



# Background Information: Meeting 1

JTC Public-Private Partnership (P3) Work Group

September 21, 2023

**CDM**  
**Smith**





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Key characteristics of public-private partnerships, the various forms they take, and how P3s compare to other transportation project delivery models.

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## **Synthesis report: select case studies of transportation P3s in North America** (p. 16-22)

A scan of select highway and multimodal transportation P3 projects that have been implemented since 2012 along with best practices and lessons learned. Selected case studies represent projects most similar to Washington's transportation needs.

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## **P3s in Washington: past and present experiences, laws, and processes** (p. 23-34)

A brief history of Washington's P3 experience, current laws, administrative rules, and processes that will be reviewed by this JTC Work Group.

# How to use this Briefing Book



- This briefing book is provided to Work Group members as read-ahead background information for the September 21, 2023, meeting. These materials are aligned with the agenda for the meeting and provide background information on several of the topics to be reviewed and discussed.
- During the meeting, slide presentations may summarize some of these topics (but will not repeat everything), so it will be helpful to read the content of this briefing book prior to the meeting.
- The project team is happy to answer any questions that arise prior to the meeting.



Section 1



# Work Group Meeting Roadmap



# The Legislature directed this P3 Work Group and Study in Section 204 of the 2023-25 transportation budget:

(2)(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.



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

The meeting information provided below is a roadmap of what is planned for coverage. Future meeting plans are less detailed, keeping the agenda more open to respond to issues raised during earlier meetings, or to adjust to new information. Detailed agendas, presenters, activities, action items, and expected outcomes are developed approximately one month in advance of the scheduled meeting.

## ■ MEETING 1

September 21, 2023  
1 – 3 pm, Virtual



### Establish common understanding

- Introductions by Work Group members, overview of the P3 study directive, Work Group meeting schedule, deliberation process, and ground rules.
- Overview of the fundamentals of P3s and key issues for Work Group consideration.
- Washington’s experience with P3s, including a higher-level overview of RCW 47.29, Washington’s current P3 law.

## ■ MEETING 2

October 20, 2023  
9 am – Noon, In-Person



### Review of P3 challenges and opportunities

- How other states have addressed P3s, in law and practice.
- Washington’s ability to deliver large, complicated or innovative transportation projects under current laws and processes.
- Essential elements of a successful P3 enabling statute.
- Challenges and barriers to broader uses of P3s in Washington.

## ■ MEETING 3

December 8, 2023  
9 am - Noon, In-Person



### P3 statutory provisions and deliberation

- Review of P3 statutory framework and draft legislative language.
- Discussion of key issues to be resolved.
- Viability of select transportation projects under draft P3 enabling statute.
- Process and schedule for implementation plan development (2024) final report.



Section 2



# Public-Private Partnership (P3) Overview



# P3 overview

## ■ P3 Definition

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

Sources:

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

## ■ Common Features

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

## ■ Common Misconceptions

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

# Conventional vs. P3 procurement

- **Conventional delivery:**

A public entity controls design, construction, operations and maintenance phases and uses all public funding.

- **P3 delivery:**

A private partner engages in some mixture of design, construction, financing, operations, and maintenance. The private partner assumes a varying degree of risks and potential benefits.

	Conventional	P3 Projects
<b>Types</b>	Design-Bid-Build	Design-Build-Finance Design-Build-Finance-Maintain Design-Build-Finance-Operate-Maintain
<b>Risk</b>	Public sector shoulders all design, construction, operations and maintenance risks	Risk shared between public and private partners
<b>Contracts</b>	Succession of separate (and multiple) contracts	Integration of two or more project phases
<b>Financing</b>	Public financing	Private financing (except design-build)
<b>Bidding</b>	Generally lowest bidder (construction)	Best-value bidder

Source: Adapted from [FHWA Office of Innovative Program Delivery, Center for Innovative Finance Support](#)



# Breaking down common alternative delivery and P3 structures

## Design-Build (DB)

*(Some classify this as “alternative delivery” but not P3 since the public sector provides financing.)*

- Most common type of P3/alternative delivery.
- Private party responsible for both design and construction for a fixed price.
- Private party assumes most or all risk associated with design changes.
- Public sector provides financing, operations and maintenance, and retains ownership.

## Design-Build-Finance (DBF)

- Same as design-build, but private party provides up-front capital and is typically repaid over time by the state from taxes, fees, or tolls.

