

# SENATE BILL REPORT

## SHB 1541

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As Reported By Senate Committee On:  
Transportation, April 4, 2005

**Title:** An act relating to transportation innovative partnerships.

**Brief Description:** Enacting the Transportation Innovative Partnerships Act.

**Sponsors:** House Committee on Transportation (originally sponsored by Representatives Murray, Woods, Wallace, Jarrett, Ericksen, Morris, B. Sullivan, Chase, Schual-Berke, Rodne and Dickerson).

**Brief History:** Passed House: 3/15/05, 95-1.

**Committee Activity:** Transportation: 3/23/05, 4/4/05 [DPA, w/oRec].

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### SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** Do pass as amended.

Signed by Senators Haugen, Chair; Jacobsen, Vice Chair; Poulsen, Vice Chair; Swecker, Ranking Minority Member; Eide, Mulliken, Oke, Spanel and Weinstein.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Benson.

**Staff:** Dalene Sprick (786-7321)

**Background:** The current public-private initiatives law (RCW 47.46) does not provide for any additional projects. Out of six projects originally identified by the Department of Transportation for development, the only project that has been undertaken is the Tacoma Narrows Bridge project.

After a development agreement between the Department of Transportation (DOT) and the private developer had been signed, the Legislature analyzed the cost savings that could result from state financing, and subsequently amended the law to provide for state financing.

**Summary of Amended Bill:** The Transportation Innovative Partnerships Act is created to enable the DOT to enter into partnerships with private entities for the development of transportation facilities. Projects eligible for development include road and highway facilities, structures, operations, properties, vehicles, vessels, etc., that represent any mode of travel (except for recreational purposes). Projects that are not transportation facilities, but that carry out public purposes or provide financing streams to a transportation project, are also eligible for development.

After the completion of a tolling feasibility study, the Transportation Innovative Partnership Act Authority (Authority) may solicit proposals and the DOT may survey their existing transportation project lists and plans to determine if any are suitable for development as a public-private partnership. Beginning July 1, 2007, the Authority may also accept unsolicited

proposals. If an unsolicited proposal is received, there is a two step process, beginning with a concept proposal and only moving to a detailed proposal if directed by the Authority. There are requirements for a 30 day publication of the proposed project with an additional 60 days for submission of a proposal, if a letter of intent was received during the first 30 days.

The Authority must enact rules for the proper acceptance, review, evaluation and selection of projects. Once a project has been identified for development, the DOT may enter into negotiations on an agreement. Some terms of the agreement are proscribed, such as the payment of prevailing wages on the public works, and provisions for bonding and the payment of workers and subcontractors. Other terms are required to be negotiated, such as ownership of the asset to be developed, maintenance responsibilities, liability for the project, etc.

Financing may be considered for all or part of a proposal, subject to certain conditions. For projects owned, leased, used, or operated by the state as a public facility, any bonded indebtedness must be issued by the State Treasurer. For other public projects that are not transportation projects, financing must be approved by the state Finance Committee or, in the case of federal tax exempt financing, by the public benefit corporation as specified in federal law. For projects that are not public projects or public facilities, any lawful source of financing may be used.

Sources of repayment may include user fees, tolls, fares, lease proceeds, gross or net receipts from sales, proceeds from development rights, franchise fees, or any other lawful form of consideration. Federal, state, and local fund sources (such as grants, loans, or tax revenues) may also be used for project financing.

A public involvement plan must be submitted and approved as part of any agreement. All public meetings, workshops, open houses, hearings, etc., must be administered and attended by representatives of the public sector partner, and may not be contracted out to the private developer. For projects that cost in excess of \$300 million, a citizen advisory committee must be established for the purpose of reviewing, monitoring, and advising on development of the project and operations and maintenance of the project after construction is complete.

After a tentative development agreement has been reached, the Authority must publish the proposed contract for 20 days, followed by a hearing to receive public comment. After receiving public comment and approving a public involvement plan, the Authority may execute the contract.

The Transportation Innovative Partnership Account (Account) is created in the state treasury, as a depository for bond proceeds and any revenues generated from the transportation project. Funds in the Account must be spent on the specific public-private project, and may not be diverted to other transportation projects.

The DOT is directed to study alternative contracting and project management authorities to seek out best practices as used by other states and the private sector. As part of the study, the DOT must consider procedures for negotiating contracts in situations of a single qualified bidder, in either solicited or unsolicited proposals. Finally, DOT must also analyze methods of encouraging competition in the development of transportation projects. A report must be

submitted to the Authority by November 1, 2005 and to the Governor and Legislature for consideration in the 2006 legislative session.

**Amended Bill Compared to Original Bill:** The tolling feasibility study is removed from the bill as it appears as a budget proviso. In the amended bill the Transportation Commission becomes the Transportation Innovative Partnerships Act Authority with responsibilities to receive, review, and approve of proposals. They are also responsible for rulemaking and contract execution. The DOT becomes responsible for evaluating proposals and negotiating contracts. There is more detailed guidance regarding specifics to be included in the rules and all rules and guidelines created are to come back before the Legislature in 2006 for review. The section on confidential information was modified to specify that the proposer must justify requests for exemptions to disclosure and patent information is covered as long as the patent is in place where other information like originality of design is only protected until an agreement is reached. Disclosure must occur prior to the final agreement and execution of the contract. The date for acceptance of unsolicited proposals is moved to July 1, 2007. Composition of the evaluation team is outlined, and criteria to be considered in proposal evaluations, are included.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Testimony For:** This is a great opportunity to get projects started. Concerns over the single bidder issue and delaying implementation. This legislation provides additional tools and options for the state to address infrastructure needs. It grants the DOT greater flexibility and puts us in line with other states. 18 states have moved in this direction and by passing this Washington will be keeping pace. This bill brings the state closer to mega-projects in a much shorter time frame. Concern over whether there is adequate incentives to bring the private sector to the table.

**Testimony Against:** Toll roads are a failure of society to fund infrastructure. It is very bad policy to negotiate ownership of a public facility.

**Who Testified:** PRO: Duke Schaub, AGE; Tim Thompson, Bechtel/Parsons Brinkeshon; Rick Wickman, Clark County; Gene Schlatter, Vulcan Inc & International Speedway; Paula Hammond, WSDOT.

CON: Representative Bob Hasegawa.