project, or in the case of a project
15 developed in phases, for the phase or segment. If no state funding is
16 required to finance the demonstration project, state funds that become
17 available for such project under RCW 47.05.051 instead must be used (a)
18 to reduce the rate of tolls or user fees imposed on the demonstration
19 project, or (b) for improvements on alternative state or local nontoll
20 routes that provide a reasonable, free, and convenient access
21 alternative to the demonstration project.

22 (3) Projects selected prior to and after September 1, 1994, must
23 comply with the requirements of subsections (4) through (9) of this
24 section.

25 (4) No projects selected or agreements entered into under this
26 chapter take effect until the department conducts a comprehensive
27 analysis of traffic patterns and economic impact to determine and
28 define the geographical boundary of the area of the project that is
29 most affected by the imposition of tolls or user fees authorized under
30 this chapter. The area so defined is referred to in this section as
31 the affected project area. In defining the affected project area, the
32 department in consultation with the legislative transportation
33 committee shall, at a minimum, undertake: (a) A comparison of the
34 estimated percentage of residents of communities in the vicinity of and
35 impacted by the project who could be subject to tolls or user fees and
36 the estimated percentage of other users and transient traffic that
37 could be subject to tolls or user fees; (b) anticipated traffic
38 diversion patterns; and (c) potential economic impact resulting from
39 proposed toll rates or user fee rates imposed on residents of and

1 commercial traffic and commercial entities in communities in the
2 vicinity of and impacted by the project. The department shall provide
3 the legislative transportation committee with progress reports on the
4 status of the definition of the affected project.

5 (5) After a determination and definition by the department of the
6 affected project area, the department shall conduct a minimum thirty-
7 day public comment period. Within fifteen days following the public
8 comment period, the legislative transportation committee may conduct a
9 hearing on the defined affected project area. The department may make
10 adjustments to the definition of the geographical boundary of the
11 affected project area, based on comments received from the public and
12 a hearing by the legislative transportation committee. Within thirty
13 days after the public comment period, the department shall establish
14 the boundaries of the affected project area in units no smaller than a
15 precinct as defined by RCW 29.01.120.

16 (6) The department shall establish a process that provides for
17 public involvement in decision making with respect to the affected
18 project area. In carrying out the public involvement process the
19 department shall proactively seek public participation through a
20 process appropriate to the characteristics of the affected project area
21 that assesses overall public support among users and residents of the
22 affected project area. Such public involvement process shall provide
23 opportunities for users and residents of the affected project area to
24 comment upon key issues regarding the project including, but not
25 limited to: (a) Alternative sizes and scopes; (b) design; (c)
26 environmental assessment; (d) right of way and access plans; (e)
27 traffic impacts; (f) tolling or user fee strategies and tolling or user
28 fee ranges; (g) project cost; (h) construction impacts; (i) facility
29 operation; and (j) any other salient characteristics.

30 (7) The results of the public involvement process shall be made
31 available for public review and comment.

32 The department shall provide the legislative transportation
33 committee with progress reports on the status of the public involvement
34 process. The results of such public involvement process, including
35 public comment, shall be forwarded to the legislative transportation
36 committee for its review. Within forty-five calendar days of
37 submission of such information, the legislative transportation
38 committee shall conduct a public hearing regarding the results of the
39 public involvement process. Taking into account the information

1 submitted, the legislative transportation committee shall adopt a
2 resolution making a recommendation to the secretary of the department
3 of transportation regarding the appropriateness of the definition of
4 the affected project area and the project description and
5 characteristics.

6 (8) In response to the recommendation of the legislative
7 transportation committee, the secretary, within two weeks after receipt
8 of legislative transportation committee recommendation, shall transmit
9 a copy of the map depicting the affected project area and the project
10 description and characteristics to the county auditor of the county in
11 which any portion of the affected project area is located.

12 (9) Upon receipt of the map and the project description and
13 characteristics, the county auditor shall, within sixty days, verify
14 the precincts that are located within the affected project area. The
15 county auditor shall prepare the text identifying and describing the
16 affected project area and the project and shall set a special election
17 date for the submission of a ballot proposition authorizing the
18 imposition of tolls or user fees within the affected project area. The
19 text of the project must appear in a voter's pamphlet for the affected
20 project area. The department shall pay for the costs of publication
21 and distribution. The special election date must be the next date for
22 a special election provided under RCW 29.13.020 that is at least sixty
23 days but, if authorized under RCW 29.13.020, no more than ninety days
24 after receipt of the final map and project description and
25 characteristics by the auditor. The department shall pay the costs of
26 an election held under this section. A simple majority of those voting
27 within the affected project area to authorize tolls or user fees within
28 the project area is required for approval. If the vote is affirmative,
29 the department is authorized to solicit proposals for replacement
30 projects. If the vote is affirmative for a project selected prior to
31 September 1, 1994, the department may enter into an agreement
32 authorized under RCW 47.46.040 with a private entity.

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

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

4 **Sec. 3.** RCW 47.46.040 and 1993 c 370 s 4 are each amended to read
5 as follows:

6 Agreements shall provide for private ownership of the projects
7 during the construction period. After completion and final acceptance
8 of each project or discrete segment thereof, the agreement shall
9 provide for state ownership of the transportation systems and
10 facilities and lease to the private entity unless the state elects to
11 provide for ownership of the facility by the private entity during the
12 term of the agreement.

