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# Public-Private Partnerships

## Overview and Table of Contents

This section provides information about the state’s Public-Private Initiatives (PPI) Act and the Transportation Innovative Partnerships Act of 2005, administered by the Department of Transportation and overseen by the Washington State Transportation Commission.

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## **Background on Public Private Partnerships in Washington**

In 1993, Washington State enacted HB 1006 (codified as RCW 47.46), the Public-Private Initiatives in Transportation Act (PPIT, or better known as PPI). Washington was among the first states in the nation to pass such a law, along with Virginia and California. A new office was created within WSDOT to implement the law, and the Washington Transportation Commission was directed to oversee and approve all project agreements developed under the PPI program.

Due to controversies about the projects, only one among the original six authorized projects was constructed under the PPI program: the Tacoma Narrows Bridge toll facility. By the time the Tacoma Narrows Bridge was opened to traffic, several changes to the original PPI contract, including the financing structure and project approval process were made. In the end, the TNB project was delivered and considered a success.

As part of the final legislative package approving the Tacoma Narrows Bridge project, the Legislature directed the Legislative Transportation Committee to conduct a study of barriers to public-private partnerships in Washington State. As a result of this study, the Transportation Innovative Partnerships Act of 2005 was enacted (codified as Chapter 47.29 RCW). This law phased out the prior PPI Act that had resulted in the delivery of the Tacoma Narrows Bridge. The new law allowed transportation-related projects and programs of all modes to be eligible for development as a public private partnership under a new Transportation Innovative Partnership program (TIP).

The TIP program is currently administered by WSDOT and falls programmatically under WSDOT's Transportation Partnerships Office, but certain aspects of the TIP program are overseen by the Washington State Transportation Commission. Much like the original PPI law, the Commission retained final approval authority for any TIP project agreements negotiated between WSDOT and a private partner. The Commission was directed to enact administrative rules to carry out the TIP program.

In 2006, the Washington Transportation Commission formally adopted administrative rules for the Transportation Innovative Partnership Program. The program rules can be found at WAC 468-600.

## **Key Differences between the 1993 Public Private Initiatives in Transportation Act (PPI) and the 2005 Transportation Innovative Partnerships Act (TIP)**

The 2005 law (codified as Chapter 47.29 RCW) is different from the original 1993 PPI law in several respects. Some of the differences:

The 2005 TIP law

- Allows transportation-related projects and programs of all modes to be eligible for development as a public private partnership under the Transportation Innovative Partnership (TIP) program;
- Requires WSDOT to assess potential projects and, for those that demonstrate basic feasibility, public a registry of projects that the state intends to develop as public-private partnerships;

- For transportation projects funded with toll revenues, any bonded indebtedness must be state-issued debt;
- Citizen advisory committees must be convened for projects that cost in excess of \$300 million, and a statutorily-prescribed evaluation panel and an expert review panel must be convened for all projects.

## **Transportation Commission's Role under RCW 47.29 (TIP Program)**

As part of Washington State's transportation governance reform, the Transportation Commission's role in overseeing WSDOT has been reorganized. However, the Commission retained its authority to oversee certain aspects of project development under the TIP program. More specifically, the Commission is responsible for:

- Creating the administrative rules for how the TIP program will be administered;
- Ensuring that the competitive process for receiving, scoring, and selecting proposals complies with all rules and regulations;
- Establishing expert review panels where warranted (such as high-cost projects);
- Reviewing the terms of any proposed contracts and partnership agreements to insure that the State's interest has been protected; and ultimately
- Approving or rejecting negotiated agreements.

## **Public Private Partnerships at WSDOT**

It is important to note that "partnerships" between WSDOT and the private sector are evident throughout the agency, and in high numbers, without an external process of review and approval. Construed broadly, the term "partnerships" includes the relationship the agency has with private firms that provide project management, engineering, design, consulting and many other functions. Recent estimates show that 74% of WSDOT's highway construction work is contracted out to the private sector.

For the more narrow purposes of this report, "partnerships" are construed as non-toll road projects or services that WSDOT seeks to deliver in conjunction with the private sector and/or other agencies that are discretionary, but provide greater benefits to the public than if not undertaken at all. For example, a partnership to redevelop a ferry terminal with a private partner might be discretionary in that the basic rehabilitation needs could be met without private participation, but the benefits to the public that could be gained through a partnership (enhanced amenities, or financial contribution to the project) are greater than what WSDOT could achieve acting strictly on its own. This construct is useful to segregate the types of projects and activities that tend to fall under WSDOT's Transportation Partnerships Office, from those projects and activities that occur on a regular basis that are part and parcel of WSDOT's project and program.

## **WSDOT's Transportation Partnerships Office**

WSDOT's Transportation Partnerships Office is the agency's focal point for engaging the private sector in unique public private partnerships that can help advance important transportation projects, programs, or policies. The Office seeks to combine or realign traditional roles of business and government in ways that result in projects that exceed what the parties could achieve if acting strictly within their traditional roles.

### **Organizational Resources**

The Transportation Partnerships Office is the smallest budgeted program (Program K) within WSDOT, with a two-year budget of approximately \$525,000 to fund professional staff and all program activities.

