

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-3165.1/16

ATTY/TYPIST: BP:akl

BRIEF DESCRIPTION:

Initiative Measure No. 1454

filed February 3, 2016

taxation; amending RCW 47.01.051, 47.01.061, 47.01.071, 47.01.240, 47.56.820, 47.56.830, 47.56.850, and 82.38.030; adding a new chapter to Title 47 RCW; repealing RCW 47.01.480, 47.56.840, 47.05.010, 47.05.021, 47.05.022, 47.05.025, 47.05.030, 47.05.035, 47.05.195, 47.05.200, 47.29.010, 47.29.020, 47.29.030, 47.29.040, 47.29.050, 47.29.060, 47.29.070, 47.29.080, 47.29.090, 47.29.100, 47.29.110, 47.29.120, 47.29.130, 47.29.140, 47.29.150, 47.29.160, 47.29.170, 47.29.180, 47.29.190, 47.29.200, 47.29.210, 47.29.220, 47.29.230, 47.29.240, 47.29.250, 47.29.260, 47.29.270, 47.29.280, 47.29.290, and 47.29.900; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** INTENT. This act intends to establish a policy framework for the selection, procurement, financing, and management of all state and federal roadway assets operated by the state of Washington. The aforementioned shall be achieved via the modification of existing statutes concerning revenue sources and financing, and appropriating additional powers to the Washington state transportation commission and the Washington state department of transportation.

NEW SECTION. **Sec. 2.** FINDINGS AND DECLARATION OF POLICY. The people find that the current methods employed by the state of Washington for the maintenance, repair, replacement, and management of roadways in the state of Washington are grossly inadequate to meet present and future transportation needs of the state. The adoption of new project evaluation and financing techniques will better represent the interests of the people of Washington when compared to current practices.

NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the transportation commission.

(2) "Department" means the department of transportation.

(3) "Eligible project" means any project as established in section 33 of this act.

(4) "ITS" means information technology systems.

(5) "Least cost" means an alternative transportation solution that delivers similar benefits to conventional solutions, such as demand management instead of facility expansion.

(6) "Life-cycle cost" means the total cost to the state for the acquisition, ownership, operations, maintenance, repairs, and any other cost inputs determined to be relative during a project's life span of operation.

(7) "Multicriteria analysis" means a means of evaluating project proposals, based upon the established goals for the project. Decision makers shall decide between alternatives based upon the option or options that best fit the evaluation criteria.

(8) "OTP3" means the office of transportation P3 established within the department of transportation.

(9) "P3" means a public-private partnership(s).

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

(11) "Public funds" means all moneys derived from taxes, fees, charges, tolls, and otherwise.

(12) "Public sector comparator" or "PSC" means the hypothetical risk-adjusted cost if a project were to be financed, owned, and implemented by the government. The PSC provides a benchmark for estimating value for money from alternative bids.

(13) "Public sector partner" or "public partner" means any federal or state unit of government, bistate transportation organization, or any other political subdivision of any state.

(14) "Shadow bid" means cost modeling conducted by the OTP3 that gives the projected value and potential for savings achieved by pursuing alternative modes of procurement when compared to PSC.

(15) "Transportation project" means a project, whether capital or operating, in which the state's primary purpose for the project is to preserve or facilitate the safe transport of people or goods via any mode of travel. "Transportation project" does not include a project that is primarily for recreational purposes, such as parks, hiking trails, off-road vehicle trails, and otherwise.

(16) "Value for money" means a method to determine whether an organization has obtained the maximum benefit with the resources available.

NEW SECTION. **Sec. 4.** ESTABLISHMENT OF THE WASHINGTON STATE OFFICE OF TRANSPORTATION P3 (OTP3). The office of transportation P3 (OTP3) is established within the department and must analyze prospective projects and financing tools necessary to deliver the greatest value for the state of Washington.

NEW SECTION. **Sec. 5.** DUTIES OF THE OTP3. The OTP3 is responsible for upholding public interest concerns and facilitating projects in the best interest of the public and private sector. The OTP3 is a center of P3 competence in which the legislature can place the confidence needed to make sound preprocurement decisions on whether to pursue a project through the P3 tool. The OTP3 has the primary responsibility to investigate and determine the optimal method of procurement, using the tools and guidelines articulated in this chapter.

NEW SECTION. **Sec. 6.** POWERS GRANTED TO THE OTP3. The following authorities should be granted to OTP3:

(1) Complete authority to approve and authorize the use of a P3 for eligible projects. A P3 may be utilized and a P3 procurement commenced only if it has received approval from the OTP3;

(2) Recommend a user fee regime for projects, for review and approval by the commission, in consultation with state, regional, and local stakeholders;

(3) Establish and update priorities in the evaluation and development of eligible projects;

(4) Establish and enforce uniform screening criteria and procedures, in advance of a P3 procurement, for:

(a) Selecting eligible projects for P3 delivery;

(b) Selecting the type of P3 to be used; and

(c) Selecting the procurement method to be used, such as: One-step versus request for proposals or request for qualifications, best value, low bid, negotiation, or other;

(5) Prepare screening analyses and reports, including value for money analyses;

(6) Mandatorily conduct a step one screening of the following projects for suitability of P3 delivery:

(a) Every eligible project that is a horizontal transportation project having an estimated capital cost of two hundred fifty million dollars or more; and

(b) Every other eligible transportation project, system, or equipment having an estimated capital cost of fifty million dollars or more;

(7) Procure, negotiate, and execute P3 agreements, including hiring advisory support;

(8) Identify and analyze project opportunities throughout the state that could benefit from alternative project delivery methods and that should be considered as a P3;

(9) Promote and conduct studies, research, analyses, and investigations including, but not limited to, research of domestic and international projects that have employed alternative project delivery methods, and identification and evaluation of lessons learned from those projects;

(10) Serve as a clearinghouse for information on national and international best practices for alternative project delivery methods;

(11) Serve as a means of reducing transaction costs, increasing efficiency, and promoting consistency among alternative procurement methods;

(12) Establish a consistent framework for operations, including standardizing procedures, and procurement documents and contracts, taking into account differences among sectors, projects, procurement approaches, contract types, sources of public funding, and applicable state and other relevant factors; and

(13) Adopt rules establishing its administrative procedures.

NEW SECTION. **Sec. 7.** POLICY. P3 projects require guarantees from the parties involved to preserve the interests of the Washington state taxpayer.

(1) The state should maintain ultimate control and/or ownership of assets involved in P3 projects.

(2) Value for money must be assessed and show a positive value before the state pursues a P3 project.

(3) Upfront payments generated by P3 projects to the state by the private partner should be used only to address transportation needs and not be diverted to pay for other government costs.

(4) The long-term quality of service delivered in a P3 project must be ensured through stringent contract provisions and ongoing oversight.

(5) P3 projects shall conform to the state's toll setting policy, rather than allowing the private sector to change toll rates without contractually stipulated limits.

(6) P3 projects shall meet relevant state laws as with any other public works project including:

(a) Apprenticeship requirements;

(b) Prevailing wage laws; and

(c) Minority and women-owned business enterprise requirements.

(7) The state must safeguard against private partners realizing excessive returns through the employment of:

(a) Revenue sharing, in which the public agency receives a share of the profits if the profits exceed a certain threshold established in the P3 agreement;

(b) Sharing the gains from refinancing;

(c) Ceasing the P3 when a reasonable rate of return is realized; and

(d) Other measures.

(8) Through contractual provisions, the state must ensure that the private partner selected will be solvent and able to deliver over the long-term through:

(a) Minimum qualifications for proposers, including evidence that members of the contracting entity have demonstrated the experience and competency to complete a project of a similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project; and

(b) The provision of financial documentation proving it has the capacity to complete the project.

(9) The state retains the right to terminate a P3 contract, or a project agreement, if the private partner is not able to deliver according to the performance specifications of the contract.

(10) The P3 contract must clearly specify the condition that the asset must be in when the term of the agreement ends. At the end of the agreement, direct control and possession of the project must return to the public sector.

