

S-4555.2

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** FINDINGS. (1) The legislature finds that a full set of project procurement, contracting, and funding tools are needed to enable the delivery of transportation projects in a manner most advantageous to the public. Current public-private partnership laws have failed to spur innovative proposals from the private sector or new project delivery approaches from the department. The legislature confirms the findings from previous studies that current laws and administrative processes are the primary obstacle impairing the state's ability to utilize public-private partnerships.

(2) The legislature finds that a new public-private partnership law is needed to:

(a) Transparently demonstrate and deliver better value for the public including, but not limited to, expedited project delivery and more effective management of project life-cycle costs;

(b) Provide an additional option for delivering complex transportation projects;

(c) Incorporate private sector expertise and innovation into transportation project delivery;

(d) Allocate project risks to the parties best able to manage those risks;

(e) Allow new sources for private capital;

(f) Increase access to federal funding and financing mechanisms;

(g) Better align private sector incentives with public priorities; and

(h) Provide consistency in the review and approval processes for the full range of project delivery tools and contracting methods.

NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the transportation commission.

(2) "Department" means the department of transportation.

(3) "Eligible transportation project" means any project *[[with an estimated cost to the state of less than five hundred million dollars]]*, whether capital or operating, eligible for development where the state's purpose for the project is to preserve or facilitate the safe transport of people or goods via any mode of travel. *[[After the department has completed delivery of five eligible transportation projects, there is no dollar cost limitation on eligible projects.]]*

(4) "Private sector partner" and "private partner" means a person, entity, or organization that is not the federal government, a state, or a political subdivision of a state.

(5) "Public funds" means all moneys derived from taxes, fees, charges, tolls, or other levies of money from the public.

(6) "Public sector partner" and "public partner" means any federal or state unit of government, bistate transportation organization, or any other political subdivision of any state.

(7) "State finance committee" means the entity created in chapter 43.33 RCW.

(8) "Unit of government" means any department or agency of the federal government, any state or agency, office, or department of a state, any city, county, district, commission, authority, entity, port, or other public corporation organized and existing under statutory law or under a voter-approved charter or initiative, and any intergovernmental entity created under chapter 39.34 RCW or this chapter.

NEW SECTION. **Sec. 3.** WASHINGTON STATE DEPARTMENT OF TRANSPORTATION POWERS AND DUTIES. (1) The department shall develop

policies and, where appropriate, adopt rules to carry out this chapter and govern the use of public-private partnerships for transportation projects. At a minimum, the department's policies and rules must address the following issues:

(a) The types of projects allowed;

(b) Consistent with section 7 of this act, a process and methodology for determining whether a public-private partnership delivery model will be in the public's interest;

(c) Consistent with section 12 of this act, a process and methodology for determining whether a negotiated partnership agreement will result in greater public value to the state than if the project is delivered using other procurement and contracting methods;

(d) The types of contracts allowed, with consideration given to the best practices available;

(e) Minimum standards and criteria required of all proposals;

(f) Procedures for the proper identification, solicitation, acceptance, review, and evaluation of projects, consistent with existing project procurement and contracting requirements and practices;

(g) Criteria to be considered in the evaluation and selection of proposals that includes:

(i) Comparison with the department's internal ability to complete the project that documents the advantages of completing the project as a partnership versus solely as a public venture; and

(ii) Factors such as, but not limited to: Priority, life-cycle cost, risk sharing, scheduling, innovation, and management conditions;

(h) The protection of confidential proprietary information while still meeting the need for transparency and public disclosure that is consistent with section 13 of this act;

(i) Protection for local contractors to participate in subcontracting opportunities that is consistent with section 4(3) of this act;

(j) Specifying that maintenance issues must be resolved in a manner consistent with chapter 41.80 RCW;

(k) Guidelines to address security and performance issues.

(2) By February 1, 2026, the department must provide a report to the house of representatives and senate transportation committees on proposed policies and guidelines it intends to develop into administrative rules. Rules adopted by the department pursuant to this chapter may not take effect before to September 1, 2026.

NEW SECTION. **Sec. 4.** APPLICABILITY OF OTHER TRANSPORTATION PROJECT GOVERNING PROVISIONS.

(1) For any eligible transportation project that requires the imposition of tolls on a state facility, the legislature must approve the imposition of such tolls consistent with RCW 47.56.820.

(2) For any eligible transportation project that requires setting or adjusting toll rates on a state facility, the commission has sole responsibility consistent with RCW 47.56.850.

(3)(a) If federal funds are provided for an eligible transportation project developed under this chapter, disadvantaged business enterprise inclusion requirements as established, monitored, and administered by the department's office of equity and civil rights apply.

(b) If no federal funds are provided for an eligible transportation project developed under this chapter, state laws, rates, and rules must govern, including the small business enforceable goals program required through 49 C.F.R. Sec. 26.39 as established, monitored, and administered by the department's office of equity and civil rights.

NEW SECTION. **Sec. 5.** ELIGIBLE FINANCING. (1) Subject to the limitations in this section, the department may, in connection with the evaluation of eligible transportation projects, consider any financing mechanisms from any lawful source, either integrated as part of a project proposal or as a separate, stand-alone proposal to finance a project. Financing may be considered for all or part of a proposed project. A project may be financed in whole or in part with:

(a) The proceeds of grant anticipation revenue bonds authorized under 23 U.S.C. Sec. 122 and applicable state law. Legislative authorization and appropriation are required to use this source of financing;

(b) Grants, loans, loan guarantees, lines of credit, revolving lines of credit, or other financing arrangements available under the transportation infrastructure finance and innovation act under 23 U.S.C. Sec. 181 et seq., or any other applicable federal law;

(c) Infrastructure loans or assistance from the state infrastructure bank established under RCW 82.44.195;

(d) Federal, state, or local revenues, subject to appropriation by the applicable legislative authority;

(e) User fees, tolls, fares, lease proceeds, rents, gross or net receipts from sales, proceeds from the sale of development rights, franchise fees, or any other lawful form of consideration. However, projects financed by tolls must first be authorized by the legislature under RCW 47.56.820;

(f) Loans, pledges, or contributions of funds, including equity investments, from private entities.

(2) Subject to subsection (4) of this section, the department may develop a plan of finance that would require either the state or a private partner, or both, to: Issue debt, equity, or other securities or obligations; enter into contracts, leases, concessions, and grant and loan agreements; or secure any financing

with a pledge of funds to be appropriated by the legislature or with a lien or exchange of real property.

(3) As security for the payment of any financing, the revenues from the project may be pledged, but no such pledge of revenues constitutes in any manner or to any extent a general obligation of the state, unless specifically authorized by the legislature. Any financing described in this section may be structured on a senior, parity, or subordinate basis to any other financing.

(4) The department shall not execute any agreement, including any agreement that could materially impact the state's debt capacity or credit rating as determined by the **state finance committee**, without prior review and approval of the plan of finance and proposed financing terms by the state finance committee.

NEW SECTION. **Sec. 6.** USE OF FEDERAL FUNDS OR OTHER SOURCES.

(1) The department may accept from the United States or any of its agencies such funds as are available to this state or to any other unit of government for carrying out the purposes of this chapter, whether the funds are made available by grant, loan, or other financing arrangement. The department may enter into such agreements and other arrangements with the United States or any of its agencies as may be necessary, proper, and convenient for carrying out the purposes of this chapter, subject to subsection (2) of this section.

(2) (a) The department may accept from any source any grant, donation, gift, or other form of conveyance of land, money, other real or personal property, or other valuable thing made to the state of Washington, the department, or a local government for carrying out the purposes of this chapter.

(b) Any eligible transportation project may be financed in whole or in part by contribution of any funds or property made by any private entity or public sector partner that is a party to any agreement entered into under this chapter.

NEW SECTION. **Sec. 7.** PUBLIC INTEREST FINDING. (1) The department may evaluate projects that are already programmed for other delivery methods to determine their appropriateness for delivery under a public-private partnership model.

(2) Before entering into a formal solicitation or procurement to develop a project as a public-private partnership, the department must make formal findings that utilizing a public-private partnership delivery method is in the public's interest. The department must adopt rules detailing the process and criteria for making such findings. At a minimum, the criteria must consider whether:

(a) Public ownership of the asset can be retained;

(b) Transparency during the consideration of a public-private partnership agreement can be provided;

(c) Public oversight of the private entity's management of the asset can be provided; and

(d) Additional criteria that reflects the legislative findings in section 1 of this act.

(3) Before commencing any solicitation to deliver the project as a public-private partnership, the department must provide an opportunity for public comment on the proposed project and delivery method.

(4) Upon a finding of public interest pursuant to subsection (2) of this section, the department must provide written notification of their finding of public interest and intent to deliver the project as a public-private partnership to the general public, to the chairs and ranking members of the transportation committees of the legislature, and to the governor.

(5) Upon a finding of public interest pursuant to subsection (2) of this section, the department may:

(a) Solicit concepts or proposals for the identified public-private partnership project from private entities and units of government;

(b) Evaluate the concepts or proposals received under this section. The evaluation under this subsection must include consultation with any appropriate unit of government; and

(c) Select potential projects based on the concepts or proposals.

NEW SECTION. **Sec. 8.** USE OF FUNDS FOR PROPOSAL PURPOSES. (1) The department may spend such moneys as may be necessary for stipends for respondents to a solicitation, the evaluation of concepts or proposals for eligible transportation projects, and for negotiating agreements for eligible transportation projects authorized under this chapter. Expenses incurred by the department under this section before the issuance of transportation project bonds or other financing must be paid by the department and charged to the appropriate project. The department must keep records and accounts showing each charged amount.

(2) Unless otherwise provided in the omnibus transportation appropriations act, the funds spent by the department under this section in connection with the project must be repaid from the proceeds of the bonds or other financing upon the sale of transportation project bonds or upon obtaining other financing for an eligible transportation project, as allowed by law or contract.

