

---

HOUSE BILL 1979

---

State of Washington                      63rd Legislature                      2013 Regular Session

By Representatives Zeiger, Lias, Clibborn, Kretz, Hargrove,  
Fitzgibbon, O'Ban, and Morrell

Read first time 03/06/13. Referred to Committee on Transportation.

1            AN ACT Relating to implementing public-private partnership best  
2 practices for nontoll transportation projects; amending RCW 47.29.010,  
3 47.29.030, 47.29.060, 47.29.140, 47.29.150, 47.29.170, 47.29.180,  
4 47.29.280, 39.10.300, and 47.12.080; reenacting and amending RCW  
5 39.08.010; adding a new section to chapter 47.29 RCW; adding a new  
6 section to chapter 39.10 RCW; and adding a new section to chapter 39.04  
7 RCW.

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

9            **Sec. 1.** RCW 47.29.010 and 2006 c 334 s 48 are each amended to read  
10 as follows:

11            (1) The legislature finds that the public-private transportation  
12 initiatives act created under chapter 47.46 RCW has not met the needs  
13 and expectations of the public or private sectors for the development  
14 of transportation projects. The legislature intends to phase out  
15 chapter 47.46 RCW coincident with the completion of the Tacoma Narrows  
16 Bridge - SR 16 public-private partnership. From July 24, 2005, this  
17 chapter will provide a more desirable and effective approach to  
18 developing transportation projects in partnership with the private

1 sector by applying lessons learned from other states and from this  
2 state's ten-year experience with chapter 47.46 RCW.

3 (2) It is the legislature's intent to achieve the following goals  
4 through the creation of this new approach to public-private  
5 partnerships:

6 (a) To provide a well-defined mechanism to facilitate the  
7 collaboration between public and private entities in transportation;

8 (b) To bring innovative thinking from the private sector and other  
9 states to bear on public projects within the state;

10 (c) To provide greater flexibility in achieving the transportation  
11 projects; and

12 (d) To allow for creative cost and risk sharing between the public  
13 and private partners.

14 (3) The legislature intends that the powers granted in this chapter  
15 to the commission or department are in addition to any powers granted  
16 under chapter 47.56 RCW.

17 (4) It is further the intent of the legislature that an expert  
18 review panel be established for each project developed under chapter  
19 334, Laws of 2006. Expert review panels shall be responsible for  
20 reviewing selected proposals, analyzing and reviewing tentative  
21 agreements, and making recommendations to the governor and the  
22 transportation commission on the advisability of executing agreements  
23 under chapter 334, Laws of 2006.

24 (5) The legislature intends that the review process, criteria, and  
25 approvals for public-private partnership projects involving  
26 toll-related facilities remain unchanged, but that the review and  
27 approval process for nontoll projects be modified so that the criteria  
28 and review process can be more closely tailored to the specific type of  
29 proposed nontoll project or program.

30 **Sec. 2.** RCW 47.29.030 and 2005 c 317 s 3 are each amended to read  
31 as follows:

32 In addition to the powers it now possesses, the commission shall:

33 (1) Approve or review contracts or agreements authorized in this  
34 chapter;

35 (2) Adopt rules to carry out this chapter and govern the program,  
36 which at a minimum must address the following issues:

1 (a) The types of projects allowed; (~~however, all allowed projects~~  
2 ~~must be included in the Washington transportation plan or identified by~~  
3 ~~the authority as being a priority need for the state;~~)

4 (b) The types of contracts allowed, with consideration given to the  
5 best practices available;

6 (c) For toll projects, the composition of the team responsible for  
7 the evaluation of proposals to include:

8 (i) Washington state department of transportation staff;

9 (ii) An independent representative of a consulting or contracting  
10 field with no interests in the project that is prohibited from becoming  
11 a project manager for the project and bidding on any part of the  
12 project;

13 (iii) An observer from the state auditor's office or the joint  
14 legislative audit and review committee;

15 (iv) A person appointed by the commission, if the secretary of  
16 transportation is a cabinet member, or appointed by the governor if the  
17 secretary of transportation is not a cabinet member; and

18 (v) A financial expert;

19 (d) Minimum standards and criteria required of all proposals;

20 (e) Procedures for the proper solicitation, acceptance, review, and  
21 evaluation of projects;

22 (f) Criteria to be considered in the evaluation and selection of  
23 proposals (~~that includes~~). For toll projects, this must include:

