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SENATE BILL 5979

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Murray, Swecker, Haugen, Pflug, Marr and Kohl-Welles

Read first time 02/09/2007. Referred to Committee on Transportation.

1            AN ACT Relating to modifying transportation innovative partnerships  
2 provisions; and amending RCW 47.29.010, 47.29.030, 47.29.060,  
3 47.29.070, 47.29.140, 47.29.160, 47.29.180, 47.29.250, 47.29.280, and  
4 47.29.290.

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

6            **Sec. 1.** RCW 47.29.010 and 2006 c 334 s 48 are each amended to read  
7 as follows:

8            (1) The legislature finds that the public-private transportation  
9 initiatives act created under chapter 47.46 RCW has not met the needs  
10 and expectations of the public or private sectors for the development  
11 of transportation projects. The legislature intends to phase out  
12 chapter 47.46 RCW coincident with the completion of the Tacoma Narrows  
13 Bridge - SR 16 public-private partnership. From July 24, 2005, this  
14 chapter will provide a more desirable and effective approach to  
15 developing transportation projects in partnership with the private  
16 sector by applying lessons learned from other states and from this  
17 state's ten-year experience with chapter 47.46 RCW.

18            (2) It is the legislature's intent to achieve the following goals

1 through the creation of this new approach to public-private  
2 partnerships:

3 (a) To provide a well-defined mechanism to facilitate the  
4 collaboration between public and private entities in transportation;

5 (b) To bring innovative thinking from the private sector and other  
6 states to bear on public projects within the state;

7 (c) To provide greater flexibility in achieving the transportation  
8 projects; and

9 (d) To allow for creative cost and risk sharing between the public  
10 and private partners.

11 (3) The legislature intends that the powers granted in this chapter  
12 to the commission or department are in addition to any powers granted  
13 under chapter 47.56 RCW.

14 (4) It is further the intent of the legislature that the commission  
15 be authorized to appoint an expert review panel (~~(be established for~~  
16 ~~each project developed under chapter 334, Laws of 2006)) for single  
17 projects as the commission finds desirable or to review more than one  
18 project proposed for development under this chapter. An expert review  
19 panel(~~(s shall be responsible for reviewing selected proposals,~~  
20 ~~analyzing and reviewing tentative agreements, and making)) shall  
21 review, analyze, and make recommendations to the (~~(governor and the~~  
22 ~~transportation)) commission on (~~(the advisability of executing~~  
23 ~~agreements under chapter 334, Laws of 2006)) issues presented to the  
24 panel for review.~~~~~~~~

25 **Sec. 2.** RCW 47.29.030 and 2005 c 317 s 3 are each amended to read  
26 as follows:

27 In addition to the powers it now possesses, the commission shall:

28 (1) Approve or review contracts or agreements authorized in this  
29 chapter;

30 (2) Adopt rules to carry out this chapter and govern the program,  
31 which at a minimum must address the following issues:

32 (a) The types of projects allowed; however, all (~~(allowed)) state~~

33 highway projects must be included in the Washington transportation plan  
34 or identified by the authority as being a priority need for the state;

35 (b) The types of contracts allowed, with consideration given to the  
36 best practices available;

1 (c) The composition of the team responsible for the evaluation of  
2 proposals to include:

- 3 (i) Washington state department of transportation staff;
- 4 (ii) An independent representative of a consulting or contracting  
5 field with no interests in the project that is prohibited from becoming  
6 a project manager for the project and bidding on any part of the  
7 project;
- 8 (iii) An observer from the state auditor's office or the joint  
9 legislative audit and review committee;
- 10 (iv) A person appointed by the commission, if the secretary of  
11 transportation is a cabinet member, or appointed by the governor if the  
12 secretary of transportation is not a cabinet member; and
- 13 (v) A financial expert;

14 (d) Minimum standards and criteria required of all proposals;

15 (e) Procedures for the proper solicitation, acceptance, review, and  
16 evaluation of projects;

17 (f) Criteria to be considered in the evaluation and selection of  
18 proposals that includes:

- 19 (i) Comparison with the department's internal ability to complete  
20 the project that documents the advantages of completing the project as  
21 a partnership versus solely as a public venture; and
- 22 (ii) Factors such as, but not limited to: Priority, cost, risk  
23 sharing, scheduling, and management conditions;
- 24 (g) The protection of confidential proprietary information while  
25 still meeting the need for public disclosure that is consistent with  
26 RCW 47.29.190;
- 27 (h) Protection for local contractors to participate in  
28 subcontracting opportunities;
- 29 (i) Specifying that maintenance issues must be resolved in a manner  
30 consistent with the personnel system reform act, chapter 41.80 RCW;
- 31 (j) Specifying that provisions regarding patrolling and law  
32 enforcement on a public facility are subject to approval by the  
33 Washington state patrol;
- 34 (3) Adopt guidelines to address security and performance issues.

35 Preliminary rules and guidelines developed under this section must  
36 be submitted to the chairs and ranking members of both transportation  
37 committees by November 30, 2005, for review and comment. All final

1 rules and guidelines must be submitted to the full legislature during  
2 the 2006 session for review.

3 **Sec. 3.** RCW 47.29.060 and 2005 c 317 s 6 are each amended to read  
4 as follows:

5 (1) Subject to the limitations in this section, the department may,  
6 in connection with the evaluation of eligible projects, accept for  
7 review and consider any financing mechanisms identified under  
8 subsections (3) through (5) of this section or any other lawful source,  
9 either integrated as part of a project proposal or as a separate,  
10 stand-alone proposal to finance a project. Financing may be considered  
11 for all or part of a proposed project. A project may be financed in  
12 whole or in part with:

13 (a) The proceeds of grant anticipation revenue bonds authorized by  
14 23 U.S.C. Sec. 122 and applicable state law. Legislative authorization  
15 and appropriation is required in order to use this source of financing;

16 (b) Grants, loans, loan guarantees, lines of credit, revolving  
17 lines of credit, or other financing arrangements available under the  
18 transportation infrastructure finance and innovation act under 23  
19 U.S.C. Sec. 181 et seq., or any other applicable federal law;

20 (c) Infrastructure loans or assistance from the state  
21 infrastructure bank established by RCW 82.44.195;

22 (d) Federal, state, or local revenues, subject to appropriation by  
23 the applicable legislative authority;

24 (e) User fees, tolls, fares, lease proceeds, rents, gross or net  
25 receipts from sales, proceeds from the sale of development rights,  
26 franchise fees, or any other lawful form of consideration.

27 (2) As security for the payment of financing described in this  
28 section, the revenues from the project may be pledged, but no such  
29 pledge of revenues constitutes in any manner or to any extent a first  
30 lien general obligation of the state that would be subject to the  
31 state's constitutional debt limit. Any financing described in this  
32 section may be structured on a senior, parity, or subordinate basis to  
33 any other financing.

34 (3) For any transportation project developed under this chapter  
35 that is owned, leased, used, or operated by the state, as a public  
36 facility, if indebtedness is issued, it must be issued by the state  
37 treasurer for the transportation project.

1 (4) For other public projects defined in RCW 47.29.050(2) that are  
2 developed in conjunction with a transportation project, financing  
3 necessary to develop, construct, or operate the public project must be  
4 approved by the state finance committee or by the governing board of a  
5 public benefit corporation as provided in the federal Internal Revenue  
6 Code section 63-20;

7 (5) For projects that are developed in conjunction with a  
8 transportation project but are not themselves a public facility or  
9 public project, any lawful means of financing may be used.

10 (6) All financing plans must publicly disclose any possible impacts  
11 the plan could have on toll payers, statewide taxpayers, state fund  
12 sources, and projects or programs that are direct beneficiaries of  
13 state fund sources. Plans utilizing debt as authorized under  
14 subsection (3) of this section must be compared against alternative  
15 financing options that utilize debt in any structure or combination  
16 that would result in the lowest cost of capital that is commercially  
17 available. If the commission finds that this alternative financing  
18 structure is capable of providing sufficient proceeds to complete the  
19 project, the commission may submit a proposal to the legislature to  
20 deviate from the financing restrictions under subsection (3) of this  
21 section.