NEW SECTION. **Sec. 9.** EXPERT CONSULTATION. The department may consult with legal, financial, technical, and other experts in the public and private sector in the evaluation, negotiation, and development of projects under this chapter.

NEW SECTION. **Sec. 10.** CONTRACTED STUDIES. In the absence of any direct federal funding or direction, the department may contract with a private developer of a selected project proposal to conduct environmental impact studies and engineering and technical studies.

NEW SECTION. **Sec. 11.** PARTNERSHIP AGREEMENTS. (1) The following provisions must be included in any transportation project agreement entered into under the authority of this chapter and to which the state is a party:

(a) For any project that proposes terms for stand alone maintenance or asset management services for a public facility, those services must be provided in a manner consistent with any collective bargaining agreements, chapter 41.80 RCW, and civil service laws that are in effect for the public facility;

(b) A finding of public interest, as issued by the department pursuant to section 7 of this act;

(c) If there is a tolling component to the project, it must be specified that tolling technology used in the project must be consistent with tolling technology standards adopted by the department for transportation-related projects;

(d) Provisions for bonding, financial guarantees, deposits, or the posting of other security to secure the payment of laborers, subcontractors, and suppliers who perform work or provide materials as part of the project;

(e) All projects must be financed in a manner consistent with section 6 of this act.

(2) At a minimum, agreements between the state and private sector partners entered into under this section must specifically include the following contractual elements:

(a) The point in the project at which public and private sector partners will enter the project and which partners will assume responsibility for specific project elements;

(b) How the partners will share management of the risks of the project;

(c) The compensation method and amount for the private partner, establishing a maximum rate of return, and identifying how project revenue, if any, in excess of the maximum rate of return will be distributed;

(d) How the partners will share the costs of development of the project;

(e) How the partners will allocate financial responsibility for cost overruns;

(f) The penalties for nonperformance;

(g) The incentives for performance;

(h) The accounting and auditing standards to be used to evaluate work on the project;

(i) For any project that reverts to public ownership, the responsibility for reconstruction or renovations that are required for a facility to meet all service standards and state of good repair upon reversion of the facility to the state;

(j) Provisions and remedies for default by either party, and provisions for termination of the agreement for or without cause;

(l) Provisions for public communication and participation with respect to the development of the project.

NEW SECTION. **Sec. 12.** BEST VALUE FINDING AND AGREEMENT EXECUTION. Before executing an agreement under this chapter, the department must make a formal finding that the negotiated partnership agreement is expected to result in best value for the public. The department must develop and adopt a process and criteria for measuring, determining, and transparently reporting best value relevant to the proposed project. At minimum, the criteria must include:

(1) A comparison of the total cost to deliver the project, including any operations and maintenance costs, as a public-private partnership compared to traditional or other alternative delivery methods available to the department;

(2) A comparison with the department's current plan, resources, delivery capacity, and schedule to complete the project that documents the advantages of completing the project as a public-private partnership versus solely as a public venture; and

(3) Factors such as, but not limited to: Priority, cost, risk sharing, scheduling, asset and service quality, innovation, and management conditions.

NEW SECTION. **Sec. 13.** CONFIDENTIALITY. A proposer must identify those portions of a proposal that the proposer considers to be confidential, proprietary information, or trade secrets and provide any justification as to why these materials, upon request, should not be disclosed by the department. Patent information will be covered until the patent expires. Other information, such as originality of design or records of negotiation, may only be protected under this section until an agreement is reached. Disclosure must occur before final agreement and execution of the contract. Projects under federal jurisdiction or using federal funds must conform to federal regulations under the freedom of information act.

NEW SECTION. **Sec. 14.** PREVAILING WAGES. If public funds are used to pay any costs of construction of a public facility that is part of an eligible transportation project, chapter 39.12 RCW applies to the entire eligible transportation project.

NEW SECTION. **Sec. 15.** GOVERNMENT AGREEMENTS. The state may, either separately or in combination with any other public sector partner, enter into working agreements, coordination agreements, or similar implementation agreements, including the formation of bistate transportation organizations, to carry out the joint implementation and operation of a transportation project selected under this chapter. The state may enter into agreements with other units of government or Canadian provinces for transborder transportation projects.

NEW SECTION. **Sec. 16.** EMINENT DOMAIN. The state may exercise the power of eminent domain to acquire property, rights-of-way, or other rights in property for projects that are necessary to implement an eligible transportation project developed under this chapter. Any property acquired pursuant to this section must be owned in fee simple by the state.

NEW SECTION. **Sec. 17.** FEDERAL LAWS. Applicable federal laws, rules, and regulations govern in any situation that involves federal funds if the federal laws, rules, or regulations:

- (1) Conflict with any provision of this chapter;
- (2) Require procedures that are additional to or different from those provided in this chapter; or
- (3) Require contract provisions not authorized in this chapter.➤

NEW SECTION. **Sec. 18.** PUBLIC-PRIVATE PARTNERSHIPS ACCOUNT.

(1) The public-private partnerships account is created in the custody of the state treasurer.

(2) The following moneys must be deposited into the account:

(a) Proceeds from bonds or other financing instruments issued under section 19 of this act;

(b) Revenues received from any transportation project developed under this chapter or developed under the general powers granted to the department; and

(c) Any other moneys that are by donation, grant, contract, law, or other means transferred, allocated, or appropriated to the account.

(3) Expenditures from the account may be used only to ensure the repayment of loan guarantees or extensions of credit made to or on behalf of private entities engaged in the planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, preservation, management, repair, or operation of any eligible transportation project under

this chapter. The lien of a pledge made under this subsection is subordinate to the lien of a pledge securing bonds payable from moneys in the motor vehicle fund created in RCW 46.68.070.

(4) The state treasurer may establish separate subaccounts within the public-private partnerships account for each transportation project that is initiated under this chapter or under the general powers granted to the department. The state may pledge moneys in the public-private partnerships account to secure revenue bonds or any other debt obligations relating to the project for which the account is established.

(5) Only the secretary or the secretary's designee may authorize distributions from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 19.** A new section is added to chapter 47.10 RCW to read as follows:

BOND ISSUANCE.

(1) In addition to any authority the department has to issue and sell bonds and other similar obligations, this section establishes continuing authority for the issuance and sale of bonds and other similar obligations in a manner consistent with this section. To finance a project as authorized in chapter 47.--- RCW (the new chapter created in section 24 of this act) in whole or in part, the department may request that the state treasurer issue revenue bonds on behalf of the public sector partner. The bonds must be secured by a pledge of, and a lien on, and be payable only from moneys in the public-private partnerships account created in section 18 of this act, and any other revenues specifically pledged to repayment of the bonds. Such a pledge by the public partner creates a lien that is valid and binding from the time the pledge is made. Revenue bonds issued under this section are not general obligations of the state or local government and are not secured by or payable from any funds

or assets of the state other than the moneys and revenues specifically pledged to the repayment of such revenue bonds.

(2) Moneys received from the issuance of revenue bonds or other debt obligations, including any investment earnings thereon, may be spent:

(a) For the purpose of financing the costs of the project for which the bonds are issued;

(b) To pay the costs and other administrative expenses of the bonds;

(c) To pay the costs of credit enhancement or to fund any reserves determined to be necessary or advantageous in connection with the revenue bonds; and

(d) To reimburse the public sector partners for any costs related to carrying out the projects authorized under this chapter.

Sec. 20. RCW 47.56.030 and 2023 c 429 s 6 are each amended to read as follows:

(1) Except as permitted under chapter (~~47.29~~) 47.--- RCW (the new chapter created in section 24 of this act) or 47.46 RCW:

(a) Unless otherwise delegated, and subject to RCW 47.56.820, the department of transportation shall have full charge of the planning, analysis, and construction of all toll bridges and other toll facilities including the Washington state ferries, and the operation and maintenance thereof.

(b) The transportation commission shall determine and establish the tolls and charges thereon.

(c) Unless otherwise delegated, and subject to RCW 47.56.820, the department shall have full charge of planning, analysis, and design of all toll facilities. The department may conduct the planning, analysis, and design of toll facilities as necessary to support the legislature's consideration of toll authorization.

(d) The department shall utilize and administer toll collection systems that are simple, unified, and interoperable. To the extent

practicable, the department shall avoid the use of toll booths. The department shall set the statewide standards and protocols for all toll facilities within the state, including those authorized by local authorities.

(e) Except as provided in this section, the department shall proceed with the construction of such toll bridges and other facilities and the approaches thereto by contract in the manner of state highway construction immediately upon there being made available funds for such work and shall prosecute such work to completion as rapidly as practicable. The department is authorized to negotiate contracts for any amount without bid under (e) (i) and (ii) of this subsection:

(i) Emergency contracts, in order to make repairs to ferries or ferry terminal facilities or removal of such facilities whenever continued use of ferries or ferry terminal facilities constitutes a real or immediate danger to the traveling public or precludes prudent use of such ferries or facilities; and

(ii) Single source contracts for vessel dry dockings, when there is clearly and legitimately only one available bidder to conduct dry dock-related work for a specific class or classes of vessels. The contracts may be entered into for a single vessel dry docking or for multiple vessel dry dockings for a period not to exceed two years.

(f) Any new vessel planning, construction, purchase, analysis, or design work must be consistent with RCW 47.60.810, except as otherwise provided in RCW 47.60.826.

(2) The department shall proceed with the procurement of materials, supplies, services, and equipment needed for the support, maintenance, and use of a ferry, ferry terminal, or other facility operated by Washington state ferries, in accordance with chapter 43.19 RCW except as follows:

(a) When the secretary of the department of transportation determines in writing that the use of invitation for bid is either not practicable or not advantageous to the state and it may be

necessary to make competitive evaluations, including technical or performance evaluations among acceptable proposals to complete the contract award, a contract may be entered into by use of a competitive sealed proposals method, and a formal request for proposals solicitation. Such formal request for proposals solicitation shall include a functional description of the needs and requirements of the state and the significant factors.

