
SUBSTITUTE HOUSE BILL 1541

State of Washington

59th Legislature

2005 Regular Session

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

READ FIRST TIME 03/08/05.

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 The legislature also intends to systematically evaluate and
16 identify those highways that are well-suited for toll projects, either
17 developed under this chapter or developed under the powers currently
18 possessed by the transportation commission and the department of
19 transportation.

1 The legislature intends that the powers granted in this chapter to
2 the commission or department are in addition to any powers granted
3 under chapter 47.56 RCW.

4 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
5 section apply throughout this chapter.

6 (1) "Eligible project" means any project eligible for development
7 under section 6 of this act.

8 (2) "Private sector partner" and "private partner" mean a person,
9 entity, or organization that is not the federal government, a state, or
10 a political subdivision of a state.

11 (3) "Public funds" means all moneys derived from taxes, fees,
12 charges, tolls, etc.

13 (4) "Public sector approval authority" means the transportation
14 commission for the state, or its successor; if none is provided, then
15 the public sector approval authority shall be the governor.

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

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

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

32 **PART I**

33 **POWERS AND DUTIES OF DEPARTMENT OF TRANSPORTATION**

34 NEW SECTION. **Sec. 3.** POWERS CONFERRED ON DEPARTMENT OF

1 TRANSPORTATION. (1) In addition to the powers it now possesses, the
2 department of transportation may:

3 (a) Enact rules necessary to carry out the purposes of this
4 chapter;

5 (b) Design, finance, construct, operate, control, maintain,
6 improve, preserve, and reconstruct toll facilities in this state,
7 whether the facilities are developed under the powers granted in this
8 chapter or under other powers the department possesses;

9 (c) Enter into contracts or agreements authorized under this
10 chapter; and

11 (d) Organize itself in ways necessary to support the purposes of
12 this chapter, including but not limited to the creation of offices to
13 support any or all tolling enterprises in the state.

14 (2) For projects that are financed with indebtedness issued by the
15 state treasurer, the department has the following powers and duties:

16 (a) To establish, revise periodically, and collect fees, fares, and
17 tolls for the privilege of using tolled facilities of this state;

18 (b) To adopt such rules governing the imposition and revision of
19 tolls, including but not limited to variable toll rates as deemed
20 necessary to ensure optimal public use of the facility, consistent with
21 state and federal law;

22 (c) To require technical studies and reports to be prepared by the
23 owner or operator of any facility to be tolled; and

24 (d) For facilities where revenues have been pledged as a first lien
25 for the retirement of debt issued by the state, to establish toll
26 charges on those facilities at least sufficient to pay all bonded
27 indebtedness in due course, and to set aside in a special reserve
28 account funds sufficient for reserves, insurance, required maintenance
29 or operation costs, or like purposes.

30 NEW SECTION. **Sec. 4.** TOLLING FEASIBILITY STUDY REQUIRED. Before
31 soliciting and reviewing proposals for projects under section 10 of
32 this act, the transportation commission, with the technical assistance
33 of the department, must conduct a study of the state's transportation
34 system to determine the feasibility of administering tolls on specific
35 transportation facilities or a network of facilities. In addition to
36 identifying specific toll facilities or corridors, the study must

1 recommend any additional laws, rules, procedures, resources, studies,
2 reports, or the like that are necessary or desirable before proceeding
3 with the review and evaluation of any toll projects.

4 The transportation commission shall complete the study and report
5 back to the Legislature by January 15, 2006.

6 **PART II**

7 **TRANSPORTATION INNOVATIVE PARTNERSHIPS PROGRAM**

8 NEW SECTION. **Sec. 5.** PURPOSE OF TRANSPORTATION INNOVATIVE
9 PARTNERSHIPS. The Transportation Innovative Partnerships Act is
10 created for the planning, acquisition, design, financing, management,
11 development, construction, reconstruction, replacement, improvement,
12 maintenance, preservation, repair, and operation of transportation
13 projects. The goals of this chapter are to:

- 14 (1) Reduce the cost of transportation project delivery;
- 15 (2) Recover transportation investment costs;
- 16 (3) Develop an expedited project delivery process;
- 17 (4) Encourage business investment in public infrastructure;
- 18 (5) Use any fund source outside the state treasury, where
19 financially advantageous and in the public interest;
- 20 (6) Maximize innovation;
- 21 (7) Develop partnerships between and among private entities and the
22 public sector for the advancement of public purposes on mutually
23 beneficial terms;
- 24 (8) Create synergies between and among public sector entities to
25 develop projects that serve both transportation and other important
26 public purposes; and
- 27 (9) Access specialized construction management and project
28 management services and techniques available in the private sector.

29 NEW SECTION. **Sec. 6.** ELIGIBLE PROJECTS. Projects eligible for
30 development under this chapter include:

- 31 (1) Transportation projects, whether capital or operating, where
32 the state's primary purpose for the project is to facilitate the safe
33 transport of people or goods via any mode of travel. However, this
34 does not include projects that are primarily for recreational purposes,
35 such as parks, hiking trails, off-road vehicle trails, etc.; and

1 (2) Facilities, structures, operations, properties, vehicles,
2 vessels, or the like that are developed concurrently with an eligible
3 transportation project and that are capable of (a) providing revenues
4 to support financing of an eligible transportation project, or (b) that
5 are public projects that advance public purposes unrelated to
6 transportation.

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

15 (a) The proceeds of grant anticipation revenue bonds authorized by
16 23 U.S.C. Sec. 122 and applicable state law. Legislative authorization
17 and appropriation is required in order to use this source of financing;

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

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

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

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

29 (2) As security for the payment of financing described in this
30 section, the revenues from the project may be pledged, but no such
31 pledge of revenues constitutes in any manner or to any extent a general
32 obligation of the state. Any financing described in this section may
33 be structured on a senior, parity, or subordinate basis to any other
34 financing.

35 (3) For any transportation project developed under this chapter
36 that is owned, leased, used, or operated by the state as a public

1 facility, if indebtedness is issued, it must be issued by the state
2 treasurer for the transportation project.

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

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

12 NEW SECTION. **Sec. 8.** USE OF FEDERAL FUNDS AND SIMILAR SOURCES OF
13 REVENUE. The department may accept from the United States or any of
14 its agencies such funds as are available to this state or to any other
15 unit of government for carrying out the purposes of this chapter,
16 whether the funds are made available by grant, loan, or other financing
17 arrangement. The department may enter into such agreements and other
18 arrangements with the United States or any of its agencies as may be
19 necessary, proper, and convenient for carrying out the purposes of this
20 chapter, subject to section 8 of this chapter.

21 NEW SECTION. **Sec. 9.** OTHER SOURCES OF VALUABLE CONSIDERATION
22 AUTHORIZED. The department may accept from any source any grant,
23 donation, gift, or other form of conveyance of land, money, other real
24 or personal property, or other valuable thing made to the state of
25 Washington, the department, or a local government for carrying out the
26 purposes of this chapter.

27 Any eligible project may be financed in whole or in part by
28 contribution of any funds or property made by any private entity or
29 public sector partner that is a party to any agreement entered into
30 under this chapter.

31 NEW SECTION. **Sec. 10.** REVIEW, EVALUATION, AND SELECTION OF
32 POTENTIAL PROJECTS. (1) Subject to subsection (2) of this section, the
33 department may:

34 (a) Solicit concepts or proposals for eligible projects from
35 private entities and units of government;

1 (b) On or after July 1, 2006, accept unsolicited concepts or
2 proposals for eligible projects from private entities and units of
3 government, subject to section 18 of this act;

4 (c) Evaluate projects for inclusion in the transportation
5 innovative partnerships program that are already programmed or
6 identified for traditional development by the state; and

7 (d) Evaluate the concepts or proposals received under this section
8 and select potential projects based on the concepts or proposals. The
9 evaluation under this subsection must include consultation with any
10 appropriate unit of government.

