National Conference of State Legislatures

The Forum for America's Ideas

Public-Private Partnerships for Transportation

A Toolkit for Legislators

Public-Private Partnerships for Transportation

A Toolkit for Legislators

By

Jaime Rall

James B. Reed

Nicholas J. Farber

At the direction of the
NCSL Partners Project on Public-Private Partnerships (PPPs) for Transportation

National Conference
of State Legislatures
The Forum for America's Ideas

William T. Pound
Executive Director

7700 East First Place
Denver, Colorado 80230
(303) 364-7700

444 North Capitol Street, N.W., Suite 515
Washington, D.C. 20001
(202) 624-5400

www.ncsl.org

October 2010

The National Conference of State Legislatures is the bipartisan organization that serves the legislators and staffs of the states, commonwealths and territories.

NCSL provides research, technical assistance and opportunities for policymakers to exchange ideas on the most pressing state issues and is an effective and respected advocate for the interests of the states in the American federal system. Its objectives are:

- To improve the quality and effectiveness of state legislatures.
- To promote policy innovation and communication among state legislatures.
- To ensure state legislatures a strong, cohesive voice in the federal system.

The Conference operates from offices in Denver, Colorado, and Washington, D.C.

Cover photo: **I-495 Capital Beltway High Occupancy Toll (HOT) Lanes, Virginia.** This nearly $2 billion public-private partnership is anticipated to introduce dynamically tolled lanes and replace aging infrastructure on the Capital Beltway by 2013. The total concession length will be 85 years: five years of construction and 80 of operation. (Photo by Trevor Wrayton, Virginia DOT.)

Printed on recycled paper.

ISBN 978-1-58024-612-5

Contents

List of Tables and Figures

Tables

Figures

Acknowledgments

The authors wish to thank the many people who assisted in the development and production of this report. Members of the NCSL Partners Project on Public-Private Partnerships for Transportation (also known as the PPP Working Group) supervised project activities, suggested agenda topics and expert faculty, helped define the scope and content of the report, and actively oversaw and suggested improvements to the various project drafts. Special gratitude is extended to the co-chairs of the working group, Representative Terri Austin, Indiana, and Representative Linda Harper-Brown, Texas, for their leadership, depth of knowledge and skillful garnering of consensus on this sometimes controversial subject. Staff chair Fred Lewis, West Virginia, made helpful contributions throughout the process. Particular thanks are also due to Senator Scott Dibble, Minnesota, who lent his full support to this effort as the chair of the NCSL Transportation Committee. A full list of working group members may be found in Appendix A.

We are grateful to several organizations that contributed funds to underwrite this effort and their representatives who provided valuable input throughout the project. These included the NCSL Foundation for State Legislatures—Caroline Carlson; AAA—Justin McNaull and Pete Nonis; the American Federation of State, County and Municipal Employees (AFSCME)—Dennis Houlihan; the American Road and Transportation Builders Association (ARTBA)—Hank Webster and Bill Toohey; the American Trucking Associations (ATA)—Ted Scott and John Lynch; Americans for Transportation Mobility Coalition (U.S. Chamber of Commerce)—Janet Kavinoky; Macquarie Capital—Geoff Segal; the Reason Foundation—Leonard Gilroy; and Transurban—Jennifer Aument. We also thank Jerry Zhao and Bob Johns of the University of Minnesota Center for Transportation Studies, each of whom acted as a technical resource for the project. Many thanks, too, to the sponsors of Phase II of this project (see Appendix A). Phase II will help legislators put this report's principles into practice, as states continue to seek innovative financing solutions for the nation's transportation needs.

We deeply appreciate the expert faculty who shared their knowledge with us at project meetings (see Appendix A) and other stakeholders who gave us the benefit of their advice, comments and suggestions. Special thanks go to Jeffrey N. Buxbaum, Principal, Cambridge Systematics, Inc.; Brian F. Chase, Senior Advisor, Castalia; Tyler Duvall, Former Acting Under Secretary and Assistant Secretary for Transportation Policy, U.S. Department of Transportation and Associate Principal, McKinsey & Company; Edward Farquharson, Project Director, Partnerships UK; John Foote, Senior Fellow, Harvard Kennedy School of Government; Jane Garvey, Former Administrator, Federal Aviation Administration and Chairman, Meridiam Infrastructure NA; James Kinsley, Vice Consul, UK Trade & Investment; Michele Mariani Vaughn, Senior Associate, The Pew Center on the States; Regina McElroy, Director, Office of Innovative Program Delivery, Federal Highway Administration; John B. Miller, Of Counsel, Patton Boggs LLP and President, Barchan Foundation, Inc.; Richard Norment, Executive Director, National Council for PPPs; Mary Peters, Former Secretary, U.S. Department of Transportation and Senior Advisor, Zachry Hastings Alliance; Robert Poole, Director of Transportation Policy, Reason Foundation; Frank M. Rapoport, Partner, McKenna Long & Aldridge LLP and Senior Advisor, Council of Project Finance Advisors (CPFA) Working Group; Jim Ray, Former Deputy Administrator and Former Acting Administrator, Federal Highway Administration and Senior Advisor, Venn Strategies; Patrick Rhode, Vice President, Cintra US; and David Wright, Special Consultant on PPP, International Financial Services.

Thanks are extended to Leann Stelzer of NCSL who edited and formatted the report and to NCSL interns Cortney Green and Alice Wheet for their research assistance.

1. Introduction

A variety of factors have negatively affected states' ability to pay for necessary maintenance of transportation infrastructure and to build new capacity to keep pace with and encourage economic development and job creation. These factors include changing economic conditions, a delayed federal transportation reauthorization bill, the declining value of the fuel tax (due to a number of factors) and a reluctance to increase it, and growing infrastructure needs. In this environment, public-private partnerships (PPPs or P3s) have been increasingly studied and pursued by state policymakers as one alternative method, among others, to procure transportation infrastructure improvements. Such partnerships combine a leveraged mix of public and private dollars to better bridge the gap between transportation needs and the financial resources available to meet those needs.

Thoughts from the NCSL Partners Project…

On Collaboration, Involvement and Education
"Public-private partnerships can be a valuable tool for states when they are developed by the executive and legislative branches in a collaborative atmosphere. Equally important is the obligation to involve the public. It is critical that elected officials educate themselves and the public when considering P3s against traditional procurement approaches."

Representative Terri Austin
Indiana
Co-chair, NCSL Partners Project on PPPs

As defined by the Federal Highway Administration, "A public-private partnership is a contractual agreement formed between public and private sector partners, which allows more private sector participation than is traditional. The agreements usually involve a government agency contracting with a private company to renovate, construct, operate, maintain, and/or manage a facility or system."[1] PPPs cover as many as a dozen types of innovative contracting, project delivery and financing arrangements between public and private sector partners. In PPPs, the private sector performs functions normally undertaken by the government, but the public sector remains ultimately accountable for the facility and the overall service to the public.

Thoughts from the NCSL Partners Project…

On Due Diligence
"In both the U.S. and around the world, PPPs have proven to be valuable tools in leveraging private capital, improving efficiencies, and managing and developing the transportation infrastructure and services that are the foundation of our economy. One of the central lessons we've learned from international PPP experience is that they are complex arrangements that need to be implemented with proper due diligence and attention to best practices, making the NCSL toolkit a valuable and critical policy resource for state lawmakers as they continue to explore PPPs and seek ways to close the transportation funding gap."

Leonard Gilroy
Director of Government Reform, Reason Foundation
Steering Committee Member, NCSL Partners Project on PPPs

Twenty-nine states and Puerto Rico have enacted authority for a state transportation agency to consider and enter into PPPs for highway projects; 20 states also allow transit PPPs. More than 80 transportation PPPs have been completed over 20 years in the states (this includes all design-build projects and a handful of transit and airport projects), involving more than $46 billion in investment.[2] (PPPs also have been used to procure other types of infrastructure, including schools, housing and water projects.)

With the growing interest in PPPs, the debate over their proper use has become somewhat polarized. The by-products of this polarization have included misunderstanding, misinformation and unrealistic expectations. Boosters and detractors of PPPs have dominated the public debate, while reasoned voices have been harder to discern. Through this report, NCSL seeks to bring a realistic and balanced understanding of the role of PPPs. The goal is to help state legislators as they consider whether and how to pursue PPPs within the context of their broader responsibility to the public interest.

2. NCSL Partners Project on Public-Private Partnerships (PPPs) for Transportation

State legislators and legislative staff involved with NCSL have been tracking the trends in transportation funding and finance, including PPPs, for several years. In early 2008, the debate sharpened, with influential members of Congress expressing concern about protecting the public interest in PPP arrangements. States were caught in the middle of an escalating debate as they sought innovative yet effective funding and project delivery mechanisms to maintain and expand transportation infrastructure. NCSL's policy regarding PPPs, adopted as part of its Surface Transportation Federalism Policy in July 2008, asserts that all funding and financing options must be available to states and that PPPs should remain state mechanisms. Further, the level of private sector participation is best determined by state and local authorities, and state legislators understand and will protect the public interest.[3]

To contribute a balanced, informed perspective that also would help protect states' ability to use PPPs as appropriate, NCSL formed a working group of state legislators, legislative staff and representatives of private sector entities to assemble reliable information and to identify effective tools for considering PPPs in the context of overall transportation funding decisions. (See Appendix A for a list of project participants.) The NCSL working group met, deliberated and gathered information for 18 months, analyzing legislators' needs and hearing from a variety of invited experts. It developed nonpartisan, balanced and absorbable materials to aid the legislative process, both in their respective states and when considering state-federal relationships.

The key focus of this report is the formulation of nine principles to help state legislators as they consider and perhaps adopt a procurement and financing approach involving PPPs. Roles and responsibilities of various policy actors—legislative branch, executive branch, private sector—also are described. The emphasis of this report is on transportation, although use of PPPs could be appropriate for a variety of other governmental endeavors as well.

This report begins with definitions and identification of key characteristics of PPPs. The range of PPP approaches—according to mission, method and money—is delineated. The next section frames the debate in terms of potential PPP-related benefits, concerns and controversies. State-federal relations and the federal role in PPPs are discussed, followed by a description of state legislative and executive agency roles and responsibilities. The centerpiece of the toolkit is the nine principles that promote a sound public policy approach to the consideration of PPPs. A key assumption of this approach is that the states are and should be primarily responsible for PPP policy and implementation decisions and that solid, balanced, comprehensive state enabling legislation is the key to thorough consideration of PPP proposals and protection of the public interest.

Thoughts from the NCSL Partners Project…

On PPPs as a Tool, not a Panacea

"PPPs are one of the many tools that can be used to help address America's infrastructure deficiencies. PPPs, however, are not the panacea for infrastructure funding."

Bill Graves, Former Governor, Kansas
President and CEO, American Trucking Associations Inc.
Steering Committee Member, NCSL Partners Project on PPPs

PPPs can be valuable options for states that are seeking innovative approaches and funding to repair crumbling infrastructure and build new projects. Supporters and opponents would both agree, however, that PPPs are best viewed as only one piece of the funding puzzle, as states address overall transportation needs. They can supplement overall public infrastructure investment and, when used, usually are combined with an extensive procurement and financing package on a given project. They are best suited to large-scale infrastructure assets that have ongoing maintenance requirements.[4]

It should be noted that PPPs can offer alternative project delivery methods or financing mechanisms, but, in the long term, do not provide new money for infrastructure. Revenues to repay the private investment must come from the same sources of public financing—tolls, fees or taxes. Thus, state decision makers will want to consider PPPs in terms of whether they provide better value or overall public service than could otherwise be purchased by those revenue streams.

3. What Are PPPs? Definitions and Key Characteristics

Definitions

PPPs cover a broad range of innovative contracting, project delivery and financing arrangements; thus, as one recent report points out, "references to public-private partnerships are wide-ranging and ambiguous, with little precision about how the term is used."[5] The U.S. Department of Transportation has provided this widely adopted definition of PPPs:

> A public-private partnership is a contractual agreement formed between public and private sector partners, which allows more private sector participation than is traditional. The agreements usually involve a government agency contracting with a private company to renovate, construct, operate, maintain, and/or manage a facility or system. While the public sector usually retains ownership in the facility or system, the private party will be given additional decision rights in determining how the project or task will be completed.[6]

A second definition—this from legislation passed in Puerto Rico in 2009—notes similar characteristics, and further emphasizes issues of mutual benefit and public interest:

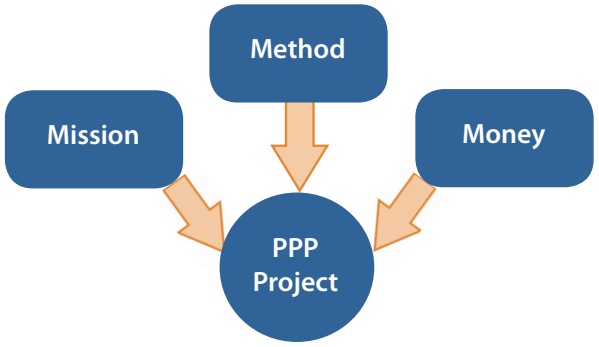
> A public-private partnership is an entity that couples the resources and efforts of the public sector with resources of the private sector by means of a joint investment that results in the benefit of both parties. Such partnerships are sought with the purpose of providing a service for citizens, as well as building or operating a facility or project that is held in high priority by the government… These partnerships shall be vested in high public interest, that is, the Commonwealth is neither relinquishing its responsibility of protecting such interest, nor waiving its rights to receive an efficient service, nor renouncing [the] ownership of the public assets included [in] the Partnership Contract.[7]

Although some authors suggest all relationships between public and private entities are partnerships,[8] most definitions of PPPs include certain key characteristics, such as ultimate public sector responsibility for and ownership of an asset; sharing and allocation of risk among public and private entities; contribution of resources by both public and private partners; a contractual agreement; and transfer to the private sector of traditionally public responsibilities.[9]

The Range of PPP Approaches: The Mission, the Method and the Money

Long-term leases of existing transportation assets have tended to dominate the PPP discourse in the United States, largely due to the highly publicized and controversial leases of the Chicago Skyway and the Indiana Toll Road. Although some policymakers have come to associate PPPs with this type of project, in fact, a wide range of possible PPP projects exists. PPP projects differ based on 1) the "mission," or the kind of facility or public service that is the focus of the project; 2) the "method," or the project delivery model; and 3) the "money," or the source of financing (Figure 1).[10]

Figure 1. PPP Project Components[11]



The Mission: PPP Assets and Services

The first key characteristic of a PPP project is its mission. This includes public sector goals and objectives for the project—focused on its intended results and public benefit—and, following from that, the kind of facility and public service to be provided. These policy decisions then will determine whether a PPP is appropriate or feasible and, if so, the project delivery structure and financing tools to be considered.

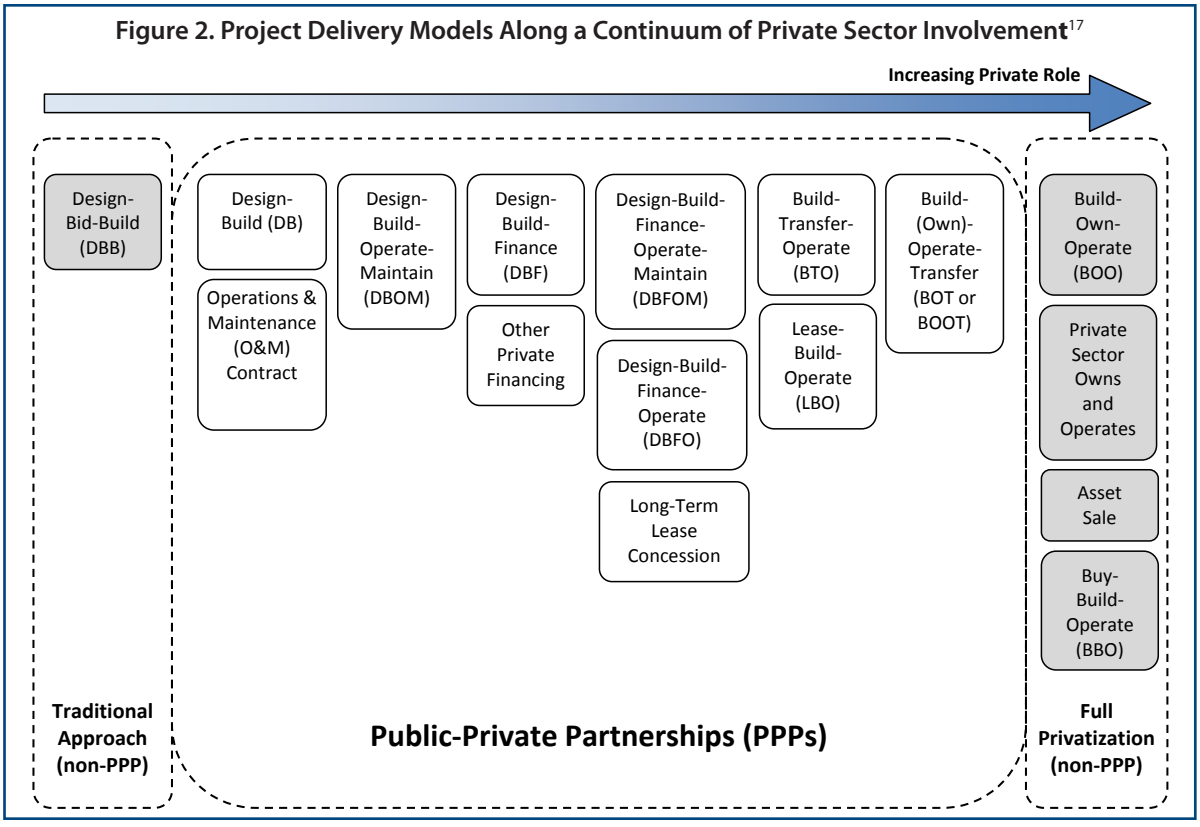
Projects with many different missions may be deliverable through PPPs. This report focuses on PPPs for transportation projects—especially highways—but these partnerships have been used in many sectors worldwide, including building or modernizing schools, hospitals and other health care facilities, traditional and renewable energy projects, water and wastewater utilities, government buildings, prisons, police and fire stations, and national defense projects. In the transportation sector, PPPs can help deliver diverse highway and bridge, rail, mass transit, aviation, ferry and port projects. PPPs are not appropriate for every project, however; in fact, less than 20 percent of transportation infrastructure is likely to be deliverable through PPPs (see also Principle 6).[12]

One significant difference among PPPs in terms of mission lies between projects that develop new infrastructure ("greenfield" projects) and those that operate, maintain, preserve or improve existing infrastructure ("brownfield" projects). Blended greenfield-brownfield projects also exist—for example, adding new high-occupancy toll lanes to an existing highway to increase its capacity.[13] For a pure brownfield project, appropriate PPP project structures are limited to those in which a private contractor assumes responsibility for operations and maintenance; these structures include long-term operations and maintenance (O&M) contracts or lease concessions (see *Glossary*). Many more project delivery models are available for greenfield projects, depending on which responsibilities are transferred to the private sector.[14] Most transportation PPPs in the United States have been greenfield projects, several of which are located in Texas (see Appendix G).

The Method: PPP Project Delivery Models

The second key characteristic of a PPP is the method used for project delivery. PPP project delivery models can be thought of as being on a continuum of public-private mixes (Figure 2).[15] At one extreme is traditional public project delivery, where the public sector finances, owns and retains control over the project throughout its life cycle. Such projects may outsource certain functions to the private sector—through traditional design-bid-build contracting, for example (see *Glossary*)—but they are not PPPs. At the other extreme is privatization, where projects are privately financed, owned and controlled, subject only to overarching public laws and regulations. These, too, are not PPPs. Between these poles of public and private control lie a range of PPP options, where the public sector retains ultimate responsibility for and ownership of an asset, but the private sector assumes one or more traditionally public roles in and responsibilities for project delivery.

Figure 2. Project Delivery Models Along a Continuum of Private Sector Involvement[17]



Roles assumed by the private sector in a PPP can include designing, building, operating, maintaining or financing a facility and, in some cases, assuming limited-term ownership. Thus, as shown in Figure 2, PPPs range from design-build contracts,[16] in which one private contractor is responsible for both the design and construction of a project, to build-own-transfer, in which a private entity owns an asset for a period of time before eventually transferring ownership to the public sponsor. (See *Glossary* for more about specific PPP project delivery models and innovative contracting approaches.)

Another way to think about PPP project delivery models is in terms of risk allocation. In traditional project delivery, all risk for a transportation project is borne by the public sector. PPPs, in contrast, are characterized by a transfer of risk associated with a transfer of responsibilities, and essentially differ based on which risks and responsibilities for a facility are contractually transferred to the private sector (Table 1).[18] When the private sector assumes a risk in a PPP, it becomes responsible for solving certain potential problems that might arise in project delivery and for absorbing related financial losses (or, conversely, for benefitting from related financial gains). Risks usually assumed by the private sector include those associated with the phases of the project with which it will be involved, such as those related to uncertainties in construction cost, schedule, operations and maintenance and, in some cases, traffic and revenue. The public sector tends to retain risks related to uncertainties in environmental permitting and clearance, right-of-way acquisition and changes in applicable law. Environmental and *force majeure* risks may be shared.[19]

Table 1. Private Sector Risks and Responsibilities under Different Project Delivery Models[20]

	Functional Responsibilities and Project Risks[a]												
Project Delivery Models	Planning	Environmental Clearance	Land Acquisition	Finance	Preliminary Design	Final Design	Construction	Construction Inspection	Maintenance	Operations	Long-Term Preservation[b]	Traffic Revenue	Asset Ownership
Traditional Design-Bid-Build (DBB) (not a PPP)						•	•						
Design-Build (DB)						•	•	•					
Design-Build with Warranty						•	•	•			•		
Operate and Maintain (O&M)									•	•			
Construction Management at Risk (CM at Risk)					•	•	•	•					
Design-Build-Operate-Maintain (DBOM)				•		•	•	•	•	•		•	
Design-Build-Finance-Operate (DBFO)				•		•	•	•	•	•		•	
Brownfield Concession				•					•	•	•	•	
Greenfield Concession				•		•	•	•	•	•	•	•	
Build-Transfer-Operate (BTO)				•	•	•	•	•	•	•	•	•	
Build-Own-Operate-Transfer (BOOT)	•	•	•	•	•	•	•	•	•	•	•	•	•
Build-Own-Operate (BOO) (not a PPP)	•	•	•	•	•	•	•	•	•	•	•	•	•
Asset Sale (not a PPP)				•					•	•	•	•	•

Notes
[a] Functional responsibilities and project risks noted with a dot may be transferred entirely to the private partner or shared with the public sponsor, depending on the contract.
[b] Refers to long-term risk of asset failure or physical obsolescence.

The Money: Sources of Financing for PPPs

The third key characteristic of a PPP is the money, meaning which elements of the project are financed by the public or private partners, and how. In some PPPs, the public sector pays for construction, improvement, operation and maintenance of an asset using public funds from taxes, direct user fees or tolls, borrowed funds (typically bonds or related instruments) or grants from other levels of government. In others, the public sector seeks to attract the private sector to finance part or all of a project with private resources that may come from direct user fees or tolls, funds borrowed from private capital markets (typically bonds or other debt) or private equity.[21]

If the private sector provides financing, it will need to cover costs and also make a return on investment, either from a revenue stream generated by the facility (such as tolls) or from public sector compensation. Some compensation arrangements—such as availability payments and shadow tolls—allow the public sector to make regular payments to a private partner based on a facility's available capacity, traffic levels or other performance measures as defined by contract. Privately financed transportation PPPs using these models often do not involve any direct user fees or tolls.

Figure 3. Innovative Finance Mechanisms that Can Support PPPs[23]

Federal-Aid Fund Management Tools
- Advance Construction (AC) and Partial Conversion of Advance Construction (PCAC)
- Federal-Aid Matching Strategies
  - Flexible Match
  - Tapered Match
  - Toll Credits (Soft Match)
  - Program Match
  - Third-Party Donations
  - Using Other Federal Funds as Match

Federal Debt Financing Tools
- Grant Anticipation Revenue Vehicles (GARVEEs)
- Private Activity Bonds (PABs)

Federal Credit Assistance Tools
- Transportation Infrastructure Finance and Innovation Act (TIFIA)
- State Infrastructure Banks (SIBs)
- Section 129 Loans

Public-Private Finance Mechanisms
- Pass-Through Tolls / Shadow Tolling
- Availability Payments

Other Innovative Finance Mechanisms
- Non-Federal Bonding and Debt Instruments
- Value Capture Arrangements such as Tax Increment Financing (TIF)

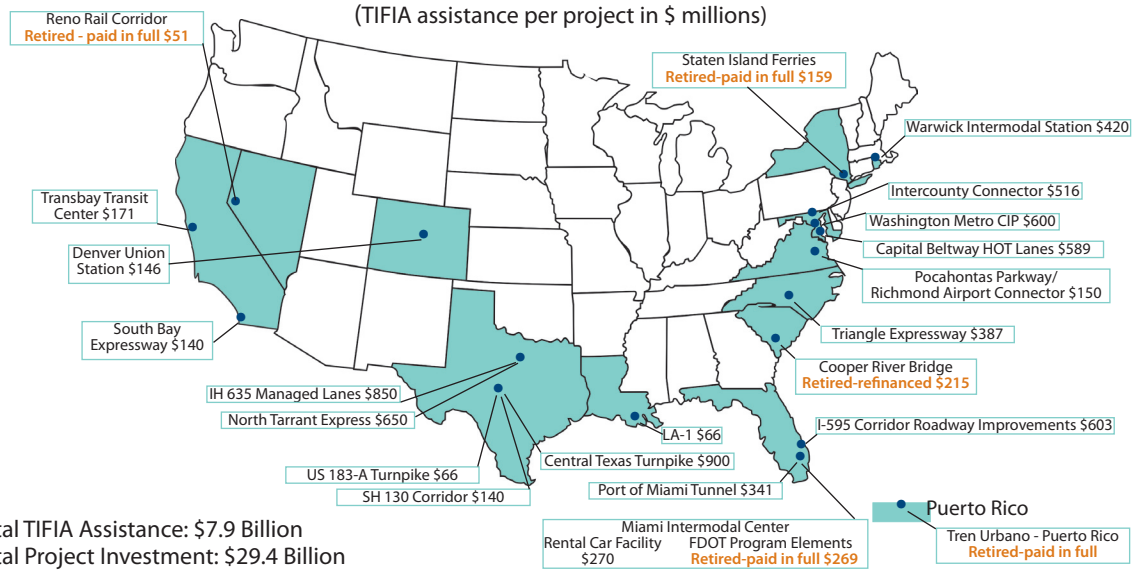
In addition to user fees and the standard financing mechanisms available in general capital markets, other innovative financing tools exist that can facilitate PPP projects (Figures 3 through 5 and Table 2). Transportation Infrastructure Finance and Innovation Act (TIFIA) federal credit assistance, private activity bonds and state infrastructure banks, for example, provide access to low-interest or tax-exempt debt to private sector entities for transportation projects. These tools can reduce financing costs for private entities to levels that are more competitive with tax-exempt state and municipal financing rates.[22] (See *Glossary* for more on these and other innovative financing methods.)

Table 2. Projects Using Private Activity Bonds (PABs) as of January 2010[26]

PROJECT	PAB ALLOCATION
BONDED ISSUED	
Capital Beltway HOT Lanes, Virginia (*issued 6-12-08*)	$589,000,000
North Tarrant Express, Texas (*issued 12-17-09*)	$400,000,000
Subtotal	**$989,000,000**
ALLOCATIONS	
IH-635 (LBJ Freeway), Texas	$2,650,000,000
RidgePort Logistics Center, Will County, Illinois	$554,800,000
CenterPoint Intermodal Center, Joliet, Illinois	$1,340,000,000
Knik Arm Crossing, Alaska	$600,000,000
Mississippi DOT Jackson Airport Parkway	$200,000,000
Subtotal	**$5,344,800,000**
TOTAL PAB ALLOCATIONS	**$6,333,800,000**

Figure 4. Approved TIFIA Projects as of July 2010[24]

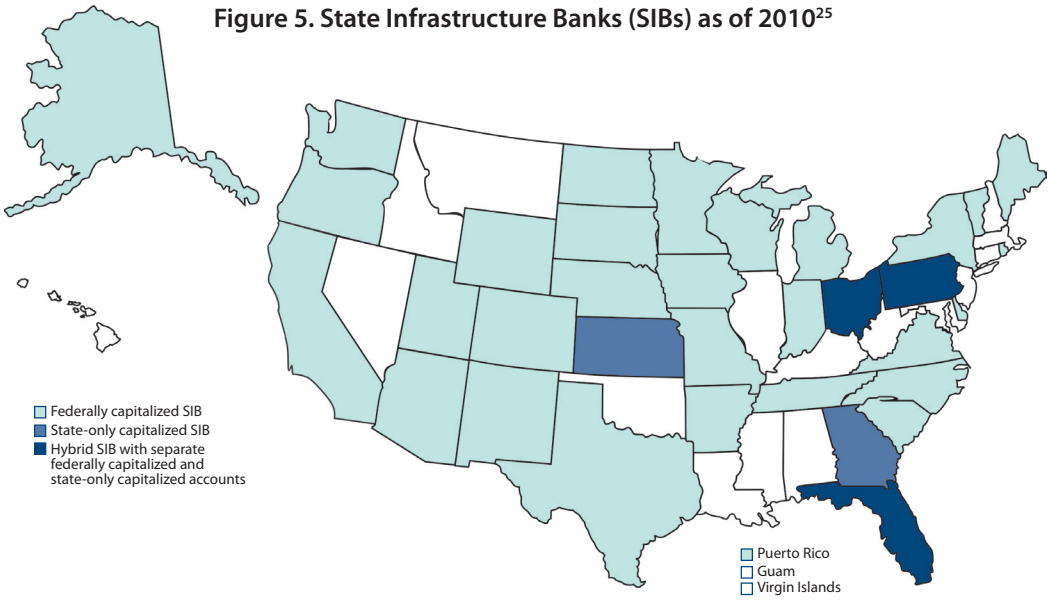
(TIFIA assistance per project in $ millions)



Total TIFIA Assistance: $7.9 Billion
Total Project Investment: $29.4 Billion

The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides federal credit assistance to public or private sponsors of eligible major surface transportation projects. See *Glossary* for more information.

Figure 5. State Infrastructure Banks (SIBs) as of 2010[25]



A state infrastructure bank (SIB) is a state-administered revolving fund that provides credit assistance to public and private sponsors of federal-aid highway projects. See *Glossary* for more information.

Chicago Skyway, Illinois (99-year lease). The Chicago Skyway is a 7.8-mile elevated toll road connecting Chicago to the Indiana Toll Road at the state line. It was leased in 2005 for $1.83 billion. (Photo: Peter S. Schultz)

Indiana Toll Road, Indiana (75-year lease). The 157-mile Indiana Toll Road—which stretches from Ohio to Illinois—was leased in 2006 for $3.85 billion. (Photo: Jon L. Hendricks/The Times file photo)

A Note on Brownfield Long-Term Lease Concessions

In the United States, many policymakers, analysts and members of the general public have come to associate PPPs with long-term lease concessions of existing infrastructure ("brownfields").[27] This is largely due to the high-profile leases of the Chicago Skyway in 2005 and the Indiana Toll Road in 2006. In a brownfield concession, an existing public asset is leased to a private entity, the "concessionaire," for a specified time. The concessionaire typically pays an up-front lump sum fee and/or a share of ongoing revenues to the public agency in exchange for the right to collect availability payments or direct revenue generated by the asset over the life of the contract (usually 25 years to 99 years). The private entity also agrees to operate, maintain and/or improve the facility during that time.[28] Up-front fees for brownfield concessions can be sizable. Private concessionaires paid $1.83 billion for the 99-year lease on the Chicago Skyway and $3.85 billion for the 75-year lease on the Indiana Toll Road.

Much of the current public discourse about PPPs in the United States focuses on potential benefits and controversies related to brownfield concessions, especially those that involve tolls. Many policymakers have questions and concerns about such projects. However, opportunities for a long-term lease of an existing asset—especially one involving tolls—are relatively few in the United States. Most states simply will not have brownfield toll roads to lease[29] and are more likely to enter into other types of PPPs. In fact, most PPP activity in the United States to date has involved greenfield, not brownfield, projects. For these reasons, this report addresses both brownfield concessions and other project types.

PPP Project Participants

A wide variety of stakeholders may be involved in a transportation PPP, based on its mission, its approach to project delivery and financing, and the legal environment in which it takes place. Possible PPP participants who may determine the environment for PPP projects or take part in delivering a specific project may include:

- State legislators, who create the legal environment for PPPs and may play a role in project approval (see *The State Legislative Role in PPPs* on pages 15 to 19);
- A public sector executive agency—such as a department of transportation or toll authority—that will act as project sponsor, enter into the PPP contract with one or more private entities, and provide project management and oversight (see *The State Executive Role in PPPs* on page 19);
- Other public officials who may play a role in project selection or approval, such as governors, mayors, state transportation commissions or boards, metropolitan planning organizations or members of local legislative bodies (see Appendix B);
- Equity participants, such as funds and concessionaires;
- Lenders, such as commercial banks, state infrastructure banks or federal credit assistance programs;
- Private sector companies or public sector employees who provide design, construction, or operations and maintenance services;
- Technical, legal, financial or other advisors to the public or private partners;
- Voters, who in some jurisdictions must approve certain projects (see Appendix B);
- Taxpayers, who may provide funding through taxes; and/or
- Users of the facility, who may provide funding through direct user fees or tolls.

4. Framing the Debate: Potential PPP-Related Benefits, Concerns and Controversies

PPP analysts and stakeholders have identified several potential benefits of transportation PPPs for the public sector and the public interest, as well as potential concerns and controversies. State policymakers may find it helpful to become familiar with these potential benefits and concerns, since they have arisen in many public debates about PPPs in the United States. An important caveat here is that, in general, the advantages of PPPs are realized only when the public sector takes a careful and well-informed approach to enabling legislation, project analysis and selection, procurement, contracting, and long-term contract management and oversight. Some identified concerns may be averted in the same way.[30] Guidelines for how state legislators may help secure the benefits of PPPs—and address some of the related concerns—are discussed in depth in the Principles section starting on page 21.

Potential Benefits

Potential PPP Benefits

- Private financing and project acceleration
- Monetization of existing assets
- Cost and time savings
- Lifecycle efficiencies
- Improved project quality
- Risk transfer
- Public control and accountability

Private Financing and Project Acceleration

By providing access to additional capital from private-sector financing sources, PPPs can facilitate the delivery of projects that otherwise might have been delayed or not built at all because of state and local fiscal constraints. More than $180 billion in private capital is estimated to be available now for infrastructure investment.[31] Innovative financing mechanisms such as availability payments or Grant Anticipation Revenue Vehicles (GARVEEs) (see *Glossary*) may help further by spreading the public sector's investment in a project over an extended period of time.[32]

Thoughts from the NCSL Partners Project…

On Project Acceleration

"If you have a major transportation project waiting for funding, look into public-private partnerships. There may be an application that can make the project a reality relatively quickly."

William D. Toohey Jr.
Executive Vice President & COO, ARTBA
Steering Committee Member, NCSL Partners Project on PPPs

Monetization of Existing Assets

PPPs that involve up-front payments or revenue-sharing arrangements, it is argued, can be used to extract value from existing transportation assets and raise substantial funds for other public projects and purposes. These funds also may be leveraged to create other potential long-term financial benefits for the public sector. For example, part of the $1.83 billion up-front payment for the lease of the Chicago Skyway was used to pay off some of the city's general obligation debt—which improved the city's credit rating and reduced the cost of future debt—and to create a reserve fund that can generate substantial net revenue in interest. This asset had previously operated at a loss and had outstanding debt, which also was paid off by lease proceeds.[33] The $3.85 billion lease of the Indiana Toll Road was used to fund the 10-year statewide "Major Moves" transportation plan; the transportation infrastructure to be improved or built under this plan also may yield indirect economic benefits to the state. It has been noted, however, that fluctuations in the economy and rising construction costs affect the real value of up-front lease payments to the public sector.[34]

Cost and Time Savings

Current data indicate that PPPs often can result in significant project cost and time savings compared to traditional procurement. Causes can include direct incentives to the private contractor for on-time delivery; use of warranties (see *Glossary*) or performance-based contracting; competition among bidders; transfer of risk to the private sector for cost and schedule overruns or revenue shortfalls; and lifecycle efficiencies (see below).[35] Some private contractors, however, may lower their costs by cutting staff, hiring non-union employees, or reducing pay and benefits, which could raise labor-related concerns (see *Labor Concerns* on pages 12 to 13).

