

## Summary of JTC 2012 and 2024 P3 Study Recommendations

#	2012 Recommendations	2024 Revised Recommendations
6	It is recommended that Washington State adopt a policy framework that identifies a number of public interest protections as binding requirements of all future P3 projects. Such public interest protections are implementable and enforceable through statutes and/or as part of any P3 contract.	2012 Recommendations are effectively carried forward in the 2024 draft P3 legislation.
7	It is recommended that the State utilize the two-step screening tool developed in this study to determine if a project is suitable, from an initial qualitative perspective, to be considered as a potential P3.	2024 update backs away from specific screening criteria and tools, leaving the discretion to WSDOT (the implementing agency). However, the 2024 draft P3 legislation requires an assessment, determination, and public findings of Best Value for a P3 project.
8	It is recommended that the State employ the financial model developed in this study to determine whether Value for Money is greater in a P3 approach than in traditional delivery model.	2024 update requires the P3 project finance plan to be evaluated and approved by the State Finance Committee prior to entering into a P3 contract. The 2012 VfM model (or more recent tools) could be used.
9	It is recommended that the State of Washington take relevant considerations into account in setting the duration of project agreements on a project specific (rather than statutory) basis. It is also recommended that project terms should be targeted between 30 and 60 years in order to realize life cycle cost savings.	2024 update does not mandate or target specific contract durations for P3 projects.
10	It is recommended that the State should maintain ultimate control and/or ownership of assets involved in P3 projects.	2012 recommendation is still valid. 2024 update (and accompanying draft P3 legislation) specifically require the state to retain ownership of assets in fee simple if power of eminent domain is exercised.
11	It is recommended that Value for Money (VfM) must be assessed by the office of transportation P3 (OTP3) in relation to all candidate projects, and that only those projects demonstrating potential to achieve a positive value through P3 delivery be pursued as P3 projects. It is recommended that VfM be periodically reassessed through pre-development and procurement and or accordance with Section 4.4.3.	2024 update backs away from a statutorily created P3 office. Instead, it allows WSDOT (the implementing agency) to organize its own agency to meet the goals and requirements of the P3 program. This may require enhancing the existing P3 office at WSDOT, or delegating P3 assessments and project delivery to other divisions that are currently responsible for alternative delivery of mega-projects. 2024 update and section 12 of draft P3 legislation require WSDOT to make a formal finding of best value for the public – one method of calculating this is conducting a Value for Money (VfM) analysis.

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12	Upfront payments generated by P3 projects, which are paid to the State by the private partner should be used only to address transportation needs, and not diverted to pay for other government costs.	2024 update reiterates this recommendation.
13	The long-term quality of service delivered in a P3 project must be ensured through stringent contract provisions and ongoing oversight by the OTP3.	2024 update allows WSDOT to set the standard of service (including long term maintenance) for any P3 project. However, this function is not mandated for the P3 office, specifically.
14	P3 projects should conform to the State’s toll-setting policy, rather than allowing the private sector to change toll rates without contractually stipulated limits.	2024 update (and draft P3 legislation) reflect this recommendation.
15	The State must safeguard against private partners realizing excessive returns.	No changes to this 2012 recommendation.
16	P3 projects should meet relevant State laws as with any other public works project.	2024 update (and draft P3 legislation) reflect this recommendation.
17	Through contractual and statutory provisions, the State must ensure that the private partner selected will be solvent and able to deliver over the long-term.	No changes to this 2012 recommendation.
18	The State should maintain the ability to terminate a P3 contract, or project agreement, if the private partner is not able to deliver according to the performance specifications of the contract.	No changes to this 2012 recommendation.
19	The State should ensure that P3 contracts clearly specify the condition the asset must be in when the project agreement expires or is terminated.	2024 update allows WSDOT to set the standard of service (including long term maintenance) for any P3 project.
20	It is recommended that the State keep the determination of project worthiness separate from the determination of whether to use P3 delivery.	No changes to this 2012 recommendation.
21	It is recommended that the State must protect the public interest through legislation.	2024 update (and draft P3 legislation) reflect this recommendation.

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22	The State must de-politicize the approach to P3 development and control.	2024 update allows greater P3 capabilities than current law, and directs participation by the State Finance Committee prior to P3 contracting. This reduces the need for detailed legislative involvement during P3 contract negotiation and approval.
23	The State must professionalize its P3 functions.	2024 update (including the implementation plan) call for WSDOT to engage outside legal and consulting expertise.
24	The State must avoid requirements and limitations incompatible with private participation.	2024 update does not identify this as an overriding operating principle in the same manner as the 2012 study recommended.
25	The State must carefully weigh the potential impact of a legislative provision on competition and the receipt of value.	2024 update does not identify this as an overriding operating principle in the same manner as the 2012 study recommended.
26	The State must provide flexible authority that supports the different types and scopes of P3 agreements the State wishes to pursue.	2024 update enhances ability to use different finance and project delivery methods.
27	It is recommended that the State should enable Availability Payment P3s.	2024 update (and draft P3 legislation) reflect this recommendation.
28	It is recommended that the State should repeal its current P3 legislation. It should enact new P3 legislation to encompass public interest protections, ensuring that every project advanced, key policy goals are upheld.	2024 update and draft P3 legislation reflects this recommendation.
29	It is recommended that the State should take a programmatic approach to P3 project delivery by authorizing the creation of a P3 oversight office within the Department of Transportation (the OTP3) that is responsible for upholding public interest concerns and facilitating projects in the best interest of the public and private sector. The Legislature should adequately fund this P3 office.	2024 update specifically avoids a statutorily-created P3 Office, choosing to allow the executive branch agency (WSDOT) determine how best to provide these functions. However, the 2024 update (implementation plan) reflects the 2012 recommendation to adequately fund state agency P3 functions, including outside expertise.
30	It is recommended that the State should enact new P3 legislation to clearly authorize a full range of procurement structures and tolls, such as two-step procurements (Request for Qualifications (RFQ)/shortlisting and Request for Proposals (RFP)), and a period for dialogue with proposers.	2024 update and draft P3 legislation allows latitude for these recommended procurement processes.