(11) Noncompete agreements are forbidden in all P3 agreements excluding for the net adverse of effects on revenue as defined in the P3 agreement. The state will not be liable for the effects of any identified long-range transportation plan on the facility specified in the P3 agreement at the time of procurement.

(12) Within the context of P3 agreements, the private party may pursue the use of privately arranged or issued debt financing, and

allow private partners to realize a return on equity subject to the limitations imposed in the agreement concerning the established reasonable rate of return for the subject project.

(13) The department may enter into alternative delivery contracts that provide for annual or extended payment procedures including, but not limited to:

(a) The availability of payment contracts and obligatory payments under such contracts in the event of early termination;

(b) The availability of payment contracts, up to a limit established in the agreement, prioritized in the department's budget;

(c) The use of continuing appropriations enabling availability of payment contracts to be advanced.

(14) The following projects are eligible for P3 financing:

(a) Project systems, facilities, areas, buildings, and structures; and

(b) Equipment used in providing, operating, maintaining, or administering transportation facilities or services, including ITS, department of licensing systems, transportation-related web sites and information systems, power generation and supply systems on or for transportation facilities, safety rest areas, and user fee collection systems.

NEW SECTION. **Sec. 8.** SCREENING PROCESS. The state shall employ a two-step screening tool that includes:

(1) A project screening tool, including a fatal flaw analysis; and

(2) A comparative financial model to aid in quantitatively evaluating the P3 model and traditional delivery model.

NEW SECTION. **Sec. 9.** P3 STRUCTURES. The OTP3 may pursue the following P3 structures if in compliance with state law and this chapter:

(1) Design-build finance;

- (2) Design-build operate maintain;
- (3) Design-build finance maintain;
- (4) Design-build finance operate maintain - availability payment P3;
- (5) Design-build finance operate maintain - revenue concession;
- (6) Monetization; or
- (7) Build own operate.

NEW SECTION. **Sec. 10.** VALUE FOR MONEY ANALYSIS. Before advancing a P3 procurement, the OTP3 shall undertake a value for money analysis to determine the possible P3 structures, if any, that might prove the greatest value versus a publicly financed and delivered approach. The value for money assessment will proceed in the following order:

(1) A preliminary assessment through the application of the project screening process.

(2) For projects that pass the screening process and progress towards P3 procurement by the OTP3:

(a) The development of a prebid value for money assessment similar in character to the comparative financial model described in section 18 of this act but containing a more detailed quantitative assessment of P3 and PSC scenarios;

(b) This assessment will be structured so as to enable reassessment of bids throughout the procurement process to account for revised input assumptions, market conditions, risk apportionment, and otherwise; and

(c) This assessment will help define the minimum award criteria described in subsection (3) of this section.

(3) Once bids are received, reassessment of the value for money presented by each bid in the context of the prebid value for money assessment and minimum award criteria.

(a) If all bids are noncompliant or fail to meet the minimum award criteria, the OTP3 must perform a detailed value for money assessment to determine if any acceptable changes to the project's

structure, duration, tolling regime, risk apportionment, funding, or any other modification to the proposed bid-phase project agreement or minimum award criteria could potentially restore P3 delivery as a value adding approach;

(b) The OTP3 must receive approval from the P3 executive board in relation to any proposed changes to the bid-phase project agreement or minimum award criteria that would be required to restore P3 delivery as a superior value for money approach to delivery;

(c) The OTP3 must receive approval from the P3 executive board in relation to any subsequent termination, change, or award of the procurement.

(4) If there is any significant change to the terms of the project agreement after the project award, but before financial closing, reassessment of the value for money resulting from any current valid bid offered by either the preferred bidder and/or any reserve bidder.

(5) Recommendation of a preferred funding mechanism including, but not limited to:

(a) Gas taxes;

(b) Vehicle fees;

(c) Toll revenue; or

(d) Any other sources of revenue deemed appropriate by the OTP3 and approved by the executive board.

(6) If the estimated costs of a P3 procurement are less than a traditional public sector procurement, further analysis of the project.

NEW SECTION. **Sec. 11.** MINIMUM AWARD CRITERIA. The OTP3 is responsible for developing the minimum award criteria on a project-specific basis that should be considered from an early state of the project development in conjunction with the value for money assessment and refined over time as the project request for

proposals is defined. The exact value of the project must remain confidential and not shared with bidders.

NEW SECTION. **Sec. 12.** GENERAL ASSESSMENT CRITERIA. The OTP3 is responsible for developing the weighing of different criteria in regard to a specific project and may employ a staged approach if deemed necessary.

NEW SECTION. **Sec. 13.** DESIGNATION OF CANDIDATE PROJECTS. All projects declared to have a positive value based on cost-benefit analysis by the state are eligible for consideration and filtered under the following:

(1) There is no limit to the number of projects that can be designated as eligible for P3 financing.

(2) Projects that have previously failed the project screening tool assessment should not be restricted from being assessed more than once.

(3) The project screening tool and comparative financial model are limited in nature and have been tailored to and should be used only for the assessment of state transportation projects.

(4) The OTP3 may select projects deemed as P3 delivery candidates and is responsible for screening these projects.

(5) Candidate projects should be identified and tested no later than eighteen months prior to the time they are anticipated to enter a traditional procurement for construction processes.

(6) Candidate projects shall be identified no sooner than three years before their approvals are anticipated to be in place and shall have the following characteristics predefined:

(a) Whether the project will be tolled or not and, if tolled, an initial tolling study completed indicating future toll rates and transaction and initial revenue forecasts.

(b) Concept design performed to a standard that has or would allow the development of an order of magnitude capital and operating cost forecasts.

(c) Projects must have passed a basic purpose and need rationale and are official state transportation plans.

NEW SECTION. **Sec. 14.** PROJECT SCREENING TOOL FORMAT. (1) The final project screening tool shall contain two tiers of assessment:

(a) Specific to fatal flaw criteria: A project seen as so significant in the eyes of the state that if it fails to demonstrate an appropriate outcome in any relation to any of these issues, the project automatically fails overall and is unsuited for P3 procurement in its current form.

(b) Nonfatal flaw criteria: Alternative categories deemed important by the department and concerned parties.

(2) Both fatal flaw and nonfatal flaw criteria shall employ weighted analysis and address the following categories:

- (a) The public interest;
- (b) Ability for P3 to potentially add value;
- (c) Private sector interest; and
- (d) Regulatory, legal, and political feasibility.

(3) The department retains the right to add categories as it sees fit to properly analyze the project in question.

NEW SECTION. **Sec. 15.** TREATMENT OF PROJECTS THAT FAIL THE PROJECT SCREENING TOOL. (1) Upon failure of the project screening tool analysis, a project is deemed to be ineligible for P3. The project's failure forces the following if deemed appropriate by the OTP3:

(a) An analysis of elements of the project that must be addressed, rectified, improved, or studied in greater detail in order to potentially pass future P3 screening;

(b) A redefinition of projects that have failed due to scale or revenue shortfalls and consideration of expansion, grouping, or consolidation with other projects, followed by a reassessment;

(c) If failure is due to a lack of clarity in definition, a future reassessment once this detail is available;

(d) A pursuit of industry outreach in relation to specific projects to gauge the rationale for reassessment in the future and to solicit innovative solutions;

(e) If failure is due to inadequate funding through either user fees or government funds, a review in the context of the state's omnibus appropriations act, with the decision to reassess made on the basis of if and when additional funds may be secured for the project;

(f) If failure is due to an unrecoverable fatal flaw, no reassessment; or

(g) A referral back to the department with recommendations to develop a new proposal following the cost-benefit analysis methodology described in this chapter.

(2) If the project is deemed necessary in spite of its failure to meet P3 requirements, the department may pursue alternative financing or delivery methods. The project should still be determined to deliver significant value for money and must have undergone a rigorous cost-benefit analysis.