Lifecycle Efficiencies

Lifecycle efficiencies also can result in significant cost savings—up to 40 percent—for PPP projects.[36] In an integrated, lifecycle approach to project delivery—such as a design-build or DBOM approach (see *Glossary*)—a single contractor is responsible for multiple project phases such as design, construction, operations and/or maintenance. This, in theory, gives the private contractor an incentive to reduce costs across a facility's entire lifecycle, for example through innovative design that reduces construction costs, high-quality project delivery that lowers the cost of maintenance and improvements, or up-front maintenance that avoids costly rebuilds down the road.[37] Some analysts assert that integrated delivery approaches also can reduce delays due to collaboration between those responsible for different project phases.[38]

Thoughts from the NCSL Partners Project…

On the Usefulness of PPPs and Design-Build

"Public-private partnership initiatives can be very useful to states as they attempt to finance necessary transportation infrastructure projects. For example, in our state of Washington, the design-build procurement process has proven to be a contracting technique that encourages innovative project design and construction as well as faster delivery."

Senator Mary Margaret Haugen
Washington
Steering Committee Member, NCSL Partners Project on PPPs

Improved Project Quality

Analysts have identified several ways in which PPPs can potentially improve project quality. Innovative contracting methods can give a private contractor more flexibility to incorporate state-of-the-art technologies and techniques, which may result not only in better quality for one project, but also provide examples of best practices that can be applied to other projects.[39] Use of warranties or performance-based payment arrangements can give a private contractor direct incentives to build a higher-quality project. Integrated project delivery approaches can also, in theory, encourage a private contractor to prioritize quality during design and construction, in order to lower costs during the operations and maintenance phase.[40]

Risk Transfer

A PPP allows the transfer of certain project risks from the public to the private sector (see page 5). This enables the public sector to reduce its own risk and potential financial losses for a project. Further, allocating risk to the party best able to manage it makes it less likely that each project risk will materialize, thus reducing the overall project risk.[41] The up-front consideration of risk in a PPP agreement may also facilitate less costly and more timely risk mitigation.[42] Again, however, these potential benefits depend on careful project analysis, contracting, and public sector monitoring and enforcement of the PPP agreement.[43]

Public Control and Accountability

Although some analysts warn that PPPs can diminish public control over public assets (see *Loss of Public Control and Flexibility* on page 11), others assert that PPPs actually enhance public control over, and accountability for, transportation infrastructure. In a PPP, the contract details the many responsibilities and performance expectations the public agency requires of the private entity, including penalties, incentives, and default and termination provisions, as well as limits on tolls, fees or rates of return. Thus, by specifying the desired performance standards in the PPP contract and holding the private entity financially accountable for meeting them, it is argued, the public sector can potentially enhance its control over the project's outcomes.[44]

King Coal Highway, West Virginia (Special Negotiated Agreement). Some construction work for this 90-mile, four-lane highway is being done by local mining companies as they extract coal nearby. (Photo: FHWA)

Potential Concerns and Controversies

Potential PPP Concerns and Controversies
- Loss of public control and flexibility
- Private profits at the public's expense
- Loss of future public revenues
- Risk of bankruptcy or default
- Accountability and transparency
- Environmental issues
- Labor concerns
- Foreign companies
- Toll road controversies
- Specific contract terms

Analysts have identified several potential concerns and controversies related to transportation PPPs.[45] Some pertain to the increased private sector involvement in any PPP and others to the terms of individual projects, particularly brownfield concessions. Again, some of these may be mitigated to some extent through well-crafted enabling legislation and contract terms, as well as through careful project analysis and selection, procurement, and long-term contract management and oversight.[46]

Loss of Public Control and Flexibility

Some critics warn that PPP agreements—especially for brownfield concessions that may last for several generations—constrain the government's ability to make further policy decisions that affect the road and its users for the duration of the contract.[47] In response to the assertion that well-crafted PPP contract provisions enhance public control and accountability (see *Public Control and Accountability* on page 10), it has been argued that "no contract can be crafted well enough to … predict the public's needs and contingencies in the distant future," especially contracts that last more than 35 years.[48] One Harvard scholar has critiqued what he calls the "overuse of long-term concession contracts as the method of regulation."[49] To specifically address concerns about lengthy contracts, European Union countries limit PPP contracts to between 21 years and 35 years.[50] Likewise, some states such as Florida, Maine and Mississippi—and Puerto Rico—have laws that restrict term lengths (see Appendix B).[51] Some say, however, that these limits may prevent a project from achieving the best possible value for money, and that concession terms should be decided on a project-by-project basis.[52]

Noncompete or similar clauses in PPP agreements, especially for brownfield concessions, also raise concerns about potential loss of public control.[53] These clauses prohibit, limit and/or elicit compensation for highways or other transportation facilities that may draw traffic from a leased toll road. The public sector's ability to deliver needed infrastructure is thus constrained. As a result of noncompete clause controversies and growing experience with other alternatives,[54] the common approach now is for PPP agreements to include limited compete or compensation clauses that address the predominant potential financial risks from competing facilities, but that also seek to protect the public interest.[55] Some states—such as Arizona, California, Colorado, Florida, Mississippi, North Carolina and Texas—prohibit noncompete clauses in statute (see Appendix B).[56]

In general, concerns about public control are addressed in PPP contracts by termination or "buy back" clauses that define how a facility may return to public control,[57] as well as renegotiation clauses that define how either party may amend the contract. Engaging in termination, buy-back or renegotiation, however, may incur significant added costs and create difficulties for the public sector.[58]

Private Profits at the Public's Expense

Concerns have been expressed that private companies may seek a profit even at the public's expense—for example, by skimping on maintenance and repairs to boost profits, requiring compensation for lost revenues due to competing public transportation facilities (see *Loss of Public Control and Flexibility*, above), or reaping excessive profits through ever-higher tolls and fees.[59] Contract provisions related to performance standards, limited compete or compensation clauses, and limits on tolls and fees have been used to address these concerns. Some stakeholders, however, believe that contractual restrictions on tolls and fees still leave private concessionaires too much discretion to raise rates (see also Principle 3).[60]

Another related concern has to do with unsolicited proposals, which allow the private sector to propose projects outside of state and local transportation plans. Some stakeholders argue that unsolicited bids encourage public agencies to consider projects that are profitable to private developers before those that are a greater priority for the public.[61] Others, however, argue that unsolicited bids can be a source of innovation.[62] This concern has been addressed by some state statutes that require PPP projects to be consistent with transportation plans, and by others that either prohibit unsolicited proposals or provide a review process for them (see also Principle 6).

Loss of Future Public Revenues

PPPs—particularly brownfield concessions involving tolls—have been criticized for trading potentially more valuable future toll revenue for up-front payments, essentially shortchanging the public sector over time.[63] The higher cost of non-tax-exempt private financing and the need to provide a return on investment also may result in higher overall financing costs for the private sector. These costs then must be repaid through lower up-front payments to the public sector and/or higher tolls.[64] On the other hand, it is argued, in this kind of PPP the private sector also assumes the risk of potentially lower-than-expected toll revenues, while the public sector may benefit from the potential indirect effects of asset monetization (see *Monetization of Existing Assets* on page 9). Concerns about lost revenue have been addressed partly through careful asset valuation (see also Principle 8) and revenue-sharing agreements, in which the public sector receives a portion of ongoing revenues from the facility (see *Glossary*).

Risk of Bankruptcy or Default

Some stakeholders express concern about how default by a private partner could affect the public sector, especially for long-term lease agreements. Recent examples of PPP bankruptcies in the United States include the Las Vegas Monorail, South Carolina's Southern Connector and California's South Bay Expressway (see Appendix G). Of special concern are agreements in which the public sector is at particular financial risk in case of bankruptcy—for example, if it has guaranteed the private partner's loans[65] or is otherwise owed money at the time of default.[66] These issues generally are addressed through PPP contract provisions that transfer financial risk and define what happens to the asset should the private entity be unable to pay its debts or declare bankruptcy. In some cases, the facility reverts to the state, which can either take it over or re-lease it with another private operator. This may create additional, unexpected costs for the public sector, however. In other situations—such as the Chicago Skyway—the lenders first have an opportunity to remedy the default and either operate the facility or appoint a successor to do so.[67] If a private concessionaire should need to sell, get out of, or modify a contract during the lease term, final approval generally rests with the state.[68]

South Bay Expressway, California (DBFO). This 9.3-mile, privately funded toll road was the first PPP to use TIFIA financing (see Glossary). The private franchise—South Bay Expressway, LP—filed for bankruptcy in 2010. (Photo: FHWA)

Accountability and Transparency

Some complicated PPP agreements have been criticized for being "rushed through without the public or their elected officials fully understanding the implications."[69] In one recent survey of state departments of transportation, 30 percent of respondents named transparency as a main concern about PPPs, and more than 70 percent considered it an important measure to protect the public interest.[70] Transparency in this context includes adequate opportunities for both public input and legislative review during the PPP decision-making process.[71] Concerns may arise, however, about the competing need to maintain some confidentiality during the proposal process to protect bidders' proprietary information and the state's negotiating stance.[72] To address this, several states—including Delaware, Indiana and Texas—address confidentiality issues in statute (see also Principles 4 and 9).[73]

Environmental Issues

Concerns have been raised that PPPs may not sufficiently safeguard the environment. Some say, for example, that PPPs may allow private entities to choose less costly and less environmentally friendly construction and maintenance methods; encourage higher traffic rates—yielding higher emissions—to maximize revenues; or use private financing to avoid the National Environmental Policy Act (NEPA) requirements for federally funded projects. To address this, PPP contracts may include enforceable environmental performance standards; environmental studies and mitigation also have been integrated into PPP processes.[74]

Labor Concerns

PPPs have created significant labor issues in the United States and other countries. The concern for brownfield projects is continued employment of existing employees, including their wages, benefits, pensions, working conditions and collective bargaining rights; for greenfield projects, it is that the private sector meet prevailing wage requirements.[75] To address this, some PPP contracts have included workforce protections.[76] Laws in some states—Delaware, Illinois, Indiana and Massachusetts, for example—also ensure prevailing wage requirements for PPP projects.[77] Davis-Bacon Act labor and contracting requirements apply to projects with federal funding.[78] Note that labor protections and prevailing wage requirements may result in higher project costs (see *Cost and Time Savings* on pages 9 to 10).

Foreign Companies

Foreign-led consortia have won bids for some PPPs in the United States and are likely to continue to do so, based on their international experience and expertise with such projects. Concerns about foreign concessionaires or operators of U.S. transportation facilities mainly involve foreign control of domestic assets, national security issues, and potential federal preemption of state and local authority in cases involving international trade issues.[79] To address some of these concerns, Arizona law requires that foreign companies in PPP concessions be certified to do business in the state (see Appendix B).[80] Other stakeholders, however, point to the benefits of attracting foreign investment for U.S. infrastructure and drawing on international innovations in project delivery. In addition, foreign-led consortia may include direct equity investors from the United States as well as up to hundreds of domestic subcontracting firms, and many U.S. pensions have invested in non-U.S. investment funds, thus "blurring the line between foreign and domestic interests."[81]

Toll Road Controversies

Many concerns about brownfield toll projects also apply to public toll roads. For example, traffic diversion to untolled routes,[82] removal of tolls upon termination, and toll rates are issues for public and private toll roads alike. Likewise, non-compete clauses are not unique to PPPs, but often have been used in the public sector as well.[83] In PPPs, many of these issues are addressed through contract provisions or enabling legislation (see also Principle 2 for more on separating the PPP and tolling debates).

Eagle P3 Commuter Rail Project, Colorado (DBFO with availability payments). This commuter rail project—due to start operations in 2016—will include one line from downtown Denver to Denver International Airport. An estimated $900 million of the total cost will be privately financed. (Photo: RTD)

Specific Contract Terms

Controversies have arisen about many other specific PPP contract terms in addition to those listed above, often in the context of brownfield concessions. Maintenance standards and handback provisions; safety and enforcement; commercial development rights; data privacy and ownership; and liability, indemnification and insurance issues are addressed in PPP contracts, and have been identified as potential issues.[84] General concerns exist about whether executive agencies have sufficient capacity to thoroughly analyze PPP projects and negotiate contracts that adequately protect the public interest. Advisors and consultants, peer-to-peer dialogue and public PPP advisory bodies have been used to enhance public sector capacity (see Principle 1).

5. State-Federal Relations and Federal Government Roles in the PPP Process

In many countries around the world, PPP policies are set at the national level. In the United States, however, state governments own, operate and finance transportation assets.[85] Thus, state-level policymakers decide whether and how each state will allow PPP projects, while state executive agencies such as departments of transportation often act as PPP project sponsors. The states also have considerable authority over whether to implement tolls or congestion pricing.[86] The federal role in the United States has thus far been limited to influencing states' use of PPPs through guidelines for federal funds and federal-aid highways, innovative financing tools, experimental pilot programs and the provision of information.[87]

Guidelines for Federal Funds and Federal-Aid Highways

During the last few decades, federal legislation has increasingly facilitated use of PPPs through relevant guidelines for federal funds and federal-aid highways. Federal legislation passed in 1991 first allowed federal funds to be mixed with private funds for highway development and construction. It also authorized states to use federal highway funds on any toll road owned by a public entity and on approved private facilities, excluding construction of new toll roads on the Interstate system.[88] In the 2005 federal transportation bill (SAFETEA-LU), Congress eliminated dollar thresholds on design-build contracting, making any federal-aid highway project potentially eligible to use this approach.[89]

Innovative Financing Tools

Federal legislation has created several innovative financing tools that facilitate PPPs. These include federal-aid fund management tools, which provide states with greater flexibility in how they manage federal highway funds; federal debt financing tools such as Grant Anticipation Revenue Vehicles (GARVEEs) and private activity bonds; and federal credit assistance through the Transportation Infrastructure Finance and Innovation Act (TIFIA), state infrastructure banks or Section 129 loans.[90] These tools can reduce financing costs for private entities to be more competitive with tax-exempt state and municipal financing rates.[91] (See *Glossary*, Figures 3 through 5, Table 2 and pages 5 to 7 for more on innovative financing methods.)

Experimental Pilot Programs

Federal legislation has initiated several experimental pilot programs to evaluate PPP-related project delivery and financing models. For example, the Special Experimental Project No. 15 (SEP-15), established in 2004, exists to encourage state experimentation with innovative PPP approaches to project delivery.[92]

Information

Several federal agencies have provided substantial information about PPPs. The U.S. Department of Transportation's Federal Highway Administration (FHWA) has offered numerous publications and public presentations; its Office of Innovative Program Delivery is especially tasked with providing information, technical assistance and expertise about PPPs to the states, and has developed an extensive Web site to serve as a clearinghouse for information about innovative project delivery and financing options.[93] The U.S. Department of Transportation also has developed model PPP enabling legislation for states to consider.[94] Other federal agencies such as the Congressional Research Service and the Government Accountability Office have provided additional in-depth reports and studies about PPPs.[95]

6. State Government Roles in the PPP Process

In the United States, state governments are primarily responsible for owning, developing financing mechanisms for, and operating their transportation assets. Both legislative and executive branches of state government are involved in the PPP decision-making and implementation process. Stages of this process include deciding whether a state will engage in PPPs; creating a policy framework; establishing a PPP program; developing, evaluating and selecting projects; engaging in procurement processes such as negotiation and bidding; contracting; and managing and overseeing contracts.

The State Legislative Role in PPPs

Legislatures are primarily responsible for deciding whether a state is to engage in PPPs and, if so, crafting a policy framework to define the objectives and rules of PPP implementation.[96] Because enabling legislation guides a state's PPP program development and the selection and execution of specific projects, legislators can be directly or indirectly involved in all stages of the PPP process. In some states, legislative approval is also required for specific projects.

Enabling Statutes

Enabling statutes that grant an existing or new executive agency the authority to enter into one or more PPP agreements for transportation projects—and define the limits of that authority—are a necessary precursor to PPP implementation.[97] These statutes set conditions that promote or prevent PPPs, guide development of state PPP programs, provide foundations for PPP contracts and affect the risks involved for each party.

PPP legislation first was enacted more than 20 years ago in California (AB 680, 1989); a few years later, Virginia adopted its comprehensive Public-Private Transportation Act (1995). The number of states with PPP enabling statutes continues to grow. As of October 2010, 29 states and Puerto Rico had enacted laws authorizing PPPs for highway and bridge projects (see Appendix B and Figure 6)[98] and 38 states and Puerto Rico had specifically authorized design-build approaches (see Appendix E and Figure 7).[99] Model PPP and procurement legislation also has been developed.[100]

Figure 6. States with PPP Enabling Legislation[101]

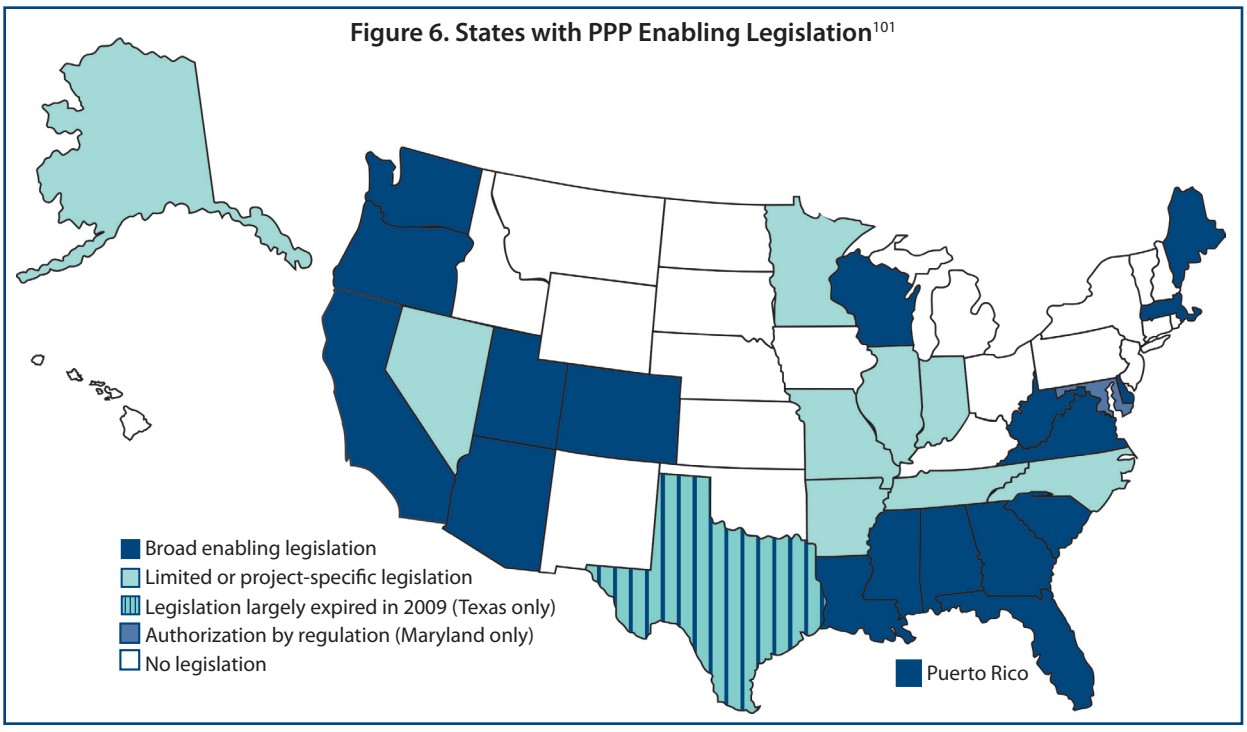
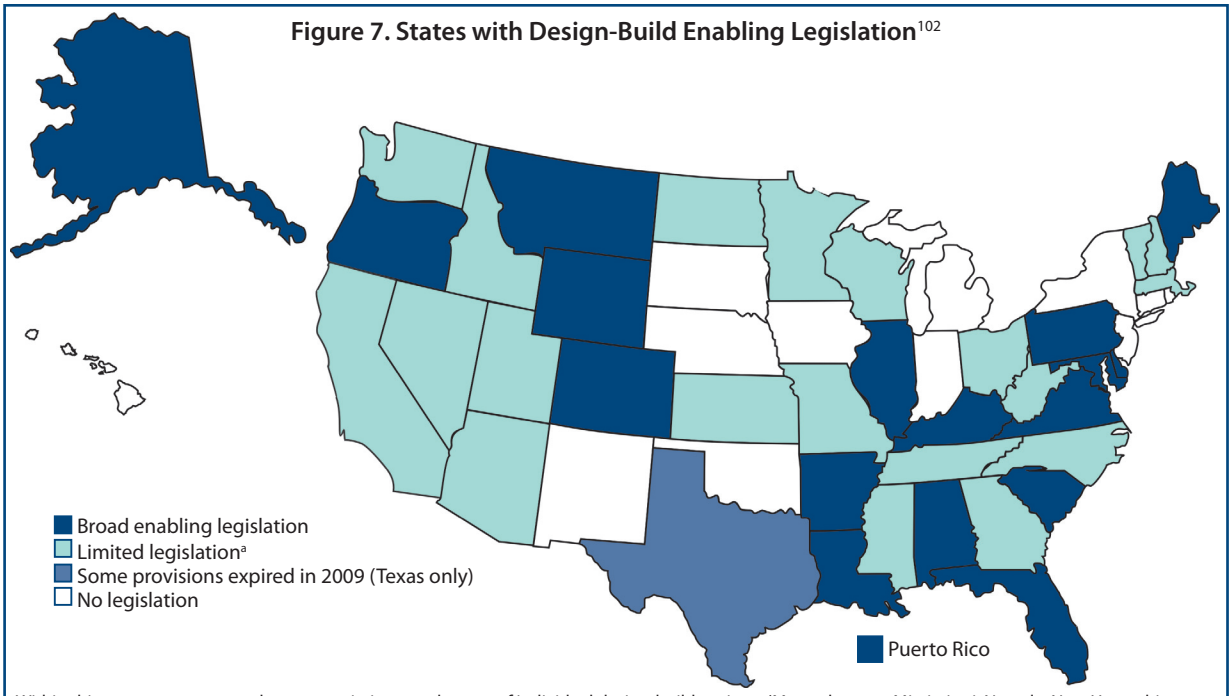


Figure 7. States with Design-Build Enabling Legislation[102]



[a]Within this category are states that set restrictions on the cost of individual design-build projects (Massachusetts, Mississippi, Nevada, New Hampshire, Utah, Washington); limit the total cost or number of design-build contracts per year (Georgia, Idaho, Minnesota, North Carolina, Ohio, Tennessee, Vermont, West Virginia); authorize only a certain number of pilot or demonstration projects (California, Kansas, Mississippi, Missouri, North Dakota, Washington, West Virginia); include an end date or sunset provision (Arizona, California, North Dakota, Missouri, Utah, West Virginia); and/or strongly restrict the type of project (North Dakota, Wisconsin).

States with PPP legislation seem to have reached consensus on some issues, such as allowing for design-build projects and use of federal TIFIA credit assistance (see *Glossary*). They vary widely on others, however, such as the powers delegated to executive agencies, the types of projects authorized and the ongoing legislative role. One recent report suggests that the many variations in states' PPP legislation reflect their philosophical orientation toward PPPs: aggressive (e.g. Indiana and Virginia), positive but cautious (e.g., Arkansas and Minnesota), and wary (e.g., Missouri and Tennessee).[103]

One area where states differ is whether they have provided enabling legislation on a project-by-project basis or have authorized ongoing PPP programs. As of October 2010, Alaska, Illinois, Indiana, North Carolina and Tennessee limited PPPs to selected "pilot" or "demonstration" projects.[104] This approach allows a state to carefully consider the details of each project and gain experience with PPPs before committing to a larger program. Pilot projects also may show a lack of commitment to the PPP approach, however, which could dissuade bidders from investing substantially in the initial projects.[105] If more than one project is anticipated, project-by-project legislation also can be time- and cost-intensive for both the public and private sectors; standardization of PPP procedures can streamline the process.[106]

In general, PPP statutes address key issues related to project selection and approval; the proposal review process; funding requirements and restrictions; procurement and project management; and toll management (Table 3). Specific key legislative provisions within these categories can include authorization to mix public and private funding; bidding procedures; a process for awarding contracts based on best value or other factors, not just low price; unsolicited proposals; tax provisions; authority to collect tolls or fares; bonding and debt; transparency and public participation; and contract provisions such as term lengths or noncompete clauses. Other important provisions can include designation or creation of a lead executive agency; structure and use of any proceeds; eminent domain; dispute resolution; reporting and review requirements; and cost-benefit or other analyses. (For more details about enabling statutes and their key provisions, see Appendices B and D.)

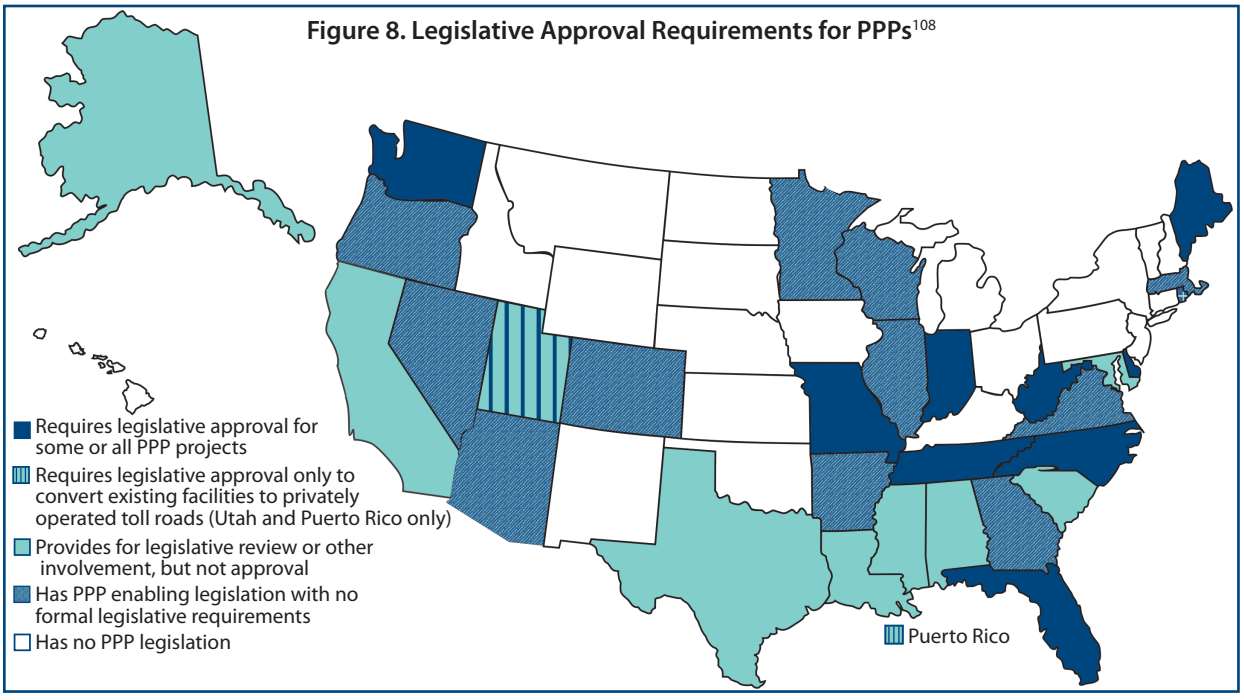
Legislative Approval

After legislation is passed, it generally is the responsibility of the authorized executive agency—such as a state or local transportation agency—to implement a PPP program and/or specific projects within the established statutory guidelines. Certain provisions, however, have created a more active, ongoing role for the state legislature by requiring its approval for some or all PPP projects.

Table 3. Examples of Provisions in State PPP Legislation by Category[107]	
Project Selection and Approval	**Proposal Review Process**
• Allows for solicited and unsolicited proposals • Limits number of projects • Restricts geographic location • Restricts mode of transportation • Permits the conversion of existing or partially constructed roads to tollways • Requires prior legislative approval • Subjects approved PPPs to local veto • Restricts PPP authority to state agencies • Allows design-build • Allows HOT lane projects	• Allows public agency to hire own technical and legal consultants • Permits payments to unsuccessful bidders for work product in proposals • Allows public entity to charge application fees to offset proposal review costs • Allows adequate time for preparation, submission and evaluation of competitive proposals • Requires time for public review • Specifies evaluation criteria • Specifies proposal review structure and participants • Protects confidentiality of proposals and related negotiations
Funding Requirements and Restrictions	**Procurement and Project Management**
• Allows use of state and federal funds for PPP projects • Allows combination of local/state/federal and private funds on a PPP project • Allows use of TIFIA credit assistance for PPP projects • Prevents transfer of PPP revenues to general fund or for other unrelated uses • Allows public sector to issue toll revenue bonds or notes • Allows public sector to form nonprofits and lets them issue debt on behalf of a public agency	• Provides for multiple types of procurement, including design-build, competitive RFQ and RFPs, best bid rather than low bid, etc. • Exempts PPPs from state procurement laws • Allows outsourcing of operations and management • Requires public entities to maintain comparable non-toll routes • Addresses noncompete clauses • Allows long-term leases or franchises
Toll Management	
• Determines who has rate-setting authority • Sets how and under which circumstances rates can be changed • Requires removal of tolls after debt is repaid	

As of October 2010, Delaware, Florida, Indiana, Maine, Missouri, North Carolina, Tennessee, Washington and West Virginia required that at least some individual PPP projects be approved by the state legislature (see Appendix B and Figure 8). Of those, North Carolina required approval only for PPPs other than the five pilot projects listed in its statute,

Figure 8. Legislative Approval Requirements for PPPs[108]



and Washington only for those PPP projects financed by tolls or other equivalent funding sources. In addition, Utah and Puerto Rico required legislative approval for converting existing facilities to privately operated toll roads. As another approach, at least eight states statutorily provided for some kind of legislative review but not approval of PPP projects.

Legislative approval provisions are controversial. On the one hand, they allow elected officials to review and be held accountable for individual PPP projects. Proponents argue this better protects the public interest, especially in large concession deals.[109] Such requirements also add uncertainty to the process, however, and thus can discourage private investment. Private firms may be reluctant to develop costly project proposals if there is a risk that approval will not be given and negotiations will not close, even though a project has been selected and approved by the executive agency.[110] This may be especially true for states that require legislative approval relatively late in the negotiation and contracting process (e.g., Florida for some projects, North Carolina and West Virginia) compared to Indiana, where the legislature must approve a request for proposals for a PPP project (see Appendix B).[111]

Legislatively Approved Transportation PPPs in the United States

Legislative approval requirements in PPP enabling statutes are controversial (see pages 16 to 19). Proponents argue that they ensure accountability and protect the public interest,[a] while critics assert that they strongly discourage private investment by introducing political risk—especially where approval is required late in the procurement process. For example, the Reason Foundation has claimed that "in those states whose PPP enabling acts required legislative approval of *negotiated deals* [emphasis added], no such deals were ever proposed."[b]

This raises the question of which, if any, PPP projects have moved forward under such legislative approval requirements—and at what stage they were approved, given the diversity of state approaches to this issue. Of the nine states that have any legislative approval requirements in their current PPP enabling statutes—plus California from 2005 to 2009—Florida and Indiana were found to have projects that were so approved. Indiana alone had a project approved after negotiations; the state's PPP statutes now require a different process.

Florida law requires any PPP to undergo a form of legislative approval early in project development, "as evidenced by approval of the project in the department's work program" in the appropriations process. Further legislative approval is required to lease an existing toll facility, for a contract term of more than 75 years, or for a turnpike project. Florida has a vigorous PPP program, with seven current projects worth more than $3.7 billion and another in active procurement, but none so far has required approval beyond inclusion in the work program.

Indiana's only current PPP project is the 75-year lease of the Indiana Toll Road, which was authorized in 2006 by what was effectively project-specific legislation—in the absence of any other enabling statute and after the final bidder had already been selected.[c] But two years later, that same approach—embarking on a PPP deal before having enabling legislation in place—contributed to the failed attempt to lease the Pennsylvania Turnpike. Former executive director of the Pennsylvania Turnpike Commission, John Durbin, later said, "There will not be another consortium that will proceed in any state where they have to put their bids in first and then gain legislative approval to lease the asset."[d] The 2006 Indiana law does require legislative approval for all subsequent PPP projects, but earlier in the process. Certain actions—including issuing a request for proposals—are prohibited unless a statute is enacted to authorize them. Legislation was thus passed in 2010 to allow the proposed Illiana Expressway and other projects to move forward.

See Appendices B and G for more about these PPP enabling statutes and projects.

[a] See Baxandall et al., *Private Roads,* 31.
[b] Robert Poole, *No Toll Czar: States, Not Feds, Should Protect the Public Interest in Public-Private Partnership Deals* (Los Angeles, Calif.: Reason Foundation, Oct. 26, 2009), http://reason.org/blog/show/no-toll-czar-states-not-feds-s; see also Robert Poole, "Finally, California Gets PPP Legislation," *Surface Transportation Innovations* 65 (March 6, 2009), http://reason.org/news/printer/surface-transportation-innovat-64#feature6.
[c] See NCSL Foundation for State Legislatures, *NCSL Foundation Partnership: Public-Private Partnerships (P3s or PPPs) for Transportation Meeting Summary, July 20, 2009* (Denver, Colo.: NCSL, 2009), 22–23, http://www.ncsl.org/documents/transportation/Summit09P3mtgsum.pdf.
[d] The Pew Center on the States, *Driven by Dollars*, 18.

Opponents of legislative approval provisions generally advise that legislatures instead craft strong enabling legislation that carefully addresses key policy issues.[112] Virginia, for example, established a PPP program based on comprehensive legislation that includes a public review process but not legislative approval. Another policy option is to statutorily provide the legislature with structured involvement other than project approval—for example, through opportunities for legislative review and comment or regular reports to the legislature on PPP activities. As of October 2010, eight states used this approach (Figure 8).

The United States has a distinctive separation of powers among its branches of government, and striking an appropriate balance between legislative and executive roles in the PPP process is both critical and difficult.[113] Legislators will want to consider this and many other issues as they approach the complex task of creating a meaningful policy framework for PPPs—some of which could endure for generations.

The State Executive Role in PPPs

After the legislature creates a policy framework for PPPs, the authorized executive agency—such as a state or local transportation agency—is generally responsible for implementing the PPP program and/or executing specific projects within the established guidelines. This involves development of a PPP program; project development, evaluation and selection; procurement, including negotiation and bidding; contracting; and contract management and oversight. In those states that require legislative approval of individual projects, legislatures also will be involved to that extent in project selection.

According to the Government Accountability Office, contracts have been the primary means used to protect the public interest in highway PPPs in the United States.[114] Legislators generally set guidelines for the contracting process and allowable contract terms, while executive agencies are primarily responsible for crafting specific contracts within those guidelines. Because a PPP contract defines the salient points and contingencies of the agreement, as one analyst has said, "the contract is paramount."[115] Critical provisions that protect the public interest in a PPP contract typically include performance standards, toll policies or other payment mechanisms, public sector flexibility to provide transportation services, labor protections, public oversight and monitoring, revenue sharing, risk allocation, default provisions and termination or "buy back" options.[116] PPP contracts can be hundreds of pages long and deeply complex. Executive agencies generally need access to experts who are able to contract effectively[117] and enough time and money to ensure a robust and careful contracting process.

