

# HOUSE BILL REPORT

## HB 1979

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### As Reported by House Committee On: Transportation

**Title:** An act relating to implementing public-private partnership best practices for nontoll transportation projects.

**Brief Description:** Implementing public-private partnership best practices for nontoll transportation projects.

**Sponsors:** Representatives Zeiger, Liias, Clibborn, Kretz, Hargrove, Fitzgibbon, O'Ban and Morrell.

#### **Brief History:**

##### **Committee Activity:**

Transportation: 3/18/13, 4/2/13 [DPS].

#### **Brief Summary of Substitute Bill**

- Limits application of certain transportation innovative partnership statutes to only toll projects.
- Authorizes, under certain circumstances, the Washington State Department of Transportation's (WSDOT) use of design-build procedures for projects under \$10 million.
- Creates a pilot project through which the WSDOT may procure a development partner in a transportation innovative partnership project on the basis of that partner's qualifications to successfully develop a non-toll project.
- Makes several changes to the Washington State Transportation Commission's (Commission) oversight of project financing.
- Authorizes the Commission to adopt guidelines regarding the WSDOT entering predevelopment agreements for future transportation innovative partnership projects.

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### HOUSE COMMITTEE ON TRANSPORTATION

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 30 members: Representatives Clibborn, Chair; Fey, Vice Chair; Liias, Vice Chair; Moscoso, Vice Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Angel, Bergquist, Farrell, Fitzgibbon, Habib, Hayes, Johnson, Klippert, Kochmar, Kretz, Kristiansen, Moeller, Morris, O'Ban, Riccelli, Rodne, Ryu, Sells, Shea, Takko, Tarleton, Upthegrove and Zeiger.

**Staff:** Andrew Russell (786-7143).

**Background:**

The Transportation Innovative Partnerships (TIP) chapter of the RCW (chapter 47.29) pertains to the development of transportation projects in partnership with the private sector. This chapter supplements other public works laws, including those in chapters 39.04 and 39.10, which apply to state projects generally.

The TIP chapter provides guidelines for TIP projects, including what projects are eligible under the chapter, how projects may be financed, the review and selection of projects, and the appointment of advisory committees and expert review panels. An eligible project is a transportation project where the goal is to facilitate safe transport of people or goods and includes certain facilities or structures developed concurrently with the transportation project. An eligible project may be financed in various ways, including by bonds, grants, loans, or tolls, fares, and user fees.

In implementing the TIP chapter, the Washington State Transportation Commission (Commission) has the power to review proposed projects, select projects to move forward, and execute contracts to carry out the selected projects. These decisions are made by the Commission in consultation with the Washington State Department of Transportation's (WSDOT) and an Evaluation Panel appointed and directed by the Commission. These entities, when evaluating projects, consider several factors, including whether the proposal is complete, responsive, feasible, and meets the public interest. Upon selection of one or more proposals, a negotiation team from the Commission may enter negotiations to reach a final agreement with the proposer. Any final agreement must be reviewed by the Attorney General and be subject to a public hearing and comment period before the agreement may be approved by the Commission.

Finally, if a project is expected to cost more than \$300 million, the Commission must establish an advisory committee, which reviews proposals and submits comments to its public sector partners. For any project, regardless of size or cost, the WSDOT must establish an expert review panel to analyze proposals and make recommendations to the Governor and the Commission.

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**Summary of Substitute Bill:**

Certain requirements of the TIP chapter are made applicable to only toll projects. First, only toll projects must be evaluated by the Commission's Evaluation Panel, reviewed by the

WSDOT's expert review panel, and overseen by an advisory committee if the project costs more than \$300 million. Additionally, certain statutory criteria that a project must meet is limited to only toll projects, and certain financing requirements are applied only to toll projects. Contracts that are executed pursuant to the TIP chapter must cover projects that are priority needs of the state. Finally, the bill clarifies that it does not affect collective bargaining rights under RCW 41.80.

The Commission is given oversight in several different areas. First, for a non-toll project, financing that does not pledge the state's credit must be approved by the Commission. In addition, the Commission must review and approve any project that either sells assets owned by the WSDOT or incurs obligations that would significantly bind future state legislative appropriations. Finally, the Commission is empowered to develop guidelines for a project review and approval process that allows the WSDOT to enter into predevelopment agreements for future TIP projects.

For TIP projects, the WSDOT may use the design-build procurement process for public works projects that cost less than \$10 million and that are either highly specialized, repetitive in design, or can be delivered without regular interaction from users. The WSDOT may also, as part of a pilot program and under Commission guidelines, competitively procure a potential development partner solely on the basis of that partner's qualifications to successfully develop a non-toll road transportation project that does not exceed \$10 million.

Finally, TIP projects are specifically allowed to be financed in whole or in part with exchanges of property.

**Substitute Bill Compared to Original Bill:**

The substitute bill clarifies that it does not affect employees' collective bargaining rights under RCW 41.80. Additionally, the substitute bill does not include a provision that conditioned certain exchanges of state-owned transportation property.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The Commission provided several efficiency recommendations, including changes to the public-private partnership statute. This bill streamlines the process through which non-toll public-private partnership projects can be done. This bill provides greater flexibility and more options to the WSDOT and the Commission.

The Commission's recommendations included drawing clear distinctions between tolled and non-tolled projects. It was also recommended to authorize the Commission to approve or review the sale of state-owned assets and state obligations. Additionally, the approval and review process should be streamlined and modified for non-tolled projects. Finally, the Commission recommended that the WSDOT be able to try non-tolled public-private partnership pilot projects that are less than \$10 million. The ability to enter predevelopment agreements is also useful for the Commission and the WSDOT.

Washington businesses support this bill and would like to see public-private partnerships expanded.

(With concerns) This act carves out non-tolled projects as they relate to the public-private partnership process, but there is the question of how this act affects collective bargaining issues and contracting-out work. The WSDOT maintenance employees are opposed to any part of the bill that would affect their collective bargaining rights. This bill may also eliminate some important checks and balances on the use of public funds.

(Opposed) None.

**Persons Testifying:** (In support) Representative Zieger, prime sponsor; Reema Griffith, Washington State Transportation Commission; Mike Ennis, Association of Washington Business; and Jeff Doyle, Washington State Department of Transportation.

(With concerns) Vince Oliveri, Professional Technical Employees Local 17; and Matt Zuvich, Washington Federation of State Employees.

**Persons Signed In To Testify But Not Testifying:** None.