24 (i) Comparison with the department's internal ability to complete  
25 the project that documents the advantages of completing the project as  
26 a partnership versus solely as a public venture; and

27 (ii) Factors such as, but not limited to: Priority, cost, risk  
28 sharing, scheduling, and management conditions;

29 (g) The protection of confidential proprietary information while  
30 still meeting the need for public disclosure that is consistent with  
31 RCW 47.29.190;

32 (h) Protection for local contractors to participate in  
33 subcontracting opportunities;

34 (i) Specifying that maintenance issues must be resolved in a manner  
35 consistent with the personnel system reform act, chapter 41.80 RCW;

36 (j) Specifying that provisions regarding patrolling and law  
37 enforcement on a public facility are subject to approval by the  
38 Washington state patrol;

1 (3) Adopt guidelines to address security and performance issues.

2 Preliminary rules and guidelines developed under this section must  
3 be submitted to the chairs and ranking members of both transportation  
4 committees by November 30, 2005, for review and comment. All final  
5 rules and guidelines must be submitted to the full legislature during  
6 the 2006 session for review.

7 **Sec. 3.** RCW 47.29.060 and 2008 c 122 s 18 are each amended to read  
8 as follows:

9 (1) Subject to the limitations in this section, the department may,  
10 in connection with the evaluation of eligible projects, consider any  
11 financing mechanisms identified under subsections (3) through (5) of  
12 this section or any other lawful source, either integrated as part of  
13 a project proposal or as a separate, stand-alone proposal to finance a  
14 project. Financing may be considered for all or part of a proposed  
15 project. A project may be financed in whole or in part with:

16 (a) The proceeds of grant anticipation revenue bonds authorized by  
17 23 U.S.C. Sec. 122 and applicable state law. Legislative authorization  
18 and appropriation is required in order to use this source of financing;

19 (b) Grants, loans, loan guarantees, lines of credit, revolving  
20 lines of credit, or other financing arrangements available under the  
21 Transportation Infrastructure Finance and Innovation Act under 23  
22 U.S.C. Sec. 181 et seq., or any other applicable federal law;

23 (c) Infrastructure loans or assistance from the state  
24 infrastructure bank established by RCW 82.44.195;

25 (d) Federal, state, or local revenues, subject to appropriation by  
26 the applicable legislative authority;

27 (e) User fees, tolls, fares, lease proceeds, rents, gross or net  
28 receipts from sales, proceeds from the sale or exchange of development  
29 rights, franchise fees, equivalent value exchanges of property, or any  
30 other lawful form of consideration. However, projects financed by  
31 tolls or equivalent funding sources must first be authorized by the  
32 legislature under RCW 47.56.820.

33 (2) As security for the payment of financing described in this  
34 section, the revenues from the project may be pledged, but no such  
35 pledge of revenues constitutes in any manner or to any extent a general  
36 obligation of the state. Any financing described in this section may

1 be structured on a senior, parity, or subordinate basis to any other  
2 financing.

3 (3) For any toll transportation project developed under this  
4 chapter that is owned, leased, used, or operated by the state, as a  
5 public facility, if indebtedness is issued, it must be issued by the  
6 state treasurer for the toll transportation project.

7 (4) For other public projects defined in RCW 47.29.050(2) that are  
8 developed in conjunction with a transportation project, financing  
9 necessary to develop, construct, or operate ((the)) a toll public  
10 project must be approved by the state finance committee or by the  
11 governing board of a public benefit corporation as provided in the  
12 federal Internal Revenue Code section 63-20. Financing necessary to  
13 develop, construct, or operate a nontoll public project that does not  
14 pledge the state's credit must be approved by the state transportation  
15 commission;

16 (5) For projects that are developed in conjunction with a  
17 transportation project but are not themselves a public facility or  
18 public project, any lawful means of financing may be used.

19 **Sec. 4.** RCW 47.29.140 and 2005 c 317 s 14 are each amended to read  
20 as follows:

21 (1) The following provisions must be included in any agreement to  
22 which the state is a party:

23 (a) For any toll project that proposes terms for stand-alone  
24 maintenance or asset management services for a public facility, those  
25 services must be provided in a manner consistent with any collective  
26 bargaining agreements, the personnel system reform act (chapter 41.80  
27 RCW), and civil service laws that are in effect for the public  
28 facility;

29 (b) Toll transportation projects that are selected for development  
30 under this chapter must be identified in the Washington transportation  
31 plan or be identified by the authority as being a priority need for the  
32 state;

33 (c) If there is a tolling component to the project, then it must be  
34 specified that tolling technology used in the project must be  
35 consistent with tolling technology standards adopted by the department  
36 for transportation-related projects;

1 (d) Provisions for bonding, financial guarantees, deposits, or the  
2 posting of other security to secure the payment of laborers,  
3 subcontractors, and suppliers who perform work or provide materials as  
4 part of the project;

5 (e) All projects must be financed in a manner consistent with RCW  
6 47.29.060. This chapter is null and void if this subsection or RCW  
7 47.29.060 fails to become law or is held invalid by a court of final  
8 jurisdiction.