22 **Sec. 4.** RCW 47.29.070 and 2005 c 317 s 7 are each amended to read  
23 as follows:

24 The department may accept from the United States or any of its  
25 agencies such funds as are available to this state or to any other unit  
26 of government for carrying out the purposes of this chapter, whether  
27 the funds are made available by grant, loan, or other financing  
28 arrangement. The department may enter into such agreements and other  
29 arrangements with the United States or any of its agencies, or other  
30 states, as may be necessary, proper, and convenient for carrying out  
31 the purposes of this chapter, subject to RCW 47.29.080.

32 **Sec. 5.** RCW 47.29.140 and 2005 c 317 s 14 are each amended to read  
33 as follows:

34 (1) The following provisions must be included in any agreement to  
35 which the state is a party:

1 (a) For any project that proposes terms for stand-alone maintenance  
2 or asset management services for a public facility, those services must  
3 be provided in a manner consistent with any collective bargaining  
4 agreements, the personnel system reform act (chapter 41.80 RCW), and  
5 civil service laws that are in effect for the public facility;

6 (b) (~~Transportation~~) State highway projects that are selected for  
7 development under this chapter must be identified in the Washington  
8 transportation plan or be identified by the authority as being a  
9 priority need for the state;

10 (c) If there is a tolling component to the project, then it must be  
11 specified that tolling technology used in the project must be  
12 consistent with tolling technology standards adopted by the department  
13 for transportation-related projects;

14 (d) Provisions for bonding, financial guarantees, deposits, or the  
15 posting of other security to secure the payment of laborers,  
16 subcontractors, and suppliers who perform work or provide materials as  
17 part of the project;

18 (e) All projects must be financed in a manner consistent with RCW  
19 47.29.060. This chapter is null and void if this subsection or RCW  
20 47.29.060 fails to become law or is held invalid by a court of final  
21 jurisdiction.

22 (2) Agreements between the state and private sector partners  
23 entered into under this section must specifically include the following  
24 contractual elements:

25 (a) The point in the project at which public and private sector  
26 partners will enter the project and which partners will assume  
27 responsibility for specific project elements;

28 (b) How the partners will share management of the risks of the  
29 project;

30 (c) How the partners will share the costs of development of the  
31 project;

32 (d) How the partners will allocate financial responsibility for  
33 cost overruns;

34 (e) The penalties for nonperformance;

35 (f) The incentives for performance;

36 (g) The accounting and auditing standards to be used to evaluate  
37 work on the project;

1 (h) For any project that reverts to public ownership, the  
2 responsibility for reconstruction or renovations that are required in  
3 order for a facility to meet all applicable government standards upon  
4 reversion of the facility to the state; and

5 (i) Provisions for patrolling and law enforcement on transportation  
6 projects that are public facilities.

7 **Sec. 6.** RCW 47.29.160 and 2005 c 317 s 16 are each amended to read  
8 as follows:

9 (1) Before approving an agreement under subsection (2) of this  
10 section, the commission, with the technical assistance of the  
11 department, must:

12 (a) Prepare a financial analysis that fully discloses all project  
13 costs, direct and indirect, including costs of any financing proposals;

14 (b) Publish notice and make available the contents of the  
15 agreement, with the exception of patent information, at least twenty  
16 days before the public hearing required in (c) of this subsection; and

17 (c) Hold a public hearing on the proposed agreement, with proper  
18 notice provided at least twenty days before the hearing. The public  
19 hearing must be held within the boundaries of the county seat of the  
20 county containing the project.

21 (2) The commission must allow at least twenty days from the public  
22 hearing on the proposed agreement required under subsection (1)(c) of  
23 this section before approving and executing any agreements authorized  
24 under this chapter.

25 **Sec. 7.** RCW 47.29.180 and 2005 c 317 s 18 are each amended to read  
26 as follows:

27 ~~((For projects with costs, including financing costs, of three  
28 hundred million dollars or greater, advisory committees are required.))~~

29 (1) The commission ~~((must))~~ may establish an advisory committee  
30 ~~((to advise with respect to eligible projects))~~ for a single project or  
31 to provide advice on multiple projects. An advisory committee must  
32 consist of not fewer than five and not more than nine members, as  
33 determined by the public partners. Members must be appointed by the  
34 commission, or for projects with joint public sector participation, in  
35 a manner agreed to by the commission and any participating unit of

1 government. In making appointments to the committee, the commission  
2 shall consider persons or organizations offering a diversity of  
3 viewpoints on the project.

