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HOUSE BILL 2726

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State of Washington

65th Legislature

2018 Regular Session

By Representatives Buys and Tarleton

Read first time 01/15/18. Referred to Committee on Capital Budget.

1 AN ACT Relating to public-private partnerships for alternative  
2 public works contracting; amending RCW 39.10.230; reenacting and  
3 amending RCW 43.131.408; adding a new chapter to Title 39 RCW; and  
4 providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply  
7 throughout this chapter unless the context clearly requires  
8 otherwise.

9 (1) "Affected jurisdiction" means any public body within the  
10 state of Washington in which all or part of a project implemented by  
11 another public body under this chapter is located or which is  
12 directly affected by a public-private facility or public-private  
13 agreement.

14 (2) "Capital maintenance" means maintenance or rehabilitation  
15 performed either (a) to extend the useful life of a facility, system,  
16 or component or (b) to restore a public-private facility to the  
17 condition required before expiration of the public-private agreement.

18 (3) "Concessionaire" means any private entity that has entered  
19 into a public-private agreement with a public body under this  
20 chapter.

1 (4) "Construction" means the process of building, altering,  
2 retrofitting, improving, or demolishing any public-private facility,  
3 including any structure, building, or other improvements of any kind  
4 to real property. "Construction" does not include the routine  
5 operation, routine repair, routine maintenance, or capital  
6 maintenance of any existing public-private facility, including  
7 structures, buildings, or real property.

8 (5) "Design-build-finance" means a project delivery method in  
9 which a public body enters into a single contract for design,  
10 construction, and full or partial private financing of a public-  
11 private facility over a contractually defined term.

12 (6) "Design-build-finance-operate-maintain" means a project  
13 delivery method in which a public body enters into a single contract  
14 for design, construction, finance, maintenance, and operation of a  
15 public-private facility over a contractually defined term. Public  
16 funds must not be appropriated to pay for any part of the services  
17 provided by the concessionaire during the agreement period, except as  
18 provided in the request for proposals and final public-private  
19 agreement.

20 (7) "Design-build-operate-maintain" means a project delivery  
21 method in which a public body enters into a single contract for the  
22 design and construction, and the maintenance or operation, or both,  
23 of a public-private facility over a contractually defined term, and  
24 for which public funds are appropriated.

25 (8) "Maintenance" means routine maintenance, routine repair,  
26 rehabilitation, capital maintenance, maintenance replacement, and any  
27 other categories of physical maintenance or upkeep of a public-  
28 private facility that may be designated by the public body.

29 (9) "Offeror" means a private entity who submits a statement or  
30 qualifications or a proposal in response to a request for  
31 qualifications or request for proposals for a public-private  
32 agreement.

33 (10) "Operate" means any action other than maintenance to operate  
34 or facilitate the use of a public-private facility for its intended  
35 purpose.

36 (11) "Private entity" means a person, corporation, general  
37 partnership, limited liability company, limited partnership, joint  
38 venture, business trust, public benefit corporation, nonprofit  
39 entity, or other business entity.

1 (12) "Public body" has the same meaning as defined in RCW  
2 39.10.210.

3 (13) "Public-private agreement" means a contract between a public  
4 body and a private entity that relates to the development, financing,  
5 maintenance, or operation of a public-private facility. The public-  
6 private agreement may implement a design-build-operate-maintain,  
7 design-build-finance-operate-maintain, design-build-finance, or other  
8 public-private project delivery method.

9 (14) "Public-private facility" means a new or existing property,  
10 facility, or improvement that serves a public purpose, is developed  
11 for a public body, and is subject to a public-private agreement  
12 including, but not limited to, civic or education facilities, roads,  
13 bridges, public transit systems, ferry facilities, port facilities,  
14 airports, intermodal systems, other transportation facilities,  
15 cultural or recreational facilities, medical facilities, utility  
16 facilities, and telecommunications facilities.

17 (15) "Request for proposals" means all documents, whether  
18 attached to or incorporated by reference, utilized for soliciting  
19 proposals for a public-private facility under this chapter.

20 (16) "Request for qualifications" means a solicitation issued by  
21 a public body under section 2(7)(a) of this act.

22 (17) "Responsible offeror" means a private entity that meets all  
23 criteria stated in RCW 39.04.350, has the capability in all respects  
24 to fully perform the requirements of the public-private agreement,  
25 and has the integrity and reliability to assure good faith  
26 performance.

27 (18) "Responsive offeror" means a private entity who has  
28 submitted a statement of qualifications or a proposal that conforms  
29 in all material respects to the applicable request for qualifications  
30 or request for proposals.

