
SENATE BILL 5862

State of Washington 64th Legislature 2015 Regular Session

By Senators Fain, Ericksen, Baumgartner, and Angel

Read first time 02/06/15. Referred to Committee on Transportation.

1 AN ACT Relating to public-private partnerships for state
2 transportation projects and programs; amending RCW 84.36.010,
3 84.36.010, 47.56.030, 47.56.031, and 70.94.528; reenacting and
4 amending RCW 82.29A.130; adding new sections to chapter 47.29 RCW;
5 adding a new section to chapter 84.36 RCW; recodifying RCW 47.29.230;
6 repealing RCW 47.29.010, 47.29.020, 47.29.030, 47.29.040, 47.29.050,
7 47.29.060, 47.29.070, 47.29.080, 47.29.090, 47.29.100, 47.29.110,
8 47.29.120, 47.29.130, 47.29.140, 47.29.150, 47.29.160, 47.29.170,
9 47.29.180, 47.29.190, 47.29.200, 47.29.210, 47.29.220, 47.29.240,
10 47.29.250, 47.29.260, 47.29.270, 47.29.280, 47.29.290, and 47.29.900;
11 providing effective dates; and providing an expiration date.

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

13 NEW SECTION. **Sec. 1.** LEGISLATIVE INTENT. The legislature finds
14 that the public-private transportation initiatives act created under
15 chapter 47.46 RCW has not met the needs and expectations of the
16 public or private sectors for the development of transportation
17 projects. The legislature intends to phase out chapter 47.46 RCW
18 coincident with the completion of the Tacoma Narrows bridge - SR 16
19 public-private partnership. This chapter will provide a more
20 desirable and effective approach to developing transportation
21 projects in partnership with the private sector by applying lessons

1 learned from other states and from this state's prior experience with
2 chapter 47.46 RCW.

3 The legislature finds and declares the following:

4 (1) It is important for the economic, social, and environmental
5 well-being of the state that the people of the state have sufficient
6 quality public infrastructure.

7 (2) The ability of the state to provide sufficient quality public
8 infrastructure will be enhanced by a program providing for private
9 entities to undertake all or a portion of the study, planning,
10 design, development, financing, acquisition, installation,
11 construction, reconstruction, improvement, operation, or maintenance
12 of public infrastructure facilities, including facilities related to
13 transportation, and appurtenances to such facilities.

14 (3) Public-private partnerships provide the public sector with
15 increased access to project opportunities and private sector
16 expertise by:

17 (a) Facilitating the collaboration and cost and risk sharing in
18 public infrastructure projects between public and private partners;

19 (b) Bringing innovative thinking from the private sector to bear
20 on public infrastructure needs within the state;

21 (c) Reducing the public cost of project delivery and services for
22 eligible facilities;

23 (d) Expediting project delivery;

24 (e) Encouraging life-cycle efficiencies in public infrastructure
25 projects;

26 (f) Fostering flexibility in procurement methods to provide the
27 best value to the public; and

28 (g) Providing better use and leverage of public resources,
29 increasing private investment in public infrastructure facilities,
30 enhancing capital formation for large projects, and providing savings
31 to taxpayers.

32 (4) It is in the best interest of the state to create an office
33 to provide a process for, and to promote fairness, transparency, and
34 efficiency in, the procurement of infrastructure assets through
35 public-private partnership methods.

36 (5) As an initial demonstration of these methods and the benefits
37 to be achieved, the department should be permitted to deliver a
38 limited number of projects through the use of this public-private
39 partnership act, to be evaluated through a five-year pilot program.

1 NEW SECTION. **Sec. 2.** POLICY GOALS. (1) To ensure that the
2 intent of the legislature is carried out in the implementation of
3 this chapter, the legislature establishes the following policy goals:

4 (a) The state should maintain ultimate control or ownership of
5 assets, or both, involved in a public-private partnership project;

6 (b) An objective comparison should be conducted for any proposed
7 public-private partnership project, and the comparison must
8 demonstrate positive value for the public sector before the state may
9 enter into a public-private partnership contract;

10 (c) Payments generated from public-private partnership projects
11 to the state by the private partner must be used only for
12 transportation purposes;

13 (d) The long-term quality of service to be delivered in a public-
14 private partnership project must be ensured through stringent
15 contract provisions and ongoing oversight;

16 (e) Public-private partnership toll projects should conform to
17 the state's toll-setting policies, and changes to toll rates must be
18 subject to and controlled by contractual limits placed upon the
19 private sector;

20 (f) Public-private partnership projects must be consistent with
21 state laws governing public works projects including, but not limited
22 to, apprenticeship requirements, prevailing wage requirements, and
23 minority and women-owned business requirements;

24 (g) Through revenue sharing, refinancing provisions, restrictions
25 on withdrawal of equity, and other contractual provisions, the state
26 must safeguard against private partners realizing excessive returns;

27 (h) Through contractual provisions, the state must ensure that
28 the private partner selected will be solvent and able to deliver the
29 contracted project and services over the duration of the agreement;

30 (i) The state must maintain the ability to terminate the public-
31 private partnership contract, or project agreement, if the private
32 partner is not able to deliver according to the performance
33 specifications of the contract;

34 (j) In any agreement with a private partner, the public-private
35 partnership contract should clearly specify the condition or state of
36 repair that the asset must be in at the conclusion of the contract
37 term.

38 (2) Interpretations of the provisions contained in this chapter,
39 the administration of a public-private partnership program, the

1 oversight and delivery of projects, and the execution and enforcement
2 of contracts must be carried out consistent with these policy goals.

3 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
4 section apply throughout this chapter unless the context clearly
5 requires otherwise.

6 (1) "Affected jurisdiction" means any county, city, or town or
7 municipal corporation, or other unit of government within the state
8 in which all or part of a transportation facility is located or any
9 other public entity directly affected by the transportation facility.

10 (2) "Department" means the department of transportation.

11 (3) "Force majeure" means an uncontrollable force or natural
12 disaster not within the power of the operator or the state.

13 (4) "Maintenance" includes ordinary maintenance, repair,
14 rehabilitation, capital maintenance, maintenance replacement,
15 preservation, and any other categories of maintenance that may be
16 designated by the department.

