



JTC Public-Private Partnership (P3) Work Group

Project Overview and Update for the Joint Transportation
Committee

October 9, 2023



**CDM
Smith**



Overview

5 min

Overview of the P3 Work Group and Study proviso

- Allegra Calder, BERK Consulting

5 min

Overview of P3s

- Jeff Doyle, CDM Smith

10 min

Washington's experience with P3s and items to be addressed in the study

Jeff Doyle, CDM Smith

10 min

Q&A



P3 Study and Work Group Overview



P3 Study and Work Group proviso

from Section 204 of the 2023-25 Transportation Budget

- **Study and recommend a new statutory framework** for the department's public-private partnership program.
- **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:
 - Protecting the state's ability to retain public ownership of assets constructed or managed under a public private partnership contract;
 - Allowing for the most transparency during the negotiation of terms of a public-private partnership agreement; and
 - Addressing the state's ability to oversee the private entity's management of the asset.
- **Identify any barriers to the implementation of funding models** that best protect the public interest, including statutory and constitutional barriers.
- 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.
- **Update the 2012 recommendations and devise an implementation plan** for the state.
- **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**, and **a final report with draft legislation** to the same by **July 1, 2024**.

Work Group membership

Work Group Member	Representative or Designee
Joint Transportation Committee Executive Committee Members (or designees)	Co-Chair, Sen. Marko Liias Co-Chair, Rep. Jake Fey Sen. Curtis King Rep. Ed Orcutt
Office of the Governor	Debbie Driver , Senior Policy Advisor - Transportation
Secretary of Transportation (or designee)	Anthony Buckley , Director of Innovative Partnerships, WSDOT
State Treasurer (or designee)	Jason Richter , Treasurer's Office
Representative of a national nonprofit organization specializing in public-private partnership program development	Lisa Buglione , AIAI
Representative of the construction trades	Jennifer Ziegler , National Construction Alliance
Representative from an organization representing general contractors	Geoff Owen , Kiewit Construction, Association of General Contractors of Washington

What We Heard from Work Group Interviews

- Range of experience with, and understanding, of P3
- Openness to explore it as another tool for project delivery – won't solve all transportation needs
- Benefits noted include accelerated delivery, project bundling, innovation potential, opportunities to address other state needs
- Concerns about timeline and not wanting to be pressured to take action
- Desire to define success for the project and articulate the State of Washington's goals for P3
- Learn from and adapt what is done elsewhere - don't overcomplicate it - competition is national and has choices about where they work



Overview of P3s



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.