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

16 The department may exercise any power possessed by it to facilitate
17 the development, construction, financing, operation, and maintenance of
18 transportation projects under this chapter. Agreements for maintenance
19 services entered into under this section shall provide for full
20 reimbursement for services rendered by the department or other state
21 agencies. Agreements for police services for projects developed under
22 ~~((the)) agreements~~ may be entered into with ~~((any qualified law~~
23 ~~enforcement agency, and shall provide for full reimbursement for~~
24 ~~services rendered by that agency))~~ the Washington state patrol. The
25 agreement for police services shall provide that the state patrol will
26 be reimbursed for costs on a comparable basis with the costs incurred
27 on other state highway facilities. The department may provide services
28 for which it is reimbursed, including but not limited to preliminary
29 planning, environmental certification, and preliminary design of the
30 demonstration projects.

31 The plans and specifications for each project constructed under
32 this section shall comply with the department's standards for state
33 projects. A facility constructed by and leased to a private entity is
34 deemed to be a part of the state highway system for purposes of
35 identification, maintenance, and enforcement of traffic laws and for
36 the purposes of applicable sections of this title. Upon reversion of
37 the facility to the state, the project must meet all applicable state
38 standards. Agreements shall address responsibility for reconstruction

1 or renovations that are required in order for a facility to meet all
2 applicable state standards upon reversion of the facility to the state.

3 For the purpose of facilitating these projects and to assist the
4 private entity in the financing, development, construction, and
5 operation of the transportation systems and facilities, the agreements
6 may include provisions for the department to exercise its authority,
7 including the lease of facilities, rights of way, and airspace,
8 exercise of the power of eminent domain, granting of development rights
9 and opportunities, granting of necessary easements and rights of
10 access, issuance of permits and other authorizations, protection from
11 competition, remedies in the event of default of either of the parties,
12 granting of contractual and real property rights, liability during
13 construction and the term of the lease, authority to negotiate
14 acquisition of rights of way in excess of appraised value, and any
15 other provision deemed necessary by the secretary.

16 The agreements entered into under this section may include
17 provisions authorizing the state to grant necessary easements and lease
18 to a private entity existing rights of way or rights of way
19 subsequently acquired with public or private financing. The agreements
20 may also include provisions to lease to the entity airspace above or
21 below the right of way associated or to be associated with the private
22 entity's transportation facility. In consideration for the reversion
23 rights in these privately constructed facilities, the department may
24 negotiate a charge for the lease of airspace rights during the term of
25 the agreement for a period not to exceed fifty years. If, after the
26 expiration of this period, the department continues to lease these
27 airspace rights to the private entity, it shall do so only at fair
28 market value. The agreement may also provide the private entity the
29 right of first refusal to undertake projects utilizing airspace owned
30 by the state in the vicinity of the public-private project.

31 Agreements under this section may include any contractual provision
32 that is necessary to protect the project revenues required to repay the
33 costs incurred to study, plan, design, finance, acquire, build,
34 install, operate, enforce laws, and maintain toll highways, bridges,
35 and tunnels and which will not unreasonably inhibit or prohibit the
36 development of additional public transportation systems and facilities.
37 Agreements under this section must secure and maintain liability
38 insurance coverage in amounts appropriate to protect the project's
39 viability and may address state indemnification of the private entity

1 for design and construction liability where the state has approved
2 relevant design and construction plans.

3 Nothing in this chapter limits the right of the secretary and his
4 or her agents to render such advice and to make such recommendations as
5 they deem to be in the best interests of the state and the public.

6 **Sec. 4.** RCW 47.46.050 and 1993 c 370 s 5 are each amended to read
7 as follows:

8 (1) The department may enter into agreements using federal, state,
9 and local financing in connection with the projects, including without
10 limitation, grants, loans, and other measures authorized by section
11 1012 of ISTEPA, and to do such things as necessary and desirable to
12 maximize the funding and financing, including the formation of a
13 revolving loan fund to implement this section.

14 (2) Agreements entered into under this section shall authorize the
15 private entity to lease the facilities within a designated area or
16 areas from the state and to impose user fees or tolls within the
17 designated area to allow a reasonable rate of return on investment, as
18 established through a negotiated agreement between the state and the
19 private entity. The negotiated agreement shall determine a maximum
20 rate of return on investment, based on project characteristics. If the
21 negotiated rate of return on investment is not affected, the private
22 entity may establish and modify toll rates and user fees.

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

30 (4) Agreements shall require that over the term of the ownership or
31 lease the user fees or toll revenues be applied only to payment of the
32 private entity's capital outlay costs for the project, including
33 interest expense, the costs associated with construction, operations,
34 toll collection, maintenance and administration of the ((facility))
35 project, reimbursement to the state for all costs associated with an
36 election as required under RCW 47.46.030, the costs of project review
37 and oversight, technical and law enforcement services, establishment of
38 a fund to assure the adequacy of maintenance expenditures, and a

1 reasonable return on investment to the private entity. ((The use of
2 any excess toll revenues or user fees may be negotiated between the
3 parties.

4 After expiration of the lease of a facility to a private entity,
5 the secretary may continue to charge user fees or tolls for the use of
6 the facility, with these revenues to be used for operations and
7 maintenance of the facility, or to be paid to the local transportation
8 planning agency, or any combination of such uses.)) A negotiated
9 agreement shall not extend the term of the ownership or lease beyond
10 the period of time required for payment of the private entity's capital
11 outlay costs for the project under subsection (4) of this section.

12 NEW SECTION. Sec. 5. A new section is added to chapter 47.05 RCW
13 to read as follows:

14 RCW 47.46.030(2) applies to this chapter.

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