17 (5) "Material default" means any failure of an operator to
18 perform any duties under a public-private agreement, which
19 jeopardizes delivery of adequate service to the public and remains
20 unsatisfied after a reasonable period of time and after the operator
21 has received written notice from the department of the failure.

22 (6) "Operate" means any action to maintain, rehabilitate,
23 improve, equip, or modify a transportation facility.

24 (7) "Operator" means a private entity that has entered into a
25 public-private agreement under this chapter.

26 (8) "Private entity" means any natural person, corporation,
27 general partnership, limited liability company, limited partnership,
28 joint venture, business trust, public benefit corporation, nonprofit
29 entity, or other business entity.

30 (9) "Public-private agreement" means the agreement between a
31 private entity and the department that relates to the development,
32 financing, maintenance, or operation of a transportation facility
33 subject to this chapter.

34 (10) "Public-private partnership" means an arrangement between
35 the department and one or more private entities, the terms of which
36 are stated in a public-private agreement, that provides for:

37 (a) Acceptance of a private contribution, including a money
38 payment, for a project or service for a transportation facility;

1 (b) Sharing of resources and the means of providing a project or
2 service for a transportation facility;

3 (c) Cooperation in researching, developing, and implementing
4 projects or services for a transportation facility.

5 (11) "Transportation facility" means any, including new and
6 existing, highway, road, bridge, tunnel, overpass, ferry, airport,
7 public transportation facility, vehicle parking facility, seaport
8 facility, rail facility, intermodal facility, or similar facility
9 open to the public and used for the transportation of persons or
10 goods, and any building, structure, parking area, appurtenances, or
11 other property needed to operate such facility that is subject to a
12 public-private agreement.

13 (12) "User fee" means the rate, toll, fee, or other charge
14 imposed by an operator for use of all or part of a transportation
15 facility.

16 NEW SECTION. **Sec. 4.** OFFICE OF TRANSPORTATION PARTNERSHIPS
17 WASHINGTON. (1) The office of transportation partnerships Washington
18 is established as an independent entity within the department to have
19 and exercise the powers and duties provided in this chapter in
20 addition to the general powers and duties conferred upon the
21 department under this title.

22 (2) The office is responsible for general administration of the
23 operations of the transportation partnerships Washington executive
24 board created in section 5 of this act, and must utilize the staff of
25 the office to carry out those functions. In addition to the duties as
26 required by the secretary of transportation, the office must also
27 perform those duties that are specified in the resolutions of the
28 transportation partnerships Washington executive board.

29 (3) The office is conferred, must hold, and may exercise all
30 rights and powers as necessary or convenient to meet its purposes
31 including, but not limited to, the following:

32 (a) To adopt, amend, and repeal guidelines for the management of
33 its affairs, as well as standards as necessary or pertinent to carry
34 out and discharge its functions, powers, and duties;

35 (b) To assess the nature and need of all its expenses and the
36 manner in which these are to be incurred, authorized, and paid for;

37 (c) To procure, contract, negotiate, and execute with any person
38 any kind of contract, instrument, and agreement as necessary and
39 convenient to exercise the powers and discharge the functions and

1 responsibilities conferred onto the office under this chapter,
2 including contracts for financial, legal, technical, and other
3 consulting services;

4 (d) To establish and update from time to time priorities in the
5 evaluation and development of eligible projects, in furtherance of
6 the legislative intent of this chapter, with due regard to the
7 limited resources available to the office and taking into account
8 project readiness for procurement;

9 (e) To work in cooperation with other department divisions to
10 identify and analyze project opportunities throughout the state that
11 could benefit from public-private partnership methods and that should
12 be considered to be added as an eligible project;

13 (f) To promote and conduct studies, research, analyses, and
14 investigations in furtherance of the purposes of this chapter
15 including, but not limited to, research of domestic and international
16 projects that have employed public-private partnership methods and
17 identification and evaluation of lessons learned from those projects;

18 (g) To serve as a clearinghouse for information on best practices
19 for public-private partnership methods;

20 (h) In order to reduce transaction costs, increase efficiency,
21 and promote consistency among public-private partnership methods, to
22 establish a consistent framework for operations, including
23 standardizing procedures, procurement documents, and contracts,
24 taking into account differences among sectors, projects, procurement
25 approaches, contract types, sources of public funding, applicable
26 state law, and other relevant factors;

27 (i) To establish conflict of interest policies that are
28 consistent with the goals and provisions of this chapter, which must
29 be binding on eligible public entities and any advisors or staff
30 conducting the procurement of a developer for an eligible project, to
31 govern the circumstances under which private firms and individuals
32 may or may not participate in the project before, during, or after
33 the delivery of the project;

34 (j) To take all actions or measures as necessary or convenient to
35 discharge the powers conferred under this chapter or otherwise;

36 (k) To report, in coordination with the department, to the
37 legislature every two years on the activities of the office and the
38 progress of eligible projects toward implementation; and

39 (l) To implement other powers and duties by rule and otherwise as
40 prescribed by law.

1 (4) In addition to its general powers set forth in subsection (3)
2 of this section, the office may:

3 (a) In collaboration with appropriate divisions within the
4 department, gather and update from time to time data specific to the
5 eligible projects sufficient to be able to delineate the activities
6 needing to be either performed or completed, or both, before such
7 eligible projects may be either procured or financed, or both, the
8 schedule on which such activities will occur, the resources such
9 eligible projects need to reach procurement readiness, opportunities
10 to accelerate procurement readiness, and the funding currently
11 available to provide those resources;

12 (b) Request technical, expert, financial, and human resource
13 assistance as the office may deem convenient or necessary directly
14 from any participating public entity in connection with the
15 evaluation of an eligible project, the implementation of the
16 procurement of the project, and the execution of agreements with
17 respect to the project;

18 (c) Conduct, commission, and pay for studies, analyses, and
19 reports as the office may deem convenient or necessary to carry out
20 its duties;

21 (d) Determine whether it is in the best interest of the state for
22 an eligible project to be the subject of public-private partnerships
23 through an analysis and determination of whether sufficient public
24 value can be attained from a proposed public-private partnership,
25 when compared against other available public sector financing and
26 delivery options;

