

SENATE BILL REPORT

SB 5330

As of February 14, 2017

Title: An act relating to implementing public-private partnership best practices for nontoll transportation projects.

Brief Description: Implementing public-private partnership best practices for nontoll transportation projects.

Sponsors: Senators Zeiger, Palumbo, Fain, Mullet, King, Hobbs, Lias, Wellman and Miloscia.

Brief History:

Committee Activity: Transportation: 2/06/17.

Brief Summary of Bill

- Limits certain provisions of the Transportation Innovative Partnerships (TIP) program only to toll projects.
- Allows the state to enter into predevelopment agreements to develop TIP projects under certain circumstances.
- Requires the Washington State Transportation Commission (WSTC) to approve projects that dispose of state assets and those that would significantly bind future legislatures and approve project financing that does not pledge the state's credit.
- Approves a design-build project delivery process for certain TIP projects.
- Exempts TIP projects from surety bond requirements unless required by the WSTC or the Washington State Department of Transportation (WSDOT).

SENATE COMMITTEE ON TRANSPORTATION

Staff: Kim Johnson (786-7472)

Background: The TIP program, codified in chapter 47.29 RCW, lays the framework for project delivery through public-private partnerships. The TIP program provides guidance regarding the review and selection of projects, approval and execution of the procurement

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contracts, and additional oversight of the project. Responsibility for each of these functions is delegated to either the WSTC or the WSDOT. To date, the TIP program has not been used to develop a project.

The WSTC, in coordination with the WSDOT, may solicit projects for potential development under the TIP program. Before approving a project for solicitation, the WSTC must ensure the project is either a priority need for the state or that it is included in the state's Transportation Plan. After July 1, 2017, the WSTC may also consider unsolicited proposals. After the WSDOT has received responses to a request for proposals under the TIP program, it must conduct a preliminary review to ensure that the proposals are complete. Proposals are then forwarded to an evaluation panel appointed by the WSTC. The evaluation panel must consider whether the proposal meets the criteria specified in the request for proposals, and other relevant factors.

The State Treasurer must issue any indebtedness for a state transportation project that is developed under the TIP program and is owned, operated, used, or leased by the state as a public facility. For other public projects that are developed in conjunction with a transportation project, financing must be approved by the State Finance Committee or the governing board of a public benefit corporation.

Before any agreement is executed, there must be a process that provides for public involvement in the process; the Attorney General must review the legal sufficiency of the agreement; and the WSTC must conduct a financial analysis of the project and must consider the WSDOT's ability to complete the project internally. The WSTC must then conduct a final review, and it may approve the agreement, reject the agreement, or return the agreement for further negotiations.

The WSDOT must convene an expert review panel to review and make recommendations to the Governor and the WSTC on whether to approve, reject, or continue negotiations on a proposed project agreement. Additionally, for projects with costs greater than \$300 million, the WSTC must appoint an advisory committee to review concepts and proposals for eligible projects.

Under Chapter 47.20 RCW, the WSDOT has specific authority to use design build contracting to deliver transportation projects that are valued above \$2 million. There is also design build authority provided to public owners in Chapter 39.10 RCW that is applicable to a broad variety of public entities and is generally overseen by the Capital Projects Advisory Review Board (CPARB). The process for obtaining approval of using design build contracting for a project under CPARB involves either becoming a certified public owner or applying for project review and approval on a project by project basis. WSDOT does not currently utilize the design build authority under CPARB.

Summary of Bill: The qualification requirement that a TIP program project must have been included in the Washington transportation plan or have been identified by the authority as being a priority need for the state is removed.

The WSTC must review and approve any project that proposes to (1) sell an asset owned by WSDOT as part of a larger transaction involving a private entity, or (2) incurs obligations that would significantly bind future legislative appropriations including long-term lease agreements that involve a private entity.

TIP program projects may be financed using the exchange of development rights or equivalent value exchanges of property. Financing for a nontoll public project that does not pledge the state's credit must be approved by the WSTC.

The following TIP program review or approval requirements are limited to toll related projects:

- WSTC rules that relate to the required composition of the team responsible for the evaluation of proposals;
- mandatory criteria to be used in the evaluation and selection of proposals;
- financing must be approved by the State Finance Committee, or the board of public benefit corporation;
- the requirement that only state debt may be issued for TIP projects;
- prior to final project approval, a process that provides for public involvement and participation related to the development of a project;
- unsolicited project proposal rules;
- an advisory committee review of concepts or proposals for projects valued \$300 million; and
- an expert review panel to review, analyze, and make recommendations to the Governor and the WSTC on whether to approve, reject, or continue negotiations on a proposed project.

WSDOT may use the public works design build authorization for TIP program projects valued under \$10 million. This authorization is limited to projects meeting certain criteria. Unless otherwise required by the WSTC or the WSDOT, TIP projects are not required to include a surety bond covering performance of the contract, payment of laborer and subcontractors, and payment of taxes and penalties.

As part of the alternative public works contracting statute, the WSTC is directed to develop guidelines for and oversee project review and approval process that allows for WSDOT to enter into predevelopment agreements for delivery under the TIP program.

As part of the public works contracting statute, the WSTC is also directed to develop guidelines for and oversee a project review and approval process for a pilot program for seven projects, limited to a value of less than \$10 million for each project. The WSTC must establish an advisory committee to oversee the procurement and development of non-toll transportation projects. The advisory committee's membership is specified. WSDOT, after consultation with the advisory committee may competitively procure a potential development partner solely on the basis of that partner's qualifications to develop a non-toll project via the TIP program.

The collective bargaining rights of employees are not affected by the act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: As this Committee looks at how to fund transportation projects in the future, I would urge you to look seriously at public private partnerships. I think we need to bring in private financing to help build our public infrastructure. P3's will not work on all projects, but they can work for some and I think that it is an option we need to look carefully at. This bill comes out of a recommendation from the Washington Traffic Safety Commission from 2011. We are talking about non-toll projects. Projects like park and rides and ferry terminals. These are not megaprojects. I know WSDOT will have some concerns and am happy to work through this with you.

There has been a moratorium in place and that is why we have not done a P3 in Washington yet. I think that we have to think of not just capital things but also operational activities like snow removal, lighting, road side assistance, and even park and ride lots and how can we look at them differently. The idea is to pull apart the current law that really contemplates the rules governing the big concession deals related to tolling. We thought it would be appropriate to look at a more stream lined process for non-toll related project. The full report is online. We went to talk to some governmental entities that are doing P3s and examined their process. We wanted to limit the Commission's oversight to only those projects that would bind future legislatures or permanently dispose of assets. We want to streamline the process to WSDOT and the Commission as the only two entities that would be involved. We want to work on section 13 of the bill which establishes an advisory committee. We think this should be permissible because we are not sure that every small project would need that kind of oversight.

Plan Washington's number one solution was to extend P3 use in Washington. As the state looks to fill the remaining funding gaps we think that P3's can assist. PNWER has tried to share many of British Columbia's successful projects with Washington as examples. We support a pilot that will let us explore what opportunities are out there and what can work.

OTHER: We have long supported the use of public-private partnerships to support the development of public infrastructure. The public interest can be protected with proper oversight and providing clear and enforceable provisions in the procurement contract.

Persons Testifying: PRO: Senator Hans Zeiger, Prime Sponsor; Isaac Kastama, Washington Business Alliance; Reema Griffith, Washington State Transportation Commission.

OTHER: Mariya Frost, Washington Policy Center.

Persons Signed In To Testify But Not Testifying: No one.