NEW SECTION. **Sec. 16.** TREATMENT OF PROJECTS THAT PASS THE PROJECT SCREENING TOOL. If a project passes the project screening tool, it should proceed to assessment under the comparative financial model in a timely manner, but only when a threshold level of detailed project information is available for assessment.

NEW SECTION. **Sec. 17.** TREATMENT OF PROJECTS UNDER THE COMPARATIVE FINANCIAL MODEL ASSESSMENT. Projects under the comparative financial model do not strictly pass or fail, but are instead defined in terms of their relative value for money under both P3 and traditional delivery scenarios, from which the state can determine a preferred delivery model and indicate funding surplus or shortfalls of the project. Based upon the results of the comparative financial model assessment, various courses of action can be pursued by the state.

NEW SECTION. **Sec. 18.** DEVELOPMENT OF THE COMPARATIVE FINANCIAL MODEL. (1) The comparative financial model compares the cost of delivering a project using a traditional approach and a P3 approach. The traditional approach is called the PSC, and the P3 approach is called the shadow bid model. Each project under study requires the development of its own: Financial model with project-specific inputs for delivery mode, financing assumptions, timing assumptions, constructions costs, revenue, and operating costs.

(2) The range of alternatives drawn from the inputs listed in subsection (1) of this section shall be developed by the OTP3. The findings shall be submitted to the executive board that will select a preferred alternative.

NEW SECTION. **Sec. 19.** THE INTENDED USE OF THE MODEL. (1) Pursuant to the public's interest, the comparative financial model shall:

(a) Identify the estimated gaps in funds necessary to construct the asset;

(b) Identify, at a preliminary level, whether the method of project delivery, facility management, and financing meets the public interest criteria and value for money expectations; and

(c) Apply a range of discount factors dependent on the risk associated with cash flow amongst others.

(2) Findings from the model shall be presented at the present net cost of the public sector comparator and shadow bid model with adjustments made for nonfinancial costs.

NEW SECTION. **Sec. 20.** COST INPUTS FOR PUBLIC SECTOR COMPARATOR AND PUBLIC-PRIVATE PARTNERSHIP SCENARIOS. (1) When analyzing PSC versus P3, it is critical to consider the lifetime operation costs of the assets. Life-cycle costs can be defined in three categories:

(a) Initial construction costs;

(b) Preservation costs or capital expenditures required over the term of a concession to maintain the asset in a good state of

repair, known as major maintenance costs. The following cost categories should be applied for both P3 and PSC cases:

- (i) Roadway maintenance;
- (ii) Structures;
- (iii) Pavement maintenance;
- (iv) Tolling and ITS maintenance;
- (v) Other miscellaneous items;
- (vi) Engineering, construction management, and testing fees;
- (vii) Design;
- (viii) Mobilization and preparation; and
- (ix) General contingencies; and
- (c) Operation and maintenance costs, comprised of:
 - (i) Personnel;
 - (ii) Structures;
 - (iii) Pavements;
 - (iv) Tolling and ITS;
 - (v) Tolling uncollectables;
 - (vi) Enforcement;
 - (vii) Facility maintenance;
 - (viii) Roadway general maintenance;
 - (ix) General administration;
 - (x) Forecast period;
 - (xi) Fringe and overhead costs.

(2) The cost categories under subsection (1) of this section shall provide the basis for value for money comparisons for PSC procurement versus P3 procurement.

NEW SECTION. **Sec. 21.** RISK ASSESSMENT METHODOLOGY. Value for money on behalf of the taxpayer is best achieved with an optimal and enforceable risk allocation between public and private partners. The following model seeks to establish an objective risk assessment methodology in order to understand the associated risks, magnitude, and, ultimately, allocation of risk between different procurement strategies. The goal is to establish a basis for risk comparison

between the different parties involved. The risk assessment is to be conducted for both the traditional procurement model and the P3 procurement model with the results under each scenario to be compared to provide the greatest value for money to the public. The following steps are necessary for risk evaluation project-by-project basis:

(1) Develop a template for a comparative risk-cost model utilizing a systematized risk register approach.

(2) Conduct a risk analysis workshop for each project with the individual project teams to identify and score the key project risks. Risks shall be characterized into specific categories that are generic and broadly representative of the typical risks that might occur on an average project.

(3) Risk scoring must involve the likely probability of a particular risk even occurring. If the risk occurs, the assumed cost impact to the project under both a traditional procurement scenario and under an alternative methodology is compared.

(4) (a) Once the individual risks have been scored for probability and assumed cost impact, an assessment is made as to which party actually carries that risk under the relevant delivery model with three possibilities for each risk:

- (i) All risk is carried by the state;
- (ii) All risk is carried by the contractor;
- (iii) The risk is shared between the state and the contractor.

(b) Specific risk elements are to be assigned and clearly defined in the terms of agreement between the state and contractor.

NEW SECTION. **Sec. 22.** P3 PROCUREMENT PROCESSES. (1) In order to effectively execute its mandate and to secure the greatest value for the state, the OTP3 may employ the following procurement tools and methodologies:

- (a) Authorization to use and evaluate:
 - (i) Solicited proposals;

(ii) Unsolicited proposals that hold the opportunity to increase competition, subject to the same established criteria for solicited proposals. The department may charge a reasonable administrative fee for the evaluation of an unsolicited project proposal;

(iii) Best price;

(iv) Best value;

(v) Qualification-based selection;

(vi) Negotiating authority;

(vii) One-step procurements, such as requests for proposals; and

(viii) Two-step procurements; for example, a request for qualifications, statements of qualification, and shortlist or prequalification, then a request for proposals, the receipt of proposals, and the selection of proposals;

(b) Authorization for alternative technical and financial concepts;

(c) Authorization to pay stipends in exchange for work product to all active proposers if the public agency cancels the procurement before proposal submission, or to unsuccessful proposers that submit responsive proposals;

(d) Authorization to conduct confidential preproposal meetings with individual proposers;

(e) Authorization to disclose to proposers the primary evaluation factors and weighted factors; and

(f) Minimum qualifications of proposers, including a qualification to do business in the state, no debarment or suspension, and licensure of proposal team members.

(2) In order to more effectively achieve the procurement tools and methodologies described in subsection (1) of this section, the OTP3 will create and update annually an evaluation manual for internal use that describes in detail the methodology the OTP3 must use to process, review, and score qualification submittals and proposals and to ultimately select a preferred proposer.

NEW SECTION. **Sec. 23.** IMPLEMENTATION. Due to the necessity of developing the institutional expertise necessary to implement P3 projects, there is a one-year moratorium on unsolicited proposals and a focus on solicited projects for the first two years of the program. The evaluation of unsolicited proposals shall reside in the OTP3.

NEW SECTION. **Sec. 24.** ADMINISTRATION. In order to facilitate the effective procurement of processes, the following policies are adopted:

(1) The state shall optimize the use of its existing expertise and resources by channeling them through the OTP3;

(2) The state shall fill any gaps in its internal expertise and resources with third-party support that shall be procured through the OTP3; and

(3) All P3 approval and contracting functions shall be consolidated into the OTP3 while streamlining the number and type of approvals to the greatest extent possible.

NEW SECTION. **Sec. 25.** EXECUTIVE BOARD. (1) The executive board of the OTP3 is created within the department with the purpose of overseeing the OTP3 on behalf of the legislature. The executive board may:

(a) Authorize a project delivery mandate to the OTP3 in conjunction with the department; and

(b) Authorize the OTP3 to release any P3 project request for qualifications, request for proposals, or draft project agreement subject to its review and approval.

(2) If for a given procurement there is no request for proposals response that achieves predetermined minimum award criteria, the executive board shall guide and authorize the OTP3 to terminate, modify, or award the project based on its revised value for money analysis.

