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SENATE BILL 6044

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State of Washington                      56th Legislature                      1999 Regular Session

By Senators Roach, Rasmussen, Patterson, Haugen, Heavey and Gardner

Read first time 02/24/1999. Referred to Committee on Transportation.

1            AN ACT Relating to construction of projects identified under the  
2 public-private transportation initiatives; and amending RCW 47.46.040.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 47.46.040 and 1995 2nd sp.s. c 19 s 3 are each amended  
5 to read as follows:

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

11            (2) The secretary or a designee shall consult with legal,  
12 financial, and other experts within and outside state government in the  
13 negotiation and development of the agreements.

14            (3) Agreements shall provide for private ownership of the projects  
15 during the construction period. After completion and final acceptance  
16 of each project or discrete segment thereof, the agreement shall  
17 provide for state ownership of the transportation systems and  
18 facilities and lease to the private entity unless the state elects to

1 provide for ownership of the facility by the private entity during the  
2 term of the agreement.

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

6 (4) The department may exercise any power possessed by it to  
7 facilitate the development, construction, financing operation, and  
8 maintenance of transportation projects under this chapter. Agreements  
9 for maintenance services entered into under this section shall provide  
10 for full reimbursement for services rendered by the department or other  
11 state agencies. Agreements for police services for projects, involving  
12 state highway routes, developed under agreements shall be entered into  
13 with the Washington state patrol. The agreement for police services  
14 shall provide that the state patrol will be reimbursed for costs on a  
15 comparable basis with the costs incurred for comparable service on  
16 other state highway routes. The department may provide services for  
17 which it is reimbursed, including but not limited to preliminary  
18 planning, environmental certification, and preliminary design of the  
19 demonstration projects.

20 (5) The plans and specifications for each project constructed under  
21 this section shall comply with the department's standards for state  
22 projects. A facility constructed by and leased to a private entity is  
23 deemed to be a part of the state highway system for purposes of  
24 identification, maintenance, and enforcement of traffic laws and for  
25 the purposes of applicable sections of this title. Upon reversion of  
26 the facility to the state, the project must meet all applicable state  
27 standards. Agreements shall address responsibility for reconstruction  
28 or renovations that are required in order for a facility to meet all  
29 applicable state standards upon reversion of the facility to the state.

30 (6) For the purpose of facilitating these projects and to assist  
31 the private entity in the financing, development, construction, and  
32 operation of the transportation systems and facilities, the agreements  
33 may include provisions for the department to exercise its authority,  
34 including the lease of facilities, rights of way, and airspace,  
35 exercise of the power of eminent domain, granting of development rights  
36 and opportunities, granting of necessary easements and rights of  
37 access, issuance of permits and other authorizations, protection from  
38 competition, remedies in the event of default of either of the parties,  
39 granting of contractual and real property rights, liability during

1 construction and the term of the lease, authority to negotiate  
2 acquisition of rights of way in excess of appraised value, and any  
3 other provision deemed necessary by the secretary.

4 (7) The agreements entered into under this section may include  
5 provisions authorizing the state to grant necessary easements and lease  
6 to a private entity existing rights of way or rights of way  
7 subsequently acquired with public or private financing. The agreements  
8 may also include provisions to lease to the entity airspace above or  
9 below the right of way associated or to be associated with the private  
10 entity's transportation facility. In consideration for the reversion  
11 rights in these privately constructed facilities, the department may  
12 negotiate a charge for the lease of airspace rights during the term of  
13 the agreement for a period not to exceed fifty years. If, after the  
14 expiration of this period, the department continues to lease these  
15 airspace rights to the private entity, it shall do so only at fair  
16 market value. The agreement may also provide the private entity the  
17 right of first refusal to undertake projects utilizing airspace owned  
18 by the state in the vicinity of the public-private project.

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

30 (9) Agreements shall include a process that provides for public  
31 involvement in decision making with respect to the development of the  
32 projects.

33 (10)(a) In carrying out the public involvement process required in  
34 subsection (9) of this section, the private entity shall proactively  
35 seek public participation through a process appropriate to the  
36 characteristics of the project that assesses and demonstrates public  
37 support among: Users of the project, residents of communities in the  
38 vicinity of the project, and residents of communities impacted by the  
39 project.

1 (b) The private entity shall conduct a comprehensive public  
2 involvement process that provides, periodically throughout the  
3 development and implementation of the project, users and residents of  
4 communities in the affected project area an opportunity to comment upon  
5 key issues regarding the project including, but not limited to: (i)  
6 Alternative sizes and scopes; (ii) design; (iii) environmental  
7 assessment; (iv) right of way and access plans; (v) traffic impacts;  
8 (vi) tolling or user fee strategies and tolling or user fee ranges;  
9 (vii) project cost; (viii) construction impacts; (ix) facility  
10 operation; and (x) any other salient characteristics.

11 (c) If the affected project area has not been defined, the private  
12 entity shall define the affected project area by conducting, at a  
13 minimum: (i) A comparison of the estimated percentage of residents of  
14 communities in the vicinity of the project and in other communities  
15 impacted by the project who could be subject to tolls or user fees and  
16 the estimated percentage of other users and transient traffic that  
17 could be subject to tolls or user fees; (ii) an analysis of the  
18 anticipated traffic diversion patterns; (iii) an analysis of the  
19 potential economic impact resulting from proposed toll rates or user  
20 fee rates imposed on residents, commercial traffic, and commercial  
21 entities in communities in the vicinity of and impacted by the project;  
22 (iv) an analysis of the economic impact of tolls or user fees on the  
23 price of goods and services generally; and (v) an analysis of the  
24 relationship of the project to state transportation needs and benefits.

25 The agreement may require an advisory vote by users of and  
26 residents in the affected project area.

27 (d) In seeking public participation, the private entity shall  
28 establish a local involvement committee or committees comprised of  
29 residents of the affected project area, individuals who represent  
30 cities and counties in the affected project area, organizations formed  
31 to support or oppose the project, if such organizations exist, and  
32 users of the project. The private entity shall, at a minimum,  
33 establish a committee as required under the specifications of RCW  
34 47.46.030(~~(+5)~~) (6)(b) (ii) and (iii) and appointments to such  
35 committee shall be made no later than thirty days after the project  
36 area is defined.

37 (e) Local involvement committees shall act in an advisory capacity  
38 to the department and the private entity on all issues related to the

1 development and implementation of the public involvement process  
2 established under this section.

3 (f) The department and the private entity shall provide the  
4 legislative transportation committee and local involvement committees  
5 with progress reports on the status of the public involvement process  
6 including the results of an advisory vote, if any occurs.

7 (11) Nothing in this chapter limits the right of the secretary and  
8 his or her agents to render such advice and to make such  
9 recommendations as they deem to be in the best interests of the state  
10 and the public.

11 (12) Agreements completed under the authorization of this section  
12 are subject to and conditioned upon and must include a provision  
13 providing that the subject agreement and commencement of construction  
14 on a public-private initiatives project is specifically subject to and  
15 conditioned upon nonrevocable appropriation, authorization, or  
16 identification of all funds required to complete the preferred  
17 alternative as defined in this chapter.

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