9 (2) Agreements between the state and private sector partners  
10 entered into under this section must specifically include the following  
11 contractual elements:

12 (a) The point in the project at which public and private sector  
13 partners will enter the project and which partners will assume  
14 responsibility for specific project elements;

15 (b) How the partners will share management of the risks of the  
16 project;

17 (c) How the partners will share the costs of development of the  
18 project;

19 (d) How the partners will allocate financial responsibility for  
20 cost overruns;

21 (e) The penalties for nonperformance;

22 (f) The incentives for performance;

23 (g) The accounting and auditing standards to be used to evaluate  
24 work on the project;

25 (h) For any project that reverts to public ownership, the  
26 responsibility for reconstruction or renovations that are required in  
27 order for a facility to meet all applicable government standards upon  
28 reversion of the facility to the state; and

29 (i) Provisions for patrolling and law enforcement on transportation  
30 projects that are public facilities.

31 **Sec. 5.** RCW 47.29.150 and 2005 c 317 s 15 are each amended to read  
32 as follows:

33 (1) Before final approval of any toll projects, agreements entered  
34 into under this chapter must include a process that provides for public  
35 involvement and participation with respect to the development of the  
36 toll projects. This plan must be submitted along with the proposed

1 agreement, and both must be approved under RCW 47.29.160 before the  
2 state may enter a binding agreement.

3 (2) All workshops, forums, open houses, meetings, public hearings,  
4 or similar public gatherings must be administered and attended by  
5 representatives of the state and any other public entities that are  
6 party to an agreement authorized by this chapter.

7 **Sec. 6.** RCW 47.29.170 and 2011 c 367 s 701 are each amended to  
8 read as follows:

9 Before accepting any unsolicited toll project proposals, the  
10 commission must adopt rules to facilitate the acceptance, review,  
11 evaluation, and selection of unsolicited toll project proposals. These  
12 rules must include the following:

13 (1) Provisions that specify unsolicited proposals must meet  
14 predetermined criteria;

15 (2) Provisions governing procedures for the cessation of  
16 negotiations and consideration;

17 (3) Provisions outlining that unsolicited proposals are subject to  
18 a two-step process that begins with concept proposals and would only  
19 advance to the second step, which are fully detailed proposals, if the  
20 commission so directed;

21 (4) Provisions that require concept proposals to include at least  
22 the following information: Proposers' qualifications and experience;  
23 description of the proposed project and impact; proposed project  
24 financing; and known public benefits and opposition; and

25 (5) Provisions that specify the process to be followed if the  
26 commission is interested in the concept proposal, which must include  
27 provisions:

28 (a) Requiring that information regarding the potential project  
29 would be published for a period of not less than thirty days, during  
30 which time entities could express interest in submitting a proposal;

31 (b) Specifying that if letters of interest were received during the  
32 thirty days, then an additional sixty days for submission of the fully  
33 detailed proposal would be allowed; and

34 (c) Procedures for what will happen if there are insufficient  
35 proposals submitted or if there are no letters of interest submitted in  
36 the appropriate time frame.

1 The commission may adopt other rules as necessary to avoid  
2 conflicts with existing laws, statutes, or contractual obligations of  
3 the state.

4 The commission may not accept or consider any unsolicited proposals  
5 before July 1, 2013.

6 **Sec. 7.** RCW 47.29.180 and 2005 c 317 s 18 are each amended to read  
7 as follows:

8 For toll projects with costs, including financing costs, of three  
9 hundred million dollars or greater, advisory committees are required.

10 (1) The commission must establish an advisory committee to advise  
11 with respect to eligible projects. An advisory committee must consist  
12 of not fewer than five and not more than nine members, as determined by  
13 the public partners. Members must be appointed by the commission, or  
14 for projects with joint public sector participation, in a manner agreed  
15 to by the commission and any participating unit of government. In  
16 making appointments to the committee, the commission shall consider  
17 persons or organizations offering a diversity of viewpoints on the  
18 project.