(3) The executive board's membership is comprised of:

- (a) Four ex-officio, nonvoting legislators;
- (b) The chairs and ranking members of the house of representatives and senate transportation committees;
- (c) The following five members with voting rights:
 - (i) A representative of the office of financial management;
 - (ii) A representative of the state treasurer's office;
 - (iii) The chair of the state transportation commission;
 - (iv) The secretary of transportation or his or her designee; and
 - (v) An appointee of the governor who will also serve as chair of the executive board.

(4) The executive board shall receive biannual summary level reports from the OTP3 with detailed reporting on an exception basis in support of specific approval requirements.

(5) The executive board may perform audits of the OTP3 and its contracts, including toll collection audits undertaken by the commission and financial audits by the state treasurer's office.

NEW SECTION. **Sec. 26.** STEERING COMMITTEE. A steering committee is created to provide the executive board with independent expert guidance on the activities of the OTP3 and shall meet with the OTP3 on a regular basis solely for the purpose of sharing information. The steering committee is comprised of:

- (1) A representative from the department's capital program development and management office;
- (2) The department's chief operating officer;
- (3) The department's head of the toll division; and
- (4) The department's operations manager.

NEW SECTION. **Sec. 27.** DUTIES. The following individuals are responsible for providing the following to the OTP3:

- (1) The secretary of transportation shall act as a liaison with the OTP3, both from an approvals standpoint and in an administrative capacity specific to the department. The secretary is required to participate in the procurement process for all P3 projects and be

solely responsible for executing P3 contracts for transportation projects on behalf of the state of Washington and the OTP3.

(2) The deputy secretary of transportation shall take responsibility for departmental administrative functions in the OTP3 in the same manner as the department's three assistant secretaries.

(3) The department's assistant secretaries shall collectively provide policy guidance to the OTP3 on an ad hoc basis particularly in relation to the identification and initial review of the projects. They are additionally responsible for providing the OTP3 with project staff to support its screening of relevant projects and, if a project progresses as a P3, to support its development and procurement.

NEW SECTION. **Sec. 28.** SUPPORTING RESOURCES. (1) The OTP3 may seek out the following to most effectively perform its duties:

(a) The following external advisors:

(i) Financial advisors;

(ii) Legal advisors;

(iii) Technical advisors, including independent engineers; and

(iv) Other specialty firms;

(b) The commission, to assist in:

(i) Developing the tolling regime for projects prior to their procurement;

(ii) Developing inputs to the tolling regime to be included in the draft project agreement; and

(iii) Auditing the toll collection practices of P3 projects under operation to ensure their compliance with relevant project agreements; and

(c) The state treasurer's office, to assist in:

(i) Identifying and securing any state debt that is required and agreed upon in relation to the development of any transportation P3 project prior to procurement;

(ii) The issuance of any agreed public debt on behalf of the state in support of commercial or financial closings of P3 projects;

(iii) For projects that generate revenue for the state, management of such capital; and

(iv) Auditing P3 project finances once the project is in operation, on behalf of the state.

(2) The OTP3 may solicit and procure advisory services on behalf of the department from third-party, nongovernmental resources.

(3) Private parties are permitted to enter into P3 contracts with the OTP3 by the authority of the secretary of transportation. Once such a contract is signed, the OTP3 is responsible for the management, oversight, and enforcement of the contract.

NEW SECTION. **Sec. 29.** DEVELOPMENT OF THE OTP3. The OTP3 replaces the existing transportation partnership office, budgeted as program K, within the department. Budget requests shall be made at the level necessary to hire staff at competitive wages. The OTP3 staff shall receive supplemental assistance from the department and other public agencies as required, in addition to third-party consultants. The staff must have extensive knowledge of P3 institutions and will be tasked with building the institutional knowledge of the OTP3.

NEW SECTION. **Sec. 30.** USE OF FEDERAL FUNDS AND SIMILAR REVENUES. The department may accept from the United States or any of its agencies such funds as are available to this state or to any other unit of government for carrying out the purposes of this chapter, whether the funds are made available by grant, loan, or other financing arrangement. The department may enter into such agreements and other arrangements with the United States or any of its agencies as may be necessary, proper, and convenient for carrying out the purposes of this chapter.

NEW SECTION. **Sec. 31.** OTHER SOURCES OF FUNDS OR PROPERTY. (1) The department may accept from any source any grant, donation, gift, or other form of conveyance of land, money, other real or personal

property, or other valuable thing made to the state of Washington, the department, or a local government for carrying out the purposes of this chapter.

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

NEW SECTION. **Sec. 32.** ADMINISTRATIVE FEE. The department may charge a reasonable administrative fee for the evaluation of an unsolicited project proposal. The fee amount will be established by the executive board.

NEW SECTION. **Sec. 33.** ELIGIBLE PROJECTS. Projects eligible for development under this chapter include:

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

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

NEW SECTION. **Sec. 34.** ELIGIBLE FINANCING. (1) Subject to the limitations in this section, the OTP3 may consider any financing mechanisms identified under subsections (3) through (5) of this section or any other lawful source, either integrated as part of a project proposal or as a separate, stand-alone proposal to finance a

project. Financing may be considered for all or part of a proposed project. A project may be financed in whole or in part with:

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

(b) Grants, loans, loan guarantees, lines of credit, revolving lines of credit, or other financing arrangements available under the transportation infrastructure finance and innovation act under 23 U.S.C. Sec. 601 et seq., or any other applicable federal law;

(c) Infrastructure loans or assistance from the state infrastructure bank program established under RCW 82.44.195;

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

(e) User fees, tolls, fares, lease proceeds, rents, gross or net receipts from sales, proceeds from the sale of development rights, franchise fees, or any other lawful form of consideration. However, projects financed by tolls or equivalent funding sources must first be authorized by the legislature under RCW 47.56.820 under the biennial transportation budgetary request.

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

(3) For any transportation project developed under this chapter that is owned, leased, used, or operated by the state as a public facility, if indebtedness is issued it must be issued by the state treasurer for the transportation project.

(4) For other public projects that are developed in conjunction with a transportation project, financing necessary to develop, construct, or operate the public project must be approved by the state finance committee or by the governing board of a public

benefit corporation as provided in the federal internal revenue code section 63-20.

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

NEW SECTION. **Sec. 35.** ISSUING BONDS AND OTHER OBLIGATIONS.

(1) In addition to any authority the commission or department has to issue and sell bonds and other similar obligations, this section establishes continuing authority for the issuance and sale of bonds and other similar obligations in a manner consistent with this section. To finance a project in whole or in part, the OTP3 may request that the state treasurer issue revenue bonds on behalf of the public sector partner. The bonds must be secured by a pledge of, and a lien on, and be payable from the account established for the project and any other revenues specifically pledged to repayment of the bonds. Such a pledge by the public sector partner creates a lien that is valid and binding from the time the pledge is made. Revenue bonds issued under this section are not general obligations of the state or local government and are not secured by or payable from any funds or assets of the state other than the moneys and revenues specifically pledged to the repayment of such revenue bonds.

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

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

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

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

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

NEW SECTION. **Sec. 36.** CONFIDENTIALITY. A proposer shall identify those portions of a proposal that the proposer considers to be confidential, proprietary information, or trade secrets and provide any justification as to why these materials, upon request, should not be disclosed by the authority. Patent information will be covered until the patent expires. Other information such as originality of design or records of negotiation may only be protected under this section until an agreement is reached. Disclosure must occur before final agreement and execution of the contract. Projects under federal jurisdiction or using federal funds must conform to federal regulations under the freedom of information act.

NEW SECTION. **Sec. 37.** PREVAILING WAGES. If public funds are used to pay any costs of construction of a public facility that is part of an eligible project, chapter 39.12 RCW applies to the entire eligible public works project.

NEW SECTION. **Sec. 38.** GOVERNMENT AGREEMENTS. The state may, either separately or in combination with any other public sector partner, enter into working agreements, coordination agreements, or similar implementation agreements, including the formation of bistate transportation organizations, to carry out the joint implementation of a transportation project selected under this chapter. The state may enter into agreements with other units of government or Canadian provinces for transborder transportation projects.

