
Public-Private Partnerships

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Public Private Partnerships in Transportation

In modern US history, the “traditional” means of delivering infrastructure projects has been using a design-bid-build (DBB) model. Under this model, the public sector designs the project, defines contract obligations at an early stage, bids out each phase of the project, and uses public resources to make monthly payments to contractors as the contract is executed. Subsequent operations and maintenance costs are typically managed and funded by the public agency and may or may not be undertaken directly by agency staff. In this traditional delivery model, most project risks are borne by the public sector, including the need for up front capital to pay for the project, and budgeting for ongoing operations and maintenance.

An alternative to traditional delivery is a method known as public-private partnerships, or P3s. As defined by the Federal Highway Administration, “A public-private partnership (P3) is a contractual agreement formed between public and private sector partners, allowing more private sector participation than is traditional. The agreements usually involve a government agency contracting with a private company to design, renovate, construct, operate, maintain, and/or manage a facility or system”. In P3s, the private sector performs functions normally undertaken by the government, but the public sector retains legal ownership of the facility..

In 2011, the Legislature directed the Joint Transportation Committee to undertake a study of P3s, to evaluate five projects using screening tools and a comparative finance model developed in the course of the study, and to develop a conceptual P3 implementation plan for the state of Washington. Much of the following description of P3s is drawn from that study, which can be found on-line at http://www.leg.wa.gov/JTC/Documents/Studies/P3/P3FinalReport_Jan2012Web.pdf. Additional materials for this chapter were drawn from *Public-Private Partnerships in Transportation: A Toolkit for Legislators* published in 2010 by the National Conference of State Legislatures. Included in the *Toolkit* is a list of nine principles to guide state legislators making policy decisions about P3s. <http://www.ncsl.org/issues-research/transport/public-private-partnerships-for-transportation.aspx>

P3s can offer additional options for states seeking innovative approaches and funding to repair transportation infrastructure and build new projects. However, they are only one piece of the funding puzzle. In fact, while P3s can offer alternative project delivery methods or financing mechanisms, in the long term they do not provide new money for infrastructure. Revenues to repay the private investment must come from the same sources of public funding – tolls, fees or taxes.

P3 delivery is not suitable for all infrastructure projects. Many believe that P3 should be considered for projects that meet some or all of the following criteria:

- major technically-complex projects that are part of a capital plan;
- that need to be delivered faster to realize economic development and/or quality of life benefits;
- that could realize an upfront cost savings through alternative delivery;
- that could show cost savings through operating and maintenance efficiencies; and/or that may lack financing.

The P3 delivery approach includes a range of potential partnership structures, which transfer risk to the private partner in increasingly greater degrees. As the private partner takes on greater risk, it also gains greater control of the project, including the opportunity for a return on its investment. The right structure for a particular project may depend on project complexity, public policy goals, private sector interest, and Value for Money (see definition below). An explanation of the various P3 structures can be found in the JTC’s 2011 P3 study:

http://www.leg.wa.gov/JTC/Documents/Studies/P3/P3FinalReport_Jan2012Web.pdf

Value for Money

In order to decide if a P3 structure could benefit the public partner, a Value for Money (VfM) analysis is conducted to compare the total estimated lifecycle costs of traditional public procurement to those of a hypothetical P3 procurement. If the estimated costs of the P3 procurement are less than those of the traditional public procurement, then there may be a positive Value for Money, and the potential P3 project may warrant further analysis. The VfM analysis is a way of ensuring that the public interest is consistently calculated and weighed in all decisions regarding project delivery.

How Might P3s Add Value? Isn't Tax-Exempt Financing Cheaper?

Yes, municipal tax exempt interest rates are generally lower than corporate taxable interest rates, but financing costs are not the only element to be considered in evaluating the Value for Money of a potential P3 procurement. Four main elements should be considered in evaluating the costs of P3 delivery as compared to traditional delivery:

- Financing costs
- Construction costs
- Operating and maintenance costs over the lifetime of the concession
- Cost of facility preservation over the lifetime of the concession.

Experience in other states and countries has shown that despite the higher financing costs of taxable financing, the benefits of transferring project delivery and long-term maintenance and preservation risks to the private sector can sometimes result in cost savings to the public. In traditional project delivery, most upfront and long-term project delivery risks remain with the public sector. However, in a P3 approach, many risks are transferred to the private sector such that the private party is incentivized to innovate and value engineer to drive down costs and mitigate risks.

Private finance can expand the pool of available capital and provide significantly higher levels of upfront investment. In certain instances, P3 projects have closed public sector funding gaps. In the case of the Texas SH 130 Highway P3, for example, private financing was able to close a \$425 million funding gap which otherwise would have prevented the project from being built. While tax-exempt public debt can be advantageous because of its attractive borrowing rate, this relative advantage is lessened on a P3 project where a private investor has the ability to depreciate various capital costs over the long-term – a tax benefit available to private investors but not to public entities.

