
SUBSTITUTE HOUSE BILL 3164

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Murray, Ericksen, Wallace, Jarrett, Sommers, Rockefeller, Woods, Ruderman, Hatfield, Morris, Cooper, G. Simpson and Hankins)

READ FIRST TIME 02/25/04.

1 AN ACT Relating to transportation innovative partnerships; and
2 adding a new chapter to Title 47 RCW.

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

4 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS AND INTENT. The
5 legislature finds that the public-private initiatives act created under
6 chapter 47.46 RCW has not met the needs and expectations of the public
7 or private sectors for the development of transportation projects. The
8 legislature intends to phase out chapter 47.46 RCW coincident with the
9 completion of the Tacoma Narrows Bridge - SR 16 public-private
10 partnership. From the effective date of this act, this chapter will
11 provide a more desirable and effective approach to developing
12 transportation projects in partnership with the private sector by
13 applying lessons learned from other states and from this state's ten-
14 year experience with chapter 47.46 RCW.

15 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
16 section apply throughout this chapter.

17 (1) "Private sector partner" and "private partner" means a person,

1 entity, or organization that is not the federal government, a state, or
2 a political subdivision of a state.

3 (2) "Public financing" means indebtedness that is issued, secured,
4 or backed by a unit of government. For purposes of this chapter,
5 public financing does not include financing provided through a public
6 or private nonprofit corporation under the terms of Internal Revenue
7 Code 63-20. For purposes of this chapter, public financing shall be
8 the exclusive method of financing available to units of government.

9 (3) "Public funds" means money originally derived from taxes or
10 fees imposed generally. This does not include revenues derived from
11 specific operation of a transportation project, such as user fees,
12 lease revenues, development rights, highway tolls, etc.

13 (4) "Public sector approval authority" means the transportation
14 commission for the state, the district administrator for the federal
15 highway administration, the county executive for counties where
16 applicable, and the legislative authority such as a council, board, or
17 commission for local governments.

18 (5) "Public sector partner" and "public partner" means any federal
19 or state unit of government, bistate transportation organization, or
20 any other political subdivision of any state.

21 (6) "Transportation projects" means a project, whether capital or
22 operating, where the primary purpose of the project is to facilitate
23 the transport of people or goods via any mode of travel. However, this
24 does not include projects that are primarily for recreational purposes,
25 such as parks, hiking trails, off-road vehicle trails, etc.

26 (7) "Unit of government" means any department or agency of the
27 federal government, any state or agency, office, or department of a
28 state, any city, county, district, commission, authority, entity, port,
29 or other public corporation organized and existing under statutory law
30 or under a voter-approved charter or initiative, and any
31 intergovernmental entity created pursuant to chapter 39.34 RCW or
32 created under this chapter.

33 NEW SECTION. **Sec. 3.** CREATING TRANSPORTATION INNOVATIVE
34 PARTNERSHIPS. The Transportation Innovative Partnerships Act is
35 created for the planning, acquisition, financing, development, design,
36 construction, reconstruction, replacement, improvement, maintenance,

1 preservation, management, repair, and operation of transportation
2 projects. The goals of this chapter are to:

- 3 (1) Reduce the cost of transportation project delivery;
- 4 (2) Recover transportation investment costs;
- 5 (3) Develop an expedited project delivery process;
- 6 (4) Encourage business investment in public infrastructure;
- 7 (5) Use any fund source outside the state treasury, where
8 financially advantageous and in the public interest;
- 9 (6) Maximize innovation; and
- 10 (7) Develop partnerships between private entities and units of
11 government.

12 NEW SECTION. **Sec. 4.** JOINT AGREEMENTS WITH OTHER GOVERNMENTAL
13 ENTITIES. Public sector partners may, either separately or in
14 combination with any other public sector partner, enter into working
15 agreements, coordination agreements, or similar implementation
16 agreements, including the formation of bistate transportation
17 organizations, to carry out the joint implementation of a
18 transportation project selected under this chapter. Public sector
19 partners may enter into agreements with other units of government or
20 Canadian provinces for transborder transportation projects.

21 NEW SECTION. **Sec. 5.** ELIGIBLE PROJECTS. Projects eligible for
22 development under this chapter include any transportation project as
23 defined in section 2 of this act. Concurrent development of
24 facilities, structures, operations, properties, vehicles, vessels, or
25 the like that are necessary to provide revenues to support financing of
26 a transportation project are also permissible under this chapter.