11 (2) Before undertaking any of the activities contained in
12 subsection (1) of this section, the department must:

13 (a) Complete the tolling feasibility study specified in section 4
14 of this act; and

15 (b) Adopt rules specifying the procedures and criteria for the
16 proper solicitation, acceptance, review, evaluation, and selection of
17 projects proposed for development under this chapter. The rules
18 adopted by the department must include provisions for the constitution
19 of project evaluation teams.

20 NEW SECTION. **Sec. 11.** ADMINISTRATIVE FEE AUTHORIZED. The
21 department may charge an administrative fee for the evaluation of a
22 project proposal in an amount calculated to reasonably offset any costs
23 incurred that are not otherwise funded through governmental budget
24 appropriations.

25 NEW SECTION. **Sec. 12.** AUTHORIZATION TO SPEND FUNDS FOR EVALUATION
26 AND NEGOTIATION OF PROPOSALS. The department may spend, out of any
27 funds identified for the purpose, such moneys as may be necessary for
28 the evaluation of concepts or proposals for eligible projects and for
29 negotiating agreements for eligible projects authorized by this
30 chapter. The department may employ engineers, consultants, or other
31 experts the department determines are needed for the purposes of doing
32 the evaluation and negotiation. Expenses incurred by the department
33 under this section before the issuance of transportation project bonds
34 or other financing must be paid by the department and charged to the
35 appropriate project. The department shall keep records and accounts
36 showing each amount so charged.

1 Unless otherwise provided in the omnibus transportation budget the
2 funds spent by the department under this section in connection with the
3 project must be repaid from the proceeds of the bonds or other
4 financing upon the sale of transportation project bonds or upon
5 obtaining other financing for an eligible project, as allowed by law or
6 contract.

7 NEW SECTION. **Sec. 13.** CONSULTATION WITH EXPERTS AUTHORIZED. The
8 commission and department may consult with legal, financial, and other
9 experts inside and outside the public sector in the evaluation,
10 negotiation, and development of projects under this chapter, consistent
11 with RCW 43.10.040 where applicable.

12 NEW SECTION. **Sec. 14.** ENVIRONMENTAL, ENGINEERING, AND TECHNICAL
13 STUDIES CONTRACTED. Notwithstanding any other provision of law, and in
14 the absence of any direct federal funding or direction, the department
15 may contract with a private developer of a selected project proposal to
16 conduct environmental impact studies and engineering and technical
17 studies.

18 NEW SECTION. **Sec. 15.** TERMS OF PARTNERSHIP AGREEMENTS. (1) The
19 following provisions must be included in any agreement to which the
20 state is a party:

21 (a) For any project that proposes terms for stand-alone maintenance
22 or asset management services for a public facility, those services must
23 be provided in a manner consistent with any collective bargaining
24 agreements and civil service laws that are in effect for the public
25 facility;

26 (b) Transportation projects that are selected for development under
27 this chapter must be identified in a regional transportation plan
28 approved by a regional transportation planning organization or a
29 metropolitan transportation planning organization;

30 (c) Consistency with tolling technology standards adopted by the
31 department for transportation-related projects;

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

1 (e) All projects must be financed in a manner consistent with
2 section 7 of this act. This chapter is null and void if this
3 subsection or section 7 of this act fails to become law or is held
4 invalid by a court of final jurisdiction.

5 (2) Agreements between the state and private sector partners
6 entered into under this section must specifically include the following
7 contractual elements:

8 (a) The point in the project at which public and private sector
9 partners will enter the project and which partners will assume
10 responsibility for specific project elements;

11 (b) How the partners will share management of the risks of the
12 project;

13 (c) How the partners will share the costs of development of the
14 project;

15 (d) How the partners will allocate financial responsibility for
16 cost overruns;

17 (e) The penalties for nonperformance;

18 (f) The incentives for performance;

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

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

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

27 NEW SECTION. **Sec. 16.** PUBLIC INVOLVEMENT AND PARTICIPATION PLAN.

28 (1) Before final approval, agreements entered into under this chapter
29 must include a process that provides for public involvement and
30 participation with respect to the development of the projects. This
31 plan must be submitted along with the proposed agreement, and both must
32 be approved under section 17 of this act before the state may enter a
33 binding agreement.