19 (2) An advisory committee shall review concepts or proposals for  
20 eligible projects and submit comments to the public sector partners.

21 (3) An advisory committee shall meet as necessary at times and  
22 places fixed by the department, but not less than twice per year. The  
23 state shall provide personnel services to assist the advisory committee  
24 within the limits of available funds. An advisory committee may adopt  
25 rules to govern its proceedings and may select officers.

26 (4) An advisory committee must be dissolved once the project has  
27 been fully constructed and debt issued to pay for the project has been  
28 fully retired.

29 **Sec. 8.** RCW 47.29.280 and 2006 c 334 s 49 are each amended to read  
30 as follows:

31 (1) For projects that involve toll facilities, the department shall  
32 establish an expert review panel to review, analyze, and make  
33 recommendations to the governor and the transportation commission on  
34 whether to approve, reject, or continue negotiations on a proposed  
35 project agreement under this chapter. The department shall provide  
36 staff to support the expert review panel, if requested by the panel.

1 The expert review panel may utilize any of the consultants under  
2 contract for the department, and the expert review panel may contract  
3 for consulting expertise in specific areas as it deems necessary to  
4 ensure a thorough and critical review of any proposed project  
5 agreement.

6 (2) The governor shall appoint members of an expert review panel  
7 that have experience in large capital project delivery, public-private  
8 partnerships, public financing of infrastructure improvements, or other  
9 areas of expertise that will benefit the panel. The panel shall  
10 consist of no less than three, but no more than five members, as  
11 determined by the governor.

12 NEW SECTION. **Sec. 9.** A new section is added to chapter 47.29 RCW  
13 to read as follows:

14 The commission must review and approve any project that proposes to  
15 (1) sell or otherwise permanently dispose of assets owned by the  
16 department as part of a larger transaction involving a private entity;  
17 or (2) incur obligations that would significantly bind future state  
18 legislative appropriations including, but not limited to, long-term  
19 lease agreements or assumption of significant facility maintenance or  
20 preservation costs, as part of a larger transaction involving a private  
21 entity.

22 **Sec. 10.** RCW 39.10.300 and 2009 c 75 s 4 are each amended to read  
23 as follows:

24 (1) Subject to the process in RCW 39.10.270 or 39.10.280, public  
25 bodies may utilize the design-build procedure for public works projects  
26 in which the total project cost is over ten million dollars and where:

27 (a) The design and construction activities, technologies, or  
28 schedule to be used are highly specialized and a design-build approach  
29 is critical in developing the construction methodology or implementing  
30 the proposed technology; or

31 (b) The project design is repetitive in nature and is an incidental  
32 part of the installation or construction; or

33 (c) Regular interaction with and feedback from facilities users and  
34 operators during design is not critical to an effective facility  
35 design.

1 (2) Subject to the process in RCW 39.10.270 or 39.10.280, public  
2 bodies may use the design-build procedure for parking garages,  
3 regardless of cost.

4 (3) The design-build procedure may be used for the construction or  
5 erection of preengineered metal buildings or prefabricated modular  
6 buildings, regardless of cost and is not subject to approval by the  
7 committee.

8 (4) Except for utility projects and approved demonstration  
9 projects, the design-build procedure may not be used to procure  
10 operations and maintenance services for a period longer than three  
11 years. State agency projects that propose to use the design-build-  
12 operate-maintain procedure shall submit cost estimates for the  
13 construction portion of the project consistent with the office of  
14 financial management's capital budget requirements. Operations and  
15 maintenance costs must be shown separately and must not be included as  
16 part of the capital budget request.

17 (5) Subject to the process in RCW 39.10.280, public bodies may use  
18 the design-build procedure for public works projects in which the total  
19 project cost is between two million and ten million dollars and that  
20 meet one of the criteria in subsection (1)(a), (b), or (c) of this  
21 section.

22 (6) Subject to the process in RCW 39.10.280, a public body may seek  
23 committee approval for a design-build demonstration project that  
24 includes procurement of operations and maintenance services for a  
25 period longer than three years.

26 (7) For projects proposed under RCW 47.29.090, the department of  
27 transportation may use the design-build procedure for public works  
28 projects in which the total project cost is under ten million dollars  
29 and that meet one of the criteria in subsection (1)(a), (b), or (c) of  
30 this section.