(b) When purchases are made through a formal request for proposals solicitation the contract shall be awarded to the responsible proposer whose competitive sealed proposal is determined in writing to be the most advantageous to the state taking into consideration price and other evaluation factors set forth in the request for proposals. No significant factors may be used in evaluating a proposal that are not specified in the request for proposals. Factors that may be considered in evaluating proposals include but are not limited to: Price; maintainability; reliability; commonality; performance levels; life-cycle cost if applicable under this section; cost of transportation or delivery; delivery schedule offered; installation cost; cost of spare parts; availability of parts and service offered; and the following:

(i) The ability, capacity, and skill of the proposer to perform the contract or provide the service required;

(ii) The character, integrity, reputation, judgment, experience, and efficiency of the proposer;

(iii) Whether the proposer can perform the contract within the time specified;

(iv) The quality of performance of previous contracts or services;

(v) The previous and existing compliance by the proposer with laws relating to the contract or services;

(vi) Objective, measurable criteria defined in the request for proposal. These criteria may include but are not limited to items

such as discounts, delivery costs, maintenance services costs, installation costs, and transportation costs; and

(vii) Such other information as may be secured having a bearing on the decision to award the contract.

(c) When purchases are made through a request for proposal process, proposals received shall be evaluated based on the evaluation factors set forth in the request for proposal. When issuing a request for proposal for the procurement of propulsion equipment or systems that include an engine, the request for proposal must specify the use of a life-cycle cost analysis that includes an evaluation of fuel efficiency. When a life-cycle cost analysis is used, the life-cycle cost of a proposal shall be given at least the same relative importance as the initial price element specified in the request of proposal documents. The department may reject any and all proposals received. If the proposals are not rejected, the award shall be made to the proposer whose proposal is most advantageous to the department, considering price and the other evaluation factors set forth in the request for proposal.

Sec. 21. RCW 47.56.031 and 2005 c 335 s 2 are each amended to read as follows:

No tolls may be imposed on new or existing highways or bridges without specific legislative authorization, or upon a majority vote of the people within the boundaries of the unit of government empowered to impose tolls. This section applies to chapter 47.56 RCW and to any tolls authorized under chapter ~~((47.29 RCW, the transportation innovative partnership act of 2005))~~ 47.--- RCW (the new chapter created in section 24 of this act).

Sec. 22. RCW 70A.15.4030 and 2020 c 20 s 1126 are each amended to read as follows:

(1) A county, city, or town may, as part of its commute trip reduction plan, designate existing activity centers listed in its

comprehensive plan or new activity centers as growth and transportation efficiency centers and establish a transportation demand management program in the designated area.

(a) The transportation demand management program for the growth and transportation efficiency center shall be developed in consultation with local transit agencies, the applicable regional transportation planning organization, major employers, and other interested parties.

(b) In order to be eligible for state funding provided for the purposes of this section, designated growth and transportation efficiency centers shall be certified by the applicable regional transportation organization to: (i) Meet the minimum land use and transportation criteria established in collaboration among local jurisdictions, transit agencies, the regional transportation planning organization, and other interested parties as part of the regional commute trip reduction plan; and (ii) have established a transportation demand management program that includes the elements identified in (c) of this subsection and is consistent with the rules established by the department of transportation in RCW 70A.15.4060(2). If a designated growth and transportation efficiency center is denied certification, the local jurisdiction may appeal the decision to the commute trip reduction board.

(c) Transportation demand management programs for growth and transportation efficiency centers shall include, but are not limited to: (i) Goals for reductions in the proportion of single-occupant vehicle trips that are more aggressive than the state program goal established by the commute trip reduction board; (ii) a sustainable financial plan demonstrating how the program can be implemented to meet state and regional trip reduction goals, indicating resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommending any innovative financing techniques consistent with chapter (~~47.29~~ RCW) 47.--- RCW (the new chapter created in section 24 of this

act), including public/private partnerships, to finance needed facilities, services, and programs; (iii) a proposed organizational structure for implementing the program; (iv) a proposal to measure performance toward the goal and implementation progress; and (v) an evaluation to which local land use and transportation policies apply, including parking policies and ordinances, to determine the extent that they complement and support the trip reduction investments of major employers. Each of these program elements shall be consistent with the rules established under RCW 70A.15.4060.

(d) A designated growth and transportation efficiency center shall be consistent with the land use and transportation elements of the local comprehensive plan.

(e) Transit agencies, local governments, and regional transportation planning organizations shall identify certified growth and transportation efficiency centers as priority areas for new service and facility investments in their respective investment plans.

(2) A county, city, or town that has established a growth and transportation efficiency center program shall support vehicle trip reduction activities in the designated area. The implementing jurisdiction shall adopt policies, ordinances, and funding strategies that will lead to attainment of program goals in those areas.

NEW SECTION. **Sec. 23.** The following acts or parts of acts are each repealed:

(1) RCW 47.29.010 (Finding—Intent) and 2006 c 334 s 48 & 2005 c 317 s 1;

(2) RCW 47.29.020 (Definitions) and 2005 c 317 s 2;

(3) RCW 47.29.030 (Transportation commission powers and duties) and 2005 c 317 s 3;

(4) RCW 47.29.040 (Purpose) and 2005 c 317 s 4;

(5) RCW 47.29.050 (Eligible projects) and 2005 c 317 s 5;

- (6) RCW 47.29.060 (Eligible financing) and 2008 c 122 s 18 & 2005 c 317 s 6;
- (7) RCW 47.29.070 (Use of federal funds and similar revenues) and 2005 c 317 s 7;
- (8) RCW 47.29.080 (Other sources of funds or property) and 2005 c 317 s 8;
- (9) RCW 47.29.090 (Project review, evaluation, and selection) and 2005 c 317 s 9;
- (10) RCW 47.29.100 (Administrative fee) and 2005 c 317 s 10;
- (11) RCW 47.29.110 (Funds for proposal evaluation and negotiation) and 2005 c 317 s 11;
- (12) RCW 47.29.120 (Expert consultation) and 2005 c 317 s 12;
- (13) RCW 47.29.130 (Contracted studies) and 2005 c 317 s 13;
- (14) RCW 47.29.140 (Partnership agreements) and 2005 c 317 s 14;
- (15) RCW 47.29.150 (Public involvement and participation) and 2005 c 317 s 15;
- (16) RCW 47.29.160 (Approval and execution) and 2005 c 317 s 16;
- (17) RCW 47.29.170 (Unsolicited proposals) and 2017 c 313 s 711, 2015 1st sp.s. c 10 s 704, 2013 c 306 s 708, 2011 c 367 s 701, 2009 c 470 s 702, 2007 c 518 s 702, 2006 c 370 s 604, & 2005 c 317 s 17;
- (18) RCW 47.29.180 (Advisory committees) and 2005 c 317 s 18;
- (19) RCW 47.29.190 (Confidentiality) and 2005 c 317 s 19;
- (20) RCW 47.29.200 (Prevailing wages) and 2005 c 317 s 20;
- (21) RCW 47.29.210 (Government agreements) and 2005 c 317 s 21;
- (22) RCW 47.29.220 (Eminent domain) and 2005 c 317 s 22;
- (23) RCW 47.29.230 (Transportation innovative partnership account) and 2005 c 317 s 23;
- (24) RCW 47.29.240 (Use of account) and 2005 c 317 s 24;
- (25) RCW 47.29.250 (Issuing bonds and other obligations) and 2005 c 317 s 25;
- (26) RCW 47.29.260 (Study and report) and 2005 c 317 s 26;
- (27) RCW 47.29.270 (Federal laws) and 2005 c 317 s 27;

(28) RCW 47.29.280 (Expert review panel on proposed project agreements—Creation—Authority) and 2006 c 334 s 49; and

(29) RCW 47.29.290 (Expert review panel on proposed project agreements—Execution of agreements) and 2006 c 334 s 50.

NEW SECTION. **Sec. 24.** Sections 1 through 18 of this act constitute a new chapter in Title 47 RCW.

NEW SECTION. **Sec. 25.** This act takes effect January 1, 2026.

--- **END** ---

JUNE 2024

Implementation Plan for Public-Private Partnerships



Prepared for:

Washington State Joint Transportation Committee



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1.0 Introduction

This document presents an implementation plan for the recommended public-private partnerships (P3) provisions developed by the Joint Transportation Committee’s working group in late 2023 and early 2024. The provisions developed by the JTC workgroup are integrated into both the draft legislation framework (separate document) and this implementation plan.

The implementation plan addresses several of the changes that would be made to current law, with the intent of streamlining the P3 project delivery process to reflect other project delivery methods utilized by the Washington State Department of Transportation (WSDOT).

This plan begins with an overview of three implementation tasks, followed by detailed descriptions of each one. It closes with a brief overview of national best practices in P3 implementation, including examples drawn from technical, administrative, and stakeholder engagement areas.

2.0 Implementation Tasks

The implementation plan features three high-level tasks, each of which is further developed through a series of subtasks. The three main tasks are presented chronologically as follows.

- The first task is to perform **education and stakeholder outreach** to better understand the potential P3 market, identifying issues and concerns from potential third-party partners and public sector leadership. This task will require a low-to-moderate level of effort as it involves in-depth engagement with various stakeholders, and a short-term timeframe (i.e., one year to complete).
- The second task is to conduct formal **rulemaking and other administrative proceedings** to define processes, roles and responsibilities, schedules, and other procedural details of the P3 program. This task will require a high level of effort, as it will require outlining and specifying foundational elements of the P3 program. A medium-to-long term timeframe (i.e., within one to two years to complete) can be expected.
- The final task is to **secure both internal and external resources** necessary to develop P3 projects from initial project identification to procurement and implementation. The anticipated effort for this task is high, and a long-term timeframe (i.e., two years to complete) should be expected, considering the various stages involved in procurement of external professional resources and internal staffing.