4 (2) An advisory committee shall review ~~((concepts or proposals for  
5 eligible projects))~~, analyze, and submit comments to the public sector  
6 partners on issues presented to the committee for their consideration.

7 (3) An advisory committee shall meet as necessary at times and  
8 places fixed by the department, but not less than twice per year. The  
9 state shall provide personnel services to assist the advisory committee  
10 within the limits of available funds. An advisory committee may adopt  
11 rules to govern its proceedings and may select officers.

12 (4) An advisory committee must be dissolved once the project has  
13 been fully constructed and debt issued to pay for the project has been  
14 fully retired.

15 **Sec. 8.** RCW 47.29.250 and 2005 c 317 s 25 are each amended to read  
16 as follows:

17 (1) In addition to any authority the commission or department has  
18 to issue and sell bonds and other similar obligations, this section  
19 establishes continuing authority for the issuance and sale of bonds and  
20 other similar obligations in a manner consistent with this section. To  
21 finance a project in whole or in part, the commission may request that  
22 the state treasurer issue ~~((revenue))~~ bonds on behalf of the public  
23 sector partner. The bonds must be secured by a pledge of, and a lien  
24 on, and be payable only from moneys in the transportation innovative  
25 partnership account established in RCW 47.29.230, and any other  
26 revenues specifically pledged to repayment of the bonds. Such a pledge  
27 by the public partner creates a lien that is valid and binding from the  
28 time the pledge is made. ~~((Revenue))~~ Bonds issued under this section  
29 are not first lien general obligations of the state or local government  
30 and are not secured by or payable from any funds or assets of the state  
31 other than the moneys and revenues specifically pledged to the  
32 repayment of such ~~((revenue))~~ bonds.

33 (2) Moneys received from the issuance of ~~((revenue))~~ bonds or other  
34 debt obligations, including any investment earnings thereon, may be  
35 spent:

36 (a) For the purpose of financing the costs of the project for which  
37 the bonds are issued;

1 (b) To pay the costs and other administrative expenses of the  
2 bonds;

3 (c) To pay the costs of credit enhancement or to fund any reserves  
4 determined to be necessary or advantageous in connection with the  
5 (~~revenue~~) bonds; and

6 (d) To reimburse the public sector partners for any costs related  
7 to carrying out the projects authorized under this chapter.

8 **Sec. 9.** RCW 47.29.280 and 2006 c 334 s 49 are each amended to read  
9 as follows:

10 (1) The (~~department shall~~) commission may establish an expert  
11 review panel to review, analyze, and make recommendations (~~to the~~  
12 ~~governor and the transportation commission on whether to approve,~~  
13 ~~reject, or continue negotiations~~) on any aspect of a proposal,  
14 project, or a proposed project agreement under this chapter. The  
15 department shall provide staff to support the expert review panel, if  
16 requested by the panel. The expert review panel may utilize any of the  
17 consultants under contract for the department, and the expert review  
18 panel may contract for consulting expertise in specific areas as it  
19 deems necessary to ensure a thorough and critical review of any  
20 (~~proposed project agreement~~) aspect of their assigned scope of  
21 review.

22 (2) The (~~governor~~) commission shall appoint members of an expert  
23 review panel that have experience in large capital project delivery,  
24 public-private partnerships, public financing of infrastructure  
25 improvements, or other areas of expertise that will benefit the panel.  
26 The panel shall consist of no less than three, but no more than five  
27 members, as determined by the (~~governor~~) commission.

28 **Sec. 10.** RCW 47.29.290 and 2006 c 334 s 50 are each amended to  
29 read as follows:

30 Upon receiving the recommendations of the expert review panel as  
31 provided in RCW 47.29.280, (~~and upon consultation with the governor,~~)  
32 the transportation commission shall either execute the proposed project  
33 agreement, reject the proposed project agreement, or continue further  
34 negotiations between the state and a private partner. The execution of

1 any agreement or the rejection of any agreement shall constitute a  
2 final action for legal or administrative purposes.

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