The Office carries out its activities under the Strategic Planning and Finance (SPF) Division of WSDOT. The SPF Division is overseen by the Chief Financial Officer for the agency, who in turn reports directly to the Secretary of Transportation.

Because of its very modest budget, the Transportation Partnerships Office relies on short-term, limited engagements with private consultants and contractors to conduct specialized research and due diligence of potential projects. Access to these specialists is limited to available funding earmarked for this purpose.

### **WSDOT Responsibilities for TIP Program**

A key responsibility of the Transportation Partnerships Office is to carry out the administrative functions and responsibilities of the TIP program. These tasks are more fully described in the TIP administrative rules, but generally include:

- Preliminary research and development of potential public private partnership projects;
- Selection of projects that WSDOT believes are good candidates for development ("solicited" projects, to be published in the TIP Program project registry);
- Preparation of required legal notices and solicitation documents to be issued after review and approval by the Commission;
- Participation in reviewing proposals for feasibility, negotiating the terms of proposals, and necessary agreements;
- Public involvement and community outreach; and
- Technical support during the Commission's review and deliberations.

## Chronology of PPI Program

- 1993** HB 1006, Public-Private Initiatives in Transportation (PPI), is enacted into law (RCW 47.46). A program is created within WSDOT to implement the law.
- 1994** WSDOT issued a Request for Proposals (RFP) inviting private firms to submit proposed projects for consideration. Fourteen project proposals were received. Six projects were selected and approved by the Transportation Commission for further consideration:
1. SR 18 Corridor between I-5 and I-90
  2. SR 520 including the Evergreen Point Bridge
  3. Puget Sound Congestion Pricing project
  4. SR 522 from Woodinville to Monroe
  5. King County Park and Ride lot improvements
  6. SR 16/Tacoma Narrows Bridge
- The SR 18 Corridor project was dropped from consideration due to lack of public involvement and support.
- 1995** PPI law was amended to require WSDOT to conduct an advisory vote on projects that were challenged by petition of 5,000 signatures.
- The Puget Sound Congestion Pricing project was dropped from consideration.
- 1996** PPI law amended to require legislative funding for environmental, engineering, and public involvement work before proposed projects could proceed. Only the Tacoma Narrows Bridge project received legislative appropriations. Therefore, SR 520 and SR 522 were dropped from further consideration.
- 1997** King County Park and Ride lot improvement proposal was dropped from consideration due to local funding concerns.
- United Infrastructure of Washington (UIW), a joint venture of Bechtel Infrastructure and Kiewit Pacific, was selected as the project development and construction team for the SR 16 Tacoma Narrows Bridge (TNB) project. Included on the team, is the design-builder, Tacoma Narrows Constructors, also a joint-venture of Bechtel and Kiewit.
- 1998** The Legislature passed legislation to provide sales tax deferrals on construction of the TNB project; required the initial roundtrip toll to not exceed \$3; and to provide \$50 million state contribution to the project. The advisory vote was held, with 53 percent of the voters in the affected area favoring the project.
- 1999** The Legislature authorized the \$50 million state contribution. WSDOT entered into a contract with UIW to develop the project.
- 2000** The Governor approved \$800 million in privately-issued tax exempt financing for the TNB project. However, the State Supreme Court ruled that WSDOT lacked statutory authority to impose tolls to improve the existing Tacoma Narrows Bridge. In effect, this halted the project from advancing, as toll revenues collected from existing bridge users is required to fully finance construction of the new bridge.

- 2002** Legislation was enacted that allowed for the state to finance the Tacoma Narrows Bridge Project and improvements to the existing bridge using state-issued bonds and public financing. The Legislature appropriated \$849 million for the project, which included \$800 million to be obtained from the sale of the bonds, which will then be paid back through tolling. WSDOT took over management of the construction and operation of the project, reimbursing UIW for their development efforts to date. Also, the Legislature directed a study of barriers to public-private partnerships, and also established a legislative oversight committee to monitor the design-build contract.
- 2005** The Transportation Innovative Partnerships Act of 2005 was enacted (codified as Chapter 47.29 RCW). This law phases out the prior PPIT Act (RCW 47.46) and creates a new public-private partnership law in Washington. The new law allows transportation-related projects and programs of all modes to be eligible for development as a public-private partnership under the Transportation Innovative Partnership Program (TIPP). The TIPP program is administered by WSDOT but overseen by the Washington State Transportation Commission. The Commission has final approval authority for any TIPP agreement negotiated between WSDOT and a private partner. The Commission was directed to enact administrative rules to carry out the TIPP program.
- 2006** The Washington Transportation Commission formally adopted administrative rules to implement the Transportation Innovative Partnership Program, which was created in RCW 47.29. The new program rules can be found at WAC 468-600.
- 2007** The Legislature provided funding for WSDOT's new Transportation Partnership program, and specifically funded analysis for two projects: (1) public/private partnership development opportunities at public ferry terminals; and (2) economic feasibility of using state-owned property to host alternative refueling/recharging stations along Interstate 5.
- 2008** The Transportation Partnerships Office completed analyses of potential public/private partnerships at public ferry terminals, and for alternative refueling/recharging stations along the I-5 corridor. Both projects demonstrate basic financial feasibility, and are proposed for development under the new PPP law, RCW 47.29.