

2 **SSB 6044** - S AMD 235 (S2674.2)

3 By Senators Owen, Quigley, Long, Prince, Finkbeiner, Wood, Schow,
4 Roach and Kohl

5 ADOPTED 3/14/95

6 Strike everything after the enacting clause and insert the
7 following:

8 "**Sec. 1.** RCW 47.46.010 and 1993 c 370 s 1 are each amended to read
9 as follows:

10 The legislature finds and declares:

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

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

20 A public-private initiatives program will provide benefits to both
21 the public and private sectors. Public-private initiatives provide a
22 sound economic investment opportunity for the private sector. Such
23 initiatives will provide the state with increased access to property
24 development and project opportunities, financial and development
25 expertise, and will supplement state transportation revenues, allowing
26 the state to use its limited resources for other needed projects.

27 The public-private initiatives program, to the fullest extent
28 possible, should encourage and promote business and employment
29 opportunities for Washington state citizens.

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

32 The secretary of transportation should be permitted and encouraged
33 to test the feasibility of building privately funded transportation
34 systems and facilities or segments thereof through the use of
35 innovative agreements with the private sector. The secretary of
36 transportation should be vested with the authority to solicit,
37 evaluate, negotiate, and administer public-private agreements with the

1 private sector relating to the planning, construction, upgrading, or
2 reconstruction of transportation systems and facilities.

3 Agreements negotiated under a public-private initiatives program
4 will not bestow on private entities an immediate right to construct and
5 operate the proposed transportation facilities. Rather, agreements
6 will grant to private entities the opportunity to design the proposed
7 facilities, demonstrate public support for proposed facilities, and
8 complete the planning processes required in order to obtain a future
9 decision by the department of transportation and other state and local
10 lead agencies on whether the facilities should be permitted and built.

11 Agreements negotiated under the public-private initiative's program
12 should establish the conditions under which the private developer may
13 secure the approval necessary to develop and operate the proposed
14 transportation facilities; create a framework to attract the private
15 capital necessary to finance their development; and ensure that the
16 transportation facilities will be designed, constructed, and operated
17 in accordance with applicable local, regional, state, and federal laws
18 and the applicable standards and policies of the department of
19 transportation.

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

28 **Sec. 2.** RCW 47.46.030 and 1993 c 370 s 3 are each amended to read
29 as follows:

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

36 The public-private initiative program may develop up to six
37 demonstration projects. Each proposal shall be weighed on its own
38 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
4 public and private sectors at their discretion.))~~

5 (2) Projects selected prior to and after September 1, 1994, must
6 comply with the requirements of subsections (3) through (8) of this
7 section.

8 (3) No projects selected or agreements entered into under this
9 chapter take effect until the department conducts a comprehensive
10 analysis of traffic patterns and economic impact to determine and
11 define the geographical boundary of the area of the project that is
12 most affected by the imposition of tolls or user fees authorized under
13 this chapter. The area so defined is referred to in this section as
14 the affected project area. In defining the affected project area, the
15 department in consultation with the legislative transportation
16 committee shall, at a minimum, undertake: (a) A comparison of the
17 estimated percentage of residents of communities in the vicinity of and
18 impacted by the project who could be subject to tolls or user fees and
19 the estimated percentage of other users and transient traffic that
20 could be subject to tolls or user fees; (b) anticipated traffic
21 diversion patterns; and (c) potential economic impact resulting from
22 proposed toll rates or user fee rates imposed on residents of and
23 commercial traffic and commercial entities in communities in the
24 vicinity of and impacted by the project. The department shall provide
25 the legislative transportation committee with progress reports on the
26 status of the definition of the affected project.

27 (4) After a determination and definition by the department of the
28 affected project area, the department shall conduct a minimum thirty-
29 day public comment period. Within fifteen days following the public
30 comment period, the legislative transportation committee may conduct a
31 hearing on the defined affected project area. The department may make
32 adjustments to the definition of the geographical boundary of the
33 affected project area, based on comments received from the public and
34 a hearing by the legislative transportation committee. Within thirty
35 days after the public comment period, the department shall establish
36 the boundaries of the affected project area in units no smaller than a
37 precinct as defined by RCW 29.01.120.

38 (5) The department shall establish a process that provides for
39 public involvement in decision making with respect to the affected

1 project area. In carrying out the public involvement process the
2 department shall proactively seek public participation through a
3 process appropriate to the characteristics of the affected project area
4 that assesses overall public support among users and residents of the
5 affected project area. Such public involvement process shall provide
6 opportunities for users and residents of the affected project area to
7 comment upon key issues regarding the project including, but not
8 limited to: (a) Alternative sizes and scopes; (b) design; (c)
9 environmental assessment; (d) right of way and access plans; (e)
10 traffic impacts; (f) tolling or user fee strategies and tolling or user
11 fee ranges; (g) project cost; (h) construction impacts; (i) facility
12 operation; and (j) any other salient characteristics.