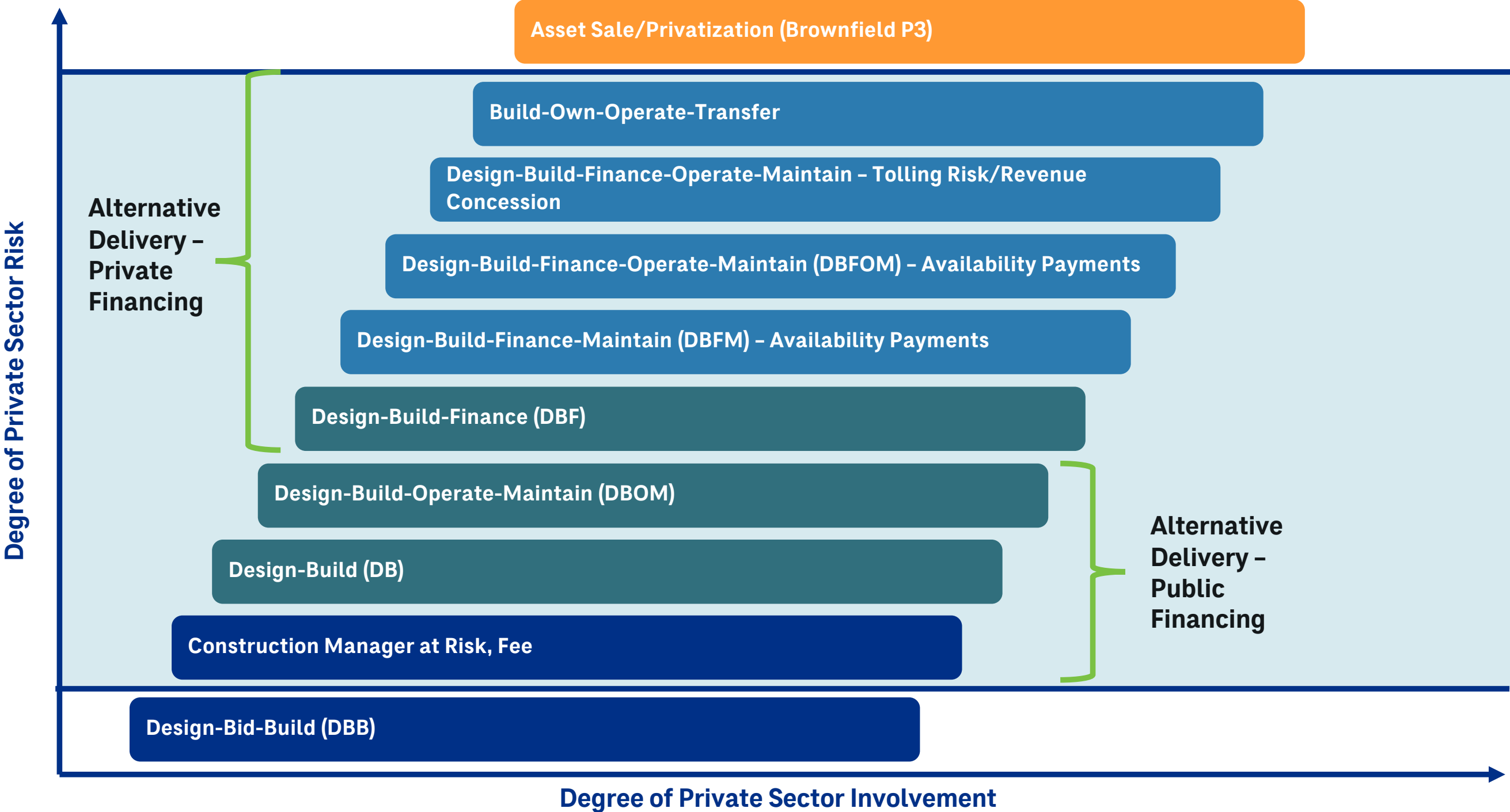
## Design-Build-Finance-Operate-Maintain (DBFOM)

- Two most common types: revenue concession or availability payment.
- Private sector absorbs most of the risk across each phase of the project, including long-term O&M.
- Private sector debt and equity is “repaid” through revenues generated from the facility or through payments from the public sector (i.e., availability payments).

**Value-for-Money (VfM) analysis typically determines the right P3 structure, if any.**

VfM estimates the total lifecycle costs over the life of a project to determine whether a P3 offers lower costs than a conventional delivery approach.

# Project delivery structures





# Allocation of risk under various alternative delivery/ P3 structures

- A principal benefit for the public of P3s is the significant timeliness, cost, and quality risks transferred to the private sector.
- P3s aim to allocate risks to the party best able to manage them.
- **Individual project details determine the risk allocation strategy and therefore, the preferred delivery model.**

Alt Delivery/P3 Structure	Design Risk	Construction Risk	Financial Risk	O&M and Rehab Risk	Traffic Risk	Revenue Risk <sup>1</sup>
Design-Bid-Build (DBB)		Partly				
Design-Build (DB)	●	●				
Design-Build-Finance (DBF)	●	●	●			
Design-Build-Finance-Operate-Maintain (DBFOM)	●	●	●	●	Yes, if toll or traffic-based payment	Yes, if performance-based payment

● = risk transferred to private sector

1. Revenues may be tolls or other revenue sources such as taxes, fees, and fines.

# Potential benefits and challenges of P3 models

## Potential Benefits

- **Risk sharing** of costs, delays and performance.
- **Private financing sources** which can overcome a lack of public capital.
- **Accelerated project delivery** compared to traditional approaches.
- **Reduced overall project costs** resulting from a “life cycle” approach to project design and delivery.
- **Innovative approaches** to project delivery and potentially diversification of contractors.
- **More efficient project management** due to long-term project involvement.
- **Improved service** to end customers (e.g., drivers) through performance-based contracts and long-term commitment to operations and maintenance.
- **Social benefits** through policy and/or contracting, such as workforce development, job training, community amenities, disadvantaged business participation in contracts, and other public benefits (e.g., multi-modal facilities).