NEW SECTION. **Sec. 39.** EMINENT DOMAIN. The state may exercise the power of eminent domain to acquire property, rights-of-way, or other rights in property for projects that are necessary to implement an eligible project developed under this chapter, regardless of whether the property will be owned in fee simple by the state.

NEW SECTION. **Sec. 40.** TEN-YEAR PROGRAMS. Following the project selection analysis conducted by the department, the OTP3 shall compose a comprehensive ten-year investment, improvement, and preservation program. The ten-year program shall be updated for every biennial omnibus transportation appropriations act.

NEW SECTION. **Sec. 41.** SCOPE OF LEGISLATION. This chapter is concerned exclusively with the development and selection of financing methods for transportation projects in the state, specifically choosing between traditional or P3 procurement mechanisms.

NEW SECTION. **Sec. 42.** PROJECT SELECTION. The department shall analyze and prioritize projects that deliver the greatest value for money over the predicted life-cycle costs of any asset in question in accordance with the transportation system policy goals specified in RCW 47.04.280.

NEW SECTION. **Sec. 43.** ESTABLISHING PROJECT CONTEXT. In developing the objectives of the subject project, specifically the functions the facility must perform, the department must establish, at a minimum, the following baseline elements:

(1) The following socioeconomic trends:

- (a) Projected local and regional growth;
- (b) Demographic changes;
- (c) Employment forecasts; and
- (d) Forecasts of growth in specific economic sectors in which the area covered by the infrastructure is suited, such as freight mobility in relation to the Port of Seattle;

(2) The following political, institutional, and regulatory elements:

- (a) Reference to federal guidelines and statutes;
- (b) Reference to the long-term regional and local planning documents and strategies; and

- (c) Any preexisting planning authorizations and decisions;
- (3) The following existing service conditions:
 - (a) Detailed information about the existing transport infrastructure in the area;
 - (b) Information about competition from alternative transportation modes;
 - (c) Planned and/or recently executed investments that may affect the project performance;
 - (d) Information about historic and present traffic patterns;
 - (e) Statistics in motorization, mobility, and accessibility in the area;
 - (f) Technical characteristics of the service currently provided;
 - (g) Infrastructure quality, capacity, and safety; and
 - (h) Any other consideration deemed relevant by the parties involved; and
- (4) A standard project scoring criteria to be applied to project options.

NEW SECTION. **Sec. 44.** DEFINITION OF OBJECTIVES. (1) The department, in collaboration with the regional transportation commissioner and other concerned parties, shall develop specific objectives and functions of the project. The following are objectives that must be addressed in project evaluation:

- (a) The reduction of congestion within the road system, facility, or node by addressing capacity constraints or demand reduction strategies;
- (b) The improvement of the capacity and/or performance of the system, facility, or node by increasing travel speeds and reducing operating costs and accidents;
- (c) Minimizing pollution, environmental impact, and effect on surrounding communities from the project;
- (d) Addressing connectivity and integration with existing infrastructure;
- (e) Improving accessibility;

(f) Aligning project objectives with local, regional, and statewide master transportation plans;

(g) Highways or roadways, as each are defined in RCW 47.04.010, which receive state or federal funding must consider pedestrians, bicycles, and amenities;

(h) Identifying least-cost alternatives; and

(i) Any other objectives decided upon by the involved parties.

(2) When feasible, the objectives under subsection (1) of this section shall be quantified and targeted through the use of indicators linked to the project's benefits.

NEW SECTION. **Sec. 45.** OPTION ANALYSIS. The project shall be identified after the assessment of all promising strategic and technical alternatives on the basis of physical circumstances and available technologies. The evaluation must analyze low-cost solutions including, but not limited to, pricing, management, and infrastructure interventions. The preferred approach for option selection is the multicriteria analysis for shortlisting alternatives, which shall be conducted by the department. From this short list, a cost-benefit analysis shall be performed on each alternative. It is critical that the option analysis be established standardly in context stage and prior to analysis requirements established under sections 46 through 49 of this act. The analysis must employ a robust socioeconomic analysis to select the preferred alternative. The option analysis should establish the following:

(1) Proper time horizons;

(2) Forecast future costs and benefits over the period;

(3) Appropriate discount rates; and

(4) An account of uncertainty.

NEW SECTION. **Sec. 46.** DEMAND ANALYSIS. (1) In formulating the demand analysis, the department must address the following:

(a) Factors influencing demand analysis;

(b) Hypotheses, methods, and inputs;

- (c) The project's impact area;
 - (d) The degree of complementarity and competition amongst transportation modes, specifically:
 - (i) Competing modes and alternative routes;
 - (ii) Pricing and regulation policies, such as tolling; and
 - (iii) Congestion and capacity constraints;
 - (e) The deviation from past trends, including taxes and toll collection; and
 - (f) The relative sensitivity of demand patterns.
- (2) Any traffic model based upon subsection (1) of this section shall be used in designing and sizing features and appropriateness of the planned infrastructure investment. The model shall provide quantitative information that informs the scheme's design in order to deliver the greatest benefit to the state.

NEW SECTION. **Sec. 47.** ECONOMIC ANALYSIS. (1) In developing the economic basis for the collective bargaining agreement, the department, regional transportation commissioner, and affected parties, in collaboration with the OTP3, shall seek options that optimize the value of the facility to the public by maximizing the efficiency of the subject facility at the lowest possible fare, if applicable, and minimizing vehicle operating costs. Fare and toll schedules shall be developed in accordance with established tolling statutes.

- (2) The following shall be considered in an economic analysis:
- (a) Travel time savings and the monetary value of savings employing the revealed preference model and/or cost savings approach for nonfreight users and capital lock-up approach for freight. The department maintains the discretion to choose the inputs and means to model so long as the methodology is clearly reported;
 - (b) Vehicle operating costs;
 - (c) Accident savings;
 - (d) Variation in noise emissions using the hedonic pricing method;

(e) Variation in air pollution, including the following and employing the bottom-up approach based upon the impact pathway model to determine the aggregate costs of air pollution:

- (i) Health effects;
- (ii) Building and material damages;
- (iii) Crop losses; and
- (iv) Impacts on ecosystems and biodiversity;
- (f) Variation in greenhouse gas emissions;
- (g) Costs due to induced demand;
- (h) Wider, indirect impacts of the project;
- (i) Project effects on wider system performance; and
- (j) Any other considerations deemed appropriate to the project in question, which could include wider regional impacts on development and land use.

(3) The economic analysis shall employ a robust qualitative assessment to determine the economic value of the project.

NEW SECTION. **Sec. 48.** SENSITIVITY ANALYSIS. A sensitivity analysis shall be conducted to include the following, at a minimum:

- (1) Value of time;
- (2) Accident costs;
- (3) Assumptions concerning economic variables and trends;
- (4) Rate increases of traffic over time;
- (5) Number of years necessary for the realization of the facility;
- (6) Investment and maintenance costs;
- (7) Fares and tolls; and
- (8) Any other considerations deemed critical by the parties involved.

NEW SECTION. **Sec. 49.** FINANCIAL ANALYSIS. Following the selection of the preferred option based on a rigorous cost-benefit analysis, the project shall be forwarded to the OTP3 for procurement.

NEW SECTION. **Sec. 50.** DECOMMISSIONING OF ASSETS. Existing facilities where it is deemed that the continued cost of maintenance of or the cost of rebuilding the asset in question is more than its value, the department shall allocate the funds necessary for its closure and any funds for mitigating the effects of closing the facility.

NEW SECTION. **Sec. 51.** BIENNIAL BUDGET PRIORITIZATION. The department shall develop a budget that ranks funding priorities based upon projects that deliver the greatest value for money. Item one in any biennial transportation budget request shall be the operations account. The proceeding items should prioritize the preservation and repair, not expansion, of existing assets. The legislature may approve all or a portion of the budget request, but may only fund items in order of the value for money the department delivers. The legislature may not modify any of the text of the budget request, but may refer it back to the department with change recommendations.