27 (e) Prepare and assist in negotiations of a procurement and
28 contract, including requests for qualifications, requests for
29 proposals and public-private partnership contracts, needed to carry
30 out a partnership for an eligible project with respect to which it
31 has made a best interest of the state determination;

32 (f) Seek revisions to proposals or best and final offers from two
33 or more offerors and to use such revisions or best and final offers
34 when deciding which offerors' proposal offers the best value to the
35 state; or

36 (g) Charge fees, and obtain reimbursement, for services it
37 renders under this chapter, including fees from the department and
38 other public entities, whether in the form of application fees,
39 transaction fees, or periodic service fees, the details of which must
40 be set forth in an agreement between the office and the participating

1 public entity, and charge fees from offerors for their participation
2 in either any qualification or award procedure, or both, which must
3 be placed in a revolving fund, available for office expenditure for
4 purposes of this chapter without appropriation.

5 (5) The office may establish from time to time committees as it
6 deems desirable in order to meet its purpose, including internal
7 oversight or advisory boards to provide guidance and direction to the
8 office in the discharge of its duties.

9 NEW SECTION. **Sec. 5.** TRANSPORTATION PARTNERSHIPS WASHINGTON
10 EXECUTIVE BOARD. (1) The transportation partnerships Washington
11 executive board is established to oversee the affairs of the office
12 of transportation partnerships Washington in procuring public-private
13 partnership projects.

14 (2)(a) The executive board must be comprised of nine members to
15 be appointed as follows:

16 (i) Four ex officio, nonvoting legislators to include the chairs
17 of the house of representatives and senate transportation committees
18 and the ranking members of the house of representatives and senate
19 transportation committees;

20 (ii) A representative of the office of financial management,
21 appointed by the governor;

22 (iii) A representative of the office of the state treasurer,
23 appointed by the state treasurer;

24 (iv) The chair of the transportation commission;

25 (v) The secretary of transportation; and

26 (vi) An appointee of the governor to serve as chair of the
27 executive board.

28 (b) If any vacancy occurs among the members, the vacancy must be
29 filled by using the same appointment procedure established in this
30 section.

31 (c) A member may not delegate any of his or her duties or
32 functions to any other person. Any member who is an officer or
33 employee of the state, of any political subdivision of the state, of
34 any governmental entity operating any public school or college, or of
35 any other public agency or instrumentality or unit of government that
36 exercises governmental powers under the laws of the state may not
37 forfeit such office or employment by reason of acceptance or
38 appointment as a member or representative of the executive board, and
39 such service as an executive board member or representative of the

1 board is not deemed incompatible or in conflict with such office or
2 employment.

3 (3) Executive board members may not receive remuneration for
4 their services as members, but may be reimbursed for their travel
5 expenses incurred in the performance of their duties.

6 (4) Executive board members may not, during and for six months
7 following their tenure:

8 (a) Attempt to benefit financially from any of the work discussed
9 by the board, through direct or indirect involvement on an offeror
10 team or through consultation with other firms that are seeking to be
11 offerors or members of an offeror team; or

12 (b) Share any of the information discussed with anyone who could
13 potentially be an offeror.

14 (5) A majority of executive board members then in office
15 constitutes a quorum at meetings of the board.

16 (6) The affirmative votes of the majority of the executive board
17 members present at a meeting of the board at which a quorum is
18 present are sufficient to pass a resolution of the board.

19 NEW SECTION. **Sec. 6.** SOLICITED PROPOSALS. (1) This chapter does
20 not apply to solicited proposals developed pursuant to Title 39 RCW.

21 (2) The department may solicit, receive, consider, evaluate, and
22 accept a proposal for a public-private partnership.

23 (3) In soliciting and selecting a private entity with which to
24 enter into a public-private partnership, the department may utilize
25 one or more of the following procurement approaches:

26 (a) Sealed bidding;

27 (b) Selection of proposals, with or without negotiations, based
28 on qualifications or best value, or both; or

29 (c) Any competitive selection process that the department
30 determines to be appropriate or reasonable.

31 (4) The department may consider the following factors in
32 evaluating and selecting a bid or proposal to enter into a public-
33 private partnership:

34 (a) The ability of the transportation facility to improve safety,
35 reduce congestion, increase capacity, and promote economic growth;

36 (b) The proposed cost of and financial plan for the
37 transportation facility;

38 (c) The general reputation, qualifications, industry experience,
39 and financial capacity of the private entity;

1 (d) The proposed design, operation, and feasibility of the
2 transportation facility;

3 (e) Comments from local citizens and affected jurisdictions;

4 (f) Benefits to the public;

5 (g) The safety record of the private entity; and

6 (h) Other criteria that the department deems appropriate.

7 (5) The department may select multiple private entities with
8 which to enter a public-private agreement for a transportation
9 facility if it is in the public interest to do so.

10 (6) The department must select a private entity or entities for a
11 public-private partnership on a competitive basis to the maximum
12 extent practicable.

13 (7)(a) Prior to submission of a solicited proposal, a private
14 entity may request a review by the department, with assistance from
15 the state attorney general, to determine whether information that the
16 private entity has identified as confidential or proprietary is
17 subject to disclosure under chapter 42.56 RCW.

18 (b) The department must take appropriate action to protect
19 confidential or proprietary information that a private entity
20 provides as part of a solicited proposal and that is exempt from
21 disclosure under chapter 42.56 RCW.

22 NEW SECTION. **Sec. 7.** PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS.

23 (1)(a) After selecting a proposal for a public-private partnership,
24 the department shall enter into a public-private agreement for a
25 transportation facility with the selected private entity or any
26 configuration of private entities.

27 (b) An affected jurisdiction may be a party to a public-private
28 agreement entered into by the department and a selected private
29 entity or combination of private entities.