The implementation plan defines who, what, when, why, and how for each of the three primary tasks, as well as the anticipated resource needs. This approach allows for an at-a-glance reference to support the state as it responds to changing agency needs, legislative priorities, and economic conditions.

- **Who** will be responsible for which tasks?
- **What** will be the scope of their work?
- **When** does this work need to be completed?
- **Why** are specific tasks identified, and how does each task support the overall goals and objectives for the P3 program?
- **How** will each task owner move forward with establishing a program that has the necessary guardrails to reflect the legislation, while allowing flexibility to move projects forward without additional legislative changes?
- Which **resource requirements** will be needed to execute the task, including both internal (i.e., staffing) and external (i.e., professional services) resources?

Table 2.1 provides a summary of the implementation plan, including the three primary tasks, lead agency, schedule, and resource requirements.

Table 2.1 Implementation Action Summary Matrix

| 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 (i.e., one year to complete) | Modest one-time funding of approximately \$0.5M will be needed to pay a communications/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-to-long term (i.e., within one to two years to complete) | Moderate one-time 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 | Long-term (i.e., two years to complete) | Funding up to approximately \$4.5M per P3 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. |

2.1 Task 1: Perform Education and Stakeholder Outreach

Task 1 involves conducting educational initiatives and outreach to understand the state of the potential P3 market, discern issues and concerns from potential third-party partners, and inform public-sector leadership of key tradeoffs and decision points in developing a P3 program.

Who: WSDOT should lead this education and outreach effort in collaboration with the Treasurer’s Office, the Governor’s Office, legislators, and industry stakeholders. Within WSDOT, this effort is anticipated to be led by the Innovative Partnerships Office, in collaboration with the construction division, the development division, and executive leadership.

What: Education and stakeholder outreach should include fact sheets and Q&A documentation to describe the provisions and potential impacts of the new legislation. Private sector outreach (“market sounding”) should be performed to better understand private-sector interest in P3 opportunities in Washington. A temporary steering committee comprising the Governor’s Office, Treasurer’s Office, WSDOT, and legislators should be established to work through legal, financial, or technical issues related to initial implementation of the legislation. This group can also confirm the goals and objectives of the P3 process and articulate guiding principles for implementation of the legislation.

When: These actions should be implemented immediately upon enactment of new legislation. This task should be considered a near-term initiative. The task is expected to take approximately six to 12 months to complete the development and dissemination of educational materials, establish audiences for market sounding, convene a temporary steering committee, and conduct initial meetings of the temporary steering committee.

Why: This task will ensure that private and public sector stakeholders – such as the Governor’s Office, Treasurer’s Office, Capital Projects Advisory Review Board, WSDOT project delivery and executive

leadership, and legislators – are well-informed about the provisions of the new law and understand how it alters the P3 process in Washington. The task is crucial in aiding key decision-makers to better define their goals, objectives, challenges, and opportunities in the development of P3 projects. It is also intended to convey a signal to the private sector regarding the state’s interest and intentions with respect to P3s. This process may involve issuing a written affirmation that consideration of P3 alternatives will be given in the project development process.

How: This education and engagement effort should help WSDOT identify opportunities, resource requirements, tradeoffs, and items that may not be acceptable in Washington.

The identification of potential unacceptable items will help the program avoid negative outcomes as it is being designed. Below are two examples of items that public-sector agencies may find unacceptable:

- Example 1: Limiting sovereign immunity, which refers to the legal doctrine that protects the government from being sued without its consent. In the context of P3s, states typically retain immunity from certain legal actions that could be brought against them by a private partner.
- Example 2: Limiting the State’s ability to pursue other planned improvements, such as those listed in long-range transportation plans (LRTPs). In some P3 contracts, the state is precluded from developing projects that could “compete” with a concessionaire’s facility. However, the state may desire to reserve the right to develop projects—for example, any that are already in LRTPs (formal documents that outline a state’s vision for transportation or infrastructure development for an extended period). The state could specify that projects listed in LRTPs at the time of proposal submission will be deemed known and accounted for by the private partner. In that case, the private partner could not request compensation if the planned project implemented by the State were to impact revenues for a P3 project.

Resource requirements: The resource requirements for this task are relatively modest, approximately \$0.5 million during the start-up phase (one-time funding). This task will require agency staff time and may also require engaging an outreach and communications specialist to develop necessary materials and to facilitate meetings and interviews.

2.2 Task 2: Develop Rules and Policies

Task 2 involves the completion of rulemaking and additional administrative procedures and agency policies to more precisely outline the processes, roles, responsibilities, schedules, technical specifications, and other formal requirements of the P3 program.

Who: WSDOT should lead the development of rules and internal policies.

What: These rules and internal policies should aim to ensure effective consideration of P3s in accordance with the new law through the subtasks below.

- Update **Washington Administrative Code (chapter 468-600 WAC)**. At a minimum, this process should make corresponding revisions to the WACs to align with new legislation, including new roles and responsibilities of WSDOT, Washington State Transportation Commission (WSTC), the Office of the State Treasurer, the Governor’s Office, and the Legislature; rules related to the solicitation procedures for P3 projects; and references to policy goals of the P3 program. This process should also consider potential technical updates to this chapter necessary for the

effective management of funds, P3 legal agreements, insurance coverage requirements for private parties, and other risk mitigation requirements for P3 projects.

- **Update WSDOT, WSTC, and Office of the State Treasurer’s Policies and Processes.** For WSDOT, this includes defining a process to identify candidate P3 projects (considering aspects like unsolicited vs. solicited bids, performance metrics, and screening tools) and establishing processes to integrate P3 initiatives into existing statewide and metropolitan planning processes. This task also includes defining the roles and responsibilities across internal divisions within WSDOT and clarifying the functions of any staff or offices with roles in delivering the P3 program. WSTC will need to pare any processes or policies it established under the prior P3 statute, RCW 47.29, and align any policies to match the new P3 law. Given an enhanced role under a new P3 law for the Office of the State Treasurer (OST) to review a P3 project’s plan of finance before that plan advances for approval by the State Finance Committee, OST may need to enact new policies and procedures to reflect the new P3 law.
- **Update Terms and Provide Guidance on Technical Methodologies.** For example, the term “public interest” used in the proposed legislation will need to be defined more clearly, both in describing a proposed P3 project and in drafting agreements with third-party partners. Additionally, guidance on how to perform both quantitative and qualitative Value for Money (VfM) analysis is needed.
- **Create Tools for Project Screening and Delivery Method Selection.** Project screening tools could be used by WSDOT as a part of the pre-established screening process to identify potential P3 opportunities from the State’s existing capital improvement program. Additional tools would support the evaluation of proposed projects across various P3 delivery mechanisms. VfM analysis, for example, must be performed once a reasonably accurate scope, cost, and schedule have been defined for a project. Emphasizing the iterative nature of the screening process, projects may be refined or discontinued for P3 at various stages. Additionally, this subtask includes creating templates for main agreements and instructions to P3 proposers.
- **Develop and Implement a Lessons Learned Reporting Requirement.** Given WSDOT’s long hiatus since last delivering a P3 project, the agency can improve its expertise and continuously improve the P3 program by conducting a regimented “Lessons Learned” analysis and report. Pennsylvania’s P3 program has incorporated this as a regular practice and has stated that such practices haven proven valuable to the agency. In PennDOT’s case, they conduct their analysis and document their learnings to date as part of their regular project reviews. Most recently PennDOT completed a detailed “Lessons Learned” report for their Rapid Bridge Replacement P3 Project, which involved replacing 558 structurally deficient bridges. Their report highlights the efficiencies gained (e.g., mass production of common bridge components) and the innovative delivery methods that have contributed to time and cost savings for taxpayers.

When: This task is a medium- to long-term initiative that can be initiated following initial stakeholder engagement and market sounding. A timeframe of about 12-24 months should be expected to complete rulemaking, internal policymaking, and research and analysis.

Why: The objective of this task is to complete the required administrative steps to allow the new legislation to be actionable by state agencies, while creating clarity around the program and its operations for the benefit of agency staff as well as prospective private partners.

How: This step will be implemented through the existing administrative powers of state agencies, supported by research and analysis efforts including peer review of existing policies and tools used by other states. This task would reflect feedback obtained through the outreach conducted in Task 1.

Resource requirements: Moderate one-time funding of up to \$1 million should be expected during the first 12-24 months for this task. External technical or legal expertise may be necessary to update administrative codes and to update terms and provide guidance on technical methodologies, while external financial advisors may be needed to provide insight into financial consideration for development of project screening tools and delivery method selection. Project management experts may be useful to coordinate the overall task and ensure timely completion in alignment with P3 program goals.

2.3 Task 3: Secure Resources to Support the Program

In Task 3, WSDOT will obtain the internal and external resources required to support the full lifecycle of P3 projects, spanning from the initial identification of projects to their procurement and eventual implementation.

Who: Resource allocation and/or procurement will be completed by WSDOT. External resources would be secured by WSDOT using traditional procurement processes for professional services.

What: This task includes the procurement of both external and internal resources to support the P3 program.