27 NEW SECTION. **Sec. 6.** PUBLIC FINANCING MECHANISMS AS PART OF
28 PROPOSAL. Public sector partners may, in connection with the
29 evaluation of concepts or proposals for transportation projects,
30 consider any public financing mechanisms, either together with a
31 transportation project proposal or as a separate, stand-alone proposal
32 to publicly finance a project. The public partner may consider sources
33 identified under section 25 of this act or any other lawful source.
34 Financing may be considered for all or part of a proposed project.

1 NEW SECTION. **Sec. 7.** REVIEW, EVALUATION, AND SELECTION OF
2 POTENTIAL PROJECTS. To carry out the purposes of this chapter, a
3 public partner may:

4 (1) Solicit concepts or proposals for transportation projects from
5 private entities and units of government;

6 (2) Accept unsolicited concepts or proposals for transportation
7 projects from private entities and units of government, subject to the
8 provisions in section 8 of this act;

9 (3) Evaluate projects already programmed or identified for
10 traditional development and financing by a unit of government; and

11 (4) Evaluate the concepts or proposals received under this section
12 and select potential projects based on the concepts or proposals. The
13 evaluation under this subsection must include consultation with any
14 appropriate unit of government. Projects selected for development
15 under this chapter must be identified in a regional transportation plan
16 approved by a regional transportation planning organization or a
17 metropolitan transportation planning organization.

18 NEW SECTION. **Sec. 8.** UNSOLICITED PROJECT PROPOSALS. Prior to
19 accepting any unsolicited project proposals, the public sector partner
20 must develop rules to facilitate the acceptance, review, publication,
21 and evaluation of unsolicited project proposals. At a minimum, these
22 rules must include provisions that:

23 (1) Identify a process for the acceptance of unsolicited proposals;

24 (2) Require publication of the basic elements of an unsolicited
25 proposal that has been submitted, for the purpose of informing the
26 public; and

27 (3) Provide a reasonable period of time for competing proposals to
28 be submitted.

29 The public sector partner may promulgate other rules as necessary
30 to avoid conflicts with existing laws, statutes, or contractual
31 obligations of the public sector partner.

32 NEW SECTION. **Sec. 9.** ADMINISTRATIVE FEE AUTHORIZED. A public
33 sector partner may charge an administrative fee for the evaluation of
34 a project proposal in an amount determined by the public partner,
35 reasonably calculated to offset any costs incurred that are not
36 otherwise funded through governmental budget appropriations.

1 NEW SECTION. **Sec. 10.** AUTHORIZATION TO SPEND FUNDS FOR EVALUATION
2 AND NEGOTIATION OF PROPOSALS. A public sector partner may spend, out
3 of any funds available for the purpose, such moneys as may be necessary
4 for the evaluation of concepts or proposals for transportation projects
5 and for negotiating agreements for transportation projects authorized
6 by this chapter. The public sector partner may employ engineers,
7 consultants, or other experts the public partner determines are needed
8 for the purposes of doing the evaluation and negotiation. Expenses
9 incurred by the public partner under this section before the issuance
10 of transportation project revenue bonds or other financing must be paid
11 by the public partner and charged to the appropriate transportation
12 project. The public partner shall keep records and accounts showing
13 each amount so charged. Upon the sale of transportation project
14 revenue bonds or upon obtaining other financing for a transportation
15 project, the funds spent by the public partner under this section in
16 connection with the project must be repaid to the public partner from
17 the proceeds of the bonds or other financing, as allowed by law.

18 NEW SECTION. **Sec. 11.** PUBLIC PARTNER MAY NEGOTIATE TENTATIVE
19 AGREEMENTS. After an evaluation by the public sector partner of
20 concepts or proposals submitted or reviewed under section 7 of this
21 act, and the selection of potential transportation projects, the public
22 partner may negotiate and enter into tentative agreements described in
23 section 16 of this act for implementing the selected transportation
24 projects.

25 NEW SECTION. **Sec. 12.** PROPRIETARY BUSINESS INFORMATION.
26 Sensitive business, commercial, or financial information that is not
27 customarily provided to business competitors that is submitted to the
28 public partner in connection with a transportation project under this
29 chapter is exempt from disclosure under chapter 42.17 RCW only when
30 releasing such information would adversely affect the financial
31 interest of the private entity or the bargaining position of either
32 entity.

33 NEW SECTION. **Sec. 13.** CONSULTATION WITH EXPERTS AUTHORIZED.
34 Public sector partners may consult with legal, financial, and other

1 experts within and outside the public sector in the evaluation,
2 negotiation, and development of projects under this chapter, consistent
3 with RCW 43.10.040 where applicable.