Thoughts from the NCSL Partners Project…

On Governance

"A perspective on governance issues would have eased the way for us in West Virginia when we first began working on our enabling statute back in 2002 (completed in 2008). Whatever PPP tools your enabling statutes may authorize, they must provide for an executive authority to make decisions and take actions, and a framework within which those decisions and actions may occur. The primary objective in creating a governance structure is that the executive authority and, ultimately, the state, achieve what they should, avoid unacceptable situations, and maintain the public trust. To that end, the system of governance should foster transportation program continuity, provide for manageable growth, and maintain system-wide priorities. Most fundamentally, the transportation program should drive PPP projects, not the other way around."

Fred Lewis
Policy Analyst, West Virginia House Finance Committee
Staff Chair, NCSL Partners Project on PPPs

PPPs do not allow the public sector to abdicate responsibility; the state remains the owner of the infrastructure and is accountable to the public for its condition. Rather, according to Partnerships British Columbia, the public role in a PPP changes "…from that of directing and managing infrastructure to one of oversight and maintenance of quality service outcomes."[118] During the stages of the process related to implementation, the executive agency is primarily responsible to the public for PPP outcomes. To better protect the public interest, executive agencies must have adequate resources to build their internal capacity to develop, procure, manage and oversee these projects and to engage, supervise and instruct technical and other advisors as needed.

Shared State Legislative and Executive Roles in PPPs

Executive agencies and legislatures both can play a role in many of the tasks in the PPP process. Many of these are addressed in the principles in the next section. For example, both legislators and executive agencies can help ensure adequate funding for PPP analyses or advisors; establish public PPP advisory bodies; be involved with public outreach and stakeholder participation processes and share their perspectives about proposed PPP programs or projects in the state; and support robust, comprehensive project analyses. In states that require legislative approval for individual projects, both branches also will be involved to some degree in project selection. In many stages of the process, enabling statutes will set broad guidelines, but executive agencies will have flexibility to determine how those guidelines are implemented.

Port of Miami Tunnel, Florida (DBFO with availability payments). Expected to open in 2014, the tunnel will connect the Port of Miami with the MacArthur Causeway and I-395. Senior bank debt, a TIFIA loan and private equity have been used to finance the project. (Photo: FHWA)

7. Principles for State Legislators

These principles are intended to help guide state legislators in the process of making important policy decisions about PPPs. Rather than providing specific recommendations about PPP legislation and specific statutory provisions, these are general good governance principles that can support legislative decision making about whether and how to involve the private sector in the traditionally public-sector enterprise of providing transportation infrastructure. The principles are drawn from the literature and the combined wisdom of the NCSL Partners Project.

The principles relate mainly to the stages of the process in which legislatures are most directly involved: deciding whether a state will engage in PPPs and creating a policy framework. Some also are relevant to stages for which legislative involvement is usually less direct, including development of a PPP program; project selection; procurement processes such as negotiation and bidding; contracting; and contract management and oversight. The role of executive agencies in these areas also is described.

Principles for State Legislators

Principle 1: Be informed.
State decision makers need access to fact-based information that supports sound decisions.

Principle 2: Separate the debates.
Debates about the PPP approach should be distinct from issues such as tolling, taxes or specific deals.

Principle 3: Consider the public interest for all stakeholders.
State legislators will want to consider how to protect the public interest throughout the PPP process.

Principle 4: Involve and educate stakeholders.
Stakeholder involvement helps protect the public interest, gain support and mitigate political risk.

Principle 5: Take a long-term perspective.
State legislators will want to approach PPP decisions with the long-term impacts in mind.

Principle 6: Let the transportation program drive PPP projects—not the other way around.
PPPs should be pursued to support a state's transportation strategy, not just to raise revenue.

Principle 7: Support comprehensive project analyses.
Before pursuing a PPP, it should be shown to be a better option than traditional project delivery.

Principle 8: Be clear about the financial issues.
States will want to carefully assess financial goals, an asset's value and how to spend any proceeds.

Principle 9: Set good ground rules for bidding and negotiations.
Legislation should promote fairness, clarity and transparency in the procurement process.

Principle 1: Be informed

State decision makers need access to fact-based information that supports sound decisions.

Ultimately, each state must determine for itself whether and how to pursue transportation PPPs. A key principle throughout the decision-making process is for both legislators and executive agencies to have access to fact-based information that supports educated, thoughtful decisions.

When deciding whether to authorize transportation PPPs, legislators will need to be informed about their state's context and goals for PPPs, alternative revenue and financing options for transportation infrastructure, and—if relevant—the advantages and risks of potential projects. When crafting enabling legislation, legislators need additional information about the possible effects of various policy options on PPP implementation. Executive agencies need information about PPP programs, project selection, procurement, contracting, and contract management and oversight.

Recent reports from the National Cooperative Highway Research Program and the Pew Center on the States have identified information that public policymakers need to properly evaluate the benefits and risks of PPPs; broad policy decisions are addressed, as are programs, projects, procurement, contracting and contract management. The Pew analysis lists 30 questions to which states should have clear, data-driven answers when considering transportation PPPs (Appendix H).[119]

Although each situation is unique, there is no need to entirely reinvent the wheel. A growing body of information exists about international and U.S. PPP experiences, legislative options and best practices. A nationwide knowledge and experience gap about PPPs also exists, however, partly because some types of PPPs are relatively new in the United States. According to a 2009 McGraw-Hill survey, 61 percent of state and local officials had no experience with PPPs and did not fully understand their characteristics.[120] Further, PPPs can be complex and may entail a steep learning curve.[121] Failing to tap available knowledge may lead to costly and avoidable mistakes or inadequate protection of the public interest.

To better inform themselves about PPPs and relevant policy options, legislators can independently leverage existing resources or create an independent commission to advise the legislature and the governor.[122] Executive agencies can build in-house expertise and hire specialized advisors. Agencies that use such advisors, however, must take care to be an educated client, to avoid conflicts of interest and to ensure adequate state oversight.[123] Both legislators and executive agency personnel also can reach out to counterparts in other jurisdictions who have had experience with PPPs, either directly or through an appropriate organization, for peer-to-peer exchange.[124]

A public PPP advisory body or "center of excellence" also can provide expertise and guidance to executive agencies and bring consistency to the PPP process for both the public and private sectors.[125] More than 85 such centers exist globally,[126] including those in Canada, Australia and the United Kingdom (see Table 4 for examples). Their functions and structures vary considerably. In addition to sharing best practices and lessons learned, some actively develop PPP programs, evaluate and select projects, and standardize or manage contracts.[127] Many have published comprehensive guidance documents that serve as informational resources.[128] In most cases, these centers help agencies choose and manage legal, financial and technical advisors but do not replace those advisors.[129] Some also help executive agencies develop their internal capacity and skill set.

Table 4. Examples of International and U.S. Public PPP Advisory Bodies[130]		
Public PPP Advisory Body	**Jurisdiction**	**Web Site**
Public Infrastructure Advisory Commission	California	http://www.publicinfrastructure.ca.gov/
Puerto Rico Public-Private Partnerships Authority	Puerto Rico	http://www.p3.gov.pr/?lang=en
Michigan Office for Public-Private Partnerships	Michigan	None found as of October 1, 2010
New York State Commission on State Asset Maximization	New York	http://esd.ny.gov/resources/sam.html
Partnerships UK	United Kingdom	http://www.partnershipsuk.org.uk/
European PPP Expertise Centre (EPEC)	European Union	http://www.eib.org/epec/
Infrastructure Ontario	Ontario, Canada	http://www.infrastructureontario.ca/
Partnerships BC	British Columbia, Canada	http://www.partnershipsbc.ca/
PPP Canada	Canada	http://www.p3canada.ca/home.php
Partnerships Victoria	Victoria, Australia	http://www.partnerships.vic.gov.au/

I-595 Managed Lanes, Florida (DBFO with availability payments). This project is expected to reconstruct and widen 10.5 miles of the I-595 corridor and add three reversible, dynamically tolled lanes by 2014. It is the first highway PPP in the United States to use availability payments. (Photo: Corradino Group)

In 2009, the California and Puerto Rico legislatures created public PPP centers—the Public Infrastructure Advisory Commission and the Puerto Rico Public-Private Partnerships Authority, respectively; the executive branch has established centers in Michigan and New York (see Table 4). In 2008, the Texas Legislative Study Committee on Private Participation in Toll Projects recommended creating a similar centralized entity in Texas.[131] Some organizations also are advocating for a national center of excellence,[132] although concerns exist about the potential effect of such a center on state authority. One possible model is the European PPP Expertise Centre (EPEC), which supports but does not direct PPP units across Europe.

Principle 2: Separate the debates

Debates about the PPP approach should be distinct from issues such as tolling, taxes or specific deals.

Legislative decisions about whether or how a state is to pursue PPPs can be controversial. The process can become even more contentious if the question of passing PPP enabling legislation becomes entangled with related but conceptually distinct debates, either in the legislature or the public arena. These other issues could include tolling and pricing decisions; concerns about a specific deal or project that is the subject of or motivation for proposed legislation; or the state's plan for spending potential proceeds.[133] For example, one Texas legislator has reported that the PPP debate in that state got "mixed up" with tolling options, plans for the Trans-Texas Corridor, and the gas tax.[134]

Why are these debates blended together in the first place? In some cases, confusion might arise due to misconceptions about PPPs—such as that all PPPs are large-scale brownfield concessions involving tolls. In such cases, education and outreach to stakeholders and the public—for example, about different pricing and payment arrangements—may help focus the debate (see also Principle 4).

Foley Beach Express, Alabama (DBFO). This $44 million project provides an alternative route from the City of Foley to beach destinations in Alabama, and is the smallest scale transportation-related DBFO known to have been completed in the United States. (Photo: FHWA)

Conversely, multiple issues could actually be relevant to a specific project or piece of proposed legislation. In that case, each may require careful consideration and discussion. In 2009, for example, the Michigan Legislature was discussing the possibility of authorizing PPPs for toll roads. Because the state had no existing toll roads, one legislative staff member described this as "taking two big steps at once" in terms of changes to state policy.[135]

The 2008 Pew analysis advises, "[i]deally, the pros and cons of public-private partnerships should be weighed apart from the specifics of any particular deal."[136] Specific to brownfield concessions, another recent report advises, "the public decision to extend and escalate tolls…has been rolled into the decision to lease the highway to the private sector. These are two separate decisions, each deserving analysis, and debate."[137] Throughout the PPP process, both legislators and executive agencies can work to separate and clarify the debates—internally as well as for other stakeholders—and consider each on its merits, as relevant to their roles and tasks in a given policy environment.

Principle 3: Consider the public interest for all stakeholders

State legislators will want to consider how to protect the public interest throughout the PPP process.

Thoughts from the NCSL Partners Project…

On "There is No Free Road or Bridge"

"Tax or toll? Private companies invest in transportation infrastructure for one reason: to sustain a profitable return on investment. There is nothing wrong with that. One way or the other, however, your user constituents will pay. There is no free road or bridge."

William D. Toohey Jr.
Executive Vice President & COO, ARTBA
Steering Committee Member, NCSL Partners Project on PPPs

Although the interests of the public and private sectors can sometimes be aligned for mutual advantage, they are not the same. The public interest is focused on the general welfare, while the private sector's purpose is profit—a repayment of costs incurred for the project, plus a return on investment for shareholders.[138] Thus, the public cannot assume that the private sector will act in the public interest in a PPP.[139] State legislators play a key role in protecting the public interest throughout the decision-making process and will be held accountable by their constituents for any failures to do so.

Several recent reports have discussed "protecting the public interest" in PPPs, with recommendations on how to achieve this goal,[140] but "public interest" is rarely defined. One workable definition is that public interest, equivalent to social welfare, comprises "the welfare of all agents involved in or affected by a policy or situation."[141] State legislators can consider the pros and cons of PPPs for various stakeholders who may be affected, including taxpayers, workers, system providers and operators, and consumers such as tollpayers, commercial vehicle operators and other motorists. Members of the general public—of both current and future generations—also may be affected by external effects such as traffic flow, environmental impacts, job creation or other impacts on a state's economy.[142] There may be conflicts, however; a recent analysis by researchers at Harvard and the University of Barcelona warns that PPPs can benefit one group of stakeholders while negatively affecting others.[143]

Because enabling legislation sets the guidelines for PPP programs, procurement, projects and contracts, legislators will want to consider the public interest as it might be affected in each stage. Key statutory provisions to be considered in terms of the public interest could include allowable types of projects, alignment of PPPs with an overall transportation program, transparency and public participation, bidding procedures, reporting and oversight requirements, and comprehensive project analyses (see also Principles 4, 6, 7 and 9).

In the United States, contracts have been the primary means used to protect the public interest in highway PPPs, according to the Government Accountability Office.[144] A recent Cambridge Systematics report also cautions, "unless adequately controlled through contractual agreements, there is a strong possibility that private sector interests will supersede the public interest."[145] Legislators generally set legislative guidelines for contract provisions, while the executive agency is primarily responsible for crafting specific contracts. Contract provisions that may be especially relevant to protecting the public interest include performance standards, term lengths, toll policies, public sector flexibility to provide transportation services, labor protections, and public oversight and monitoring, as well as revenue sharing, risk allocation, indemnities, default provisions, and termination or "buy back" options.[146]

All PPPs have trade-offs in terms of risks and benefits for both parties. One analyst has advised that, to protect the public interest, it is important to keep the motivations in the right place.[147] The private sector has a profit motive, while the public sector wants a fair price, value for money, and progress on broader policy goals.[148] Legislators can help by explicitly identifying these interests and working to keep the public interest central to the debate. They can also help keep PPPs in context. Some analysts have advised legislators, when considering the effect of PPPs on the public interest, to compare them to traditional project delivery rather than asking whether they are "a good thing to do" in the abstract.[149]

Principle 4: Involve and educate stakeholders

Stakeholder involvement helps protect the public interest, gain support and mitigate political risk.

"Experience shows that P3 agreements completed without public oversight [and comment] fall short of meeting the full potential for P3s to garner public benefit," stated a coalition of national environmental and public health groups in 2008. "They also sour public opinion about P3s."[150] Given the relative lack of understanding in the United States about PPPs and the controversy that sometimes arises when they are proposed, it is important to provide opportunities for debate, explanation and education when decisions are being made about PPP policy and projects. Both legislators and executive agencies can better protect the public interest, gain support and address political risk by effectively educating and involving stakeholders throughout the PPP process.

Public Interest

Many analysts have strongly advised a process of public education and participation as a way to protect the public interest, promote government accountability and maximize public benefit from PPPs.[151] More than 70 percent of respondents in a recent survey of state DOTs indicated that public access to information about PPPs was an important measure to protect the public interest.[152] Legislators can involve the public during their decision making and set guidelines for public participation during other stages of the process. Under Virginia statute, for example, the executive agency must provide opportunities for public comment on PPP project proposals during procurement; the Virginia DOT has further developed this PPP review process.[153]

Support

A 2007 Federal Highway Administration report identified stakeholder involvement, consultation and support as critical to the success of PPP concession deals.[154] Indiana and Texas legislators have emphasized public outreach as key to gaining support for PPPs and addressing misconceptions during the policymaking and project selection stages of the process.[155] In Texas, a lack of public involvement during project selection had legislative repercussions. The Texas Department of Transportation was heavily criticized for its quick approval—with limited public input—of the Trans-Texas Corridor plan in 2002, and the resulting public backlash contributed to enactment of a moratorium on PPPs in 2007. The law expired in 2009 (see Appendix B).[156]

Political Concerns

In the United States, public decision makers may view supporting private sector involvement in public service delivery as politically risky, or even career-threatening.[157] A process of outreach and education during the policymaking stage allows legislators to communicate their goals for the PPP process, explain potential benefits and trade-offs, and address constituent concerns and misconceptions.[158] For example, two main political concerns about PPPs—the transfer of a public asset to private control and possible toll increases based on profit motives rather than public policy objectives—relate primarily to long-term brownfield concessions but not necessarily to other PPP models.[159] This distinction may need to be made for stakeholders.

Several issues have been identified as appropriate for public analysis and debate, including tolling policies, land use and noncompete clauses, performance standards, costs to the public sector and risk.[160] During procurement, executive agencies especially must meet the need for transparency and accountability (see Principle 9). Information also can be shared after procurement. The concession agreements for the Chicago Skyway and Indiana Toll Roads, for example, mandate annual public disclosure of financial and performance data.[161]

Principle 5: Take a long-term perspective

State legislators will want to approach PPP decisions with the long-term impacts in mind.

PPPs can have long-term consequences and, according to the Pew Center on the States, "a long-term deal deserves a long-term perspective."[162] Legislators should approach decisions about PPPs with the long-term public interest in mind—not just short-term needs. State legislators and executive agencies can incorporate a long-term perspective at every stage of the PPP decision-making process—whether deciding if the state is to pursue PPPs, crafting enabling legislation, creating a PPP program, evaluating and selecting projects, engaging in procurement, or planning for ongoing contract management and oversight.

Executive agencies will generally be responsible for assessing the long-term effects of particular projects; in states where legislators approve specific projects, this is also a legislative concern. When considering particular projects, a 2006 Deloitte study advocates adopting a holistic view of a PPP project's entire life cycle from the outset. This perspective "provides a framework for evaluating whether the solution is the most appropriate for the public over time," allows the public sector to plan in advance, helps governments understand how decisions throughout the process will affect the project's long-term success, and "best insures the interest of the government agency that retains ownership and ultimate responsibility for the asset throughout the life cycle."[163] During this stage, it is worth considering potential long-term positive and negative effects on the overall transportation system, the environment and the public interest, as well as value for money for the public sector (see also Principles 3, 6 and 7).

Certain elements of the contractual agreement also may need particular attention from a long-term perspective. Legislators may address contract issues in statutory guidelines, while executive agencies will generally be responsible for individual agreements. Depending on the type of PPP being considered, relevant provisions may include limited compete or noncompete clauses, labor protections, risk allocation, term lengths, operations and maintenance standards, environmental performance standards, termination clauses, and provisions that specify the minimum condition of the asset when it is returned to the public (known as "hand-back" provisions).[164] Contract flexibility also is a key issue that deserves special attention from a long-term perspective.

The potential long-term positive and negative economic effects of PPPs will need to be considered throughout the process. Possible benefits include job creation, transfer of risk away from the public sector, the value of having certain infrastructure projects delivered more quickly and the potential cost savings of PPPs—up to 40 percent, according to the U.S. Department of Transportation[165]—due to innovative contracting and integrated project delivery.

I-635 (LBJ Freeway) Managed Lanes Project, Texas (DBFOM). Expected to open in 2016, this project will add six managed lanes along I-635 (subsurface) and I-35E (elevated), besides reconstructing the main lanes and frontage roads. The private partner is under contract to operate and maintain the facility for 52 years. (Photo: Texas DOT)

Analyses of PPPs' long-term economic risks have tended to focus on brownfield concessions. Some well-publicized deals have been especially criticized for prioritizing the short-term benefits of upfront payments over the state's long-term economic interests. A U.S. Public Interest Research Group analysis comments that the 75-year lease of the Indiana Toll Road—authorized by project-specific legislation—was intended to finance the state transportation plans for only the first 10 years. After that, the state may have the same structural budget problems, but not the toll revenues.[166] Pennsylvania's attempted turnpike lease received similar criticism.[167] The New York Citizens Budget Commission also has warned against trading more valuable future revenue for immediate proceeds, essentially shortchanging future generations.[168] These concerns must be carefully addressed and balanced against other potential long-term benefits and risks of a project.

Principle 6: Let the transportation program drive PPP projects—not the other way around

PPPs should be pursued to support a state's transportation strategy, not just to raise revenue.

States currently face enormous fiscal challenges. Legislatures closed a gap of more than $142.6 billion as they assembled their FY 2010 budgets and are confronted with an $83.9 billion shortfall for FY 2011.[169] State transportation revenues—still fed primarily by gas taxes—especially have diminished as driving has declined; in 2009, half the states made or considered transportation program cuts.[170] At the same time, some estimates indicate that more than $180 billion in private capital is available for infrastructure investment.[171]

In this context, it is natural for states to consider PPPs largely for their financial benefits. Brownfield concessions with up-front payments may be an especially attractive way to help solve immediate budget shortfalls; PPPs in general may be seen primarily as a much-needed way to deliver infrastructure projects in the absence of public funds. PPPs, however, cannot solve all problems.[172] In fact, less than 20 percent of transportation infrastructure is likely to be deliverable through PPPs, and very few projects are appropriate for tolling.[173] Further, PPPs are not "free money" but financing tools with costs, risks and trade-offs specific to each situation.[174]

Pocahontas Parkway, Virginia (99-year lease with revenue sharing). This $354 million transportation project was the first to be implemented under Virginia's Public-Private Transportation Act of 1995. (Photo: FHWA)

Many analysts caution that PPPs should support a state's transportation strategy, not drive it. One recent report counsels that "each type of partnership carries its own set of issues and will be more or less appealing depending on the government's goals."[175] Both legislators and executive agencies should beware of pursuing PPPs for financial reasons at the expense of an integrated surface transportation program with clear goals and objectives.

At least six states—Delaware, Florida, Louisiana, Maine, Virginia and West Virginia—have addressed this issue in statute by requiring proposed PPP projects to be consistent with existing state, local and metropolitan transportation plans.[176] Virginia's statute, for example, requires a PPP to address a public need identified in the state transportation plan, but allows it to differ from the project originally proposed.[177]

Legislation also can address how the state should handle unsolicited bids, which allow private firms to propose projects outside the traditional public-sector transportation planning process. Some stakeholders are concerned that unsolicited bids circumvent the transportation planning process and encourage public agencies to consider projects that are profitable to private developers before those that are a greater priority for the public. Others see such bids as a possible source of innovation.[178] States can prohibit such bids or subject them to a process that introduces competition and transparency. Under Virginia's quality control process, unsolicited proposals are reviewed to determine if they are in the interest of the public sector.[179] As of January 2009, 18 states allowed unsolicited proposals for PPP projects, and Nevada allowed only unsolicited projects.[180]

Thomas Pelnik, director of the Virginia DOT Innovative Project Delivery Division, has advised, "It is important to develop priority projects that are financially feasible under a variety of funding options. Goals for the project should be set first, and then the agency should decide what the best financing options are for achieving those goals… A financially healthy organization can [consider a variety of options and] make better decisions for the public interest."[181] Having a range of funding and financing alternatives for infrastructure projects—with or without private money—can help both legislators and executive agencies avoid making decisions about PPP policy or projects for solely financial reasons.

Principle 7: Support comprehensive project analyses

Before pursuing a PPP, it should be shown to be a better option than traditional project delivery.

Many analysts counsel that the decision to pursue a PPP should be supported by a comprehensive project analysis—conducted as early as possible—showing that, over the duration of the contract, a PPP is truly a better option for the state than traditional project delivery.[182] In 2008, the Government Accountability Office advised using a rigorous, up-front analysis to better secure the potential benefits of highway PPPs and warned that a failure to do so could lead to overlooking aspects of protecting the public interest.[183] Legislators and executive agencies can support the use of these analyses, which inform project development, selection, approval and procurement.

Thoughts from the NCSL Partners Project…

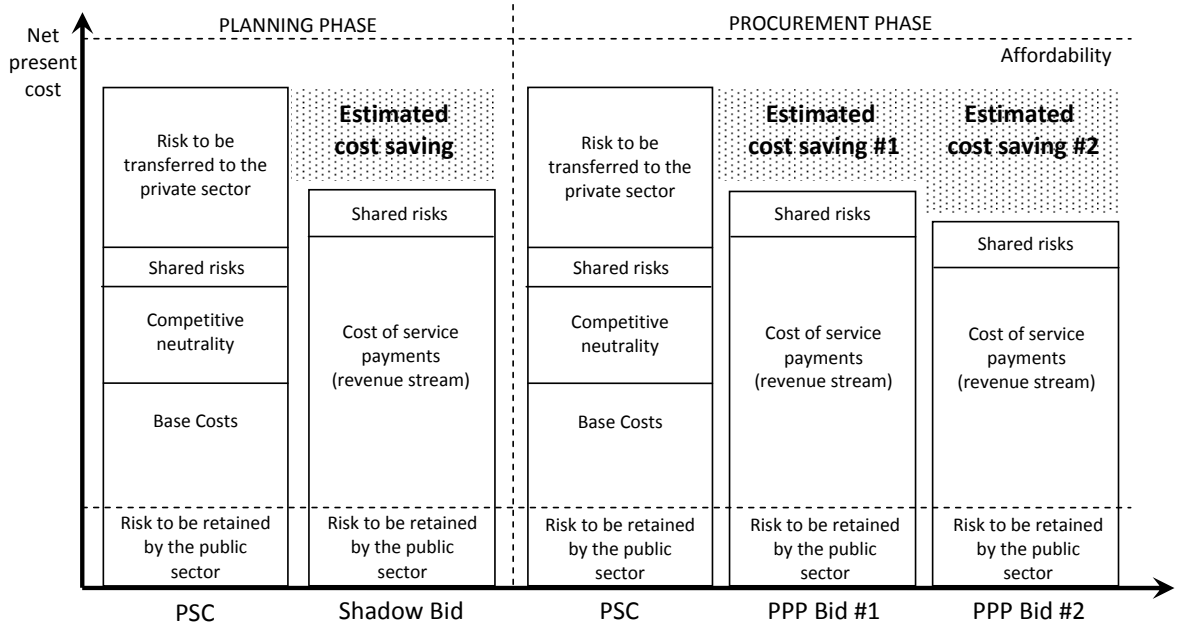
On Building the Business Case

"We can learn some very important lessons from other countries who build a business case first before making a decision to utilize a public-private approach to infrastructure."

Representative Terri Austin
Indiana
Co-chair, NCSL Partners Project on PPPs

Value for money (VfM) is one analytical tool that has emerged as global best practice, primarily for greenfield projects; other financial tests are available for brownfield concessions.[184] In general, VfM evaluates total project costs and benefits. VfM often incorporates a Public Sector Comparator (PSC) that estimates life-cycle costs—including operations, maintenance and improvements—for public project delivery. Using a PSC, a VfM analysis can ask whether a PPP offers better value for money in comparison to traditional project delivery, and can offer a comparison among PPP bids (Figure 9). A PSC also sets a threshold for private firms to meet or exceed.[185]

Figure 9. Value for Money (VfM) Analysis Using a Public Sector Comparator (PSC)[186]



Base costs are the actual costs (before risk) to the public sector including design, construction, operations, maintenance and asset rehabilitation. **Competitive neutrality** is included to remove the inherent competitive advantages (e.g., tax exemptions) or disadvantages (e.g., economies of scale) of a public agency compared to the private sector.

VfM is used in Australia, the United Kingdom, British Columbia and others (see Table 5 for guidance documents); the UK and British Columbia use PSC for all potential PPPs. British Columbia has reportedly used traditional project delivery in many cases where VfM analysis showed the PPP approach did not offer enough value for money.[187]

Table 5. Guides to Public Sector Comparator (PSC) and Value for Money (VfM) Analyses[188]			
Source	**Country**	**Document**	**Web Site**
Central PPP Unit	Ireland	Technical Note: Compilation of a Public Sector Benchmark for a Public Private Partnership Project (2007) Technical Note: Value for Money in the PPP Procurement Process (2007)	http://www.ppp.gov.ie/key-documents/guidance/central-guidance/psb-guidelines-jan-07.doc/ http://www.ppp.gov.ie/key-documents/guidance/central-guidance/value-for-money-technical-note.doc/
HM Treasury	United Kingdom	Value for Money Assessment Guidance (2006); Value for Money Quantitative Assessment User Guide (2007)	http://www.hm-treasury.gov.uk/ppp_vfm_index.htm
Partnerships BC	Canada	Methodology for Quantitative Procurement Options Analysis Discussion Paper (2010)	http://www.partnershipsbc.ca/files/documents/pbc-methodology-quantitative-procurement-options-analysis-29jan10_000.pdf
Partnerships Victoria	Australia	Public Sector Comparator (2001); Public Sector Comparator Supplementary Technical Note (2003)	http://www.partnerships.vic.gov.au/CA25708500035EB6/0/E4C501A76F826D77CA2570C0001B45EA?OpenDocument

Some governments also incorporate qualitative public interest tests and criteria for PPP project evaluation. For example, the Australian states of New South Wales and Victoria evaluate aspects of public interest—such as public access, effectiveness in meeting government objectives, accountability and transparency—before entering into PPPs.[189] The United Kingdom complements quantitative tests with qualitative tests and uses both at various stages of the PPP process.[190]

The recent National Cooperative Highway Research Program report on public-sector decision making advises, "[The proper] development and use of valuation tools is potentially one of the most important means of helping the public and elected officials better understand the benefits, costs, risks and rewards of PPPs."[191] In the United States, however, use of systematic processes and tools has been limited. Florida, Oregon and Virginia have reported using VfM; Oregon, Texas and Virginia have used forms of PSC.[192] Texas has used so-called "shadow bids" to estimate costs for public project delivery for comparison with PPP proposals.[193] As of 2007, Texas also required a "market valuation" analysis for new toll roads, which the 2008 Texas Legislative Study Committee advised be replaced by PSC.[194]

Legislators can set guidelines for project analyses in PPP legislation. Florida, Maryland, Washington and Puerto Rico statutes, for example, require a cost-benefit or other analysis during PPP project development or procurement.[195] Puerto Rico requires its Public-Private Partnerships Authority to conduct desirability and convenience studies for proposed PPP projects. These can include a PSC-like comparative analysis of the cost-benefit of public project delivery versus a PPP approach, including the effect on public finances. Executive agencies can address analysis requirements in PPP program regulations and are generally responsible for implementing them. Legislators and executive agencies both can help provide adequate funding and build agency capacity to support effective analyses.[196]

Although VfM and other methods are useful, none is perfect. For example, PSC has been critiqued for using numerous assumptions as well as projections far into the future.[197] These tools also continue to evolve. The United Kingdom, British Columbia and New South Wales have recently adjusted their analyses.[198] Meanwhile, standards vary by country for calculating VfM or PSC[199] and, in practice, some significant cost factors—such as depreciation of equipment and employee benefits—have been included in some analyses but omitted in others.[200] Care should be taken when selecting, using and interpreting the results of analytical methods to support and inform PPP decisions; these tools can aid, but not replace, decision making.

Principle 8: Be clear about the financial issues

States will want to carefully assess financial goals, an asset's value and how to spend any proceeds.

PPPs are complex deals with many implications, but, as the recent Pew analysis points out, "the money usually grabs the headlines"[201]—especially in the case of a brownfield concession worth billions of dollars. Even for other, less dramatic PPPs, careful assessment of the financial issues is important to protect the public interest and ensure a fair deal. Legislators will deliberate these issues when making decisions about whether the state is to pursue PPPs and when crafting policy; executive agencies will consider them during project evaluation, selection and procurement. Key concerns explored below include the state's financial goals and how to achieve them, estimated revenue, the value of an asset and—for brownfield concessions or design-build-finance-operate (DBFO) toll-roads (see *Glossary*)—how to spend the proceeds. In cases where the state commits to ongoing payments to a private partner, consideration also must be given to how those payments will be supported over the duration of the contract.

Goals

A state's financial goals will necessarily inform what types of PPP are allowed in legislation, which projects are selected and the characteristics of each agreement. A state may wish to quickly infuse money into its transportation system or have a stable, long-term source of maintenance funds; it may wish to build a new asset quickly, complete projects that are not otherwise feasible, achieve cost savings or improve operational efficiencies, or some combination of these. It is important to clarify these goals, as each may suggest different PPP models with different parameters and trade-offs. These financial goals must be considered in the context of the overall transportation program, the public interest and long-term impacts (see also Principles 3, 5 and 6).

Revenue and Value

In brownfield concessions or design-build-finance-operate (DBFO) toll-roads, the state receives an up-front payment and/or revenue sharing over the concession term. In these cases, the executive agency generally will estimate the value of an asset for comparison with bidders' proposals[202] (see also Principle 9). Executive agencies may consider this estimate during project selection and procurement; it also may be relevant to legislators in states where their approval is required. Assumptions about traffic flow, life-cycle costs, debt financing, risk allocation, equity and various contract terms[203] influence both what the state considers a fair price and what the market is willing to pay. Revenue-sharing arrangements can help protect the public interest and limit excessive private profits,[204] but also may reduce the up-front payment. State revenue estimates may include interest or investment income on proceeds.

The tendency is to be overly optimistic when estimating traffic flows, revenue projections and investment income;[205] any of these can affect how the public and private sectors value a deal. Estimates should instead be for the most likely outcome.[206] Project valuation must be conducted with care and the results thoughtfully reviewed, as dangers exist in both under- and over-estimation.[207]

Spending the Proceeds

Enabling legislation generally sets guidelines for the use of up-front or revenue-sharing proceeds from brownfield concessions or design-build-finance-operate (DBFO) toll-roads. Some analysts concur that proceeds from transportation PPPs should be used mainly for transportation,[208] as was the case with the Indiana Toll Road. As of January 2009, statutes in 12 states prohibited PPP revenues from being diverted to state general funds or unrelated uses.[209] Others may prioritize state flexibility in spending these proceeds, especially in the face of competing fiscal priorities.[210] Whether proceeds are spent on transportation or other needs, principles of fiscal responsibility generally suggest that revenues from long-term assets should go toward long-term investments. Otherwise, states are essentially cashing out a long-lived asset for short-term needs.[211] Decisions about where and how proceeds should be used—for example, for debt service, reserve funds or transportation projects—are conceptually distinct from other PPP decisions and deserve separate deliberation (see Principle 2).[212]

Principle 9: Set good ground rules for bidding and negotiations

Legislation should promote fairness, clarity and transparency in the procurement process.

The decision to deliver a project as a PPP should be based on careful analysis of its role in an overall transportation program, its possible effects on the public interest, its value and financial risks under different circumstances, and other elements of a comprehensive project analysis (see Principles 3, 6, 7 and 8). These initial investigations will guide whether a state pursues a PPP and, if so, its structure and parameters. The deal also may be informed by proposals received during the procurement stage, which includes bidding and negotiations.

Bidding and negotiations are conducted according to each state's procurement rules, which define procedures for bid requests, submission, evaluation, review and how to award a winner.[213] Legislators can help protect the public interest and support executive decision making by addressing procurement issues in PPP legislation. Many enabling statutes have followed the model established by Virginia's 1995 Public-Private Transportation Act and provided such guidance.[214] Key concerns are the procurement approach, evaluation criteria, review process, fees and payments, and transparency and confidentiality. Legislation also can address unsolicited proposals (see Principle 6).