- **Internal resources** include existing staff that support the P3 program and serve as points of contact to coordinate the project development process for P3s. These staff members would require diverse skillsets, including procurement, alternative contracting, finance, project delivery and controls, along with project-specific skillsets as needed (e.g., for projects related to Washington State Ferries). Executive leadership at WSDOT would determine the extent to which these duties would be filled by new staff or shared among existing staff across divisions.
- WSDOT executive leadership would also need to determine an appropriate place within the organization for this staff. A range of options is available, from establishing a standalone, dedicated public-private partnership office to coordinating and managing P3 project development and delivery resources across existing offices or divisions.
- The preferred approach may vary over time. For example, an initial approach of relying on the expertise of existing staff could allow for the P3 program to be launched at lower cost shortly after enactment of the legislation. As the P3 program matures over time, WSDOT could invest in a dedicated office with new staff to manage a larger portfolio of projects. This incremental approach would be similar to WSDOT's experience in standing up its statewide tolling division in the early 2000s.

- **External resources** include legal, technical, and financial advisors. These resources would be used to identify potential P3 projects, manage the proposal review process, develop and deploy tools and resources to evaluate proposals, review draft agreements, and provide other related services. Additionally, a public relations firm could be engaged to monitor news related to the new law, summarize information, and conduct preliminary data gathering and analysis of stakeholder concerns, issues, support, and skepticism.

When: This task should begin concurrently with Tasks 1 and 2 and continue after those tasks are completed. A longer timeline of approximately 18-24 months should be expected for completion of this task following the enactment of the new legislation, noting that a slower launch at lower cost could lead to a longer timeframe before a fully mature, standalone P3 office emerges.

Why: Specialized professional resources may be required to assist WSDOT in the initial development and ongoing management of a P3 program. These resources would augment existing staff resources across WSDOT and provide technical skillsets required to deliver a P3 program.

How: For internal resources, decisions about alignment and possible reallocation of existing staff would benefit from executive direction on how best to coordinate and organize among the several offices to carry out a P3 project, especially during the earliest start-up phase of a new P3 law. As internal roles, responsibilities, and resource requirements become more known, adding new staff to support implementation of P3s may be warranted. For external resources, this task would be completed through the conventional procurement of professional services.

Resource requirements: Moderate to significant resources would need to be provided as part of this task, totaling as much as \$4.5 million per proposed P3 project, which would be expended over three years. Internal resource requirements involve dedicated staffing to support the P3 program. This may necessitate the hiring of new staff or redistribution of duties among existing staff. As mentioned previously, a smaller-scale launch (for example, focused on specific projects or opportunities) could be less costly, with the development of full P3 office capabilities taking several years longer.

3.0 National Best Practices

This subsection provides examples of key implementation actions taken by other state DOTs to support P3 development. These three examples illustrate how other states and agencies have approached various components of P3 implementation, including approaches to outreach and education, the development of data and analysis, and administrative options. Sample contracts from other agencies are included in **Appendix B**.

3.1 Outreach and Education

The Colorado Transportation Investment Office (CTIO), a government-owned business entity within the Colorado Department of Transportation (CDOT), provides a strong outreach and engagement example. Its P3 Outreach Plan addresses program-level stakeholder engagement, public outreach strategies, and industry outreach strategies¹. Each is described below:

- The **program-level plan** includes several key components:
 - Key stakeholders for outreach efforts are identified, including elected officials and interest groups.
 - Outreach strategies for various needs are determined, such as public meetings, official briefings, written documents, website updates, and outreach on social media.
 - An implementation plan that includes initiatives along with their associated actors is developed and put into action.
 - Documentation throughout the enactment of the plan is kept including records of meetings held, attendees at events, questions and responses, and other feedback on the plan. This documentation is used to assess the outcomes of the plan and to determine updates for improved effectiveness moving forward.
- The **public outreach strategy** involves the identification of key groups, individuals, and specific geographic areas to prioritize. The outreach plan undergoes periodic evaluation assessments and updates based on feedback gathered from public outreach sessions. It identifies a range of outreach channels, ranging from briefing materials to in-person meetings to website or social media packages, and also requires the development of detailed schedules and careful recordkeeping of engagement activities.
- The **industry outreach plan** entails multiple strategies including industry forums, P3 conferences, and industry-requested meetings.

¹ *CDOT P3 Management Manual*. Colorado Department of Transportation, 2020. Accessed February 15, 2024. <https://www.codot.gov/programs/high-performance-transportation-enterprise-hpte/agenda-item-documents/2020-agenda-documents/november-2020/hpte-p3-management-manual-update-2020.pdf/@download/file/HPTE%20P3%20Management%20Manual%20Update%202020.pdf>

- Industry forums are aimed at sharing and gathering information to enhance the development of optimal P3 projects, delivery approaches, and processes for the state. These forums may involve general sessions, one-on-one meetings, and subsequent evaluations based on the feedback received. Additionally, the use of Requests for Letters of Interest (LOI) provides a mechanism to assess interest and gather specific industry comments.
- Participation in P3 conferences and national meetings serve as an avenue to share information about proposed P3 projects and seek informal feedback from the industry on project proposals and approaches. This engagement approach not only facilitates information sharing but also contributes to generating interest in the projects.
- Industry requested meetings with CTIO are common as potential projects become known. These meetings operate similar to one-on-one sessions conducted at industry forums.

CTIO serves as an example of outreach and education for several reasons:

- Employing diverse and strategic public outreach channels is crucial for engaging a broad spectrum of key stakeholders.
- The implementation of multiple strategies offers more opportunities for sharing and gathering information, contributing to the development of improved P3 projects.
- The inclusion of periodic evaluations and feedback loops represents an iterative process that maintains the effectiveness and responsiveness of outreach efforts to both public and industry needs.
- Effective outreach and education also have the potential to generate interest in future P3 projects, thereby enhancing a state's P3 program.

3.2 Administrative Options

The administrative choices for overseeing P3 programs can vary, spanning from assigning P3 responsibilities part-time to existing staff to the establishment of a dedicated standalone P3 office. This case study illustrates how a standalone Virginia Office of P3s (VAP3) manages all work related to P3 delivery. Key aspects of this case study include the following:

- VAP3 was established in 2010 and operates within the Virginia Department of Transportation (VDOT). It is led by a P3 Director, who reports to the Chief Financial Officer of the Department². The VAP3 team includes industry experts in the fields of law, finance, project development, environment, construction, and maintenance and operations. There are nine employees including the director, a deputy director, multiple project managers, and a business analyst. However, some of these roles are currently vacant.

² *Virginia Office of Public Private Partnerships*. Virginia Department of Transportation, 2024. Accessed February 15, 2024. <https://p3.virginia.gov/>.

- VAP3 relies on a series of on-call professional services contracts³. This arrangement allows staff to lead procurement-related tasks, but rely on outside assistance when necessary, e.g., when specific assignments demand extra resources or expertise beyond the capabilities of the core team, without increasing the headcount of the agency.
- VAP3 is responsible for identifying and screening potential projects for P3 delivery and ensuring that projects that do move on to the P3 development stage align with local and regional policies and programs⁴. The VAP3 team develops educational materials on P3 delivery, including manuals and guidelines on topics like Value for Money (VfM) analysis, risk management, and public engagement.

3.3 Data and Analysis

The Virginia Department of Transportation (VDOT) provides an example of the development of a project screening tool, with a particular emphasis on risk assessment. The VDOT P3 Office (VAP3) utilizes a two-part assessment process, both quantitative and qualitative, for project identification and screening:

- For unsolicited proposals, VAP3 initiates a qualitative policy review within 90 calendar days⁵. This is a high-level process that determines whether the project aligns with policy considerations and the state's infrastructure goals. This concise assessment evaluates the proposal's concept and advantages, verifying its compliance with the Code of Virginia, the agency's manual and guidelines, and congruence with the transportation policy objectives of the Commonwealth. Should the unsolicited proposal successfully clear this initial policy review, the subsequent phase involves gathering feedback from the public and local governments within 60 calendar days.

Solicited proposals undergo a similar process for qualitative project screening. Unlike unsolicited proposals, solicited proposals do not include public and local agency feedback at this step of the process.

Both solicited and unsolicited projects are subjected to quantitative project screening, which analyzes the technical and financial viability of a project. The VAP3 conducts quantitative risk analysis by two methodologies: a formula-based analysis and a Monte Carlo simulation.

- In a formula-based analysis, a formula is used to calculate the average risk impact for each identified risk. This involves considering the minimum, maximum, and most likely cost and schedule impacts.

³ Public-Private Partnership (P3) Procurement: A Guide for Public Owners. US Department of Transportation Federal Highway Administration, 2019. Accessed February 19, 2024.

https://www.fhwa.dot.gov/ipd/p3/toolkit/publications/other_guides/p3_procurement_guide_0319/ch_3.aspx.

⁴ *Successful Practices for P3s: A Review of What Works When Delivering Transportation via Public Private Partnerships*. US Department of Transportation, 2016. Accessed Feb 14, 2024.

https://www.transportation.gov/sites/dot.gov/files/docs/P3_Successful_Practices_Final_BAH.PDF.

⁵ *PPTA Implementation 2017 Manual and Guidelines for the Public Private Transportation Act of 1995 (As Amended)*. Virginia Department of Transportation, 2017. Accessed Feb 16, 2024. https://p3.virginia.gov/docs/2017-PPTA-Manual-and-Guidelines_FINAL.pdf.

- The Monte Carlo simulation leverages specialized software to simulate the expected cost and schedule impacts for each risk. This sophisticated approach yields a variety of aggregate risk values, accompanied by their corresponding probabilities.

The VAP3 prepares a Project Screening Report following qualitative and quantitative analysis, which advises on whether the project should advance as a P3 delivery. The VDOT Commissioner then makes a final choice on whether the project should advance to development.

- If a project is approved, it advances to the project development phase. Localities that will be affected by the project must be notified within five calendar days of the VDOT CEO's approval.
- If the Commissioner disagrees with the VAP3 team's recommendation and new information becomes available, projects can be re-submitted for a new decision.