Sec. 52. RCW 47.01.051 and 2006 c 334 s 1 are each amended to read as follows:

There is hereby created a transportation commission, which shall consist of (~~seven voting~~) five members appointed by the governor, with the consent of the senate. (~~The present five members of the highway commission shall serve as five initial members of the transportation commission until their terms of office as highway commission members would have expired. The additional two members provided herein for the transportation commission shall be appointed for initial terms to expire on June 30, 1982, and June 30, 1983. Thereafter~~) All terms shall be for ((six)) five years with one seat coming available every year. No elective state official(~~(7)~~) or state officer(~~(7 or state employee)~~) shall be a member of the commission. There shall be five commission districts in the state and, at the time of appointment or thereafter during their

respective terms of office, (~~four members of the commission shall reside in the western part of the state and three members shall reside in the eastern part of the state as divided north and south by the summit of the Cascade mountains. No more than two members of the commission shall reside in the same county; however, the governor, or his or her designee, shall serve as a nonvoting member of the commission~~) each commissioner shall live in his or her district of representation. The five districts are composed of on a county basis as follows:

(1) District 1: Clallam, Jefferson, Grays Harbor, Pacific, Wahkiakum, Cowlitz, Clark, Lewis, Skamania, Yakima, Klickitat, and Benton;

(2) District 2: Whatcom, Skagit, Snohomish, San Juan, and Island;

(3) District 3: King;

(4) District 4: Pierce, Thurston, Mason, and Kitsap;

(5) District 5: Okanogan, Chelan, Kittitas, Douglas, Grant, Ferry, Stevens, Pend Oreille, Lincoln, Spokane, Adams, Whitman, Franklin, Walla Walla, Columbia, Garfield, and Asotin.

The secretary of transportation and the chairs and ranking members of the house of representatives and senate transportation committees shall serve as nonvoting members of the commission. Commission appointments should reflect (~~both a wide range of transportation interests and a balanced statewide geographic representation~~) a high degree of expertise in transportation planning and procurement. Commissioners may be removed from office by the governor before the expiration of their terms for cause. No member shall be appointed for more than two consecutive terms.

Sec. 53. RCW 47.01.061 and 2006 c 334 s 2 are each amended to read as follows:

(1) The commission shall meet at such times as it deems advisable but at least on a quarterly basis (~~with meetings to be held in different parts of the state~~). It may adopt its own rules

and regulations and may establish its own procedure. It shall act collectively in harmony with recorded resolutions or motions adopted by majority vote of at least (~~four~~) three members. The commission (~~(may appoint an executive director, and)~~) shall elect one of its members chair for a term of one year. The chair may vote on all matters before the commission. The commission may (~~(from time to time)~~) retain planners, consultants, and other technical personnel to advise it in the performance of its duties.

(2) The commission shall submit (~~(to each regular session of the legislature held in an odd-numbered year its own budget proposal necessary for the commission's operations separate from that proposed for the department)~~) a budgetary request as a component of the department's biennial transportation budget.

(3) Each member of the commission shall be compensated in accordance with (~~(RCW 43.03.250 and shall be reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission, and actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested by a majority vote of the commission or by the secretary of transportation, but in no event shall the entire commission membership be compensated for more than one thousand two hundred thirty days combined. Service on the commission shall not be considered as service credit for the purposes of any public retirement system)~~) RCW 43.03.027 and shall be considered an employee of the department.

(4) Each member of the commission shall disclose any actual or potential conflict of interest, if applicable under the circumstance, regarding any commission business.

Sec. 54. RCW 47.01.071 and 2007 c 516 s 4 are each amended to read as follows:

The transportation commission shall have the following functions, powers, and duties:

(1) To propose policies to be adopted by the governor and the legislature designed to assure the development and maintenance of a comprehensive and balanced statewide transportation system which will meet the needs of the people of this state for safe and efficient transportation services. Wherever appropriate, the policies shall provide for the use of integrated, intermodal transportation systems. The policies must be aligned with the goals established in RCW 47.04.280. To this end the commission shall:

(a) Develop transportation policies which are based on the policies, goals, and objectives expressed and inherent in existing state laws;

(b) Inventory the adopted policies, goals, and objectives of the local and area-wide governmental bodies of the state and define the role of the state, regional, and local governments in determining transportation policies, in transportation planning, and in implementing the state transportation plan;

(c) Establish a procedure for review and revision of the state transportation policy and for submission of proposed changes to the governor and the legislature; and

(d) Integrate the statewide transportation plan with the needs of the elderly and persons with disabilities, and coordinate federal and state programs directed at assisting local governments to answer such needs;

(2) To provide for the effective coordination of state transportation planning with national transportation policy, state and local land use policies, and local and regional transportation plans and programs;

(3) In conjunction with the provisions under RCW 47.01.075, to provide for public involvement in transportation designed to elicit the public's views both with respect to adequate transportation services and appropriate means of minimizing adverse social, economic, environmental, and energy impact of transportation programs;

(4) By December 2010, to prepare a comprehensive and balanced statewide transportation plan consistent with the state's growth management goals and based on the transportation policy goals provided under RCW 47.04.280 and applicable state and federal laws. The plan must reflect the priorities of government developed by the office of financial management and address regional needs, including multimodal transportation planning. The plan must, at a minimum: (a) Establish a vision for the development of the statewide transportation system; (b) identify significant statewide transportation policy issues; and (c) recommend statewide transportation policies and strategies to the legislature to fulfill the requirements of subsection (1) of this section. The plan must be the product of an ongoing process that involves representatives of significant transportation interests and the general public from across the state. Every four years, the plan shall be reviewed and revised, and submitted to the governor and the house of representatives and senate standing committees on transportation.

The plan shall take into account federal law and regulations relating to the planning, construction, and operation of transportation facilities;

(5) By December 2007, the office of financial management shall submit a baseline report on the progress toward attaining the policy goals under RCW 47.04.280 in the 2005-2007 fiscal biennium. By October 1, 2008, beginning with the development of the 2009-2011 biennial transportation budget, and by October 1st biennially thereafter, the office of financial management shall submit to the legislature and the governor a report on the progress toward the attainment by state transportation agencies of the state transportation policy goals and objectives prescribed by statute, appropriation, and governor directive. The report must, at a minimum, include the degree to which state transportation programs have progressed toward the attainment of the policy goals established under RCW 47.04.280, as measured by the objectives and

performance measures established by the office of financial management under RCW 47.04.280;

~~(6) ((To propose to the governor and the legislature prior to the convening of each regular session held in an odd-numbered year a recommended budget for the operations of the commission as required by RCW 47.01.061;~~

~~(7))~~ To adopt such rules as may be necessary to carry out reasonably and properly those functions expressly vested in the commission by statute;

~~((8))~~ (7) To contract with the office of financial management or other appropriate state agencies for administrative support, accounting services, computer services, and other support services necessary to carry out its other statutory duties;

~~((9))~~ (8) To conduct transportation-related studies and policy analysis to the extent directed by the legislature or governor in the biennial transportation budget act, or as otherwise provided in law, and subject to the availability of amounts appropriated for this specific purpose; ~~(and~~

~~(10))~~ (9) To exercise such other specific powers and duties as may be vested in the transportation commission by this or any other provision of law;

(10) To combine existing facilities into one facility to facilitate better management and expand tolling infrastructure to the expanded facility;

(11) To facilitate and guide the policies of the cities, municipalities, and counties in each commissioner's jurisdiction to resolve issues of concurrency and planning. It is the responsibility of the regional transportation commissioner to serve as a liaison between the different actors in his or her region for the purpose of delivering unified transportation objectives;

(12) To advise cities, municipalities, and counties in each commissioner's jurisdiction on P3 financing, collective bargaining agreements, multimodal planning, and least-cost solutions to

facilitate the adoption of innovative transportation solutions at all levels of government; and

(13) To refer recommended legislative changes to the legislature, if deemed necessary, on a biennial basis.