13 (6) The results of the public involvement process shall be made
14 available for public review and comment.

15 The department shall provide the legislative transportation
16 committee with progress reports on the status of the public involvement
17 process. The results of such public involvement process, including
18 public comment, shall be forwarded to the legislative transportation
19 committee for its review. Within forty-five calendar days of
20 submission of such information, the legislative transportation
21 committee shall conduct a public hearing regarding the results of the
22 public involvement process. Taking into account the information
23 submitted, the legislative transportation committee shall adopt a
24 resolution making a recommendation to the secretary of the department
25 of transportation regarding the appropriateness of the definition of
26 the affected project area and the project description and
27 characteristics.

28 (7) In response to the recommendation of the legislative
29 transportation committee, the secretary, within two weeks after receipt
30 of legislative transportation committee recommendation, shall transmit
31 a copy of the map depicting the affected project area and the project
32 description and characteristics to the county auditor of the county in
33 which any portion of the affected project area is located.

34 (8) Upon receipt of the map and the project description and
35 characteristics, the county auditor shall, within sixty days, verify
36 the precincts that are located within the affected project area. The
37 county auditor shall prepare the text identifying and describing the
38 affected project area and the project and shall set a special election
39 date for the submission of a ballot proposition authorizing the

1 imposition of tolls or user fees within the affected project area. The
2 text of the project must appear in a voter's pamphlet for the affected
3 project area. The department shall pay for the costs of publication
4 and distribution. The special election date must be the next date for
5 a special election provided under RCW 29.13.020 that is at least sixty
6 days but, if authorized under RCW 29.13.020, no more than ninety days
7 after receipt of the final map and project description and
8 characteristics by the auditor. The department shall pay the costs of
9 an election held under this section. A simple majority of those voting
10 within the affected project area to authorize tolls or user fees within
11 the project area is required for approval. If the vote is affirmative,
12 the department is authorized to solicit proposals for replacement
13 projects. If the vote is affirmative for a project selected prior to
14 September 1, 1994, the department may enter into an agreement
15 authorized under RCW 47.46.040 with a private entity.

16 (9) All projects designed, constructed, and operated under this
17 authority must comply with all applicable rules and statutes in
18 existence at the time the agreement is executed, including but not
19 limited to the following provisions: Chapter 39.12 RCW, this title,
20 RCW 41.06.380, chapter 47.64 RCW, RCW 49.60.180, and 49 C.F.R. Part 21.

21 (10) The secretary or a designee shall consult with legal,
22 financial, and other experts within and outside state government in the
23 negotiation and development of the agreements.

24 **Sec. 3.** RCW 47.46.040 and 1993 c 370 s 4 are each amended to read
25 as follows:

26 Agreements shall provide for private ownership of the projects
27 during the construction period. After completion and final acceptance
28 of each project or discrete segment thereof, the agreement shall
29 provide for state ownership of the transportation systems and
30 facilities and lease to the private entity unless the state elects to
31 provide for ownership of the facility by the private entity during the
32 term of the agreement.

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

36 The department may exercise any power possessed by it to facilitate
37 the development, construction, financing, operation, and maintenance of
38 transportation projects under this chapter. Agreements for maintenance

1 services entered into under this section shall provide for full
2 reimbursement for services rendered by the department or other state
3 agencies. Agreements for police services for projects developed under
4 ~~((the)) agreements~~ may be entered into with ~~((any qualified law~~
5 ~~enforcement agency, and shall provide for full reimbursement for~~
6 ~~services rendered by that agency))~~ the Washington state patrol. The
7 agreement for police services shall provide that the state patrol will
8 be reimbursed for costs on a comparable basis with the costs incurred
9 on other state highway facilities. The department may provide services
10 for which it is reimbursed, including but not limited to preliminary
11 planning, environmental certification, and preliminary design of the
12 demonstration projects.

13 The plans and specifications for each project constructed under
14 this section shall comply with the department's standards for state
15 projects. A facility constructed by and leased to a private entity is
16 deemed to be a part of the state highway system for purposes of
17 identification, maintenance, and enforcement of traffic laws and for
18 the purposes of applicable sections of this title. Upon reversion of
19 the facility to the state, the project must meet all applicable state
20 standards. Agreements shall address responsibility for reconstruction
21 or renovations that are required in order for a facility to meet all
22 applicable state standards upon reversion of the facility to the state.