30 (2) A public-private agreement under this chapter must provide
31 for the following:

32 (a) Delineated responsibilities for the planning, acquisition,
33 financing, development, design, construction, reconstruction,
34 replacement, improvement, maintenance, management, repair, leasing,
35 or operation of a transportation facility;

36 (b) The term of the public-private agreement;

37 (c) The type of property interest, if any, the private entity
38 will have in the transportation facility;

1 (d) A description of the actions the department may take to
2 ensure proper maintenance of the transportation facility;

3 (e) Whether user fees or other revenues will be collected on the
4 transportation facility and the basis by which such user fees will be
5 determined and modified;

6 (f) Compliance with applicable federal, state, and local laws;

7 (g) Grounds for termination of the public-private agreement by
8 the department or operator; and

9 (h) Procedures for amendment of the public-private agreement.

10 (3) A public-private agreement under this chapter may provide for
11 the following:

12 (a) Review and approval by the department of the operator's plans
13 for the development and operation of the transportation facility;

14 (b) Inspection by the department of construction of or
15 improvements to the transportation facility;

16 (c) Maintenance by the operator of a policy of liability
17 insurance or self-insurance;

18 (d) Filing by the operator, on a periodic basis, of appropriate
19 financial statements in a form acceptable to the department;

20 (e) Filing by the operator, on a periodic basis, of traffic
21 reports in a form acceptable to the department;

22 (f) Financing obligations of the operator and the department;

23 (g) Apportionment of expenses between the operator and the
24 department;

25 (h) The rights and duties of the operator, the department, and
26 other state and local governmental entities with respect to use of
27 the transportation facility;

28 (i) The rights and remedies available in the event of default or
29 delay;

30 (j) The terms and conditions of indemnification of the operator
31 by the department;

32 (k) Assignment, subcontracting, or other delegation of
33 responsibilities of the operator or the department under the
34 agreement to third parties, including other private entities and
35 other state agencies;

36 (l) Sale or lease to the operator of private property related to
37 the transportation facility;

38 (m) Traffic enforcement and other policing issues, subject to
39 section 13 of this act, including any reimbursement by the private
40 entity for such services; or

1 (n) Other terms and conditions.

2 NEW SECTION. **Sec. 8.** REVERSION OF TRANSPORTATION FACILITY TO
3 THE DEPARTMENT. In the event of termination of the public-private
4 agreement, the authority and duties of the operator cease, except for
5 any duties and obligations that extend beyond the termination as
6 provided in the public-private agreement, and the transportation
7 facility reverts to the department and is dedicated to the department
8 for public use.

9 NEW SECTION. **Sec. 9.** MATERIAL DEFAULT—REMEDIES. (1) Upon the
10 occurrence and during the continuation of material default by an
11 operator, not related to an event of force majeure, the department
12 may:

13 (a) Elect to take over the transportation facility, including the
14 succession of all rights, title, and interest in the transportation
15 facility, subject to any liens on revenues previously granted by the
16 private entity; and

17 (b) Terminate the public-private agreement and exercise any other
18 rights and remedies that may be available.

19 (2) If the department elects to take over a transportation
20 facility under subsection (1)(a) of this section, the department:

21 (a) Shall collect and pay any revenues that are subject to lien
22 to satisfy any obligation;

23 (b) May develop and operate the transportation facility, impose
24 user fees and collect revenues for the use of the transportation
25 facility, and comply with any service contracts;

26 (c) May solicit proposals for the maintenance and operation of
27 the transportation facility under section 6 of this act.

28 NEW SECTION. **Sec. 10.** PUBLIC FINANCING. (1) The department may
29 request issuance for the sale of bonds, notes, or similar instruments
30 of the state for the purpose of providing funds to carry out the
31 provisions of this chapter with respect to the development,
32 financing, or operation of a transportation facility or the refunding
33 of any bonds or notes, together with any costs associated with the
34 transaction.

35 (2)(a) For the purpose of financing a transportation facility,
36 the department and operator may apply for, obtain, issue, and use
37 private activity bonds available under any federal law or program.

1 (b) Any bonds, debt, other securities, or other financing issued
2 for the purpose of this chapter may not be considered to be a debt of
3 the state or any political subdivision of the state or a pledge of
4 the full faith and credit of the state or any political subdivision
5 of the state.

6 (3) This section does not limit a local government or any
7 authority of the state to issue bonds for transportation projects.

8 NEW SECTION. **Sec. 11.** FUNDING FROM FEDERAL GOVERNMENT OR OTHER
9 SOURCES. (1)(a) The department may accept from the United States, or
10 any of its agencies, funds that are available to the state for
11 carrying out this chapter, whether the funds are made available by
12 grant, loan, or other financial assistance.

13 (b) The state assents to any federal requirements, conditions, or
14 terms of any federal funding accepted by the department under this
15 section.

16 (c) The department may enter into agreements or other
17 arrangements with the United States or any of its agencies as may be
18 necessary for carrying out the purposes of this chapter.

19 (2) The department may accept from any source any grant,
20 donation, gift, or other form of conveyance of land, money, other
21 real or personal property, or other item of value made to the state
22 or the department for carrying out the purpose of this chapter.

23 (3) Any transportation facility may be financed in whole or in
24 part by contribution of any funds or property made by any private
25 entity or affected jurisdiction that is party to a public-private
26 agreement under this chapter.

27 (4) The department may combine federal, state, local, and private
28 funds to finance a transportation facility under this chapter.

29 NEW SECTION. **Sec. 12.** EMINENT DOMAIN. The department may
30 exercise the power of eminent domain to acquire property, rights-of-
31 way, or other rights in property for transportation projects that are
32 part of a public-private partnership.

33 NEW SECTION. **Sec. 13.** POLICE POWERS—VIOLATIONS OF LAW. (1) All
34 law enforcement officers of the state and of an affected local
35 jurisdiction have the same powers and jurisdiction within the limits
36 of the transportation facility as they have in their respective areas

1 of jurisdiction and access to the transportation facility at any time
2 for the purpose of exercising such powers and jurisdiction.

3 (2) The traffic and motor vehicle laws of the state or, if
4 applicable, any affected local jurisdiction are the same on the
5 transportation facility as those laws applied to conduct on similar
6 transportation facilities in the state or local jurisdiction.

7 (3) Punishment for violations of traffic and motor vehicle laws
8 of the state or, if applicable, any affected local jurisdiction on
9 the transportation facility are as prescribed by law for conduct
10 occurring on similar transportation facilities in the state or local
11 jurisdiction.