The following considerations are important concerning the use of private financing vs. traditional tax-exempt financing:

- Private capital can help fast track projects when public funding and/or financing is not available or insufficient;
- Through the use of private financing, a P3 may allow some projects to be delivered with no effect on the State's debt capacity;
- Although the cost of private capital (particularly private equity) is generally higher than traditional public debt, it is only one of the factors that define the Value for Money equation. A number of tools exist that can reduce the financing cost for private entities to levels that are more competitive with tax-exempt state and municipal financing rates. These tools include Federal TIFIA loans, private activity bonds, and state infrastructure banks which provide access to low-interest or tax-exempt debt to private sector entities for transportation projects. In addition, lifecycle cost savings generated through P3 structures can generate value to offset the capital cost differential; and

- Through a competitive procurement and risk sharing (particularly revenue risk) approach, the access to equity investment allows a P3 structure to potentially leverage a significantly greater amount of up front capital than a publicly-financed approach under equivalent or comparable projects scope and assumptions.
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Potential P3 Benefits

- *Private financing and project acceleration*
- *Monetization of existing assets*
- *Cost and time savings*
- *Lifecycle efficiencies*
- *Improved project quality*
- *Risk transfer*
- *Public control and accountability*

SOURCE: NCSL's P3 for Transportation Toolkit for Legislators

Potential P3 Concerns and Controversies

- *Loss of public control and flexibility*
- *Private profits at the public's expense*
- *Loss of future public revenues*
- *Risk of bankruptcy or default*
- *Accountability and transparency*
- *Environmental issues*
- *Labor concerns*
- *Foreign companies*
- *Toll road controversies*
- *Specific contract terms*

SOURCE: NCSL's P3 for Transportation Toolkit for Legislators

Historic and Current US P3 Transportation Projects

Source: Final Report, Evaluation of Public Private Partnerships, January, 2012; by AECOM Enterprises, Inc.

This table shows P3 projects in the United States. A majority involved the creation of new or expanded highway lanes or transit systems; a smaller number involved asset leases of existing roadways. The five projects below deemed to have failed all involve revenue risk where projections of the original investors failed to materialize. New owners operate these projects today. This demonstrates that revenue projects are very important to project feasibility, and that properly-constructed P3 agreements can insulate the public sector from liability.

Status	NTP	Project Name	Public Sponsor	Delivery Method	Revenue Source	Project Cost (M \$US)	Developer (\$ Capital / Design-Builder)	TIFIA	Failed*
In Operation	Jul 1993	91 Express Lanes, CA	Caltrans	35-year DBFOM	Tolls	\$130	Level 3/Cofiroute/Granite (sold to gov't. 1/03)		Y
	Sep 1993	Dulles Greenway, VA	Virginia DOT	43-year DBFO	Tolls	\$350	TRIP II (\$150m/Brown & Root)		
	May 1999	Foley Beach Express, AL	City of Foley, AL	DBFO/BOO	Tolls	\$44	Baldwin County Bridge Co.		
	Jun 1999	Camino Colombia Bypass, TX	Texas DOT	BOO	Tolls	\$85	Landowners (Granite) (TXDOT purchased 1/04) Sold to TxDOT in 2004		Y
	Oct 2000	Las Vegas Monorail, NV	Clark County, NV	50-year DBOM	Farebox / Ads	\$650	Las Vegas Hotels (\$331 /Bombardier–Granite)		Y
	May 2003	SR 125 So. Bay Express, CA	Caltrans	35-year DBFOM	Tolls	\$773	PB / Macquarie (\$653m/Fluor_Washington)	Y	Y
	Jan 2005	Chicago Skyway, IL	City of Chicago	99-year lease	Tolls	\$1,830	Cintra Concessions/Macquarie		
	Jun 2006	Indiana Toll Road, IN	Indiana Finance Authority	75-year lease	Tolls	\$3,850	Cintra Concessions / Macquarie		
	Jun 2006	Pocahontas Parkway Lease, VA	Virginia DOT	99-year lease	Tolls	\$611	Transurban (\$45m / Fluor–Washington)	Y	Y
	May 2007	Northwest Parkway Lease, CO	Northwest Parkway Authority	99-year lease	Tolls	\$603	BRISA		
In Construction	June 2008	I-495 HOT Lanes, V A	Virginia DOT	85-year DBFOM	Tolls	\$1,998	Transurban / Fluor (\$1.4bn/Fluor–Lane)	Y	
	Mar 2008	SH 130 segments 5-6, TX	Texas DOT	50-year DBFOM	Tolls	\$1,358	Cintra/Zachry (\$968m/Ferrovial–Zachry)	Y	
	Feb 2009	I-595 Managed Lanes, FL	Florida DOT	35-year DBFOM	Availability Payments	\$1,814	ACS Infrac. (\$1.2bn/Dragados–EarthTech)	Y	
	Oct 2009	Port of Miami Tunnel, FL	Florida DOT	35-year DBFOM	Availability Payments	\$914	Meridiam (\$607m/Bouygues–Jacobs)	Y	
	Dec 2009	North Tarrant Express, TX	Texas DOT	52-year DBFOM	Tolls	\$2,047	Cintra/Meridiam (\$1.46bn/Ferrovial)	Y	
	Jun 2010	I-635 LBJ Managed Lanes, TX	Texas DOT	52-year DBFOM	Tolls	\$2,800	Cintra/Meridiam (\$2.1bn/Ferrovial Agroman)	Y	
	Aug 2010	Denver Eagle P3 Rail, CO	Denver RTD	34-year DBFOM	Availability Payments	\$2,100	Fluor/Laing/Uberior (\$1.27bn/Fluor–BB)		
Jan 2011	Jordan Bridge, VA	Chesapeake, VA	BOO, Owned in Perp.	Tolls	\$100	Figg/Amer. Infra. MLP/Lane (\$100m/Lane)			
Sep 2011	PR-22/PR-5 Lease, Puerto Rico	Gov't Development Bank	40-year lease	Tolls	\$1,436	Abertis/Goldman Sachs Infra Partners II			