Key takeaways from this case study are summarized below:

- It is important to integrate both qualitative and quantitative analysis, as this allows for an examination of alignment with both policies and goals as well as feasibility of technical aspects of projects.
- Defining a separate process to review unsolicited proposals is important, as they require additional screening.
- There is value in utilizing professional judgement and past experiences as part of the assessment process.
- A transparent decision-making process can help guide project screening, leading to a more efficient and effective process.
- Effective communication with local governments is essential when assessing unsolicited proposals, to both leverage stakeholder comments and to keep the public informed and involved.



Appendix A Washington State Laws & Rules

[Chapter 47.29 RCW](#)

[Chapter 468-600 WAC](#)



Appendix B Sample P3 Contracts

Four sample contracts from Pennsylvania and Virginia are provided to illustrate the range of approaches to structure a P3 agreement. The projects are listed below, with the contract documents appended beginning on the following page.

Pennsylvania Rapid Bridge Replacement Project: Public Private Transportation Partnership Agreement

- Dated: January 8, 2015
- Between: The Pennsylvania Department of Transportation and the Plenary Walsh Keystone Partners, LLC
- [Link](#) to website

The CNG Fueling for Transit Agencies Partnership Project: Public Private Transportation Partnership Agreement

- Dated June 16, 2016
- Between: The Pennsylvania Department of Transportation and the Trillium Transportation Fuels LLC
- [Link](#) to website

Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project

- Dated December 5, 2011
- Between: The Virginia Department of Transportation and the Elizabeth River Crossing OPCO LLC
- [Link](#) to website

I-95/395 HOV/HOT Lanes Project

- Dated August 10, 2022
- Between: The Virginia Department of Transportation and 95 Express Lanes LLC
- [Link](#) to website

Should these links no longer work, please contact JTC staff for copies of the contract documents.



Appendix C Sample Administrative Rules, Regulations, and Policies to Implement State P3 Programs

- Maryland Administrative Code, Chapter 11.07.06 – Governing the Transportation Public-Private Partnership Program: <https://casetext.com/regulation/maryland-administrative-code/title-11-department-of-transportation/subtitle-07-maryland-transportation-authority/chapter-110706-transportation-public-private-partnership-program>
- Colorado Department of Transportation High-Performance Transportation Enterprise P3 Management Manual: <https://www.codot.gov/programs/ctio/procurement/2017-12-15-p3-manual-update-1.pdf>
- Texas Administrative Code, Title 43, Part 1, Chapter 27, Subchapter A (Comprehensive Development Agreements):
[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=43&pt=1&ch=27&sch=A&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=43&pt=1&ch=27&sch=A&rl=Y)

JUNE 2024

Evaluation of Public-Private Partnership Opportunities identified in the study proviso



Prepared for:

Washington State Joint Transportation Committee



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1.0 Introduction

This memo reviews the potential for P3 opportunities identified in the legislative budget proviso that directed this study (see call-out box below). The viability of utilizing P3 under the new legislation as a mechanism to deliver two project types is assessed. Specifically:

- Culvert replacements on state highways as a component of the required fish passage barrier removal projects.
- The construction/replacement of, or commercial retail options within, Washington's state ferry terminals, including development of adjacent real estate.

The memo provides an overview of existing conditions for both projects, followed by an assessment of viability using various P3 procurement options for culvert replacements and state ferry terminals.

Budget proviso language from Sec. 204, paragraph 2, of the 2023-25 transportation budget (HB 1125).

(a) \$400,000 of the motor vehicle account—state appropriation is for the joint transportation committee, in collaboration with the department of transportation, to convene a work group to study and recommend a new statutory framework for the department's public-private partnership program. The committee may contract with a third party Consultant for work group support and drafting the new statutory framework.

(b)(i) The work group must consist of, but is not limited to, the following members: (A) The secretary of transportation or their designee; (B) Joint transportation committee executive committee members or their designees; (C) The state treasurer or the state treasurer's designee; (D) A representative of a national nonprofit organization specializing in public-private partnership program development; (E) A representative of the construction trades; and (F) A representative from an organization representing general contractors.

(ii) The work group must also consult with the Washington state transportation commission and the department of commerce.

(c)(i) The work group must 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: (A) Protecting the state's ability to retain public ownership of assets constructed or managed under a public-private partnership contract; (B) Allowing for the most transparency during the negotiation of terms of a public-private partnership agreement; and (C) Addressing the state's ability to oversee the private entity's management of the asset.

(ii)(A) The work group must identify any barriers to the implementation of funding models that best protect the public interest, including statutory and constitutional barriers. **(B) The work group 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.**

(iii) The work group must update the 2012 recommendations and devise an implementation plan for the state.

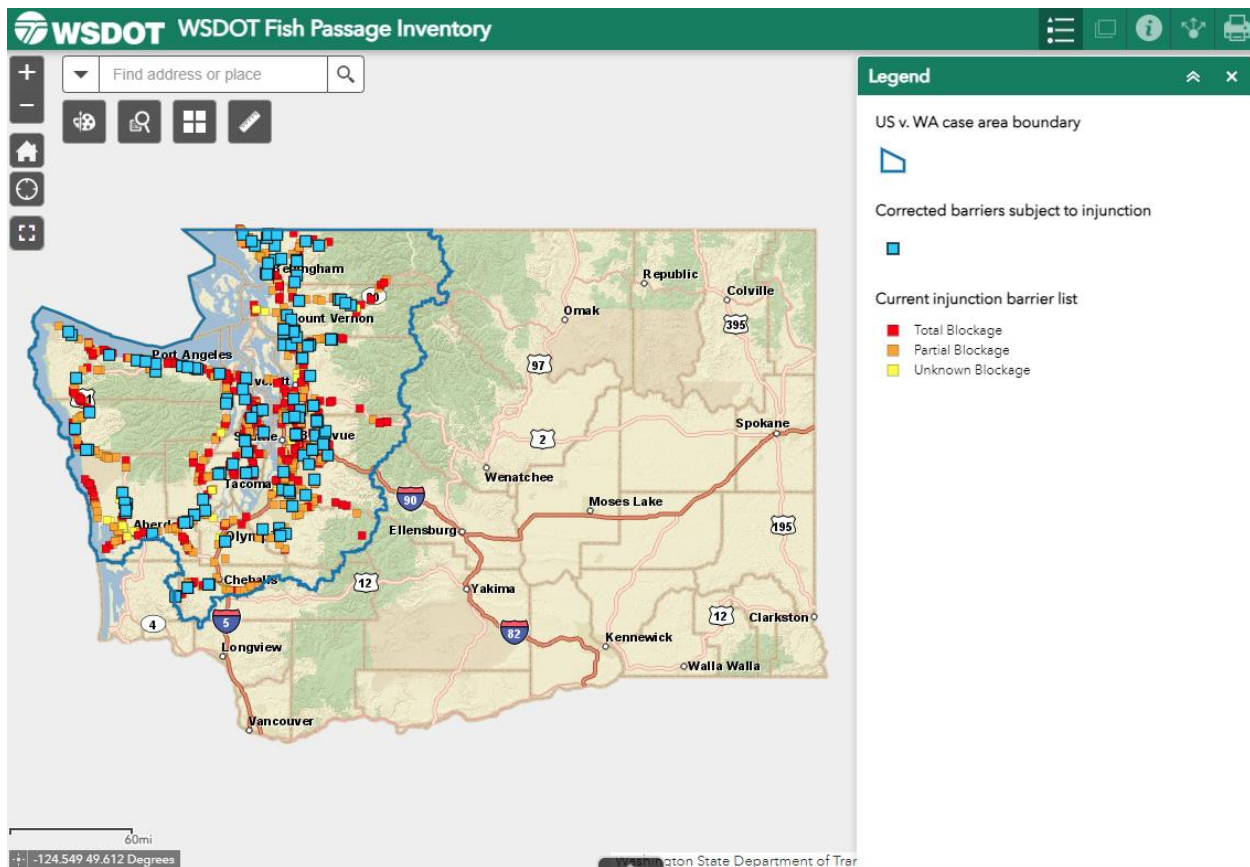
(d) The work group must submit a preliminary report, including any recommendations or draft legislation, to the office of the governor and the transportation committees of the legislature by December 15, 2023. The work group must submit a final report with draft legislation to the office of the governor and the transportation committees of the legislature by July 1, 2024.

2.0 Overview of Current Conditions of Select Opportunities

2.1 Fish Passage Barrier Removal on State Highways

Federal injunction

In 2013, the U.S. District Court for the Western District of Washington ordered the State to increase its efforts towards correcting salmon barriers.¹ The injunction area includes over 900 culverts, out of over 2,000 state-owned culverts impeding fish passage across the state.² In a December 2023 update to the Washington State Legislature, WSDOT reported that 45% of blocked habitat in the injunction area has been restored. Approximately 300 projects are currently underway, which will restore access to 80% of blocked habitat. To reach the injunction requirement of restoring 90% of blocked habitat by 2030, WSDOT plans to have approximately 100 additional projects under contract by 2025.³



Source: [WSDOT, 2024](#).

¹ United States v. Washington, No. C70-9213 (W.D. Wash. Mar. 29, 2013).

² WSDOT Fish Passage Inventory. Washington State Department of Transportation, 2024. Accessed February 16, 2024. <https://wsdot.maps.arcgis.com/apps/webappviewer/index.html?id=c2850f301118480fbb576f1ccfda7f47>

³ Statewide Culvert Remediation Plan Update, December 2023. Washington State Department of Transportation, 2023. Accessed February 16, 2024. <https://wsdot.wa.gov/sites/default/files/2023-12/Statewide-Culvert-Remediation-Plan-Update-December2023.pdf>

Figure 2-1 Washington State Fish Passage Injunction Area Inventory

Due to site conditions, each fish passage project is unique in design and construction. It is estimated to cost \$3.8 billion to open 80% of blocked habitat and an additional \$4 billion to reach 90%.⁴ Estimated costs for remaining projects are relatively higher than current projects in part due to proximity to urban areas, which may require excavation of existing roads and relocating utilities.

