



JTC Public-Private Partnership (P3) Work Group

Meeting 4, SeaTac Executive Conference Center

April 29, 2024
11:00 am– 1:30 pm



**CDM
Smith**



Agenda

- 11:00 am** **Welcome and Preview of the Meeting**
 - Allegra Calder, BERK Consulting
- 11:05 am** **Legislative Session Recap**
 - Introduction: Jeff Doyle, CDM Smith
 - Remarks from P3 Work Group members
 - Facilitator: Allegra Calder, BERK Consulting
- 11:30 am** **Issues to be addressed in new P3 legislation**
 - Jeff Doyle, CDM Smith
 - Allegra Calder, BERK Consulting
- 12:00 pm** **Working Lunch**
- 12:15 pm** **Draft Implementation Plan for revised P3 law**
 - Jeff Doyle, CDM Smith
 - Allegra Calder, BERK Consulting
- 1:00 pm** **Assessment of P3 Opportunities: Fish Passage Barriers and WSF Terminal Development**
 - Jeff Doyle, CDM Smith
 - Allegra Calder, BERK Consulting
- 1:25 pm** **Next Steps**
 - Alyson Cummings, Joint Transportation Committee staff
- 1:30 pm** **Adjourn**



Meeting Objectives





Meeting Objectives

- **Discuss** the P3 bill from the 2024 session
- **Identify** remaining issues in P3 legislation that require additional work and reconciliation
- **Review and discuss** the (draft) Implementation Plan for a revised P3 law
- **Review** assessment of P3 opportunities for Fish Passage Barrier removal and WSF Terminal Development
- **Preview Next Steps** for the remainder of this study



Legislative session recap

Work Group's legislative framework (December 2023)

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).

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 law

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).



Issues to be addressed in new P3 legislation

Draft legislation derived from WG deliberations

- Removes references to Washington State Transportation Commission (WSTC) as the “Authority” for P3s and removes WSTC from having a review and decision-making role while preserving the role of the Commission related to toll rate setting.
- Empowers Washington State Department of Transportation (WSDOT), rather than WSTC, to enact WACs and policies to implement P3s.
- Removes the requirement that P3 candidate projects must be identified in the state’s Long Range Transportation Plan or otherwise identified as high priority for the state.
- Allows private equity contributions to a P3 project.
- Repeals detailed requirements for accepting unsolicited proposals.
- Removes requirements for outside advisory committees or expert review panels to accept or reject any proposed P3 project agreements.

Unreconciled issues in Working Group’s P3 legislation

Drafting Issue(s)	Relevance	Options
<ul style="list-style-type: none"> • Where should proceeds from a P3 project be deposited? • Is an appropriation required to disburse funds from the P3 account? 	<ul style="list-style-type: none"> • Proceeds may include revenue generated by the P3 project (e.g., from tolls), or could include private sources (e.g., equity from private partners). • Requiring legislative appropriation to disburse funds subject to the P3 Agreement is cited as problematic for the private sector 	<ul style="list-style-type: none"> A. Allow P3 contracts to establish trust accounts maintained by an independent third party for disbursement of funds B. Create a new P3 account that is a non-appropriated account held in the state treasury (“treasury trust” accounts)



Working Lunch





 Draft 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 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 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
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 1x funding of approximately \$0.5M will be needed to pay a communication/ outreach firm, as well as cover internal staff expenses.

Implementation Plan

Task Area 2

Task	Description	Lead Agency	Timeline	Funding Requirements
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 1x funding of approximately \$1M will be needed for technical, legal, and financial expertise when developing policies and procedures for the P3 program.

Implementation Plan

Task Area 3

Task	Description	Lead Agency	Timeline	Funding Requirements
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 – areas for further discussion

- **Start-up phase (immediately after P3 law passage):** concentrated vs. distributed administrative functions and subject matter expertise?
- **Internal staffing requirements (FTEs):** how many, when, and roles/responsibilities?
- **Timing for hiring outside experts (legal, technical, etc.):** is this needed at start-up, or later?
- **Funding requirements to support new a P3 law:** includes both internal and external resources – how much?
- **Other issues as raised by WG members...**



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
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: 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	As with other capital projects delivered under a new P3 law, WSF terminal projects would similarly benefit because: <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	The risks associated with WSF terminal development as a P3 are the same as under current law: <ul style="list-style-type: none">• Unclear whether current terminal locations are attractive to potential private partners (example: Anacortes Terminal RFI results)
Decision process	Recommended steps (whether as a new P3 or under existing authority): <ul style="list-style-type: none">• 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



Next Steps



Adjourn