31 **Sec. 11.** RCW 39.08.010 and 2007 c 218 s 88 and 2007 c 210 s 3 are  
32 each reenacted and amended to read as follows:

33 Except as provided under RCW 47.29.140(1)(d), whenever any board,  
34 council, commission, trustees, or body acting for the state or any  
35 county or municipality or any public body shall contract with any  
36 person or corporation to do any work for the state, county, or  
37 municipality, or other public body, city, town, or district, such

1 board, council, commission, trustees, or body shall require the person  
2 or persons with whom such contract is made to make, execute, and  
3 deliver to such board, council, commission, trustees, or body a good  
4 and sufficient bond, with a surety company as surety, conditioned that  
5 such person or persons shall faithfully perform all the provisions of  
6 such contract and pay all laborers, mechanics, and subcontractors and  
7 material suppliers, and all persons who supply such person or persons,  
8 or subcontractors, with provisions and supplies for the carrying on of  
9 such work, which bond in cases of cities and towns shall be filed with  
10 the clerk or comptroller thereof, and any person or persons performing  
11 such services or furnishing material to any subcontractor shall have  
12 the same right under the provisions of such bond as if such work,  
13 services, or material was furnished to the original contractor:  
14 PROVIDED, HOWEVER, That the provisions of RCW 39.08.010 through  
15 39.08.030 shall not apply to any money loaned or advanced to any such  
16 contractor, subcontractor or other person in the performance of any  
17 such work: PROVIDED FURTHER, That on contracts of thirty-five thousand  
18 dollars or less, at the option of the contractor the respective public  
19 entity may, in lieu of the bond, retain fifty percent of the contract  
20 amount for a period of thirty days after date of final acceptance, or  
21 until receipt of all necessary releases from the department of revenue  
22 and the department of labor and industries and settlement of any liens  
23 filed under chapter 60.28 RCW, whichever is later: PROVIDED FURTHER,  
24 That for contracts of one hundred thousand dollars or less, the public  
25 entity may accept a full payment and performance bond from an  
26 individual surety or sureties: AND PROVIDED FURTHER, That the surety  
27 must agree to be bound by the laws of the state of Washington and  
28 subjected to the jurisdiction of the state of Washington.

29 NEW SECTION. **Sec. 12.** A new section is added to chapter 39.10 RCW  
30 to read as follows:

31 The transportation commission may develop guidelines for, and  
32 oversee, a project review and approval process that allows the  
33 department of transportation to enter into predevelopment agreements  
34 for the possible construction or delivery of projects or programs under  
35 chapter 47.29 RCW.

1        NEW SECTION.    **Sec. 13.**    A new section is added to chapter 39.04 RCW  
2 to read as follows:

3        (1) The department of transportation may competitively procure a  
4 potential development partner solely on the basis of that development  
5 partner's qualifications to successfully develop a nontoll road  
6 transportation project under chapter 47.29 RCW. The transportation  
7 commission must develop guidelines for, and oversee, a project review  
8 and approval process for projects proposed for development under this  
9 pilot program.

10        (2) At a minimum, the transportation commission guidelines must  
11 include the following:

12        (a) No more than five projects may enter into predevelopment  
13 agreements; and

14        (b) The value of a single project under this pilot program may not  
15 exceed ten million dollars.

16        **Sec. 14.**    RCW 47.12.080 and 1984 c 7 s 121 are each amended to read  
17 as follows:

18        The secretary of transportation may transfer and convey to the  
19 United States, its agencies or instrumentalities, to any other state  
20 agency, to any county or city or port district of this state, or to any  
21 public utility company, any unused state-owned real property under the  
22 jurisdiction of the department of transportation when, in the judgment  
23 of the secretary of transportation and the attorney general, the  
24 transfer and conveyance is consistent with public interest. Whenever  
25 the secretary makes an agreement for any such transfer or conveyance,  
26 and the attorney general concurs therein, the secretary shall execute  
27 and deliver unto the grantee a deed of conveyance, easement, or other  
28 instrument, duly acknowledged, as shall be necessary to fulfill the  
29 terms of the aforesaid agreement.    The state must receive equal or  
30 greater value in the sale or exchange of unused state-owned real  
31 property. In determining whether the state has received adequate  
32 compensation, the value of the exchange must consider all forms of  
33 consideration including, but not limited to, cash, exchange of property  
34 or development rights, property banking or similar credits, and  
35 benefits gained from the advancement of transportation-related projects

1 and priorities. All moneys paid to the state of Washington under any  
2 of the provisions hereof shall be deposited in the motor vehicle fund.

--- END ---