Sec. 55. RCW 47.01.240 and 1988 c 167 s 12 are each amended to read as follows:

~~((The department and the transportation improvement board shall coordinate their activities relative to long-range needs studies, in accordance with the provisions of chapter 47.05 RCW and RCW 47.26.170, respectively, in order that long-range needs data may be developed and maintained on an integrated and comparable basis.))~~
Needs data for county roads and city streets in nonurban areas shall be provided by the counties and cities to the department in such form and extent as requested by the department, after consultation with the county road administration board and the association of Washington cities, in order that needs data may be obtained on a comparable basis for all highways, roads, and streets in Washington.

Sec. 56. RCW 47.56.820 and 2008 c 122 s 4 are each amended to read as follows:

(1) Unless otherwise delegated, only the legislature may authorize the imposition of tolls on eligible toll facilities.

(2) All revenue from an eligible toll facility must be used ~~((only to construct, improve, preserve, maintain, manage, or operate the eligible toll facility on or in which the revenue is collected. Expenditures of toll revenues are subject to appropriation and must be made only))~~):

(a) To cover the operating costs of ~~((the eligible))~~ toll ~~((facility))~~ facilities, including necessary maintenance, preservation, administration, and toll enforcement by public law enforcement ~~((within the boundaries of the facility))~~;

(b) To meet obligations for the repayment of debt and interest on the eligible toll facilities, and any other associated financing

costs including, but not limited to, required reserves and insurance;

(c) To meet any other obligations to provide funding contributions for any projects or operations on the eligible toll facilities;

(d) To provide funding to public transportation services in the region affected by the tolls to mitigate their effect on low-income users;

(e) To provide for the operations of conveyances of people or goods; or

~~((e))~~ (f) For any other improvements to the eligible toll facilities.

Sec. 57. RCW 47.56.830 and 2008 c 122 s 5 are each amended to read as follows:

Any proposal for the establishment of eligible toll facilities shall consider the following policy guidelines:

(1) Eligibility. All facilities operated in the state shall be eligible for full facility congestion tolling. Tolling eligibility shall be extended to all interstates in the state in accordance with the tolling authority granted by the federal highway administration under the value pricing pilot program.

(2) Toll imposition. The imposition of tolls must be considered in a systemwide context and account for travel pattern changes resulting from the imposition of tolls. Maximum attention and effort shall be placed on developing a cohesive and fair tolling regime.

(3) Overall direction. Washington should use tolling to encourage effective use of the transportation system and provide a source of transportation funding.

~~((2))~~ (4) When to use tolling. Tolling should be used when it can be demonstrated to contribute a significant portion of the cost of a project that cannot be funded solely with existing sources or optimize the performance of the transportation system through the employment of demand management strategies. Such tolling should, in

all cases, be fairly and equitably applied in the context of the statewide transportation system and not have significant adverse impacts through the diversion of traffic to other routes that cannot otherwise be reasonably mitigated. Such tolling should also consider relevant social equity, environmental, and economic issues, and should be directed at making progress toward the state's greenhouse gas reduction goals.

~~((3))~~ (5) Use of toll revenue. ~~((All revenue from an eligible toll facility must be used only to improve, preserve, manage, or operate the eligible toll facility on or in which the revenue is collected. Additionally, toll revenue should provide for and encourage the inclusion of recycled and reclaimed construction materials.~~

~~(4))~~ Toll revenue shall be allocated with a focus on mitigation and operations in the affected corridor.

(6) Surplus toll revenue. Any surplus toll revenue shall be deposited into the motor vehicle fund and allocated to unfunded projects based upon the priorities in the biennial omnibus transportation appropriations act as approved by the legislature.

(7) Setting toll rates. Toll rates, which may include variable pricing, must be set to meet anticipated funding obligations. To the extent possible, the toll rates should be set to optimize system performance, recognizing necessary trade-offs to generate revenue.

~~((5))~~ (8) Duration of toll collection. Because transportation infrastructure projects have costs and benefits that extend well beyond those paid for by initial construction funding, tolls on future toll facilities may remain in place to fund additional capacity, capital rehabilitation, maintenance, management, and operations, and to optimize performance of the system.

NEW SECTION. **Sec. 58.** SUPPLEMENTARY TOLL REVENUE FOR EXISTING FACILITIES. If deemed necessary by the commission, toll rates on an existing facility may be reduced and its bonding obligations may be met with revenue from another tolled facility. The authorized

issuances of bonds for the purpose of financing transportation improvements are payable and secured by a pledge of toll revenue by the state.

Sec. 59. RCW 47.56.850 and 2009 c 498 s 15 are each amended to read as follows:

(1) Unless these powers are otherwise delegated by the legislature, the transportation commission is the tolling authority for the state. The tolling authority shall:

(a) Set toll rates, establish appropriate exemptions, if any, and make adjustments as conditions warrant on eligible toll facilities;

(b) Review toll collection policies, toll operations policies, and toll revenue expenditures on the eligible toll facilities and report annually on this review to the legislature.

(2) The tolling authority, in determining toll rates, shall consider the policy guidelines established in RCW 47.56.830.

(3) Unless otherwise directed by the legislature, in setting and periodically adjusting toll rates, the tolling authority must ensure that toll rates will generate revenue sufficient to:

(a) Meet the operating costs of the eligible toll facilities, including necessary maintenance, preservation, renewal, replacement, administration, and toll enforcement by public law enforcement;

(b) Meet obligations for the timely payment of debt service on bonds issued for eligible toll facilities, and any other associated financing costs including, but not limited to, required reserves, minimum debt coverage or other appropriate contingency funding, insurance, and compliance with all other financial and other covenants made by the state in the bond proceedings;

(c) Meet obligations to reimburse the motor vehicle fund for excise taxes on motor vehicle and special fuels applied to the payment of bonds issued for eligible toll facilities; and

(d) Meet any other obligations of the tolling authority to provide its proportionate share of funding contributions for any projects or operations of the eligible toll facilities.

(4) The established toll rates may include variable pricing, and should be set to optimize system performance, recognizing necessary trade-offs to generate revenue for the purposes specified in subsection (3) of this section. Tolls may vary for type of vehicle, time of day, traffic conditions, or other factors designed to improve performance of the system.

(5) In fixing and adjusting toll rates under this section, the only toll revenue to be taken into account must be toll revenue pledged to bonds that includes toll receipts, and the only debt service requirements to be taken into account must be debt service on bonds payable from and secured by toll revenue that includes toll receipts.

(6) The legislature pledges to appropriate toll revenue as necessary to carry out the purposes of this section. When the legislature has specifically identified and designated an eligible toll facility and authorized the issuance of bonds (~~((for the financing of the eligible toll facility))~~) that are payable from and secured by a pledge of toll revenue, the legislature further agrees for the benefit of the owners of outstanding bonds issued by the state for eligible toll facilities to continue in effect and not to impair or withdraw the authorization of the tolling authority to fix and adjust tolls as provided in this section. The state finance committee shall pledge the state's obligation to impose and maintain tolls, together with the application of toll revenue as described in this section, to the owners of any bonds.

(7) If deemed necessary to meet debt obligations or performance requirements, existing facilities may be combined by the commission and tolls imposed on the entirety of the newly constituted facility.

Sec. 60. RCW 82.38.030 and 2015 3rd sp.s. c 44 s 103 are each amended to read as follows:

(1) There is levied and imposed upon fuel licensees a tax at the rate of twenty-three cents per gallon of fuel.

(2) Beginning July 1, 2003, an additional and cumulative tax rate of five cents per gallon of fuel is imposed on fuel licensees. This subsection (2) expires when the bonds issued for transportation 2003 projects are retired.

(3) Beginning July 1, 2005, an additional and cumulative tax rate of three cents per gallon of fuel is imposed on fuel licensees.

(4) Beginning July 1, 2006, an additional and cumulative tax rate of three cents per gallon of fuel is imposed on fuel licensees.

(5) Beginning July 1, 2007, an additional and cumulative tax rate of two cents per gallon of fuel is imposed on fuel licensees.

