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**SENATE BILL 5862**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Fain, Ericksen, Baumgartner, and Angel

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

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

NEW SECTION. **Sec.**  LEGISLATIVE INTENT. The legislature finds that the public-private transportation initiatives act created under chapter 47.46 RCW has not met the needs and expectations of the public or private sectors for the development of transportation projects. The legislature intends to phase out chapter 47.46 RCW coincident with the completion of the Tacoma Narrows bridge - SR 16 public-private partnership. This chapter will provide a more desirable and effective approach to developing transportation projects in partnership with the private sector by applying lessons learned from other states and from this state's prior experience with chapter 47.46 RCW.

The legislature finds and declares the following:

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

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

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

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

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

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

(d) Expediting project delivery;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Interpretations of the provisions contained in this chapter, the administration of a public-private partnership program, the oversight and delivery of projects, and the execution and enforcement of contracts must be carried out consistent with these policy goals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) To procure, contract, negotiate, and execute with any person any kind of contract, instrument, and agreement as necessary and convenient to exercise the powers and discharge the functions and responsibilities conferred onto the office under this chapter, including contracts for financial, legal, technical, and other consulting services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Charge fees, and obtain reimbursement, for services it renders under this chapter, including fees from the department and other public entities, whether in the form of application fees, transaction fees, or periodic service fees, the details of which must be set forth in an agreement between the office and the participating public entity, and charge fees from offerors for their participation in either any qualification or award procedure, or both, which must be placed in a revolving fund, available for office expenditure for purposes of this chapter without appropriation.

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

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

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

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

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

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

(iv) The chair of the transportation commission;

(v) The secretary of transportation; and

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

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

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

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

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

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

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

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

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

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

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

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

(a) Sealed bidding;

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

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

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

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

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

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

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

(e) Comments from local citizens and affected jurisdictions;

(f) Benefits to the public;

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

(h) Other criteria that the department deems appropriate.

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

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

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

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

NEW SECTION. **Sec.**  PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS. (1)(a) After selecting a proposal for a public-private partnership, the department shall enter into a public-private agreement for a transportation facility with the selected private entity or any configuration of private entities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Other terms and conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  POLICE POWERS—VIOLATIONS OF LAW. (1) All law enforcement officers of the state and of an affected local jurisdiction have the same powers and jurisdiction within the limits of the transportation facility as they have in their respective areas of jurisdiction and access to the transportation facility at any time for the purpose of exercising such powers and jurisdiction.

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

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

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

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

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

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

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

(1) All property belonging exclusively to the United States, the state, or any county or municipal corporation; all property belonging exclusively to any federally recognized Indian tribe, if (a) the tribe is located in the state, and (b) the property is used exclusively for essential government services; all state route number 16 corridor transportation systems and facilities constructed under chapter 47.46 RCW; all property used for transportation purposes subject to an agreement pursuant to chapter 47.29 RCW; all property under a financing contract pursuant to chapter 39.94 RCW or recorded agreement granting immediate possession and use to the public bodies listed in this section or under an order of immediate possession and use pursuant to RCW 8.04.090; and, for a period of forty years from acquisition, all property of a community center; is exempt from taxation. All property belonging exclusively to a foreign national government is exempt from taxation if that property is used exclusively as an office or residence for a consul or other official representative of the foreign national government, and if the consul or other official representative is a citizen of that foreign nation.

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

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

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

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

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

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

(1) All property belonging exclusively to the United States, the state, or any county or municipal corporation; all property belonging exclusively to any federally recognized Indian tribe located in the state, if that property is used exclusively for essential government services; all state route number 16 corridor transportation systems and facilities constructed under chapter 47.46 RCW; all property used for transportation purposes subject to an agreement pursuant to chapter 47.29 RCW; all property under a financing contract pursuant to chapter 39.94 RCW or recorded agreement granting immediate possession and use to the public bodies listed in this section or under an order of immediate possession and use pursuant to RCW 8.04.090; and, for a period of forty years from acquisition, all property of a community center; is exempt from taxation. All property belonging exclusively to a foreign national government is exempt from taxation if that property is used exclusively as an office or residence for a consul or other official representative of the foreign national government, and if the consul or other official representative is a citizen of that foreign nation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor shall be deemed a single leasehold interest.

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

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

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

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

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

(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over one million, that has a seating capacity of over forty thousand, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee.