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31	It is recommended that the State’s current P3 statute should be replaced to remove the post-procurement discretionary action by the State Transportation Commission and other post-procurement, pre-execution processes. Such existing requirements will preclude the State from undertaking any major P3 projects.	2024 update and draft P3 legislation reflects this recommendation.
32	It is recommended that the State enact new P3 legislation to enable the use of privately arranged or issued debt financing and allow private partners to realize a return on equity.	2024 update and draft P3 legislation reflects this recommendation.
33	It is recommended that provisions directing toll revenues into the transportation innovative partnership account and making expenditures from toll revenues subject to appropriation should be replaced so that they do not adversely affect private sector financing of eligible projects and so that toll revenue expenditures are freed from legislative appropriation.	2024 update and draft P3 legislation allows revenue from a partnership project to be deposited into a non-appropriated account.
34	It is recommended that if lawful, Washington State should enact new P3 legislation to enable the use of continuing appropriations that would allow for availability payment contracts to be advanced.	2024 update and draft P3 legislation allows availability payments and allows funds to be deposited into a non-appropriated account. However, there is no provision for “continuing appropriations” (i.e., removing legislative discretion for appropriations).
35	It is recommended that the State enact new P3 legislation to expand the scope of eligible transportation projects.	2024 update and draft P3 legislation reflects this recommendation.
36	It is recommended that the State enact new P3 legislation to enable conduit issuance of private activity bonds (PABs).	2024 update and draft P3 legislation is flexible enough to allow PABs, but it does not specify PABs in the draft. The 2024 approach is consistent with current law/approach to PABs for other projects.
37	It is recommended that the State institute a 4-year moratorium on unsolicited proposals and enact new P3 legislation to improve control over unsolicited proposals after that time.	2024 update takes the position that unsolicited proposals are not granted any special process or right of review. Unsolicited proposals for non-P3 projects are currently allowable; it is assumed they would be equally allowable for a P3 project without the need for specific statutory procedures.

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38	It is recommended that, if necessary, Washington State should rectify any insurmountable barrier to the use of P3s created by existing provisions concerning the State personnel system reform act.	2024 update does not recommend any changes to current labor laws.
39	It is recommended that new P3 legislation should address its relationship to other State laws.	2024 update and draft P3 legislation would repeal existing RCW 47.29 (2005 P3 law) in its entirety and replace it with new statutory provisions. Any conflict in laws would be resolved during the legislative session with assistance from legislative staff.
41	It is recommended that detailed guidelines per Section 3.2.2 be followed by the OTP3 when dealing with projects that fail analysis under the screening tool.	2024 update does not mandate use of a specific screening tool; it directs WSDOT to develop a methodology for determining (1) public interest; and if demonstrated, (2) best value by using a P3 delivery method.
42	The State should make best use of its existing expertise and resources by channeling these through a single entity – the WSDOT Office of Transportation P3 (OTP3).	2024 update and implementation plan calls for P3 expertise within WSDOT, but does not direct creation of a P3 Office in statute.
43	The State should fill any gaps in its internal expertise and resources with third party support as would be required at various times – procured through the WSDOT OTP3.	2024 update and implementation plan reflects this recommendation (except for specific identification of a new Office of Transportation P3).
44	The State should consolidate all of its P3 approval and contracting functions through the WSDOT OTP3 – while also streamlining the number and type of approvals to the greatest extent possible.	2024 update avoids directing WSDOT to consolidate all of its P3 functions into a specific office. This is allowable, but not mandated.
45	The State should overcome any contradictions within current legislation.	2024 update and draft P3 legislation repeals existing P3 law, RCW 47.29.
46	The State should uphold the public interest by ensuring that legislative oversight of P3 processes is informed, effective, and clearly defined in line with the detailed administrative recommendations contained in Section 4.4.2 (and summarized within the Executive Summary of this report).	2024 update and draft P3 legislation requires WSDOT to develop administrative rules and processes for reviewing and procuring P3 projects. These provisions must be forwarded to the Legislature and Governor, and made available to the public, prior to agency adoption.

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47	Further to the discussion of Value for Money (VfM) concepts in Section 2.3.4 and framing the detailed recommendations in Section 4.4.3, it is recommended that all VfM assessments of candidate P3 projects be undertaken through the OTP3.	2024 update avoids directing WSDOT to consolidate all of its P3 functions into a specific office. This is allowable, but not mandated. Use of Value for Money (VfM) analysis is encompassed in the 2024 draft P3 legislation (Section 12) that requires WSDOT to determine whether a P3 project achieves best value before executing any contract.