4 NEW SECTION. **Sec. 14.** ENVIRONMENTAL, ENGINEERING, AND TECHNICAL
5 STUDIES CONTRACTED. Notwithstanding any other provision of law, and in
6 the absence of any direct federal funding or direction, the public
7 sector partner may contract with a private developer of a selected
8 project proposal to conduct environmental impact studies and
9 engineering and technical studies funded by the legislature.

10 NEW SECTION. **Sec. 15.** REQUIRED TERMS OF PARTNERSHIP AGREEMENTS.
11 The following provisions are mandatory in any agreement to which the
12 public sector is a party:

13 (1) For any project that reverts to public ownership, agreements
14 must address responsibility for reconstruction or renovations that are
15 required in order for a facility to meet all applicable government
16 standards upon reversion of the facility to the state or local
17 government; and

18 (2) For any project that proposes terms for stand-alone maintenance
19 or asset management services for a publicly owned facility, those
20 services must be provided in a manner consistent with any collective
21 bargaining agreements and civil service laws that are in effect for the
22 publicly owned facility.

23 NEW SECTION. **Sec. 16.** ELEMENTS SUBJECT TO NEGOTIATION IN A
24 PARTNERSHIP AGREEMENT. (1) As part of the program established under
25 this chapter, the public sector partner may:

26 (a) Enter into any agreement or any configuration of agreements
27 relating to transportation projects with any private entity or unit of
28 government or any configuration of private entities and units of
29 government. The subject of agreements entered into under this section
30 may include, but need not be limited to, planning, acquisition,
31 financing, development, design, construction, reconstruction,
32 replacement, improvement, preservation, maintenance, management,
33 repair, and operation of transportation projects;

34 (b) Include in any agreement entered into under this section any

1 financing mechanisms, including but not limited to sources identified
2 under section 25 of this act or any other lawful source.

3 (2) The agreements among the public and private sector partners
4 entered into under this section must specify at least the following:

5 (a) The point in the transportation project at which public and
6 private sector partners will enter the project and which partners will
7 assume responsibility for specific project elements;

8 (b) How the partners will share management of the risks of the
9 project;

10 (c) How the partners will share the costs of development of the
11 project;

12 (d) How the partners will allocate financial responsibility for
13 cost overruns;

14 (e) The penalties for nonperformance;

15 (f) The incentives for performance;

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

18 (h) Whether the project is consistent with any applicable state
19 transportation plans, and any applicable regional transportation plans
20 or local transportation or land use plans or programs.

21 NEW SECTION. **Sec. 17.** PUBLIC INVOLVEMENT AND PARTICIPATION PLAN.

22 (1) Before final approval, agreements entered into under this chapter
23 must include a process that provides for public involvement and
24 participation with respect to the development of the projects. For
25 state projects, the plan must be submitted to the transportation
26 commission for approval. For other regional or local government
27 projects, the plan must be submitted to the appropriate executive or
28 legislative authority for approval.

29 (2) All workshops, forums, open houses, meetings, public hearings,
30 or similar public gatherings must be administered and attended by
31 representatives of public sector partners to an agreement authorized by
32 this chapter.

33 NEW SECTION. **Sec. 18.** APPLICATION OF PREVAILING WAGE LAW.

34 Chapter 39.12 RCW does not apply to concepts or proposals submitted
35 under this chapter, or to agreements entered into under this chapter,
36 except that if public moneys are used to pay any costs of construction

1 of public works that are part of a project, chapter 39.12 RCW applies
2 to the public works. In addition, if public moneys are used to pay any
3 costs of construction of public works that are part of a project, the
4 construction contract for the public works must contain provisions that
5 require the payment of workers under the contract in accordance with
6 chapter 39.12 RCW.

7 NEW SECTION. **Sec. 19.** CONFORMITY WITH FEDERAL LAWS.
8 Notwithstanding any provision of this chapter, applicable federal laws,
9 rules, and regulations govern in any situation that involves federal
10 funds if the federal laws, rules, or regulations:

- 11 (1) Conflict with any provision of this chapter;
12 (2) Require procedures that are additional to or different from
13 those provided in this chapter; or
14 (3) Require contract provisions not authorized in this chapter. If
15 no federal funds are provided, state laws, rates, and regulations shall
16 govern.

17 NEW SECTION. **Sec. 20.** COMPETITIVE BID--FINANCIAL PRO FORMA
18 REQUIRED. Before presenting an agreement for approval under section 21
19 of this act, the public sector partner must:

- 20 (1) Consider whether further cost savings can be achieved by
21 competitively bidding all or portions of the transportation proposal.
22 The public partner must conduct an analysis of the impacts of
23 competitively bidding all or part of the transportation proposal, and
24 submit its analysis, findings, and recommendations to the public sector
25 approval authority before entering into a final agreement; and
26 (2) Prepare a financial analysis that fully discloses all project
27 costs, direct and indirect, including costs of any financing.

