

# HOUSE BILL REPORT

## HB 1006

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As Reported By House Committee On:  
Transportation

**Title:** An act relating to public-private initiatives in transportation.

**Brief Description:** Enabling public-private transportation initiatives.

**Sponsors:** 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.

**Brief History:**

Reported by House Committee on:  
Transportation, February 25, 1993, DPS.

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### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives R. Fisher, Chair; Brown, Vice Chair; Jones, Vice Chair; Schmidt, Ranking Minority Member; Mielke, Assistant Ranking Minority Member; Brough; Brumsickle; Cothorn; Finkbeiner; Forner; Fuhrman; Hansen; Horn; Johanson; J. Kohl; R. Meyers; Miller; H. Myers; Orr; Patterson; Quall; Sheldon; Shin; Wood; and Zellinsky.

**Staff:** Vicki FabrÀ (786-7313).

**Background:** Joint ventures between the public and private sector is a concept which has generated increased nationwide interest in recent years. As the magnitude of unmet capital and operating program needs rises and the funding available to state government to finance those needs declines, turning to the private sector as a source of additional revenue is viewed as a viable alternative. Although there are numerous current examples of private involvement in state transportation projects -- incentive programs to influence private sector investment decisions, air and land rights leasing, the state could significantly expand its role as broker and facilitator of transportation financing partnerships.

The Washington State Transportation Policy Plan is an ongoing process through which a wide range of individuals representing public and private interests develop transportation policy recommendations which are adopted by the state Transportation Commission and reported to the Legislature.

In April 1992, the Policy Plan Steering Committee convened a Subcommittee on Public-Private Initiatives in Transportation to examine ways in which the state could expand its role in transportation financing partnerships. The subcommittee was a broad-based, 18-member group including representatives from the business sector, the investment banking community, various state agencies, legislators, the commission and other interest groups.

The subcommittee conducted a detailed review of the legal -- such as loan of the state's credit and the gifting of public funds -- institutional and regulatory barriers to development of public-private initiatives in Washington State, innovative transportation financing programs across the country, and federal provisions encouraging the development of transportation partnerships. The subcommittee also analyzed the financial and economic climate for such initiatives and determined there is significant interest by the private sector in participating in such programs, given a properly structured institutional and regulatory framework.

The subcommittee recommended and the Transportation Commission approved legislation implementing a new program of public-private initiatives in transportation.

**Summary of Substitute Bill:** It is the intent of the Legislature to enhance the ability of the state to provide an efficient transportation system through the use of public-private initiatives which allow private entities to plan, design, develop, finance, acquire, install, construct, improve, operate and maintain transportation systems and facility projects. The Legislature finds that such initiatives will supplement state transportation revenues and allow the state to use its limited resources for other needed projects. The state is encouraged to promote the participation of Washington businesses in public-private initiatives.

Transportation systems and facilities that are built with private funding are defined as capital-related improvements and additions to the state's transportation infrastructure, including highways, roads, bridges, vehicles and equipment, marine-related facilities, vehicles and equipment, park and

ride lots, transit stations and equipment, and transportation management systems.

The secretary of the Washington State Department of Transportation (WSDOT) or a designee is authorized to solicit proposals from and enter into agreements with private entities to undertake all or a portion of the study, planning, design, construction, operation and maintenance of transportation facilities using private financing.

The public-private initiatives program may develop up to six demonstration projects which are selected by the public and private sectors at their discretion and approved by the state Transportation Commission. Agreements provide for private ownership during the construction period. Once completed, the projects are state-owned and leased to the private entity for operating purposes for up to 50 years, unless the state elects to provide for private ownership during the term of the agreement. Facilities built by the private sector are to be turned over to the state for lease back to the private sector as soon as they are accepted by the state as being completed.

Projects are considered part of the state's transportation system for purposes of identification, maintenance, and the enforcement of traffic laws. Projects designed, constructed and operated under the program must comply with laws, rules and regulations in existence at the time the agreement is negotiated, including, but not limited to, prevailing wage, non-displacement of state workers, and state ferry worker collective bargaining requirements, and are required to meet all state standards when they revert to the state at the end of the lease term. Agreements between the private sector and WSDOT must address responsibility for reconstruction or renovation that are required in order for a facility to meet state standards upon reversion of the facility to the state.

Agreements may include provisions for WSDOT to lease, for a term not to exceed 50 years, rights of way and airspace for a negotiated charge. Leases negotiated after the 50-year period shall be for fair market value.

WSDOT is authorized to exercise its authority to facilitate and assist the private sector in implementing projects, including leasing facilities, providing rights of way and airspace, exercising powers of eminent domain, granting development rights, easements and rights of access, and granting contractual and real property rights.

WSDOT is reimbursed by the private sector for services provided in support of the program, including preliminary

planning, environmental certification and preliminary design.

Private entities are authorized, under a negotiated agreement, to impose user fees or tolls within a project area to allow a reasonable rate of return on investment. A maximum rate of return on investment is established based on project characteristics. Agreements may establish incentive rates of return beyond the maximum rate of return on investment if various safety, performance or transportation demand goals are achieved.

User fee or toll revenues are applied to payment of the private entity's capital cost, including interest expense, operation, maintenance, administrative costs, reimbursement to the state for the costs of project review and oversight, technical and law enforcement services, and a reasonable rate of return on investment to the private entity. The use of excess toll revenues or user fees is negotiated.

WSDOT is allowed to continue to charge user fees or tolls for the facility's use following expiration of the lease term. These revenues are earmarked for operations and maintenance, are paid to the local transportation planning agency, or any combination of such uses.

In order to maximize funding opportunities for public-private initiatives identified in federal law -- the Intermodal Surface Transportation Efficiency Act of 1991 -- WSDOT is permitted to create a revolving fund which can be used to make grants and loans to the private sector and to enter into other financing arrangements.

The public-private initiatives program is implemented in cooperation and consultation with affected local jurisdictions.

**Substitute Bill Compared to Original Bill:** It is legislative intent that the public-private initiatives program encourage and promote opportunities for Washington businesses.

Facilities built by the private sector are to be turned over to the state for lease back to the private sector as soon as they are accepted by the state as being completed.

Provisions providing for the non-displacement of state employees and collective bargaining requirements applicable to state ferry workers are included in the list of state laws to which public-private agreements must adhere.

Agreements between the private sector and the state Department of Transportation must address responsibility for reconstruction or renovations that are required in order for a facility to meet state standards upon reversion of the facility to the state.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect on July 1, 1993.

**Testimony For:** Agreements between the Department of Transportation and the private sector to undertake the planning, design, construction, operation and maintenance of transportation facilities and systems will permit the state to supplement state transportation revenues and allow the state to use its limited resources for other needed projects.

**Testimony Against:** None.

**Witnesses:** Jerry Ellis, Subcommittee on Public-Private Partnerships; Duane Berentson, Department of Transportation; Geoffrey S. Yarema, Nossaman, Guthner, Knox & Elliott; Enid Layes, Association of Washington Business; Joe Daniels, Federation of Professional & Technical Engineers and Federation of State Employees; John Woodring, Washington Trucking Association (with concerns); and Duke Schaub, Associated General Contractors (with concerns).