



JTC Public-Private Partnership (P3) Work Group

Final presentation to the Joint Transportation Committee

Jeff Doyle, CDM Smith and Allegra Calder, BERK
May 14, 2024





Overview

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 - Jeff Doyle, CDM Smith
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P3 Study and Work Group Overview



P3 Study and Work Group proviso

from Section 204 of the 2023-25 Transportation Budget

- **Study and recommend a new statutory framework** for the department's public-private partnership program.
- **Review the 2012 joint transportation committee's "Evaluation of Public-Private Partnerships" study**, consisting of:
 - **an evaluation of the recommendations for replacing chapter 47.29 RCW** and
 - **development of a process for implementing public-private partnerships** that serve the defined public interest, including, but not limited to:
 - Protecting the state's ability to retain public ownership of assets constructed or managed under a public private partnership contract;
 - Allowing for the most transparency during the negotiation of terms of a public-private partnership agreement; and
 - Addressing the state's ability to oversee the private entity's management of the asset.
- **Identify any barriers to the implementation of funding models** that best protect the public interest, including statutory and constitutional barriers.
- May also **evaluate public-private partnership opportunities for**
 - required fish passage and culvert work on state highways,
 - for the construction of, replacement of, or commercial retail options within Washington state ferries' terminals, and
 - for other projects as determined by the work group.
- **Update the 2012 recommendations and devise an implementation plan** for the state.
- **Submit a preliminary report, including any recommendations or draft legislation**, to the office of the governor and the transportation committees of the legislature by **December 15, 2023**, and **a final report with draft legislation** to the same by **July 1, 2024**.

Work Group membership

Work Group Member	Representative or Designee
Joint Transportation Committee Executive Committee Members (or designees)	Co-Chair, Sen. Marko Liias Co-Chair, Rep. Jake Fey Sen. Curtis King Rep. Ed Orcutt
Office of the Governor	Debbie Driver , (former) Senior Policy Advisor Erik Hansen , Senior Budget Assistant to the Governor
Secretary of Transportation (or designee)	Anthony Buckley , Director of Innovative Partnerships, WSDOT
State Treasurer (or designee)	Jason Richter , Treasurer's Office
Representative of a national nonprofit organization specializing in public-private partnership program development	Lisa Buglione , AIAI
Representative of the construction trades	Jennifer Ziegler , National Construction Alliance
Representative from an organization representing general contractors	Geoff Owen , Kiewit Construction, Association of General Contractors of Washington

Prior to 2024 session: Work Group's discussion topics

MEETING 1 | September 21, 2023

Established common understanding

- Introductions by Work Group members, overview of the P3 study directive, Work Group meeting schedule, deliberation process, and ground rules.
- Overview of the fundamentals of P3s and key issues for Work Group consideration.

MEETING 2 | October 20, 2023

Review of P3 challenges and opportunities

- Washington's experience with P3s
- Washington's ability to deliver large, complicated or innovative transportation projects under current laws and processes.
- Essential elements of a successful P3 enabling statute.
- Challenges and barriers to broader uses of P3s in Washington.

MEETING 3 | December 8, 2023

P3 statutory provisions and deliberation

- Review of P3 statutory framework and draft legislative language.
- Discussion of key issues to be resolved.
- Process and schedule for implementation plan development, viability of select transportation projects under draft P3 enabling statute, and final report (2024).

Post- 2024 session: Work Group's remaining work items

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MEETING 4 | April 29, 2024

Session debrief and review of Implementation Plan

- Review remaining legislative drafting issues
- Debrief from 2024 session.
- Review Implementation Plan
- Review P3 analysis for Fish Passage Barrier Removal and WSF Terminal projects

FINAL MEETING

MEETING 5 | June 18, 2024

Final few items and review of draft Work Group legislation

- Review how/who chooses projects to procure as P3s
- Review final adjustments to the Implementation Plan
- Review final Work Group-developed draft legislation



P3 Framework & Work Group Summary

Legislature

Legislation: P3 legal authorization (RCW)

- Objectives (findings and legislative intent)
- Essential policy parameters that must be detailed in law
- Delegation of authority to agencies and offices implementing the law

Budget: P3 funding (biennial)

- Funding amounts and direction
- Limitations on program activities
- Expires at end of biennium

Green: Legislative authorization required

Blue: Implementation plan (dependent upon legislative authorization)

High-level framework for new P3 law

Agency

Administrative rules: promulgated by the agency (WAC)

- Legal requirements for implementing P3 projects

Policies: agency priorities and practices

- Agency's business practices and current priorities, within their discretion

Agency + P3 developer

P3 Contract: project-specific terms and conditions

- Mutually-agreed contract for delivery of P3 project
- Must comply with RCWs and WACs

Summary of four key issues deliberated by the Work Group

■ Finance

- Review/approval by the State Finance Committee is required to ensure the State's credit capacity or rating is not negatively impacted.
- Equity investments and availability payments are allowed, subject to the above limitation.

