

HOUSE BILL REPORT

SSB 6277

As Reported by House Committee On:
Transportation

Title: An act relating to creating a new statutory framework for the use of public-private partnerships for transportation projects.

Brief Description: Creating a new statutory framework for the use of public-private partnerships for transportation projects.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Liias, King, Hunt, Nobles and Shewmake).

Brief History:

Committee Activity:

Transportation: 2/21/24, 2/26/24 [DPA].

Brief Summary of Substitute Bill
(As Amended by Committee)

- Creates a new statutory framework for the implementation of public-private partnerships for transportation projects.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended. Signed by 22 members: Representatives Fey, Chair; Donaghy, Vice Chair; Paul, Vice Chair; Timmons, Vice Chair; Barkis, Ranking Minority Member; Hutchins, Assistant Ranking Minority Member; Low, Assistant Ranking Minority Member; Berry, Chapman, Cortes, Dent, Doglio, Duerr, Goehner, Griffey, Hackney, Klicker, Mena, Nance, Orcutt, Ramel and Schmidt.

Minority Report: Without recommendation. Signed by 6 members: Representatives Bronoske, Entenman, Ramos, Volz, Walsh and Wylie.

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

Staff: David Munnecke (786-7315).

Background:

Transportation Innovative Partnerships—Generally.

The Transportation Innovative Partnership (TIP) Program provides a framework for project delivery through public-private partnerships (P3s). The intent of the program is stated to be to 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 the state's ten-year experience with the previously enacted P3 Program. The TIP Program goals include reducing the cost of project delivery, encouraging business investments in public infrastructure, and developing partnerships between private entities and the public sector to advance public purposes on mutually beneficial terms. The TIP Program provides guidance regarding the review and selection of projects, approval and execution of the procurement contracts, and additional oversight of the project. Responsibility for each of these functions is delegated to either the Washington State Transportation Commission (WSTC) or the Washington State Department of Transportation (WSDOT).

Eligible Projects and Financing.

A project is eligible under the TIP Program if it facilitates the safe transport of people or goods via any mode of travel. Certain concurrent development projects are also eligible if they provide revenues to support a transportation project or they advance public purposes. Development of these eligible projects may be financed through various methods including: (1) grant anticipation revenue bonds; (2) federal funds; (3) assistance from the Transportation Infrastructure Account; (4) state or local revenues pursuant to appropriation; (5) user fees, fares, lease proceeds, or receipts from sales; and (6) contributions of funds or property by private or public entities. A project may also be financed by tolls if authorized by the Legislature.

The State Treasurer (Treasurer) must issue any indebtedness for a state transportation project that is developed under the TIP Program and is owned, operated, used, or leased by the state as a public facility. For other public projects that are developed in conjunction with a transportation project, financing must be approved by the State Finance Committee or the governing board of a public benefit corporation.

Project Solicitation, Review, and Selection.

The WSTC, in coordination with the WSDOT, may solicit projects for potential development under the TIP Program. Before approving a project for solicitation, the WSTC must ensure the project is either a priority need for the state or that it is included in the state's transportation plan. The WSDOT may evaluate projects for inclusion in the TIP Program, and it may recommend projects for solicitation that meet the policy goals of the TIP Program. The WSTC may also consider and accept unsolicited proposals, and develop rules to govern this process, which must include a variety of specified provisions.

After the WSDOT has received responses to a request for proposals under the TIP Program, it must conduct a preliminary review to ensure that the proposals are complete. Proposals are then forwarded to an evaluation panel appointed by the WSTC, which must include a financial expert, an independent representative from a contracting firm, an observer from the State Auditor's Office or the Joint Legislative Audit and Review Committee, and a WSDOT representative. The evaluation panel must consider whether the proposal meets the criteria specified in the request for proposals, and the panel may consider any other factors that it believes necessary to ensure the project benefits the public interest. For a tolled project, the panel must consider other factors relating specifically to the impact of the tolled project.

Contract Execution.

After the WSTC selects an apparent successful proposer, the WSDOT must notify the proposer of the state's intent to negotiate and execute an agreement. The negotiation must be referred to a negotiation team within the WSDOT. Any agreement under the TIP Program must include terms relating to: (1) maintenance complying with collective bargaining agreements and civil service laws; (2) security for the payment of laborers, subcontractors, and suppliers; (3) project financing and auditing; (4) how the parties will share costs, management, and any cost overruns; (5) contract incentives and penalties; (6) requirements for facilities that revert to state ownership; and (7) law enforcement on TIP projects. Before any agreement is executed, there must be a process that provides for public involvement in the process, the Attorney General must review the legal sufficiency of the agreement, and the WSTC must conduct a financial analysis of the project and consider the WSDOT's ability to complete the project internally. The WSTC must conduct a final review, and may approve the agreement, reject the agreement, or return the agreement for further negotiations.