## Challenges

- **Not a new revenue source**, despite providing access to capital.
- **State enabling legislation** is needed to pursue P3s.
- **Uncertainties** in usage and revenue projections, allocation of risk, and private sector returns, potentially leading to revenue shortfalls.
- **Public misperceptions** exist, which can limit public support.
- **Private commercial interest** in the project is necessary.
- **Revenue constraints** limit options for P3 structuring.
- **Scarcity and high cost of private capital**, partly since P3s are not tax-exempt like public financing and public financing programs like the Transportation Infrastructure Finance and Innovation Act (TIFIA) and private activity bonds (PABs) are oversubscribed.
- **State may lack expertise and capacity needed** to engage on an even playing field with private partners in setting up a P3 agreement.

# Inputs for determining project delivery model



## Identifying capital sources

- Determine source of project revenue and finance, and whether the project is affordable from a cost of capital standpoint.
- Analyze private sector interest in the project to determine if sufficient capital and competition are available.



## Value for Money (VfM) analysis

- VfM is found when a P3's lifecycle costs are estimated to be less than those of a traditional delivery model.
- VfM is highly recommended to safeguard public interest and improve the likelihood of successful project delivery.



## Risk analysis

- Consider risk in development, construction, funding and financing sources, and operation.
- Goal is not to rid the public sector of all risks but rather to transfer those that the private sector can most efficiently manage.

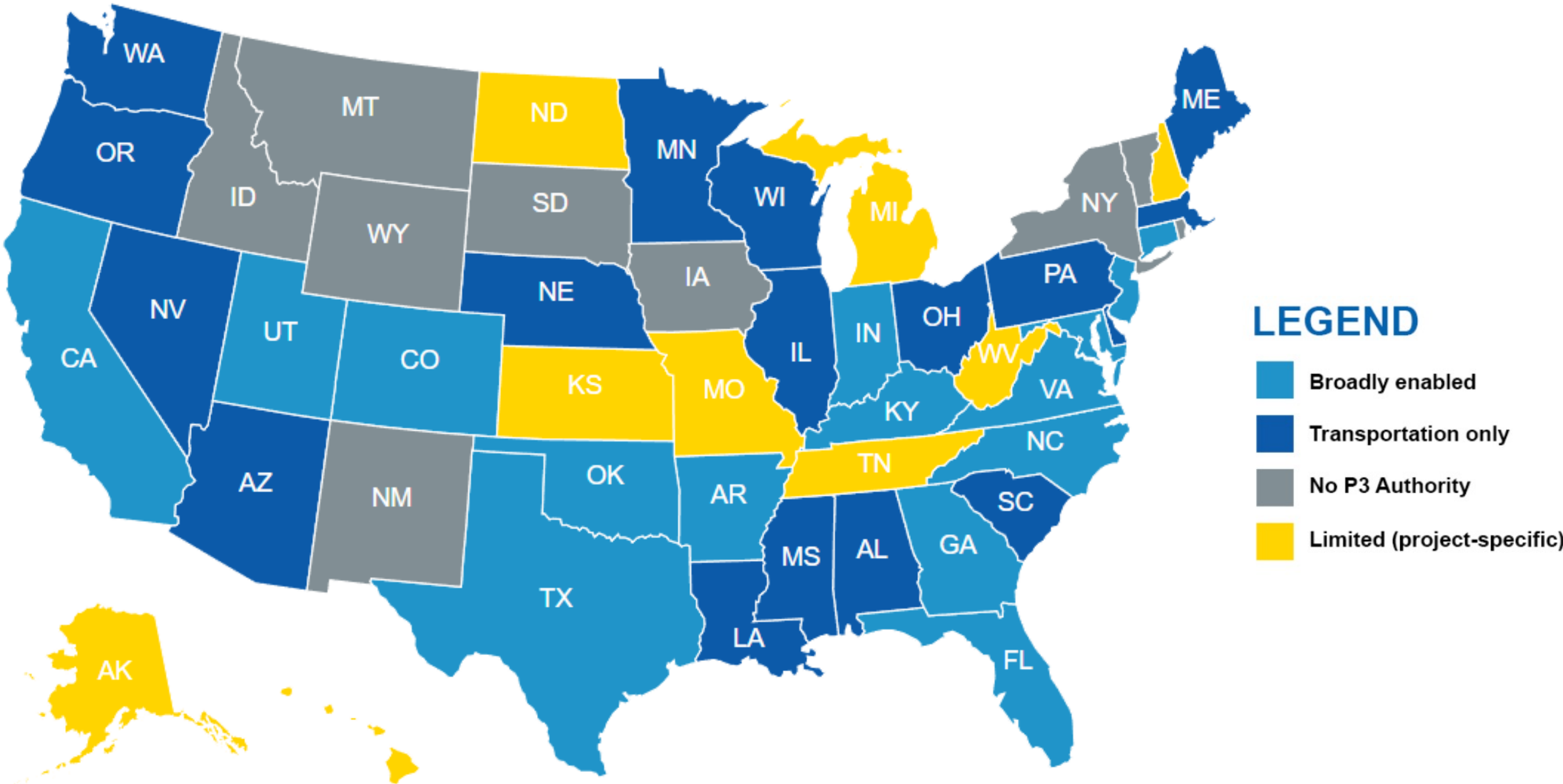


## Prioritize public interest

- Evaluate the positive and negative impacts to the public of each of the delivery models with respect to cost-effectiveness and safe, high-quality construction and operations.
- Evaluation may include stakeholder outreach through public hearings to fully understand impacts.
- Willingness to withdraw P3 procurement if private sector response is unsatisfactory.



