

WSR 21-18-126

PROPOSED RULES

TRANSPORTATION IMPROVEMENT BOARD

[Filed September 1, 2021, 10:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [21-14-099].

Title of Rule and Other Identifying Information: Portions of chapters 479-01, 479-05, 479-10, and 479-14 WAC.

Hearing Location(s): On November 19, 2021, at 9:00 a.m., at Everett, Washington. Taking place during the November transportation improvement board (TIB) meeting.

Date of Intended Adoption: November 19, 2021.

Submit Written Comments to: Kelsey Davis, P.O. Box 40901, Olympia, WA 98504-0901, email kelseyd@tib.wa.gov, fax 360-586-1165, by November 8, 2021.

Assistance for Persons with Disabilities: Contact Kelsey Davis, phone 360-586-1146, fax 360-586-1165, email kelseyd@tib.wa.gov, by November 15, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The small city and urban sidewalk program WAC criteria has not been updated in nearly a decade. The objective of this rule making is to transition the small city and urban sidewalk program to active transportation.

Statutory Authority for Adoption: Chapter 47.26 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: TIB, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mr. Ashley Probart, P.O. Box 40901, Olympia, WA 98504-0901, 360-586-1139.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule changes are more inclusive for nonmotorized users of the transportation system. Program funding will continue to be distributed according to RCW and board direction.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

August 31, 2021
Ashley Probart
Executive Director

OTS-3279.1

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-01-040 Definitions and acronyms. The following definitions and acronyms apply:

- (1) TIB - The transportation improvement board.
- (2) Board - The transportation improvement board refers to the group of board members defined in RCW 47.26.121 and does not include the executive director or staff.
- (3) Director - The executive director of the transportation improvement board.
- (4) Staff - Refers to the employees of the transportation improvement board excluding the executive director.
- (5) Agency - All cities, towns, counties, and transportation benefit districts eligible to receive board funding.
- (6) Local agency official - Refers to a local agency elected official or staff who is authorized to sign contracts on the city, town, county, or transportation benefit district's behalf.
- (7) Urban area - Refers to the portion of a county within the federal urban area boundary as designated by the Federal Highway Administration and/or Washington state's Growth Management Act.
- (8) Six-year transportation plan - Refers to the city or county six-year transportation plan for coordinated transportation program expenditures per RCW 35.77.010 and 36.81.121.
- (9) Small city - Refers to an incorporated city or town with a population of less than five thousand.
- (10) ((Sidewalk)) Active transportation program - Refers to both the urban and small city ((sidewalk)) active transportation programs.
- (11) Population - Is defined as office of financial management official published population at the time of application.
- (12) Highway urban area population - As published by the office of financial management.
- (13) Scope change - Refers to a change in the physical characteristics and/or dimensions of a project.
- (14) CHAP - City Hardship Assistance Program.
- (15) TIA - Transportation improvement account.
- (16) Matching funds - All funds contributed to a project other than TIB funds.
- (17) Construction ready - Is defined as a project that has design, plans specifications and estimates, right of way, permits, and all sources of match funding to enable advertisement for bids.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-01-040, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-01-040, filed 8/30/07, effective 9/30/07. Statutory Authority: Chapters 47.26 and 47.66 RCW. WSR 99-24-038, § 479-01-040, filed 11/23/99, effective 12/24/99. Statutory Authority: Chapter 47.26 RCW. WSR 95-04-072, § 479-01-040, filed 1/30/95, effective 3/2/95; WSR 90-11-035, § 479-01-040, filed 5/10/90, effective 6/10/90.]

OTS-3280.1

AMENDATORY SECTION (Amending WSR 15-22-052, filed 10/29/15, effective 11/29/15)

WAC 479-05-035 Qualifications for small city projects administered by another agency. A local agency that has a small city arterial program (~~(or)~~) project, small city preservation project, or active transportation project, may elect to have, or the executive director may require, the project to be administered by another city, a county, state department of transportation, or state transportation improvement board when:

(1) The local agency does not have certification acceptance from the state department of transportation per the Washington state department of transportation local agency guidelines manual, chapter 13; or

(2) The executive director determines that the local agency has insufficient capacity to directly administer transportation projects.

