



# JTC Public-Private Partnership (P3) Work Group

Meeting 3

**December 8, 2023**  
**9:30 am – 1:30 pm**



**CDM  
Smith**



# Agenda

- 9:30 am**      **Preview of meeting and objectives**
  - Allegra Calder, BERK Consulting
  
- 9:40 am**      **Close-out of Questions from Meeting 2**
  - Jeff Doyle, CDM Smith
  
- 9:45 am**      **Indiana's recent experiences with P3's, from the financing perspective**
  - Mark Pascarella, Director of Debt Management, Indiana Finance Authority
  
- 10:15 am**      **Pennsylvania's bridge bundling P3 program**
  - Mike Bonini, Director, PennDOT P3 Office
  
- 11:00 am**      **Short break**
  
- 11:10 am**      ***Moderated discussion: confirming the Work Group's objectives for a revised P3 law/program***
  - Allegra Calder, BERK Consulting
  
- 11:20 am**      **Review and discussion: proposed P3 framework and draft legislative provisions**
  - Jeff Doyle, CDM Smith
  - Allegra Calder, BERK Consulting



# Agenda

- 12:00 noon**      **Lunch break (lunch will be delivered to the conference room)**
- 12:30 pm**      **Continued discussion and decision-making: proposed P3 framework and draft legislative provisions**
- Allegra Calder, BERK Consulting
- 1:20 pm**      **Next steps**
- Jeff Doyle, CDM Smith
- 1:30 pm**      **Adjourn**



# Introductions

# Work Group membership

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



# Meeting Objectives



# Meeting roadmap

The meeting information provided below is a roadmap of the Work Group's progress. The last meeting scheduled before legislative session is Meeting 3 on December 8, 2023.

## 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 (moved to Meeting 2).*

## MEETING 2

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



### Review of P3 challenges and opportunities

- Washington's experience with P3s
- 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  
9:30 am – 1:30 pm, In-Person



### P3 statutory provisions and deliberation

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



# Meeting Objectives

- **Learn** how Indiana and Pennsylvania have used P3 to address transportation infrastructure challenges
- **Confirm** the Work Group's recommended objectives for a P3 program
- **Review and discuss** the legislative framework and key provisions for a new P3 statutory authorization





# Close-out of Q&A from October meeting





# Indiana's recent experiences with P3's, from the financing perspective

Mark Pascarella, Director of Debt Management, Indiana Finance Authority





# Pennsylvania's bridge bundling P3 program

Mike Bonini, Director, PennDOT P3 Office



# Short Break





**Moderated discussion: confirming the Work Group's objectives for a revised P3 law/program**

# In October, the Work Group identified the following objectives for a revised P3 program

## A new P3 law is needed to:

- Deliver better value to taxpayers
- Transparently demonstrate value for the state's investment
- Provide an additional method for delivering more complex transportation projects
- Incorporate outside expertise into transportation project delivery
- Allocate project risks to the parties best able to manage those risks
- Allow new sources of private capital
- Increase access to federal grant funding
- Better align laws and approval processes with those utilized by the department of transportation for other large or complex projects.



***Moderated discussion:* proposed P3 framework and draft legislative provisions**

## Legislature

### Legislation: P3 program legal authorization (RCW)

- Objectives (findings and legislative intent)
- Essential policy parameters that must be detailed in law
- Delegation of authority to agencies and offices implementing the law

### Budget: P3 program funding (biennial)

- Funding amounts and direction
- Limitations on program activities
- Expires at end of biennium

**Green:** Legislative authorization (informed by the current phase of this JTC study, due December 2023).

**Blue:** Implementation plan (informed by next phase of this JTC study, beginning January 2024).

# High-level legal framework for new P3 program

## Agency

### Administrative rules: promulgated by the agency (WAC)

- Legal requirements for implementing P3 projects

### Policies: agency priorities and practices

- Agency's business practices and current priorities, within their discretion

## Agency + P3 developer

### P3 Contract: project-specific terms and conditions

- Mutually-agreed contract for delivery of P3 project
- Must comply with RCWs and WACs





# Key Elements of P3 Authorization

# Key P3 provisions that are allowed – and unallowed – under current Washington law

## ALLOWED under WA laws (P3, D/B, Alt Contracting)

- WSDOT select projects for P3 development
- Design/Build contracting
- Progressive Design/Build contracting
- General Contractor/Construction Manager contracting
- Use any revenue made available for the project, including federal funds, loans, etc.
- Value for Money (VfM) analysis
- Performance-based payments

## NOT AUTHORIZED/ PROHIBITED in WA laws

- WSDOT is not authorized to select projects to become tolled facilities (legislature alone approves imposition of tolls on state facilities)
- Private or quasi-private entity setting toll rates on state facilities
- Privately-issued debt used for P3 project development

***Might be allowed, but law is unclear***

- Availability payment structures?

- Equity investments in P3 project financing?

- Gain-sharing provisions to share any excess revenue collections?

- Contracting out maintenance & operations?