■ Governance

- Streamlined to more closely align with the process for other mega (or tolled) projects administered by WSDOT.
- No expert review/approval panels are mandated – WSDOT may still convene one on case-by-case basis.
- Legislature's role: decide on continued appropriations for projects (now including possible availability payments); and whether to toll a facility.
- WSTC to retain role as toll authority to set/adjust rates.

■ Operations

- Maintain existing language requiring adherence to state wage laws and collective bargaining agreements.
- Clarifies that Washington State Patrol must be funded to provide patrolling and law enforcement on P3 facilities.
- Removes confusing language about funding other enforcement activities (e.g., toll enforcement).

■ Maintenance

- Specifically allows availability payments and “legislative appropriations” to cover P3 contract for maintaining a facility.
- Defers to WSDOT to set the services standard and state of good repair for the assets (same as for non-P3 projects).



Summary of 2024 legislative activities

December 2023 (Pre-session):

- Consultant Team developed the legislative framework and drafted key legislative provisions based on the Workgroup's discussion and direction from December 8, 2023 meeting.

2024 Legislative session:

- Senate introduced SB 6277 (P3 legislation)
- House Transportation Committee amended the Senate version
- No further legislative action taken in 2024 session



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Implementation Plan for revised P3 law

Implementation Plan

Summary of key components across three primary Task Areas

Task	Description	Lead Agency	Timeline	Funding Requirements
Task 1. Education and Stakeholder Outreach	Perform education and stakeholder outreach to better understand the potential P3 market	WSDOT	Short-term (one year to complete)	Modest one-time funding of approximately \$0.5M will be needed to pay a communication/outreach firm, as well as cover internal staff expenses.
Task 2. Develop Rules and Policies	Conduct formal rulemaking and other admin proceedings to define processes, roles, responsibilities, schedules, and other procedural details of the P3 program	WSDOT	Medium term (i.e., within one to two years to complete)	Moderate one-time funding of approximately \$1M will be needed for technical, legal, and financial expertise when developing policies and procedures for the P3 program.
Task 3. Secure Resources	Secure both internal and external resources necessary to develop P3 projects from initial project identification to procurement and implementation	WSDOT	Longer-term (i.e., two years to complete)	Significant funding of approximately \$4.5M per contract will be required. This sum will pay for legal, technical, and financial advisors, which cost approximately \$1.5M per advisor per procurement. A typical contract term is three years.

Implementation Plan

Task Area 1

Task	Description	Lead Agency	Timeline	Funding Requirements
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Implementation Plan

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Implementation Plan

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Assessment of P3 Opportunities: Fish Passage Barrier removal and WSF Terminal Development

P3 Opportunities for Fish Passage Barrier Removal

If developed as a P3	
Legal permissibility	Best value selection and project bundling already available under current law
Potential benefits	<ul style="list-style-type: none">• Ability to fund projects through Availability Payments• Ability to contract for long-term (lifecycle) maintenance of bridges and culverts• Greater opportunities for innovation in project design and delivery, particularly where long-term maintenance is part of the P3 project
Potential risks	<ul style="list-style-type: none">• Time needed to ramp up a new P3 procurement and contracting process, considering the court-imposed deadlines for project completion• Uncertainty whether private sector would perceive value in bundling remaining projects, considering diverse circumstances of many locations
Decision process	Further analysis required to determine: <ul style="list-style-type: none">• Whether remaining projects have enough synergy to bundle under a single P3 contract• Whether a long-term contract that includes operations and maintenance (DBOM) of the remaining culverts and bridges is a better value for the state.

P3 Opportunities for Ferry Terminal Redevelopment

If developed as a P3	
Legal permissibility	Joint development at WSF terminals is already permissible under current law.
Potential benefits	<p>As with other capital projects delivered under a new P3 law, WSF terminal projects would similarly benefit because:</p> <ul style="list-style-type: none"> • Progressive Design/Build and Best Value contracts could be awarded without the added review by CPARB, as required in current law
Potential risks	<p>The risks associated with WSF terminal development as a P3 are the same as under current law:</p> <ul style="list-style-type: none"> • Unclear whether current terminal locations and associated limitations are attractive to potential private partners (example: Anacortes Terminal RFI results)
Decision process	<p>Recommended steps (whether as a new P3 or under existing authority):</p> <ul style="list-style-type: none"> • Assess terminal sites and ensure coordination among public agencies in advance of seeking private partners (i.e., zoning/environmental permitting) • Assess private sector interest in a WSF Terminal P3 project through an RFI or other industry outreach efforts • If interest exists, commence a P3 procurement



Conclusion



Questions?