31 (19) "User fees" means any rates, tolls, fares, fees, or other  
32 charges imposed for use of all or part of a public-private facility.

33 NEW SECTION. **Sec. 2.** (1) A public body may, subject to the  
34 requirements of this chapter, utilize the request for qualifications-  
35 request for proposals process or request for proposals process  
36 provided in this section and enter into a public-private agreement  
37 with the responsible and responsive offeror who submits the proposal  
38 receiving the highest evaluation for the development, financing,  
39 design, construction, operation, or maintenance of a public-private

1 facility. The proposal must fully comply with all applicable  
2 requirements of federal, state, and local law, including chapters  
3 39.08, 39.12, and 39.19 RCW. Chapter 39.19 RCW applies to any public-  
4 private agreement procured pursuant to this chapter regardless of the  
5 source of financing or funding. A public-private agreement procured  
6 in compliance with this chapter is not subject to the competitive bid  
7 requirements set forth in chapter 39.04 RCW or to the requirements,  
8 restrictions, or limits in this chapter regarding design-build,  
9 general contractor/construction manager, or job order contract  
10 procedures.

11 (2) This chapter (a) applies if the public body expressly elects  
12 to procure the project as a public-private agreement and (b) does not  
13 limit a public body's ability to procure, execute, or administer any  
14 lease or other form of contract to improve public property or operate  
15 a public facility under existing law. A public body may elect to  
16 procure professional services for or related to a public-private  
17 facility or public-private agreement using procurement procedures  
18 otherwise available to the public body for such services.

19 (3) A transportation project eligible for development under  
20 chapter 47.29 RCW is eligible to enter into a public-private  
21 agreement under this chapter if it meets the eligibility criteria  
22 established in this chapter. A transportation project developed under  
23 this chapter must satisfy the requirements of this chapter and is not  
24 subject to the requirements of chapter 47.29 RCW.

25 (4) To use the procurement process provided in this chapter, the  
26 public body must, before applying for approval pursuant to section 9  
27 of this act, determine that it is in the best interest of the public.  
28 In making this determination, the public body must:

29 (a) Publish a notice of intent to use this procurement process in  
30 a legal newspaper published in or as near as possible to that part of  
31 the county where the public work will be constructed. Notice must be  
32 published at least fourteen calendar days before conducting a public  
33 hearing. The notice must include: The date, time, and location of the  
34 hearing; a statement justifying the basis for the procurement  
35 process; and how interested parties may, before the hearing, obtain  
36 additional information;

37 (b) Conduct a hearing and provide an opportunity for any  
38 interested party to submit written and verbal comments regarding the  
39 justification for using this selection process;

1 (c) After the public hearing, consider the written and verbal  
2 comments received and determine if using this procurement process is  
3 in the best interests of the public; and

4 (d) Publish a written final determination. All protests of the  
5 decision to use the procurement process must be in writing and  
6 submitted to the public body within seven calendar days of the final  
7 determination. Any modifications to the criteria, weights, and  
8 protest procedures based on comments received during the public  
9 hearing process must be included in the final determination.

10 (5) A public-private agreement must be awarded through a  
11 competitive public procurement process set forth in this section  
12 using either the request for qualifications-request for proposals  
13 process or the request for proposals process. A private entity may  
14 submit, and a public body may, but is not obligated to, receive and  
15 consider, an unsolicited proposal regarding a potential public-  
16 private agreement or public-private facility; however, the public  
17 body may not enter into a public-private agreement in connection with  
18 such unsolicited proposal without first complying with the  
19 competitive public request for qualifications-request for proposals  
20 process or the request for proposals process set forth in this  
21 section.

22 (6) The public body must provide adequate public notice of its  
23 request for qualifications or request for proposals, which must at a  
24 minimum include publishing at least once in a legal newspaper of  
25 general circulation published in, or as near as possible to, that  
26 part of the state in which the public work will be done, a notice of  
27 its request for qualifications or request for proposals, and the  
28 availability and location of the request for qualifications or  
29 request for proposals. Before issuing a request for qualifications or  
30 request for proposals, the public body may, by direct contact or  
31 otherwise, seek input from potential applicants who may have an  
32 interest or expertise relevant to the project through a request for  
33 expression of interest, registration of interest, or otherwise.