# Summary of four key issues deliberated by the Work Group

## ■ Finance

- If the state's credit capacity or rating is implicated, review/approval of the State Finance Committee is required.
- Equity investments and availability payments are allowed, subject to the above limitation.

## ■ Governance

- Streamlined to mirror the process for other mega (or tolled) projects.
- No expert review/approval panels are mandated – WSDOT may still convene one on case-by-case basis.
- Legislature's role: decide on continued appropriations (e.g., for availability payments); and whether to toll a facility.
- WSTC to retain role as toll authority to set/adjust rates.

## ■ Operations

- Requires adherence to state wage laws and collective bargaining agreements.
- Clarifies that Washington State Patrol must be funded to provide patrolling and law enforcement on P3 facilities.
- Removes confusing language about funding other enforcement activities (e.g., toll enforcement).

## ■ Maintenance

- Specifically allows availability payments and “ongoing legislative appropriations” to cover P3 contract for maintenance.
- Defers to WSDOT to set the services standard and state of good repair for the assets (same as for non-P3 projects).

# Proposed P3 project approval process

	1 Identify candidate P3 projects	2 Approve tolls ( <i>*if applicable</i> )	3 Declare P3 approach in public's interest	4 Negotiate P3 contract with private partner	5 Approve financing ( <i>**only if state debt or credit is affected</i> )	6 Take public comments on P3 contract	7 Findings & declaration of VfM and public interest	8 Execute final P3 contract	9 Periodically adjust toll rates ( <i>*if applicable</i> )
WSDOT	1		3	4		6	7	8	
Legislature & Governor		2*							
State Finance Committee					5**				
Transportation Commission									9*

# Legislation: P3 program authorization (1 of 13)

## 1. Purpose

### **A new P3 law is needed to:**

- Deliver better value to taxpayers
- Transparently demonstrate value for the state's investment
- Provide an additional method for delivering more complex transportation projects
- Incorporate outside expertise into transportation project delivery
- Allocate project risks to those parties best able to manage those risks
- Allow new sources of private capital
- Increase access to federal grant funding
- Better align laws and approval processes with those utilized by the department of transportation for other large or complex projects.

# Legislation: P3 program authorization (2 of 13)

## 2. Definitions

- “Department” means the Washington State Department of Transportation.
- “Commission” means the Washington State Transportation Commission.
- [additional definitions as needed]

# Legislation: P3 program authorization (3 of 13)

## 3. Department of transportation authorized to undertake public-private partnership projects.

- WSDOT is empowered to procure and contract with private parties to develop eligible transportation projects as a public-private partnership.
- WSDOT may select one or a combination of projects to be procured and delivered as a public-private partnership.
- After formally adopting WACs governing the review process, WSDOT may accept unsolicited proposals from non-state entities to develop eligible projects as public-private partnerships.
- Prior to initiating a public-private partnership project, WSDOT must adopt administrative rules (WACs) specifying procedures for the proper solicitation, acceptance, review, evaluation, selection, and negotiation of project agreements. The rules must include:
  - A process and methodology for determining whether a public-private partnership delivery model will be in the public's interest [see next section]; and 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.

# Legislation: P3 program authorization (4 of 13)

## 4. Finding of public interest before procuring an eligible project

- WSDOT may procure an eligible project as a public-private partnership only upon issuing formal findings that such a partnership is in the public's interest.
- The department must adopt rules detailing the criteria and process for making such findings. At minimum, the criteria must include findings that:
  - Public ownership of the asset will be retained;
  - Transparency during the negotiation of a public-private partnership agreement will be provided;
  - Public oversight of the private entity's management of the asset can be retained.
- The finding of public interest must also include criteria that reflects the legislative purpose for this Act (see [Section 1, Purpose](#)).



# Legislation: P3 program authorization (5 of 13)

## 5. Eligible projects

### **Eligible projects include:**

- Transportation projects, whether capital or operating, where the state's primary purpose for the project is to facilitate the safe transport of people or goods via any mode of travel, and
- Facilities, structures, operations, properties, vehicles, vessels, or the like that are capable of generating revenue for other transportation projects.
- For any project involving tolls on a state facility, the legislature must approve the imposition of such tolls (per current law).



**Lunch break (until 12:30 pm)**



***Moderated discussion, continued:* proposed P3  
framework and draft legislative provisions**

# Legislation: P3 program authorization (6 of 13)

## 6. Eligible funding and financing

- WSDOT may accept any lawful source of funding for the project, including but not limited to appropriations or grants made by public entities, and contributions made by private entities.
- Any project agreement that proposes to utilize toll revenue must conform to current law requiring legislative approval to toll a state facility, and review and approval by the Washington State Transportation Commission of proposed toll rates.
- Subject to conditions, WSDOT may enter into financing agreements with the private party that require either or both parties to issue debt, equity, or other securities or obligations; enter into leases, concessions, and grant and loan agreements; or secure any financing with a pledge of revenue, continuing appropriations, or a lien or exchange of property, including but not limited to a property interest in the qualifying facility.
- Conditions:
  - WSDOT shall not enter into an agreement that could impact the state's debt capacity or the state's credit rating without review and approval of those provisions by the State Finance Committee (Treasurer, Governor, Lt. Governor).

