
HOUSE BILL 1317

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By Representatives Robertson, Cairnes, B. Thomas, Mitchell, Van Luven, Dyer, Lambert, Radcliff, D. Schmidt, Backlund, Cooke, Reams, Campbell, Stevens, L. Thomas and Koster

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1 AN ACT Relating to transportation systems and facilities; amending
2 RCW 47.46.030 and 47.46.040; creating a new section; and declaring an
3 emergency.

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

5 **Sec. 1.** RCW 47.46.030 and 1993 c 370 s 3 are each amended to read
6 as follows:

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

13 The public-private initiative program may develop up to six
14 demonstration projects. Each proposal shall be weighed on its own
15 merits, and each of the six agreements shall be negotiated
16 individually, and as a stand-alone project. The commission shall
17 approve each of the selected projects.

18 ~~((Proposals and demonstration projects may be selected by the
19 public and private sectors at their discretion.))~~ (2) No projects

1 selected or agreements entered into under this chapter shall have force
2 and effect until the department establishes a public involvement
3 process to identify prospective projects that (a) are acceptable to the
4 impacted communities; (b) meet a state transportation need; and (c)
5 provide a significant state benefit.

6 (3) Those projects that meet the criteria in subsection (2) of this
7 section shall be submitted for review by the Washington state
8 transportation commission. The commission shall submit a list of
9 eligible projects to the legislature for approval. Upon legislative
10 approval of projects, the secretary is authorized to solicit proposals.

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

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

19 **Sec. 2.** RCW 47.46.040 and 1993 c 370 s 4 are each amended to read
20 as follows:

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

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

31 The department may exercise any power possessed by it to facilitate
32 the development, construction, financing operation, and maintenance of
33 transportation projects under this chapter. Agreements for maintenance
34 services entered into under this section shall provide for full
35 reimbursement for services rendered by the department or other state
36 agencies. Agreements for police services under the agreement may be
37 entered into with any qualified law enforcement agency, and shall
38 provide for full reimbursement for services rendered by that agency.

1 The department may provide services for which it is reimbursed,
2 including but not limited to preliminary planning, environmental
3 certification, and preliminary design of the demonstration projects.

4 The plans and specifications for each project constructed under
5 this section shall comply with the department's standards for state
6 projects. A facility constructed by and leased to a private entity is
7 deemed to be a part of the state highway system for purposes of
8 identification, maintenance, and enforcement of traffic laws and for
9 the purposes of applicable sections of this title. Upon reversion of
10 the facility to the state, the project must meet all applicable state
11 standards. Agreements shall address responsibility for reconstruction
12 or renovations that are required in order for a facility to meet all
13 applicable state standards upon reversion of the facility to the state.

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

27 The agreements entered into under this section may include
28 provisions authorizing the state to grant necessary easements and lease
29 to a private entity existing rights of way or rights of way
30 subsequently acquired with public or private financing. The agreements
31 may also include provisions to lease to the entity airspace above or
32 below the right of way associated or to be associated with the private
33 entity's transportation facility. In consideration for the reversion
34 rights in these privately constructed facilities, the department may
35 negotiate a charge for the lease of airspace rights during the term of
36 the agreement for a period not to exceed fifty years. If, after the
37 expiration of this period, the department continues to lease these
38 airspace rights to the private entity, it shall do so only at fair
39 market value. The agreement may also provide the private entity the

1 right of first refusal to undertake projects utilizing airspace owned
2 by the state in the vicinity of the public-private project.