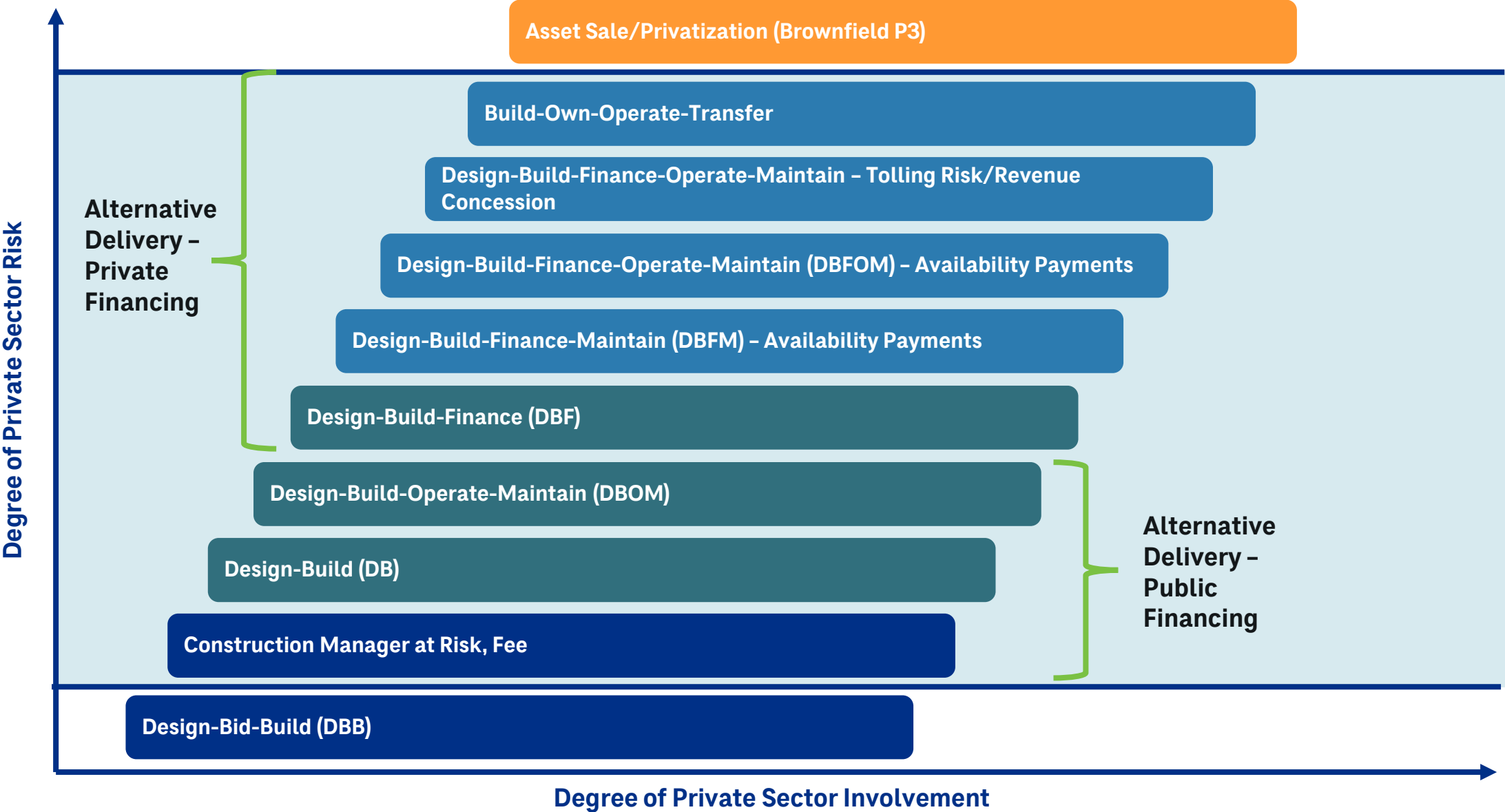
- P3 delivery:**

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.

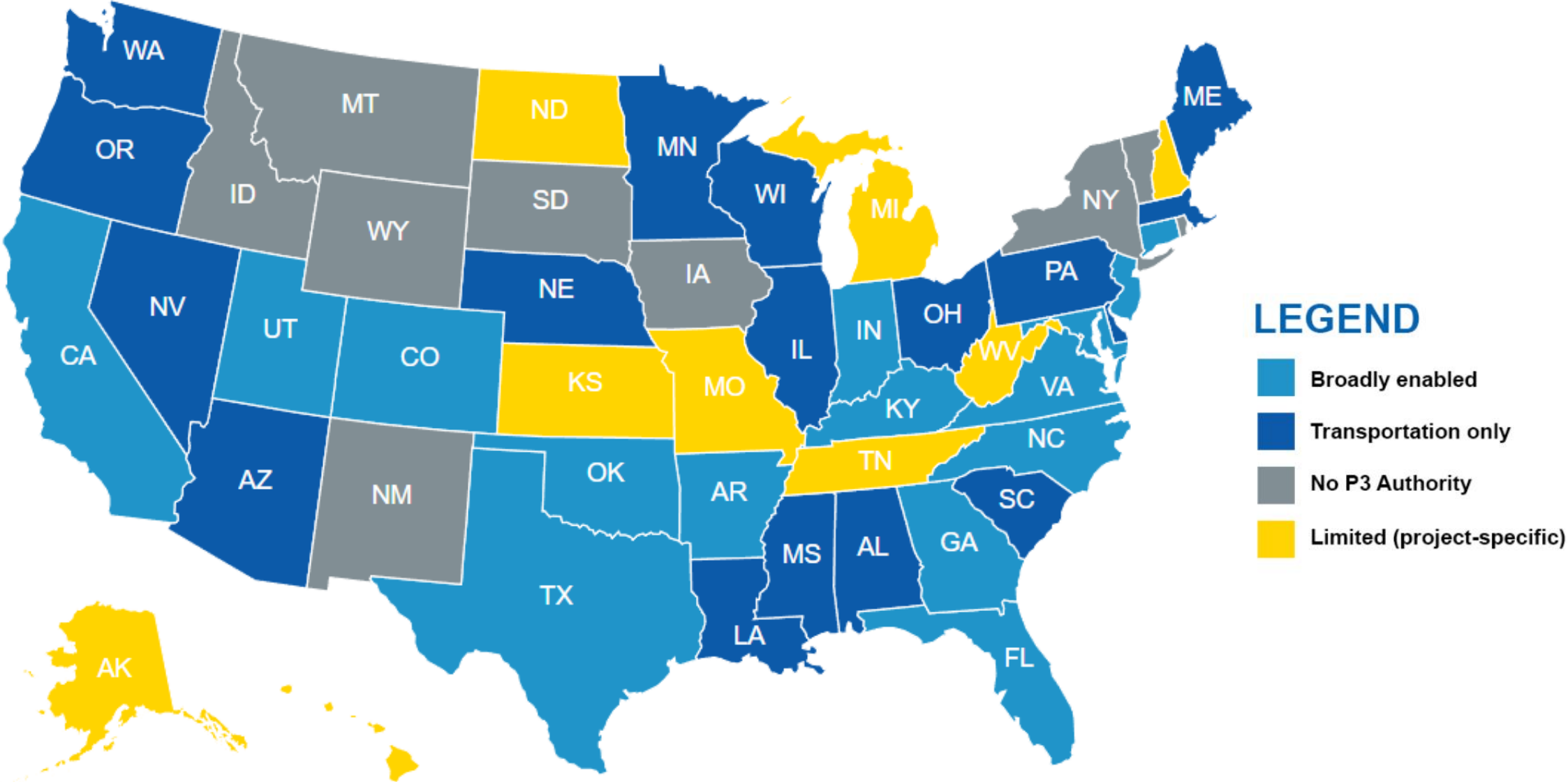
	Conventional	P3 Projects
Types	Design-Bid-Build	Design-Build-Finance Design-Build-Finance-Maintain Design-Build-Finance-Operate-Maintain
Risk	Public sector shoulders all design, construction, operations and maintenance risks	Risk shared between public and private partners
Contracts	Succession of separate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