Current project delivery roles

On a typical fish passage project, WSDOT assesses site conditions, designs the culvert replacement structure, and solicits bids for construction.⁵ Recent contracting opportunities also include design-build work that involves the private sector completing design and construction through a single contract. Funding and maintenance are the State's responsibility.

1. *Assessment:* Biologists and engineers examine the upstream and downstream conditions of a site with guidance from the Washington Department of Fish and Wildlife (WDFW), tribal partners, and other local stakeholders.
2. *Design:* Includes documenting the environmental impacts of the proposed project, obtaining permits and permissions from stakeholders, and drafting construction contracts. Multiple fish passage barrier removal projects may be bundled together if there are design and construction efficiencies.
3. *Construction:* Ranges from a few months to several years.

Examples of private sector involvement in current project delivery

In March 2021, WSDOT awarded Kiewit a design-build contract for a bundle of 29 fish barriers. Design work began in April 2021, construction began in Spring 2023, and the project is estimated to be completed in Fall 2026.⁶

WSDOT is currently undergoing a two-stage procurement process to determine a shortlist of qualified firms then select a contractor for a project comprising eight fish barriers. Four firms submitted in the Statement of Qualifications stage. WSDOT notified shortlisted submitters and issued the project Request for Proposals (RFP) in March 2024, with proposals due in August 2024 and the "best value" proposer announced in September 2024. Work is estimated to be completed by December 2028.⁷

⁴ WSDOT Fish Passage Program Update, House Transportation Committee Meeting. Washington State Department of Transportation, 2023. Accessed February 16, 2024. <https://app.leg.wa.gov/committeeschedules/Home/Documents/31464>

⁵ Designing Fish Passage Projects. Washington State Department of Transportation, 2019. Accessed February 16, 2024. <https://www.youtube.com/watch?v=u7HT6oMqAco>

⁶ US 101 – SR 109 Grays Harbor, Jefferson and Clallam Counties – Remove Fish Barriers. Washington State Department of Transportation, 2020. Accessed February 16, 2024. <https://wsdot.wa.gov/construction-planning/search-projects/us-101-sr-109-grays-harbor-jefferson-and-clallam-counties-remove-fish-barriers>

⁷ SR 16, Goodnough Creeks & McCormick Creeks – Remove Fish Barrier. Washington State Department of Transportation, 2023. Accessed April 5, 2024. <https://wsdot.wa.gov/business-wsdot/contracting-opportunities/sr-16-goodnough-creeks-mccormick-creeks-remove-fish-barrier>

2.2 Ferry Terminal Redevelopment

Overview

Washington State Ferries owns and operates 20 ferry terminals. New terminals have opened recently at Seattle's Colman Dock and Mukilteo, and WSF's 2040 Long Range Plan includes a new terminal facility at Anacortes, though no funding has been allocated.

The 2018 transportation budget (ESSB 5096, Section 214) included a proviso for WSDOT's Innovative Partnerships Office to explore a potential P3 for the Anacortes terminal site. WSDOT partnered with the Port and City of Anacortes to conduct community engagement to understand preferences and needs for an improved or new terminal. The community survey received 1,397 responses. Findings of note included:

- 56% feel it is important that WSDOT improve the Anacortes terminal.
- 69% selected improved restaurant/café/grocery as the top choice. The next most frequent responses were 36% selecting "vehicle charging, bikes, e-bikes, scooters," and 32% selected "arts, culture, museum, interpretive, visitors center."
- Other responses focused on a need to fix ferries, concerns about traffic, and overdevelopment of the 35-acre site.
- The survey asked "What, if any, concerns do you have about a joint development project or other public-private partnerships at this site?" and received a range of responses. It is unclear whether respondents had a common understanding of what was meant by public-private partnership.

The agency also issued an RFI to solicit developer interest in the 35-acre ferry terminal site. The RFI was distributed through Washington’s Electronic Bidding System (WEBS), and through some direct outreach in the retail and development community and on the project website. The RFI noted that “The project must generate revenue for an improved terminal facility – currently more than fifty years old, undersized and in deteriorating condition – and provide improved amenities for ferry passengers and the nearby communities.” At that time, the Anacortes-Sidney, BC route was still operational, and 2019 ridership for the terminal was estimated to be 2 million travelers. The RFI explained that WSDOT is leasing the terminal property from the Port of Anacortes under a 25-year lease and that WSDOT owns a nearby parking lot which is operated under a Memorandum of Agreement between WSDOT and the City of Anacortes. See Figure 2-2 for more details.

Source: WSDOT, 2020⁸

Two responses were received; however, they were not responsive and were instead firms offering to support any future projects. As noted in the lessons learned, WSDOT did not identify a specific project in

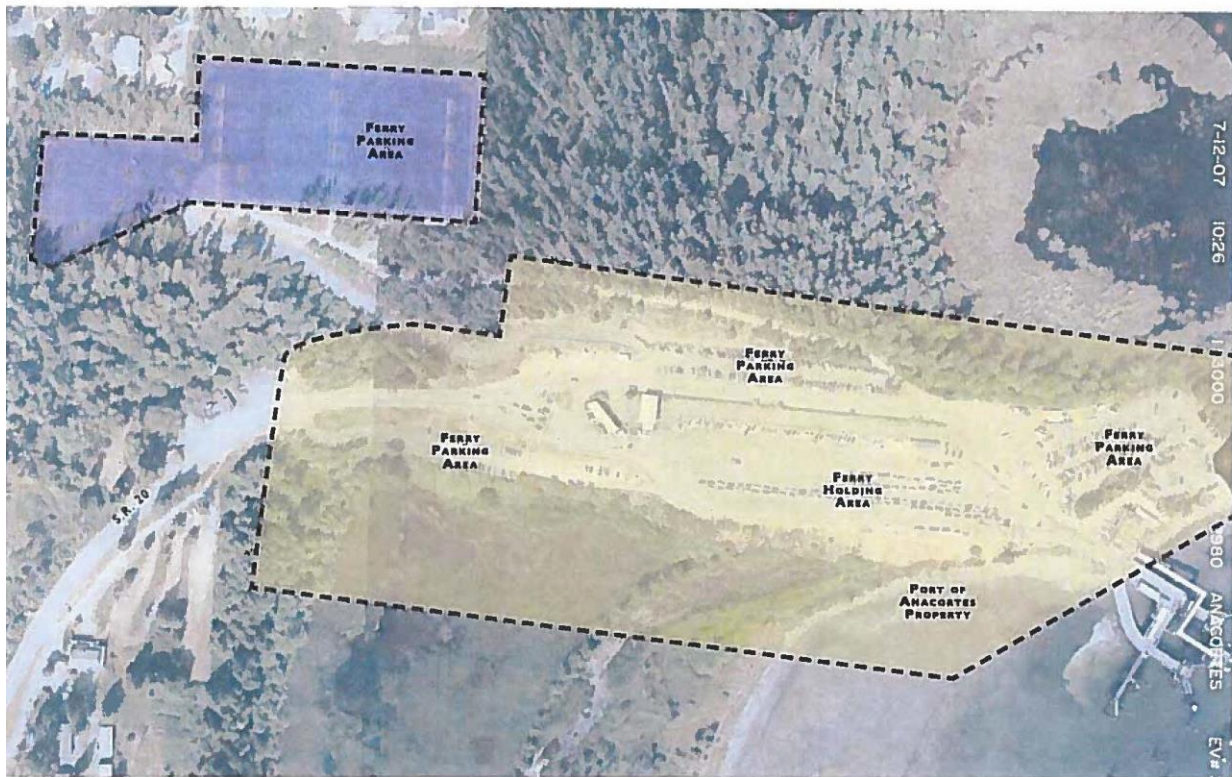


Figure 2-2 Anacortes Ferry Terminal Ownership

CITY, STATE OR PORT PROPERTY IN FERRY TERMINAL AREAS

EXISTING CONDITIONS AND OWNERSHIP
 OPPORTUNITIES AT WSF TERMINALS

⁸ WSDOT, 2020. Innovative Partnership Opportunities at Anacortes Ferry Terminal, Legislative Report.

the RFI, and no advance permitting or environmental work had been done to get the site ready for development. This is not an approach that should be repeated.

Factors that may have also contributed to the lack of developer response, but are speculative, include the terminal site's location is 3.7 miles from the center of downtown Anacortes, surrounded by a low-density, single-family residential neighborhood. It is also possible that the prospect of working with three public partners proved daunting, absent any agreement among the three public agencies on shared vision, goals, and commitment to a public-private partnership.

3.0 Feasibility Assessment of P3 Procurement Options

This section evaluates the fish passage barrier removal and ferry terminals projects, to explore the feasibility of utilizing P3 project delivery options. This evaluation is a high-level assessment that investigates the legal feasibility, benefits, risks or downsides of applying a range of possible P3 approaches. Each evaluation concludes with a process that can be applied to each of these specific project types to make a final decision about delivery approach.

3.1 Fish Passage Barrier Removal

This subsection analyzes and describes the potential application of a P3 procurement model for the successful execution of fish passage barrier removals. High-level benefits and risks are discussed for this project type, although a specific project would include critical decision points that are informed by more specific benefits and risks analysis.