12 NEW SECTION. **Sec. 14.** UTILITY CROSSINGS. An operator under this
13 chapter and any utility whose facility is to be crossed or relocated
14 must cooperate fully in planning and arranging the manner of the
15 crossing or relocation of the utility facility.

16 NEW SECTION. **Sec. 15.** SOVEREIGN IMMUNITY. This chapter may not
17 be construed or deemed to limit any waiver of the sovereign immunity
18 of the state or any officer or employee of the state with respect to
19 the participation in or approval of any part of the transportation
20 facility or its operation.

21 NEW SECTION. **Sec. 16.** ADMINISTRATIVE RULES. The department may
22 adopt rules to carry out this chapter.

23 NEW SECTION. **Sec. 17.** ADDITIONAL POWERS. The legislature
24 intends that the powers granted to the department in this chapter are
25 in addition to any other powers authorized under applicable law.

26 **Sec. 18.** RCW 84.36.010 and 2014 c 207 s 5 are each amended to
27 read as follows:

28 (1) All property belonging exclusively to the United States, the
29 state, or any county or municipal corporation; all property belonging
30 exclusively to any federally recognized Indian tribe, if (a) the
31 tribe is located in the state, and (b) the property is used
32 exclusively for essential government services; all state route number
33 16 corridor transportation systems and facilities constructed under
34 chapter 47.46 RCW; all property used for transportation purposes
35 subject to an agreement pursuant to chapter 47.29 RCW; all property

1 under a financing contract pursuant to chapter 39.94 RCW or recorded
2 agreement granting immediate possession and use to the public bodies
3 listed in this section or under an order of immediate possession and
4 use pursuant to RCW 8.04.090; and, for a period of forty years from
5 acquisition, all property of a community center; is exempt from
6 taxation. All property belonging exclusively to a foreign national
7 government is exempt from taxation if that property is used
8 exclusively as an office or residence for a consul or other official
9 representative of the foreign national government, and if the consul
10 or other official representative is a citizen of that foreign nation.

11 (2) Property owned by a federally recognized Indian tribe, which
12 is used for economic development purposes, may only qualify for the
13 exemption from taxes in this section if the property was owned by the
14 tribe prior to March 1, 2014.

15 (3) For the purposes of this section the following definitions
16 apply unless the context clearly requires otherwise.

17 (a) "Community center" means property, including a building or
18 buildings, determined to be surplus to the needs of a district by a
19 local school board, and purchased or acquired by a nonprofit
20 organization for the purposes of converting them into community
21 facilities for the delivery of nonresidential coordinated services
22 for community members. The community center may make space available
23 to businesses, individuals, or other parties through the loan or
24 rental of space in or on the property.

25 (b) "Essential government services" means services such as tribal
26 administration, public facilities, fire, police, public health,
27 education, sewer, water, environmental and land use, transportation,
28 utility services, and economic development.

29 (c) "Economic development" means commercial activities, including
30 those that facilitate the creation or retention of businesses or
31 jobs, or that improve the standard of living or economic health of
32 tribal communities.

33 **Sec. 19.** RCW 84.36.010 and 2010 c 281 s 1 are each amended to
34 read as follows:

35 (1) All property belonging exclusively to the United States, the
36 state, or any county or municipal corporation; all property belonging
37 exclusively to any federally recognized Indian tribe located in the
38 state, if that property is used exclusively for essential government
39 services; all state route number 16 corridor transportation systems

1 and facilities constructed under chapter 47.46 RCW; all property used
2 for transportation purposes subject to an agreement pursuant to
3 chapter 47.29 RCW; all property under a financing contract pursuant
4 to chapter 39.94 RCW or recorded agreement granting immediate
5 possession and use to the public bodies listed in this section or
6 under an order of immediate possession and use pursuant to RCW
7 8.04.090; and, for a period of forty years from acquisition, all
8 property of a community center; is exempt from taxation. All property
9 belonging exclusively to a foreign national government is exempt from
10 taxation if that property is used exclusively as an office or
11 residence for a consul or other official representative of the
12 foreign national government, and if the consul or other official
13 representative is a citizen of that foreign nation.

14 (2) For the purposes of this section the following definitions
15 apply unless the context clearly requires otherwise.

16 (a) "Community center" means property, including a building or
17 buildings, determined to be surplus to the needs of a district by a
18 local school board, and purchased or acquired by a nonprofit
19 organization for the purposes of converting them into community
20 facilities for the delivery of nonresidential coordinated services
21 for community members. The community center may make space available
22 to businesses, individuals, or other parties through the loan or
23 rental of space in or on the property.

24 (b) "Essential government services" means services such as tribal
25 administration, public facilities, fire, police, public health,
26 education, sewer, water, environmental and land use, transportation,
27 and utility services.

28 NEW SECTION. **Sec. 20.** A new section is added to chapter 84.36
29 RCW to read as follows:

30 All personal property used for the operation and maintenance of a
31 transportation facility pursuant to an agreement under chapter 47.29
32 RCW is exempt from taxation.

33 **Sec. 21.** RCW 82.29A.130 and 2008 c 194 s 1 and 2008 c 84 s 2 are
34 each reenacted and amended to read as follows:

35 The following leasehold interests shall be exempt from taxes
36 imposed pursuant to RCW 82.29A.030 and 82.29A.040:

1 (1) All leasehold interests constituting a part of the operating
2 properties of any public utility which is assessed and taxed as a
3 public utility pursuant to chapter 84.12 RCW.

4 (2) All leasehold interests in facilities owned or used by a
5 school, college or university which leasehold provides housing for
6 students and which is otherwise exempt from taxation under provisions
7 of RCW 84.36.010 and 84.36.050.

8 (3) All leasehold interests of subsidized housing where the fee
9 ownership of such property is vested in the government of the United
10 States, or the state of Washington or any political subdivision
11 thereof but only if income qualification exists for such housing.