28 NEW SECTION. **Sec. 21.** APPROVAL REQUIRED TO EXECUTE CONTRACTS.

29 (1) The public sector partner may not enter into an agreement under
30 this chapter until the agreement is reviewed and approved by the
31 transportation commission for state projects, or the highest executive
32 or legislative authority for local government projects.

33 (2) The public sector partner may not approve an agreement under
34 this chapter for the construction of a public improvement as part of a
35 transportation project unless the agreement provides for bonding,

1 financial guarantees, deposits, or the posting of other security to
2 secure the payment of laborers, subcontractors, and suppliers who
3 perform work or provide materials as part of the project.

4 NEW SECTION. **Sec. 22.** DISCLOSURE OF AGREEMENTS AND SUPPORTING
5 DOCUMENTS. The terms of a final agreement entered into under this
6 chapter, the terms of a proposed agreement presented to the public
7 sector approval authority for review and approval under section 21 of
8 this act, and any documents, communications, and information referenced
9 or relied upon to support a final or proposed agreement are subject to
10 disclosure under chapter 42.17 RCW.

11 NEW SECTION. **Sec. 23.** EMINENT DOMAIN. A public sector partner
12 may exercise the power of eminent domain to acquire property, rights of
13 way, or other rights in property for transportation projects that are
14 necessary to implement a project developed under this chapter,
15 regardless of whether the property will be owned in fee simple by the
16 public entity.

17 NEW SECTION. **Sec. 24.** CREATION OF TRANSPORTATION INNOVATIVE
18 PARTNERSHIP ACCOUNT. (1) The transportation innovative partnership
19 account is established separate and distinct from the state general
20 fund. Interest earned by the transportation innovative partnership
21 account must be credited to the account.

22 (2) The following moneys must be deposited into the transportation
23 innovative partnership account:

24 (a) Proceeds from bonds or other financing instruments issued under
25 section 29 of this act;

26 (b) Revenues received from any transportation project developed
27 under this chapter; and

28 (c) Any other moneys that are by donation, grant, contract, law, or
29 other means transferred, allocated, or appropriated to the account.

30 (3) Moneys in the transportation innovative partnership account
31 must be made available to the public partner by the state treasurer
32 upon presentation of an ordinance, resolution, chapter law, or other
33 duly enacted legal document evidencing the intent of the public sector
34 approval authority to appropriate funds to a project developed under
35 this chapter.

1 (4) The state treasurer shall serve as a fiduciary for the purpose
2 of carrying out this chapter and implementing all or portions of any
3 transportation project financed under this chapter.

4 (5) Moneys in the transportation innovative partnership account
5 that were derived from revenue subject to Article II, section 40
6 (Amendment 18) of the Washington state Constitution, may be used only
7 for purposes authorized by that provision of the state Constitution.

8 (6) The state treasurer shall establish separate subaccounts within
9 the transportation innovative partnership account for each
10 transportation project that is initiated under this chapter. Except as
11 provided in subsection (5) of this section, a public sector partner may
12 pledge moneys in the transportation innovative partnership account to
13 secure revenue bonds or any other debt obligations relating to the
14 transportation project for which the account is established.

15 (7) Moneys in a subaccount established under subsection (6) of this
16 section must be used as provided in any agreement applicable to the
17 transportation project for which the subaccount is established.

18 NEW SECTION. **Sec. 25.** TYPES OF PUBLIC FINANCING AVAILABLE. (1)

19 A transportation project may be financed in whole or in part with:

20 (a) The proceeds of grant anticipation revenue bonds authorized by
21 23 U.S.C. Sec. 122 and applicable state law. Legislative authorization
22 and appropriation is required in order to use this source of financing;

23 (b) Grants, loans, loan guarantees, lines of credit, revolving
24 lines of credit, or other financing arrangements available under the
25 Transportation Infrastructure Finance and Innovation Act under 23
26 U.S.C. Sec. 181 et seq., or any other applicable federal law;

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

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

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

34 (2) As security for the payment of public financing described in
35 this section, the revenues from the project may be pledged, but no such
36 pledge of revenues constitutes in any manner or to any extent a general

1 obligation of the state. Any public financing described in this
2 section may be structured on a senior, parity, or subordinate basis to
3 any other financing.

4 (3) For projects financed with bonds, only bonds issued by a unit
5 of government may be utilized. Bonds issued pursuant to Internal
6 Revenue Code 63-20 are not permissible for projects developed under
7 this chapter.