34 (7) For purposes of this section, "request for qualifications-  
35 request for proposals process" means the following:

36 (a) The public body must issue a request for qualifications,  
37 including at least the following:

38 (i) A general description of the project that provides sufficient  
39 information for offerors to submit qualifications;

1 (ii) A description of the intended project delivery method, the  
2 reasons for using such method, and the public body's anticipated  
3 sources of funding;

4 (iii) A description of the qualifications required of offerors  
5 including, but not limited to, technical competence and experience,  
6 financial capacity, capability to perform, any team structure, past  
7 performance of the offeror's team or team members, demonstrated  
8 ability to meet time and budget requirements, ability to meet  
9 performance and payment bond requirements, firm workloads, location,  
10 safety records, and other qualifications as determined by the public  
11 body;

12 (iv) The honorarium, if any, to be paid to finalists who submit  
13 responsive proposals and who are not awarded a contract. Honorarium  
14 payments, if any, must be sufficient to generate meaningful  
15 competition among potential proposers and the amount of the  
16 honorarium must consider the level of effort required to meet the  
17 selection criteria. The request for qualifications must include a  
18 statement indicating whether any portion of the honorarium will be  
19 paid if the solicitation is canceled before proposals are submitted,  
20 and the public body's rights, if any, to utilize intellectual  
21 property, including documents, concepts, designs, or information  
22 submitted by finalists who are not awarded a contract;

23 (v) The anticipated schedule for the procurement process and the  
24 project;

25 (vi) A description of the process the public body will use to  
26 evaluate qualifications, including evaluation factors, the relative  
27 weights of factors, and any specific forms to be used by offerors;  
28 and

29 (vii) Protest procedures.

30 (b) The public body must establish an evaluation committee to  
31 evaluate responses to the request for qualifications based solely on  
32 the factors, weighting, and process identified in the request for  
33 qualifications and any addenda issued by the public body. Based on  
34 the evaluation committee's findings, the public body must select no  
35 more than four responsive and responsible offerors as finalists to  
36 submit proposals. The public body may reject all qualification  
37 submissions and must provide its reasons for rejection in writing to  
38 all offerors.

39 (c) The public body must notify all offerors of the list of  
40 finalists selected to move to the next phase of the selection

1 process. At the request of an offeror not selected as a finalist, the  
2 public body must provide the requesting offeror a summary of the  
3 evaluation results for its proposal. The process may not proceed to  
4 the next phase until two business days after all offerors are  
5 notified of the public body's selection decision. Any offeror filing  
6 a protest on the selection of the finalists must file the protest in  
7 accordance with published protest procedures and applicable law. The  
8 selection process may not advance to the next phase of selection  
9 until two business days after the final protest decision is  
10 transmitted to the offeror.

11 (d) Upon selection of the finalists, the public body must proceed  
12 with the request for proposals process with the finalists.

13 (8) For purposes of this section, the "request for proposals  
14 process" means the following:

15 (a) The public body must issue a request for proposals,  
16 consistent with the request for qualifications, if any, including at  
17 least the following:

18 (i) A detailed description of the project including, but not  
19 limited to:

20 (A) The public body's design requirements regarding project  
21 features, functions, characteristics, qualities, properties, and  
22 parameters;

23 (B) Requirements and constraints pertaining to the construction,  
24 financing, operation, and maintenance of the public-private facility;

25 (C) Programmatic, performance, and technical requirements and  
26 specifications;

27 (D) Any facility performance goals, validation requirements, and  
28 nonperformance terms;

29 (E) Financial requirements, constraints, incentives, and  
30 objectives, including terms of agreement;

31 (F) Authorized payment mechanisms, provided that the public body  
32 may request or permit proposals regarding alternate payment  
33 mechanisms and authorize payment mechanisms not specified in the  
34 request for proposals;

35 (ii) A description of the intended project delivery method and  
36 the reasons for using such method;

37 (iii) A description of required proposal development documents,  
38 if any, including drawings and other design-related documents that  
39 describe the size and character of a public-private facility as to  
40 architectural, structural, mechanical, and electrical systems,

1 materials, any maintenance and operation requirements, and such other  
2 elements as may be appropriate to the applicable project delivery  
3 method;

4 (iv) A description of the process the public body will use to  
5 evaluate offerors' qualifications and proposals, including evaluation  
6 factors and the relative weight of factors, and any specific forms to  
7 be used;

8 (A) Evaluation factors must include, but are not limited to:

9 (I) The offeror's qualifications, including technical competence and  
10 experience, financial capacity, capability to perform, past  
11 performance of the offeror's team, demonstrated ability to meet time  
12 and budget requirements, ability to meet performance and payment bond  
13 requirements, firm workloads, location, safety records, and accident  
14 prevention plan, provided that if using the request for  
15 qualifications-request for proposals process the public body may  
16 forego this evaluation factor or may utilize the results from the  
17 request for qualifications evaluations; (II) compliance with the  
18 public body's design and other requirements set forth in the request  
19 for proposals; (III) cost or other price-related considerations,  
20 which may include short and long-term costs to the public body, the  
21 impact on public debt, the anticipated cost savings to the public  
22 body by selecting the offeror, and the offeror's fees; (IV) technical  
23 and operational feasibility and merit; (V) schedule; (VI) anticipated  
24 user fees, charges, or price over the term of the public-private  
25 agreement; and (VII) other appropriate factors, if any.

