Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Capital Budget Committee

HB 2726

Brief Description: Concerning public-private partnerships for alternative public works contracting.

Sponsors: Representatives Buys and Tarleton.

Brief Summary of Bill

- Authorizes a public-private agreement between any public body and a qualified private entity to construct and finance, operate, and/or maintain: (1) civic or education facility; (2) roads; (3) bridges; (4) public transit systems; (5) ferry facility; (6) port facility; (7) airports; (8) intermodal systems; (9) cultural or recreational facilities; (10) medical facilities; (11) utility facilities; and (12) telecommunication facilities.
- Authorizes a public body to sell bonds to finance a public-private project construction or operation of the facility.
- Authorizes transportation projects eligible for use under chapter 47.29 to enter into a public-private agreement under this chapter.

Hearing Date: 1/23/18

Staff: Steve Masse (786-7115).

Background:

Public Works Projects.
Public works projects include construction, renovation, remodeling, and repair, other than maintenance, of real property at the cost of the state or a municipality. The capital budget provides direct appropriations and grants to state agencies, other governmental entities, and nonprofit organizations for public works projects. The transportation budget provides funding for state roads, and bridges projects. Those projects consist of labor and materials to complete. Most public works projects are procured using the design-bid-build procedure when a governmental entity selects an architectural engineering firm to develop drawings and

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specifications for the project, then the construction contract is awarded to the lowest responsible bidder.

Capital Projects Advisory Review Board

In 2005 the Capital Projects Advisory Review Board (CPARB) was established to monitor and evaluate the use of traditional and alternative public works contracting procedures and to evaluate potential future use of other alternative contracting procedures. The CPARB also provides a forum in which best practices and concerns about alternative public works contracting can be discussed. The CPARB consists of 23 members, including four Legislative members: two from the House of Representatives, appointed by the Speaker of the House, and two from the Senate, appointed by the President of the Senate.

Alternative Contracting Procedures.

Alternative forms of public works were first used on a very limited basis and then adopted in statute in 1994 for certain pilot projects. These alternative procedures included the Design-Build process and General Contractor Construction Manager process. With some restrictions, the use of alternative public works contracting procedures are authorized to a limited number of public entities. Public entities must apply for certification to use the alternative contracting methods. After three years the public entity must reapply for certification. Criteria for certification includes the public body's qualifications to use alternative contracting methods, capital plan during the certification period, and intended use of alternative contracting.

Public Private Partnerships

A Public Private Partnership (P3) is a performance-based contract between the public sector and private sector to provide financing, delivery, and possibly long term operations and maintenance. The ability to transfer risk to the private sector is a determining factor when considering P3 contract agreements. Washington was one of the first states to enact P3 legislation. The 1993 legislation was eventually repealed, then replaced with new legislation in 2005.

The Transportation Innovative Partnerships Act

The Transportation Innovative Partnerships Act was passed by the Legislature in 2005. It authorizes the Transportation Commission to solicit concepts or proposals for projects from private entities. This includes transportation projects where the primary purpose for the project is: (1) to move people or goods by any means of travel; and (2) facilities, vessels, or vehicles that are developed concurrently with an eligible transportation project, that are capable of generating revenues to support financing of an eligible transportation project. The projects selected for development must be identified in the Washington State Transportation Plan, or be identified as being a priority for the state.

6320 Financing

Internal Revenue Service ruling 63-20 of 1963 allows a governmental entity to authorize a nonprofit to issue tax exempt bonds to develop a new public facility. The revenue is used by a developer to construct and possibly operate and maintain the facility for an agreed upon period. After the facility is built, the public entity leases the facility from the nonprofit to pay the debt on the bonds. Typically the lease period is 30 years. There have been two major 6320 projects authorized by the Legislature recently. The Edna Goodrich Building located in Tumwater is leased by the Department of Corrections and the Department of Transportation. The Jefferson Street Building is leased by the Department of Enterprise Services, and has four data halls. Both facilities were developed and are being operated and maintained by a developer, and lease to the state for 30 years. After the 30 year period the facility ownership and operations reverts to the state.

Summary of Bill:

Authorizes a public-private agreement between any public body and a qualified private entity to construct and finance, operate, and/or maintain: (1) civic or education facility; (2) roads; (3) bridges; (4) public transit systems; (5) ferry facility; (6) port facility; (7) airports; (8) intermodal systems; (9) cultural or recreational facilities; (10) medical facilities; (11) utility facilities; and (12) telecommunication facilities.

The types of agreements include:

- Design-build-operate-maintain
- Design-build-finance-operate-maintain
- Design-build-finance

<u>The Public Body Authority</u>

- The public body must determine that using this process is in the best interest of the public. To determine this the public body must publish the intent to use the process in a legal newspaper, and conduct a hearing to receive any verbal or written comments, and consider the comments to determine if the process proposed is in the best interest of the public. The public body must then publish a final determination.
- A public body may consider an unsolicited proposal regarding a potential public-private agreement or public-private facility.
- The public body may provide an honorarium to private entity finalists who are not awarded the contract to generate meaningful competition.
- The public body must establish an evaluation committee to evaluate proposals. The evaluation can only be based on factors, weighting, and process identified on the request for proposals. The public body may negotiate with the highest evaluated proposal. If an agreement cannot be reached the public body may then negotiate with the next highest evaluated proposal.
- Public-private agreements may not exceed 50 years.
- The public body may sell bonds for the purpose of funding a public-private project for the development, financing, or operation of a public-private facility.

The Capital Projects Advisory Review Board (CPARB) must establish a public-private project review subcommittee. A public body must apply for and receive approval to use a public-private project agreement. The CPARB may authorize up to four public-private agreements per year.

A transportation project that is eligible for development under chapter 47.29 (Transportation Innovative Partnerships), may use the process in this chapter.

Appropriation: None.

Fiscal Note: Available.

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