The Procurement Approach

Executive agencies in some states are required to award contracts based on the lowest price; bidders also may be required to respond to a standard bid package. This traditional approach may not allow an agency to consider factors relevant to PPPs, such as the value of risks being transferred to the private sector, innovation and project quality, or public policy considerations that are more important than price.[215] Enabling legislation can allow a wide range of approaches for PPPs, including calls for projects, competitive requests for proposals, qualifications review followed by review of proposer concepts, procurements based on best value rather than lowest price, or other appropriate mechanisms.[216] As of December 2007, PPP legislation in at least 16 states allowed different types of procurements for PPPs; 11 states statutorily exempted PPP projects from general procurement laws.[217] Legislation also can allow the executive agency to provide adequate time for preparation, submission and evaluation of competitive proposals.[218]

Evaluation Criteria

PPP enabling legislation can define the evaluation criteria used to assess PPP proposals received under a given procurement approach, including technical quality, innovation, price or qualifications. At least nine states identify such criteria.[219]

Review Process

PPP legislation can specify the structure of the review and evaluation process for PPP proposals and who participates in that process. In at least 11 states, enabling legislation addresses the review process.[220]

Fees and Payments

Delaware and Indiana allow the public sector to make payments to unsuccessful bidders for the right to use information in their proposals; at least 10 states allow the executive agency to charge fees to offset review costs for unsolicited proposals.[221]

Transparency and Confidentiality

During procurement, executive agencies must meet the need for transparency and accountability while protecting bidders' proprietary information and the state's negotiating stance.[222] The recent Pew analysis cautions that, although it may be difficult to achieve this balance, "a lack of transparency—even a perceived one—can weaken a proposal's chances."[223] Legislation can set guidelines for what information is shared when, in what form, and with whom; at least 10 states address confidentiality of PPP proposals and related negotiations.[224]

Ground rules for bidding and negotiations should be structured to promote fairness, clarity and transparency. According to recent analysis of major legal issues for highway PPPs, "Any perceived unfairness, lack of transparency, or uncertainty in the procurement process will undermine general public support for a PPP transaction and will make it difficult for private-sector bidders to have confidence in the process."[225] A bidding process also should encourage fair competition, to help ensure that the public receives the best possible deal.[226]

GLOSSARY[227]

63-20 public benefit corporation	An innovative financing tool that can be used for transportation PPPs, a 63-20 public benefit corporation is a nonprofit corporation that, pursuant to IRS Rule 63-20 and Revenue Proclamation 82-26, is authorized to issue tax-exempt debt on behalf of private project developers for activities that are "public in nature."
A + B contracting	A+B contracting—also known as "cost-plus-time bidding"—is a procurement approach that rewards a contractor for completing a project as quickly as possible. Each submitted bid includes both A) the project cost and B) the value associated with the time needed to complete the project; both factors are used to determine low bid. Bonuses for early completion and/or penalties for late completion typically are included, and the contractor assumes the risk of not completing the project on time.
asset management contract	An asset management contract is used for long-term maintenance and/or operation of an existing facility. Under this type of contract, the private entity typically is responsible for financing needed improvements and is paid a fee by the public sector for doing so. Fees may include performance incentives or disincentives. Possible benefits include cost savings. See also "operations and maintenance (O&M) contract."
asset monetization	Asset monetization is the extraction of monetary value from an existing asset. A transportation asset can be monetized by a public agency in a PPP through receipt of an up-front payment for a concession lease or an ongoing revenue-sharing arrangement. See also "long-term concession lease" and "revenue sharing."
asset sale	In an asset sale, the public entity fully transfers ownership of a publicly funded asset to the private sector indefinitely. This is considered full privatization, not a PPP. See also "privatization."
availability payments	Under this PPP financing arrangement, the public entity agrees to make regular payments to the private entity based on the facility's availability and level of service achieved for operations and maintenance. Unlike shadow tolls, availability payments do not depend on traffic volume (see "shadow tolling"). In the United States, availability payments are more common for transit projects. Florida's I-595 Managed Lanes project is the first U.S. highway project to use this approach; performance-based availability payments to the private operator are planned to start once the facility is fully operational (expected to be in 2014).
brownfield	Brownfield projects focus on improving, operating and/or maintaining an existing asset (contrast to "greenfield"). PPP brownfield projects in transportation typically are long-term operation and maintenance contracts or lease concessions (see also "operations and maintenance [O&M] contract" and "long-term lease concession"). Blended greenfield-brownfield projects also exist—for example, improving an existing asset by adding new capacity (e.g., more lanes).
build-(own)-operate-transfer (BOT or BOOT)	Under a build-(own)-operate-transfer (BOT or BOOT) PPP project delivery structure, the private contractor retains ownership of a facility after construction and for a specified period during the operations and maintenance phase of the project, after which ownership is transferred to the public sector. Similar to design-build-finance-operate (DBFO) (except for the temporary private ownership before transfer) and build-transfer-operate (BTO). This model is not often used in the U.S. highway sector.
build-own-operate (BOO)	Build-own-operate (BOO) is a project delivery structure that does not necessarily contractually obligate the private entity to transfer ownership of an asset back to the public sector. This model is not often used in the U.S. highway sector. Although similar to the build-operate-transfer (BOT) approach, this is considered full privatization rather than a PPP. See also "privatization."

build-transfer-operate (BTO) Build-transfer-operate (BTO) is a variation on the design-build-operate-maintain (DBOM) project delivery structure in which the private contractor transfers ownership to the public sponsor after construction is completed, and then is authorized to operate the facility for a period of time. This model also includes some private financing of the design, construction, operation and maintenance of a facility. BTO is similar to design-build-finance-operate (DBFO) and build-(own)-operate-transfer (BOT or BOOT).

compensation clause A compensation clause is a possible element of a limited complete clause that requires the public sector to compensate a private concessionaire for lost toll revenues due to competing public facilities. One example is the State Highway 130 concession in Texas. See also "noncompete clause" and "limited compete clause."

concession See "long-term lease concession."

concession benefits Concession benefits are the rights to receive revenues and other benefits (often from tolling) for a specified period of time. See also "long-term lease concession."

congestion pricing Congestion pricing is a variation on tolling, in which user fees for a transportation facility vary based on the level of traffic volume or time of day. It is also known as "variable pricing." Note that not all PPPs use tolling or pricing techniques. See also "tolling."

construction manager at risk (CM at Risk) The construction manager at risk (CM at Risk) project delivery structure involves a separate contract for a construction manager and a design contractor during the initial phase of the project. The construction manager provides constructability, pricing and sequencing analysis and negotiates a design-build contract with the project sponsor as design work progresses. Potential benefits include advancement of a project during price negotiations.

construction manager/general contractor (CM/GC) Under the construction manager/general contractor (CM/GC) contracting method, the design contractor and the building contractor are hired simultaneously and work together to develop design and construction solutions tailored to the particular project. The project owner retains full control of the project design throughout the process. Potential benefits can include accelerated project delivery.

cost-plus-time bidding See "A + B contracting."

design-bid-build (DBB) Design-bid-build (DBB) is the traditional procurement approach for transportation projects in the United States, in which the design and construction of a facility are sequential steps in the project development process and each activity is bid separately. This is not a PPP.

design-build (DB) Under a design-build (DB) contracting method, a single entity is responsible for both the design and construction of a project and both procurements are combined into one fixed-fee contract. Potential benefits can include time savings, cost savings, risk sharing and quality improvement. A variation is design-build with a warranty (also known as design-build-warrant), in which a contractor guarantees to meet material workmanship and/or performance measures for a specified period of time after project delivery. Design-build is sometimes considered the PPP approach with the least private involvement; others have excluded it from the PPP category, since it involves only a project's construction phases. Thirty-eight states and Puerto Rico have design-build enabling legislation, whereas fewer have authorized other PPP models for highway projects (see Figures 6 and 7 and Appendices B and E).

design-build-finance-operate-(maintain/manage) (DBFO or DBFOM) Design-build-finance-operate-(maintain/manage) (DBFO or DBFOM) models are variations on the design-build-operate-maintain (DBOM) PPP project delivery structure that also include some private financing of the design, construction, operation and/or maintenance of a facility. Under a DBFO or DBFOM, the public sponsor retains ownership of the facility and uses revenues generated from operation of the facility (such as tolls) to repay the private and other financing used to construct it. These approaches may include an up-front payment to the public sector agency or a revenue-sharing agreement (see also "revenue sharing"). In other cases, availability payments may be used (see also "availability payments"). Potential benefits include transfer of financial risk to the private contractor. These models are similar to build-operate-transfer (BOT) and build-transfer-operate (BTO).

design-build-operate-maintain (DBOM)	Under a design-build-operate-maintain (DBOM) PPP project delivery structure, the private contractor is responsible for the design and construction of a facility, as well as its operations and maintenance for a specified period of time after construction. One potential benefit is the incentive to a private contractor to deliver a higher-quality product in order to avoid higher maintenance and improvement costs during the operations phase.
grant anticipation revenue vehicle (GARVEE)	A grant anticipation revenue vehicle (GARVEE) is a federal debt financing instrument that enables a state, political subdivision or public authority to pledge future federal-aid highway apportionments to support costs related to eligible bonds, notes or other debt financing instruments. GARVEEs essentially enable debt-related expenses to be paid with future federal-aid funds, which can accelerate construction timelines and spread the cost of a transportation facility over its useful life. These instruments are not available to private entities, but can facilitate PPPs by providing additional, reliable and immediate funding for transportation projects. GARVEEs are authorized under 23 U.S.C. §122.
greenfield	Greenfield projects focus on developing and/or building a new asset (contrast with "brownfield"). Many PPP structures are available for greenfield projects, including design-build, design-build-operate-maintain (DBOM), design-build-finance-operate-maintain/manage (DBFOM) and others. Blended greenfield-brownfield projects also exist (see "brownfield").
innovative finance	Innovative methods of financing construction, maintenance or operation of transportation facilities. Covers a broad variety of nontraditional financing, including use of private funds or innovative use of public funds such as GARVEEs (see "grant anticipation revenue vehicle [GARVEE]").
innovative contracting	Innovative contracting practices are meant to improve the efficiency and quality of road construction, maintenance or operation. See "A+B contracting," "design-build" and "design-build-finance-operate-(maintain/manage) (DBFO or DBFOM)" for examples.
lease	See "long-term lease concession."
life-cycle costs	A project's life-cycle costs are its total costs from project inception to the end of its useful life.
limited compete clause	A limited compete clause is a variation on a noncompete clause that allows a public sponsor to build or improve certain transportation facilities that may draw traffic from a privately leased toll road, within limits. One example is the Pocahontas Parkway in Virginia. A limited compete clause may include compensation to the private operator for lost toll revenues due to competing facilities (see "compensation clause"). See also "noncompete clause."
long-term lease concession	A long-term lease concession is a PPP project delivery structure involving a long-term lease of an existing public asset to a private concessionaire for a specified period of time (see also "brownfield"). Generally, the concessionaire agrees to pay an up-front lump sum fee to the public agency in exchange for the right to collect availability payments or direct revenue generated by the asset over the life of the contract (typically 25 years to 99 years). Alternatively, a revenue-sharing arrangement may be used (see also "revenue sharing"). The concessionaire agrees to operate, maintain and/or improve the facility during the term of the lease. This approach has received more public attention in the United States than other PPP models, largely due to the highly publicized leases of the Chicago Skyway and the Indiana Toll Road. See also "concession benefits."
noncompete clause	In PPP agreements—particularly for brownfield concessions—noncompete clauses prevent the public sponsor from building or improving highways or other transportation facilities that might provide a competing route for traffic on a privately leased toll road. Such clauses are used to help reduce revenue risk for the private toll road operator, but have been criticized for limiting the public sector's ability to deliver needed transportation infrastructure. One example is in the original California SR 91 agreement. PPP agreements now generally use a modified version of a noncompete clause (see "compensation clause" and "limited compete clause"). Some states—such as Arizona, California, Colorado, Florida, Mississippi, North Carolina and Texas—prohibit noncompete clauses in statute. Note that noncompete clauses originated with public toll roads.

operations and maintenance (O&M) contract	Under an operations and maintenance (O&M) contract, a selected contractor is responsible for operating and maintaining a facility for a specified time. See also "asset management contract."
pass-through tolling	See "shadow tolling."
private activity bonds (PABs)	An innovative financing tool that can be used for transportation PPPs, public activity bonds (PABs) are a form of tax-exempt bond financing that can be issued by or on behalf of state or local governments for privately developed and operated projects. This gives private entities access to tax-exempt interest rates. All Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) projects are eligible for PABs. Under current law, the total amount of such bonds is limited to $15 billion. As of January 2010, PAB allocations totaled $6.3 billion for seven projects.
privatization	Privatization is when full control and ownership of a public asset is transferred to the private sector. This is not a PPP. See also "asset sale" and "build-own-operate (BOO)."
progress payments	Progress payments are the traditional approach to federal, state and local contracting in the United States, in which regular cash payments are made by the public sector to the private sector to allow the contractor to perform without using its own financial resources and without borrowing.
public-private partnership (PPP or P3)	According to a widely adopted definition from the U.S. Department of Transportation, a public-private partnership (PPP or P3) is "a contractual agreement formed between public and private sector partners, which allow more private sector participation than is traditional. The agreements usually involve a government agency contracting with a private company to renovate, construct, operate, maintain, and/or manage a facility or system. While the public sector usually retains ownership in the facility or system, the private party will be given additional decision rights in determining how the project or task will be completed." In some PPPs, the private sector may also finance some or all of a project.
purely private development	A purely private development project has no public sector involvement and no contract or other formal agreement between the public and private sectors. This is not a PPP.
revenue bonds	Revenue bonds are issued by the public sector to finance the construction or maintenance of a transportation facility. Unlike general obligation bonds, these are not backed by the full faith and credit of the government but, rather, depend on revenues from the roadway they finance.
revenue sharing	Revenue sharing is a PPP arrangement in which the public sector shares in the revenues generated by a privately leased transportation facility, over a certain threshold. This arrangement generally comes with a lower up-front concession payment to the public sponsor (see "long-term lease concession"). Examples include State Highway 130 in Texas and the Pocahontas Parkway in Virginia.
Section 129 loan	An innovative financing tool that can be used for transportation PPPs, Section 129 loans allow federal participation in a state loan to a public or private entity for transportation projects with dedicated revenue streams. States have the flexibility to negotiate interest rates and other terms. Projects receiving Section 129 loans must meet fewer requirements than those receiving state infrastructure bank loans (see "state infrastructure bank [SIB]"). Section 129 loans are authorized under 23 U.S.C. §129.
shadow tolling	Shadow tolling—known as "pass-through tolling" in Texas—is a variation on the use of tolling to support private financing of a highway project. Under this PPP financing arrangement, the sponsoring public agency agrees to make payments to the private operator "equal to the amount of the toll that would have been imposed on users of the facility if a direct user fee had been implemented," which gives the private sector an incentive to maximize traffic volume on the facility. Thus, shadow tolls are not paid by facility users. Shadow tolls are similar to availability payments, except that shadow tolls depend on traffic volume (see "availability payments").

state infrastructure bank (SIB)	An innovative financing tool that can be used for transportation PPPs, a state infrastructure bank (SIB) is a revolving fund administered by a state that supports surface transportation projects through low-interest loans, loan guarantees and other credit assistance to public and private sponsors of federal-aid highway projects. The program allows states to capitalize revolving loan funds with federal-aid funds. As of December 2008, 32 states and Puerto Rico had entered into 579 SIB loan agreements worth more than $5.56 billion. In addition, Florida, Georgia, Kansas, Ohio and Pennsylvania have developed state-funded SIBs. SIBs are authorized under 23 U.S.C. §610.1.
TIFIA	See "Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA)."
toll credits	Toll credits are earned by states for toll revenues from existing facilities that are spent on nonfederal highway capital improvement projects. The credits then can be substituted for the required nonfederal share on a federal-aid project, essentially increasing the federal share on such a project. Toll credits do not, however, increase the total funding available for transportation.
tolling	In this traditional approach to financing PPP highway projects, users pay tolls that cover the full construction and operating costs of the road. Not all PPPs involve tolling or pricing techniques. See also "congestion pricing."
Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA)	An innovative financing tool that can be used for transportation PPPs, the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) provides federal credit assistance in the form of direct loans, loan guarantees or standby lines of credit to public or private sponsors of major surface transportation projects. The program's goal is to "leverage federal funds by attracting substantial private and other non-federal co-investment in critical improvements to the nation's surface transportation system." Various criteria must be met to qualify for TIFIA assistance, and only 33 percent of eligible project costs can be supported. Congress authorized $122 million per year for TIFIA for FY 2005 through FY 2009, which can support on average more than $2 billion of annual credit assistance. From its inception to July 2010, the program provided $7.9 billion in assistance for projects worth $29.4 billion total.
value capture	Value capture refers to various arrangements in which the private sector contributes financial or other resources in exchange for benefits—such as increased property values—resulting from public investment in transportation improvements. Examples include development impact fees, joint development agreements (usually used for transit projects), tax increment financing, air rights development and assessment districts. Some value-capture projects may be considered PPPs, depending on the extent to which the private and public sectors share project risks and responsibilities. In many, however, the private sector acts primarily as an alternative revenue source for the public sector. Most value-capture approaches are used mainly by local, not state, governments.
variable pricing	See "congestion pricing."
warranty	In the context of PPPs for road projects, a warranty guarantees that a facility will meet a certain level of quality or else repairs or replacements will be made at the private contractor's expense. See also "design-build."

Appendix A. NCSL Foundation for State Legislatures Partners Project on Public-Private Partnerships (PPPs) for Transportation

Overview

This project is designed to link legislators, legislative staff and interested private sector entities in an effort to analyze legislators' needs and to develop nonpartisan, balanced and useful materials to aid legislators' decision making relative to PPPs, both in their respective states and as they consider state-federal relationships. The PPP steering committee will meet at each scheduled NCSL meeting. The proposed activities of the project include educational sessions on PPPs for the NCSL Transportation Committee.

Steering Committee Members (2008–2010)

Co-Chair (D): Representative Terri Austin, Indiana (Vice Chair—NCSL Transportation Committee)
Co-Chair (R): Representative Linda Harper-Brown, Texas (Chair—NCSL Transportation Committee)
Staff Chair: Fred Lewis, West Virginia

Legislator Members

Senator Steven Baddour, Massachusetts (Vice Chair—NCSL Transportation Committee)
Senator Scott Dibble, Minnesota (Immediate Past Chair—NCSL Transportation Committee)
Senator Pamela Gorman, Arizona
Senator Mary Margaret Haugen, Washington
Senator Dennis Nolan, Nevada (Chair—NCSL Transportation Committee, 2008-2009)
Senator Bruce Starr, Oregon

Legislative Staff Members

Eric Bugaile, Pennsylvania (Immediate Past Staff Chair—NCSL Transportation Committee)
Karl Spock, Texas Sunset Commission
Kate Wade, Wisconsin Audit Bureau

Private Partners

AAA—Justin McNaull and Pete Nonis
American Federation of State, County and Municipal Employees (AFSCME)—Dennis Houlihan
American Road and Transportation Builders Association (ARTBA)—Hank Webster and Bill Toohey
American Trucking Associations (ATA)—Ted Scott and John Lynch
Americans for Transportation Mobility Coalition (U.S. Chamber of Commerce)—Janet Kavinoky
Macquarie Capital—Geoff Segal
The Reason Foundation—Leonard Gilroy
Transurban—Jennifer Aument

Technical Resource

Jerry Zhao and formerly Bob Johns, University of Minnesota Center for Transportation Studies

Expert Faculty at Project Meetings (2008–2010)

Robert D. Atkinson, President, Information Technology and Innovation Foundation and Chair, National Surface Transportation Infrastructure Financing Commission, Washington, D.C.
Pamela Bailey-Campbell, then Senior Vice-President, Parsons Brinckerhoff, now Vice President, Jacobs, Colorado
Michael Bartolotta, Vice Chairman, First Southwest Company, Texas
Phineas Baxandall, Federal Tax and Budget Policy Analyst, U.S. PIRG (Federation of State Public Interest Research Groups), Massachusetts
Jeffrey N. Buxbaum, Principal, Cambridge Systematics, Inc., Massachusetts
Dominick Chilcott, Deputy Head of Mission, British Embassy, Washington, D.C.
Steve Cohen, Assistant Director, U.S. Government Accountability Office, Washington, D.C.
David Epperson, Resident Fellow, Center for Finance Strategy Innovation, University of Texas at Dallas, Texas
Edward Farquharson, Project Director, Partnerships UK, United Kingdom
John Foote, Senior Fellow, Harvard Kennedy School of Government, Massachusetts
Jane Garvey, Former Administrator, Federal Aviation Administration and Chairman, Meridiam Infrastructure NA, New York

Cameron Gordon, Senior Lecturer in Banking and Finance, University of Canberra, Australia, and John J. Marchi Visiting Scholar in Public Policy, City University of New York—College of Staten Island, New York
D.J. Gribbin, Managing Director, Macquarie Capital, Washington, D.C.
Karen Hedlund, then Partner, Nossaman LLP, now Chief Counsel, Federal Railroad Administration, Washington, D.C.
Rob Henry, Executive Director, Greater Valley Forge Transportation Management Association, Pennsylvania
Terry Hill, Global Head of Transportation and Former Chairman of the Board, Arup Group Limited, United Kingdom
Brian Howells, Director, Halcrow, United Kingdom, and 2009–2010 President, Public-Private Partnerships (PPP) in Transportation Division, American Road and Transportation Builders Association (ARTBA), Washington, D.C.
Miller Hudson, Legislative Consultant, Colorado
Elizabeth Jones, Associate Director and Visiting Professor, Center for Finance Strategy Innovation, University of Texas at Dallas, Texas
Joung Lee, Associate Director for Finance and Business Development, American Association of State Highway and Transportation Officials (AASHTO), Washington, D.C.
David Levy, Managing Director, Goldman Sachs, New York
Michele Mariani Vaughn, Senior Associate, The Pew Center on the States, Washington, D.C.
Regina McElroy, Director, Office of Innovative Program Delivery, Federal Highway Administration, Washington, D.C.
John B. Miller, Of Counsel, Patton Boggs LLP and President, Barchan Foundation Inc., Washington, D.C.
Thomas Pelnik, Director, Innovative Project Delivery Division, Virginia Department of Transportation, Virginia
Mary Peters, Former Secretary, U.S. Department of Transportation and Senior Advisor, Zachry Hastings Alliance, Texas
Frank M. Rapoport, Partner, McKenna Long & Aldridge LLP and Senior Advisor, Council of Project Finance Advisors (CPFA) Working Group, Washington, D.C.

Meeting Schedule (2008–2010)

Scoping meetings, April and July 2008
Conference Call, October 2008
Fall Forum, December 11–13, 2008, Atlanta, Georgia
Conference Call, March 2009
Spring Forum, April 22–25, 2009, Washington, D.C.
Legislative Summit, July 20–24, 2009, Philadelphia, Pennsylvania
Fall Forum, December 10–12, 2009, San Diego, California
Spring Forum, April 7–10, 2010, Washington, D.C.
Legislative Summit, July 25–28, 2010, Louisville, Kentucky
Conference Call, October 2010
Fall Forum, December 8–10, 2010, Phoenix, Arizona

Confirmed Private Partners for Phase II (2010–2011)

AAA—Justin McNaull and Pete Nonis
AECOM—Sam Barend
American Trucking Associations (ATA)—Ted Scott and John Lynch
American Road and Transportation Builders Association (ARTBA)—Hank Webster and Bill Toohey
Cintra US—Patrick Rhode
Design-Build Institute of America—Richard Thomas
Dorsey and Whitney, LLP—Jay Lindgren
The Lane Construction Corporation—John Irvine
Transurban—Jennifer Aument
U.S. Chamber of Commerce—Janet Kavinoky

NCSL Staff

Caroline Carlson, Jim Reed, Nick Farber, Jaime Rall—Denver
Molly Ramsdell, Helen Narvasa—Washington, D.C.

Appendix B. State PPP Enabling Statutes for Transportation Projects as of October 2010[228]

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
1	Alabama	Ala. Code §23-1-81	Authorizes county commissions and the state DOT to license private entities to establish or operate toll roads, toll bridges, ferries or causeways. Allows the authorization of a licensee to establish and fix the rates of toll.	No. Allows the county commission or state DOT to license private parties for toll projects (Ala. Code §23-1-81).
		Ala. Code §§23-2-140 to 163	Under legislation enacted in 2009 (House Bill 217; 2009 Ala. Acts, Act 769), authorizes the Alabama Toll Road, Bridge and Tunnel Authority to enter into agreements for design-build, design-build-operate, design-build-own-operate or design-build-own-operate-maintain contracts, or other similar arrangements or agreements; also allows for leases, licenses, franchises, concessions or other agreements for the development, operation, management or undertaking of all or any part of a project. Allows any entity that owns, leases or otherwise operates a toll facility to set and collect tolls, subject to such conditions as the authority and the state DOT may establish. Allows bids to be awarded by best value or qualifications. Sets the bond issue date at 75 years.	No. The authority must have the approval of the state DOT to construct toll, bridge or tunnel projects (Ala. Code §23-2-144(a)(5)) but is given full authority to enter into PPP contracts or agreements (Ala. Code §23-2-144(a)(12)). The statute requires approval of the governor to accept federal funds and to study any proposed toll road, bridge or tunnel project (Ala. Code §23-2-144(a)(15) and §23-2-161). It also requires the authority to submit an annual report to the Legislature (Ala. Code §23-2-158).
2	Alaska	Alaska Stat. §§19.75.111 to 990	Authorizes the Knik Arm Bridge and Toll Authority to enter into PPPs in any form to finance, design, construct, maintain, improve or operate the Knik Arm Bridge. Allows the authority to issue bonds or incur other forms of indebtedness to finance the project and to fix and collect tolls for the use of the bridge; these tolls may exceed operating costs.	No. Requires the authority to issue a report to the Legislature and the governor detailing its operations over the previous year and prospects for the next year (Alaska Stat. §19.75.111(b)(1)).
3	Arizona	Ariz. Rev. Stat. Ann. §§28-7701 to 7710	Comprehensive statute that authorizes PPPs for transportation projects. Under legislation enacted in 2009 (Senate Bill 2396; 2009 Ariz. Sess. Laws, Chap. 141), authorizes the state DOT to enter into agreements with private entities to design, build, finance, maintain, operate, manage and/or lease transportation facilities, or for any other project delivery method that the DOT determines will serve the public interest. Allows for availability payments and revenue sharing. Limits agreements to no more than 50 years, which may be extended by the DOT. Requires any foreign entity that submits a concession agreement to provide satisfactory evidence	No.

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
			of compliance with certain requirements. Prohibits noncompete clauses, in that a PPP agreement must include a provision that bars a private partner from seeking relief to hinder the DOT from developing or constructing any facility that was planned at the time the agreement was executed. However, an agreement may provide for reasonable compensation to the private partner for adverse effects on revenues resulting from the development and construction of a then-unplanned facility. Allows for solicited and unsolicited proposals.	
4	Arkansas	Ark. Stat. Ann. §§27-86-201 to 211; Ark. Stat. Ann. §27.76.402	Sections 27-86-201 to 211 allow counties to grant franchises to private entities to build toll bridges, turnpikes or causeways over or along swamps, watercourses, lakes or bays whenever it is in the public interest. Require consent from the federal government for construction of the bridge. Give counties superintending authority on rates. Prohibit granting a franchise to operate a toll road on the state highway system. Section 27.76.402 prohibits a regional mobility authority from selling a toll facility project to a private entity or entering into a lease or concession agreement for a toll facility.	No.
5	California	Cal. Streets & Highways Code §143	Comprehensive statute that authorizes PPPs for transportation projects. Under legislation enacted in 2009 (Senate Bill 4b; 2009 Cal. Stats., Chap. 2), allows the state DOT (Caltrans) and regional transportation agencies, if authorized by the California Transportation Commission, to enter into "comprehensive development lease agreements" with public and/or private entities for transportation projects, including those that charge tolls or fees. Eliminates the need for legislative approval of lease agreements. Establishes the Public Infrastructure Advisory Commission as a public PPP advisory body. Prohibits noncompete clauses. Allows for solicited and unsolicited proposals. No lease agreements may be entered into under this section on or after Jan. 1, 2017.	No. The 2009 legislation eliminated former legislative approval requirements, which had been in place since 2005. However, the new law provides that lease agreements must first be submitted to the California Transportation Commission for approval, then to the Legislature and the Public Infrastructure Advisory Commission for review (Cal. Streets & Highways Code §143(c)(2) and §143(c)(5)).
		Cal. Gov. Code §§5956 to 5956.10	Authorizes local governmental agencies to enter into agreements with private entities to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair and/or operate a variety of fee-producing infrastructure facilities, including rail,	No. However, any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge pursuant to this chapter shall be taken only

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
			highway, bridge, tunnel or airport projects. Allows for solicited and unsolicited proposals. Prohibits using the authority in this section to design, construct, finance or operate a toll road on a state highway.	by ordinance or resolution of the legislative body of that agency (Cal. Gov. Code §5956.10(b)(5)(D)).
6	Colorado	Colo. Rev. Stat. §§43-3-202 to 202.5	Authorizes the state DOT to make or enter into contracts or agreements with one or more public or private entities to design, finance, construct, operate, maintain, reconstruct or improve a turnpike project by means of a public-private initiative. Finds that privately-developed transportation projects can result in time and cost savings, risk reduction and new tax revenues. Requires that the public or private entity secure and maintain liability insurance coverage.	No.
		Colo. Rev. Stat. §§43-1-1201 to 1209	Allows the state DOT to enter into agreements for public-private initiatives, including for the design, financing, construction, operation, maintenance and/or improvement of toll roads, turnpikes and high-occupancy toll lanes. Allows for solicited and unsolicited proposals.	No.
		Colo. Rev. Stat. §§43-4-801 to 812	Under legislation enacted in 2009 (Senate Bill 108; 2009 Colo. Sess. Laws, Chap. 5), creates and authorizes a Statewide Bridge Enterprise to enter into PPPs to design, develop, construct, reconstruct, repair, operate or maintain bridge projects. Also creates the High-Performance Transportation Enterprise (HPTE) to seek out and enter into PPPs and other innovative means of completing surface transportation infrastructure projects. Both enterprises shall operate as government-owned businesses within the state DOT.	No. However, a metropolitan planning organization or other transportation planning region has the right to approve completion of any proposed surface transportation infrastructure PPP project that will add substantial capacity or significantly alter traffic patterns in its territory (Colo. Rev. Stat. §43-4-806(8)(b)).
		Colo. Rev. Stat. §§43-3-301 to 304	Sets requirements for private toll road or toll highway companies. Prohibits such a company from entering into a noncompete agreement with a public entity if such agreement would degrade an existing roadway or delay or prevent construction or upgrading of a road or highway that is included in a regional or statewide transportation plan.	No.
		Colo. Rev. Stat. §§43-3-401 to 414	Authorizes the Transportation Commission, with the approval of the governor, to enter into a contract with a private individual, firm or corporation for construction, maintenance and operation of one or more toll tunnels. Requires all rates for tolls or fees to be charged by a private	No. However, the governor must approve these contracts (Colo. Rev. Stat. §43-3-403(2)).

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
			contractor to first be approved by the commission.	
		Colo. Rev. Stat. §43-2-219	Authorizes a board of county commissioners to enter into public-private initiatives for county highways and bridges, to privatize any county highway or bridge, or to charge tolls for such facilities.	No.
7	Delaware	Del. Code Ann. tit. 2, §§2001 to 2012	Comprehensive statute that authorizes PPPs for transportation projects. Authorizes the secretary of transportation to enter into agreements with private entities to study, plan, design, construct, lease, finance, operate, maintain, repair and/or expand transportation systems. Establishes the Public-Private Initiatives Program Revolving Loan Fund, which provides funds for financing such projects. Allows for solicited and unsolicited proposals.	Yes. However, the co-chairs of the Joint Bond Bill Committee, not the entire General Assembly, have authority to approve the agreement (Del. Code Ann. tit. 2, §2003(e)(3)).
8	Florida	Fla. Stat. Ann. §334.30	Comprehensive statute that authorizes PPPs for transportation projects. Authorizes the state DOT, with legislative approval, to enter into agreements with private entities to build, operate, own or finance transportation facilities. Creates evaluation criteria for such projects. Prohibits noncompete clauses. Exempts private entities from certain taxes. Allows the DOT to lease existing toll facilities (except the Florida Turnpike System) through PPPs with legislative approval; the DOT also may develop new toll facilities or increase capacity on existing toll facilities through PPPs. Requires provisions in the PPP agreement that ensure a negotiated portion of revenues from tolled or fare generating projects are returned to the DOT over the life of the agreement. Allows a private entity to impose tolls or fares, subject to DOT regulation and certain limits. Allows for availability payments or shadow tolls, subject to annual appropriation by the Legislature. Limits PPP terms to no more than 50 years; however, the secretary of transportation may authorize a term of up to 75 years, and the Legislature may approve a term exceeding 75 years. Limits the total obligations for all projects under this section to no more than 15 percent of total federal and state funding for the State Transportation Trust Fund in any given year. Allows for solicited and unsolicited proposals.	Yes, "as evidenced by approval of the project in the department's work program" in the Legislature's appropriations process (Fla. Stat. Ann. §334.30(1)). The DOT must submit PPPs either in its five-year work plan or 10-year Strategic Intermodal System Plan. Also, the DOT is required to provide an independent project analysis to the Legislative Budget Commission for review and approval prior to awarding a contract on a lease of an existing toll facility (Fla. Stat. Ann. §334.30(2)(d)). Legislative approval also is required for any agreement with a term in excess of 75 years (Fla. Stat. Ann. §334.30(12)).
		Fla. Stat. Ann. §337.251	Authorizes the state DOT to lease to public or private entities, for a term not to exceed	No.

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
			99 years, the use of DOT property, including rights-of-way. Also authorizes the DOT to lease the use of areas above or below state highways or other transportation facilities for commercial purposes. Leases under this section may not interfere with the primary state transportation needs nor be contrary to the best interests of the public. Allows for solicited and unsolicited proposals.	
		Fla. Stat. Ann. §§338.22 to 251	Creates the Florida Turnpike Enterprise, which operates like private-sector business within the state DOT, in order to plan, develop, own, purchase, lease or otherwise acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate and manage the Florida Turnpike System. Allows the enterprise to cooperate, coordinate, partner and contract with other entities, public and private, to accomplish its purposes.	Yes. Any proposed turnpike project requires legislative approval (Fla. Stat. Ann. §338.221(6), §338.222, §338.223 and §338.2275).
		Fla. Stat. Ann. §343.875	Authorizes the Northwest Florida Transportation Corridor Authority to enter into agreements with private entities to build, operate, own or finance transportation facilities within its jurisdiction. Sets criteria for proposed projects. Allows for solicited and unsolicited proposals. Allows a private entity to impose tolls or fares, but rates and use of funds must be regulated by the authority to avoid unreasonable costs to facility users.	No.
		Fla. Stat. Ann. §348.0004	Authorizes any expressway authority, transportation authority, bridge authority or toll authority to enter into agreements with private entities to build, operate, own or finance transportation facilities within the jurisdiction of the authority. Creates evaluation criteria for such projects. Prohibits noncompete clauses. Allows a private entity to impose tolls or fares, but rates and use of funds must be regulated by the authority to avoid unreasonable costs to the users of the facility. Requires all PPP facilities to be consistent with state, regional and local comprehensive plans. Allows for solicited and unsolicited proposals.	Yes. The authority must provide an independent project analysis to the Legislative Budget Commission for review and approval prior to awarding a contract on a lease of an existing toll facility (Fla. Stat. Ann. §348.0004(9)(a)).
9	Georgia	Ga. Code Ann. §32-2-41(b)(6)	Under legislation enacted in 2009 (Senate Bill 200; 2009 Ga. Laws, p. 340), allows the commissioner to establish a Public-Private Initiatives Division within the state DOT.	No.
		Ga. Code Ann.	Under legislation enacted in 2009 (Senate	No. Final approval of

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
		§§32-2-78 to 80	Bill 200; 2009 Ga. Laws, p. 340), authorize the DOT to solicit and accept proposals for projects that are funded or financed in part or in whole by private sources. Require all future PPP projects to be solicited by the DOT. Include public comment requirements and criteria for the DOT to use in awarding contracts. Authorize contracts to include tolls, fares, or other user fees and tax increments for use of the project. Final approval of PPP contracts shall be by action of the State Transportation Board.	contracts is by action of the State Transportation Board (Ga. Code Ann. §32-2-80(c)).
		Ga. Code Ann. §48-5-41; Ga. Code Ann. §48-5-421.1	Under legislation enacted in 2010 (House Bill 1186; 2010 Ga. Laws, p. 644), section 48-5-41 exempts property that qualifies as a public-private transportation project from ad valorem taxes, and section 48-5-421.1 provides that such projects shall not constitute special franchises.	No.
10	Illinois	Ill. Rev. Stat. ch. 20, §2705/2705-450	Authorizes the state DOT to enter into agreements with any public or private entity for the purpose of promoting and developing high-speed rail and magnetic levitation transportation within the state.	No.
		Ill. Rev. Stat. ch. 605, §5/10-802; Ill. Rev. Stat. ch. 605, §5/10-602(4)(1)	Authorizes municipalities to make contracts "of every kind and nature" to acquire, construct, reconstruct, improve, enlarge, better, operate, maintain and/or repair any bridge within five miles of the corporate limits of the municipality, and to fix and apply tolls and fees for use of such a bridge.	No.
		Ill. Rev. Stat. ch. 605 §§130/1 to 130/135; see also Ill. Rev. Stat. ch. 20 §2705/2705-220; Ill. Rev. Stat. ch. 20 §3501/825-105; Ill. Rev. Stat. ch. 30 §550/1.5; Ill. Rev. Stat. ch. 30 §570/2.5; Ill. Rev. Stat. ch. 30 §575/2.5; Ill. Rev. Stat. ch. 35 §120/1q; Ill. Rev. Stat. ch. 35 §200/15-55; Ill. Rev. Stat. ch. 820 §130/2	Under legislation enacted in 2010 (Senate Bill 3659; 2010 Ill. Laws, P.A. 96-913), authorizes the state DOT to enter into a PPP to develop, construct, manage or operate the Illiana Expressway. Limits the contract term to 99 years, including extensions. Requires legislative approval for all extensions. Chapter 820 section 130/2 makes a PPP for the Illiana Expressway subject to the state Prevailing Wage Act (this section is also applicable to a lease of facility property at Chicago Midway International Airport).	No, except for extensions of lease terms beyond 99 years (Ill. Rev. Stat. ch. 605 §§130/15(d)).