34 (2) All workshops, forums, open houses, meetings, public hearings,
35 or similar public gatherings must be administered and attended by
36 representatives of the state and any other public entities that are
37 party to an agreement authorized by this chapter.

1 NEW SECTION. **Sec. 17.** PROCESS FOR FINAL APPROVAL AND EXECUTION OF
2 CONTRACTS. (1) Before approving an agreement under subsection (2) of
3 this section, the public sector approval authority must:

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

6 (b) Publish notice and make available the full contents of the
7 agreement at least twenty days before the public hearing required in
8 (c) of this subsection; and

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

13 (2) The public sector approval authority must allow at least twenty
14 days from the public hearing on the proposed agreement required under
15 subsection (1)(c) of this section before approving and executing any
16 agreements authorized under this chapter.

17 NEW SECTION. **Sec. 18.** UNSOLICITED PROJECT PROPOSALS. Before
18 accepting any unsolicited project proposals, the department must adopt
19 rules to facilitate the acceptance, review, evaluation, and selection
20 of unsolicited project proposals. These rules must include provisions
21 that require publication of the basic elements of an unsolicited
22 proposal that has been submitted. These rules must also provide at
23 least ninety days from the date of publication for competing proposals
24 to be submitted.

25 The department may adopt other rules as necessary to avoid
26 conflicts with existing laws, statutes, or contractual obligations of
27 the state.

28 The department may not accept or consider any unsolicited proposals
29 before July 1, 2006.

30 NEW SECTION. **Sec. 19.** ADVISORY COMMITTEES REQUIRED FOR LARGE
31 PROJECTS. For projects with costs, including financing costs, of three
32 hundred million dollars or greater, advisory committees are required.

33 (1) The public sector approval authority must establish an advisory
34 committee to advise with respect to eligible projects. An advisory
35 committee must consist of not fewer than five and not more than nine
36 members, as determined by the public partners. Members must be

1 appointed by the public sector approval authority, or for projects with
2 joint public sector participation, in a manner agreed to by the state
3 and any participating unit of government. In making appointments to
4 the committee, the commission shall consider persons or organizations
5 offering a diversity of viewpoints on the project.

6 (2) An advisory committee shall review concepts or proposals for
7 eligible projects and submit comments to the public sector partners.

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

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

16 NEW SECTION. **Sec. 20.** PROPRIETARY BUSINESS INFORMATION. Subject
17 to rules adopted under section 10(2)(b) of this act, sensitive
18 business, commercial, or financial information that is not customarily
19 provided to business competitors that is submitted to the state in
20 connection with a transportation project under this chapter is exempt
21 from disclosure under chapter 42.17 RCW only when releasing the
22 information would adversely affect the financial interest of the
23 private entity or the bargaining position of either entity. Projects
24 under federal jurisdiction or using federal funds must conform to
25 federal regulations under the Freedom of Information Act.

26 NEW SECTION. **Sec. 21.** APPLICATION OF PREVAILING WAGE LAW. If
27 public funds are used to pay any costs of construction of a public
28 facility that is part of an eligible project, chapter 39.12 RCW applies
29 to the entire eligible public works project.

30 NEW SECTION. **Sec. 22.** JOINT AGREEMENTS WITH OTHER GOVERNMENTAL
31 ENTITIES. The state may, either separately or in combination with any
32 other public sector partner, enter into working agreements,
33 coordination agreements, or similar implementation agreements,
34 including the formation of bistate transportation organizations, to
35 carry out the joint implementation of a transportation project selected

1 under this chapter. The state may enter into agreements with other
2 units of government or Canadian provinces for transborder
3 transportation projects.