12 (4) All leasehold interests used for fair purposes of a nonprofit
13 fair association that sponsors or conducts a fair or fairs which
14 receive support from revenues collected pursuant to RCW 67.16.100 and
15 allocated by the director of the department of agriculture where the
16 fee ownership of such property is vested in the government of the
17 United States, the state of Washington or any of its political
18 subdivisions: PROVIDED, That this exemption shall not apply to the
19 leasehold interest of any sublessee of such nonprofit fair
20 association if such leasehold interest would be taxable if it were
21 the primary lease.

22 (5) All leasehold interests in any property of any public entity
23 used as a residence by an employee of that public entity who is
24 required as a condition of employment to live in the publicly owned
25 property.

26 (6) All leasehold interests held by enrolled Indians of lands
27 owned or held by any Indian or Indian tribe where the fee ownership
28 of such property is vested in or held in trust by the United States
29 and which are not subleased to other than to a lessee which would
30 qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

31 (7) All leasehold interests in any real property of any Indian or
32 Indian tribe, band, or community that is held in trust by the United
33 States or is subject to a restriction against alienation imposed by
34 the United States: PROVIDED, That this exemption shall apply only
35 where it is determined that contract rent paid is greater than or
36 equal to ninety percent of fair market rental, to be determined by
37 the department of revenue using the same criteria used to establish
38 taxable rent in RCW 82.29A.020(2)((~~b~~)) (g).

39 (8) All leasehold interests for which annual taxable rent is less
40 than two hundred fifty dollars per year. For purposes of this

1 subsection leasehold interests held by the same lessee in contiguous
2 properties owned by the same lessor shall be deemed a single
3 leasehold interest.

4 (9) All leasehold interests which give use or possession of the
5 leased property for a continuous period of less than thirty days:
6 PROVIDED, That for purposes of this subsection, successive leases or
7 lease renewals giving substantially continuous use of possession of
8 the same property to the same lessee shall be deemed a single
9 leasehold interest: PROVIDED FURTHER, That no leasehold interest
10 shall be deemed to give use or possession for a period of less than
11 thirty days solely by virtue of the reservation by the public lessor
12 of the right to use the property or to allow third parties to use the
13 property on an occasional, temporary basis.

14 (10) All leasehold interests under month-to-month leases in
15 residential units rented for residential purposes of the lessee
16 pending destruction or removal for the purpose of constructing a
17 public highway or building.

18 (11) All leasehold interests in any publicly owned real or
19 personal property to the extent such leasehold interests arises
20 solely by virtue of a contract for public improvements or work
21 executed under the public works statutes of this state or of the
22 United States between the public owner of the property and a
23 contractor.

24 (12) All leasehold interests that give use or possession of state
25 adult correctional facilities for the purposes of operating
26 correctional industries under RCW 72.09.100.

27 (13) All leasehold interests used to provide organized and
28 supervised recreational activities for persons with disabilities of
29 all ages in a camp facility and for public recreational purposes by a
30 nonprofit organization, association, or corporation that would be
31 exempt from property tax under RCW 84.36.030(1) if it owned the
32 property. If the publicly owned property is used for any taxable
33 purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and
34 82.29A.040 shall be imposed and shall be apportioned accordingly.

35 (14) All leasehold interests in the public or entertainment areas
36 of a baseball stadium with natural turf and a retractable roof or
37 canopy that is in a county with a population of over one million,
38 that has a seating capacity of over forty thousand, and that is
39 constructed on or after January 1, 1995. "Public or entertainment
40 areas" include ticket sales areas, ramps and stairs, lobbies and

1 concourses, parking areas, concession areas, restaurants, hospitality
2 and stadium club areas, kitchens or other work areas primarily
3 servicing other public or entertainment areas, public rest room
4 areas, press and media areas, control booths, broadcast and
5 production areas, retail sales areas, museum and exhibit areas,
6 scoreboards or other public displays, storage areas, loading,
7 staging, and servicing areas, seating areas and suites, the playing
8 field, and any other areas to which the public has access or which
9 are used for the production of the entertainment event or other
10 public usage, and any other personal property used for these
11 purposes. "Public or entertainment areas" does not include locker
12 rooms or private offices exclusively used by the lessee.

13 (15) All leasehold interests in the public or entertainment areas
14 of a stadium and exhibition center, as defined in RCW 36.102.010,
15 that is constructed on or after January 1, 1998. For the purposes of
16 this subsection, "public or entertainment areas" has the same meaning
17 as in subsection (14) of this section, and includes exhibition areas.

18 (16) All leasehold interests in public facilities districts, as
19 provided in chapter 36.100 or 35.57 RCW.

20 (17) All leasehold interests in property that is: (a) Owned by
21 the United States government or a municipal corporation; (b) listed
22 on any federal or state register of historical sites; and (c) wholly
23 contained within a designated national historic reserve under 16
24 U.S.C. Sec. 461.

25 (18) All leasehold interests in the public or entertainment areas
26 of an amphitheater if a private entity is responsible for one hundred
27 percent of the cost of constructing the amphitheater which is not
28 reimbursed by the public owner, both the public owner and the private
29 lessee sponsor events at the facility on a regular basis, the lessee
30 is responsible under the lease or agreement to operate and maintain
31 the facility, and the amphitheater has a seating capacity of over
32 seventeen thousand reserved and general admission seats and is in a
33 county that had a population of over three hundred fifty thousand,
34 but less than four hundred twenty-five thousand when the amphitheater
35 first opened to the public.

36 For the purposes of this subsection, "public or entertainment
37 areas" include box offices or other ticket sales areas, entrance
38 gates, ramps and stairs, lobbies and concourses, parking areas,
39 concession areas, restaurants, hospitality areas, kitchens or other
40 work areas primarily servicing other public or entertainment areas,

1 public rest room areas, press and media areas, control booths,
2 broadcast and production areas, retail sales areas, museum and
3 exhibit areas, scoreboards or other public displays, storage areas,
4 loading, staging, and servicing areas, seating areas including lawn
5 seating areas and suites, stages, and any other areas to which the
6 public has access or which are used for the production of the
7 entertainment event or other public usage, and any other personal
8 property used for these purposes. "Public or entertainment areas"
9 does not include office areas used predominately by the lessee.

10 (19) All leasehold interests in real property used for the
11 placement of military housing meeting the requirements of RCW
12 84.36.665.