26 (B) A public body must include as evaluation factors (I) the  
27 offeror's specific plans to include participation by small business  
28 entities, disadvantaged business entities, veteran-owned businesses,  
29 minority and women-owned businesses, and any other underutilized  
30 businesses as the public body may designate, and (II) the offeror's  
31 plans for labor harmony for the entire term of the public-private  
32 agreement, including construction, reconstruction, operation, and  
33 capital and routine maintenance. Nothing in this subsection  
34 (8)(a)(iv)(B) must be construed to restrain fair and open  
35 competition. Regardless of the source of financing or funding for a  
36 public-private agreement, this chapter does not prevent a public body  
37 from applying any program, factors, goals, or standards regarding  
38 such plans to the extent otherwise permitted by law;

39 (v) Protest procedures;

40 (vi) The form of the public-private agreement to be awarded;

1 (vii) The anticipated process and procurement schedule for the  
2 project, which may include opportunities for clarifications,  
3 interviews, written questions, discussions, confidential discussions,  
4 revisions, negotiations, and best-and-final offers, provided that  
5 such opportunities must be fairly and equitably available to  
6 offerors;

7 (viii) The honorarium, if any, to be paid to finalists who submit  
8 responsive proposals and who are not awarded a contract. Honorarium  
9 payments, if any, must be sufficient to generate meaningful  
10 competition among potential proposers, and the amount of the  
11 honorarium must consider the level of effort required to meet the  
12 selection criteria. The request for proposals must include a  
13 statement indicating whether any portion of the honorarium will be  
14 paid if the solicitation is canceled before proposals are submitted,  
15 and the public body's rights, if any, to utilize intellectual  
16 property including documents, concepts, designs, or information  
17 submitted by finalists who are not awarded a contract. A public body  
18 utilizing the request for qualifications-request for proposals  
19 procedure satisfies this subsection (8)(a)(viii) if it has specified  
20 the honorarium and intellectual property terms in the request for  
21 qualifications;

22 (ix) The public body's intellectual property or other rights, if  
23 any, to utilize documents, concepts, designs, or information  
24 submitted by offerors who are not awarded a contract; and

25 (x) Other information relevant to the project.

26 (b) The public body must establish an evaluation committee to  
27 evaluate offerors' proposals. The public body must follow the  
28 procurement process described in the request for proposals. Proposals  
29 must be evaluated based solely on the factors, weighting, and process  
30 identified in the request for proposals and in any addenda published  
31 by the public body.

32 (c) The public body may initiate negotiations with the offeror  
33 submitting the highest evaluated proposal. If the public body is  
34 unable to successfully negotiate and execute an agreement with the  
35 offeror submitting the highest evaluated proposal, negotiations with  
36 that offeror may be suspended or terminated and the public body may  
37 proceed to negotiate with the next highest evaluated proposer. Public  
38 bodies may continue in accordance with this procedure until an  
39 agreement is reached or the selection process is terminated.

1 (d) The public body must notify all offerors of the selection  
2 decision and make a selection summary of the final proposals  
3 available to all offerors within two business days of such  
4 notification. If the public body receives a timely written protest,  
5 the public body may not execute an agreement until two business days  
6 after the final protest decision is transmitted to the protestor. The  
7 protestor must submit its protest in accordance with the published  
8 protest procedures.

9 (e) Upon completion of the request for proposals process, the  
10 public body must make, or cause to be made, the honorarium payments  
11 specified in the request for qualifications and request for proposals  
12 to finalists who submit responsive proposals and who are not awarded  
13 a contract.

14 (9) The public disclosure and inspection requirements set forth  
15 in RCW 39.10.470 apply to procurements under this chapter, and  
16 statements of qualifications, proposals, and other documents and  
17 information submitted as part of the request for proposals or request  
18 for qualifications-request for proposals process must be treated in  
19 the same manner as proposals by design-build finalists pursuant to  
20 RCW 39.10.470(3).

21 NEW SECTION. **Sec. 3.** (1) The request for proposals regarding a  
22 public-private agreement must contain a draft form of agreement.