4 NEW SECTION. **Sec. 23.** EMINENT DOMAIN. The state may exercise the
5 power of eminent domain to acquire property, rights of way, or other
6 rights in property for projects that are necessary to implement an
7 eligible project developed under this chapter, regardless of whether
8 the property will be owned in fee simple by the state.

9 **PART III**
10 **GENERAL PROVISIONS**

11 NEW SECTION. **Sec. 24.** CREATION OF TRANSPORTATION INNOVATIVE
12 PARTNERSHIP ACCOUNT. (1) The transportation innovative partnership
13 account is established in the custody of the state treasurer separate
14 and distinct from the state general fund. Interest earned by the
15 transportation innovative partnership account must be credited to the
16 account. The account is subject to allotment procedures under chapter
17 43.88 RCW.

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

20 (a) Proceeds from bonds or other financing instruments issued under
21 section 26 of this act;

22 (b) Revenues received from any transportation project developed
23 under this chapter or developed under the general powers granted to the
24 department; and

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

27 (3) Moneys in the transportation innovative partnership account may
28 only be expended upon evidence of approval by the Washington state
29 legislature, either upon appropriation of supporting state funds or by
30 other statutory direction.

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

34 (5) Moneys in the transportation innovative partnership account

1 that were derived from revenue subject to Article II, section 40
2 (Amendment 18) of the Washington state Constitution, may be used only
3 for purposes authorized by that provision of the state Constitution.

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

12 NEW SECTION. **Sec. 25.** USE OF TRANSPORTATION INNOVATIVE
13 PARTNERSHIP ACCOUNT. (1) The state may use moneys in the
14 transportation innovative partnership subaccount to ensure the
15 repayment of loan guarantees or extensions of credit made to or on
16 behalf of private entities engaged in the planning, acquisition,
17 financing, development, design, construction, reconstruction,
18 replacement, improvement, maintenance, preservation, management,
19 repair, or operation of any eligible project that is related to a
20 subaccount established under this chapter.

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

25 NEW SECTION. **Sec. 26.** AUTHORITY TO ISSUE REVENUE BONDS AND OTHER
26 OBLIGATIONS. (1) In addition to any authority the commission or
27 department has to issue and sell bonds and other similar obligations,
28 this section establishes continuing authority for the issuance and sale
29 of bonds and other similar obligations in a manner consistent with this
30 section. To finance a project in whole or in part, the commission may
31 request that the state treasurer issue revenue bonds on behalf of the
32 public sector partner. The bonds must be secured by a pledge of, and
33 a lien on, and be payable only from moneys in the transportation
34 innovative partnership account established in section 24 of this act,
35 and any other revenues specifically pledged to repayment of the bonds.
36 Such a pledge by the public partner creates a lien that is valid and

1 binding from the time the pledge is made. Revenue bonds issued under
2 this section are not general obligations of the state or local
3 government and are not secured by or payable from any funds or assets
4 of the state other than the moneys and revenues specifically pledged to
5 the repayment of such revenue bonds.

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

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

11 (b) To pay the costs and other administrative expenses of the
12 bonds;

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

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

18 **PART IV**

19 **ALTERNATIVE CONTRACTING AND INNOVATIVE PROJECT MANAGEMENT**

20 NEW SECTION. **Sec. 27.** STUDY OF ALTERNATIVE CONTRACTING AND
21 PROJECT MANAGEMENT AUTHORITIES. The department shall conduct a study
22 of:

23 (1) The contracting powers and project management authorities it
24 currently possesses; those same powers and authorities authorized under
25 this chapter; and those powers and authorities employed by other states
26 or the private sector;

27 (2) Methods of encouraging competition for the development of
28 transportation projects; and

29 (3) Any additional procedures that may be necessary or desirable
30 for negotiating contracts in situations of a single qualified bidder,
31 in either solicited or unsolicited proposals.

32 The department must submit its report, along with any recommended
33 legislative changes, to the governor and the legislature for
34 consideration in the 2006 legislative session.