13 (20) All leasehold interests in real property used for
14 transportation purposes subject to an agreement under chapter 47.29
15 RCW.

16 **Sec. 22.** RCW 47.56.030 and 2008 c 122 s 8 are each amended to
17 read as follows:

18 (1) Except as permitted under chapter (~~(47.29-04)~~) 47.46 RCW:

19 (a) Unless otherwise delegated, and subject to RCW 47.56.820, the
20 department of transportation shall have full charge of the planning,
21 analysis, and construction of all toll bridges and other toll
22 facilities including the Washington state ferries, and the operation
23 and maintenance thereof.

24 (b) The transportation commission shall determine and establish
25 the tolls and charges thereon.

26 (c) Unless otherwise delegated, and subject to RCW 47.56.820, the
27 department shall have full charge of planning, analysis, and design
28 of all toll facilities. The department may conduct the planning,
29 analysis, and design of toll facilities as necessary to support the
30 legislature's consideration of toll authorization.

31 (d) The department shall utilize and administer toll collection
32 systems that are simple, unified, and interoperable. To the extent
33 practicable, the department shall avoid the use of toll booths. The
34 department shall set the statewide standards and protocols for all
35 toll facilities within the state, including those authorized by local
36 authorities.

37 (e) Except as provided in this section, the department shall
38 proceed with the construction of such toll bridges and other
39 facilities and the approaches thereto by contract in the manner of

1 state highway construction immediately upon there being made
2 available funds for such work and shall prosecute such work to
3 completion as rapidly as practicable. The department is authorized to
4 negotiate contracts for any amount without bid under (e)(i) and (ii)
5 of this subsection:

6 (i) Emergency contracts, in order to make repairs to ferries or
7 ferry terminal facilities or removal of such facilities whenever
8 continued use of ferries or ferry terminal facilities constitutes a
9 real or immediate danger to the traveling public or precludes prudent
10 use of such ferries or facilities; and

11 (ii) Single source contracts for vessel dry dockings, when there
12 is clearly and legitimately only one available bidder to conduct dry
13 dock-related work for a specific class or classes of vessels. The
14 contracts may be entered into for a single vessel dry docking or for
15 multiple vessel dry dockings for a period not to exceed two years.

16 (2) The department shall proceed with the procurement of
17 materials, supplies, services, and equipment needed for the support,
18 maintenance, and use of a ferry, ferry terminal, or other facility
19 operated by Washington state ferries, in accordance with chapter
20 43.19 RCW except as follows:

21 (a) When the secretary of the department of transportation
22 determines in writing that the use of invitation for bid is either
23 not practicable or not advantageous to the state and it may be
24 necessary to make competitive evaluations, including technical or
25 performance evaluations among acceptable proposals to complete the
26 contract award, a contract may be entered into by use of a
27 competitive sealed proposals method, and a formal request for
28 proposals solicitation. Such formal request for proposals
29 solicitation shall include a functional description of the needs and
30 requirements of the state and the significant factors.

31 (b) When purchases are made through a formal request for
32 proposals solicitation the contract shall be awarded to the
33 responsible proposer whose competitive sealed proposal is determined
34 in writing to be the most advantageous to the state taking into
35 consideration price and other evaluation factors set forth in the
36 request for proposals. No significant factors may be used in
37 evaluating a proposal that are not specified in the request for
38 proposals. Factors that may be considered in evaluating proposals
39 include but are not limited to: Price; maintainability; reliability;
40 commonality; performance levels; life cycle cost if applicable under

1 this section; cost of transportation or delivery; delivery schedule
2 offered; installation cost; cost of spare parts; availability of
3 parts and service offered; and the following:

4 (i) The ability, capacity, and skill of the proposer to perform
5 the contract or provide the service required;

6 (ii) The character, integrity, reputation, judgment, experience,
7 and efficiency of the proposer;

8 (iii) Whether the proposer can perform the contract within the
9 time specified;

10 (iv) The quality of performance of previous contracts or
11 services;

12 (v) The previous and existing compliance by the proposer with
13 laws relating to the contract or services;

14 (vi) Objective, measurable criteria defined in the request for
15 proposal. These criteria may include but are not limited to items
16 such as discounts, delivery costs, maintenance services costs,
17 installation costs, and transportation costs; and

18 (vii) Such other information as may be secured having a bearing
19 on the decision to award the contract.

20 (c) When purchases are made through a request for proposal
21 process, proposals received shall be evaluated based on the
22 evaluation factors set forth in the request for proposal. When
23 issuing a request for proposal for the procurement of propulsion
24 equipment or systems that include an engine, the request for proposal
25 must specify the use of a life cycle cost analysis that includes an
26 evaluation of fuel efficiency. When a life cycle cost analysis is
27 used, the life cycle cost of a proposal shall be given at least the
28 same relative importance as the initial price element specified in
29 the request of proposal documents. The department may reject any and
30 all proposals received. If the proposals are not rejected, the award
31 shall be made to the proposer whose proposal is most advantageous to
32 the department, considering price and the other evaluation factors
33 set forth in the request for proposal.

34 **Sec. 23.** RCW 47.56.031 and 2005 c 335 s 2 are each amended to
35 read as follows:

36 No tolls may be imposed on new or existing highways or bridges
37 without specific legislative authorization, or upon a majority vote
38 of the people within the boundaries of the unit of government
39 empowered to impose tolls. (~~This section applies to chapter 47.56~~

1 ~~RCW and to any tolls authorized under chapter 47.29 RCW, the~~
2 ~~transportation innovative partnership act of 2005.)~~

3 **Sec. 24.** RCW 70.94.528 and 2006 c 329 s 4 are each amended to
4 read as follows:

5 (1) A county, city, or town may, as part of its commute trip
6 reduction plan, designate existing activity centers listed in its
7 comprehensive plan or new activity centers as growth and
8 transportation efficiency centers and establish a transportation
9 demand management program in the designated area.

10 (a) The transportation demand management program for the growth
11 and transportation efficiency center shall be developed in
12 consultation with local transit agencies, the applicable regional
13 transportation planning organization, major employers, and other
14 interested parties.