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
11	Indiana	Ind. Code Ann. §§5-23-1-1 to 5-23-7-2	Authorizes governmental bodies to enter into PPP agreements with private entities for the acquisition, planning, design, development, reconstruction, repair, maintenance or financing of public facilities. Applies to the state, a political subdivision in a county containing a consolidated city, or a political subdivision in a county that adopts these provisions by resolution or ordinance. Limits original terms of PPP agreements to no more than five years with board approval; a term in excess of five years requires approval from the board, the governor and/or the fiscal body of a political subdivision. Requires a public hearing. Allows for solicited proposals only.	No. Under this chapter, PPPs must be approved by the board of the public agency having the power to award contracts. A PPP with an original term in excess of five years must also be approved by either the governor if the state is a party to the agreement or by the fiscal body of a political subdivision that is a party to the agreement (Ind. Code Ann. §5-23-6-1).
		Ind. Code Ann. §§8-15-1-1 to 8-15-3-35	Pertains to toll roads generally. Authorizes toll road bonds. Provides for certain powers and duties of private operators that have entered into a PPP for a toll road under Ind. Code Ann. art. 8-15.5 or art. 8-15.7. Exempts private operators from paying certain taxes on property or property interests acquired via a PPP.	Yes, inasmuch as the General Assembly must enact a statute to approve the location of a tollway as well as certain construction on Interstate 69 or the imposition of tolls in certain areas (Ind. Code Ann. §8-15-2-1(d) and §8-15-3-9(e)). The governor also must approve the location of any tollway (Ind. Code Ann. §8-15-3-9).
		Ind. Code Ann. §§8-15.5-1-1 to 8-15.5-13-8	With art. 8-15.7, acted to authorize the Indiana Toll Road lease transaction when first passed in 2006 (House Bill 1008; 2006 Ind. Acts, P.L. 47). Authorizes the Indiana Finance Authority to enter into PPP agreements with private entities to plan, design, acquire, construct, reconstruct, improve, extend, expand, lease, operate, repair, manage, maintain or finance toll road projects. Prohibits the state DOT or the authority from issuing a request for proposals or entering into a PPP for a toll road after Aug. 1, 2006, unless the General Assembly adopts a statute authorizing the imposition of tolls. Exempts certain projects from the legislative approval requirement, including the Illiana Expressway under legislation enacted in 2010 (Senate Bill 382; 2010 Ind. Acts, P.L. 85). Requires public hearings to be held in affected counties; also requires certain preliminary studies. Limits lease terms to no more than 75 years. Allows for solicited proposals only.	Yes, inasmuch as the General Assembly must enact a statute to approve the imposition of tolls generally as well as to approve certain construction on Interstate 69 or the imposition of tolls in certain areas. Certain projects are exempt from this requirement including the Illiana Expressway (Ind. Code Ann. §8-15.5-1-2). The governor must approve the PPP agreement and the selection of the private operator (Ind. Code Ann. §8-15.5-4-11 and §8-15.5-5-1).
		Ind. Code Ann.	With art. 8-15.5, acted to authorize the	Yes. The General Assembly

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
		§§8-15.7-1-1 to 8-15.7-16-8	Indiana Toll Road lease transaction when first passed in 2006 (House Bill 1008; 2006 Ind. Acts, P.L. 47). Authorizes the state DOT to enter into PPPs to develop, finance or operate transportation projects, including tollways, roads and bridges, and some rail projects. Prohibits the DOT or the Indiana Finance Authority from issuing a request for proposals or entering into a PPP agreement unless the General Assembly adopts a statute authorizing that activity. Exempts certain projects from the legislative approval requirement, including an Interstate 69 project and the Illiana Expressway under new legislation enacted in 2010 (Senate Bill 382; 2010 Ind. Acts, P.L. 85). Allows for solicited proposals only.	must enact a statute to approve issuing a request for proposals or entering into a PPP agreement. It also must approve carrying out certain construction on Interstate 69 or the imposition of tolls in certain areas. Certain projects are approved by having been statutorily exempted from the legislative approval requirement, including an Interstate 69 project and the Illiana Expressway (Ind. Code Ann. §8-15.7-1-5(b)). PPPs for rail projects also are subject to review and appropriation by the General Assembly (Ind. Code Ann. §8-15.7-1-5(c)). The governor must approve the selection of the private operator (Ind. Code Ann. §8-15.7-4-3).
		Ind. Code Ann. §§8-23-7-22 to 25	Authorizes the state DOT to convert a state highway to a tollway, subject to approval of the governor and the General Assembly. After such order becomes effective, requires the DOT to maintain and operate the tollway as provided in Ind. Code Ann. §8-15-3 or to enter into a PPP as provided in Ind. Code Ann. art. 8-15.7 (see above). Exempts certain projects from the legislative approval requirement, including an Interstate 69 project and the Illiana Expressway under legislation enacted in 2010 (Senate Bill 382; 2010 Ind. Acts, P.L. 85).	Yes, inasmuch as the General Assembly must enact a statute to approve changing a state highway to a tollway as well as to approve certain construction on Interstate 69 or the imposition of tolls in certain areas. Certain projects are exempt from this requirement, including an Interstate 69 project and the Illiana Expressway (Ind. Code Ann. §8-23-7-22(b) and §8-23-7-23(c)). The governor also must approve changing a state highway to a tollway (Ind. Code Ann. §8-23-7-22(a) and §8-23-7-23(a)).
12	Louisiana	La. Rev. Stat. Ann. §§48:1251 to 1281	Establishes the Louisiana Expressway Authority, which was subsequently transferred to the Louisiana Department of Transportation and Development (DOTD) by La. Rev. Stat. Ann. §36:509. Section 1261 empowers the authority to fix, revise, charge and collect tolls and charges for the use of an expressway project; to contract with any person, partnership, association or corporation desiring the use of any part thereof in order to provide expressway facilities when, in the opinion of the authority, such facilities are necessary or	No

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
			desirable; and to fix the terms, conditions, rates and charges for use. States that such tolls shall not be subject to supervision or regulation by any other commission, board or agency of the state.	
		La. Rev. Stat. Ann. §§48:2020 to 2037	Encourages parishes and municipalities to use PPPs to help the state finance improvements to the state highway system and meet local transportation needs. Authorizes parishes and municipalities to create transportation authorities, which may enter into agreements with public or private entities to construct, maintain, repair and/or operate transportation projects. Allows transportation authorities to authorize investment of public and private money to finance such projects, subject to compliance with state law relative to use of public funds.	No.
		La. Rev. Stat. Ann. §§48:2071 to 2074; La. Rev. Stat. Ann. §48:2077; La. Rev. Stat. Ann. §§48:2084 to 2084.15	Creates the Louisiana Transportation Authority to pursue alternative and innovative funding sources—including PPPs, tolls and unclaimed property bonds—to supplement public revenue sources and to improve Louisiana's transportation system. Allows the authority to contract with a public or private entity to construct, maintain, repair or operate authority projects, and to authorize the investment of public and private money to finance such projects, subject to compliance with state law relative to the use of public funds. Allows a private entity to impose user fees, but prohibits a private entity from imposing tolls or user fees on any existing free transportation facility unless the facility is improved or expanded. Allows for solicited and unsolicited proposals.	No. However, before approving a PPP proposal, the authority must first submit it to the House and Senate Committees on Transportation, Highways and Public Works, which then must conduct a public hearing (La. Rev. Stat. Ann. §48:2084).
13	Maine	Me. Rev. Stat. Ann. tit. 23, §4251	Under legislation enacted in 2010 (House Bill 1167; 2010 Me. Laws, Chap. 648), authorizes the state DOT—with legislative approval—to enter into PPPs for transportation projects with an estimated cost of more than $25 million or when a project proposal includes tolling existing transportation facilities that were not previously subject to tolls. Allows for solicited and unsolicited proposals. Sets standards and requirements for PPP proposals, including completion of certain studies. Requires PPP proposals to limit the use of state capital funding to less than 50 percent of the initial capital cost of the facility and, to the extent practicable,	Yes. The state DOT must submit to the Legislature a bill that authorizes the agreement (Me. Rev. Stat. Ann. tit. 23, §4251(9)). The Legislature also must approve any terms longer than 50 years (Me. Rev. Stat. Ann. tit. 23, §4251(8)). Requires the DOT to submit, to the joint standing committee of the Legislature having jurisdiction over transportation matters, an annual report summarizing proposals that the DOT has determined meet the required

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
			minimize use of public transportation funding sources. Allows a PPP agreement to authorize a private entity to impose tolls or fares, subject to certain requirements. Limits term length to 50 years unless the Legislature, upon the recommendation of the commissioner of transportation, approves a longer term.	standards or that have been finally rejected during the previous calendar year (Me. Rev. Stat. Ann. tit. 23, §4251(11)).
14	Maryland	No PPP enabling statute, but see Md. Transportation Code Ann. §4-205; Md. Transportation Code Ann. §4-312; Md. Transportation Code Ann. §4-406	Maryland does not have a statute expressly authorizing transportation PPPs. However, Maryland established by regulation a Transportation Public-Private Partnerships Program for non-highway projects (Md. Code Regs §§11.07.06.01 to 14 and Md. PPP Guidance), under the statutory authority of sections 4-205 and 4-312. A 1996 state attorney general opinion also states that the Maryland Transportation Authority is authorized to enter into PPPs for toll highways under these and other provisions (MD 81 Op. Att'y Gen. 261, issued 2/2/96). State statute now implicitly acknowledges this interpretation by addressing oversight and reporting requirements for transportation PPPs, including tolled projects (Md. Transportation Code Ann. §4-406).	No. The state DOT has the authority to enter into PPPs, although lease agreements specifically are subject to approval by the Board of Public Works (Md. Transportation Code Ann. §4-406(f)). However, Md. Transportation Code Ann. §4-205 and §4-406—the latter under legislation enacted in 2010 (Senate Bill 979 and House Bill 1370; 2010 Md. Laws, Chap. 640 and Chap. 641)—require the authority to submit several reports for review and comment to the Senate Budget and Taxation Committee, the House Committee on Ways and Means, the House Appropriations Committee and/or the Department of Legislative Services.
15	Massachusetts	Mass. Gen. Laws Ann. ch. 6C, §§1 to 75	Under legislation enacted in 2009 (Senate Bill 2087; 2009 Mass. Acts, Chap. 25), allows the board of directors of the newly created MassDOT to solicit proposals and enter into contracts for design-build-finance-operate-maintain or design-build-operate-maintain services with the responsible and responsive offeror submitting the proposal that is most advantageous to the department through the sale, lease, operation and maintenance of a transportation facility within the commonwealth.	No. A Special Public-Private Partnership Infrastructure Oversight Commission is established, which must comment on and approve all requests for proposals. Commission members cannot have been employees of the executive branch or members or employees of the legislature for a period of at least two years prior to appointment (Mass. Gen. Laws Ann. ch. 6C, §73).
16	Minnesota	Minn. Stat. Ann. §§160.84 to 98	This statute generally authorizes state and local road authorities to solicit or accept proposals from and enter into development agreements with private entities to develop, finance, design, construct, improve, rehabilitate, own and/or operate toll facilities. It also authorizes user fees for high-occupancy vehicle lanes (also known	No. Approval is required by the state DOT commissioner or, if the project is in a municipality, by the municipality's governing board (Minn. Stat. Ann. §160.85 subd. 3).

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
			as HOT lanes) or dynamic shoulder lanes. Under legislation passed in 2008 (House File 2800; 2008 Minn. Laws, Chap. 152), however, the extent to which a private entity can operate and maintain a road is significantly limited. Section 160.845 prohibits a road authority or a private operator from converting, transferring or utilizing any portion of a highway to impose tolls or for use as a toll facility (excepting dynamic shoulder lanes or HOV/HOT lanes); and section 160.98 prohibits a road authority from selling, leasing, executing a development agreement for a build-operate-transfer or build-transfer-operate facility that transfers an existing highway lane, or otherwise relinquishing management of a highway. Thus, although Minnesota is still counted as a state with PPP enabling legislation, according to a recent Stateline article, "new legislation would be necessary to move forward virtually any significant P3 project."[229]	
17	Mississippi	Miss. Code Ann. §§65-43-1 to 85	Authorizes the Mississippi Transportation Commission, county boards of supervisors and/or the governing authorities of municipalities to contract with other governmental agencies or private entities for the purpose of designing, financing, constructing, operating and maintaining one or more new toll roads or toll bridges in the state. Prohibits noncompete clauses by authorizing toll roads or bridges at and along only those locations where an alternate untolled route exists. Limits contract terms to 50 years, which cannot be extended or renewed. Allows for solicited and unsolicited proposals.	No. Requires the Mississippi Transportation Commission to submit an annual report to the chairs of the Senate Highways and Transportation Committee and the House Transportation Committee evaluating the financial and operational performance by a private company with which the commission has contracted for construction, operation and maintenance of a toll project (Miss. Code Ann. §65-43-4).
18	Missouri	Mo. Rev. Stat. §§227.600 to 669	Under legislation enacted in 2009 (House Bill 683; 2009 Mo. Laws, H.B. 683), authorizes the Highways and Transportation Commission to enter into agreements with private partners to finance, develop and/or operate any pipeline, ferry, river port, airport, railroad, light rail or other mass transit facility. Any project not mentioned previously cannot be financed, developed or operated by a private partner until it is approved by a vote of the people. Allows for solicited and unsolicited projects.	Yes. Requires projects to be approved by the commission, then the Joint Committee on Transportation Oversight (Mo. Rev. Stat. §227.615(2)). Certain projects must be submitted for approval by a vote of the people (Mo. Rev. Stat. 227.600(2)(10)). Also requires the commission to submit an annual status report to the governor and General Assembly assessing the

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
				of the PPP method of financing, developing, and/or operating each project (Mo. Rev. Stat. §227.669).
		Mo. Rev. Stat. §§238.300 to 367	Authorizes creation of special purpose, nonprofit "transportation corporations" by private parties, which may enter into agreements with the Highways and Transportation Commission in order to fund, promote, plan, design, construct, maintain and operate one or more transportation projects. Authorizes such corporations to issue bonds and to establish and charge user fees for projects. No part of the earnings or assets of a transportation corporation shall inure to the benefit of any private interests, person or entity.	No. Projects must be approved by the governing body of each such county, city, town or village and the commission (Mo. Rev. Stat. §238.310(3)).
19	Nevada	Nev. Rev. Stat. §§338.161 to 168	Allows private entities to submit a request to a public body to develop, construct, improve, maintain or operate, or any combination thereof, a transportation facility. Excludes toll roads and toll bridges.	No. However, approval is subject to the provisions in Nev. Rev. Stat. §338.166.
20	North Carolina	N.C. Gen. Stat. §136-28.6A	Under legislation enacted in 2009 (Senate Bill 648; 2009 N.C. Sess. Laws, Chap. 235), allows the state DOT to enter into a contract with a private developer to accomplish the engineering, design or construction of improvements to the state highway system. Sets restrictions on such projects, including that DOT participation is limited to the lesser of 10 percent of the engineering contract and any construction contract or $250,000, and that, in any case, DOT costs must not exceed normal practices. Requires projects to be constructed in accordance with DOT-approved plans and specifications. Expires Dec. 31, 2011.	No. Requires the secretary of transportation to report annually to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Transportation Oversight Committee about agreements entered into under this section (N.C. Gen. Stat. §136-28.6A(d)).

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
		N.C. Gen. Stat. §§136-89.180 to 198	Authorizes the North Carolina Turnpike Authority to enter into agreements with the state DOT, political subdivisions and private entities, and to expend such funds as it deems necessary pursuant to such agreements, to finance the acquisition, construction, equipping, operation or maintenance of any turnpike project. Authorizes the authority to fix and collect tolls and fees for the use of a turnpike project. Prohibits noncompete clauses by requiring the DOT to maintain an existing, alternate, comparable nontoll route corresponding to each turnpike project constructed pursuant to this article. Allows the authority to study, plan and conduct preliminary design work on up to nine projects and then to design, establish, purchase, construct, operate and maintain five identified projects only. Any additional projects require legislative approval.	Yes, but only for projects in addition to the five listed in the statute (N.C. Gen. Stat. §136-89.183(a)(2)(e)). Also requires the authority to submit a description of any proposed toll or fee to the Board of Transportation, the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations for review (N.C. Gen. Stat. §136-89.183(a)(5)). Concurrence of the Board of Transportation also is required if the state DOT is a party to the agreement (N.C. Gen. Stat. §136-89.183(a)(17)). Sets other reporting requirements to the governor, the General Assembly, the DOT, the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations (N.C. Gen. Stat. §136-89.183A(e) and §136-89.193).
21	Oregon	Or. Rev. Stat. §§367.800 to 826	Establishes the Oregon Innovative Partnerships Program within the state DOT, which is authorized to enter into agreements with private entities to plan, acquire, finance, develop, design, construct, reconstruct, replace, improve, maintain, manage, repair, lease and/or operate transportation projects. Lists specific goals for the program, including to speed project delivery, maximize innovation and develop partnerships with private entities. Lists specific requirements for PPP agreements, including financing, risk management, penalties for nonperformance and incentives for performance. Allows for solicited and unsolicited proposals.	No. The DOT may not enter into an agreement until it is reviewed and approved by the Oregon Transportation Commission (Or. Rev. Stat. §367.806(6)(a)).
		Or. Rev. Stat. §§383.001 to 075	Finds that, because public funding sources are not providing sufficient funds to meet the state's growing transportation needs, private funding should be encouraged as an additional source of funding for transportation projects and facilities. Authorizes the state DOT to enter into agreements with private entities and/or	No. Decisions are made by the DOT, except that the Transportation Commission must approve establishment of any tolls (Or. Rev. Stat. §383.004(1)).

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
			units of government to acquire, design, construct, reconstruct, operate or maintain and repair tollway projects. Includes lease agreements. Allows the DOT or a private entity that operates a tollway project pursuant to an agreement with the DOT to impose and collect tolls. Allows for solicited and unsolicited proposals.	
22	South Carolina	S.C. Code Ann. §57-3-200	Authorizes the state DOT to expend such funds as it deems necessary to enter into partnership agreements with private entities to finance, by tolls and other methods, the cost of acquiring, constructing, equipping, maintaining and operating highways, roads, streets and bridges in the state.	No.
		S.C. Code Ann. §§57-5-1310 to 1495	Allows the state DOT to construct and operate turnpike facilities. Section 57-5-1330(1)(4) appears to allow the use of PPPs for these facilities by allowing the DOT to exercise such authorizations as are granted by the provisions in other statute law to designate, establish, plan, abandon, improve, construct, maintain and regulate turnpike facilities.	No. However, the DOT is required to complete a feasibility study of any bridge project that qualifies as a turnpike facility and to forward copies of such study to the chairs of the Senate Transportation and Finance committees and the House Education and Public Works and Ways and Means committees (S.C. Code Ann. §57-5-1335).
23	Tennessee	Tenn. Code Ann. §§54-3-101 to 113	Authorizes tolling as an additional and alternative method for funding or financing transportation facilities. Authorizes the state DOT to enter into agreements with private parties to develop or operate a tollway, toll facility or any part thereof. Limits authorization for tolling initially to a pilot program of two projects. Provides that existing highways cannot be converted into toll roads, but additional lane capacity constructed on or along an existing highway or bridge may be developed and operated like a tollway. Requires legislative approval.	Yes. Requires the DOT to submit any proposed toll facility or road in their annual funding recommendation to the General Assembly. The toll facility or road cannot be developed further until those recommendations have been approved by the General Assembly (Tenn. Code Ann. §54-3-102(b)). Legislative approval is required both for the two pilot projects and before proceeding with additional tollway and toll facility projects beyond the pilot program (Tenn. Code Ann. §54-3-113).
24	Texas	Tex. Transportation Code Ann. §§222.001 to 107	Relates generally to funding and federal aid, with provisions pertaining to PPPs. Prohibits the state DOT from using state highway funds to guarantee loans or insure bonds for costs associated with a toll facility of a public or private entity. Authorizes the DOT to otherwise participate in the cost of acquiring, constructing, maintaining or	No.

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
			operating a toll facility of a public or private entity. Allows the DOT to enter into an agreement with a public or private entity to pay pass-through tolls (also known as shadow tolls) to that entity as reimbursement for the design, development, financing, construction, maintenance or operation of a toll or nontoll facility on the state highway system.	
		Tex. Transportation Code Ann. §§223.201 to 210 (many provisions expired on Aug. 31, 2009); Tex. Transportation Code Ann. Ch. 228	Chapter 223 authorized the state DOT to enter into comprehensive development agreements with private entities to design, develop, finance, construct, maintain, repair, operate, extend or expand toll projects, facilities on the Trans-Texas Corridor and certain state highway improvement projects. This authority expired on Aug. 31, 2009, except in relation to certain non-tolled managed lanes projects, which expires on Aug. 31, 2011. Chapter 228 relates to state highway toll projects, including county and voter approval requirements for conversion of a state highway to a toll road.	No. However, the Transportation Commission can convert a state highway or segment thereof to a toll road only if the conversion is approved by the commissioner's court of the county where the highway is located as well as by the voters of the relevant local jurisdiction (Tex. Transportation Code §228.207).
		Tex. Transportation Code Ann. §91.054; Tex. Transportation Code Ann. §§227.021 to 034 (subject to Ch. 223, above)	Authorized and further defined the requirements for the state DOT to enter into comprehensive development agreements for facilities on the Trans-Texas Corridor; these were subject to the authority granted by Chapter 223 (above), which expired on Aug. 31, 2009.	No.
		Tex. Transportation Code Ann. §§366.401 to 409	Authorizes regional tollway authorities to use comprehensive development agreements with private entities to design, develop, finance, construct, maintain, repair, operate, extend or expand turnpike projects.	No.
		Tex. Transportation Code Ann. §§370.305 to 317 (many provisions expired on Aug. 31, 2009)	Authorized regional mobility authorities to use comprehensive development agreements with private entities to construct, maintain, repair, operate, extend or expand transportation projects. This authority expired on Aug. 31, 2009, except provisions pertaining to certain non-tolled and managed lanes projects, which expire on Aug. 31, 2011.	No.
		Tex. Transportation Code Ann. §§371.001 to 153	Sets requirements for comprehensive development agreements for highway toll projects, including those developed by the state DOT under Chapter 277, by a regional tollway authority under Chapter 366, or by a regional mobility authority	No. Requires a toll entity to notify the Legislative Budget Board with the names of shortlisted proposers and team members no later than the 10th day after selection, and with

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
			under Chapter 370 (above). Requires a review of a proposed agreement by the attorney general and notifications to the Legislative Budget Board and state auditor. Makes certain financial data public information on or after the date the agreement is entered into. Prohibits noncompete clauses, but allows compensation of the private participant for revenue losses attributable to the construction by the toll entity of a limited access highway project located within up to four miles of the PPP project, subject to limits and exceptions. Addresses termination, disclosure of financial information, and public hearing requirements.	several other materials at least 30 days before entering into a comprehensive development agreement (Tex. Transportation Code Ann. §371.052(a),(b)). Also requires a toll entity to provide the state auditor with a traffic and revenue report at least 30 days before entering into such an agreement (Tex. Transportation Code Ann. §371.052(c)). Further prohibits any toll project entity from entering into such an agreement unless the attorney general reviews it and determines it is legally sufficient (Tex. Transportation Code Ann. §371.051).
25	Utah	Utah Code Ann. §63G-6-503; Utah Code Ann. §§72-6-201 to 206	Authorize the state DOT to accept proposals for, and enter into, tollway development agreements with public or private entities to study, predevelop, design, finance, acquire, construct, reconstruct, maintain, repair, operate, extend or expand tollway facilities. Define the terms that must be included in such agreements. Tollway development agreements must be approved by the Utah Transportation Commission. Allow for solicited and unsolicited proposals.	No. Tollway development agreements are approved by the Transportation Commission, as are any amendments or modifications thereto. However, the DOT must report to the Executive Appropriations Committee, Transportation Interim Committee, or other designated committee on the status and progress of a tollway subject to a tollway development agreement (Utah Code Ann. §72-6-206).
		Utah Code Ann. §72-6-118; Utah Code Ann. §72-2-120	Authorizes the state DOT to establish, expand and operate tollways and related facilities. Authorizes the DOT to enter into contracts, agreements, licenses, franchises, tollway development agreements, or other arrangements for tollway projects. Prohibits the DOT or other entity from establishing or operating a tollway on an existing state highway unless approved by the Transportation Commission and the Legislature, except for high occupancy toll lanes or additional capacity lanes. Requires revenue generated from tollway development agreement projects to be deposited into the Tollway Special Revenue Fund created in section 72-2-120 and used for transportation facilities within the corridor served by the tollway, unless the revenue is to the private entity or identified	Yes, inasmuch as legislative approval is required for the state DOT or other entity to establish or operate a tollway on an existing state highway (Utah Code Ann. §72-6-118(3)(a)).

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
			for a different purpose under the agreement.	
26	Virginia	Va. Code §§56-556 to 575	The Public-Private Transportation Act of 1995 (subsequently modified) is a comprehensive PPP statute intended to encourage private investment in transportation facilities. Authorizes a private entity to develop and/or operate a qualifying transportation facility, subject to approval from and a comprehensive agreement with the responsible public entity. Contains detailed implementation guidelines, including specific requirements for comprehensive agreements. Stipulates the powers and duties of a private entity in a PPP and provides financing mechanisms. Allows for solicited and unsolicited proposals.	No. However, approval is subject to the provisions in Va. Code §56-560.
27	Washington	Wash. Rev. Code Ann. §§47.29.010 to 290	Notes that the Public-Private Transportation Initiatives Act created under Chapter 47.46 (below) has not met the needs and expectations of the public or private sector for the development of transportation projects, and phases out that act after July 24, 2005. Authorizes the state DOT to enter into PPPs for transportation projects, whether capital or operating, where the state's primary purpose for the project is to facilitate safe transportation of people or goods via any mode of travel. Defines terms that must be included in agreements. Requires review by and approval of the Transportation Commission for PPP contracts or agreements. Requires an advisory committee for any project that costs $300 million or more. Authorizes the DOT to solicit or accept unsolicited proposals after Jan. 1, 2007, for eligible transportation projects.	Yes, but only for projects financed by tolls or other equivalent funding sources (Wash. Rev. Code Ann. §47.29.060(1)(e)). Also requires legislative authorization to use the proceeds of grant anticipation revenue bonds (Wash. Rev. Code Ann. §47.29.060(1)(a)). Further requires the state finance committee (the state treasurer, lieutenant governor and governor, ex officio) or governing board of a public benefit corporation to approve the financing of any public project developed in conjunction with a transportation project. (Wash. Rev. Code Ann. §47.29.060(4)).
		Wash. Rev. Code Ann. §§47.46.010 to 180 (phased out by §§47.29.060 et seq., above)	Authorized public-private transportation initiatives. This statute was phased out in 2005 by Chapter 47.29 (above).	No.
		Wash. Rev. Code Ann. §47.10.834	Requires bonds to be issued to fund the public-private initiatives authorized by Chapter 47.46 (above).	No.
28	West Virginia	W. Va. Code §§17-27-1 to 18	The Public-Private Transportation Facilities Act, passed in 2008 (House Bill 4476; 2008 W. Va. Acts, Chap. 184), is a comprehensive statute that authorizes the	Yes. Requires approval first by concurrent resolution of the Legislature and then by the governor (W. Va. Code §17-

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
			Division of Highways to enter into comprehensive agreements with private entities to acquire, construct or improve transportation facilities. Sets guidelines for soliciting proposals. Specifies what comprehensive agreements shall contain. Allows a private developer to charge user fees if they are consistent with the rate of return specified in the agreement; requires the schedule and amount of initial user fees and any fee increase to be approved by the Commissioner of the Division of Highways. Once a developer's rights and duties cease under an agreement, provides that the facility will be dedicated to the Division of Highways for public use. Stipulates that the division has no duty to accept, consider or review an unsolicited proposal. Prohibits the Division of Highways from entering into any comprehensive agreement after June 30, 2013.	27-9(10)(i)).
29	Wisconsin	Wis. Stat. Ann. §84.01(30)	Authorizes the state DOT to enter into build-operate-lease or transfer agreements with private entities for construction of transportation projects and for maintenance or operation of projects that are not purchased by the state upon their completion. Lists specific provisions that must be included in every agreement. An agreement may not be entered into unless the DOT determines that it advances the public interest and the private entity meets certain criteria.	No.
30	Puerto Rico	9 L.R.P.A. §§2001 to 2021	Creates the Puerto Rico Highway and Transportation Authority. Empowers the authority or the Department of Transportation and Public Works to contract with private parties to design, construct, operate and maintain new highways, bridges, avenues, expressways and ancillary transit facilities, and informative electronic signboards or billboards. Limits contract terms for the operation, administration and maintenance phases to 50 years. Requires the secretary of transportation and public works or an official designated by him to be the representative of the public interest and to ensure the private entity fulfills its contractual obligations, among other duties. Creates a negotiated competitive bidding process. In case an existing road is converted into a toll road, requires an	Yes, inasmuch as legislative approval is required for projects that convert an existing facility to a toll road that is operated and maintained by a private entity (9 L.R.P.A. §2004e). Also requires the secretary of transportation and public works to report annually to the governor and the legislature in relation to the development of a project (9 L.R.P.A. §2004d(e)). Sets other reporting requirements to the legislature (9 L.R.P.A. §2014).

	State/ Jurisdiction	Statute	Provisions	Legislative Approval Required
			alternate road that is not tolled.	
		P.R. 2009 Act No. 29	Comprehensive statute that authorizes PPPs, passed in 2009 (Senate Bill 469). States the commonwealth's motives and goals for authorizing PPPs. Establishes the Public-Private Partnership Authority as an entity of the Government Development Bank. Empowers the authority to establish PPPs for infrastructure projects, and makes the authority the sole government entity responsible for implementing public policy on PPPs as set forth in this act. Limits term lengths to 50 years, with extensions subject to legislative approval. Creates guidelines for evaluating, approving, contracting for and overseeing PPP projects. The authority will form a separate committee for each proposed project; authority members and the project committee will assess the credentials of each project, and the committee will be able to issue RFQs and negotiate contracts. Final approval of PPP contracts rests with the governor.	No. Final decisions rest with the governor (P.R. 2009 Act No. 29 Section 9(g)). The act, however, requires the authority to provide annual reports to the legislature and the governor on the development of projects and contractors' compliance with partnership contracts in effect (2009 Act No. 9 Section 10(d)). Extensions of term lengths beyond 50 years also require approval by legislation (2009 Act No. 9 Section 10(e)).

Appendix C. 2010 State Legislation Concerning PPPs for Transportation Projects[230]

As of Oct. 1, 2010, 21 states—Alabama, California, Colorado, Florida, Georgia, Illinois, Indiana, Maine, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, Washington and West Virginia—and the District of Columbia had considered 52 legislative measures concerning transportation PPPs during their 2010 sessions.

Of those, seven states—Alabama, Georgia, Illinois, Indiana, Maine, Maryland and West Virginia—had adopted or enacted 11 measures; 17 bills and one resolution were pending; and the remainder had failed or been vetoed.

Eight states—Illinois, Maine, Michigan, New York, Ohio, Pennsylvania, Rhode Island and South Carolina—and the District of Columbia had considered some form of comprehensive PPP enabling legislation; of those, Maine's had been enacted.

This level of PPP-related legislative activity was greater than in recent years. In 2009, 33 bills were introduced in 18 states; in 2008, 12 states considered legislation, and in 2007, 16 states did so.

State	Legislation	Status	PPP Provisions
Alabama	Senate Joint Resolution 17 (identical to House Joint Resolution 50)[231]	SJR 17 enacted on Jan. 22, 2010: 2010 Ala. Acts, Act 19; HJR 50 enacted on April 12, 2010: 2010 Ala. Acts, Act 405	• Extends the Lieutenant Governor's Commission on Public-Private Partnership Projects, originally established in 2008, until the fifth legislative day of the 2011 regular legislative session.
California	Senate Bill 474	Enrolled on Aug. 23, 2010; vetoed by governor on Sept. 23, 2010	• Would require the lead agency for a project, prior to entering into any agreement involving design-build contracting or a PPP, to pass a resolution that identifies the anticipated benefits from using those methods in comparison to using traditional contracting or financing methods.
Colorado	Senate Bill 145	Failed (adjourned) on May 12, 2010	• Would require the state High-Performance Transportation Enterprise to study the feasibility of entering into a PPP to develop, construct and operate a certain rail fixed guideway system in the city of Denver. • Would require $4 of each road safety surcharge paid by vehicle owners living within one mile of the system to be paid to any special district or improvement district that might be formed to support the system.
Florida	House Bill 497	Failed (died in committee) on April 30, 2010	• Would remove state DOT authority to lease existing toll facilities through PPPs. • Would provide that a determination that a PPP project is in the public's best interest be evidenced by a business case prepared by the state DOT under specified provisions and submitted to the Council on Efficient Government.
	Senate Bill 106	Failed (died in committee) on April 30, 2010	• Would remove state DOT authority to lease existing toll facilities through PPPs.
Georgia	House Bill 1134	Failed (failed to pass House) on March 22,	• Would enact the State and Local Public-Private Partnership Act of 2010. • Would establish within the executive branch of state government

State	Legislation	Status	PPP Provisions
		2010	an Office of Public-Private Partnerships to identify potential state and local PPP projects, review and comment on proposed PPPs, provide advice and technical assistance, and annually report to the governor and the legislature with respect to PPPs. • Would establish an Advisory Council on Public-Private Partnerships to serve the leadership of the Office of Public-Private Partnerships in an advisory capacity. • Would require the Office of Public-Private Partnerships to compile a list of all programs, services and activities carried out and delivered by state agencies and evaluate whether each is a candidate for a PPP. • Would require political subdivisions to provide to the Office of Public-Private Partnerships a compilation of all programs, services and activities they carry out and deliver, together with an evaluation of whether each is a candidate for a PPP, in order to be eligible for certain state funds. • Would require a proposed PPP to include development of a business case that considers certain factors. • Would repeal all conflicting laws. • Does not specifically mention transportation projects, but would apply to all programs, services and activities carried out by state agencies and political subdivisions.
	House Bill 1186	Enacted on June 4, 2010: 2010 Ga. Laws, p. 644	• Exempts from ad valorem taxes property that qualifies as a public-private transportation project pursuant to Ga. Code Ann. §32-2-80.
	Senate Bill 372 (identical to House Bill 968)[232]	Failed (adjourned) on April 29, 2010	• Would prohibit the state DOT from entering into PPP contracts for the construction of certain tunnels.
	Senate Bill 526	Failed (adjourned) on April 29, 2010	• Would authorize the State Road and Tollway Authority to participate in PPPs for planning, development, acquisition, construction, equipping, financing, operation, management and leasing of transportation projects. • Would authorize the State Road and Tollway Authority to extend credit or make loans to any entity participating in transportation PPPs.
Illinois	House Bill 6895	Pending as of Oct. 1, 2010	• Would amend the Public Private Agreements for the Illiana Expressway Act. • Would require the state DOT's rules pertaining to PPPs for the Illiana Expressway to establish firm goals, standards, processes, appeals procedures, reporting requirements and penalties to ensure that contractors promote and permit the participation of minority businesses.
	Senate Bill 108	Pending as of Oct. 1, 2010	• Would create the Public-Private Partnerships for Transportation Act. • Would authorize the state DOT and the Illinois State Toll Highway Authority to enter into PPPs for the development, operation and financing of transportation facilities. • Would provide that PPP projects could not include an airport in a county with a population of more than 500,000. • Would grant similar powers to the Regional Transportation Authority with regard to mass transit projects.

