

# SENATE BILL REPORT

## SB 5773

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As of February 24, 2025

**Title:** An act relating to alternative procurement and delivery models for transportation projects.

**Brief Description:** Concerning alternative procurement and delivery models for transportation projects.

**Sponsors:** Senators Liias and King.

**Brief History:**

**Committee Activity:** Transportation: 2/25/25.

### Brief Summary of Bill

- Creates a new statutory framework for the implementation of public-private partnerships for transportation projects.
- Requires the Department of Transportation (WSDOT) to develop a process for awarding contracts for highway projects over \$2 million to use a progressive design-build (PDB) or any general contractor/construction manager (GC/CM) procedure.
- Requires WSDOT to consult with the Capital Projects Advisory Review Board after identifying PDB or GC/CM procedures as the preferred delivery method, for projects over \$100 million, for any recommendations or feedback.
- Requires the Joint Transportation Committee to collaborate with WSDOT to evaluate the alliance contracting procedure as a potential project delivery model for transportation projects, with a report due by July 1, 2027.

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### SENATE 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 part of the legislation nor does it constitute a statement of legislative intent.*

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**Background:** Transportation Innovative Partnerships. *Generally.* The Transportation Innovative Partnership (TIP) Program provides a framework for project delivery through public-private partnerships (P3). The intent of the TIP Program is 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 Public-Private Partnership Program. TIP Program goals include reducing the cost of project delivery, encouraging business investment 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 grant anticipation revenue bonds; federal funds; assistance from the Transportation Infrastructure Account; state or local revenues pursuant to appropriation; and user fees, fares, lease proceeds, or receipts from sales. A project may also be financed by tolls if authorized by the Legislature.

The state 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.* WSTC, in coordination with WSDOT, may solicit projects for potential development under the TIP Program. Before approving a project for solicitation, WSTC must ensure the project is either a priority need for the state or that it is included in the state's transportation plan. 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. WSTC may also consider and accept unsolicited proposals.

After 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 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. After receiving recommendations from the evaluation panel, the WSTC may proceed to negotiations with one proposer, competitive negotiations with more than one proposer, or reject all proposals.

*Contract Execution.* After WSTC selects an apparent successful proposer, 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 WSDOT. Any agreement under the TIP Program must include terms relating to: maintenance complying with collective bargaining agreements and civil service laws; security for the payment of laborers, subcontractors, and suppliers; project financing and auditing; how the parties will share costs, management, and any cost overruns; contract incentives and penalties; requirements for facilities that revert to state ownership; and 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 WSTC must conduct a financial analysis of the project and consider WSDOT's ability to complete the project internally. WSTC must conduct a final review, and it may approve the agreement, reject the agreement, or return the agreement for further negotiations.

*Additional Oversight.* WSDOT must convene an expert review panel to review, analyze, and make recommendations to the Governor and 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 who hold expertise relevant to the TIP Program. For projects with costs of \$300 million or more, WSTC must appoint an advisory committee. The advisory committee must consist of at least five, but no more than nine, members, and meet at least twice each year, review concepts and proposals for eligible projects, and submit comments to public sector partners.

*Use of Project Revenues.* The 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. TIP Account funds may only be expended as approved by the Legislature through appropriation or statutory direction. The state 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 use of federal funds or other sources for P3 purposes; use of public and private sector experts in project procurement; use of environmental impact and engineering studies for selection proposals; confidentiality of submitted project proposals; prevailing wage requirements if public funds are used to pay costs of an eligible project; and the 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 published January 25, 2012, and made several recommendations regarding the statutory framework governing P3s, including the repeal of the existing statutes.

In 2023, the Legislature directed JTC to convene a workgroup to study and recommend a new statutory framework for the TIP Program. Specific tasks included a review and update of the 2012 JTC report, and development of a process for implementing P3s that serve and best protect a defined public interest. The workgroup was allowed to evaluate P3 opportunities for fish culvert work and commercial retail options at state ferry terminals. The workgroup was required to 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.

Capital Projects Advisory Review Board. The Capital Projects Advisory Review Board (CPARB), in the Department of Enterprise Services, provides evaluations of public capital projects construction processes, including the impact of contracting methods on project outcomes, and advises the Legislature on policies related to public-works delivery methods and alternative public-works contracting procedures. In 2024, CPARB completed a review of the planned procurement methods of four highway projects as directed by the Legislature.

Alternative Project Delivery Methods. WSDOT may award competitively bid highway construction contracts for projects over \$2 million using the design-build (DB) procedure, which is a method of contracting under which WSDOT contracts with another party to design and build the structures, facilities, and other specified contract items. The DB award process must include the scope of services required, contractor prequalification requirements, criteria to evaluate technical information and project costs, contractor selection criteria, and resolution procedures. WSDOT may and is encouraged to use the DB procedure for public works projects over \$2 million when construction activities are highly specialized and the DB approach is critical to develop construction methodology, the project selected provides for greater innovation and efficiency opportunities, or project delivery cost savings would be significant.

WSDOT and other public bodies may apply to CPARB for certification to use the progressive design-build (PDB) procedure or general contractor/construction manager (GC/CM) procedure on projects. Certification allows the public body to use either procedure without CPARB review for three years. To be eligible for certification, the public body must demonstrate successful management of at least one PDB or GC/CM project, respectively, in the previous five years. Otherwise, a public body not certified must apply for approval from CPARB on a project-by-project basis to use the PDB or GC/CM

procedure.