15 (b) In order to be eligible for state funding provided for the
16 purposes of this section, designated growth and transportation
17 efficiency centers shall be certified by the applicable regional
18 transportation organization to: (i) Meet the minimum land use and
19 transportation criteria established in collaboration among local
20 jurisdictions, transit agencies, the regional transportation planning
21 organization, and other interested parties as part of the regional
22 commute trip reduction plan; and (ii) have established a
23 transportation demand management program that includes the elements
24 identified in (c) of this subsection and is consistent with the rules
25 established by the department of transportation in RCW 70.94.537(2).
26 If a designated growth and transportation efficiency center is denied
27 certification, the local jurisdiction may appeal the decision to the
28 commute trip reduction board.

29 (c) Transportation demand management programs for growth and
30 transportation efficiency centers shall include, but are not limited
31 to: (i) Goals for reductions in the proportion of single-occupant
32 vehicle trips that are more aggressive than the state program goal
33 established by the commute trip reduction board; (ii) a sustainable
34 financial plan demonstrating how the program can be implemented to
35 meet state and regional trip reduction goals, indicating resources
36 from public and private sources that are reasonably expected to be
37 made available to carry out the plan, and recommending any innovative
38 financing techniques (~~consistent with chapter 47.29 RCW~~), including
39 public/private partnerships, to finance needed facilities, services,

1 and programs; (iii) a proposed organizational structure for
2 implementing the program; (iv) a proposal to measure performance
3 toward the goal and implementation progress; and (v) an evaluation to
4 which local land use and transportation policies apply, including
5 parking policies and ordinances, to determine the extent that they
6 complement and support the trip reduction investments of major
7 employers. Each of these program elements shall be consistent with
8 the rules established under RCW 70.94.537.

9 (d) A designated growth and transportation efficiency center
10 shall be consistent with the land use and transportation elements of
11 the local comprehensive plan.

12 (e) Transit agencies, local governments, and regional
13 transportation planning organizations shall identify certified growth
14 and transportation efficiency centers as priority areas for new
15 service and facility investments in their respective investment
16 plans.

17 (2) A county, city, or town that has established a growth and
18 transportation efficiency center program shall support vehicle trip
19 reduction activities in the designated area. The implementing
20 jurisdiction shall adopt policies, ordinances, and funding strategies
21 that will lead to attainment of program goals in those areas.

22 NEW SECTION. **Sec. 25.** The following acts or parts of acts are
23 each repealed:

24 (1) RCW 47.29.010 (Finding—Intent) and 2006 c 334 s 48 & 2005 c
25 317 s 1;

26 (2) RCW 47.29.020 (Definitions) and 2005 c 317 s 2;

27 (3) RCW 47.29.030 (Transportation commission powers and duties)
28 and 2005 c 317 s 3;

29 (4) RCW 47.29.040 (Purpose) and 2005 c 317 s 4;

30 (5) RCW 47.29.050 (Eligible projects) and 2005 c 317 s 5;

31 (6) RCW 47.29.060 (Eligible financing) and 2008 c 122 s 18 &
32 2005 c 317 s 6;

33 (7) RCW 47.29.070 (Use of federal funds and similar revenues)
34 and 2005 c 317 s 7;

35 (8) RCW 47.29.080 (Other sources of funds or property) and 2005
36 c 317 s 8;

37 (9) RCW 47.29.090 (Project review, evaluation, and selection)
38 and 2005 c 317 s 9;

39 (10) RCW 47.29.100 (Administrative fee) and 2005 c 317 s 10;

- 1 (11) RCW 47.29.110 (Funds for proposal evaluation and
2 negotiation) and 2005 c 317 s 11;
- 3 (12) RCW 47.29.120 (Expert consultation) and 2005 c 317 s 12;
- 4 (13) RCW 47.29.130 (Contracted studies) and 2005 c 317 s 13;
- 5 (14) RCW 47.29.140 (Partnership agreements) and 2005 c 317 s 14;
- 6 (15) RCW 47.29.150 (Public involvement and participation) and
7 2005 c 317 s 15;
- 8 (16) RCW 47.29.160 (Approval and execution) and 2005 c 317 s 16;
- 9 (17) RCW 47.29.170 (Unsolicited proposals) and 2013 c 306 s 708,
10 2011 c 367 s 701, 2009 c 470 s 702, 2007 c 518 s 702, 2006 c 370 s
11 604, & 2005 c 317 s 17;
- 12 (18) RCW 47.29.180 (Advisory committees) and 2005 c 317 s 18;
- 13 (19) RCW 47.29.190 (Confidentiality) and 2005 c 317 s 19;
- 14 (20) RCW 47.29.200 (Prevailing wages) and 2005 c 317 s 20;
- 15 (21) RCW 47.29.210 (Government agreements) and 2005 c 317 s 21;
- 16 (22) RCW 47.29.220 (Eminent domain) and 2005 c 317 s 22;
- 17 (23) RCW 47.29.240 (Use of account) and 2005 c 317 s 24;
- 18 (24) RCW 47.29.250 (Issuing bonds and other obligations) and
19 2005 c 317 s 25;
- 20 (25) RCW 47.29.260 (Study and report) and 2005 c 317 s 26;
- 21 (26) RCW 47.29.270 (Federal laws) and 2005 c 317 s 27;
- 22 (27) RCW 47.29.280 (Expert review panel on proposed project
23 agreements—Creation—Authority) and 2006 c 334 s 49;
- 24 (28) RCW 47.29.290 (Expert review panel on proposed project
25 agreements—Execution of agreements) and 2006 c 334 s 50; and
- 26 (29) RCW 47.29.900 (Captions not law) and 2005 c 317 s 28.

27 NEW SECTION. **Sec. 26.** RCW 47.29.230 is recodified as a section
28 in chapter 47.29 RCW.

29 NEW SECTION. **Sec. 27.** Sections 1 through 17 of this act are
30 each added to chapter 47.29 RCW.

31 NEW SECTION. **Sec. 28.** Except for section 19 of this act, this
32 act takes effect July 1, 2016.

33 NEW SECTION. **Sec. 29.** Section 18 of this act expires January 1,
34 2022.

1 NEW SECTION. **Sec. 30.** Section 19 of this act takes effect
2 January 1, 2022.

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