

---

**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; adding a new  
3 section to chapter 47.46 RCW; and declaring an emergency.

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 Agreements negotiated under the public-private initiative's program  
27 should establish the conditions under which the private developer may  
28 secure the approval necessary to develop and operate the proposed  
29 transportation facilities; create a framework to attract the private  
30 capital necessary to finance their development; and ensure that the  
31 transportation facilities will be designed, constructed, and operated  
32 in accordance with applicable local, regional, state, and federal laws  
33 and the applicable standards and policies of the department of  
34 transportation.

35 The department of transportation should be encouraged to take  
36 advantage of new opportunities provided by federal legislation under  
37 section 1012 of the Intermodal Surface Transportation Efficiency Act of  
38 1991 (ISTEA). That section establishes a new program authorizing  
39 federal participation in construction or improvement or improvement of

1 publicly or privately owned toll roads, bridges, and tunnels, and  
2 allows states to leverage available federal funds as a means for  
3 attracting private sector capital.

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

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

12 The public-private initiative program may develop up to six  
13 demonstration projects. Each proposal shall be weighed on its own  
14 merits, and each of the six agreements shall be negotiated  
15 individually, and as a stand-alone project. The commission shall  
16 approve each of the selected projects.

17 Proposals and demonstration projects may be selected by the public  
18 and private sectors at their discretion.

19 (2) If projects selected prior to September 1, 1994, are terminated  
20 by the public or private sectors, no other projects shall be selected  
21 as replacement projects until the department develops a public  
22 involvement process to identify prospective projects. The public  
23 involvement process shall, at a minimum, identify projects that: (a)  
24 Have the potential of achieving overall public support among users of  
25 such projects, residents of communities in the vicinity of such  
26 projects, and residents of communities impacted by such projects; (b)  
27 meet a state transportation need; and (c) provide a significant state  
28 benefit.

29 (3) The department shall develop a public involvement plan for  
30 identifying replacement projects by January 1, 1996, and shall submit  
31 such plan to the legislative transportation committee for review.  
32 Project selections made after September 1, 1994, shall be carried out  
33 utilizing the public involvement process developed by the department  
34 and reviewed by the legislative transportation committee. Projects  
35 that meet the criteria established in subsection (2) of this section  
36 shall be submitted for review by the Washington state transportation  
37 commission. The commission shall submit a list of eligible projects to  
38 the legislative transportation committee for its consideration. If

1 within forty-five calendar days of such submission the legislative  
2 transportation committee has not adopted a resolution recommending that  
3 the secretary reject an eligible project, the secretary is authorized  
4 to solicit proposals for such eligible project.

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

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

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

15 Agreements shall provide for private ownership of the projects  
16 during the construction period. After completion and final acceptance  
17 of each project or discrete segment thereof, the agreement shall  
18 provide for state ownership of the transportation systems and  
19 facilities and lease to the private entity unless the state elects to  
20 provide for ownership of the facility by the private entity during the  
21 term of the agreement.

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

25 The department may exercise any power possessed by it to facilitate  
26 the development, construction, financing, operation, and maintenance of  
27 transportation projects under this chapter. Agreements for maintenance  
28 services entered into under this section shall provide for full  
29 reimbursement for services rendered by the department or other state  
30 agencies. Agreements for police services for projects developed under  
31 ~~((the))~~ agreements may be entered into with any qualified law  
32 enforcement agency, and shall provide for full reimbursement for  
33 services rendered by that agency. The department may provide services  
34 for which it is reimbursed, including but not limited to preliminary  
35 planning, environmental certification, and preliminary design of the  
36 demonstration projects.

37 The plans and specifications for each project constructed under  
38 this section shall comply with the department's standards for state

1 projects. A facility constructed by and leased to a private entity is  
2 deemed to be a part of the state highway system for purposes of  
3 identification, maintenance, and enforcement of traffic laws and for  
4 the purposes of applicable sections of this title. Upon reversion of  
5 the facility to the state, the project must meet all applicable state  
6 standards. Agreements shall address responsibility for reconstruction  
7 or renovations that are required in order for a facility to meet all  
8 applicable state standards upon reversion of the facility to the state.

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

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

37 Agreements under this section may include any contractual provision  
38 that is necessary to protect the project revenues required to repay the  
39 costs incurred to study, plan, design, finance, acquire, build,

1 install, operate, enforce laws, and maintain toll highways, bridges,  
2 and tunnels and which will not unreasonably inhibit or prohibit the  
3 development of additional public transportation systems and facilities.  
4 Agreements under this section must secure and maintain liability  
5 insurance coverage in amounts appropriate to protect the project's  
6 viability and may address state indemnification of the private entity  
7 for design and construction liability where the state has approved  
8 relevant design and construction plans.

9 The department shall not enter into an agreement with a private  
10 entity for a project selected prior to September 1, 1994, unless that  
11 agreement includes a process that provides for public involvement in  
12 decision making with respect to the development of such project.