PDB is generally defined as a method of contracting under which a public body selects a design-builder before establishing a final project design, price, and schedule, with the public body and design-builder collaborating on final project scope, schedule, and price thereafter. WSDOT using the PDB procedure is subject to the DB procedure requirements applicable to other public bodies. WSDOT has started utilizing the PDB procedure on several projects.

GC/CM is generally defined as a firm selected by a public body to provide services during the design phase, negotiate a maximum allowable construction cost, and act as construction manager and general contractor during the project construction phase. WSDOT and other public bodies using the GC/CM procedure for public works projects are subject to certain requirements, including additional requirements in utilizing GC/CM for heavy civil construction projects.

The alliance contracting procedure is generally defined as a method of contracting under which the public body and one or more service providers, including the designers and constructors, collaborate on the delivery of a project using contractually established financial incentives to encourage project performance and cooperation among all participants. This procedure is generally used outside of the United States and has not been authorized for use as an alternative project delivery method within Washington State.

**Summary of Bill:** Transportation Innovative Partnership. *Generally.* The entirety of the TIP Program is repealed, with certain provisions modified or fully retained as follows.

WSDOT, rather than WSTC, is responsible for: the review and selection of projects, consistent with existing project procurement and contracting requirements and practices; approval and execution of the procurement contracts; and additional oversight of the project, under a P3 delivery model. The Legislature retains its role as toll imposition authority for any eligible P3 toll projects, and WSTC retains its role as toll rate setting authority for any eligible P3 toll projects.

WSDOT must report to the transportation committees of the Legislature proposed policies and guidelines intended for rule adoption by September 1, 2026, with no adopted rules taking effect before January 1, 2027. During rule-making, WSDOT must consult with its Office of Equity and Civil Rights.

*Eligible Projects and Financing.* A transportation project is eligible for delivery under a P3 model if it preserves or facilitates the safe transport of people or goods via any mode of travel. An eligible transportation project with an estimated cost of under \$500 million may be evaluated for delivery under a P3 model as prescribed, but any eligible transportation project with an estimated cost of \$500 million or more may only be evaluated for delivery under a P3 model as prescribed if explicitly authorized by the Legislature.

Development of eligible transportation projects may be financed through various methods, including grant anticipation revenue bonds, federal funds, assistance from the Transportation Infrastructure Account, state or local revenues pursuant to appropriation, private entity contributions including equity investments, revenue bonds, and user fees, fares, lease proceeds, or receipts from sales. WSDOT may develop a finance plan requiring the state or private sector partner to issue debt, enter into contracts or leases, or secure financing through a legislative appropriation or lien or an exchange of real property. The restriction that any debt issued on a P3 project must be state-issued debt is removed. WSDOT may only execute any agreement regarding an eligible transportation project, 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.

*Project Solicitation, Review, and Selection.* WSDOT, rather than WSTC, may evaluate transportation projects already programmed for other delivery models as appropriate for P3 delivery. Before soliciting or procuring a P3 project, WSDOT must make formal findings that a P3 delivery model is in the public's interest. 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, WSDOT must provide notice and intent to deliver the project as a P3 project to the public, transportation committees of the Legislature, and Governor. WSDOT may solicit, evaluate, and select potential P3 proposals, but must first provide an opportunity for public comment. WSDOT may also provide stipends for respondents to a P3 project solicitation, subject to appropriation.

*Contract Execution.* Before an agreement is executed, 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: a comparison of total delivery costs as a P3 project compared to traditional or other alternative delivery methods; a comparison with current project delivery capacity and scheduling, documenting the advantages of advancing a P3 project; and other factors such as cost, risk sharing, asset and service quality, and innovation.

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

*Use of Project Revenues.* The P3 Account is created as a nonappropriated account. P3 Account deposits are derived from bond proceeds issued for and other revenue from the project, to be used for all elements of an eligible transportation project. The state treasurer may establish separate subaccounts within the P3 account for each initiated P3 transportation

project.

*Miscellaneous Provisions.* TIP Program provisions that address the use of federal funds or other sources for P3 purposes; use of public and private sector experts in project procurement; use of environmental impact and engineering studies for selection proposals; confidentiality of submitted project proposals; prevailing wage requirements if public funds are used to pay costs of an eligible project; and 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.

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

Alternative Project Delivery Methods. WSDOT may award competitively bid highway construction contracts for projects over \$2 million using the PDB procedure or any GC/CM procedure. WSDOT may, and is encouraged to use, the PDB procedure or any GC/CM procedure for public works projects over \$2 million when the same conditions for using the DB procedure are met.

The JTC, in collaboration with WSDOT, must evaluate the alliance contracting procedure as a potential alternative contracting procedure for delivering transportation-related projects, and submit an evaluation report to the transportation committees of the Legislature, including any findings and recommended statutory changes, by July 1, 2027.

Capital Projects Advisory Review Board. Until June 30, 2031, and after identifying the PDB procedure or any GC/CM procedure as the preferred delivery method for a project in excess of \$100 million, WSDOT must consult with CPARB to review the selected delivery method for the project and provide any recommendations or feedback for consideration. WSDOT and CPARB must collaboratively develop and implement the coordination and details of this consultation.

**Appropriation:** None.

**Fiscal Note:** Requested on February 21, 2025.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.