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

Project delivery structures



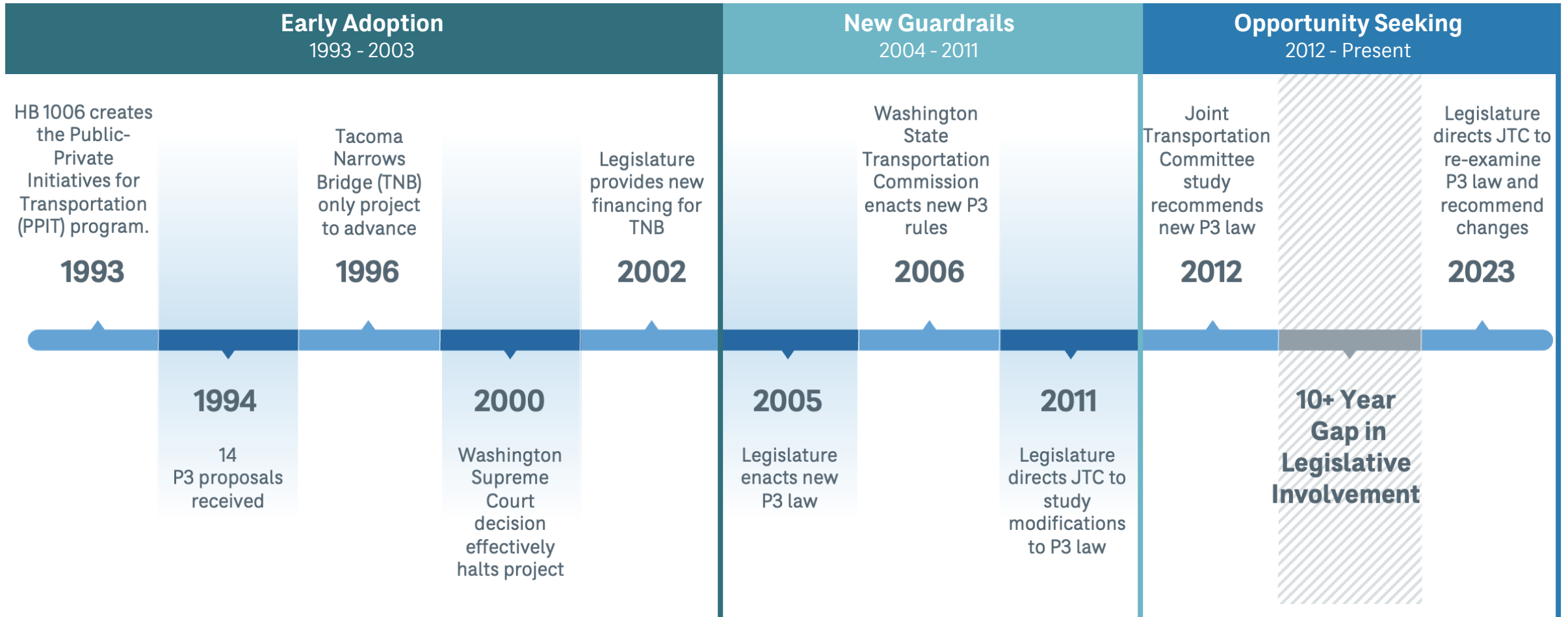
United States P3 legislation



A blurred, high-angle photograph of a multi-lane highway with an overpass, overlaid with a dark blue gradient. The image is out of focus, showing streaks of light and motion.

Washington's experience with P3s and items to be addressed in the study

Washington history with transportation P3s



Tradeoff: security vs. opportunity



Peak attribute of RCW 47.29:

Institutionalizes the least-cost public funding/financing approach used in the TNB project



RCW 47.29's main drawback:

Limits opportunities to pursue new P3s for transportation projects, programs, or priorities.

Security

Opportunity

Washington's P3 statute: Examples of issues to examine

- Post-procurement review and approval process for P3 projects?
- Maintenance of public facilities must be provided in a manner consistent with collective bargaining agreements?
- Additional public involvement is required prior to (and after) execution of a P3 agreement?
- P3 projects cannot be financed with privately-issued debt?

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

✓ MEETING 1

September 2023

Established 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 2023

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 2023

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.



Questions?