



JTC Public-Private Partnership (P3) Work Group

Project Overview and Update for the Joint Transportation
Committee

Jeff Doyle, CDM Smith and Allegra Calder, BERK
January 4, 2024





Overview

5 min **P3 Work Group and Study proviso**
• Allegra Calder, BERK Consulting

10 min **P3 Framework and Summary of Work Group Efforts**
• Jeff Doyle, CDM Smith

10 min **Q&A**



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 , Senior Policy Advisor - Transportation
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

Each Work Group meeting had an overall objective, with specific agenda items and outcomes in support

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).



P3 Framework & Work Group Summary

P3 overview

■ P3 Definition

A competitively bid, performance-based contract between the public sector and the private sector (often several companies working together) to arrange financing, delivery, and typically long-term operations and maintenance of public infrastructure for residents.

Sources:

- [Evaluation of Public Private Partnerships, Washington State JTC, January 2012](#)
- [The World Bank PPP Reference Guide 3.0](#)
- [USDOT Build America Bureau, Public-Private Partnerships \(P3\)](#)
- [FHWA Public-Private Partnership \(P3\) Procurement: A Guide for Public Owners, March 2019](#)

■ Common Features

- Private partner is contractually obligated to fulfill the project agreement (at risk of losing its investment and future revenue).
- Most often used for major, technically complex projects that carry greater risks and often where accelerated delivery is desired.
- Lifecycle cost calculations, which includes financing costs, are key to determining whether a P3 delivery model delivers value and is “worth it” for the public.

■ Common Misconceptions

- Involves selling public assets to the private sector. *Reality: The public sector typically retains ownership of underlying assets and leases to the private partner.*
- Provides private funding for projects lacking public funding. *Reality: The private sector provides financing that must be repaid through existing or new revenue sources such as tolls, taxes or fees.*
- No open competition for contracts (including construction). *Reality: P3 teams may compete for contracts.*

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 (informed by the current phase of this JTC study, due December 2023).

Blue: Implementation plan (informed by next phase of this JTC study, beginning January 2024).

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



The Work Group identified the following objectives for a revised P3 program

A new P3 law could:

- Transparently demonstrate and deliver better value for the public, including expedited project delivery and more effective management of project lifecycle costs;
- Provide an additional option for delivering complex transportation projects;
- Incorporate private sector expertise and innovation into transportation project delivery;
- Allocate project risks to the parties best able to manage those risks;
- Allow new sources for private capital;
- Increase access to federal funding and financing mechanisms;
- Better align private sector incentives with public priorities; and
- Provide consistency in the review and approval processes for the full range of project delivery tools and contracting methods.

Summary of four key issues deliberated by the Work Group

■ Finance

- If the State's credit capacity or rating is implicated, review/approval by the State Finance Committee is required.
- Equity investments and availability payments are allowed, subject to the above limitation.

■ Governance

- Streamlined to mirror 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 (e.g., for 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).

Next Steps and Planned Activities

January through March 2024 – Phase 2: Implementation Plan

1. Assess how two projects identified by the Legislature might perform under a new P3 framework
 - Fish passage barriers
 - Development at WSDOT ferry terminals
 - (Potentially others as directed by the Work Group and subject to resource availability)
2. Develop an Implementation Plan for a new P3 authorization and program at WSDOT

April through June 2024:

- Re-convene Work Group to review the draft Implementation Plan (post-session)
- Prepare and deliver Final Report to Joint Transportation Committee in June 2024



Questions?