3 Agreements under this section may include any contractual provision
4 that is necessary to protect the project revenues required to repay the
5 costs incurred to study, plan, design, finance, acquire, build,
6 install, operate, enforce laws, and maintain toll highways, bridges,
7 and tunnels and which will not unreasonably inhibit or prohibit the
8 development of additional public transportation systems and facilities.
9 Agreements under this section must secure and maintain liability
10 insurance coverage in amounts appropriate to protect the project's
11 viability and may address state indemnification of the private entity
12 for design and construction liability where the state has approved
13 relevant design and construction plans. Agreements under this section
14 between the department and a private entity shall provide for public
15 involvement in decision making with respect to the development of
16 projects selected under this chapter. Public involvement shall
17 include, but is not limited to, public participation in project
18 planning, environmental assessment, traffic analysis and market
19 analysis of tolls or user fee rates authorized under RCW 47.46.050, and
20 right of way and access plans. Nothing in this chapter limits the
21 right of the secretary and his or her agents to render such advice and
22 to make such recommendations as they deem to be in the best interests
23 of the state and the public.

24 NEW SECTION. **Sec. 3.** Subject to legislative appropriation, the
25 department is authorized to reimburse a private entity for developer
26 costs incurred after January 1, 1994, associated with projects selected
27 in accordance with the terms of this chapter before September 1, 1994.

28 "Developer costs" means all reasonable costs and expenses incurred
29 by the developer on and after January 4, 1994, and on or before the
30 effective date of this act in connection with or relating to the
31 state's public-private initiatives in transportation program
32 established in chapter 47.46 RCW, including: (1) The application fee
33 paid to the department of transportation; (2) out-of-pocket expenses,
34 costs, and fees paid to consultants, attorneys, financial advisors,
35 investment bankers, and others; (3) out-of-pocket expenses incurred by
36 the developer for payment or reimbursement of travel, accommodation,
37 and meal expenses of its personnel while away from their usual work
38 assignments; (4) rent and office overhead of facilities specially

1 leased to pursue opportunities of the program; (5) fully burdened
2 salaries of personnel dedicated to the developer's activities relating
3 to the program allocated on a pro rata basis for personnel dedicated
4 less than full time; (6) parent-company allocated overhead actually
5 charged to the developer by the developer's parent company, if any; (7)
6 organizational expenses of the developer if the developer was formed
7 exclusively for the purposes of pursuing opportunities of the program;
8 and (8) interest on each of such amounts from the date incurred at the
9 rate of twelve percent per annum. The following costs are not
10 "developer costs": Political contributions as defined in the political
11 reform act of 1974; write downs or amortization of goodwill; executive
12 compensation and gifts and gratuities to the extent the same would not
13 be deductible from the developer's adjusted gross income under the
14 internal revenue code if the developer were a stand alone corporation;
15 legal penalties or fines; goodwill as defined in Volume 48 of the code
16 of federal regulations, federal acquisition regulations, C.F.R. 31.205-
17 49; executive lobbying costs as defined in C.F.R. 31.205-50; costs of
18 alcoholic beverages; asset devaluations resulting from business
19 combinations; deferred research and development costs; costs related to
20 legal and other proceedings, if the result is a conviction in a
21 criminal proceeding or a finding of fraud in a civil or administrative
22 proceeding; unallowable travel costs as defined in C.F.R. 31.205-46;
23 unallowable training costs as defined in C.F.R. 31.205-44; unallowable
24 trade, business, technical, and professional activity costs as defined
25 in C.F.R. 31.205-43; fines and penalties, including late penalties on
26 payment of taxes; losses on other contracts; legislative lobbying costs
27 as defined and unallowable under C.F.R. 31.205-22; independent research
28 and development costs except to the extent that such costs were
29 incurred in connection with the program; excessive contributions or
30 donations; compensation incidental to business acquisitions as defined
31 in C.F.R. 31.205-6(I); unreasonable postretirement benefits other than
32 pensions as defined in C.F.R. 31.205-6(o); employee rebate and purchase
33 discount plans as defined in C.F.R. 31.205-6(n); employee stock
34 ownership plan costs to the extent disallowed under C.F.R. 31.205-6(8);
35 unallowable public relations and advertising costs as defined in C.F.R.
36 31.205-1(f)(3), (4)(i), (5), and (6); entertainment costs as defined in
37 C.F.R. 31.205-14; and relocation costs associated with a permanent
38 change of duty assignment of employees as defined in C.F.R. 31.205(c).

1 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and shall take
4 effect immediately.

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