

2 2ESHB 1317 - S AMD TO S AMD (S-3536.5/95) - 452
3 By Senators Haugen, McCaslin, Prince and Sellar

4 NOT ADOPTED 5/23/95

5 On page 12, after line 22 of the amendment, insert the following:

6 "NEW SECTION. **Sec. 5.** (1) Subject to legislative appropriation,
7 the office of risk management in the department of general
8 administration is authorized to process claims submitted for projects
9 selected for participation in this program prior to September 1, 1994,
10 and terminated by the department after March 31, 1995, or withdrawn by
11 the private entity following the verification of signatures submitted
12 pursuant to RCW 47.46.030.

13 (2) Claims submitted under this section shall be considered claims
14 against the legislature in accordance with the provisions of RCW
15 4.92.040 and shall be limited to all reasonable costs and expenses
16 incurred by the developer on and after January 4, 1994, and on or
17 before the effective date of this act in connection with or relating to
18 the state's public-private initiatives in transportation program
19 established in chapter 47.46 RCW, including: (a) The application fee
20 paid to the department of transportation; (b) out-of-pocket expenses,
21 costs, and fees paid to consultants, attorneys, financial advisors,
22 investment bankers, and others; (c) out-of-pocket expenses incurred by
23 the developer for payment or reimbursement of travel, accommodation,
24 and meal expenses of its personnel while away from their usual work
25 assignments; (d) rent and office overhead of facilities specially
26 leased to pursue opportunities of the program; (e) fully burdened
27 salaries of personnel dedicated to the developer's activities relating
28 to the program allocated on a pro rata basis for personnel dedicated
29 less than full time; (f) parent-company allocated overhead actually
30 charged to the developer by the developer's parent company, if any; (g)
31 organizational expenses of the developer if the developer was formed
32 exclusively for the purposes of pursuing opportunities of the program;
33 and (h) interest on each of such amounts from the date incurred at the
34 rate of twelve percent per annum.

35 (3) The following costs are not "developer costs": Political
36 contributions as defined in the political reform act of 1974; political

1 expenditures which, if made by an exempt charitable organization, would
2 be subject to taxation under section 527(f) of the internal revenue
3 code; noncash expenditures such as depreciation, amortization, write
4 downs of goodwill, asset valuations resulting from business
5 combinations that would not be allowable under Title 48 C.F.R., Part
6 31, contract cost principles and procedures, subpart 31.2 contracts
7 with commercial organizations dated August 31, 1992 ("48 C.F.R.")
8 31.205-52, and deferred research and development costs that would not
9 be allowable under 48 C.F.R. 31.205-48; executive compensation and
10 gifts, gratuities and entertainment to the extent the same would not be
11 deductible from developer's adjusted gross income, assuming developer
12 were a stand-alone for-profit corporation, under the internal revenue
13 code; costs of alcoholic beverages; costs of criminal proceedings if
14 the result is a conviction; travel costs that would not be allowable
15 under 48 C.F.R. 31.205-46(d); training costs that would not be
16 allowable under 48 C.F.R. 31.205-44; trade, business, technical, and
17 professional activity costs that would not be allowable under 48 C.F.R.
18 31.205-43; fines and penalties, including late penalties on taxes;
19 losses on other contracts; independent research and development costs
20 except to the extent that such costs were incurred in connection with
21 the program; compensation incidental to business acquisitions as
22 defined under 48 C.F.R. 31.205-6(I); unreasonable post-retirement
23 benefits other than pensions as defined under 48 C.F.R. 31.205-6(o);
24 employee rebate and purchase discount plan costs as defined under 48
25 C.F.R. 31.205-6(n); employee stock ownership plan costs to the extent
26 disallowed under 48 C.F.R. 31.205-6(j)(8); unallowable public relations
27 and advertising costs as defined under 48 C.F.R. 31.205-1(f)(3), and
28 (f)(4)(i); unrealized losses; and excessive contributions or donations
29 under 48 C.F.R. 31.205-8.

30 (4) All claims made to the legislature under the provisions of this
31 section shall be disposed of in accordance with the provisions of RCW
32 4.92.040.

33 If the private entity accepts any payment for the claim which is
34 approved by the department, such acceptance shall constitute a waiver
35 and release of the state from any further claims relating to the damage
36 or injury asserted in the claim so accepted. Prior to the payment of
37 such claims the private entity shall transfer to the department all
38 plans, studies, reports, surveys, and any other information and
39 materials the private entity prepared or caused to be prepared in

1 connection with the terminated project except that which is proprietary
2 in nature.

3 (5) For the purposes of this section, the settlement of claims by
4 the department shall be a proper expenditure of funds authorized
5 pursuant to RCW 47.10.834 through 47.10.841."

6 Renumber the remaining section consecutively.

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10 On page 12, line 32 of the title amendment, after "47.46.050;"
11 insert "creating a new section;"

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