8 NEW SECTION. **Sec. 26.** USE OF FEDERAL FUNDS AND SIMILAR SOURCES OF
9 REVENUE. A public sector partner may accept from the United States or
10 any of its agencies such funds as are available to this state or to the
11 unit of government for carrying out the purposes of this chapter,
12 whether the funds are made available by grant, loan, or other financing
13 arrangement. The public sector partner may enter into such agreements
14 and other arrangements with the United States or any of its agencies as
15 may be necessary, proper, and convenient for carrying out the purposes
16 of this chapter, subject to section 25(2) of this act.

17 NEW SECTION. **Sec. 27.** OTHER SOURCES OF VALUABLE CONSIDERATION
18 AUTHORIZED. A public sector partner may accept from any source any
19 grant, donation, gift, or other form of conveyance of land, money,
20 other real or personal property, or other valuable thing made to the
21 state of Washington, the department, or a local government for carrying
22 out the purposes of this chapter.

23 Any transportation project may be publicly financed in whole or in
24 part by contribution of any funds or property made by any private
25 entity or public sector partner that is a party to any agreement
26 entered into under this chapter.

27 NEW SECTION. **Sec. 28.** USE OF TRANSPORTATION INNOVATIVE
28 PARTNERSHIP ACCOUNT. (1) The public sector partner may use moneys in
29 the transportation innovative partnership account to ensure the
30 repayment of loan guarantees or extensions of credit made to or on
31 behalf of private entities engaged in the planning, acquisition,
32 financing, development, design, construction, reconstruction,
33 replacement, improvement, maintenance, preservation, management,
34 repair, or operation of any transportation project that is part of the
35 program established under this chapter.

1 (2) The lien of a pledge made under this section is subordinate to
2 the lien of a pledge securing bonds payable from moneys in the motor
3 vehicle fund established in RCW 46.68.070, or the transportation
4 innovative partnership account established in section 24 of this act.

5 NEW SECTION. **Sec. 29.** AUTHORITY TO ISSUE REVENUE BONDS AND OTHER
6 INDENTURES. (1) In addition to any authority the public sector partner
7 has to issue and sell bonds and other similar obligations, this section
8 establishes continuing authority for the issuance and sale of bonds and
9 other similar obligations in a manner consistent with this section. To
10 finance a transportation project in whole or in part, the public sector
11 partner may request that the state treasurer issue revenue bonds on
12 behalf of the public sector partner. The bonds must be secured by a
13 pledge of, and a lien on, and be payable only from moneys in the
14 transportation innovative partnership account established in section 24
15 of this act, and any other revenues specifically pledged to repayment
16 of the bonds. Such a pledge by the public partner creates a lien that
17 is valid and binding from the time the pledge is made. Revenue bonds
18 issued under this section are not general obligations of the state or
19 local government and are not secured by or payable from any funds or
20 assets of the public partner other than the moneys and revenues
21 specifically pledged to the repayment of such revenue bonds.

22 (2) Moneys received from the issuance of revenue bonds or other
23 debt obligations, including any investment earnings thereon, may be
24 spent:

25 (a) For the purpose of financing the costs of the transportation
26 project for which the bonds are issued;

27 (b) To pay the costs and other administrative expenses of the
28 bonds;

29 (c) To pay the costs of credit enhancement or to fund any reserves
30 determined to be necessary or advantageous in connection with the
31 revenue bonds; and

32 (d) To reimburse the public sector partners for any costs related
33 to carrying out the purposes of the program established under this
34 chapter.

35 NEW SECTION. **Sec. 30.** ADVISORY COMMITTEES REQUIRED FOR LARGE

1 PROJECTS. For projects with costs, including financing costs, of fifty
2 million dollars or greater, advisory committees are required.

3 (1) A public sector partner that participates in a transportation
4 project must establish an advisory committee to advise with respect to
5 transportation projects. An advisory committee must consist of not
6 fewer than five and not more than nine members, as determined by the
7 public partner. Members must be appointed by the public partner, or
8 for projects with joint public sector participation, in a manner agreed
9 to by the state and any participating unit of government.

10 (2) An advisory committee shall review concepts or proposals for
11 transportation projects and submit comments to the public sector
12 partners.

13 (3) An advisory committee shall meet as necessary at times and
14 places fixed by the public sector partner, but not less than twice per
15 year. The public sector partner shall provide personnel services to
16 assist the advisory committee within the limits of available funds. An
17 advisory committee may adopt rules to govern its proceedings and may
18 select officers.

19 NEW SECTION. **Sec. 31.** Section captions used in this act are not
20 part of the law.

21 NEW SECTION. **Sec. 32.** Sections 1 through 31 of this act
22 constitute a new chapter in Title 47 RCW.

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