



JTC Public-Private Partnership (P3) Work Group

Meeting 5: 2200 Columbia House Blvd., Vancouver, WA

June 18, 2024
2:30 pm – 4:00 pm



**CDM
Smith**



Welcome and Agenda Overview

2:30 PM

Welcome and Agenda Overview

- Allegra Calder, BERK Consulting

2:40 PM

Outstanding Items

- Project cost threshold
- Experience from other P3 States with legislative project selection
- Consulting and legal cost estimates for WSDOT projects
- *Facilitator: Allegra Calder, BERK Consulting*

3:00 PM

DRAFT P3 Legislation

- Jeff Doyle, CDM Smith
- Allegra Calder, BERK Consulting

4:00 PM

Adjourn



Outstanding Items




Outstanding Items from Work Group Meeting #4

1. Would establishing a **P3 project cost threshold** increase contracting opportunities for Washington-based small and medium-sized contractors?
2. What is the **Legislature's role in project selection** in those states have that P3 laws and programs?
3. How **much does WSDOT typically spend** on specialized consulting/legal services for large projects vs. estimated cost for P3 project delivery?



1. P3 Project Cost Thresholds

Would establishing a **P3 project cost threshold** increase contracting opportunities for Washington-based small and medium-sized contractors?



2. Experience from other P3 States with legislative project selection

What is the **Legislature's role in project selection** in those states have that P3 laws and programs?

Legislature's role selecting P3 projects in comparative states

Model State: Virginia

- VA is regarded as the most successful P3 program in the U.S., and the longest tenured
- In addition to the VDOT Director, **P3 projects must be approved by:**
 - the **Commonwealth Transportation Board (CTB)** - 17 members, appointed by the Governor
 - the PPTA Steering Committee, which includes members of the CTB; **House Appropriations Committee; Senate Committee on Finance and Appropriations**; Deputy Secretary of Transportation; the CFO of the DOT; and a nonagency public financial expert, as selected by the Secretary of Transportation.

Key State: Colorado

- Commitment to using and success with implementing P3s.
- In addition to the CDOT Director, **P3 projects must be approved by:**
 - the **Colorado Transportation Commission** - 11 members, appointed by the Governor
 - the High-Performance Transportation Enterprise Board (7 members), 3 of whom are Colorado Transportation Commissioners, and 4 members appointed from different regions of the state.
- **There is no formal role for legislators or legislative committees** in the P3 approval process.

Key State: Maryland

- Commitment to using and success with implementing P3s
- In addition to the CDOT Director, **P3 projects must be approved by:**
 - The Maryland Transportation Authority- 9 members, appointed by the Governor, oversees toll-related projects and P3s in the state.
 - the Board of Public Works - 3-member Board (Governor, Comptroller, and Treasurer).
- **There is no formal role for legislators or legislative committees** in the P3 approval process

Legislative discretion and public interest protections for new P3 projects in Washington

Provision	Location
If the new P3 legislation should pass, WSDOT must undergo a public rulemaking process (with public hearings) to adopt administrative rules to implement the new P3 law	RCW 34.05, Washington’s Administrative Procedures Act.
HTC and STC must review WSDOT’s proposed P3 administrative rules prior to adoption	New P3 legislation (2024) Sec 3(2)
As with other major projects (and all improvement projects), the legislature decides which projects to authorize for funding	Current state budgeting process
WSDOT must make formal, Finding of Public Interest in procuring a project as P3. Must notify HTC & STC Chairs & Governor of finding that a P3 procurement is in the public’s interest. Must hold public comment period.	New P3 legislation (2024) Sec. 3(1)(b)
Issue Finding of Best Value, including cost comparisons between proposed P3 contract and traditional or other alternative public contracting methods	New P3 legislation (2024), Sec 12
Specific contractual standards must be met, including: setting a maximum rate of return for private partner; allocation of cost responsibility for overruns; standard of the facility upon reversion to state control; provisions and remedies for default.	New P3 legislation (2024) Sec. 11
The legislature must approve any project that imposes tolls, including P3 projects.	New P3 legislation (2024) Sec 4(1); and RCW 47.56.820
WSDOT may not execute any P3 agreement without prior review and approval of the finance plan by State Finance Committee (Governor, Lt. Governor, State Treasurer)	New P3 legislation (2024) Sec 5(4)
Legislative (continuing) authority is required for the issuance of bonds that may be utilized for the P3 project	New P3 legislation (2024) Sec. 19
Legislature retains discretion whether to: appropriate state funds to a P3 project; authorize sales tax deferrals; and/or appropriate availability payments.	Current law

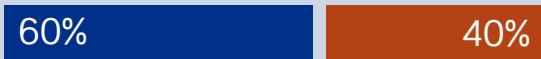


3. Comparison of WSDOT's outside consulting/legal cost estimates vs. P3 projects

How much does WSDOT typically spend on specialized consulting/legal services for large projects vs. estimated cost for P3 project delivery?

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.

Question was triggered by this provision in Implementation Plan

Cost component	State costs for WSDOT project	State costs for P3 Project
Pre-contract execution: Preliminary engineering	~ 13% of estimated project cost (ex: \$39M, assuming a \$300M project)	Estimated additional special resources for P3 delivery (<i>source</i> : implementation plan): <ul style="list-style-type: none"> \$1.5 M Outside legal counsel \$1.5M Outside technical experts \$1.5 M Outside financial advisor = \$4.5 M total (3-year service contracts)
Pre-contract execution: Contract development		
Pre-contract execution: Administering procurement		
Post-contract execution: Administering construction	~ 15% of estimated project cost (ex: \$45M, assuming a \$300M project)	

In-house/outside services ratio (Estimated)	WSDOT Mega-project	P3 Project
<ul style="list-style-type: none"> In-house: WSDOT, AGO Outside: consultants and law firms 	<p>\$300M or less:</p>  <p>\$300M+:</p> 	<p>\$300M+ (varies based on project, typically):</p> 



Work Group's Draft P3 legislation

Resolution of remaining issues in Working Group's P3 legislation

Drafting Issue(s)	Work Group's Direction (subject to confirmation)
<ul style="list-style-type: none"> • Depository accounts for P3s and whether appropriations are required 	<p>Create a new P3 account that is a non-appropriated account held in the state treasury ("treasury trust" accounts)</p>
<ul style="list-style-type: none"> • Project thresholds (e.g., cap on P3 project value) 	<p>TBD (based on outcome of WG discussions)</p>
<ul style="list-style-type: none"> • Legislative review of WSDOT's draft P3 rules, and timing for that 	<p>Reflects submission ~18 months after passage of a new P3 bill in the 2025 session (currently noted as November 2026 in the draft bill)</p>
<ul style="list-style-type: none"> • Legislature has final approval authority over a negotiated P3 Agreement 	<p>P3 Agreements can be entered into by WSDOT, subject to State Finance Committee approval. No legislative approval of the final Agreement is required.</p>
<ul style="list-style-type: none"> • Allowable uses of property acquired via eminent domain 	<p>Property acquired by eminent domain must be held in fee simple by the state.</p>
<ul style="list-style-type: none"> • Effective dates 	<p>Draft bill has an effective date of January 1, 2026</p>



Adjourn