Additional Oversight.

The WSDOT must convene an expert review panel to review, analyze, and make recommendations to the Governor and the WSTC on whether to approve, reject, or continue negotiations on a proposed project agreement. The panel must consist of at least three, but no more than five members, each of whom hold expertise relevant to the TIP Program. For projects with costs of \$300 million or more, the WSTC must appoint an advisory committee. The committee must consist of at least five, but no more than nine members, meet at least twice each year to review concepts and proposals for eligible projects, and submit comments to public sector partners.

Use of Project Revenues.

The Transportation Innovative Partnership Account (TIP Account) receives proceeds from bonds issued for, and other revenue from, the project, to be used for repayment of loan guarantees or extensions of credit made to, or on behalf of, private partners engaged in all elements of an eligible project. The TIP Account funds may only be expended as approved by the Legislature through appropriation or statutory direction. The Treasurer must establish separate subaccounts within the TIP Account for each transportation project

initiated under the TIP Program.

Miscellaneous Provisions.

Other TIP Program provisions address the: (1) use of federal funds or other sources for P3 purposes; (2) use of public and private sector experts in project procurement; (3) use of environmental impact and engineering studies for selection proposals; (4) confidentiality of submitted project proposals; (5) prevailing wage requirements if public funds are used to pay costs of an eligible project; and (6) state's authority to exercise eminent domain to implement an eligible project, and to enter into implementation agreements with other units of government.

Program Studies.

In 2011 the Legislature directed the Joint Transportation Committee (JTC) to conduct a study to evaluate the role P3s could potentially play in financing state transportation projects with a focus on how best to protect the public interest. The final JTC report was dated January 19, 2012, and made a variety of recommendations regarding the statutory framework governing P3s.

In 2023 the Legislature directed the JTC to convene a workgroup to study and recommend a new statutory framework for the TIP Program. Specific tasks include a review and update of the 2012 JTC Report, development of a process for implementing P3s that serve the defined public interest, and barriers to implementation of funding models that best serve the public interest. The workgroup may evaluate P3 opportunities for fish culvert work and commercial retail options at state ferry terminals. The workgroup must also submit a preliminary report and any draft legislation recommendations by the end of 2023, along with a final report and draft legislation recommendations by July 1, 2024.

Summary of Amended Bill:

The entirety of the TIP Program is repealed, with certain provisions modified or fully retained as follows.

Transportation Innovative Partnerships—Generally.

Legislative findings state that a new P3 law is needed to achieve various objectives, including: (1) transparently deliver better public value, including expedited project delivery; (2) allocate project risks to the most abled parties; (3) better align private sector incentives with public priorities; and (4) provide consistency in project review and approval process. The WSDOT, rather than the WSTC, is responsible for: (1) the review and selection of projects, consistent with existing project procurement and contracting requirements and practices; (2) approval and execution of the procurement contracts; and (3) additional oversight of the project.

Any preliminary rules or guidelines developed under the WSDOT's powers and duties must

be submitted to the chairs and ranking members of the Legislative Transportation Committees for review and comment by November 30, 2026, along with draft legislation to implement any necessary changes to the use of public-private partnerships. The Legislature retains its role as toll imposition authority for any eligible P3 toll projects, and the WSTC retains its role as toll rate setting authority for any eligible P3 toll projects. The WSDOT may not adopt any rules relative to the P3 Program.

Eligible Projects and Financing.

A project is eligible as a P3 if it facilitates the safe transport of people or goods via any mode of travel, has an engineer estimated cost of \$500 million or less, and is not a rail project. Development of these eligible projects may be financed through various methods including: (1) grant anticipation revenue bonds; (2) federal funds; (3) assistance from the Transportation Infrastructure Account; (4) state or local revenues pursuant to appropriation; (5) private entity contributions including equity investments; and (6) user fees, fares, lease proceeds, or receipts from sales.

The WSDOT may develop a finance plan requiring the state or private partner to: (1) issue debt; (2) enter into contracts or leases; or (3) secure financing through legislative appropriation or a lien or exchange of real property. The restriction that any debt issued on a P3 project must be state-issued debt is removed. The WSDOT may only execute an agreement, including if it impacts the state's debt capacity or credit rating, upon review and approval of the finance plan and proposed financing terms by the State Finance Committee. The WSDOT may request the Treasurer to issue revenue bonds on its behalf to finance a P3 project.