23 (2) After selecting an offeror's proposal and completing any  
24 negotiations with such offeror, the public body may enter into the  
25 public-private agreement with the selected private entity. An  
26 affected jurisdiction may be a party to a public-private agreement  
27 entered into by another public body.

28 (3) All public-private agreements procured under this chapter  
29 must include provisions expressly addressing each of the following:

30 (a) The planning, permitting, acquisition, engineering,  
31 financing, development, design, construction, reconstruction,  
32 replacement, improvement, maintenance, management, repair, or  
33 operation of a public-private facility, including provisions for the  
34 replacement and relocation of utility facilities;

35 (b) The term of the public-private agreement, which must not  
36 exceed fifty years unless authorized in the review process described  
37 in section 9 of this act;

38 (c) The type of interest, if any, the concessionaire has in the  
39 public-private facility, and the means of compensation to the

1 concessionaire, whether through direct payment by the public body,  
2 user fees, grants, credits, property, or otherwise, and any  
3 incentives or deductions based on performance, safety, or other  
4 criteria;

5 (d) Whether user fees will be collected on the public-private  
6 facility, and the basis by which such user fees will be determined  
7 and modified;

8 (e) Grounds for termination of the public-private agreement by  
9 the public body or concessionaire, and the procedures and  
10 compensation, if any, upon termination;

11 (f) A security package securing the performance of the public-  
12 private agreement and protecting the public body in the event of  
13 default or nonperformance by the concessionaire or its  
14 subcontractors, which may include, in the public body's discretion,  
15 performance bonds, letters of credit, security interests, or other  
16 measures;

17 (g) Filing by the concessionaire, on a periodic basis, of  
18 performance, service, utilization, efficiency, financial, and other  
19 reports identified by the public body, in a form acceptable to the  
20 public body;

21 (h) The rights and duties of the concessionaire, the public body,  
22 and other state and local governmental entities with respect to use  
23 of the public-private facility;

24 (i) Provisions requiring the concessionaire to:

25 (i) Cause a bond for the construction price to be executed and  
26 delivered consistent with the requirements of chapter 39.08 RCW,  
27 provided that for a public-private agreement entered into pursuant to  
28 this section, the term "subcontractors," as used in RCW 39.08.010,  
29 includes professional design consultants and sub-tier consultants  
30 engaged by the concessionaire or its contractors;

31 (ii) Require payment of prevailing wages for labor performed on  
32 the project in accordance with chapter 39.12 RCW; and

33 (iii) Implement plans for (A) participation by small business  
34 entities, disadvantaged business entities, veteran-owned businesses,  
35 minority and women-owned businesses, and any other underutilized  
36 businesses as the concessionaire or public body may designate, and  
37 (B) compliance with chapter 39.19 RCW;

38 (j) The concessionaire's plans for labor harmony for the entire  
39 term of the agreement, including construction, reconstruction, and  
40 capital and routine maintenance and adequate remedies to address the

1 concessionaire's failure to maintain labor harmony, which may include  
2 assessment of liquidated damages and contract termination;

3 (k) The condition of physical quality, maintenance, and repair in  
4 which the concessionaire must provide the public-private facility to  
5 the public body upon expiration of the public-private agreement;

6 (l) Any restrictions or terms regarding the procurement or  
7 development of other projects that may compete with or otherwise  
8 impact the revenues, cost, or operation of the public-private  
9 facility; and

10 (m) Other terms and conditions as the public body may deem  
11 appropriate.

12 NEW SECTION. **Sec. 4.** Unless otherwise provided, upon the end of  
13 the term of the public-private agreement or in the event of  
14 termination of the public-private agreement, the public body and  
15 duties of the concessionaire cease, except any duties and obligations  
16 that extend beyond the termination as provided in the public-private  
17 agreement. All rights, title, and interest in such public-private  
18 facility and all property involved in the facility must revert to the  
19 public body to the extent owned by the public body before the public-  
20 private agreement or acquired by the public body for the public-  
21 private agreement and must be dedicated to the public body for public  
22 use.

23 NEW SECTION. **Sec. 5.** Upon the occurrence and during the  
24 continuation of a material default of the public-private agreement by  
25 a concessionaire, after notice and opportunity for the concessionaire  
26 or its financing institution to cure, the public body may:

27 (1) Elect to take over the public-private facility, including the  
28 succession of all rights, title, and interest in the public-private  
29 facility and may assume the concessionaire's rights and obligations  
30 pursuant to any contracts related to the public-private facility; and

31 (2) Terminate the public-private agreement and exercise any other  
32 rights and remedies available.

