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**SUBSTITUTE HOUSE BILL 1006**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** House Committee on Transportation (originally sponsored by Representatives R. Fisher, Zellinsky, Brumsickle, Dorn, R. Meyers, Miller, Scott, Sheldon, Wineberry, Ogden, Wood, Schmidt, Ballasiotes, Forner, Cooke, Talcott, Chandler, Leonard, Jacobsen, Eide, Horn and Pruitt)

Read first time 03/03/93.

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, to the fullest extent  
4 possible, should encourage and promote business and employment  
5 opportunities for Washington state citizens.

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

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

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

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

31 NEW SECTION. **Sec. 3.** The secretary or a designee shall solicit  
32 proposals from, and negotiate and enter into agreements with, private  
33 entities to undertake as appropriate, together with the department and  
34 other public entities, all or a portion of the study, planning, design,  
35 construction, operation, and maintenance of transportation systems and  
36 facilities, 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 public  
7 and private sectors at their discretion. All projects designed,  
8 constructed, and operated under this authority must comply with all  
9 applicable rules and statutes in existence at the time the agreement is  
10 executed, including but not limited to the following provisions: RCW  
11 39.12.030, this title, RCW 41.06.380, chapter 47.64 RCW, RCW 49.60.180,  
12 and 49 C.F.R. Part 21.

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

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

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

26 The department may exercise any power possessed by it to facilitate  
27 the development, construction, financing operation, and maintenance of  
28 transportation projects under this chapter. Agreements for maintenance  
29 services entered into under this section shall provide for full  
30 reimbursement for services rendered by the department or other state  
31 agencies. Agreements for police services under the agreement may be  
32 entered into with any qualified law enforcement agency, and shall  
33 provide for full reimbursement for services rendered by that agency.  
34 The department may provide services for which it is reimbursed,  
35 including but not limited to preliminary planning, environmental  
36 certification, and preliminary design of the 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. Nothing in this chapter limits  
9 the right of the secretary and his or her agents to render such advice  
10 and to make such recommendations as they deem to be in the best  
11 interests of the state and the public.

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

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

28 Agreements may establish "incentive" rates of return beyond the  
29 negotiated maximum rate of return on investment. The incentive rates  
30 of return shall be designed to provide financial benefits to the  
31 affected public jurisdictions and the private entity, given the  
32 attainment of various safety, performance, or transportation demand  
33 management goals. The incentive rates of return shall be negotiated in  
34 the agreement.

35 Agreements shall require that over the term of the ownership or  
36 lease the user fees or toll revenues be applied to payment of the  
37 private entity's capital outlay costs for the project, including  
38 interest expense, the costs associated with operations, toll

1 collection, maintenance and administration of the facility,  
2 reimbursement to the state for the costs of project review and  
3 oversight, technical and law enforcement services, establishment of a  
4 fund to assure the adequacy of maintenance expenditures, and a  
5 reasonable return on investment to the private entity. The use of any  
6 excess toll revenues or user fees may be negotiated between the  
7 parties.

8 After expiration of the lease of a facility to a private entity,  
9 the secretary may continue to charge user fees or tolls for the use of  
10 the facility, with these revenues to be used for operations and  
11 maintenance of the facility, or to be paid to the local transportation  
12 planning agency, or any combination of such uses.

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

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

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