23 For the purpose of facilitating these projects and to assist the
24 private entity in the financing, development, construction, and
25 operation of the transportation systems and facilities, the agreements
26 may include provisions for the department to exercise its authority,
27 including the lease of facilities, rights of way, and airspace,
28 exercise of the power of eminent domain, granting of development rights
29 and opportunities, granting of necessary easements and rights of
30 access, issuance of permits and other authorizations, protection from
31 competition, remedies in the event of default of either of the parties,
32 granting of contractual and real property rights, liability during
33 construction and the term of the lease, authority to negotiate
34 acquisition of rights of way in excess of appraised value, and any
35 other provision deemed necessary by the secretary.

36 The agreements entered into under this section may include
37 provisions authorizing the state to grant necessary easements and lease
38 to a private entity existing rights of way or rights of way
39 subsequently acquired with public or private financing. The agreements

1 may also include provisions to lease to the entity airspace above or
2 below the right of way associated or to be associated with the private
3 entity's transportation facility. In consideration for the reversion
4 rights in these privately constructed facilities, the department may
5 negotiate a charge for the lease of airspace rights during the term of
6 the agreement for a period not to exceed fifty years. If, after the
7 expiration of this period, the department continues to lease these
8 airspace rights to the private entity, it shall do so only at fair
9 market value. The agreement may also provide the private entity the
10 right of first refusal to undertake projects utilizing airspace owned
11 by the state in the vicinity of the public-private project.

12 Agreements under this section may include any contractual provision
13 that is necessary to protect the project revenues required to repay the
14 costs incurred to study, plan, design, finance, acquire, build,
15 install, operate, enforce laws, and maintain toll highways, bridges,
16 and tunnels and which will not unreasonably inhibit or prohibit the
17 development of additional public transportation systems and facilities.
18 Agreements under this section must secure and maintain liability
19 insurance coverage in amounts appropriate to protect the project's
20 viability and may address state indemnification of the private entity
21 for design and construction liability where the state has approved
22 relevant design and construction plans.

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

26 **Sec. 4.** RCW 47.46.050 and 1993 c 370 s 5 are each amended to read
27 as follows:

28 (1) The department may enter into agreements using federal, state,
29 and local financing in connection with the projects, including without
30 limitation, grants, loans, and other measures authorized by section
31 1012 of ISTEPA, and to do such things as necessary and desirable to
32 maximize the funding and financing, including the formation of a
33 revolving loan fund to implement this section.

34 (2) Agreements entered into under this section shall authorize the
35 private entity to lease the facilities within a designated area or
36 areas from the state and to impose user fees or tolls within the
37 designated area to allow a reasonable rate of return on investment, as
38 established through a negotiated agreement between the state and the

1 private entity. The negotiated agreement shall determine a maximum
2 rate of return on investment, based on project characteristics. If the
3 negotiated rate of return on investment is not affected, the private
4 entity may establish and modify toll rates and user fees.

5 (3) Agreements may establish "incentive" rates of return beyond the
6 negotiated maximum rate of return on investment. The incentive rates
7 of return shall be designed to provide financial benefits to the
8 affected public jurisdictions and the private entity, given the
9 attainment of various safety, performance, or transportation demand
10 management goals. The incentive rates of return shall be negotiated in
11 the agreement.

12 (4) Agreements shall require that over the term of the ownership or
13 lease the user fees or toll revenues be applied only to payment of the
14 private entity's capital outlay costs for the project, including
15 interest expense, the costs associated with construction, operations,
16 toll collection, maintenance and administration of the ((facility))
17 project, reimbursement to the state for all costs associated with an
18 election as required under RCW 47.46.030, the costs of project review
19 and oversight, technical and law enforcement services, establishment of
20 a fund to assure the adequacy of maintenance expenditures, and a
21 reasonable return on investment to the private entity. ((The use of
22 any excess toll revenues or user fees may be negotiated between the
23 parties.

24 ~~After expiration of the lease of a facility to a private entity,~~
25 ~~the secretary may continue to charge user fees or tolls for the use of~~
26 ~~the facility, with these revenues to be used for operations and~~
27 ~~maintenance of the facility, or to be paid to the local transportation~~
28 ~~planning agency, or any combination of such uses.)) A negotiated
29 agreement shall not extend the term of the ownership or lease beyond
30 the period of time required for payment of the private entity's capital
31 outlay costs for the project under subsection (4) of this section.~~

32 **SSB 6044** - S AMD

33 By Senators Owen, Quigley, Long, Prince, Finkbeiner, Wood, Schow,
34 Roach and Kohl

35 ADOPTED 3/14/95

36 On page 1, line 1 of the title, after "facilities;" strike the
37 remainder of the title and insert "and amending RCW 47.46.010,

1 47.46.030, 47.46.040, and 47.46.050."

--- **END** ---