33 NEW SECTION. **Sec. 6.** (1) The public body may issue and sell  
34 bonds or notes of the public body for the purpose of providing funds  
35 to carry out this chapter, with respect to the development,  
36 financing, or operation of a public-private facility or the refunding

1 of any bonds or notes, together with any costs associated with the  
2 transaction.

3 (2) For the purpose of financing a public-private facility, the  
4 public body and concessionaire may apply for, obtain, issue, and use  
5 any funding available under any federal law or program. A  
6 nonexhaustive list of examples include private activity bonds,  
7 transportation infrastructure finance and innovation act funding,  
8 water infrastructure finance and innovation act funding, or railroad  
9 rehabilitation and improvement financing. Other federal or other  
10 funding programs may also be utilized.

11 (3) This section does not limit a public body or any authority of  
12 the state of Washington from issuing bonds for public works projects.

13 NEW SECTION. **Sec. 7.** (1)(a) The public body may accept from the  
14 United States, the state of Washington, or any of their agencies  
15 funds for developing a public-private facility or carrying out a  
16 public-private agreement, whether the funds are made available by  
17 grant, loan, or other financial assistance.

18 (b) The public body may enter into agreements or other  
19 arrangements with the United States, the state of Washington, or any  
20 of their agencies to facilitate the development, execution, or  
21 administration of a public-private facility or public-private  
22 agreement.

23 (2) The public body may accept from any source any grant,  
24 donation, gift, or other form of conveyance of land, money, other  
25 real or personal property, or other item of value made to the public  
26 body for developing a public-private facility or carrying out a  
27 public-private agreement.

28 (3) Any public-private facility or public-private agreement may  
29 be financed in whole or in part by contribution of any funds or  
30 property made by any public body, private entity, or affected  
31 jurisdiction.

32 (4) The public body may combine federal, state, local, and  
33 private funds to finance a public-private agreement or public-private  
34 facility.

35 NEW SECTION. **Sec. 8.** Every public-private agreement must  
36 provide for, and the public body must otherwise ensure that adequate  
37 provision is made for, the following:

1 (1) Payment of all subcontractors, suppliers, and laborers, which  
2 must, at a minimum, include the provision of a payment bond in  
3 compliance with chapter 39.08 RCW, which is required regardless of  
4 the ownership or control of any property involved in the public-  
5 private agreement or the public-private facility;

6 (2) Payment of prevailing wages in accordance with chapter 39.12  
7 RCW;

8 (3) Prompt payment to the concessionaire and subcontractors  
9 pursuant to RCW 39.04.250. RCW 39.04.250 applies only to the extent  
10 of payments to be made by the public body; and

11 (4) Participation plans for (a) small business entities,  
12 disadvantaged business entities, veteran-owned businesses, minority  
13 and women-owned businesses, and any other underutilized businesses as  
14 the public body may designate, and (b) compliance with chapter 39.19  
15 RCW.

16 NEW SECTION. **Sec. 9.** (1) The capital projects advisory review  
17 board must establish a public-private project review subcommittee of  
18 the project review committee to review applications regarding public-  
19 private agreements. The public-private project review subcommittee  
20 must include individuals with expertise in the fields of public  
21 policy, private finance, management consulting, engineering,  
22 architectural design, construction, construction management, labor,  
23 women and minority-owned businesses, public-private partnerships,  
24 operations and maintenance, and public works law. Members of the  
25 public-private project review subcommittee must be nominated by the  
26 project review committee and approved by the capital projects  
27 advisory review board in sufficient numbers such that each proposed  
28 public-private agreement is reviewed by a panel of members with each  
29 of the areas of expertise as listed in this subsection. A member of  
30 the public-private project review subcommittee may satisfy more than  
31 one of the required areas of expertise. The public-private project  
32 review subcommittee may include members of the project review  
33 committee.

34 (2) A public body desiring to procure a public-private agreement  
35 must apply for and receive approval of the procurement method as set  
36 forth in this section. The public-private project review subcommittee  
37 and the public body must follow the process and apply the review  
38 standards set forth in RCW 39.10.280, including a public meeting and  
39 consideration of public comment. The public-private project review

1 subcommittee must provide a written recommendation and rationale to  
2 the capital projects advisory review board, along with the  
3 application package. The board must approve or disapprove the  
4 application. Such approval or disapproval does not constitute a  
5 decision on the merit of the proposed project, but is limited to  
6 approval or disapproval of the public body's proposed alternative  
7 public works procurement method only. The capital projects advisory  
8 review board may publish additional information, implementation  
9 manuals, best practices, guidelines, or criteria for consideration in  
10 evaluating proposed public-private procurement applications.