State	Legislation	Status	PPP Provisions
			• Would prohibit units of local government and state agencies from taking any action that would have the effect of impairing a PPP under the act. • Would set forth provisions concerning tax exemptions, planning, procuring labor, materials and real estate, and developing and operating PPP projects.
	Senate Bill 2571; see also Senate Resolutions 794 and 806	Pending as of Oct. 1, 2010	• Would establish the Illinois and Midwest High-Speed Rail Commission. • Would require the commission to prepare and issue recommendations to the governor, the legislature and the public by March 20, 2011, regarding the best PPP structure to design, build, operate, maintain and finance a high-speed rail system for Illinois and the Midwest. The report would have to include specific recommendations for legislation if statutory change is required, or specific administrative regulations if regulatory change is required, and also address certain other issues. • Would require the commission to prepare and issue a follow-up report by Feb. 1, 2012. • Would require the commission to solicit and receive formal expressions of interest and other testimony from global high-speed rail operators including Amtrak. • Would require the commission to develop a process to receive public and stakeholder input and to solicit and receive formal testimony from representatives of other Midwest states including representatives from units of local government. • Would require the commission to work collaboratively with the state DOT on DOT-administered high-speed rail planning projects to comply with federal requirements. • Would repeal the act on Jan. 1, 2014.
	Senate Bill 2621[233]	Pending as of Oct. 1, 2010	• Would create the Public-Private Transportation Act of 2010. • Would authorize the state and political subdivisions to enter into comprehensive agreements with private entities to develop or operate transportation facilities. • Would allow a PPP agreement to include a maximum rate of return for the private entity and provide for permissible methods of compensation for both the public and private parties. • Would amend the Freedom of Information Act to exempt certain proprietary information related to PPPs. • Would set forth provisions concerning the powers and duties of the private entity, as well as rules and procedures for agreements, financing, material default and remedies, public disclosure, procurement and other matters.
	Senate Bill 3482	Pending as of Oct. 1, 2010	• Would create the Public-Private Partnerships for Transportation Act. • Would authorize the state DOT and the Illinois State Toll Highway Authority to enter into PPPs for development, operation and financing of transportation facilities. • Would allow construction, financing and operation of a project under terms set forth in the PPP agreement, in any form deemed appropriate by the transportation agency, including but not limited to a long-term concession and lease, design-build, design-build-maintain, design-build-operate-maintain and design-build-finance-operate-maintain (see also Appendix F). • Would encourage the practice of congestion pricing. • Would create the Public-Private Partnerships for Transportation

State	Legislation	Status	PPP Provisions
			Fund and provide that all money in the fund be used to supplement funding, as directed in the appropriation, for transportation projects in the state. • As amended, would require all proceeds arising out of a project pursuant to this act to be deposited into the Illinois State Toll Highway Authority Fund to be used only as authorized by the Toll Highway Act. • Would authorize the Illinois State Toll Highway Authority to construct, operate and maintain certain electronic toll collection systems pursuant to an agreement with the transportation agency or project contractor.
	Senate Bill 3659	Enacted on June 9, 2010: 2010 Ill. Laws, P.A. 96-913	• Creates the Public Private Agreements for the Illiana Expressway Act. • Authorizes the state DOT to enter into a PPP to develop, construct, manage or operate the Illiana Expressway, pursuant to a competitive request for qualifications. • Limits the contract term to 99 years, including extensions. Requires legislative approval for all extensions. • Provides that contractors may receive certain revenues, including user fees, in consideration of payment to the state for that right. • Requires the PPP agreement to include the authority of the contractor to impose user fees (with specified fee amounts) and to use congestion pricing. • Sets forth provisions concerning procurement, tolls, prevailing wages, user fees, the public private agreement and other matters.
	Senate Resolution 794 (similar to Senate Resolution 806);[234] see also Senate Bill 2571	SR 794 pending as of Oct. 1, 2010; SR 806 adopted on May 6, 2010	• Creates the Illinois and Midwest High-Speed Rail Commission. • Requires the commission to prepare and issue recommendations to the governor, the legislature and the public by Dec. 31, 2010, regarding the best PPP structure to design, build, operate, maintain and finance a high-speed rail system for Illinois and the Midwest. The report must include specific recommendations for legislation if statutory change is required, or specific administrative regulations if regulatory change is required, and also must address certain other issues. • Requires the commission to solicit and receive formal expressions of interest and other testimony from global high-speed rail operators including Amtrak. • Requires the commission to develop a process to receive public and stakeholder input on opinions and PPP proposals, and to solicit and receive formal testimony from representatives of other Midwest states including representatives from units of local government. • Requires the commission to work collaboratively with the state DOT on DOT-administered high-speed rail planning projects to comply with federal requirements.
Indiana	Senate Bill 382	Enacted on March 18, 2010: 2010 Ind. Acts, P.L. 85	• Amends Ind. Code Ann. §§8-15, 8-15.5 and 8-15.7 and other provisions relating to PPPs for highway projects. • Allows designation of the Illiana Expressway or a project within a metropolitan planning area that connects Indiana with Kentucky as a tollway and authorizes a PPP for its construction, without further legislative approval. Applies the common construction wage statute to a project for the Illiana Expressway. • Requires a preliminary feasibility study and economic impact study for any proposed toll road project, to be completed, posted online, and provided to the governor and Legislative Council before a

State	Legislation	Status	PPP Provisions
			request for proposals is issued. • Requires the Indiana Finance Authority or DOT to hold public hearings in the county in which a proposed project would be located pertaining to 1) proposed feasibility and economic impact studies, 2) the results of an economic impact study, and/or 3) the preliminary selection of an operator and the terms of the PPP agreement for a project. • Requires PPP agreements to address environmental analyses and dispute resolution.
Maine	House Bill 1167	Enacted on April 13, 2010: 2010 Me. Laws, Chap. 648	• Authorizes the state DOT—with legislative approval—to enter into PPPs for transportation projects with an estimated cost of more than $25 million or when a project proposal includes tolling existing transportation facilities that were not previously subject to tolls. • Allows for solicited and unsolicited proposals. • Sets standards and requirements for PPP proposals, including completion of certain studies. Requires PPP proposals to limit the use of state capital funding to less than 50 percent of the initial capital cost of the facility and, to the extent practicable, minimize the use of public transportation funding sources. • Allows a PPP agreement to authorize a private entity to impose tolls or fares, subject to certain requirements. • Limits term length to 50 years unless the legislature, upon recommendation of the commissioner of transportation, approves a longer term. • Sets forth provisions concerning eminent domain, law enforcement, confidentiality and other matters.
Maryland	House Bill 271	Failed (adjourned) on April 12, 2010	• Would require the state DOT to provide information about proposed PPP projects to certain legislative committees for review and comment and to the Department of Legal Services 1) not less than 45 days before issuing a public notice of solicitation, and 2) not less than 10 days before entering into a PPP.
	Senate Bill 979 (crossfiled with House Bill 1370)[235]	Enacted on May 20, 2010: 2010 Md. Laws, Chap. 640 and 641	• Requires the Maryland Transportation Authority to submit several reports to certain legislative committees for review and comment and to the Department of Legal Services pertaining to proposed or existing PPPs. • Sets forth other PPP reporting and analysis requirements for state agencies; these provisions do not apply to the state DOT or to the Maryland Transportation Authority.
Michigan	House Bill 4961	Pending as of Oct. 1, 2010	• Would allow the state DOT to enter into PPPs to design, construct, operate or maintain transportation facilities, subject to the approval of the state Transportation Commission. • Would limit a public-private agreement to an initial operating term of no more than 50 years, unless a longer term is required for economic feasibility, as determined by the DOT and approved by the Transportation Commission. • Would prohibit certain noncompete provisions, inasmuch as an agreement could not prohibit the state DOT from constructing, operating and maintaining any transportation project in its long-range plan in effect when proposals are submitted, nor prohibit any local agency from constructing, operating and maintaining any transportation project. • Would allow a public-private agreement to provide for user fees, including congestion pricing, and limit fee increases. Would prohibit the conversion of existing lanes into tolled or user-fee

State	Legislation	Status	PPP Provisions
			lanes. • Would require the DOT to perform a cost-benefit analysis—including a risk assessment—to determine whether a proposed PPP was the most economically beneficial way to deliver a proposed project. • Would require any proceeds from a PPP to be used for transportation purposes. • Would mandate a public-private agreement with an operations phase to require the facility to revert to the state DOT at the end of the contract term in a condition specified by the DOT. • Would require a public-private agreement for an international bridge crossing to contain risk allocation provisions that meet certain requirements, and require the DOT to report to the governor how this mandate was fulfilled. • Would allow for solicited and unsolicited proposals. • Would set forth provisions concerning procurement procedures, bonding and other financing, tax exemptions, liability, law enforcement, proprietary information, agreement termination, refinancing gains, condemnation powers, data protection and other matters.
	House Bill 6230	Pending as of Oct. 1, 2010	• Would prohibit the state DOT from entering into any agreement, including but not limited to a PPP agreement, that would require or permit tolling or similar fees or charges on any road or highway in the state if no tolling mechanism was in place as of June 1, 2009.
	House Joint Resolution 58	Pending as of Oct. 1, 2010	• Would amend the state constitution to require that any proceeds from PPPs be used exclusively for transportation purposes, and in a manner related to the similar transportation purpose of the PPP projects that were the source of the revenue. • Would submit the amendment to the people of the state at the next general election as provided by law.
	House Joint Resolution 64	Pending as of Oct. 1, 2010	• Would amend the state constitution to prohibit any government authority, instrumentality of government or quasi-public entity created or empowered as part of a transportation PPP from having the power to toll or levy user fees unless express statutory authority is granted, and only as sufficient to cover maintenance, repair and operation of the specific transportation project, and where the board or governance of the entity consists of voting members entirely of Michigan. • Would amend the state constitution to prohibit any of the above kinds of entities from having the power of eminent domain, condemnation or its determination within the state unless the board or governance of the entity consists of voting members entirely of Michigan. • Would submit the amendment to the people of the state at the next general election as provided by law.
Minnesota	House Bill 3224 (companion bill: Senate Bill 2544)[236]	Failed (adjourned) on May 16, 2010	• Would authorize the commissioner of transportation to enter into agreements with governmental or nongovernmental entities, including private and nonprofit entities, to finance or invest in transportation projects, with the approval of the commissioner of Minnesota Management and Budget, subject to existing laws. • Would allow the commissioner of transportation to apply for and receive federal assistance under the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA).

State	Legislation	Status	PPP Provisions
Missouri	House Bill 2424	Failed (adjourned) on May 25, 2010	• Would establish the Missouri and Midwest High-Speed Rail Commission. • Would require the commission to prepare and issue recommendations to the governor, the legislature and the public by March 20, 2011, regarding the best PPP structure to design, build, operate, maintain and finance a high-speed rail system for Missouri and the Midwest. The report would have to include specific recommendations for legislation if statutory change is required, or specific administrative regulations if regulatory change is required, and also address certain other issues. • Would require the commission to prepare and issue a follow-up report by Feb. 1, 2012. • Would require the commission to solicit and receive formal expressions of interest and other testimony from global high-speed rail operators including Amtrak. • Would require the commission to develop a process to receive public and stakeholder input and to solicit and receive formal testimony from representatives of other Midwest states including representatives from units of local government. • Would require the commission to work collaboratively with the state DOT on DOT-administered high-speed rail planning projects to comply with federal requirements.
New Jersey	Senate Bill 1009 (identical to Assembly Bill 2317)[237]	Pending as of Oct. 1, 2010	• Would prohibit the state DOT from charging and collecting any tolls for the use of Interstate Highways 78 or 80, or any portion or any lane thereof, and from selling, leasing or otherwise transferring jurisdiction for these highways to any public entity or private firm.
New York	Senate Bill 8268	Pending as of Oct. 1, 2010	• Would create a state high-speed rail planning board, to be responsible for planning and advising the state DOT on needed future improvements to implement high-speed rail service in the state. • Among other powers and duties, would require the board to make recommendations for the best governmental structure to design, build, operate, maintain and finance a high-speed rail system, including consideration of a PPP.
	Senate Bill 8331	Pending as of Oct. 1, 2010	• Would authorize certain state agencies, including the state DOT, to engage in an "alternative project delivery" method, including design-build (see also Appendix F), construction manager at-risk, integrated project delivery and PPPs, for any project costing $25 million or more, provided that an agency determined such method would provide best value to the state. • Would authorize the state DOT specifically to construct or improve state highways using alternative project delivery methods. • Would allow solicited proposals only. • Would make a state DOT project that uses an alternative project delivery method subject to Article 8 of the labor law and the enforcement of prevailing wage requirements. • Would require each alternative project delivery contract entered into by the state DOT to comply with the objectives and goals of minority- and women-owned business enterprises, pursuant to Article 15a of the executive law. • Would set forth other provisions concerning procurement.
Ohio	House Bill 166 (similar to Senate Bill 121)[238]	Pending as of Oct. 1, 2010	• Would authorize any governmental entity to enter into an agreement with one or more other governmental agencies to create a "transportation innovation authority," by formal action of the appropriate legislative authority and subject to approval by the

State	Legislation	Status	PPP Provisions
			director of transportation. • Would authorize the state director of transportation to establish a transportation innovation authority pilot project and approve no more than two authorities per state DOT district. • Would authorize transportation innovation authorities to enter into agreements with private entities for construction, improvement, operation or management of transportation projects; such agreements could include fair share payments to be made by the private entities to fund the projects. • Would authorize transportation innovation authorities to charge tolls or fees for use of transportation facilities, subject to approval of the director of transportation and the Transportation Review Advisory Council. • Would prohibit the use of state funds for the operating budget of a transportation innovation authority. • Would set forth provisions concerning powers and duties, governance structures, funding and finance, taxes and other matters pertaining to transportation innovation authorities.
	Senate Resolution 223	Adopted May 26, 2010	• Expresses to the Michigan legislature, the governor of Michigan, and the consul general of Canada in Detroit, Michigan, the support of the Ohio Senate for the construction of a new Detroit River International Crossing and any legislation that will allow for its construction and creation of a PPP to finance and deliver the project.
Pennsylvania	House Bill 8a	Pending as of Oct. 1, 2010	• Among other unrelated provisions, would enact a new chapter relating to transportation PPPs. • Would authorize the state DOT or a proprietary public entity, upon approval by the Public-Private Transportation Partnership Board, to enter into PPPs for transportation projects. • Would prohibit the Pennsylvania Turnpike Commission from entering into a PPP that grants substantial oversight and control over the turnpike mainline to another entity unless specific authority is granted by statute. • Would allow for solicited and unsolicited proposals, and would allow the DOT or public entity to charge an administrative fee for the evaluation of a proposal. • Would require the DOT and proprietary public entities to enhance the representation of diverse groups in the development and operation of transportation PPPs. • Would subject PPPs to the state Prevailing Wage Act and other specified procurement provisions. • Would establish within the Motor License Fund a separate Public-Private Transportation Account that could only be used for certain transportation-related purposes. • Would establish a Public-Private Transportation Partnership Board to evaluate proposals, establish guidelines for project approval, approve or deny requests by the DOT and proprietary public entities to undertake transportation PPPs, and submit an annual report to the legislature. • Would set forth provisions concerning modification of proposals and termination rights, selection criteria, evaluation and award, use of intellectual property, records, the contents of PPP agreements, police powers and violations of law, environmental and other authorizations, taxation, eminent domain, sovereign immunity, conflicts of interest and other matters.

State	Legislation	Status	PPP Provisions
	House Bill 9a[239]	Pending as of Oct. 1, 2010	• Would authorize the state DOT and/or affected public entities to enter into PPPs for transportation projects. • Would allow for solicited and unsolicited proposals, and allow the DOT to charge a reasonable fee for its costs of processing, reviewing and evaluating unsolicited proposals, including fees for attorneys and consultants and reimbursement for costs incurred by the affected public entity for its review of a proposal. • Would require the DOT to provide certain information about proposed PPPs to the state Transportation Commission and to affected public entities and jurisdictions for review and comment. • Would subject PPPs to any existing collective bargaining agreement related to the qualifying transportation facility for the term of the agreement and to the state Prevailing Wage Act. • Would allow a private entity to impose user fees, subject to necessary federal, state or local approvals and as provided in the interim or comprehensive agreement. • Would create the Public-Private Transportation Partnership Fund, money from which can only be used for transportation-related purposes unless a transfer or other use is by statute approved by a two-thirds vote of the legislature. • Would set forth provisions concerning private entity adverse interests, criteria for review of proposals, promulgation of regulations, confidential and proprietary information, taxes, service contracts, transfer and dedication of public property, interim agreements, comprehensive agreements, financing, material default, eminent domain and other matters.
	Senate Bill 693	Pending as of Oct. 1, 2010	• Would authorize a public entity that owns a transportation facility to enter into a transportation development agreement with a private entity to plan, design, develop, construct, reconstruct, improve, extend or expand, operate, repair, maintain, manage, collect revenue for or finance such a facility. • Would subject PPP agreements to the approval of the proprietary public entity's governing body and, for certain agreements, the state Transportation Commission. • Would require the Transportation Commission to develop a process by which affected local jurisdictions receive notice of a proposed PPP and have an opportunity to provide input before execution of the agreement. • Would limit the original term of a transportation development agreement to no more than 50 years. • Would allow an authorized private entity to implement, set and adjust user fees, subject to the agreement, and would allow a public entity to continue to collect such fees after the original term of the agreement expires. • Would allow for solicited and unsolicited proposals. • Would subject transportation development agreements to the Pennsylvania Prevailing Wage Act. • Would establish the Pennsylvania Transportation Development Trust Fund, to be used solely for the operation and development of transportation facilities upon majority vote of the Transportation Commission. Only the Transportation Commission would be able to authorize a transfer or removal of funds. • Would prohibit the lease, sale or other transfer of oversight responsibilities for the Pennsylvania Turnpike unless specific authority was granted by the General Assembly.

State	Legislation	Status	PPP Provisions
			• Would set forth provisions concerning procurement, conflicts of interest, asset valuation, proprietary information, interim agreements, termination, liability, material default, bonding and other financing, eminent domain, law enforcement, taxation and other matters.
Rhode Island	Senate Bill 2132	Failed (adjourned) on June 11, 2010	• Would authorize the state DOT to enter into public-private agreements with private entities for the planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing or operation of transportation facilities. • Would permit an affected jurisdiction to be a party to a PPP entered into by the DOT and one or more private entities. • Would allow for unsolicited and solicited proposals. • Would set forth provisions concerning procurement, proprietary information, public-private agreements, reversion of the transportation facility to the state DOT, material default and remedies, bonds and other financing, taxes, eminent domain, law enforcement and other matters.
South Carolina	House Bill 4033 (similar to Senate Bill 521)[240]	Failed (adjourned) on June 3, 2010	• Would create the Transportation Infrastructure Funding Flexibility Act. • Would authorize the state DOT to enter into public-private initiatives only if, upon thorough analysis, the DOT was to determine in writing that, for a given transportation facility, a public-private initiative was in the public interest. Would require the DOT to post the public interest analysis online. • Would allow PPPs for new capacity only, not for existing facilities. • Would prohibit unsolicited proposals. • Would require requests for proposals to be approved by the State Budget and Control Board. • Would require contract terms longer than 30 years to be approved by the State Budget and Control Board. • Would provide that the state DOT establish the initial user fee for a public-private initiative, if any, and would require the partnership agreement to contain a cap on fees, expressed as the increase or decrease in an objective index. Would allow congestion pricing. • Would set forth provisions for procurement, public comment, agreements, default, financing, eminent domain, tolling and other matters.
Virginia	House Bill 480	Failed (died in committee) on Feb. 16, 2010	• Would require the Commonwealth Transportation Board to establish a procedure for third-party audits of agreements executed under the Public-Private Transportation Act of 1995, and would specify the content of such audits. • Would limit the terms of interim and comprehensive agreements to no more than two years beyond the original agreed-upon completion date, or seven years beyond the completion date for agreements that were executed as of July 1, 2010. • Would require all interim and comprehensive agreements to include standard small, women-owned and minority-owned participation components of 30 percent, effective July 1, 2010. • Would enact other provisions relating to the posting and publishing of requests for approval to operate a transportation facility and subcontracting bids.
Washington	House Bill 1873	Failed (adjourned)	• Would establish a joint select committee on high-speed rail.

State	Legislation	Status	PPP Provisions
		on April 12, 2010	• Would charge the committee to examine, among other issues, public-private financing opportunities—including design-build-operate—for a high-speed rail network (see also Appendix F).
	House Bill 2838 (companion bill: Senate Bill 6381)[241]	Failed (adjourned) on April 12, 2010	• Within a supplemental transportation appropriations bill, would require the state Transportation Commission and state DOT to conduct a best practices review of nontoll PPPs, in order to identify policies and procedures that would be appropriate for application in Washington, and to report the findings to the House and Senate transportation committees by January 2011.
West Virginia	House Bill 4441	Failed (adjourned) on March 20, 2010	• Would amend the Public-Private Transportation Facilities Act to require legislative approval of PPPs only by the President of the Senate and the Speaker of the House of Delegates (rather than by adoption of a concurrent resolution, as in current law; see Appendix B).
	Senate Bill 352 (similar to House Bill 4200)[242]	SB 352 enacted on April 22, 2010: 2010 W. Va. Acts, Chap. 199; HB 4200 failed (adjourned) on March 20, 2010	• Enacts the West Virginia Community Empowerment Transportation Act. • Allows a governmental entity seeking state funds for a transportation project to submit a transportation project plan to the Commissioner of Highways, who shall review and evaluate the plan and encourage project sponsors to pursue alternative funding sources including PPPs to finance, plan, design, construct, expand, improve, maintain or control a transportation facility. • Allows the commissioner, after a detailed review, to recommend projects to the governor that are a prudent and resourceful expenditure of public funds and consistent with existing transportation plans. • Requires the commissioner to submit annual reports to the governor and the legislature, including one outlining alternative road funding models and incentive packages. • Authorizes counties to impose user fees and, following voter approval, to issue revenue and general obligation bonds for transportation projects. • Relates to other matters to do with governmental entities and transportation projects.
District of Columbia	Bill 635	Pending as of Oct. 1, 2010	• Would enact many provisions relating to procurement of goods, services and construction in the District of Columbia. • Would authorize several project delivery methods—including construction management at risk, design-build, design-build-finance-operate-maintain, design-build-operate-maintain, and operations and maintenance—for procurements relating to infrastructure facilities and services in the district. Infrastructure facilities are defined to include public roads and streets; highways; public transportation systems, terminals and rolling stock; and rail, air and water port structures, terminals and equipment, among others. (See also Appendix F.) • Would apply this section to all branches, departments, agencies, instrumentalities and employees of the District government. • Would give the director of the DOT procurement authority, including contracting and contract oversight, consistent with this act, for bridges and roads or for any other goods and services determined to be procured independently of the newly established Office of Contracting and Procurement.

Appendix D. FHWA Key Elements of State PPP Enabling Statutes for Highway Projects

This list of 28 key elements of state PPP enabling statutes for highway projects was developed by Nossaman, Guthner, Knox and Elliott LLP for the Federal Highway Administration (FHWA) in 2005.[243] They are presented here as potentially relevant issues for state legislators to consider in relation to PPP legislation.

1. Does the relevant law allow solicited and unsolicited proposals for P3 projects?
2. Does the relevant law permit local/state/federal funds to be combined with private sector funds on a P3 project?
3. Who has rate-setting authority to impose user fees and under what circumstances may they be changed or otherwise reviewed?
4. Does the relevant law permit TIFIA loans to be used on P3 projects?
5. Is the number of P3 projects limited to only a few "pilot" or "demonstration" projects?
6. Are there restrictions concerning the geographic location of P3 projects?
7. Are there restrictions concerning the particular mode of transportation eligible to be developed as a P3 project (e.g., truck, passenger auto, freight rail, passenger rail)?
8. Is there a legal requirement to remove tolls after the repayment of project debt?
9. Does the relevant law permit the conversion of existing or partially constructed highways into toll roads?
10. Is there a restriction that prevents the revenues from P3 projects from being diverted to the state's general fund or for other unrelated uses?
11. Is prior legislative approval required when an individual P3 proposal is received?
12. Are there any similar requirements that subject the P3 proposal or the negotiated P3 agreement to a local veto?
13. Does the relevant law permit all kinds of procurements for P3 project delivery? These might include, for example, calls for projects, competitive RFQ and RFPs, qualifications review followed by an evaluation of proposer concepts, use of design build, procurements based on financial terms such as return on equity rather than on price, long-term asset leases for some period of up to 60 years or longer from the time operations commence?
14. Are there explicit exemptions/supplemental procurement authority from the application of the state's general procurement laws?
15. Does the relevant law authorize the public sector to grant long-term leases/franchises for the construction, operation and maintenance of toll facilities?
16. Does the public sector have the authority to issue toll revenue bonds or notes?
17. Does the public sector have the authority to form nonprofits and let them issue debt on behalf of a public agency?
18. Does the relevant public agency have the authority to hire its own technical and legal consultants?
19. Does the relevant law permit the public sector to make payments to unsuccessful bidders for work product contained in their proposals?
20. Can the agency charge application fees to offset its proposal review costs?

21. Does the relevant law allow adequate time for the preparation, submission and evaluation of competitive proposals? Note that the agency should have the authority to establish these deadlines on a case-by-case basis depending on the complexity and scope of the initial proposal or other factors that might promote competition (e.g., more review time during holiday periods).

22. Is the public sector required to maintain comparable non-toll routes when it establishes new toll roads?

23. Are there any noncompete clause prohibitions?

24. Is the authority to enter into P3s restricted to the state DOT or state turnpike authority or may regional or local entities also do so?

25. Does the relevant law specify evaluation criteria for P3 proposals received under a given procurement approach?

26. Does the relevant law specify the structure and participants for the review process involving P3 proposals?

27. Does the relevant law protect the confidentiality of P3 proposals and any related negotiations in the period prior to execution of the P3 agreement?

28. Does the relevant law provide for the ability of the public sector to outsource long-term operations and maintenance and other asset management duties to the private sector?

Appendix E. State Design-Build Enabling Statutes for Transportation Projects as of October 2010[244]

	State	Statute	Provisions
1	Alabama	Ala. Code §§23-2-140 to 163	Under legislation enacted in 2009 (House Bill 217; 2009 Ala. Acts, Act 769), authorizes the Alabama Toll Road, Bridge and Tunnel Authority to enter into agreements for design-build contracts, leases, licenses, franchises, concessions or other agreements (see also Appendix B).
2	Alaska	Alaska Stat. §36.30.200; Alaska Stat. §36.30.990	The state procurement code authorizes competitive sealed proposals, defines design-build and authorizes design-build contracts for all state agencies.
3	Arizona	Ariz. Rev. Stat. Ann. §§28-7361 et seq.	Authorize the state DOT to use the design-build method of project delivery through Dec. 31, 2025. Prohibit the DOT from entering into a contract to operate any structure or facility under the design-build provisions. Each design-build agreement must be for a specific, single project. Section 28-7364 lists specific criteria to determine when design-build is appropriate. These include the extent to which the department can define the project requirements, time constraints for project delivery, the capability and experience of the potential design-build teams and other criteria. Section 28-7365 defines specific solicitation methods that must be used for design-build proposals and selection criteria.
4	Arkansas	Ark. Stat. Ann. §27-67-206	Authorizes the State Highway Commission to establish written procedures and regulations for procuring design-build services and administering design-build contracts for new highway construction projects. The statute allows the commission to receive solicited and unsolicited proposals for design-build construction projects and to award design-build contracts. The commission may enter into an unlimited number of design-build contracts if no state money is used, but is limited until July 16, 2013, to two projects costing more than $50 million each if state revenues are used.
5	California	Cal. Pub. Cont. Code §§20209.5 et seq.; Cal. Pub. Cont. Code §§6800 et seq.; Cal. Streets & Highways Code §143	Sections 20209.5 et seq. authorize transit operators to enter into transit design-build contracts, describe in detail the process that must be used for each design-build project, and provide specific criteria for evaluating design-build proposals. Section 20209.10 includes requirements for design-builders, including bonding and errors and omissions insurance coverage. The statute allows transit operators to establish minimum performance criteria and design standards for quality, durability, longevity, life-cycle costs and other standards. Transit operators that award design-build contracts must submit a report to the legislative analyst's office that includes project details. Under legislation enacted in 2009 (Senate Bill 4b; 2009 Cal. Stats., Chap. 2), sections 6800 et seq. establish the Design-Build Demonstration Program, which authorizes use of design-build by local transportation entities for up to five projects and by the state DOT for up to 10 projects, subject to eligibility requirements and approval by the California Transportation Commission. This chapter has a sunset provision by which it will be repealed on Jan. 1, 2014. It also sets forth reporting requirements, including to the Legislature. Under the same 2009 legislation (Senate Bill 4b; 2009 Cal. Stats., Chap. 2), section 143 allows the state DOT and regional transportation agencies to use the design-build method for PPP projects, subject to other requirements for such projects (see also Appendix B).

	State	Statute	Provisions
6	Colorado	Colo. Rev. Stat. §§43-1-1401 et seq.; Colo. Rev. Stat. §§43-4-801 et seq.	Sections 43-1-1401 et seq. authorize the state DOT to enter into design-build contracts and to use an adjusted score design-build selection and procurement process for particular transportation projects, regardless of the minimum or maximum cost of such projects, based on the individual needs and merits of such projects, and subject to approval by the state Transportation Commission. The statute allows the DOT to include warranty provisions in any design-build contract that requires maintenance of the completed product. Includes criteria for awarding design-build projects, public notice requirements, and general procedures for soliciting and awarding proposals. Under legislation enacted in 2009 (Senate Bill 108; 2009 Colo. Sess. Laws, Chap. 5), sections 43-4-801 et seq. create the High-Performance Transportation Enterprise (HPTE) to seek out and enter into PPPs and other innovative means of completing surface transportation infrastructure projects, including design-build contracting (see also Appendix B).
7	Delaware	Del. Code Ann. tit. 2, §2003[245]	Section 2003 is part of the state's larger PPP enabling statute, which authorizes the state DOT to enter into agreements with private entities for PPP projects (see also Appendix B). Section 2003(e) specifically allows all proposals made pursuant to this chapter to provide for the design-build mode of infrastructure development.
8	Florida	Fla. Stat. Ann. §337.11(7 and 8)	Authorizes the state DOT to combine the design and construction phases of a building, a major bridge, a limited access facility or a rail corridor project into a single design-build contract. The statute includes guidelines for rules and procedures to administer design-build agreements and procedures for accepting proposals. Under legislation enacted in 2009 (House Bill 1021; 2009 Fla. Laws, Chap. 85), this statute also allows the state DOT to pay a stipend to nonselected design-build firms that have submitted responsive proposals for construction contracts and to retain the right to use those designs from firms that accept such a stipend.
9	Georgia	Ga. Code Ann. §32-2-81	Authorizes the state DOT to use the design-build contract method for certain transportation projects when it is in the public interest. These include buildings, bridges and approaches, rail corridors, limited or controlled access projects, or projects that may be constructed within existing rights-of-way where the scope of work can be clearly defined or when a significant savings in project delivery time can be attained. Such projects cannot begin until title to the necessary rights-of-way has vested in the state or local government entity. The statute requires the DOT to adopt procedures for administering design-build contracts, including prequalification requirements, public advertisement procedures, scope of service requirements, letters of interest requirements and requests for proposals. It includes criteria for selecting and awarding design-build contracts and requirements for reporting to the legislature. Under legislation enacted in 2010 (Senate Bill 305; 2010 Ga. Laws, Act 440), the DOT is limited to design-build contracting for no more than 30 percent of the total amount of construction projects awarded in the previous fiscal year; as of July 1, 2014, the limit will revert to 15 percent.
10	Idaho	Idaho Code §67-2309; Idaho Code §40-904	Section 67-2309 authorizes the design-build construction method in contracts for construction, repair or improvement of public works, public buildings, public places or other work. The statute defines a design-build contract as one between a public entity and a nongovernmental party in which the nongovernmental party contracting with the public entity agrees to both design and build a structure, roadway or other item specified in the contract. Under legislation enacted in 2010 (House Bill 600; 2010 Idaho Sess. Laws, Chap. 293), section 40-904 authorizes the state DOT to select design-build firms and award contracts for design-build projects if the board determines that the projects are of appropriate size and scope, that awarding a design-build contract will serve the public interest, and that the method is superior to that described in section 40-902. The statute sets criteria for determining when to use design-build and limits the use of design-build and construction manager/general contractor contracts combined to no more than 20 percent of the annual highway construction budget for the state transportation improvement program. Sets forth procurement guidelines, including RFQ and RFP requirements. Allows the DOT to pay a stipend to unsuccessful design-build firms.

	State	Statute	Provisions
11	Illinois	Ill. Rev. Stat. ch. 70, §3615/4.06(b)(2)	Authorizes regional transportation authorities to use design-build contracting methods for transportation facilities. It includes criteria for soliciting and evaluating design-build proposals.
N/A	Indiana	Ind. Code Ann. §§5-30-1-1 et seq.	Authorizes public agencies to use design-build; section 5-30-1-11 excludes the state DOT from this authorization.
12	Kansas	Kan. Stat. Ann. §68-2314a[246]	Section 68-2314a authorizes the state DOT to use a design-build methodology for a demonstration project to demonstrate advanced and innovative pavement technologies. The project may include financing, design, construction and performance guarantee.
13	Kentucky	Ky. Rev. Stat. §§45A.180 et seq.	Gives the secretary of the Finance and Administration Cabinet authority to develop regulations guiding the design-build contract process for capital projects. It includes requirements for design-build proposals and criteria for the selection of proposals. The secretary may develop procedures for a multi-phased proposal that is based on qualifications, experience, technical requirements, the guaranteed maximum price and other criteria.
14	Louisiana	La. Rev. Stat. Ann. §§48:250.2 et seq.	Section 250.2 authorizes the state DOT, with approval of the House and Senate Transportation, Highways And Public Works committees, to develop a program to combine into a single contract the design and construction phases of a transportation facility or facilities, including, but not limited to, highways, interchanges or bridges. Each project must also be approved by said legislative committees. The statute limits legal challenges to the selection of design-build projects and restricts cost increases by design-builders for projects under contract. Section 250.3 provides specific requirements for design-build contracts and the qualifications of design-build entities. It also includes procedures for publicly announcing design-build proposals and bids and defines the selection process for bid awards. This section was amended by legislation enacted in 2009 (Senate Bill 351; La. Acts 2009, 262). The same 2009 legislation (Senate Bill 351; La. Acts 2009, 262) repealed section 250.4, which previously authorized the state DOT, with legislative approval, to use the design-build contracting method for transportation infrastructure projects in areas affected by a hurricane.
15	Maine	Me. Rev. Stat. Ann. tit. 23, §4244	Under legislation enacted in 2010 (House Bill 1167; 2010 Me. Laws, Chap. 648), authorizes the state DOT to use design-build contracting to deliver projects. The statute sets requirements for procurement and allows the DOT to provide a stipend to unsuccessful firms.
16	Maryland	Md. State Fin. & Proc. Code Ann. §3-602(g)	Authorizes design-build and fast-track construction methods for capital projects by state agencies. The statute defines design-build as a single solicitation to design and build a facility. Fast-track allows design and construction to be implemented concurrently.
17	Massachusetts	Mass. Gen. Laws Ann. ch. 149A, §§14 et seq.; Mass. Gen. Laws Ann. ch. 6C, §§1 et seq.	Chapter 149A authorizes state agencies to use design-build contracting for construction, reconstruction, alteration, remodeling or repair of public works projects with cost estimates that exceed $5 million. By statute, the Massachusetts Highway Department, the Massachusetts Port Authority and the Massachusetts Water Resources Authority are exempt from requirements that each design-build contract be submitted to the inspector general for approval. Instead, the inspector general must annually approve procedures developed by these agencies for procurement and use of design-build. Note that the Massachusetts Highway Department was merged into the new state DOT under legislation enacted in 2009 (Senate Bill 2087; 2009 Mass. Acts, Chap. 25). Under the same 2009 legislation (Senate Bill 2087; 2009 Mass. Acts, Chap. 25), Chapter 6C allows the board of directors of the newly created state DOT to solicit proposals and enter into contracts for design-build-finance-operate-maintain or design-build-operate-maintain services (see also Appendix B).