(6) Beginning July 1, 2008, an additional and cumulative tax rate of one and one-half cents per gallon of fuel is imposed on fuel licensees.

~~(7) ((Beginning August 1, 2015, an additional and cumulative tax rate of seven cents per gallon of fuel is imposed on fuel licensees.~~

~~(8) Beginning July 1, 2016, an additional and cumulative tax rate of four and nine-tenths cents per gallon of fuel is imposed on fuel licensees.~~

~~(9))~~ Taxes are imposed when:

(a) Fuel is removed in this state from a terminal if the fuel is removed at the rack unless the removal is by a licensed supplier or distributor for direct delivery to a destination outside of the state, or the removal is by a fuel supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(b) Fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the fuel immediately before the removal is not a licensed supplier; or

(ii) The removal is at the refinery rack unless the removal is to a licensed supplier or distributor for direct delivery to a destination outside of the state, or the removal is to a licensed

supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(c) Fuel enters into this state for sale, consumption, use, or storage, unless the fuel enters this state for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320, if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensed supplier; or

(ii) The entry is not by bulk transfer;

(d) Fuel enters this state by means outside the bulk transfer-terminal system and is delivered directly to a licensed terminal unless the owner is a licensed distributor or supplier;

(e) Fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the fuel;

(f) Blended fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended fuel subject to tax is the difference between the total number of gallons of blended fuel removed or sold and the number of gallons of previously taxed fuel used to produce the blended fuel;

(g) Dyed special fuel is used on a highway, as authorized by the internal revenue code, unless the use is exempt from the fuel tax;

(h) Dyed special fuel is held for sale, sold, used, or is intended to be used in violation of this chapter;

(i) Special fuel purchased by an international fuel tax agreement licensee under RCW 82.38.320 is used on a highway; and

(j) Fuel is sold by a licensed fuel supplier to a fuel distributor or fuel blender and the fuel is not removed from the bulk transfer-terminal system.

NEW SECTION. **Sec. 61.** PRIORITY. The changes stipulated in this chapter shall:

(1) Augment, and are in addition to, any other powers and authority of the department, which the department may exercise in

connection with P3 projects and projects recommended for analysis;
and

(2) Supersede conflicting procurements, project selection analyses, and contracting laws and regulations, including those whose application is fundamentally inconsistent with the P3 method of project procurement, financing, and delivery.

NEW SECTION. **Sec. 62.** PRIOR FINANCIAL AGREEMENTS. All financial agreements entered into prior to the effective date of this section remain at the terms stipulated when they were entered into.

NEW SECTION. **Sec. 63.** The following acts or parts of acts are each repealed:

(1) RCW 47.01.480 (Connecting Washington project delivery—Transportation future funding program—Report) and 2015 3rd sp.s. c 12 s 1;

(2) RCW 47.56.840 (Tolling advisory committee) and 2008 c 122 s 6;

(3) RCW 47.05.010 (Declaration of purpose) and 2002 c 5 s 401, 1993 c 490 s 1, 1969 ex.s. c 39 s 1, & 1963 c 173 s 1;

(4) RCW 47.05.021 (Functional classification of highways) and 2006 c 334 s 8, 2005 c 319 s 8, & 2002 c 56 s 301;

(5) RCW 47.05.022 (Highways of statewide significance) and 2004 c 232 s 1 & 2002 c 56 s 302;

(6) RCW 47.05.025 (Highways of regional significance) and 2002 c 56 s 303;

(7) RCW 47.05.030 (Ten-year programs—Investments, improvements, preservation) and 2007 c 516 s 7, 2006 c 334 s 45, 2005 c 319 s 9, 2002 c 5 s 402, 1998 c 171 s 6, 1993 c 490 s 3, 1987 c 179 s 2, 1979 ex.s. c 122 s 2, 1977 ex.s. c 151 s 44, 1975 1st ex.s. c 143 s 1, 1973 2nd ex.s. c 12 s 4, 1969 ex.s. c 39 s 3, 1965 ex.s. c 170 s 33, & 1963 c 173 s 3;

- (8)RCW 47.05.035 (Demand modeling tools) and 2007 c 516 s 8, 2006 c 334 s 46, 2005 c 319 s 10, 2002 c 5 s 403, 1993 c 490 s 4, 1987 c 179 s 3, 1979 ex.s. c 122 s 3, & 1975 1st ex.s. c 143 s 2;
- (9)RCW 47.05.195 (Highways of statewide significance—State route No. 164) and 2009 c 262 s 1;
- (10)RCW 47.05.200 (Highways of statewide significance—State route No. 169) and 2006 c 83 s 1;
- (11)RCW 47.29.010 (Finding—Intent) and 2006 c 334 s 48 & 2005 c 317 s 1;
- (12)RCW 47.29.020 (Definitions) and 2005 c 317 s 2;
- (13)RCW 47.29.030 (Transportation commission powers and duties) and 2005 c 317 s 3;
- (14)RCW 47.29.040 (Purpose) and 2005 c 317 s 4;
- (15)RCW 47.29.050 (Eligible projects) and 2005 c 317 s 5;
- (16)RCW 47.29.060 (Eligible financing) and 2008 c 122 s 18 & 2005 c 317 s 6;
- (17)RCW 47.29.070 (Use of federal funds and similar revenues) and 2005 c 317 s 7;
- (18)RCW 47.29.080 (Other sources of funds or property) and 2005 c 317 s 8;
- (19)RCW 47.29.090 (Project review, evaluation, and selection) and 2005 c 317 s 9;
- (20)RCW 47.29.100 (Administrative fee) and 2005 c 317 s 10;
- (21)RCW 47.29.110 (Funds for proposal evaluation and negotiation) and 2005 c 317 s 11;
- (22)RCW 47.29.120 (Expert consultation) and 2005 c 317 s 12;
- (23)RCW 47.29.130 (Contracted studies) and 2005 c 317 s 13;
- (24)RCW 47.29.140 (Partnership agreements) and 2005 c 317 s 14;
- (25)RCW 47.29.150 (Public involvement and participation) and 2005 c 317 s 15;
- (26)RCW 47.29.160 (Approval and execution) and 2005 c 317 s 16;
- (27)RCW 47.29.170 (Unsolicited proposals) and 2015 1st sp.s. c 10 s 704, 2013 c 306 s 708, 2011 c 367 s 701, 2009 c 470 s 702, 2007 c 518 s 702, 2006 c 370 s 604, & 2005 c 317 s 17;

- (28)RCW 47.29.180 (Advisory committees) and 2005 c 317 s 18;
(29)RCW 47.29.190 (Confidentiality) and 2005 c 317 s 19;
(30)RCW 47.29.200 (Prevailing wages) and 2005 c 317 s 20;
(31)RCW 47.29.210 (Government agreements) and 2005 c 317 s 21;
(32)RCW 47.29.220 (Eminent domain) and 2005 c 317 s 22;
(33)RCW 47.29.230 (Transportation innovative partnership
account) and 2005 c 317 s 23;
(34)RCW 47.29.240 (Use of account) and 2005 c 317 s 24;
(35)RCW 47.29.250 (Issuing bonds and other obligations) and 2005
c 317 s 25;
(36)RCW 47.29.260 (Study and report) and 2005 c 317 s 26;
(37)RCW 47.29.270 (Federal laws) and 2005 c 317 s 27;
(38)RCW 47.29.280 (Expert review panel on proposed project
agreements—Creation—Authority) and 2006 c 334 s 49;
(39)RCW 47.29.290 (Expert review panel on proposed project
agreements—Execution of agreements) and 2006 c 334 s 50; and
(40)RCW 47.29.900 (Captions not law) and 2005 c 317 s 28.

NEW SECTION. **Sec. 64.** Sections 1 through 51, 58, 61, and 62 of
this act constitute a new chapter in Title 47 RCW.

NEW SECTION. **Sec. 65.** This act takes effect January 1, 2017.

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