11 (3) An application regarding a public-private agreement is not  
12 subject to and does not affect the number of projects or dollar  
13 values to be reviewed by the project review committee under RCW  
14 39.10.250.

15 (4) In its application regarding a public-private agreement, the  
16 public body must provide a project report, in a form acceptable to  
17 the public-private project review subcommittee, describing the public  
18 body's intended team for the project, the experience and expertise of  
19 the team and key personnel, the public body's reasons for using the  
20 selected procurement method, and the reasons such procurement method  
21 is suited to the intended project. The project report may include,  
22 but is not limited to, the public body's descriptions of the  
23 following information: (a) A general description of the proposed  
24 public-private facility and public-private agreement; (b) the policy  
25 and regulatory structure for overseeing the public-private facility  
26 and its operations; (c) the public body's preliminary business case  
27 analysis, if any; (d) preliminary discussion of financial data, pro  
28 formas, cost and revenue allocation, taxation, profit sharing, and  
29 anticipated public and private funding sources; (e) general financial  
30 evaluation of the public-private facility, including the public  
31 body's preliminary draft value-for-money analysis, if any;  
32 (f) additional responsibilities by both the private concessionaire  
33 and the public body during the agreement period; (g) the anticipated  
34 advantages of entering into the anticipated public-private agreement;  
35 and (h) the public body's plans to protect the interests of  
36 subcontractors, suppliers, and laborers, and to include participation  
37 by minority, women-owned, veteran-owned, small, disadvantaged, or  
38 underutilized businesses.

39 (5) Deviation from the requirements of this public-private  
40 agreement provides grounds for denial of the procurement method, but

1 does not invalidate any public-private agreement after approval or  
2 award except through timely protest to the public body pursuant to  
3 section 2 of this act and the public body's published protest  
4 procedures.

5 (6) The public body must submit an annual project report to the  
6 project review committee addressing the operation and financial  
7 performance of the public-private facility and public-private  
8 agreement and the public body's compliance and deviation from the  
9 project report submitted in the public body's application. The annual  
10 report must be submitted during construction and the first five years  
11 of operation of the public-private facility.

12 (7) The board may authorize a maximum of four public-private  
13 agreement procurements per year. If more than four applications are  
14 received in a single year during such time, the public-private  
15 project review subcommittee and capital projects advisory review  
16 board must make reasonable efforts to balance the types of projects  
17 recommended pursuant to subsection (2) of this section. The capital  
18 projects advisory review board may establish processes, forms,  
19 guidelines, and deadlines for submitting and reviewing applications  
20 to promote fairness and avoid unnecessary expense. The capital  
21 projects advisory review board may additionally impose reporting  
22 requirements regarding project performance and propose to the  
23 legislature modifications to improve the procurement and  
24 implementation of public-private agreements.

25 **Sec. 10.** RCW 39.10.230 and 2013 c 222 s 3 are each amended to  
26 read as follows:

27 The board has the following powers and duties:

28 (1) Develop and recommend to the legislature policies to further  
29 enhance the quality, efficiency, and accountability of capital  
30 construction projects through the use of traditional and alternative  
31 delivery methods in Washington, and make recommendations regarding  
32 expansion, continuation, elimination, or modification of the  
33 alternative public works contracting methods;

34 (2) Evaluate the use of existing contracting procedures and the  
35 potential future use of other alternative contracting procedures  
36 including competitive negotiation contracts;

37 (3) Submit recommendations to the appropriate committees of the  
38 legislature evaluating alternative contracting procedures that are  
39 not authorized under this chapter;

1 (4) Appoint members of committees and approve or disapprove  
2 applications to utilize the public-private agreement procurement  
3 method pursuant to section 9 of this act; and

4 (5) Develop and administer questionnaires designed to provide  
5 quantitative and qualitative data on alternative public works  
6 contracting procedures on which evaluations are based.

7 The capital projects advisory review board is directed to review  
8 current statutes regarding life-cycle cost analysis and energy  
9 efficiency as related to the design-build procurement method  
10 performed under this chapter (~~(39.10-RCW)~~). Capital projects advisory  
11 review board shall report to the appropriate committees of the  
12 legislature by December 31, 2013, with recommendations for statutory  
13 changes that promote energy efficiency and reduce the total cost to  
14 construct, operate, and maintain public buildings. Recommendation  
15 must include provisions for postoccupancy validation of estimated  
16 energy efficiency measures, and operating and maintenance cost  
17 estimates. Life-cycle estimates of energy use must include estimates  
18 of energy consumptions for materials used in construction.

