
HOUSE BILL 1006

State of Washington

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By Representatives R. Fisher, Zellinsky, Brumsickle, Dorn, R. Meyers, Miller, Scott, Sheldon, Wineberry, Ogden, Wood, Schmidt, I. Ballasiotes, Forner, Cooke, Talcott, Chandler, Leonard, Jacobsen, Eide, Horn and Pruitt

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1 AN ACT Relating to public-private initiatives in transportation;
2 adding a new chapter to Title 47 RCW; providing an effective date; and
3 declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds and declares:

6 It is essential for the economic, social, and environmental well-
7 being of the state and the maintenance of a high quality of life that
8 the people of the state have an efficient transportation system.

9 The ability of the state to provide an efficient transportation
10 system will be enhanced by a public-private sector program providing
11 for private entities to undertake all or a portion of the study,
12 planning, design, development, financing, acquisition, installation,
13 construction or improvement, operation, and maintenance of
14 transportation systems and facility projects.

15 A public-private initiatives program will provide benefits to both
16 the public and private sectors. Public-private initiatives provide a
17 sound economic investment opportunity for the private sector. Such
18 initiatives will provide the state with increased access to property
19 development and project opportunities, financial and development

1 expertise, and will supplement state transportation revenues, allowing
2 the state to use its limited resources for other needed projects.

3 The public-private initiatives program should be implemented in
4 cooperation and consultation with affected local jurisdictions.

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

13 The department of transportation should be encouraged to take
14 advantage of new opportunities provided by federal legislation under
15 section 1012 of the Intermodal Surface Transportation Efficiency Act of
16 1991 (ISTEA). That section establishes a new program authorizing
17 federal participation in construction or improvement or improvement of
18 publicly or privately owned toll roads, bridges, and tunnels, and
19 allows states to leverage available federal funds as a means for
20 attracting private sector capital.

21 NEW SECTION. **Sec. 2.** As used in this chapter, "transportation
22 systems and facilities" means capital-related improvements and
23 additions to the state's transportation infrastructure, including but
24 not limited to highways, roads, bridges, vehicles, and equipment,
25 marine-related facilities, vehicles, and equipment, park and ride lots,
26 transit stations and equipment, transportation management systems, and
27 other transportation-related investments.

28 NEW SECTION. **Sec. 3.** The secretary or a designee shall solicit
29 proposals from, and negotiate and enter into agreements with, private
30 entities to undertake as appropriate, together with the department and
31 other public entities, all or a portion of the study, planning, design,
32 construction, operation, and maintenance of transportation systems and
33 facilities, using in whole or in part private sources of financing.

34 The public-private initiative program may develop up to six
35 demonstration projects. Each proposal shall be weighed on its own
36 merits, and each of the six agreements shall be negotiated

1 individually, and as a stand-alone project. The commission shall
2 approve each of the selected projects.

3 Proposals and demonstration projects may be selected by the public
4 and private sectors at their discretion. All projects designed,
5 constructed, and operated under this authority must comply with all
6 applicable rules and statutes in existence at the time the agreement is
7 executed, including but not limited to the following provisions: RCW
8 39.12.030, this title, RCW 49.60.180, and 49 C.F.R. Part 21.

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

12 NEW SECTION. **Sec. 4.** Agreements shall provide for private
13 ownership of the projects during the construction period. After
14 completion of each project or discrete segment thereof, the agreement
15 shall provide for state ownership of the transportation systems and
16 facilities and lease to the private entity unless the state elects to
17 provide for ownership of the facility by the private entity during the
18 term of the agreement.

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

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

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

1 the facility to the state, the project must meet all applicable state
2 standards.

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

6 NEW SECTION. **Sec. 5.** The department may enter into agreements
7 using federal, state, and local financing in connection with the
8 projects, including without limitation, grants, loans, and other
9 measures authorized by section 1012 of ISTEPA, and to do such things as
10 necessary and desirable to maximize the funding and financing,
11 including the formation of a revolving loan fund to implement this
12 section.

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

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

29 Agreements shall require that over the term of the ownership or
30 lease the user fees or toll revenues be applied to payment of the
31 private entity's capital outlay costs for the project, including
32 interest expense, the costs associated with operations, toll
33 collection, maintenance and administration of the facility,
34 reimbursement to the state for the costs of project review and
35 oversight, technical and law enforcement services, establishment of a
36 fund to assure the adequacy of maintenance expenditures, and a
37 reasonable return on investment to the private entity. The use of any

1 excess toll revenues or user fees may be negotiated between the
2 parties.

3 After expiration of the lease of a facility to a private entity,
4 the secretary may continue to charge user fees or tolls for the use of
5 the facility, with these revenues to be used for operations and
6 maintenance of the facility, or to be paid to the local transportation
7 planning agency, or any combination of such uses.

8 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute
9 a new chapter in Title 47 RCW.

10 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and shall take
13 effect July 1, 1993.

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