3.1.1 Legal Permissibility

RCW 47.20.780 and .785 allow WSDOT to procure and enter into contracts using design-build methodologies. However, this statute has been interpreted to require WSDOT to award the project to the lowest bidder, regardless of other project delivery and funding considerations. Some potential limitations of the existing model include the following:

- The only ability for WSDOT to make a “best value” selection under current Washington law (where factors such as accelerated project delivery, innovation, lifecycle costs, etc.) is RCW 39.10, the state’s Alternative Public Works Contracting procedures. This statute was originally created to allow the state’s capital construction projects (higher education facilities, state office buildings, etc.) to use progressive design-build procedures, including awarding projects based on overall best value to the state.
- The process prescribed in RCW 39.10 is overseen by the Capital Projects Advisory Review Board (CPARB). Although WSDOT has occasionally relied on the process detailed in 39.10 for authority to procure projects based on best value, that statute (and the Board approving those projects) were not designed nor intended to govern state transportation projects.
- Even if WSDOT continues to rely upon the CPARB process and authority under RCW 39.10 to award projects based on best overall value, that statute does not grant WSDOT the authority to incorporate private (or quasi-private) financing mechanisms into the project.

The work group-proposed P3 legislation framework in Section 3 would provide an additional legal authority for WSDOT to procure and contract transportation projects based on best overall value. Unlike RCW 39.10, under the new/proposed legislation, transportation projects would not be subject to the CPARB process; instead, a different process is prescribed in the draft P3 legislation framework which more closely mirrors WSDOT’s approval processes for other transportation infrastructure projects.

- *It is doubtful that private financing or other innovative financing techniques (such as availability payments) could be used under current law.* The work group proposed P3 legislation framework specifically allows for availability payments as well as other forms of private financing. While private financing by itself may not be viable for fish passage barrier removal projects, an availability payment arrangement could potentially be useful.
- One opportunity that could be beneficial would be the incorporation of long-term maintenance contracts (DBOM), which is not generally permissible under existing design-build statutes or RCW 47.29, the current transportation innovative partnership program.⁹ The ability to consider ongoing maintenance and operations costs as part of a long-term contract would dovetail with bundling of projects.

3.1.2 Potential Benefits

One approach to fish passage barrier removal procurement that could bring value through P3 delivery involves not only the bundling of projects but including the long-term maintenance and operations to reduce lifecycle costs. However, a bundled scenario assumes that similarities exist among the remaining various fish passage barrier projects that would allow for a shared design and more efficient construction approach. The remaining fish passage barriers may be too distinct from one other to allow for bundling of design and would need to be evaluated as a next step.

Further, incorporating long-term maintenance contracts into a DBOM and bundled project may provide additional benefits to the state to shift that responsibility to the private sector. The opportunity to bundle the remaining fish passage barrier removal projects and incorporate long-term maintenance could be a first step in the assessment of P3 options. Should bundling not be viable, pursuing DBOM on a case-by-case basis may still provide benefits.

3.1.3 Potential Risks

The potential risks and downsides associated with DBOM for a fish passage barrier removal project are primarily around the time needed to initiate this new procurement model that would include long-term maintenance contracts and ensure compliance with the injunction timeline. Attempting to optimize life cycle costs may require a longer time horizon than is available to align on the process, identify the correct private partner, and determine the contractual details. Additionally, it is unknown at this time whether bundling of projects and design of the remaining culverts is possible given the unique nature of the fish passage barrier removals and the environmental clearance and permitting requirements. The possibility of bundling would need to be evaluated as the first step toward delivering these projects under a DBOM model.

3.1.4 Decision Process

WSDOT has delivered a select number of fish passage barrier removals using progressive design build. The next step in assessing potential P3 delivery options is to determine whether the remaining projects could also be able to be delivered in a similar manner, including bundling. Potential for incorporating long-term maintenance would need to be evaluated to understand the possible benefits, including

⁹ Maintenance and operations can currently be incorporated under existing statute for projects contracted under chapter 39.10 RCW and requires CPARB approval

public dollars saved, within the time frame of required replacement. In normal circumstances, the determination to pursue a bundled DBOM contract would be based on best value. In this case, the decision would also need to consider whether DBOM would result in completion beyond the injunction deadline and therefore run the risk of incurring penalties or other consequences.

3.2 Ferry Terminals

This section focuses on how the work group-proposed legislation framework may allow additional options for joint development at Washington's ferry terminals. Other options such as commercial leases, long-term leases, or outright selling of the land were considered but not assessed further in this section as they are already allowable under current statute. Like joint development, they are not P3s but rather are conventional commercial arrangements with a private actor. However, joint development can benefit from some of the provisions of the work group-proposed legislation framework.

Joint development represents an opportunity to bring additional revenue by engaging a private developer to utilize excess land adjacent to (or airspace above) ferry terminal facilities such as Colman Dock. Examples are surplus property, co-location with the terminal, inside the terminal (concessions), and airspace. The state has an opportunity in select ferry terminal locations to engage in joint development. Joint development is defined under the Federal Transit Administration (FTA)¹⁰ as:

A public transportation project that integrally relates to, and often co-locates with commercial, residential, mixed-used, or other non-transit development. Joint development may include partnerships for public or private development associated with any mode of transit system that is being improved through new construction, renovation, or extension. Joint development may also include intermodal facilities, intercity bus and rail facilities, transit malls, or historic transportation facilities.

Joint Development involves the development of a transportation project and adjacent complementary private real estate development where a private developer either implements the real estate improvement directly or gives money to a public sector sponsor to offset the costs. Joint development may involve public participation in market-oriented developments as a means to subsidize the cost of public transportation. There are generally two forms of joint development:

- *Revenue-sharing arrangements: where the public sector infrastructure provider receives a share of the revenue from complementary real estate development; and*
- *Cost-sharing arrangements: where the private sector contributes directly to the provision or maintenance of the transportation infrastructure.*

¹⁰ Federal Transit Administration Circular: Guidance on Joint Development, revised January 25, 2024, <https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-01/Joint-Development-Circular-C-7050-1C.pdf>

3.2.1 Legal Permissibility

Under current law, joint development is allowable. WSDOT does have some latitude to enter into contracts with private entities that would allow the private sector to participate in the development (or redevelopment) of ferry terminals (or WSDOT-controlled land more generally).

- WSDOT also has authority under current state law to enter into either ground or airspace leases that would allow a private partner to use or develop property for commercial purposes. However, several conditions must be met. First, the land or airspace must be owned by the state, and not have been acquired with federal funds. If the land/airspace was originally acquired with federal funds, then federal law and regulations may control the permissible uses of the land/airspace. Second, the state must receive fair value for use of the land or airspace. Third, in the past some have argued that WSDOT's land/airspace can only be developed for allowable transportation purposes (or even more narrowly, for highway-related purposes), although this interpretation has not been tested in court. A fourth constraint is that any proceeds derived by WSDOT for use of the state's land/airspace must be returned to the state's motor vehicle fund (if the land was originally acquired with motor vehicle fund proceeds) or to other state depository accounts that are restrictive in nature.
- There is no overlap between joint development and the proposed P3 legislation framework. In other words, the proposed legislation does not affect the state's ability to pursue joint development.
- The work group-proposed P3 legislation framework could potentially help a future joint development project at a ferry terminal in at least two ways: first, if WSDOT wishes to use a progressive design build or a best-value selection methodology, the proposed legislation would be more accommodative and not involve review and approval by CPARB. Second, if the joint development project would benefit from some form of alternative or innovative (private) financing technique, the work group-proposed legislation framework would allow for that, subject to review and approval by the State Finance Committee.

3.2.2 Potential Benefits

The benefits related to potential joint development include providing the ability for the State to improve public infrastructure by leveraging real estate it owns to generate additional revenue from leases with private parties. Depending on whether there is a concession agreement along with joint development, this could result in an effective net lower cost to the state to operate ferry terminals.

3.2.3 Potential Risks

Beyond the typical risks associated with joint development, there are unique challenges related to joint development of ferry terminals that should be considered. Primarily, it is currently unclear where joint development may be attractive to a private sector partner given the assumed potential locations and market opportunities or limited traffic at ferry terminals that need improvements (e.g., the Anacortes terminal, as described below, attracted little interest from the private sector, likely due to low traffic and limited revenue opportunities).

3.2.4 Decision Process

One of the initial steps for pursuing joint development at ferry terminals would be to engage developers to understand the precise market appetite for joint development at specific locations. For example, WSDOT could conduct a Request for Information (RFI) or market sounding activities such as interviews and industry forums. Should the assessment reveal little interest, then joint development is likely not suitable for Washington's ferry terminals. If, however, there is market interest in select locations, WSDOT could initiate a formal solicitation or entertain unsolicited proposals to advance consideration of joint development as a progressive design-build and/or private-financed project.

3.2.5 Considerations for Port of Anacortes

As mentioned previously, WSDOT considered a P3 for the Port of Anacortes and issued an RFI in pursuit of that effort. Based on the RFI responses, WSDOT offered several recommendations for consideration, including revising the current P3 statutes (underway with this project), working with city and state economic development organizations to better define what the development opportunity might be, as well as exploring creation of a Public Development Authority as a vehicle for the P3.

Because the State leases the land from the Port of Anacortes, any P3 focused on a new terminal would need to involve the Port and possibly the City, as WSDOT would have a more limited land contribution.

A project that focused only on terminal redevelopment could generate revenue through food (coffee, snacks, and possibly a café or restaurant) and gift items, as well as parking. Ingress/egress to the terminal, walking distance from Anacortes, and limited parking makes it unlikely that people not waiting for a ferry would come to eat or shop there.

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. |

| # | 2012 Recommendations | 2024 Revised Recommendations |
|----|--|---|
| 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. |

| # | 2012 Recommendations | 2024 Revised Recommendations |
|----|--|--|
| 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. |

| # | 2012 Recommendations | 2024 Revised Recommendations |
|----|--|---|
| 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. |

| # | 2012 Recommendations | 2024 Revised Recommendations |
|----|--|--|
| 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. |

| # | 2012 Recommendations | 2024 Revised Recommendations |
|----|---|--|
| 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. |