NOTES: *Failed projects are those where the concession company has filed for bankruptcy; NTP + Notice to Proceed; BOO = Build Own Operate delivery; TIFIA column indicates projects where financing includes USDOT TIFIA loan; lease (brownfield) “project costs” refer to upfront payments received by the Public Sponsor in exchange for leasing rights of the asset.

P3s in Washington State

Since the early 1990s, Washington State has experimented with public-private partnerships. In 1993, the Legislature passed the Public-Private Initiatives in Transportation (PPI) Act (HB 1006, codified as RCW 47.46) to create a legal framework for transportation P3s. Fourteen project proposals were received from the private sector, and six were approved for further consideration. Over the next several years, five of these six projects were dropped from consideration due to funding concerns, legislative opposition, or lack of public support.

The last project was a new SR 16 Tacoma Narrows Bridge. In 1997, a private consortium led by Bechtel Infrastructure and Kiewit Pacific was selected to construct and operate the bridge as a P3. The project was unable to proceed as a P3, however, because the State Supreme Court ruled that WSDOT had no statutory authority to impose tolls on the existing bridge, which was critical to the project's finance plan.

In 2002, the P3 developer and the Legislature agreed to amend the law to allow tolling of the existing bridge, so long as state-issued bonds financed construction. The State also assumed operations and maintenance responsibilities from the private consortium.

The Legislature subsequently directed the Legislative Transportation Committee to study barriers to public-private partnerships in Washington State, resulting in the enactment of the 2005 Transportation Innovative Partnerships Act (Chapter 47.29 RCW). It maintained the requirement for state-issued debt for P3 projects. As a result, no P3 projects for toll facilities have been undertaken since the law's enactment. Only small, non-tolled projects have advanced under the current program.

A chronology of Washington's P3 programs follows at the end of this section.

No P3 projects for toll facilities have been undertaken since the enactment of the 2005 Transportation Innovative Partnerships Act.

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

The Transportation Innovative Partnership (TIP) program is administered by WSDOT's Transportation Partnerships Office, but certain aspects of the program are overseen by the Washington State Transportation Commission, including the following:

- 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
- Approving or rejecting negotiated agreements.

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.

WSDOT's Transportation Partnerships Office

WSDOT's Transportation Partnerships Office is responsible for engaging the private sector in public-private partnerships that can help advance transportation projects, programs, or policies.

The Office is funded at \$711,000 in operating funds, with 2 FTEs, and 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.

The Transportation Partnerships Office relies on short-term contracts with consultants to conduct specialized research and due diligence of potential projects. Typically, funding is earmarked for this purpose, and is not part of the program's ongoing budget.

WSDOT Responsibilities for TIP Program

The Transportation Partnerships Office is responsible for conducting the administrative functions and responsibilities of the TIP program. These tasks generally include the following:

- **Consultation and advisory services**, providing information and advice to public officials on the use of P3s to develop projects.
- **Analysis and assessment**, carrying out economic feasibility studies and business assessments on basic project viability.
- **Project development** for those projects that demonstrate feasibility and where the state has resources to enter a partnership.
- **Liaison and representation**, serving as the conduit between the state, the private sector, and transportation stakeholders interested in P3 projects.