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

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

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

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

For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include office areas used predominately by the lessee.

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

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

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

(1) Except as permitted under chapter ((~~47.29 or~~)) 47.46 RCW:

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

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

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

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

(e) Except as provided in this section, the department shall proceed with the construction of such toll bridges and other facilities and the approaches thereto by contract in the manner of state highway construction immediately upon there being made available funds for such work and shall prosecute such work to completion as rapidly as practicable. The department is authorized to negotiate contracts for any amount without bid under (e)(i) and (ii) of this subsection:

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

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

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

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

(b) When purchases are made through a formal request for proposals solicitation the contract shall be awarded to the responsible proposer whose competitive sealed proposal is determined in writing to be the most advantageous to the state taking into consideration price and other evaluation factors set forth in the request for proposals. No significant factors may be used in evaluating a proposal that are not specified in the request for proposals. Factors that may be considered in evaluating proposals include but are not limited to: Price; maintainability; reliability; commonality; performance levels; life cycle cost if applicable under this section; cost of transportation or delivery; delivery schedule offered; installation cost; cost of spare parts; availability of parts and service offered; and the following:

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

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

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

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

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

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

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

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

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

No tolls may be imposed on new or existing highways or bridges without specific legislative authorization, or upon a majority vote of the people within the boundaries of the unit of government empowered to impose tolls. ((~~This section applies to chapter 47.56 RCW and to any tolls authorized under chapter 47.29 RCW, the transportation innovative partnership act of 2005.~~))

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

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

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

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

(c) Transportation demand management programs for growth and transportation efficiency centers shall include, but are not limited to: (i) Goals for reductions in the proportion of single-occupant vehicle trips that are more aggressive than the state program goal established by the commute trip reduction board; (ii) a sustainable financial plan demonstrating how the program can be implemented to meet state and regional trip reduction goals, indicating resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommending any innovative financing techniques ((~~consistent with chapter 47.29 RCW~~)), including public/private partnerships, to finance needed facilities, services, and programs; (iii) a proposed organizational structure for implementing the program; (iv) a proposal to measure performance toward the goal and implementation progress; and (v) an evaluation to which local land use and transportation policies apply, including parking policies and ordinances, to determine the extent that they complement and support the trip reduction investments of major employers. Each of these program elements shall be consistent with the rules established under RCW 70.94.537.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) RCW 47.29.110 (Funds for proposal evaluation and negotiation) and 2005 c 317 s 11;

(12) RCW 47.29.120 (Expert consultation) and 2005 c 317 s 12;

(13) RCW 47.29.130 (Contracted studies) and 2005 c 317 s 13;

(14) RCW 47.29.140 (Partnership agreements) and 2005 c 317 s 14;

(15) RCW 47.29.150 (Public involvement and participation) and 2005 c 317 s 15;

(16) RCW 47.29.160 (Approval and execution) and 2005 c 317 s 16;

(17) RCW 47.29.170 (Unsolicited proposals) and 2013 c 306 s 708, 2011 c 367 s 701, 2009 c 470 s 702, 2007 c 518 s 702, 2006 c 370 s 604, & 2005 c 317 s 17;

(18) RCW 47.29.180 (Advisory committees) and 2005 c 317 s 18;

(19) RCW 47.29.190 (Confidentiality) and 2005 c 317 s 19;

(20) RCW 47.29.200 (Prevailing wages) and 2005 c 317 s 20;

(21) RCW 47.29.210 (Government agreements) and 2005 c 317 s 21;

(22) RCW 47.29.220 (Eminent domain) and 2005 c 317 s 22;

(23) RCW 47.29.240 (Use of account) and 2005 c 317 s 24;

(24) RCW 47.29.250 (Issuing bonds and other obligations) and 2005 c 317 s 25;

(25) RCW 47.29.260 (Study and report) and 2005 c 317 s 26;

(26) RCW 47.29.270 (Federal laws) and 2005 c 317 s 27;

(27) RCW 47.29.280 (Expert review panel on proposed project agreements—Creation—Authority) and 2006 c 334 s 49;

(28) RCW 47.29.290 (Expert review panel on proposed project agreements—Execution of agreements) and 2006 c 334 s 50; and

(29) RCW 47.29.900 (Captions not law) and 2005 c 317 s 28.

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

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

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

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

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

**--- END ---**