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

16 NEW SECTION. Sec. 4. A new section is added to chapter 47.46 RCW  
17 to read as follows:

18 (1) In carrying out the public involvement process required in RCW  
19 47.46.040, the private entity shall proactively seek public  
20 participation through a process appropriate to the characteristics of  
21 such project, or in the case of a project developed in phases or  
22 segments, such phase or segment, that assesses overall public support  
23 among: Users of such project, phase, or segment; residents of  
24 communities in the vicinity of such project, phase, or segment; and  
25 residents of communities impacted by such project, phase, or segment.  
26 Such public involvement process shall provide opportunities for users  
27 and residents to comment upon key issues regarding such project, phase,  
28 or segment, including, but not limited to: (a) Alternative sizes and  
29 scopes; (b) design; (c) environmental assessment; (d) right of way and  
30 access plans; (e) traffic impacts; (f) tolling or user fee strategies  
31 and tolling or user fee ranges; (g) project cost; (h) construction  
32 impacts; (i) facility operation; and (j) any other salient  
33 characteristics.

34 (2) In seeking public participation, the private entity shall cause  
35 to be conducted on one or more occasions, a comprehensive inventory of  
36 public positions of users and residents of communities in the vicinity  
37 of or impacted by such project, phase, or segment. Such inventory of  
38 public positions shall be conducted by an independent accountant or

1 other independent professional jointly selected and supervised by the  
2 private entity and the department of transportation in consultation  
3 with the legislative transportation committee. The independent  
4 accountant or other independent professional must have a proven history  
5 and expertise in assessing public opinion and shall not have a direct  
6 or indirect interest in such project. The results of the inventory of  
7 public positions shall be made available for public review and comment.

8 (3) The department shall provide the legislative transportation  
9 committee with progress reports on the status of the public involvement  
10 process and the inventory of public positions. The results of the  
11 inventory of public positions, including public comment on such  
12 inventory of public positions, shall be forwarded to the legislative  
13 transportation committee for its review. Within forty-five calendar  
14 days of submission of such information for a project, phase, or  
15 segment, the legislative transportation committee shall conduct a  
16 public hearing regarding the results of the inventory of public  
17 positions on the project, phase, or segment. Taking into account the  
18 information submitted, the legislative transportation committee shall  
19 adopt a resolution making a recommendation to the secretary regarding  
20 the disposition of the agreement for such project, phase, or segment.  
21 Any action by the secretary in response to the recommendation of the  
22 legislative transportation committee shall be taken within thirty  
23 calendar days of receipt of such recommendation and shall be carried  
24 out in accordance with the terms and conditions established in the  
25 agreement for such project, phase, or segment.

26 **Sec. 5.** RCW 47.46.050 and 1993 c 370 s 5 are each amended to read  
27 as follows:

28 The department may enter into agreements using federal, state, and  
29 local financing in connection with the projects, including without  
30 limitation, grants, loans, and other measures authorized by section  
31 1012 of ISTEPA, and to do such things as necessary and desirable to  
32 maximize the funding and financing, including the formation of a  
33 revolving loan fund to implement this section.

34 Agreements entered into under this section shall authorize the  
35 private entity to lease the facilities within a designated area or  
36 areas from the state and to impose user fees or tolls within the  
37 designated area to allow a reasonable rate of return on investment, as  
38 established through a negotiated agreement between the state and the

1 private entity. The negotiated agreement shall determine a maximum  
2 rate of return on investment, based on project characteristics. If the  
3 negotiated rate of return on investment is not affected, the private  
4 entity may establish and modify toll rates and user fees.

5 Agreements may establish "incentive" rates of return beyond the  
6 negotiated maximum rate of return on investment. The incentive rates  
7 of return shall be designed to provide financial benefits to the  
8 affected public jurisdictions and the private entity, given the  
9 attainment of various safety, performance, or transportation demand  
10 management goals. The incentive rates of return shall be negotiated in  
11 the agreement.

12 Agreements shall require that over the term of the ownership or  
13 lease the user fees or toll revenues be applied to payment of the  
14 private entity's capital outlay costs for the project, including  
15 interest expense, the costs associated with operations, toll  
16 collection, maintenance and administration of the facility,  
17 reimbursement to the state for the costs of project review and  
18 oversight, technical and law enforcement services, establishment of a  
19 fund to assure the adequacy of maintenance expenditures, and a  
20 reasonable return on investment to the private entity. The ~~((use of~~  
21 ~~any excess toll revenues or user fees may be negotiated between the~~  
22 ~~parties)) agreements must require that tolls and user fees be used only  
23 for the construction, operation, maintenance, and administration of the  
24 project, or where a project is developed in phases or segments, for  
25 such phase or segment.~~

26 After expiration of the lease of a facility to a private entity,  
27 the secretary may continue to charge user fees or tolls for the use of  
28 the facility, with these revenues to be used for operations and  
29 maintenance of the facility, or to be paid to the local transportation  
30 planning agency, or any combination of such uses.

31 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
32 preservation of the public peace, health, or safety, or support of the  
33 state government and its existing public institutions, and shall take  
34 effect immediately.

--- END ---