[Statutory Authority: Chapter 47.26 RCW. WSR 15-22-052, § 479-05-035, filed 10/29/15, effective 11/29/15; WSR 12-08-060, § 479-05-035, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-051 Project phases. Projects authorized by the board are divided into the following phases:

(1) Design phase - Documents that must be received prior to phase approval include:

(a) Signed funding status form confirming that the funding partners are fully committed;

(b) Page from the adopted six-year transportation plan which lists the project;

(c) Signed fuel tax agreement;

(d) Consultant agreement (small city arterial and small city (~~(sidewalk)~~) active transportation programs only).

(2) Bid advertisement phase - Documents that must be received prior to phase approval include:

(a) Signed bid authorization form that contains:

(i) Plans and specification package;

(ii) Written confirmation of funding partners; and

(iii) Confirmation that full funding is available for the project;

(b) Signed confirmation that right of way is acquired or possession and use agreement is in place;

(c) Engineer's estimate is in final format;

(d) Consultant agreement (small city arterial and small city (~~(sidewalk)~~) active transportation programs only);

(e) Certification that a cultural resource assessment was completed;

(f) Traffic signal warrants.

(3) Construction phase - Documents that must be received prior to phase approval include:

(a) Updated cost estimate form signed by a local agency official and the project engineer;

(b) Bid tabulations; and

(c) Description of cost changes.

(4) Project closeout phase - Documents that must be received prior to phase approval include:

(a) Updated cost estimate form signed by a local agency official and the project engineer;

(b) Final summary of quantities; and

(c) Accounting history signed by a local agency official or the financial manager.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-05-051, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-05-051, filed 8/30/07, effective 9/30/07.]

OTS-3281.1

AMENDATORY SECTION (Amending WSR 08-21-005, filed 10/2/08, effective 11/2/08)

WAC 479-10-120 Projects that are eligible for small city preservation program funds. Eligible roadway and sidewalk projects, including active transportation projects, are those that maintain, repair, and/or resurface the existing infrastructure that is municipally owned and appropriate under Article II Section 40, 18th Amendment of the Washington state Constitution.

[Statutory Authority: Chapter 47.26 RCW. WSR 08-21-005, § 479-10-120, filed 10/2/08, effective 11/2/08.]

AMENDATORY SECTION (Amending WSR 08-21-005, filed 10/2/08, effective 11/2/08)

WAC 479-10-160 City matching funds or services for small city preservation program. The board will consider a city's ability to provide matching funds or in-kind services when allocating funds under this program. Cash or in-kind match may be provided by the local agency in the form of:

(1) Cash match based on ability to contribute:

(a) If the city assessed valuation is greater than five hundred million, a match of ten percent will be contributed.

(b) If the city assessed valuation is from one hundred million to five hundred million, a five percent match will be contributed.

(2) If the city assessed valuation is under one hundred million, no cash match is necessary.

(3) Match is not expected or accepted if the construction services will be provided to the city by WSDOT or a county.

(4) All in-kind contributions must relate directly to the project and are limited to time, material, or real property donated to the agency to fulfill project requirements. In-kind match may include:

(a) Community involvement including volunteer participation.

(b) City force labor, materials, and/or equipment (excluding costs incurred for qualification in WAC 479-10-122 or application for funds).

(c) Other street beautification.

(d) In-kind match must be documented with labor reports, equipment reports, receipts, and/or citizen volunteer time with hourly rate (not to exceed fifteen dollars per hour).

(e) Contributions of overhead, per diem, travel expenses, time spent at advisory groups or meetings, or time from individuals receiving compensation through the grant will not be accepted as in-kind match.

[Statutory Authority: Chapter 47.26 RCW. WSR 08-21-005, § 479-10-160, filed 10/2/08, effective 11/2/08.]