# Legislation: P3 program authorization (7 of 13)

## 7. Proposer stipends and administrative fees

- Subject to appropriations made for this purpose, WSDOT may offer stipends to respondents of a solicitation for public-private partnerships. Stipends are intended to help encourage competition and innovation by helping partially defray respondent's cost to develop proposals. WSDOT may establish policies governing the qualifications, amount, and other terms of such stipends on a project-by-project basis.
- WSDOT may charge a reasonable administrative fee for the evaluation of unsolicited proposals.

# Legislation: P3 program authorization (8 of 13)

## 8. WSDOT authorized to consult with subject matter experts

- From appropriated funds or revenues from administrative fees, WSDOT may hire and consult with outside experts on any or all elements of a public private partnership project or proposal, from initial consideration of the appropriate delivery model, through contract execution and any required ongoing oversight or reporting.

# Legislation: P3 program authorization (9 of 13)

## 9. Requirements of partnership agreements.

### **Must include:**

- Conformance with all state laws related to wages and recognition of collective bargaining agreements.
- Provisions requiring performance bonds or similar guarantees to secure the payment of laborers, subcontractors, and suppliers.
- Provisions requiring funding for appropriating patrolling and law enforcement by the Washington State Patrol on state facilities.
- Provisions for public communication and participation with respect to the development of the project.

### **Must account for:**

- 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.
- The standard of service and state of good repair that must be adhered to by the private partner.
- Provisions and remedies for default by either party, and provisions for termination of the agreement (for cause or without cause).

# Legislation: P3 program authorization (10 of 13)

## 10. Finding that a negotiated agreement provides positive value for the public

- Prior to the execution of a P3 agreement, WSDOT must issue a formal finding that the tentative partnership agreement is expected to result in positive value for the public.
- The department must adopt rules detailing the process and criteria for measuring, determining, and transparently reporting positive value.
- At minimum, the criteria must include:
  - Comparison of the total costs to deliver the project as a public-private partnership compared to traditional or alternative delivery methods available to the department [Source: JTC P3 Work Group Mtg 2];
  - Comparison with the department's current plan, resources, capacity, and schedule to complete the project that documents the advantages of completing the project as a partnership versus solely as a public venture; and
  - Factors such as, but not limited to: Priority, cost, risk sharing, scheduling, and management conditions.



# Legislation: P3 program authorization (11 of 13)

## 11. Review and approval by the State Finance Committee

- After WSDOT has made a finding of positive public value (see section 10), if the proposed agreement contains any financing provisions that could materially impact the state's credit rating or impact the state's debt limit, the State Finance Committee (Treasurer, Governor, Lt. Governor) must review and approve of those provisions before a public-private partnership agreement can be executed.

# Legislation: P3 program authorization (12 of 13)

## 12. Public notice and involvement

- Prior to execution of a partnership agreement, and after any such agreement has been approved by the State Finance Committee (if applicable), [agency to be determined] is directed to take public comment on the proposed partnership agreement. A record of public comments received must be forwarded to the WSDOT Secretary for consideration prior to executing the proposed agreement.

# Legislation: P3 program authorization (13 of 13)

## 13. Office of Innovative Partnerships

- WSDOT's Office of Innovative Partnerships must adopt all administrative rules identified in [this proposed legislation] to carry out WSDOT's powers and duties as prescribed.
- WSDOT's Office of Innovative Partnerships must adopt policies that allow the Office to periodically conduct an evaluation of the agency's planned projects that are eligible for development as public-private partnerships to determine which projects should be proposed for advancement as a P3.
- The Office may conduct studies, research, analysis, and investigations of laws, administrative rules, policies, and projects from other jurisdictions in developing its own administrative rules and policies.
- Subject to available funding, the Office must develop a consistent framework for operations, including standardized procedures, procurement documents, procurement approaches, contract types, and other relevant materials and processes.
- The Office may contract with subject matter experts to carry out its duties, including but not limited to specialized financial, engineering, legal, and program management skills.



# Next Steps

# Next Steps and Planned Activities

## Before 2024 session:

- Revise the Objectives, Legislative Framework, and Key Provisions to reflect today's Work Group feedback
- Develop a short progress report on P3 study activities and status
- Assist legislative staff in developing draft legislation

## January through March 2024 – Phase 2: Implementation Plan

- Assess how two projects identified by Legislature might perform under a new P3 framework
  - Fish passage barriers
  - Development at WSDOT ferry terminals
  - (Potentially others as directed and subject to resource availability)
- Develop an Implementation Plan for a new P3 authorization and program at WSDOT

## April through June 2024:

- Re-convene Work Group to review draft Implementation Plan
- Prepare and deliver Final Report to Joint Transportation Committee in June 2024



**Adjourn**



**Backup slides (Q&A and other materials, if needed)**



# **JTC Public-Private Partnership (P3) Work Group**

Background Information Materials  
Meeting 3  
December 8, 2023