# United States P3 legislation





Section 3



# Synthesis Report: Transportation P3s in North America and Select Case Studies



# United States P3 Project: Express Lanes Transform 66 Outside the Beltway



The Transform 66 Outside the Beltway project provides a 22.5-mile stretch of I-66 from I-495 to near Route 29 in Gainesville in Northern Virginia. Improvements include new **express lanes**, more than 4,000 new **park and ride** spaces with convenient access to the express lanes, new and improved **bus service and transit routes**, **interchange improvements**, 11 miles of new **bike and pedestrian trails** including shared-use trails along I-66 that integrate with local trails, and new crossings of I-66 to improve and expand bicycle and pedestrian routes. Construction got underway in late 2017, and the new express lanes opened in November 2022.



## Best Practices and Lessons Learned



- Acquire highly qualified, experienced P3 legal, technical and financial advisors to provide strong procurement support to the Virginia Department of Transportation (VDOT).
- Maintain robust competition with at least three P3 teams shortlisted if possible.
- A clear process on the VDOT side for resolving issues improves the negotiating leverage and shows the public sector is engaged in issue resolution, which improves bidder engagement.
- Strive to leverage toll revenues to fund all improvements, including transit, bicycle and parking facility improvements along the corridor.
- By keeping the project limits outside the beltway, VDOT was able to achieve a less complex scope of work.
- VDOT leveraged their reputation as being knowledgeable and having the political will to get P3 projects done in order to deliver a highly successful \$3.7 billion project during a less certain time after the great recession.



# United States P3 Project: Ferry Systems

## Puerto Rico Ferry O&M



The Puerto Rico Ferry Project began in 2021 and is a 23-year public-private partnership between the Maritime Transportation Authority (MTA) and Hornblower Maritime Services (HMS) Ferries - Puerto Rico. HMS Ferries is performing **ferry operations, vessel and terminal maintenance, and ticketing system capital improvements** related to the ferry system. The services will be performed under the operations and maintenance agreement, a 23-year contract divided in two phases.



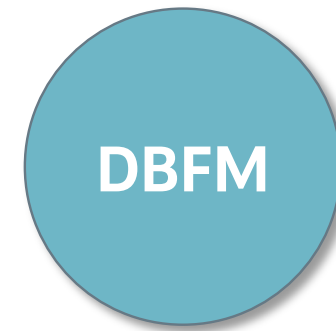
### Best Practices and Lessons Learned



- Maintain a clear, transparent procurement process that was not rushed (27-month process).
- Clear goals and objectives (desire to improve poor historical performance standards--financial, safety, maintenance--while saving money).
- Prepare for industry concerns before launching a procurement. Good preparation on the part of the public sector shows that the public sector is serious about its role in project success.
- Clear key performance indicators (KPIs) need to be included in the P3 agreement.
- Negotiations during the RFP phase regarding terms and conditions included in the P3 agreement prior to bid submission can optimize risk allocation.
- Provide strong performance incentives through the transfer of revenue and expense risk (fixed fee to be paid to HMS by MTA resulted in cost savings of \$107 million over the term of the operations and maintenance agreement).

# United States P3 Project: Bridge Bundling

## Pennsylvania Rapid Bridge Bundling



PennDOT's Rapid Bridge Replacement (RBR) project was a P3 encompassing the **design, construction, financing, and life cycle maintenance** of 558 replacement bridges. Work on the project started in 2015, all bridges were constructed by 2019 and the 25-year life cycle maintenance began after substantial completion of each bridge. The RBR project is the largest multi-asset, multi-location P3 project of its kind in the United States, replacing poor-condition bridges statewide while minimizing impacts to the traveling public.



### Best Practices and Lessons Learned



- Remain committed to communication at all levels.
- Ensure appropriate risk allocation.
- Maintain a proper balance of performance and prescriptive requirements.
- Develop a project-specific business plan based on the unique project qualities
- Develop issues resolution process early
- Plan for and conduct audits for project performance
- Maintain early and constant coordination with outside agencies
- Ensure all P3 team members are fully engaged and have clearly identified roles.
- Develop sufficient timeframes for design submissions and resubmissions.
- Ensure private sector partner fully understands the importance of its role in public outreach and coordination with public and government stakeholders during all phases of the project.
- Ensure a thorough quality control process is in place prior to the start of construction.
- Establish a process to identify, track, and resolve issues.
- Establish handback procedures and criteria early on
- Allow adequate time for project setup.
- Require analysis of complex/high-risk activities and development of a schedule that can be monitored from project start.

# United States P3 Project: Commuter Rail Denver Transit Partners (The Eagle)



The Eagle project is a P3 between the Regional Transportation District (RTD) of Denver and Denver Transit Partners, a group of several private companies. Under the program, Denver Transit Partners holds a 34-year contract to **design, build, finance, operate, and maintain** several RTD commuter rail lines. Work began in 2010 and rail lines opened by 2016.