OTS-3282.2

AMENDATORY SECTION (Amending WSR 13-20-087, filed 9/30/13, effective 10/31/13)

WAC 479-14-011 Programs funded from the transportation improvement account. The transportation improvement account funds the following programs:

- (1) The urban program;
- (2) The small city arterial program:
 - (a) Grants; and
 - (b) Federal match funding.
- (3) The ((sidewalk)) active transportation programs:
 - (a) Urban ((sidewalk)) active transportation program; and
 - (b) Small city ((sidewalk)) active transportation program.
- (4) The arterial preservation program.

[Statutory Authority: Chapter 47.26 RCW. WSR 13-20-087, § 479-14-011, filed 9/30/13, effective 10/31/13; WSR 12-08-060, § 479-14-011, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-14-011, filed 8/30/07, effective 9/30/07.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-131 Award criteria for the urban program. The board establishes the following criteria for use in evaluating urban program grant applications:

- (1) Mobility improvements - Includes system connectivity, improves flow of vehicles and freight, and extends or completes corridor for network connections.
- (2) Physical condition - Includes pavement, structural, and geometric design features of the arterial.
- (3) Growth and development improvements - Provides or improves access to urban centers, economic development, supports annexation agreements, and increases residential density.

(4) Safety improvements - Addresses (~~accident~~) crash reduction, elimination of roadway hazards, corrects roadway deficiencies, and eliminates railroad at-grade crossing.

(5) Sustainability - Improves mode accessibility, reduces or eliminates water detention, and encourages energy reduction technology and use of recycled materials.

(6) Constructability - Demonstrates a strong likelihood to achieve full funding, obtain permits, acquire right of way, and reach construction within the timelines established in WAC 479-05-211.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-14-131, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-14-131, filed 8/30/07, effective 9/30/07.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-402 ((Sidewalk)) Active transportation program sub-programs. In order to provide equity for project grant funding, the ((sidewalk)) active transportation program is divided into the urban ((sidewalk)) active transportation program and the small city ((side-walk)) active transportation program.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-14-402, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-411 Who is eligible to receive ((sidewalk)) active transportation program funding. Each of the subprograms has separate criteria for agency eligibility as follows:

(1) Urban ((sidewalk)) active transportation program agency eligibility:

(a) Incorporated cities with a population of five thousand and over.

(b) Incorporated cities with a population less than five thousand which are located within a federally designated urban area.

(c) Counties with a federally designated urban area.

(2) Small city ((sidewalk)) active transportation program agency eligibility: Incorporated cities with a population under five thousand.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-14-411, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 13-24-092, filed 12/3/13, effective 1/3/14)

WAC 479-14-421 What projects are eligible for ((sidewalk)) active transportation program funding. Minimum project requirements for each subprogram are as follows:

(1) Urban ((sidewalk)) active transportation program project eligibility:

(a) Must be on or related to a functionally classified route; and

(b) Primary purpose of the project is transportation and not recreation.

(2) Small city ((sidewalk)) active transportation program project eligibility:

(a) The project must be located on or related to a street within the TIB designated arterial system; and

(b) Primary purpose of the project is transportation and not recreation.

For both of the subprograms, TIB does not participate in the cost for right of way acquisitions.

[Statutory Authority: Chapter 47.26 RCW. WSR 13-24-092, § 479-14-421, filed 12/3/13, effective 1/3/14; WSR 12-08-060, § 479-14-421, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 18-08-068, filed 4/2/18, effective 5/3/18)

WAC 479-14-431 Award criteria for the ((sidewalk)) active transportation program. The board establishes the following criteria for use in evaluating sidewalk program grant applications for both urban and small city ((sidewalk)) active transportation projects:

(1) Safety improvement - Projects that address hazard mitigation and ((accident)) crash reduction.

(2) ((Pedestrian)) Mobility access - Projects that improve or provide access to facilities including, but not limited to:

(a) Schools;

(b) Public buildings;

(c) Central business districts;

(d) Medical facilities;

(e) Activity centers;

(f) High density housing (including senior housing);

(g) Transit facilities;

(3) Completes or extends existing ((sidewalks)) active transportation facilities.

(4) Completes or extends sidewalks to facilities listed in subsection (2) of this section that are identified in local agency latecomer agreements. The local agency must agree to collect the latecomer fee at the time of development and place the fee in its transportation improvement program.

