
SENATE BILL 6044

State of Washington**54th Legislature****1995 Regular Session****By** Senators Owen, Prince and Kohl

Read first time 02/28/95. Referred to Committee on Transportation.

1 AN ACT Relating to transportation systems and facilities; amending
2 RCW 47.46.010, 47.46.030 and 47.46.040; adding a new section to chapter
3 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 or vested right to
20 construct and operate the proposed transportation facilities. Rather,
21 agreements will grant to private entities the opportunity to design the
22 proposed facilities, demonstrate public support for proposed
23 facilities, and complete the planning processes required in order to
24 obtain a future decision by the department of transportation and other
25 state and local lead agencies on whether the facilities should be
26 built.

27 Agreements negotiated under the public-private initiative's program
28 should establish the conditions under which the private developer may
29 achieve the right to develop and operate the proposed transportation
30 facilities; create a framework to attract the private capital necessary
31 to finance their development; and ensure that the transportation
32 facilities will be designed, constructed, and operated in accordance
33 with applicable local, regional, state, and federal laws and the
34 applicable standards and policies of the department of 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 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of the
28 state government and its existing public institutions, and shall take
29 effect immediately.

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