## Best Practices and Lessons Learned



- Remain open to innovative technical and financial concepts.
- Maintain appropriate risk allocation based on party best able to manage the risk.
- Maintain proper balance of performance and prescriptive requirements.
- Plan and execute audits for project performance.
- Plan for and execute early and constant coordination with outside agencies.
- A focus on outcomes and commitment to partnership in the procurement process helps foster innovation.
- Availability payment P3s can offer an integrated solution for design and delivery of public transportation.
- Communication of project goals and status to the public through conferences, forums, and an updated website led to strong public support and diversity of funding.
- Locking down the project construction scope early helped ensure confidence that project changes would not substantially increase.
- Maintaining a dedicated project manager, an experienced financial consultant, and a legal team with P3 experience was key to the project's development and eventual success.
- Robust communications between all parties regarding project risks and other concerns led to a proposal that delivers “best value” to RTD and its constituents.
- Develop and follow an issues resolution process.



# United States P3 Project: Equity Default Texas SH 130 Segments 5 and 6 Toll Road



Segments 5 and 6 cover the southernmost approximately 40 miles of the SH 130 route to its terminus at I-10 southeast of Austin, Texas. The project was developed through a **50-year design-build-finance-operate-maintain (DBFOM)** public-private partnership between TxDOT and the SH 130 Concession Company, which comprised Cintra and Zachry American Infrastructure. The \$1.35 billion project opened to traffic in October 2012 as the first privately developed highway in Texas. The contract was negotiated with a P3 Developer who won a pre-development agreement to have the first right of negotiation for projects to be developed along the “Trans Texas Corridor I-35.” Due to lower-than-expected toll revenue, the concession company declared bankruptcy in 2016 and defaulted on its debt. During bankruptcy, the company attracted new financing and emerged under new ownership in 2017 without any disruption to facility operations.



## Best Practices and Lessons Learned



- Clearly written default provisions incentivized lenders to step in, restructure the debt, and acquire a new operator and equity investor for the project with no disruption or reduction of service to the traveling public.
- Highly qualified, experienced P3 legal, technical, and financial advisors provided negotiating leverage for TxDOT.
- Transfer of revenue risk; the road opened to traffic after the great recession to greatly reduced toll revenue projections.
- Extensive due diligence on technical and financial feasibility (prior to the great recession) enabled TxDOT to negotiate with clear outcomes in mind (no additional subsidy, willingness to allow tolls to escalate rapidly but subject to what users are willing to pay).
- Develop procurement documents for initial P3 projects with a clear understanding that they are precedent-setting for commercial positions for future procurements (decision-makers should be sure they can accept these commercial positions or be able to clearly explain why that commercial position is not reasonable for the current project under procurement).

# Most cited P3 best practices

Practice	Topic	Sources
Pass legislation allowing for a <b>variety of P3 project options</b> , with clear guidance on pursuance.	Legislation	AIAI, BPC, GMU, USDOT
Create a <b>pipeline of P3 projects</b> , with long term impacts in mind.	Legislation	AIAI, GMU, NCSL, USDOT
Conduct <b>multi-level screening</b> to evaluate projects on suitability/feasibility.	Project development	AIAI, ASCE, NCSL, USDOT
Promote <b>fairness, clarity, and transparency</b> in the procurement process.	P3 procurement	AIAI, ASCE, NCSL, USDOT
Ensure the P3 option creates <b>value for the public</b> and <b>protects the public interest</b> relative to conventional delivery.	Cross-cutting practices	AIAI, ASCE, BPC, NCSL, USDOT

AIAI = Association for the Improvement of American Infrastructure  
 ASCE = American Society of Civil Engineers  
 BPC = Bipartisan Policy Center

GMU = George Mason University  
 NSCL = National Conference of State Legislatures  
 USDOT = United States Department of Transportation