(5) Local support - Addresses local needs and is supported by the local community.

(6) Constructability - Demonstrates a strong likelihood to reach construction within the timelines established in WAC 479-05-211.

(7) Sustainability - Right sizing sidewalk or shared use path width and material type, provides hardscaping and native plantings, addresses low impact development or natural drainage practices.

[Statutory Authority: Chapter 47.26 RCW. WSR 18-08-068, § 479-14-431, filed 4/2/18, effective 5/3/18; WSR 12-08-060, § 479-14-431, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-441 Regions of the ((sidewalk)) active transportation program. The board allocates ((sidewalk)) active transportation program funding across three regions to ensure statewide distribution of funds. The three regions are as follows:

- (1) Puget Sound region includes eligible agencies within King, Pierce, and Snohomish counties.
- (2) East region includes eligible agencies within Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.
- (3) West region includes eligible agencies within Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, Kitsap, Lewis, Mason, Pacific, San Juan, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom counties.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-14-441, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 15-22-052, filed 10/29/15, effective 11/29/15)

WAC 479-14-451 Distribution formula for the ((sidewalk)) active transportation program. For the purpose of allocating funds, the ((sidewalk)) active transportation program is divided into two subprograms, the urban ((sidewalk)) active transportation program and the small city ((sidewalk)) active transportation program. The distribution formulas are as follows:

- (1) Urban ((sidewalk)) active transportation program - The average of the ratios of region urban area population (RUP) divided by statewide urban population (SUP) plus region functionally classified lane miles within the urban area (RFC) divided by statewide functionally classified lane miles within urban areas (SFC).

The equation is as follows:

$$\frac{(RUP/SUP) + (RFC/SFC)}{2}$$

- (2) Small city ((sidewalk)) active transportation program - Region small city population divided by statewide small city population. For either program, the board may adjust regional allocations by plus or minus five percent of the total annual allocation to fully fund the approved list of regional projects. When requested by the

board, staff will update the regional allocations to ensure equitable distribution of funds.

[Statutory Authority: Chapter 47.26 RCW. WSR 15-22-052, § 479-14-451, filed 10/29/15, effective 11/29/15; WSR 12-08-060, § 479-14-451, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 18-08-068, filed 4/2/18, effective 5/3/18)

WAC 479-14-461 Matching requirement for the ((sidewalk)) active transportation program. The ((sidewalk)) active transportation program provides funding which will be matched by other funds as follows:

(1) The urban ((sidewalk)) active transportation program provides funding which will be matched by other funds as follows:

(a) For cities:

(i) If the city valuation is under one billion dollars, the matching rate is ten percent of total project costs.

(ii) If the city valuation is one billion dollars to two and one-half billion dollars, the rate is fifteen percent of total project costs.

(iii) If the city valuation is over two and one-half billion dollars, the rate is twenty percent of total project costs.

(b) For counties:

(i) If the road levy valuation is under three billion dollars, the rate is ten percent of total project costs.

(ii) If the road levy valuation is between three billion dollars to ten billion dollars, the rate is fifteen percent of total project costs.

(iii) If the road levy valuation is over ten billion dollars, the rate is twenty percent of total project costs.

(c) For transportation benefit districts, the match is based on the valuation of the city or county in which the project is located. If the project lies within more than one city or county, the match is determined by the city or county that has the greatest valuation.

(2) The small city ((sidewalk)) active transportation program provides funding which will be matched by other funds as follows:

(a) If the city assessed valuation is under one hundred million dollars, no cash match is necessary.

(b) If the city assessed valuation is from one hundred million dollars to five hundred million dollars, a five percent match will be contributed.

(c) If the city assessed valuation is greater than five hundred million dollars, a match of ten percent will be contributed.

The board uses the current published valuation from the department of revenue.

[Statutory Authority: Chapter 47.26 RCW. WSR 18-08-068, § 479-14-461, filed 4/2/18, effective 5/3/18; WSR 12-08-060, § 479-14-461, filed 4/3/12, effective 5/4/12.]