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SENATE BILL 5241

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State of Washington

54th Legislature

1995 Regular Session

By Senator Oke

Read first time 01/16/95. Referred to Committee on Transportation.

1 AN ACT Relating to public-private initiatives in transportation;  
2 adding a new chapter to Title 36 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. The  
18 initiatives will provide the counties in the state with increased  
19 access to property development and project opportunities, financial and

1 development expertise, and will supplement county transportation  
2 revenues, allowing the counties to use their limited resources for  
3 other needed projects.

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

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

14 The legislative authority of each county should be encouraged to  
15 take advantage of new opportunities provided by federal legislation  
16 under section 1012 of the intermodal surface transportation efficiency  
17 act of 1991 (ISTEA). That section establishes a new program  
18 authorizing federal participation in construction or improvement or  
19 improvement of publicly or privately owned toll roads, bridges, and  
20 tunnels, and allows states to leverage available federal funds as a  
21 means for attracting private sector capital.

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

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

36 The public-private initiatives program may develop up to six  
37 demonstration projects. Each proposal shall be weighed on its own

1 merits, and each of the six agreements shall be negotiated  
2 individually, and as a stand-alone project. The transportation  
3 commission created in RCW 47.01.051 shall approve each of the selected  
4 projects.

5 Proposals and demonstration projects may be selected by the public  
6 and private sectors at their discretion. All projects designed,  
7 constructed, and operated under this authority must comply with all  
8 applicable rules and statutes in existence at the time the agreement is  
9 executed, including but not limited to the following provisions: RCW  
10 39.12.030, Title 47 RCW, RCW 49.60.180, and 49 C.F.R. Part 21.

11 The county legislative authority shall consult with legal,  
12 financial, and other experts within and outside state and county  
13 government in the negotiation and development of the agreements.

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

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

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

35 The plans and specifications for each project constructed under  
36 this section shall comply with the county's standards for county  
37 projects. A facility constructed by and leased to a private entity is  
38 deemed to be a part of the county highway system for purposes of

1 identification, maintenance, and enforcement of traffic laws and for  
2 the purposes of applicable sections of Title 47 RCW. Upon reversion of  
3 the facility to the county, the project must meet all applicable county  
4 standards.

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

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

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

1 insurance coverage in amounts appropriate to protect the project's  
2 viability and may address county indemnification of the private entity  
3 for design and construction liability where the county has approved  
4 relevant design and construction plans. Nothing in this chapter limits  
5 the right of the county legislative authority and its agents to render  
6 advice and to make recommendations as it deems to be in the best  
7 interests of the county and the public.

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

14 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 county 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 county 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 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 Agreements shall require that over the term of the ownership or  
31 lease the user fees or toll revenues be applied to payment of the  
32 private entity's capital outlay costs for the project, including  
33 interest expense, the costs associated with operations, toll  
34 collection, maintenance and administration of the facility,  
35 reimbursement to the county for the costs of project review and  
36 oversight, technical and law enforcement services, establishment of a  
37 fund to assure the adequacy of maintenance expenditures, and a  
38 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 county legislative authority may continue to charge user fees or  
5 tolls for the use of the facility, with these revenues to be used for  
6 operations and maintenance of the facility, or to be paid to the local  
7 transportation planning agency, or any combination of such uses.

8 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act shall  
9 constitute a new chapter in Title 36 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, 1995.

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