Section 4

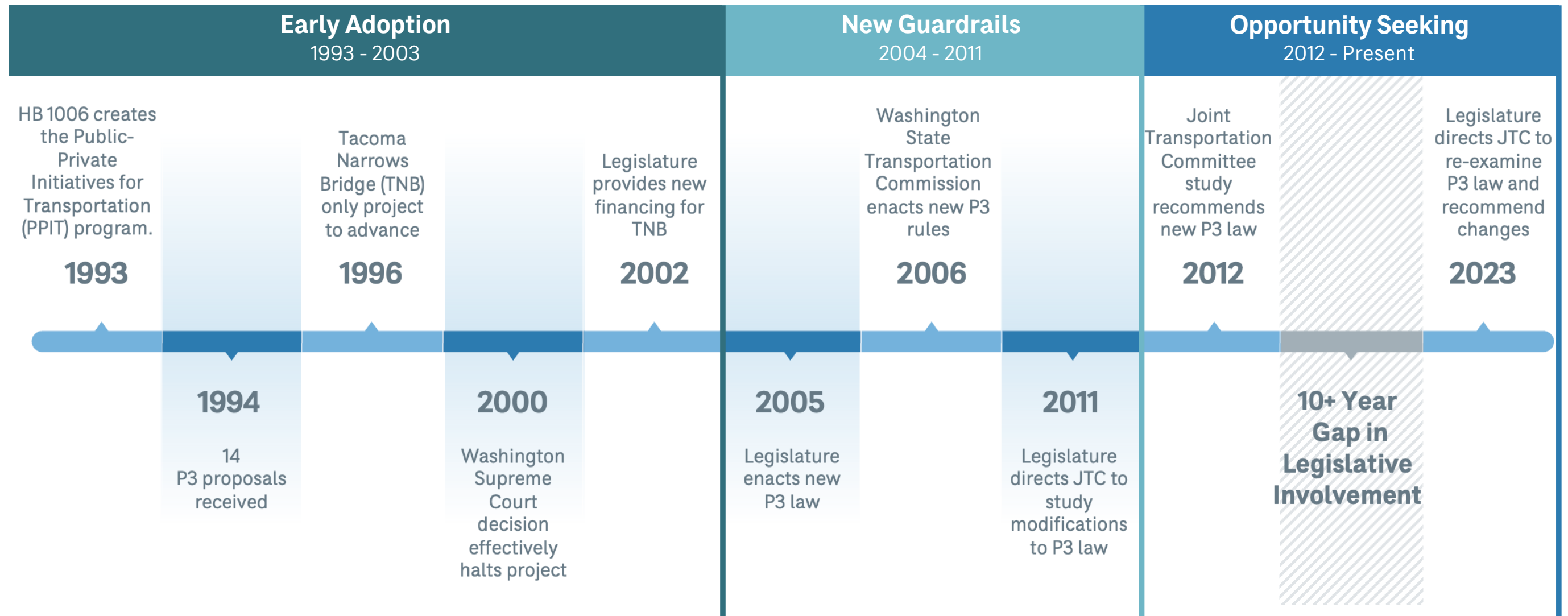


# P3s in Washington: Past and Present Experiences, Laws, and Processes

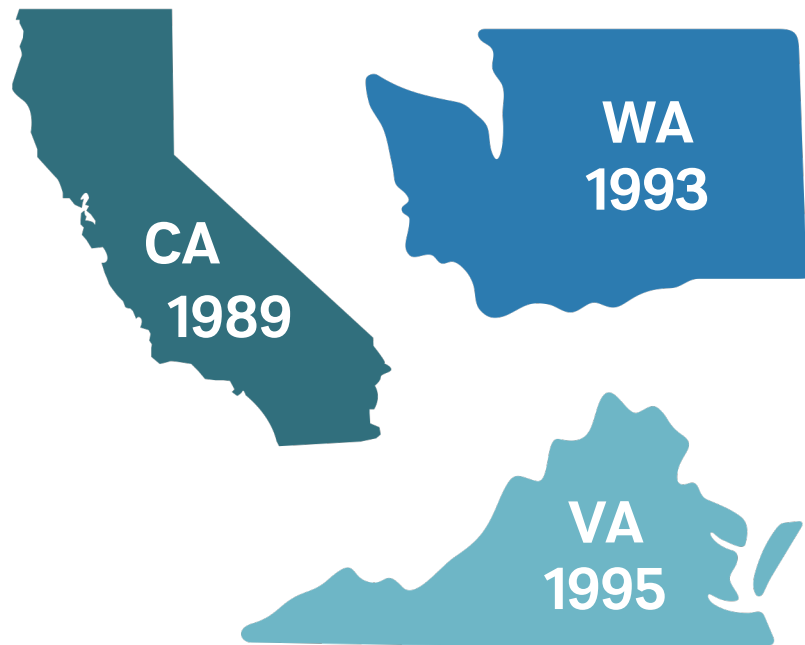


# Washington history with transportation P3s

Washington’s experience with P3’s for transportation is organized here into three distinct eras, from program conception in 1993 through the passage of legislation allowing the Tacoma Narrows Bridge (TNB) project to proceed in 2003; the P3 TNB experience led to revised P3 legislation in the state (2004 - 2011); and reconsideration of the 2005 P3 law, including subsequent efforts to develop non-traditional transportation projects as P3s (2012 – present).



# Washington was among the first states to enact a P3 law and implement a program



**+ 27 other states  
since 1995**

## ■ **HB 1006 Public Private Partnerships in Transportation (PPIT Act) was unanimously approved.**

- House: 98-0
- Senate: 45-0-4 absent

### **Key provisions:**

- Allowed the private sector to submit proposals to develop any transportation-related project as a P3 (unsolicited proposals).
- The Washington State Transportation Commission (WSTC) could select up to six projects for development as a P3.
- The Secretary of Transportation administers the process, including review, selection, and negotiation of P3 contracts; the WSTC has the ultimate approval authority.
- Projects must be design-build-finance-operate-maintain, for a period of up to 50 years.
- Authorizes private entities to impose user fees or tolls to recoup costs plus reasonable profit; excess revenue collections are subject to negotiation in the P3 contract.

# Fourteen unsolicited P3 proposals spurred strong public (and legislative) reactions

The new PPI law (RCW 47.46) allowed the Washington State Transportation Commission to select a maximum of six projects to be developed as public-private partnerships. A total of 14 proposals were received, representing 12 different projects.