	State	Statute	Provisions
18	Minnesota	Minn. Stat. Ann. §473.3993; Minn. Stat. Ann. §160.262; Minn. Stat. Ann. §§161.3410 et seq.	Section 473.3993 authorizes the commissioner of transportation to use a design-build method of project development and construction for light rail transit. Absent any law to the contrary, the commissioner may award a design-build contract on the basis of requests for proposals or requests for qualifications without bids. "Design-build method of project development and construction" is defined as a project delivery system in which a single contractor is responsible for both the design and construction of the project and bids the design and construction together. Section 160.262 authorizes acceptance of performance-specification bids, made by the lowest responsible bidder, for constructing design-build bridges for certain bicycle paths, bicycle trails and pedestrian facilities. Sections 161.3410 et seq. authorize the state transportation commissioner to solicit and award design-build contracts for transportation projects based on best value. Design-build projects can be awarded only by use of a two-step competitive process involving public solicitation. The number of design-build contracts awarded for transportation projects cannot exceed 10 percent of the total number of transportation construction contracts awarded by the commissioner in the previous fiscal year. The commissioner must notify the chairs of the Senate and House committees with jurisdiction over transportation policy and transportation finance each time the commissioner decides to use the design-build method of procurement and explain why that method was chosen. Use of design-build contracting is subject to state law regarding municipal consent. The statutes contain general and specific criteria for using design-build projects. They also contain public notice requirements for design-build projects, proposal and selection criteria, and requirements for design-builders.
19	Mississippi	Miss. Code Ann. §65-1-85	Authorizes the state DOT to use design-build contracting for projects for the Mississippi Development Authority, a limited number of projects with an estimated cost of less than $10 million, and a limited number of projects with an estimated cost exceeding $50 million. The statute requires the DOT to keep detailed records about design-build projects and to submit a report to the Legislature that compares design-build contracting with the low-bid contracting method.
20	Missouri	Mo. Rev. Stat. §227.107	Under legislation enacted in 2009 (House Bill 359; 2009 Mo. Laws, H.B. 359), section 227.107 authorizes the Highways and Transportation Commission to enter into three design-build project contracts before July 1, 2012. The statute authorizes the commission to issue RFPs to a maximum of five prequalified design-builders and includes other specific requirements for proposals, contract content and criteria for awards. Requires the commission to submit status reports to the legislature and the governor regarding design-build projects.
21	Montana	Mont. Code Ann. §60-2-111; Mont. Code Ann. §60-2-112; Mont. Code Ann. §60-2-137	Sections 60-2-111 and 60-2-112 authorize the state Transportation Commission to award design-build contracts, subject to section 60-2-137, which authorizes the design-build contracting program and contains specific requirements for the DOT's duties in soliciting and evaluating design-build proposals.

	State	Statute	Provisions
22	Nevada	Nev. Rev. Stat. §§338.1711 et seq.; Nev. Rev. Stat. §§408.3875 et seq.	Sections 338.1711 et seq. authorize design-build contracting for public works projects with estimated costs that exceed $100,000. The statutes include specific qualifications for design-build contractors and procedures for advertising and awarding contracts. Sections 408.3875 et seq. specifically authorize design-build contracting for highway projects—including construction, reconstruction or improvement—with an estimated cost that exceeds $20 million. The statutes also authorize one project per year with an estimated cost that exceeds $5 million but is less than $20 million. The design-build contracting method can be used only if it enables the state DOT to lower project costs; decrease the time required for project completion; or ensure that the design and construction of the project are properly coordinated, if the project is unique, highly technical and complex in nature. This section contains specific requirements for design-build teams and procedures for advertising, submitting, evaluating and awarding design-build proposals.
23	New Hampshire	N.H. Rev. Stat. Ann. §228:4(I)(c and d)	Under legislation enacted in 2009 (Senate Bill 69; 2009 N.H. Laws, Chap. 135), authorizes design-build contracting for projects with costs that do not exceed $25 million and permits the use of design-build contracting for certain transportation projects that exceed the cost limit, subject to approval from the governor and the Executive Council. Selection of design-build projects must be based on an objective standard and measurable criteria. The commissioner must report the results of any statewide transportation improvement program project using design-build to the Capital Budget Overview Committee within 90 days after project completion.
N/A	New Mexico	N.M. Stat. Ann. §13-1-119.1	Statute specifically excludes highway and road projects from design-build authorization.
24	North Carolina	N.C. Gen. Stat. §136-28.11	Authorizes the Board of Transportation to award 25 design-build contracts per fiscal year for transportation projects. Allows design-build contracts of any amount, but the state DOT must ensure that such contracts are awarded on a basis to maximize participation, competition and cost benefit. For each design-build contract, the state DOT must determine that the delivery must be expedited and that it is not in the public interest to comply with normal design and construction contracting procedures. The department must present information to the legislature about design-build projects with costs estimated to exceed $50 million.
25	North Dakota	N.D. Cent. Code §24-02-47 et seq.	Under legislation enacted in 2009 (Senate Bill 2147; 2009 N.D. Sess. Laws, Chap. 236), authorizes the director of transportation to use the design-build method to expedite the construction of two pilot projects (one signal light project and one box culvert structure project). Requires a report to the legislature. Includes a sunset provision, by which this chapter expires on Dec. 31, 2013.
26	Ohio	Ohio Rev. Code Ann. §5517.011; Ohio Rev. Code Ann. §5537.07; Ohio Rev. Code Ann. §5543.22	Section 5517.011 authorizes the state DOT to use design-build for highway and bridge projects. The statute requires the director to prepare and distribute a scope of work document upon which bidders must base their bids. Under legislation enacted in 2009 (House Bill 2; 2009 Ohio Laws, H. 2), the total dollar value of design-build contracts authorized under this section cannot exceed $1 billion from July 2009 to July 2011 and $250 million for each biennium after July 1, 2011, unless otherwise authorized by the legislature. Under the same 2009 legislation, section 5537.07 allows the state Turnpike Commission to establish a program to expedite special projects by combining design and construction elements of any public improvement project into a single contract, and requires the commission to prepare and distribute a scope of work document upon which bidders must base their bids. Section 5543.22 authorizes county engineers to combine the design and construction elements for highway, bridge and safety projects into a single contract. The cost for design-build contracts authorized under this section cannot exceed $1.5 million.

	State	Statute	Provisions
27	Oregon	Or. Rev. Stat. §383.005	Authorizes the state DOT to enter into design-build contracts for tollway projects.
28	Pennsylvania	Pa. Cons. Stat. tit. 75, §9511.5	Authorizes the state DOT to use design-build arrangements for construction projects. Requires the selection of the party for a design-build arrangement to be consistent with the procurement and public bidding laws applicable to the DOT.
29	South Carolina	S.C. Code Ann. §57-5-1625	Authorizes the state DOT to award highway construction contracts using a design-build procedure. A design-build contract is defined as an agreement that provides for design, right-of-way acquisition and construction of a project by a single entity; it also may provide for project maintenance, operation or financing. The agreement may be in the form of a design-build contract, a franchise agreement or any other form of contract approved by the department. Selection criteria must include the project cost and may include contractor qualifications, time of completion, innovation, design and construction quality, design innovation, or other technical or quality-related criteria.
N/A	South Dakota	S.D. Codified Laws Ann. §§5-18A-1 et seq.	Legislation enacted in 2010 (House Bill 1046; 2010 S.D. Sess. Laws, Chap. 31) repealed the statutes that formerly gave design-build authority to public corporations (S.D. Codified Laws Ann. §§5-18-26 et seq.) and created new provisions that authorize public agencies to enter into design-build contracts (S.D. Codified Laws Ann. §§5-18A-1 et seq.). The new provisions, however, specifically exclude from design-build authorization any highway construction contract entered into by the state DOT.
30	Tennessee	Tenn. Code Ann. §54-1-119	Authorizes the state DOT to award up to 15 design-build contracts in any one fiscal year, if the contract has a total estimated contract amount of less than $1 million, or up to five contracts if the contract amount is more than $1 million. If the proposed contract has a total estimated amount of more than $70 million, the DOT must specifically identify the project as a proposed design-build project in the transportation improvement program submitted annually to the legislature in support of the commissioner's annual funding recommendations. Requires the DOT to report on the effectiveness of design-build contracts to the chairs of the Senate and House transportation committees upon completion of three contracts with a total contract amount of more than $1 million. Sets forth selection criteria. Allows the DOT to award a fee to design-build firms that submit responsive proposals but are not awarded the contract.
31	Texas	Tex. Transportation Code Ann. §§223.201 et seq. (many provisions expired on Aug. 31, 2009); Tex. Transportation Code Ann. §370.314; Tex. Transportation Code Ann. §366.185	Chapter 223 authorized the state DOT to enter into comprehensive development agreements with private entities to design, develop, finance, construct, maintain, repair, operate, extend or expand toll projects, facilities on the Trans-Texas Corridor and certain state highway improvement projects. Some provisions address design-build contracts specifically. This authority expired Aug. 31, 2009, except in relation to certain non-tolled managed lanes projects, which expires on Aug. 31, 2011. Section 370.314 authorizes regional mobility authorities to obtain a combination of engineering, design and construction services in a single procurement for a transportation project, provided that any contract awarded results in the best value to the authority. Procurement procedures may not materially conflict with the design-build procedures provided by Subchapter J, Chapter 271, Local Government Code. Section 366.185 authorizes regional tollway authorities to obtain a combination of engineering, design and construction services in a single procurement for a turnpike project, provided that any contract awarded results in the best value to the authority. Procurement procedures may not materially conflict with the design-build procedures provided by Subchapter J, Chapter 271, Local Government Code. Under legislation enacted in 2009 (Senate Bill 882; 2009 Tex. Gen. Laws, Chap. 770), regional tollway authorities are authorized to offer stipends to unsuccessful design-build firms for projects that exceed $50 million.

	State	Statute	Provisions
32	Utah	Utah Code Ann. §63G-56-502; Utah Code Ann. §63I-1-263	Section 63G-56-502 authorizes the state DOT and other transportation agencies to award design-build contracts for projects with an estimated cost of at least $50 million. A public airport authority or public transit district with more than 200,000 residents also may award a design-build contract. The statute contains specific requirements for design-build proposals and awards. Under legislation passed in 2010 (House Bill 57; 2010 Utah Laws, Chap. 358), section 63I-1-263 repeals, as of July 1, 2015, the provision that allows a transportation agency to award a design-build contract for a transportation project with an estimated cost of $5 million or less under certain circumstances.
33	Vermont	Vt. Stat. Ann. tit. 19, §§2601 et seq.; see also 2009 Vt. Acts, Act 50	Under legislation enacted in 2009 (House Bill 438; 2009 Vt. Acts, Act 50), this statute authorizes the state DOT to use design-build contracting to deliver projects, and to evaluate and select proposals based on either best value or low bid. Section 85 limits the DOT to exercising this authority on no more than four projects during FY 2010.
34	Virginia	Va. Code §33.1-12; Va. Code §33.1-223.2:16	Section 33.1-12 authorizes the Commonwealth Transportation Board to award design-build contracts for construction of transportation projects. These contracts may be awarded after a written determination is made by the commonwealth transportation commissioner or the director of the Department of Rail and Public Transportation, pursuant to objective criteria previously adopted by the board regarding the use of design-build, that delivery of the projects must be expedited and that it is not in the public interest to comply with the normal design and construction contracting procedures. Section 333.1-223.2:16 authorizes counties, cities and towns to award design-build contracts for construction of transportation projects, subject to certain requirements.
35	Washington	Wash. Rev. Code §39.10.300; Wash. Rev. Code §47.20.780; Wash. Rev. Code §47.20.785; Wash. Rev. Code §§47.60.810 et seq.	Section 39.10.300 is a general authorization that allows certain state agencies to use design-build contracting. This section contains criteria for design-build projects and some procedures for advertising and awarding contracts. Section 47.20.780 requires the state DOT to develop a process for awarding competitively bid highway construction contracts for design-build projects over $10 million. The process developed by the DOT must include at least the scope of services required under the design-build procedure, contractor prequalification requirements, criteria for evaluating technical information and project costs, contractor selection criteria, and issue resolution procedures. Section 47.20.785 limits the DOT's use of design-build to projects over $10 million where the construction activities are highly specialized and a design-build approach is critical in developing the construction methodology; or the project selected provides opportunity for greater innovation and efficiencies between the designer and the builder; or significant savings in project delivery time would be realized. It also authorizes the DOT to conduct up to five pilot projects that cost between $2 million and $10 million to test the applicability of design-build to smaller and specialty projects. Sections 47.60.810 et seq. authorize the purchase of new auto ferries through design-build contracting.
36	West Virginia	W. Va. Code §§17-2D-1 et seq.	Under legislation enacted in 2009 (House Bill 2753; 2009 W. Va. Acts, Chap. 71), this chapter authorizes the commissioner of the state Division of Highways to continue the Highway Design-Build Pilot Program through June 30, 2011, to expedite no more than 10 special projects—in addition to the three projects authorized by prior enactment of this section—by combining into a single contract the design and construction elements of a highway or bridge project. The Division of Highways may expend no more than $50 million per remaining year of the program, or $150 million total. Requires a report to the Legislature on or before Dec. 1, 2011.

	State	Statute	Provisions
37	Wisconsin	Wis. Stat. Ann. §§84.11(5n) et seq.	Authorize the use of design-build contracting for bridge construction. Design-build contracts under this section must be selected through a competitive process and approved by the U.S. Department of Transportation and the governor. Required the state DOT to submit a report to the Legislature by October 2004 describing the effectiveness of design-build contracting under this section.
38	Wyoming	Wyo. Stat. §§16-6-701 et seq.	Broadly authorize state and local public entities to use alternate design and construction delivery methods—including construction manager agent, construction manager at risk or design-build—for public works projects, including highway projects. Sets requirements for procurement.
39	Puerto Rico	P.R. 2009 Act No. 29	Within a comprehensive statute that authorizes PPPs, passed in 2009 (Senate Bill 469) (see Appendix B), section 2(g) states that a partnership contract may be any modality of several kinds of contract, including design-build, design-build-operate, design-build-finance-operate, design-build-transfer-operate, design-build-operate-transfer or others, or any other kind of contract that separates or combines the design, building, financing, operation or maintenance phases of priority projects.

Appendix F. 2010 State Legislation Concerning Design-Build for Transportation Projects[247]

As of Oct. 1, 2010, 19 states—California, Delaware, Georgia, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maine, Minnesota, Missouri, New Jersey, New York, Pennsylvania, South Carolina, South Dakota, Utah, Washington and Wyoming—and the District of Columbia had considered 28 legislative measures concerning design-build contracting for transportation projects during their 2010 sessions. Eight bills had been enacted and eight were pending; the remainder had failed or had been vetoed.

State	Legislation	Status	Design-Build Provisions
California	Senate Bill 474	Enrolled on Aug. 23, 2010; vetoed by the governor on Sept. 23, 2010	• Would require the lead agency for a project, before entering into any agreement involving design-build contracting or a PPP, to pass a resolution that identifies the anticipated benefits from using those methods in comparison to using traditional contracting or financing methods (see also Appendix C).
Delaware	House Bill 500	Enacted on July 1, 2010: Del. Laws, Chap. 329	• Within a larger bond and capital improvements act, authorizes the state DOT to continue utilization of the design-build contract mechanism for a total of 12 transportation construction projects (eight of which have been authorized). • Makes design-build contracts subject to prevailing wage rates, certain environmental measures, equal employment opportunity assurances, performance bonding requirements and other provisions. • Requires the co-chairs of the Joint Legislative Committee on the Capital Improvement Program and the Director of the Office of Management and Budget to approve all other projects subject to this section.
Georgia	Senate Bill 305	Enacted on May 24, 2010: 2010 Ga. Laws, Act 440	• Amends Ga. Code Ann. §32-2-81 to increase the total that the DOT may contract for using the design-build method to no more than 30 percent of the total amount of construction projects awarded in the previous fiscal year, and to provide for a reversion to a limit of 15 percent as of July 1, 2014.
Hawaii	House Bill 2901 (companion bill: Senate Bill 2907)[248]	Failed (adjourned) on April 29, 2010	• Would specifically authorize the use of design-build by purchasing agencies, subject to certain criteria.[249] • Would set forth requirements for procurement.
	House Bill 2406 (companion bill: Senate Bill 2659)[250]	Failed (adjourned) on April 29, 2010	• Among other provisions, would streamline requirements for a pre-bid conference for a construction or design-build project.

State	Legislation	Status	Design-Build Provisions
Idaho	House Bill 600 (similar to House Bill 577)[251]	HB 600 enacted on April 11, 2010: 2010 Idaho Sess. Laws, Chap. 293; HB 577 failed (adjourned) on March 29, 2010	• Amends and adds to existing law to provide for design-build, construction manager and general contractor contracts on state highway projects. • Authorizes the state DOT to select design-build firms and award contracts for design-build projects if the board determines that the projects are of appropriate size and scope, that awarding a design-build contract will serve the public interest, and that the method is superior to that described in section 40-902. • Sets criteria for determining when to use design-build and limits the use of design-build and construction manager/general contractor contracts combined to no more than 20 percent of the annual highway construction budget for the state transportation improvement program. • Sets forth procurement guidelines, including RFQ and RFP requirements. • Allows the DOT to pay a stipend to unsuccessful design-build firms.
Illinois	Senate Bill 297	Pending as of Oct. 1, 2010	• Would create the Design-Build for Highway Construction Demonstration Act. • Would authorize the state DOT and the Illinois State Toll Highway Authority to design-build for highway construction projects. • Would set forth procedures for using the design-build method. • Would require the agencies to submit an evaluation report concerning the design-build method no later than Dec. 31, 2012. • Would repeal the act on June 30, 2013.
	Senate Bill 3482	Pending as of Oct. 1, 2010	• Would create the Public-Private Partnerships for Transportation Act (see also Appendix C). • Would allow construction, financing and operation of a project under terms set forth in the PPP agreement, in any form deemed appropriate by the transportation agency, including but not limited to a long-term concession and lease, design-build, design-build-maintain, design-build-operate-maintain and design-build-finance-operate-maintain.
Kansas	House Bill 2650	Enacted on May 25, 2010: 2010 Kan. Sess. Laws, Chap. 156	• Within a larger bill that establishes the Transportation Works for Kansas (T-Works) Program, authorizes the state DOT to procure one design-build demonstration project in Johnson or Wyandotte county.
Louisiana	Senate Bill 777	Failed (adjourned) on June 21, 2010	• Would prohibit design-build contracts for transportation facilities from being entered into after June 30, 2010.
Maine	House Bill 1167	Enacted on April 13, 2010: 2010 Me. Laws, Chap. 648	• Authorizes the state DOT to use design-build contracting to deliver projects. • Allows the DOT to evaluate and select proposals based on either best value or low bid, and sets requirements for procurement. • Allows the DOT to provide a stipend to unsuccessful firms.
Minnesota	Senate Bill 740	Enacted on Feb. 16, 2010: 2010 Minn. Laws, Chap. 181	• Authorizes Anoka County to use design-build for reconstruction of a certain intersection.
Missouri	Senate Bill 585	Failed (adjourned) on May 25, 2010	• Would authorize the state DOT to construct toll roads under certain conditions. • Would authorize the state Highways and Transportation Commission to construct the toll facility projects authorized in this section using the design-build project delivery system.

State	Legislation	Status	Design-Build Provisions
			• Would require any toll facility project constructed using the design-build project delivery system to conform to the provisions of Mo. Rev. Stat. §227.107.
New Jersey	Assembly Bill 1475	Pending as of Oct. 1, 2010	• Would allow the New Jersey Turnpike Authority to procure multiple phases of a transportation project in a single overall contract. • Would allow the authority to award bids based on price and other factors, rather than low bid alone.
New York	Senate Bill 8331	Pending as of Oct. 1, 2010	• Would authorize certain state agencies, including the state DOT, to engage in an "alternative project delivery" method, including design-build, construction manager at-risk, integrated project delivery and PPPs, for any project having a cost of $25 million or more. (See also Appendix C.)
	Assembly Bill 11259	Pending as of Oct. 1, 2010	• Would authorize the state DOT and the New York State Thruway Authority to use design-build contracts. • Would establish a two-step method for selecting an entity to enter into a design-build contract. • Would address the protection of confidential business information. • Would require the commissioner of transportation and the chair of the thruway authority to submit a report to the governor and to the chairs and ranking minority members of the Senate and Assembly transportation committees no later than four years after the date of enactment, evaluating the use of the design-build process for highway projects.
Pennsylvania	House Bill 8a	Pending as of Oct. 1, 2010	• Among other unrelated provisions, would enact a new chapter related to transportation PPPs (see also Appendix C). • Would allow any PPP project undertaken under this chapter to provide design-build, design-build-operate, design-build-operate-maintain and operate-maintain procurements, and other innovative or nontraditional competitive procurement methods for transportation-related infrastructure development.
	House Bill 22a	Pending as of Oct. 1, 2010	• Would authorize the state DOT to use a design-build delivery system when the department has demonstrated that design-build meets its needs better than traditional design-bid-build and makes a determination in writing that a design-build contract is in the best interest of the public. • Would provide a two-phase procedure for awarding design-build contracts. • Would establish a Design-Build Advisory Committee, under the jurisdiction of the DOT, to advise and comment on all phases of design-build activities of the department.
South Carolina	House Bill 4033	Failed (adjourned) on June 3, 2010	• Would create the Transportation Infrastructure Funding Flexibility Act. • Would revise the definition of "design-build contract." • Would authorize the state DOT to enter into public-private initiatives using design-build-operate-maintain or design-build-finance-operate-maintain project delivery methods, subject to certain criteria. This article, however, would not apply to design-build contracts (see also Appendix C).
South Dakota	House Bill 1046	Enacted on March 11, 2010: 2010 S.D. Sess. Laws, Chap. 31	• Repeals statutes that formerly gave design-build authority to public corporations (S.D. Codified Laws Ann. §§5-18-26 et seq.). • Creates new provisions that authorize public agencies to enter into design-build contracts (S.D. Codified Laws Ann. §§5-18A-1 et seq.), but specifically excludes from design-build authorization any highway construction contract entered into by the state DOT.
Utah	House Bill 57	Enacted on March 30,	• Extends until July 1, 2015, the sunset of the provision in Utah Code Ann. §63G-56-502 that authorizes a transportation agency to award,

State	Legislation	Status	Design-Build Provisions
		2010: 2010 Utah Laws, Chap. 358	under certain circumstances, a design-build contract for a transportation project that has an estimated cost of $5 million or less.
Washington	House Bill 1209	Failed (adjourned) on April 12, 2010	• Would authorize the state DOT to purchase five passenger-only ferries using the design-build procurement process.
	House Bill 1873	Failed (adjourned) on April 12, 2010	• Would establish a joint select committee on high-speed rail. • Would charge the committee to examine, among other issues, public-private financing opportunities—including design-build-operate—for a high-speed rail network (see also Appendix C).
Wyoming	Senate Bill 35	Failed (died; no report prior to Committee of the Whole cutoff) on February 24, 2010	• Would authorize the state DOT to toll I-80 and authorize the director of transportation—subject to approval of the state Transportation Commission and the Legislature—to operate a program for tolling I-80. • Would authorize the use of alternative design and construction delivery methods—which include construction manager agent, construction manager at risk and design-build, as defined in Wyo. Stat. §16-6-701—for the I-80 project, if the DOT chief engineer determined that use of such methods is appropriate. The project would comprise highway improvements, maintenance and services, and tolling, which could include planning, financing, construction, operation and/or maintenance of a comprehensive I-80 toll facility.
District of Columbia	Bill 635	Pending as of Oct. 1, 2010	• Would enact many provisions relating to procurement of goods, services and construction in the District of Columbia. • Would authorize several project delivery methods—including construction management at risk, design-build, design-build-finance-operate-maintain, design-build-operate-maintain, and operations and maintenance—for procurements relating to infrastructure facilities and services in the district (see also Appendix C).

Appendix G. Transportation PPP Projects in the United States as of October 2010

Current Projects

This chart lists current highway, bridge and transit PPP projects in the United States. The main source for this information is a compilation in the May 2010 issue of *Public Works Financing*;[252] the original also includes design-build and Canadian projects.[253] More information about many of these projects is available in the case studies section of the Federal Highway Administration (FHWA) Office of Innovative Program Delivery Web site.[254] *Note: Shaded rows are projects for which bankruptcy has been filed.*

Contract Amount in Nominal $ ($ millions)	Project Name	State	Project Sponsor and/or Owner	Project Delivery Model	Notice to Proceed	Sponsors (DB Component)
$3,850	Indiana Toll Road	IN	Indiana Finance Authority	75-year lease	6/06	Cintra Concessions/ Macquarie
$3,200	I-635 (LBJ Freeway) Managed Lanes[255]	TX	Texas DOT	DBFOM	5/04	LBJ Infrastructure Group
$2,300	Eagle P3 Commuter Rail Project[256]	CO	Denver RTD	DBFOM with availability payments	8/10	Fluor/Macquarie
$2,047	North Tarrant Express	TX	Texas DOT	DBFOM	5/99	Cintra/Meridiam ($1.46b Ferrovial)
$1,998	I-495 Capital Beltway HOT Lanes	VA	Virginia DOT	DBFO	7/08	Transurban/Fluor ($1.4b Fluor/Lane)
$1,830	Chicago Skyway	IL	City of Chicago	99-year lease	1/05	Cintra Concessions/ Macquarie
$1,814	I-595 Managed Lanes	FL	Florida DOT	DBFO with availability payments[257]	2/09	ACS Infrastructure ($1.2b Dragados/Earthtech)
$1,674	Hudson-Bergen Light Rail	NJ	NJ Transit	DBOM[258]	10/96	Wash. Group/Itochu ($1.15b Perini/Slattery)
$1,358	SH 130, Segments 5–6	TX	Texas DOT	DBFO with revenue sharing[259]	3/08	Cintra/Zachry
$980	Jamaica-JFK Airtrain	NY	Port Auth. NY/NJ	DB/Equip + O&M	9/99	Skanska/Bombardier ($980m Slattery/Perini)
$914	Port of Miami Tunnel	FL	Florida DOT	DBFO with availability payments[260]	10/09	Meridiam ($607m Bouygues/Jacobs)
$773	South Bay Expressway (SBX) (previously SR 125 South) + Connectors[261]	CA	San Diego Expressway	DBFO	5/03	Macquarie ($653m Washington/Fluor)
$611	Pocahontas Parkway Lease	VA	Virginia DOT	99-year lease with revenue sharing[262]	6/06	Transurban ($45m Fluor/WGI)
$603	Northwest Parkway Lease	CO	Northwest Parkway Authority	99-year lease with revenue sharing[263]	5/07	BRISA/CCR
$508	Trenton River Light Rail	NJ	NJ Transit	DB/Equip + O&M	6/99	Bechtel/Conti/Foster/ Bombardier
$431	IROX I-75	FL	Florida DOT	DBF	6/07	Anderson Columbia/Ajax Paving

Contract Amount in Nominal $ ($ millions)	Project Name	State	Project Sponsor and/or Owner	Project Delivery Model	Notice to Proceed	Sponsors (DB Component)
$385	Route 3 North	MA	Mass. Highways	DBF/ Maintenance	8/00	Modern Continental/Roy Jorgenson
$350	Dulles Greenway Toll Road	VA	TRIP II	DBFO	9/93	TRIP II ($150m Brown & Root)
$343	Las Vegas Monorail[264]	NV	L.V. Monorail LLC	Modified BOT/ DBOM[265]	10/00	Bombardier/Granite
$211	I-95 Widening	FL	Florida DOT	DBF	12/07	Community Asphalt
$191	Southern Connector[266]	SC	Connector 2000 Association	DB/F	2/98	Interwest ($na Thrift Bros.)
$191	Atlantic City-Brigantine Tunnel	NJ	NJ DOT	DB/F	10/97	Mirage Resorts ($191m Yonkers/Granite)
$177	Palmetto Expressway Widening	FL	Florida DOT	DBF	8/08	Condotte-De Moya j.v.
$130	CPTC 91 Express Lanes	CA	CalTrans	DBFO	7/93	Level 3/Cofiroute/Granite (sold 1/03)
$121	95 Express Lanes	FL	Florida DOT	DBF	1/08	FCC/MCM
$111	US 1 Improvements	FL	Florida DOT	DBF	11/07	Community Asphalt
$110	King Coal Highway, Red Jacket Section[267]	WV	WV Division of Highways	Special negotiated agreement	Not known[268]	The Alpha Corporation
$85	Camino Colombia Bypass	TX	Texas DOT	DBFO	6/99	Granite + Carter & Burgess
$70	DC Streets[269]	DC	District of Columbia DOT	5-year O&M concession	Contract started 5/00	O&M provider: VMS, Inc.
$44 (total project cost)	Foley Beach Express[270]	AL	City of Foley	DBFO	6/99	Baldwin Co. Bridge Company

Projects in Active Procurement

This chart lists PPP projects in the United States that are in various stages of active procurement.

Estimated Total Project Cost in Nominal $ ($ millions)	Project Name	State	Project Sponsor and/or Owner	Proposed Project Delivery Model	Key Procurement Dates
$2,177	Detroit River International Crossing[271]	MI	Michigan DOT / Transport Canada	DBFOM with either real tolls or availability payments	• RFPOI issued: January 2010 • Report submitted to Legislature: May 2010
$1,930	First Coast Outer Beltway[272]	FL	Florida DOT	Not known	• Original RFQ issued: December 2007 Original procurement terminated: April 2008 • New RFQ (planned): To be determined • RFP (planned): To be determined
$1,680	Midtown Tunnel/ Downtown Tunnel/ MLK Extension[273]	VA	Virginia DOT	DBFOM	• Interim agreement signed: January 2010

Estimated Total Project Cost in Nominal $ ($ millions)	Project Name	State	Project Sponsor and/or Owner	Proposed Project Delivery Model	Key Procurement Dates
$1,500 to $2,000	U.S. 460 Improvements[274]	VA	Virginia DOT	DBFOM	• Original procurement initiated: 2006 • Original procurement terminated: May 2010 • New SFP issued: May 2010
$1,100	West by Northwest Managed Lanes Project, Northwest Corridor Segment[275]	GA	Georgia DOT	DBFOM	• RFQ: February 2010 • RFQ finalists chosen: June 2010
$1,000	Goethals Bridge Replacement[276]	NY, NJ	Port Auth. NY/NJ	DBM/F	• RFI issued: May 2010 • RFQ (planned): August 2010 • RFP (planned): Q1 2011
$1,000	I-95/395 HOT Lanes[277]	VA	Virginia DOT	DBFOM	• Interim agreement signed: October 2006 • Commercial close: Postponed indefinitely as of September 2009
$1,000	Presidio Parkway (Doyle Drive Reconstruction)[278]	CA	California DOT (Caltrans), SF County Transportation Authority	DBFOM with availability payments	• Draft RFP issued: May 2010
Not known	Ronald Reagan Parkway Extension[279]	GA	Gwinnett County	DBFOM	• Pre-development/feasibility phase: Until 4Q 2010
Not known	Multi-Modal Passenger Terminal (MMPT)[280]	GA	Georgia DOT	DBOM	• NOI to issue RFQ released: July 2010 • RFQ (planned): September 2010
Not known	Puerto Rico Toll Roads PR-22 and PR-5[281]	PR	PR PPP Auth. / PR Hwys. and Trans. Auth.	50-year concession	• RFQ issued: June 2010

Planned Projects

Each of the following projects has been publicly announced as PPPs, but no requests for proposals (RFP) or requests for information (RFI) have yet been issued.[282]

California
- Bay Area Express Lane Network
- Gerald Desmond Bridge
- High Desert Corridor
- I-710 North
- I-710 Freight Corridor
- North Coast I-5 HOV/Managed Lanes
- Otay Mesa East Port of Entry/Attendant SR-11
- Schuyler Heim Bridge and SR-47 Expressway

Georgia
- "Gwinnett Connector" Toll Road
- I-285 "Top End"
- I-285W/I-20W
- SR-400 HOT Lanes

Illinois/Indiana
- Illiana Expressway

New Jersey/Pennsylvania
- Scudder Bridge

Unrealized Projects

Some recent projects have been announced but not successfully realized as PPPs, due to a lack of bids (Alligator Alley, Florida), an inability to secure the necessary financing (Chicago Midway Airport, Illinois; Jackson Airport Parkway, Mississippi), a change in market conditions (Safe and Sound Bridge Improvement Program, Missouri) or a winning bid from the public sector (SH 121 Toll Project, Texas).[283]

Appendix H. The Pew Center on the States' Key Questions for States Considering PPPs[284]

This list of key questions for states to consider when exploring PPPs for was developed by the Pew Center on the States for the 2009 report *Driven by Dollars: What States Should Know When Considering Public-Private Partnerships to Fund Transportation.* According to the report, states considering PPPs should have clear, data-driven answers to the following 30 questions, divided into four categories. Note that these questions are relevant to both legislative and executive roles.

Examining the Options: The Decision-Making Process

1. Does the government have a clear sense of the funding gap in its infrastructure needs?
2. Have all revenue options been examined and compared, both with and without private-sector involvement?
3. Is there understanding and agreement about the goals of raising revenue and the ways in which dollars will be distributed among projects or needs?
4. Has the legislature adopted enabling legislation to signal its willingness to consider a concession agreement with the private sector?

Let's Make a Deal: The Deal-Making Process

5. Did the state complete appropriate due diligence prior to proposing a lease of the roadway?
6. If tolls will be increased, what is the likely effect on traffic patterns? If increased tolls on the leased road lead to more traffic on alternative roads, will the government have to spend additional funds to improve the non-toll roads?
7. Will safety on the statewide transportation network be adversely affected if travelers avoid the tolls by using alternative roads?
8. Is it unfair that current users get to enjoy the transportation system that future generations will be paying for through higher tolls?
9. Is one group of individuals being asked to finance the majority of the state's transportation needs? Is that equitable?
10. What are the economic and business implications for the state if the concession is allowed?
11. How does the proposal take into account the potential impact on congestion, pollution and land use?
12. Was the bidding process fully competitive?
13. What are the transaction costs associated with the deal? Are they reasonable?
14. What provisions for flexibility are written into the lease? Can the government and the private operator make choices related to level of service, maintenance, etc., to reflect changing circumstances?
15. What risks do the public and private sectors bear in the deal? Does the financial structure of the lease account for risks borne by the state or the private operator?
16. Does the party bearing the risk also have control that allows it to fix problems that arise related to that risk?
17. If the lease is awarded, can the state still build competing and/or complementary roads or transportation routes? If not, what are the long-term implications?

18. Is the process adequately and appropriately transparent, with sufficient involvement from the public and other stakeholders?

19. Do both the executive and legislative branches have access to the information they need to make a sound decision?

Show Me the Money: Financial Analysis

20. How does the proposed term of the lease compare to other concessions? Does the term make sense for the state's goals?

21. Should the state pursue a lease that maximizes the upfront payment or opt for a different model that might include revenue sharing?

22. Will the upfront funds from the concession be used to create a sustainable source of revenue for the future? If so, how far into the future will they last?

23. How should the revenue from the concession be spent? Who should decide?

24. How were the state's financial assumptions built? Are they reasonable?

25. How do tax treatment and borrowing costs affect the government and the proposed concessionaire's financial assumptions?

Who Will Mind the Store? Oversight and Service Provision

26. What mechanism for oversight does the lease set out? Is it strong enough to protect the state's interests?

27. Within the terms of the contract, has a level of service been determined? Is there a system to set and measure performance criteria?

28. Are there any penalties if the road fails to meet minimum standards? Are they large enough to discourage poor performance by the concessionaire?

29. What are the conditions for the state to buy back the lease from the private operator? What provisions are included in the deal in case of termination or default? Do they provide the state with sufficient flexibility?