Since no tolled projects have advanced under the TIP program, the active projects have been limited to non-toll projects, which include the following:

- The **West Coast Green Highway**, a joint initiative by Washington, Oregon, California and British Columbia to promote the use of fuels with low- or no-carbon emissions.
- A **West Coast Electric Highway Project**, a partnership with the private sector to build a network of electric vehicle fast-charging stations along I-5, I-90 and US-2.
- Proposed **joint development at Washington State ferry terminals (Edmonds, Anacortes and Colman Dock)**.
- A pilot project to generate revenue from **digital advertising** on WSDOT websites.
- A pilot project to develop retail amenities at state-owned Park-and-Ride facilities.

As part of the JTC's 2011 P3 study, the consultant team recommended a number of statutory changes that would be needed if the state were to pursue development of a viable transportation P3 program. It would require complete rewrite of the P3 statute, to allow private financing of transportation projects, to improve public interest protections, and other revisions. Below are the recommended changes.

**Recommended changes to Washington’s P3 Statute,
Proposed in the JTC’s study of Public-Private Partnerships (2011)**

1. Repeal the current P3 law. Enact new P3 legislation to encompass public interest protections, ensuring that for every project advanced, key policy goals are upheld. Those key policy goals include:
 - a. maintaining control and/or ownership of the asset;
 - b. conducting a Value for Money assessment;
 - c. requiring that funds and tolls generated by a P3 project be used for DOT’s capital program, and not the state’s general fund programs;
 - d. ensuring that the P3 project agreement includes performance standards and requirements for quality control;
 - e. providing more flexible toll setting authority;
 - f. requiring a P3 project to meet relevant state laws such as prevailing wage, apprenticeship requirements, and others;
 - g. preventing excessive returns;
 - h. requiring financial guarantees of private partner solvency;
 - i. addressing termination of the agreement; and
 - j. addressing the issue of handback requirements in P3 agreements.
2. Authorize the creation of and fund a P3 oversight office within WSDOT, responsible for upholding public interest concerns and facilitating projects in the best interest of the public and private sectors.
3. Enact new P3 legislation to clearly authorize a full range of procurement structures and tolls.
4. Remove the post-procurement discretionary action by the Transportation Commission in current law, as well as other post-procurement, pre-execution processes.
5. Allow the use of privately arranged or issued debt financing in a P3 project, and allow private partners to realize a return on equity.
6. Repeal current provisions directing toll revenues into the Transportation Innovative Partnership Account, and requiring expenditures from toll revenue be made subject to appropriation.
7. Enable the use of continuing appropriations that would allow for availability payment contracts to be used in a P3.
8. Expand the scope of transportation projects eligible to be considered for P3.
9. Allow for the issuance of private activity bonds to finance P3 projects.
10. Institute a four-year moratorium on unsolicited proposals, and enact new legislation that improves control over unsolicited proposals after that time.

Chronology of Washington's Public-Private Partnerships Programs

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 a 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; require the initial roundtrip toll to not exceed \$3; and 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 (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 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.
- 2009** The Legislature authorized the Transportation Partnerships Office to pursue a joint development project at the Edmonds Ferry Terminal. A Request for Proposals was issued, but no financially-qualified proposals were submitted for this project. The Legislature also provided \$50,000 for business analysis on whether advertising on WSDOT's website could generate revenue for the state.
- 2010** Legislature provides \$75,000 in seed funding for a pilot project to generate revenue from digital advertising on WSDOT's website. The Transportation Partnerships Office submits a business plan to the state Department of Commerce, and is awarded \$1.6 million from U.S. Department of Energy ARRA funds, for a public/private partnership to develop a network of fast-charging stations for electric vehicles in Washington state. This funding is further leveraged through a partnership with AeroVironment, a private company that will provide the services.

2011 The Transportation Partnerships Office solicits conceptual proposals from the private sector for joint development at the Anacortes Ferry terminal. The conclusion of the development community is that a year-round business is not financially viable at the Anacortes terminal location. WSDOT drops the Anacortes terminal from further joint-development consideration.

The Legislature authorizes the Transportation Partnerships Office to issue a Request for Proposals for a pilot project that would allow development of retail amenities (such as coffee shops) at state-owned Park-and-Ride lots. The Transportation Partnerships Office, in collaboration with the Alaskan Way Viaduct Office and the City of Seattle, issues a Request for Information and conceptual proposals for a mixed-use development project in Seattle's central waterfront area that would provide short-term parking targeted for customers of waterfront businesses.