## Six projects selected for development as a P3:

- SR 18 Corridor between I-5 and I-90
- SR 520 including the Evergreen Point Floating Bridge
- Puget Sound Congestion Pricing Project
- SR 522 from Woodinville to Monroe
- King County Park and Ride Lot Improvements
- SR 16/Tacoma Narrows Bridge Project



## Negative reactions to the project and P3s in general:

- No public notice that these projects would be developed in the near term.
- No public notice or legislative discussion about tolls on road and bridges.
- Congestion pricing (managing demand by tolling roadways) was a new concept in Washington.
- Park and ride lots had always been operated free of charge.
- Provisions allowing private companies to manage and operate public roadways on a for-profit basis for up to 50 years was opposed by potential toll-payers.

### Sources:

- Online news. Fredrich, Ed. “[‘New’ Tacoma Narrows Bridge turns 15 years old.](#)” Gig Harbor Now, July 15, 2022.
- Final Report. Joint Transportation Committee. “[Opportunities for the New Tacoma Narrows Bridge.](#)” January 13, 2014.



# 1994: Newly-elected legislators roll back the initial PPI program

Incumbents representing districts that would be most affected by the proposed P3 toll projects – all of whom had voted in favor the PPIT Act – did not fare well in the November 1994 elections. Voters in key swing districts in King and Pierce counties (along SR 522 and along the SR 18 corridor) and Pierce and Kitsap county (reliant on the Tacoma Narrows Bridge) were largely responsible for swinging control of the House of Representatives in the 1994 elections. Due to the strong public (and political) opposition to the SR 18 corridor P3 project, WSDOT removed this project from consideration before the 1995 session began.

- **In the 1995 session, the Legislature enacted 3ESHB 1317, which curtailed further advancement of P3 projects and required a citizen advisory vote before any P3 toll projects could be advanced:**

- A section of 3ESHB 1317 removed the Puget Sound Congestion Pricing P3 project from further consideration.
- 3ESHB 1317 also amended the original 1993 PPI law to require WSDOT to hold a public vote on any remaining P3 project that is challenged by 5,000 voter signatures.
- The Legislature imposed a two-year moratorium on any new P3 project proposals.

- **In the 1996 session, legislative amendments required proposed P3 projects to receive state appropriations or pre-development work on P3 toll projects.**

- The SR 522 and SR 520 projects were dropped from consideration, as the legislature declined to fund pre-development work for those P3 projects.

- **In 1998, an advisory vote was held in portions of Kitsap, Pierce, and Thurston counties on the Tacoma Narrows Bridge P3 Project. The vote within this special district passed, with 53% in favor.**

# The Tacoma Narrows Bridge was the sole remaining P3 project, but the Washington Supreme Court ruled that state law prohibited tolls on the existing bridge, upending the P3 project's financing plan

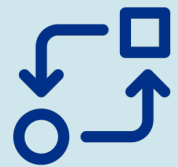
- The TNB P3 project sponsors believed a provision in state law enacted in 1959 that prohibited tolling the existing Tacoma Narrows Bridge would not apply to a reconstruction of the TNB as a P3.
- A citizen group challenged the P3 deal on numerous grounds, including that current state law prohibited any tolls on the existing bridge span.
- The Washington Supreme Court agreed; no tolls could be imposed for crossing the existing TNB bridge span.
- Because levying a round-trip toll on both the existing and new bridge (starting at \$3) was required to pay back private investors, the P3 project could not move forward unless (or until) the Legislature amended the 1959 statute to allow tolls to be collected for crossing the existing bridge span.



Photo: [WSDOT](#)

# After nearly two years of deliberation, the Legislature approved tolling on the TNB, so long as the project would be publicly financed

After extensive deliberations between legislative leadership, United Infrastructure of Washington (UIW), and the P3 project sponsors, an agreement was reached where the legislature would amend the 1959 statute to allow tolls to be collected on the existing TNB span. However, this agreement was subject to amending the P3 agreement in the following ways:



## KEY CHANGES

- All project debt must be issued by the Office of the State Treasurer.
- The state would take over further management of the project and ongoing operations and maintenance.



## EXPECTED BENEFITS

- The interest rate spread between the P3 financing (6.3%) and state-issued, state-backed bonds (4.5%) results in substantial cost savings to toll payers.
- The TNB would be developed, operated, and maintained like all other highway facilities in the state – with public control and workforce. O&M costs were forecasted to be lower when under public control.



## TRADEOFFS

- Unlike other toll projects, the TNB public financing pledged the state's full faith and credit – making the general fund potentially responsible for any toll revenue shortfalls.
- To the extent toll revenue cannot meet maintenance and operations requirements, the facility requires legislative appropriations from statewide fund sources (i.e., the same as all other highway facilities or the general fund).