Project Solicitation, Review, and Selection.

The WSDOT, rather than the WSTC, may evaluate transportation projects already programmed for other delivery models as appropriated for P3 delivery. Before soliciting or procuring a P3 project, the WSDOT must make formal findings that a P3 delivery model is in the public's interest. The WSDOT must adopt rules addressing findings, processes, and criteria, including public ownership retention, agreement transparency, and public oversight of private entity management. If there is a finding of public interest, the WSDOT must provide notice and intent to deliver the project as a P3 project to the public, Transportation Committees of the Legislature, and Governor. The WSDOT may solicit, evaluate, and select potential P3 proposals, but must first provide an opportunity for public comment. The WSDOT may also provide stipends for respondents to a P3 project solicitation.

Contract Execution.

Before an agreement is executed, the agreement must be approved by duly enacted legislation, and the WSDOT must make a formal finding that the negotiated partnership agreement is expected to result in best value for the public, which is determined by: (1) a comparison of total delivery costs as a P3 project compared to traditional or other alternative delivery methods; (2) a comparison with current project delivery capacity and scheduling, documenting the advantages of advancing a P3 project; and (3) other factors

such as cost, risk sharing, asset and service quality, and innovation.

Any partnership agreement entered into by the WSDOT must include terms relating to: (1) maintenance complying with collective bargaining agreements and civil service laws; (2) security for the payment of laborers, subcontractors, and suppliers; and (3) project financing. Any partnership agreement entered into by the WSDOT and the private partners must include terms relating to how the parties will share: (1) costs, management, and any cost overruns; (2) private partner compensation and maximum rate of return; (3) incentives and penalties; (4) requirements for facilities that revert to state ownership; (5) default by either party; and (6) public communication and participation with project development.

Use of Project Revenues.

The Public-Private Partnerships Account (P3 Account) is created as a nonappropriated account. The P3 Account deposits are derived from bond proceeds issued for and other revenue from the project, to be used for repayment of loan guarantees or extensions of credit made to, or on behalf of, private partners engaged in all elements of an eligible project. The Treasurer may establish separate subaccounts within the P3 Account for each initiated P3 transportation project.

Miscellaneous Provisions.

The TIP Program provisions that address the: (1) use of federal funds or other sources for P3 purposes; (2) use of public and private sector experts in project procurement; (3) use of environmental impact and engineering studies for selection proposals; (4) confidentiality of submitted project proposals; (5) prevailing wage requirements if public funds are used to pay costs of an eligible project; and (6) the state's authority to exercise eminent domain to implement an eligible project and to enter into implementation agreements with other units of government are retained, except that any property acquired through the exercise of eminent domain must be owned in fee simple by the state.

The TIP Program provisions that address unsolicited proposal rule requirements, advisory committee requirements for projects of \$300 million or more, expert review panel review, and approval processes for proposed project agreements are removed.

Amended Bill Compared to Substitute Bill:

The amended bill limits the use of P3s to projects with an engineer's estimated cost of less than \$500 million and to projects that are not rail projects.

The WSDOT is prevented from adopting rules to carry out P3s and is required to develop draft legislation to implement any necessary changes to the use of P3s.

The approval of any agreement relative to a P3 must be approved through duly enacted legislation, and property acquired through eminent domain must be owned in fee simple by the state.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on January 1, 2026.

Staff Summary of Public Testimony:

(In support) The State of Pennsylvania recently entered into a P3 agreement to build 500 bridges, which were built in half the time that was originally expected. Public-private partnerships allow for the bundling of projects, and the private partners are often taking on a significantly greater portion of the risk on the project.

The speed of delivery is what makes these types of projects most interesting, and P3s help meet the needs of the state for the project to be built. Local workers are often working on these projects, but not always. Under the bill, the agreement must meet the state's requirements on collective bargaining and procurement.

Gas taxes are not enough to fund the state transportation system. Public-private partnerships are essential for meeting the state's demand for transportation projects, and the private sector will help by innovating and building a sustainable system. The private capital that is used will also help boost the state's economy.

(Opposed) Public-private partnerships are not in the public interest. They are a regressive tax that benefits the private sector. Public-private partnerships are used to hide public borrowing, and they keep everyone from using a facility.

Public-private partnerships are done in private and are done in favor of the private entity involved.

(Other) None.

Persons Testifying: (In support) Stuart Barry; Logan Walzak; Jennifer Ziegler, National Construction Alliance; and Morgan Irwin, Association of Washington Business.

(Opposed) Arthur West.

Persons Signed In To Testify But Not Testifying: None.