19 **Sec. 11.** RCW 43.131.408 and 2017 c 211 s 2 and 2017 c 136 s 2  
20 are each reenacted and amended to read as follows:

21 The following acts or parts of acts, as now existing or hereafter  
22 amended, are each repealed, effective June 30, 2022:

23 (1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, &  
24 1994 c 132 s 1;

25 (2) RCW 39.10.210 and 2014 c 42 s 1 & 2013 c 222 s 1;

26 (3) RCW 39.10.220 and 2013 c 222 s 2, 2007 c 494 s 102, & 2005 c  
27 377 s 1;

28 (4) RCW 39.10.230 and 2018 c . . . s 10 (section 10 of this act),  
29 2013 c 222 s 3, 2010 1st sp.s. c 21 s 3, 2009 c 75 s 1, 2007 c 494 s  
30 103, & 2005 c 377 s 2;

31 (5) RCW 39.10.240 and 2013 c 222 s 4 & 2007 c 494 s 104;

32 (6) RCW 39.10.250 and 2013 c 222 s 5, 2009 c 75 s 2, & 2007 c 494  
33 s 105;

34 (7) RCW 39.10.260 and 2013 c 222 s 6 & 2007 c 494 s 106;

35 (8) RCW 39.10.270 and 2017 c 211 s 1, 2013 c 222 s 7, 2009 c 75 s  
36 3, & 2007 c 494 s 107;

37 (9) RCW 39.10.280 and 2014 c 42 s 2, 2013 c 222 s 8, & 2007 c 494  
38 s 108;

39 (10) RCW 39.10.290 and 2007 c 494 s 109;

- 1 (11) RCW 39.10.300 and 2013 c 222 s 9, 2009 c 75 s 4, & 2007 c  
2 494 s 201;
- 3 (12) RCW 39.10.320 and 2013 c 222 s 10, 2007 c 494 s 203, & 1994  
4 c 132 s 7;
- 5 (13) RCW 39.10.330 and 2014 c 19 s 1, 2013 c 222 s 11, 2009 c 75  
6 s 5, & 2007 c 494 s 204;
- 7 (14) RCW 39.10.340 and 2014 c 42 s 3, 2013 c 222 s 12, & 2007 c  
8 494 s 301;
- 9 (15) RCW 39.10.350 and 2014 c 42 s 4 & 2007 c 494 s 302;
- 10 (16) RCW 39.10.360 and 2014 c 42 s 5, 2013 c 222 s 13, 2009 c 75  
11 s 6, & 2007 c 494 s 303;
- 12 (17) RCW 39.10.370 and 2014 c 42 s 6 & 2007 c 494 s 304;
- 13 (18) RCW 39.10.380 and 2013 c 222 s 14 & 2007 c 494 s 305;
- 14 (19) RCW 39.10.385 and 2013 c 222 s 15 & 2010 c 163 s 1;
- 15 (20) RCW 39.10.390 and 2014 c 42 s 7, 2013 c 222 s 16, & 2007 c  
16 494 s 306;
- 17 (21) RCW 39.10.400 and 2013 c 222 s 17 & 2007 c 494 s 307;
- 18 (22) RCW 39.10.410 and 2007 c 494 s 308;
- 19 (23) RCW 39.10.420 and 2017 c 136 s 1 & 2016 c 52 s 1;
- 20 (24) RCW 39.10.430 and 2007 c 494 s 402;
- 21 (25) RCW 39.10.440 and 2015 c 173 s 1, 2013 c 222 s 19, & 2007 c  
22 494 s 403;
- 23 (26) RCW 39.10.450 and 2012 c 102 s 2 & 2007 c 494 s 404;
- 24 (27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;
- 25 (28) RCW 39.10.470 and 2014 c 19 s 2, 2005 c 274 s 275, & 1994 c  
26 132 s 10;
- 27 (29) RCW 39.10.480 and 1994 c 132 s 9;
- 28 (30) RCW 39.10.490 and 2013 c 222 s 20, 2007 c 494 s 501, & 2001  
29 c 328 s 5;
- 30 (31) RCW 39.10.900 and 1994 c 132 s 13;
- 31 (32) RCW 39.10.901 and 1994 c 132 s 14;
- 32 (33) RCW 39.10.903 and 2007 c 494 s 510;
- 33 (34) RCW 39.10.904 and 2007 c 494 s 512; and
- 34 (35) RCW 39.10.905 and 2007 c 494 s 513.

35 NEW SECTION. **Sec. 12.** Except for sections 10 and 11 of this  
36 act, this act expires four years after the effective date of this  
37 section.

1        NEW SECTION.    **Sec. 13.**    Sections 1 through 9 of this act  
2    constitute a new chapter in Title 39 RCW.

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