# In 2005, a new P3 law was enacted – this time, with stringent procedural and financing guardrails intended to replicate the legislatively-revised TNB project

SHB 1541 was enacted (as RCW 47.29) and significantly revised the state's P3 laws. The major changes from the prior 1993 PPI law were:

- Expanded the range of projects that are eligible for development under the Transportation Innovative Partnerships (TIP) law to include all modes, facilities, and assets.
- Projects that are not transportation facilities or assets themselves but, if developed, have the capability of providing revenue for transportation projects, programs, or policies, are eligible for development under the TIP program. Example: surplus real property not needed for highway purposes, but if developed as a P3 project, it could yield revenue for WSDOT to use for transportation purposes.
- Directed an assessment of the state's highway system to determine which facilities might be feasible candidates for P3 tolling.
- Tightened the process for WSDOT to receive and review unsolicited proposals, which also require review and approval by the Washington State Transportation Commission before they can proceed to negotiations. If WSDOT receives an unsolicited proposal, it must be published and other competing proposals may be submitted for consideration.
- For projects owned, leased, used, or operated by the state as a public facility, any bonded indebtedness must be issued by the state treasurer. For other public projects that are not transportation projects, financing must be approved by the state finance committee or, in the case of federal tax exempt financing, by the public benefit corporation as specified in federal law.
- Any project submitted for consideration must include a detailed public involvement plan; for projects in excess of \$300 million, a citizen advisory committee must also be established to review the proposal and any subsequent contract.

# Tradeoff: security vs. opportunity



**Peak attribute of RCW 47.29 (enacted by SHB 1541): Provides protection against P3s that could favor private interests.**

Since its enactment in 2005, RCW 47.29, the Transportation Innovative Partnerships (TIP) enabling statute, and the accompanying administrative rules governing acceptance, review, and consideration of P3 projects has succeeded in at least one respect: it has eliminated the disagreements over developing P3 projects that occurred in 1993 – 2000.



**RCW 47.29's main drawback: Limits opportunities to pursue new P3s for transportation projects, programs, or priorities.**

The corollary to the TIP program statute and administrative rules is that its public interest security strength has also impaired the ability to pursue new approaches to transportation P3's, particularly for non-toll projects.

**Security**

**Opportunity**



# 2012 Joint Transportation Committee Study

- In 2012, the Legislature directed the Joint Transportation Committee to re-examine whether, how, and when a P3 might benefit the state as a potential project delivery method.
- Significant work was conducted to develop a screening tool for potential P3 projects that attempted to capture and quantify the financial benefits that could be gained from delivering a project as a P3.
- The screening tool applied a Value for Money (VfM) analysis on five specific projects that the Legislature had suggested:
  - I-405/SR 167 Express Toll Lanes
  - I-5/SR 509 Extension
  - SR 167 Extension
  - US 2 Monroe Bypass
  - I-5 Columbia River Crossing
- The VfM analysis demonstrated that some projects could potentially benefit from P3 delivery when considered on a lifecycle cost basis; that is, if long-term maintenance and operational costs were included in the calculation.
- Beyond analyzing specific projects for potential P3 model delivery, the 2012 study examined in detail the current Transportation Innovative Partnership (TIP) program's enabling statute (RCW 47.29), the accompanying administrative rules, and the organizational processes and governance of potential P3 projects, making broad-scale recommendations for changes.



# The 2012 P3 study recommendations, in brief

The 2012 P3 study included a number of recommendations for changes to the current state law, administrative code rules, processes, organizational structure, and governance of P3 projects in Washington. These issues will be presented and examined in detail for the Work Group's October 20, 2023, meeting. **In brief, the 2012 P3 Study made the following key recommendations:**

## ■ Policy

22 total recommendations

- Allow availability payments.
- Use 2-step screening tool that is qualitative and quantitative.
- Use a 30 to 60 year time horizon to measure P3 project Value-for-Money (VfM).
- P3 projects must conform to state's tolling policies.
- State must de-politicize and professionalize its P3 selection process.

## ■ Legislative

12 total recommendations

- Repeal current P3 law and replace with new legislation.
- Remove any post-procurement approval by the Transportation Commission.
- Allow private debt to be issued.
- Allow availability payments to have priority for legislative appropriations, similar to debt service on bonds.

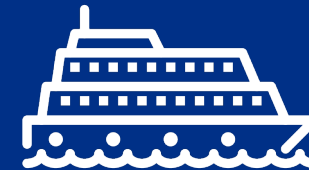
## ■ Administrative

8 total recommendations

- Adopt procedures for reviewing/screening projects using VfM analysis.
- Concentrate all P3 support and activity through a new P3 office within WSDOT.
- Ensure WSDOT P3 office has the ability and resources to carry out its role, with consultant help as needed.

# WSDOT taps into other legal authority to pursue non-traditional P3 projects

To date, the Legislature has not adopted the legislative recommendations made in the 2012 P3 Study. The types of P3 projects investigated and developed by WSDOT in recent years tend to be for modes other than highways and bridges. Examples include:



## West Coast Electric Highway

Network of EV charging stations along important longer-distance travel corridors.

## Online advertising on select WSDOT pages

Generates revenue that can help support WSDOT's traveler information pages, especially those that support tourism.

## Commercial development at state-owned park & ride lots

Proposals that allow limited commercial activities (e.g., coffee shops) co-located at select park-and-ride lots.

## Co-development of Washington State Ferry terminals

P3 concepts that would allow certain WSF terminals and/or adjacent state-owned lands to be developed in exchange for terminal improvement and/or ferry rider amenities.

## Property exchanges

P3 concepts that would allow WSDOT to exchange unused real property (including airspace leases) in exchange for revenue and/or transportation-related improvements to nearby facilities.

# JTC Public-Private Partnership (P3) Work Group

Background Information Materials  
Meeting 1  
September 21, 2023