30. What are the deal hand-back conditions? Will the state receive a road in the same, or better, working and financial order than at the start of the deal?

Notes

1. U.S. Department of Transportation, *Report to Congress on Public-Private Partnerships* (Washington, D.C.: U.S. DOT, 2004), http://www.fhwa.dot.gov/reports/pppdec2004/#2a.

2. "U.S. & Canadian Transportation Projects Scorecard," *Public Works Financing 249* (May 2010): 24–25, http://www.publicinfrastructure.ca.gov/GSLibrary/Downloads/download.ashx?file=sites/1832/17450/442064/May%202010%20Issue%2C%20PUBLIC%20WORKS%20FINANCING.pdf. See also Appendix G.

3. NCSL Policy on Surface Transportation Federalism, 2008, http://ecom.ncsl.org/statefed/transportation.htm#surfacetrans. The fuller excerpt reads as follows:

> All funding and financing options must be available to state legislatures for state and federal-aid programs. All current federal restrictions on states' authority to toll should be removed so that states can optimize resources for capacity expansion, operations, and maintenance while ensuring free flow of goods and people. Tolling, value-pricing, and public-private partnerships (PPPs) should remain state provinces and are not appropriate federal funding mechanisms.
>
> Federal guidelines should be designed to accommodate private sector support. The level of private sector participation is best determined by state and local authorities, and private participation should not be a prerequisite for receiving federal funds. Statutory or regulatory barriers to state and locally-granted revenues should be removed. Congress should not mandate or prescribe state use of toll revenues or tolling mechanisms, though Congress may seek to incentivize states to avoid redirection of toll revenues to non-transportation uses. State legislators understand and will protect the public interest.
>
> Congress should continue Transportation Infrastructure Finance and Innovation Act (TIFIA), Grant Anticipation Revenue Vehicles (GARVEE), private-activity bond, and State Infrastructure Bank (SIB) programs. Congress should expand credit-based and loan guarantee programs to incentivize private sector investment – particularly for freight mobility by rail, highway, and waterway – when and if such projects appear in state plans.

4. PriceWaterhouseCoopers LLP, *Public-Private Partnerships: The U.S. Perspective* (n.p.: PriceWaterhouseCoopers LLP, 2010), 11, http://www.pwc.com/us/infrastructure-ppp.

5. Jeffrey N. Buxbaum and Iris N. Ortiz, *Public Sector Decision Making for Public-Private Partnerships: A Synthesis of Highway Practice,* NCHRP Synthesis 391 (Washington, D.C.: Transportation Research Board, 2009), 7, http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_391.pdf.

6. U.S. Department of Transportation, *Report to Congress*, viii.

7. P.R. 2009 Act No. 29.

8. J. Juis Guasch, *Granting and Renegotiating Infrastructure Concessions: Doing It Right* (Washington, D.C.: The International Bank for Reconstruction and Development/The World Bank, 2004), cited in Wendell C. Lawther, "Privatization of Transportation Systems," in *Handbook of Transportation Policy and Administration,* ed. Jeremy F. Plant, Van R. Johnston and Cristina E. Ciocirlan (Boca Raton, Fla.: CRC Press, 2007), 371.

9. Buxbaum and Ortiz, *Public Sector Decision Making*, 7; Lawther, "Privatization of Transportation Systems," 371–2; NCSL Foundation for State Legislatures, *NCSL Foundation Partnership: Public-Private Partnerships (P3s or PPPs) for Transportation Meeting Summary, April 22–25, 2009* (Denver, Colo.: NCSL, 2009), 15, http://www.ncsl.org/documents/transportation/PPPmeetingsum09.pdf.

10. See NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009),* 22–23.

11. Adapted from Pete Rahn, *Government Perspective on Evaluating PPP Approach* [PowerPoint presentation] (Jefferson City, Mo.: Missouri DOT, 2009), http://www.modot.mo.gov/newsandinfo/documents/09-01-27PPPpresentation.pdf.

12. Elizabeth F. Jones and David M. Epperson, *Report of the Legislative Study Committee on Private Participation in Toll Projects* (Austin, Texas: Legislative Study Committee on Private Participation in Toll Projects, 2008), 28, 39, http://www.senate.state.tx.us/75r/Senate/commit/c820/SB792Report.pdf; Partnerships British Columbia (Partnerships BC), *Understanding Public Private Partnerships* (Vancouver, B.C.: Partnerships BC, March 2006), http://www.partnershipsbc.ca/pdf/Understanding%20Public%20Private%20Partnerships%2023-mar-06.pdf.

13. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009)*, 26.

14. Edward Fishman, *Major Legal Issues for Highway Public-Private Partnerships: Legal Research Digest 51* (Washington, D.C.: NCHRP, 2009), 4, http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_lrd_51.pdf.

15. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009)*, 15, 22, 26, 65–66; Buxbaum and Ortiz, *Public Sector Decision Making*, 7–8; William M. Leavitt and John C. Morris, "Public Works Service Arrangements in the 21st Century: The Multiple-Sector Partnership as an Alternative to Privatization," *Public Works Management & Policy* 12, no. 1 (2007): 325–330, cited in Buxbaum and Ortiz, *Public Sector Decision Making*, 7.

16. See note 99.

17. Figure 2 is drawn largely from Buxbaum and Ortiz, *Public Sector Decision Making*, 8; NCSL Partners Project, *Meeting Summary (April)*, 26, 65–66; Zhirong (Jerry) Zhao, *Understanding Public-Private Partnerships in State Highway Development* (Minneapolis: University of Minnesota, May 2010).

18. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009)*, 15; U.S. Department of Transportation, *Innovation Wave: An Update on the Burgeoning Private Sector Role in U.S. Highway and Transit Infrastructure* (Washington, D.C.: U.S. DOT, 2008), 9, http://www.fhwa.dot.gov/reports/pppwave/index.htm.

19. Fishman, *Major Legal Issues*, 32–33; U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships: More Rigorous Up-front Analysis Could Better Secure Potential Benefits and Protect the Public Interest*, GAO-08-44 (Washington, D.C.: U.S. GAO, 2008), 22–23, http://www.gao.gov/new.items/d0844.pdf.

20. Drawn from Federal Highway Administration (FHWA), *User Guidebook on Implementing Public-Private Partnerships for Transportation Infrastructure Projects in the United States*, Final Report, Work Order 05-002 (Washington, D.C.: FHWA, 2007), http://www.fhwa.dot.gov/ipd/pdfs/ppp_user_guidebook_final_7-7-07.pdf, cited in Buxbaum and Ortiz, *Public Sector Decision Making*, 17.

21. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership: Public-Private Partnerships (P3s or PPPs) for Transportation Meeting Summary, July 20, 2009* (Denver, Colo.: NCSL, 2009), 22, http://www.ncsl.org/documents/transportation/Summit09P3mtgsum.pdf.

22. The tax-exempt debt market, which is unique to the United States, is one oft-cited reason for the relatively low number of PPPs in this country compared to elsewhere. See NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009)*, 17.

23. Sources for Figure 3 include American Association of State Highway and Transportation Officials (AASHTO) Center for Excellence in Project Finance, *Financing* (Washington, D.C.: AASHTO, 2008), http://www.transportation-finance.org/funding_financing/financing; Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Project Finance: Tools and Programs* (Washington, D.C.: FHWA, 2010), http://www.fhwa.dot.gov/ipd/finance/tools_programs/index.htm.

24. Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *TIFIA Approved Projects* (Washington, D.C.: FHWA, July 29, 2010), http://www.fhwa.dot.gov/ipd/tifia/projects_case_studies/index.htm.

25. American Association of State Highway and Transportation Officials (AASHTO) Center for Excellence in Project Finance, *Project Finance State by State: State Infrastructure Banks (SIBs)*, (Washington D.C.: AASHTO, 2010), http://www.transportation-finance.org/tools/state_by_state/sibs.aspx.

26. Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Project Finance: Tools and Programs: Private Activity Bonds (PABs),* (Washington, D.C.: FHWA, 2010), http://www.fhwa.dot.gov/ipd/p3/tools_programs/pabs.htm.

27. Leonard Gilroy, Reason Foundation, e-mail to author, Feb. 10, 2010.

28. Buxbaum and Ortiz, *Public Sector Decision Making*; Fishman, *Major Legal Issues,* 7. It should be noted that brownfield concessions in other countries tend to have shorter terms; European Union countries limit them to between 21 years and 35 years, and thus a 99-year concession could be considered atypical in a global context. In the United States, however, three of the four such leases to date are for 99 years, and one (the Indiana Toll Road) for 75 years. See also Appendices B and G and page 11.

29. Leonard Gilroy, Reason Foundation, e-mail to author, Feb. 10, 2010; Jones and Epperson, *Report of the Legislative Study Committee*, 28, 39; Partnerships British Columbia (Partnerships BC), *Understanding Public Private Partnerships.*

30. Leonard Gilroy, Reason Foundation, e-mail to author, Feb. 10, 2010; Geoffrey Segal, Macquarie Capital, e-mail to author, Dec. 30, 2009; Janice Weingart Brown et al., *Public-Private Partnerships for Highway Infrastructure: Capitalizing on International Experience,* Federal Highway Administration (FHWA) Report FHWA-PL-09-010 (Washington, D.C.: FHWA, 2009), http://international.fhwa.dot.gov/pubs/pl09010/index.cfm.

31. Kearsarge Global Advisors, *Benefits of Private Investment in Infrastructure* (Washington, D.C.: Kearsarge Global Advisors, 2009), http://www2.vlaanderen.be/pps/documenten/benefits_of_private_investment_in_infrastructure.pdf, cited in PriceWaterhouseCoopers LLP, *Public-Private Partnerships*. In 2008, however, widely reported estimates of the private capital available for infrastructure investment placed the number at more than $400 billion; see Mary Peters, then U.S. Secretary of Transportation, speech to the National Governors Association (Feb. 25, 2008), cited in Jones and Epperson, *Report of the Legislative Study Committee*, 38.

32. Information about project acceleration is available from: Christopher Conkey, "Highway Upgrade Goes Private: Florida Deal With Spanish-Led Group Serves as a Model for Cash-Strapped States," *Wall Street Journal,* March 9, 2009, http://online.wsj.com/article/NA_WSJ_PUB:SB123655310893265587.html; William Eggers and Tom Startup, *Closing the Infrastructure Gap: The Role of Public-Private Partnerships* (Washington, D.C.: Deloitte, 2006), 1, http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_ps_ClosingInfrastructureGap2006%281%29.pdf; U.S. Department of Transportation, *Report to Congress,* 48–51. The U.S. DOT report in particular lists several projects for which private investment was critical to project advancement.

33. U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*, 21.

34. See NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (July 2009)*, 23.

35. Eggers and Startup, *Closing the Infrastructure Gap*, 8; U.S. Department of Transportation, *Report to Congress,* 41–55.

36. U.S. Department of Transportation, *Report to Congress*, 2.

37. Eggers and Startup, *Closing the Infrastructure Gap*, 8; Fishman, *Major Legal Issues*, 5–6; NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009)*, 22–23. See also Robert W. Poole Jr., "What about Public Service?" *Roads & Bridges* (October 2009), http://www.roadsbridges.com/What-about-public-service-article11181, which argues that elements of traditional procurement—such as low-bid requirements and pressure to spread capital investment dollars among as many projects as possible—give state DOTs incentives not to pursue lifecycle efficiencies.

38. U.S. Department of Transportation, *Report to Congress,* 52.

39. Zhao, *Understanding Public-Private Partnerships*, 10.

40. See note 37 for sources.

41. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009),* 59–62.

42. Ibid., 27.

43. See NCSL Foundation for State Legislatures, *NCSL Foundation Partnership: Public-Private Partnerships (P3s or PPPs) for Transportation Meeting Summary, December 11, 2009* (Denver, Colo.: NCSL, 2009*)*, 5, http://www.ncsl.org/documents/transportation/P3forumsum1209v2.pdf.

44. Leonard Gilroy, *Modernizing and Expanding Pennsylvania's Transportation Infrastructure through Public-Private Partnerships* [Testimony before the Pennsylvania House Republican Policy Committee] (Los Angeles, Calif.: Reason Foundation, 2009), 13–14, http://reason.org/files/testimony_pennsylvania_transportation_public_private_partnerships.pdf.

45. A helpful resource on PPP-related concerns is the 2009 NCHRP report by Jeffrey Buxbaum and Iris Ortiz entitled *Public Sector Decision Making*—cited frequently throughout this report—which highlights concerns about PPPs as identified by survey respondents in legislatures, state DOTs, private companies, universities and interest groups.

46. Leonard Gilroy, Reason Foundation, e-mail to author, Feb. 10, 2010; Geoffrey Segal, Macquarie Capital, e-mail to author, Dec. 30, 2009; Janice Weingart Brown et al., *Public-Private Partnerships for Highway Infrastructure*.

47. See Phineas Baxandall, Kari Wohlschlegel, and Tony Dutzik, *Private Roads, Public Costs: The Facts about Toll Road Privatization and How to Protect the Public* (Boston: USPIRG, 2009), 17–21, http://cdn.publicinterestnetwork.org/assets/H5Ql0NcoPVeVJwymwlURRw/Private-Roads-Public-Costs.pdf.

48. Baxandall et al., *Private Roads,* 29–30.

49. José Gómez-Ibáñez, Dominique Lorrain, and Meg Osius, *The Future of Infrastructure Privatization,* Working Paper (Cambridge, Mass.: Taubman Center for State and Local Government, Kennedy School of Government, Harvard University, 2004), 9, http://www.hks.harvard.edu/taubmancenter/pdfs/working_papers/gomezibanez_04_infrastructure.pdf, cited in Baxandall et al., *Private Roads*, 29.

50. John P. Jeffers et al., *Audit Stewardship and Oversight of Large and Innovatively Funded Projects in Europe*, FHWA-PL-07-001 (Washington, D.C.: FHWA, 2006), cited in Buxbaum and Ortiz, *Public Sector Decision Making*, 37.

51. Fla. Stat. Ann. §334.30(12); Me. Rev. Stat. Ann. tit. 23, §4251(8); Miss. Code Ann. §65-43-3(3); P.R. 2009 Act No. 29 (10)(e).

52. Buxbaum and Ortiz, *Public Sector Decision Making*, 36–37.

53. See Baxandall et al., *Private Roads,* 18; Buxbaum and Ortiz, *Public Sector Decision Making,* 29, 32; Fishman, *Major Legal Issues*, 35–36; U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships,* 45–46. For additional examples of noncompete clauses, see also Nicholas Farber, "Note: Avoiding the Pitfalls of Public Private Partnerships: Issues to be Aware of When Transferring Transportation Assets," *Transportation Law Journal* 35, no. 1 (2008): 110, http://law.du.edu/pdfdocuments/v35/FARBER_Note.pdf.

54. See Robert W. Poole Jr., *Orange County's 91 Express Lanes: A Transportation and Financial Success, Despite Political Problems,* Policy Paper 39 (Los Angeles, Calif.: Reason Foundation, 2005), http://reason.org/files/b66ba1c80e56be1466244e4f77245836.pdf. This report describes some of the controversy about the noncompete clause in the original PPP agreement for California's SR-91 project in Orange County, and the industry's overall transition to a different approach. See also Fishman, *Major Legal Issues*, 36.

55. See Fishman, *Major Legal Issues*, 36. This report recommends negotiating a noncompete clause that adequately balances the private entity's need to make a profit with the public sector's obligation to provide adequate transportation facilities to its constituents. It also advises not having noncompete clauses that prevent improvements to competing roads or highways. Another alternative the report offers is to allow the public sector to retain traffic risk through an availability payment approach.

56. Ariz. Rev. Stat. Ann. §28-7705(F); Cal. Streets & Highways Code §143(i); Colo. Rev. Stat. §43-3-304; Fla. Stat. Ann. §334.30; Fla. Stat. Ann. §348.0004; Miss. Code Ann. §65-43-1; N.C. Gen. Stat. §136-89.197; Tex. Transportation Code Ann. §371.103. Also, in Alabama under Ala. Code §23-1-81(e), no toll bridge may be established over the same watercourse within two miles of any other toll bridge. See also Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *State P3 Legislation* (Washington, D.C.: FHWA, 2007), http://www.fhwa.dot.gov/ipd/p3/state_legislation/state_legislation_overview.htm; Fishman, *Major Legal Issues*, 36.

57. Jones and Epperson, *Report to the Legislative Study Committee*, 56–62.

58. Dennis Houlihan, American Federation of State, County and Municipal Employees (AFSCME), conversation with author, Dec. 11, 2009.

59. Baxandall et al., *Private Roads*; Buxbaum and Ortiz, *Public Sector Decision Making*; Jones and Epperson, *Report of the Legislative Study Committee*, 52–55; PriceWaterhouseCoopers LLP, *Public-Private Partnerships*; U.S. Department of Transportation, *Report to Congress,* 80; U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*, 35–36. See also Richard Wronski, "Privatize Illinois' Tollways? Voters Say No," *Chicago Tribune*, Jan. 25, 2010, http://www.chicagobreakingnews.com/2010/01/privatize-illinois-tollways-voters-say-no.html; this article reports that a statewide poll of likely primary voters showed widespread Republican and Democrat opposition to the idea of leasing the Illinois Tollway, largely because respondents felt that tolls were likely to increase.

60. Buxbaum and Ortiz, *Public Sector Decision Making*, 34.

61. Ibid., 14.

62. Leonard Gilroy, Reason Foundation, e-mail to author, Feb. 10, 2010.

63. New York Citizens Budget Commission (CBC), *How Public-Private Partnerships Can Help New York Address Its Infrastructure Needs: A Summary of a Report by the Citizens Budget Commission* (New York: CBC, December 2008), 10, http://www.cbcny.org/CBC_PPP_v6.pdf; U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*, 33–34*;* PriceWaterhouseCoopers LLP, *Public-Private Partnerships*, 12.

64. Baxandall et al., *Private Roads,* 21–26; U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*, 33–34.

65. Jones and Epperson, *Report of the Legislative Study Committee*, 52.

66. For an example of the public sector being owed money at the time of a PPP default, see Patrick Temple-West, "Trends in the Region: Toll Tug-of-War in South Carolina," *Bond Buyer* 373, no. 33346 (July 2010): 1.

67. Buxbaum and Ortiz, *Public Sector Decision Making*, 37; John Foote, Kennedy School of Government, Harvard University, e-mail to author, Jan. 11, 2010.

68. Gilroy, *Modernizing and Expanding Pennsylvania's Transportation Infrastructure*, 15.

69. Buxbaum and Ortiz, *Public Sector Decision Making*, 24; see also Baxandall et al., *Private Roads*, 30.

70. Buxbaum and Ortiz, *Public Sector Decision Making,* 24.

71. Ibid.*,* 24; see also Baxandall et al., *Private Roads*, 30–31.

72. Buxbaum and Ortiz, *Public Sector Decision Making,* 24–26; Fishman, *Major Legal Issues,* 30; The Pew Center on the States, *Driven by Dollars: What States Should Know When Considering Public-Private Partnerships to Fund Transportation* (Washington, D.C.: The Pew Center on the States, 2009), 21–23, http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/State_policy/PA_Turnpike_FINAL_WEB.pdf; Regional Plan Association (RPA), *Proceed with Caution: Ground Rules for a Public Private Partnership in New Jersey* (n.p.: RPA, 2007), http://www.rpa.org/pdf/rpappp01082007.pdf; U.S. Department of Transportation, *Report to Congress,* 108.

73. Del. Code Ann. tit. 2, §2003; Ind. Code Ann. §8-15.5-4-6; Tex. Transportation Code §371.052(d). See also Fishman, *Major Legal Issues*, 29. In addition, the model PPP statutes developed by FHWA and by Nossaman LLP (see notes 94 and 100) provide examples of how states can legislatively address issues of confidentiality and proprietary information.

74. Buxbaum and Ortiz, *Public Sector Decision Making*, 34–35.

75. Ibid.*,* 35–36; Dennis Houlihan, American Federation of State, County and Municipal Employees (AFSCME), conversation with author, July 20, 2009, and memo to author, February 2, 2010.

76. In 2006, Mark Florian, then managing director of Goldman, Sachs & Co., addressed this generally by testifying that, "It is also important to consider the future of the municipal employees as a result of a concession. It is possible for concession contracts to be written so a concessionaire must use municipal employees for all or a portion of toll collection, maintenance, administration, etc." Mark Florian, "Statement of Mr. Mark Florian, Managing Director, Goldman, Sachs & Co.: Testimony before the Subcommittee on Highways, Transit and Pipelines of the House Transportation and Infrastructure Committee," in *Understanding Contemporary Public Private Highway Transactions: The Future of Infrastructure Finance? (109-75), Hearing Before the Committee on Highways, Transit and Pipelines of the Committee on Transportation and Infrastructure, House of Representatives, One Hundred Ninth Congress, Second Session, May 24, 2006* (Washington, D.C.: U.S. Government Printing Office, 2006), 77, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:28290.pdf.

77. Del. Code Ann. tit. 2, §2003(f); Ill. Rev. Stat. ch. 820 §130/2; Ind. Code Ann.§5-23-3-3, §5-23-4-2, §8-15.5-6-2 and §8-15.7-6-2; Mass. Gen. Laws Ann. ch. 6C, §64(c)(26). See also Buxbaum and Ortiz, *Public Sector Decision Making,* 36. Ill. Rev. Stat. ch. 50 §§615/25 et seq. (relating to leased facility property at Chicago Midway International Airport) include additional examples of statutory labor protections for PPPs, beyond prevailing wage requirements.

78. Buxbaum and Ortiz, *Public Sector Decision Making,* 35–36.

79. Ibid., 27–28.

80. Ariz. Rev. Stat. Ann. §§28-7701 to 7710; see also NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (July 2009),* 28.

81. Gilroy, *Modernizing and Expanding Pennsylvania's Transportation Infrastructure*, 12–13; Patrick Rhode, Cintra US, e-mail to author, Aug. 20, 2010; PriceWaterhouseCoopers LLP, *Public-Private Partnerships*.

82. For more on the negative impacts of diversion for local communities located on nearby, untolled roads, see Baxandall et al., *Private Roads,* 17, 19. Diversion that results from converting existing highways to public or private tolled roads can also create problems for rural communities located on those roads, which often rely economically on that traffic; for more on this, see The Pew Center on the States, *Driven by Dollars*, 11.

83. Jones and Epperson, *Report of the Legislative Study Committee*, 56.

84. Buxbaum and Ortiz, *Public Sector Decision Making*.

85. The United States, however, is not unique in this regard. In other countries such as Australia, Canada, India and Nigeria, state or provincial governments also own, operate and finance transportation assets. Source: David Wright, International Financial Services, e-mail to author, Aug. 17, 2010.

86. Hiroyuki Iseki et al., *Task B-2: Status of Legislative Settings to Facilitate Public Private Partnerships in the U.S.*, California PATH Research Report UCB-ITS-PRR-2009-32 (Berkeley, Calif.: Institute of Transportation Studies, University of California, Berkeley, 2009), 6, http://www.path.berkeley.edu/PATH/Publications/PDF/PRR/2009/PRR-2009-32.pdf.

87. This section describes the federal role in PPPs as of October 2010. Note that federal PPP activities may change under new transportation authorization legislation, however, which is due to be enacted sometime in 2010 or 2011. For a review of some broad policy options that Congress may consider, see National Surface Transportation Policy and Revenue Study Commission, *Transportation for Tomorrow: Report of the National Surface Transportation Policy and Revenue Study Commission* (Washington, D.C.: National Surface Transportation Policy and Revenue Study Commission, December 2007), http://ntl.bts.gov/lib/33000/33400/33441/final_report/pdf/front_cover.pdf, cited in William J. Mallett, *CRS Report for Congress: Public-Private Partnerships in Highway and Transit Infrastructure Provision* (Washington, D.C.: Congressional Research Service [CRS], 2010).

88. Congressional Budget Office (CBO), *CBO Memorandum: Toll Roads: A Review of Recent Experience* (Washington, D.C.: CBO, 1997), http://www.cbo.gov/ftpdocs/40xx/doc4014/1997doc03-Entire.pdf.

89. Fishman, *Major Legal Issues,* 22.

90. Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Project Finance: Tools and Programs*.

91. See note 22.

92. Fishman, *Major Legal Issues*, 24; Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Public-Private Partnerships: Tools and Programs: SEP-15* (Washington, D.C.: FHWA, 2010), http://www.fhwa.dot.gov/ipd/p3/tools_programs/sep15.htm; Matt Sundeen and James B. Reed, *Surface Transportation Funding: Options for States* (Denver, Colo.: NCSL, 2006), 50, http://www.ncsl.org/documents/transportation/surfacetranfundrept.pdf; U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*, 66–67.

93. U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*, 68–69; Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Public-Private Partnerships* (Washington, D.C.: FHWA, 2010), http://www.fhwa.dot.gov/ipd/p3/index.htm; Karen J. Hedlund, *Statement of Karen J. Hedlund, Chief Counsel, Federal Highway Administration, U.S. Department of Transportation before the Joint Michigan House of Representatives and Senate Transportation Committees, Hearing on Public Private Partnerships* (Washington, D.C.: FHWA, Sept. 15, 2009), http://www.house.mi.gov/SessionDocs/2009-2010/Testimony/Committee23-9-16-2009.pdf.

94. Federal Highway Administration (FHWA), *Working Draft* [FHWA Model Legislation for States Considering P3 Authorization] (Washington, D.C.: FHWA, 2010), http://www.fhwa.dot.gov/ipd/p3/state_legislation/index.htm, http://www.fhwa.dot.gov/ipd/pdfs/legis_model_0610.pdf.

95. See U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*; William J. Mallett, *CRS Report for Congress: Public-Private Partnerships in Highway and Transit Infrastructure Provision* (Washington, D.C.: Congressional Research Service [CRS], 2008); Mallett, *CRS Report for Congress* [2010].

96.The Pew Center on the States, *Driven by Dollars*, 4.

97. See The Pew Center on the States, *Driven by Dollars.* In this report, the importance of passing enabling legislation before pursuing deals is presented as a lesson learned from the failed attempt to lease the Pennsylvania Turnpike in 2008. In that situation, the executive branch began the bidding process and entered into negotiations before enabling legislation had been passed. In the end, the legislation failed and the bidder withdrew. See also NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009)*, 36–37; Iseki et al., *Task B-2: Status of Legislative Settings*, v.

98. Legislation pertaining to highway projects is the focus of this report. Some jurisdictions, however—including Guam, Illinois, Michigan, New Jersey and Washington—have enacted statutes authorizing PPPs solely for mass transit, high-speed rail, aviation, port or ferry projects. See Michael Pikiel, Jr. and Lillian Plata, "A Survey of PPP Legislation across the United States," *Global Infrastructure* 1 (2008): 52–65, http://www.ncppp.org/resources/State%20PPP%20Legislation%20Survey_2008.pdf; Nossaman LLP, *State Legislation Authorizing Public-Private Partnerships (PPP) for Transit Projects* (Washington, D.C.: Nossaman LLP, 2009), http://www.ncppp.org/FTA/EnablingLegislation.pdf.

99. Design-build is sometimes considered the PPP approach with the least private involvement; this report generally takes that approach. Some authors such as the New York Citizens Budget Commission (CBC), however, have excluded design-build from the PPP category because it has to do only with a project's construction phases. In this section of the report, design-build and PPP legislation are listed separately because design-build authorizations are often contained in different statutes than those for other kinds of transportation PPPs. Also, each kind of provision has been enacted by a different subset of states. See Figures 6 and 7 and Appendices B and E for more details.

100. Federal Highway Administration, *Working Draft* [FHWA Model Legislation]; Nossaman LLP, *A Bill for an Act Relating to Public-Private Partnerships for Public Infrastructure* (Los Angeles, Calif.: Nossaman LLP, 2009), http://64.106.216.3/Files/28546_Model%20PPP%20Legislation.pdf. See also NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009),* 19–21, 23–24.

101. Sources for Figure 6 include original research using Westlaw and StateNet; Buxbaum and Ortiz, *Public Sector Decision Making*; Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *State P3 Legislation*; Fishman, *Major Legal Issues*, 31; Iseki et al., *Task B-2: Status of Legislative Settings*; NCSL Transportation Program, *NCSL Transportation Funding Legislation Database* (Denver, Colo.: NCSL, 2010), http://www.ncsl.org/default.aspx?tabid=13597; Nossaman, Guthner, Knox and Elliott LLP, *Overview of Key Elements and Sample Provisions, State PPP Enabling Legislation for Highway Projects* (Washington, D.C.: Nossaman, Guthner, Knox and Elliott LLP, October 2005), 2,

http://www.fhwa.dot.gov/ipd/pdfs/legis_key_elements.pdf; Nossaman, Guthner, Knox and Elliott LLP, *Overview of States with Significant Transportation Public Private Partnership ("PPP") Authority* (Washington, D.C.: Nossaman, Guthner, Knox and Elliott LLP, 2005), http://www.ncppp.org/councilinstitutes/stlouis_2005/hedlund_3.pdf; Pikiel, Jr. and Plata, "A Survey of PPP Legislation."

102. Sources for Figure 7 include original research using Westlaw and StateNet; Design-Build Institute of America (DBIA), *Legislation and Advocacy: State Legislation* (Washington, D.C.: DBIA, 2010), http://www.dbia.org/advocacy/state; NCSL Transportation Program, *NCSL Transportation Funding Legislation Database*; Sundeen and Reed, *Surface Transportation Funding*.

103. Iseki et al., *Task B-2: Status of Legislative Settings,* iii.

104. States' use of a "pilot" or "demonstration" project approach to PPP authorization has decreased over the past two years. As of January 2009, seven states—Alaska, Arizona, California, Indiana, Missouri, North Carolina and Tennessee—limited PPPs to selected projects. Legislation enacted in 2009 extended PPP authorization beyond these restrictions in Arizona, California and Missouri. Illinois, however, then adopted a pilot project approach in 2010, when new legislation authorized the state DOT to enter into only one highway PPP, for the Illiana Expressway. See Appendices B and C for relevant citations. See also Buxbaum and Ortiz, *Public Sector Decision Making*, 13; Nossaman, Guthner, Knox and Elliott LLP, *Key Elements of State PPP Enabling Legislation for Highway Projects* (Washington, D.C.: Nossaman, Guthner, Knox and Elliott LLP, December 2007), http://www.fhwa.dot.gov/ipd/p3/state_legislation/state_legislation_key_elements.htm.

105. Fishman, *Major Legal Issues*, 26; Nossaman, Guthner, Knox and Elliott LLP, *Overview of Key Elements*.

106. Buxbaum and Ortiz, *Public Sector Decision Making*, 13.

107. Table 3 is drawn from Iseki et al., *Task B-2: Status of Legislative Settings*, ix; Nossaman, Guthner, Knox and Elliott LLP, *Overview of Key Elements.*

108. Sources for Figure 8 are the same as for Appendix B and Figure 6; see note 101.

109. See Baxandall et al., *Private Roads*, 31.

110. "What Role Should Public-Private Partnerships Play?" National Journal Expert Blogs, Transportation, April 6, 2009, http://transportation.nationaljournal.com/2009/04/what-role-should-publicprivate.php; Nossaman, Guthner, Knox and Elliott LLP, *Overview of Key Elements*, 4; Leonard Gilroy, Reason Foundation, e-mail to author, Feb. 10, 2010.

111. Other provisions besides legislative approval requirements that may add further uncertainty to the PPP process and dissuade bidders include local veto options—as in Arizona, Delaware and Minnesota—or, as introduced in new legislation passed in 2009 in Missouri, a requirement for final approval by a vote of the people for certain PPP projects. See Appendix B; Nossaman, Guthner, Knox and Elliott LLP, *Key Elements*; and Iseki et al., *Task B-2: Status of Legislative Settings*, 11.

112. Leonard Gilroy, Reason Foundation, e-mail to author, Feb. 10, 2010.

113. Tyler Duvall, former U.S. Assistant Secretary for Transportation Policy, e-mail to author, March 12, 2010.

114. U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*, 8.

115. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009),* 33.

116. U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*, 8, 19 (quoting the American Trucking Association); Jeffrey N. Buxbaum and Iris N. Ortiz, *Protecting the Public Interest: The Role of Long-Term Concession Agreements for Providing Transportation Infrastructure,* Research Paper 07-02 (Cambridge, Mass.: Cambridge Systematics, 2007), http://www.usc.edu/schools/sppd/keston/pdf/20070618-trans-concession-agreements.pdf; Fishman, *Major Legal Issues;* Baxandall et al., *Private Roads*; Jones and Epperson, *Report of the Legislative Study Committee*, 52–62; The Pew Center on the States, *Driven by Dollars;* U.S. Department of Transportation, *Innovation Wave.*

117. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (July 2009)*, 25.

118. Partnerships British Columbia (Partnerships BC), *Understanding Public Private Partnerships.*

119. Buxbaum and Ortiz, *Public Sector Decision Making*; The Pew Center on the States, *Driven by Dollars*; The Pew Center on the States, *Key Questions for States* (Washington D.C.: The Pew Center on the States, 2009), http://www.pewcenteronthestates.org/uploadedFiles/Stakeholders%20questions.pdf (included as Appendix H).

120. McGraw-Hill Construction, *Public-Private Partnership: Accelerating Transportation Infrastructure Investment* (New York, N.Y.: McGraw-Hill, 2009), cited in PriceWaterhouseCoopers LLP, *Public-Private Partnerships*, 12.

121. See The Pew Center on the States, *Driven by Dollars*, 25. In March 2008, referring to the attempt to lease the Pennsylvania Turnpike, Roger Madigan—then Republican chair of the Pennsylvania Senate Transportation Committee—said, "The complexity of this issue and the extremely limited amount of information that has been flowing to the public and the General Assembly creates a very steep learning curve for everyone outside of the administration in dealing with a significant public policy decision."

122. Buxbaum and Ortiz, *Protecting the Public Interest*, 34–35.

123. Ibid.; Baxandall et al., *Private Roads,* 33; NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (December 2009)*.

124. Several organizations that serve governmental entities have looked at PPPs and may facilitate public sector peer-to-peer dialogue about these issues. The NCSL Partners Project has provided one forum for this kind of dialogue. Other relevant organizations include the American Association of State Highway and Transportation Officials (AASHTO), the National Governors Association (NGA), the Council of State Governments (CSG) and the National League of Cities (NLC).

125. See Jones and Epperson, *Report of the Legislative Study Committee,* 48–50.

126. The Council of Project Finance Advisors Working Group, *Whitepaper Draft 1* (Washington, D.C.: McKenna Long & Aldridge LLP, 2009), 2.

127. Mark Dutz et al., *Public-Private Partnership Units: What Are They, and What Do They Do?* Public Policy for the Private Sector, no. 311 (Washington, D.C.: World Bank, September 2006), http://rru.worldbank.org/PublicPolicyJournal/Summary.aspx?id=311; Eggers and Startup, *Closing the Infrastructure Gap,* 13; Edward Farquharson, Partnerships UK, e-mail to author, Dec. 12, 2009; Jones and Epperson, *Report of the Legislative Study Committee*, 48–50.

128. Examples of guidance documents from international public PPP advisory bodies include Partnerships Victoria, *Policy and Guidelines* (Melbourne, Victoria: Partnerships Victoria, 2010), http://www.partnerships.vic.gov.au/CA25708500035EB6/0/A987456B94096C71CA25755C0015F1C6?OpenDocument; Partnerships British Columbia (Partnerships BC), *Guidance Documents* (Vancouver, B.C.: Partnerships BC, 2010), http://www.partnershipsbc.ca/files/guidance.html; Partnerships UK, *Guidance* (London: Partnerships UK, 2010), http://www.partnershipsuk.org.uk/PUK-Guidance.aspx.

129. Edward Farquharson, Partnerships UK, e-mail to author, Dec. 12, 2009.

130. Sources for Table 4 include the listed Web sites; Edward Farquharson, Partnerships UK, e-mail to author, Dec. 12, 2009; Eggers and Startup, *Closing the Infrastructure Gap*; and Jones and Epperson, *Report of the Legislative Study Committee.*

131. Jones and Epperson, *Report of the Legislative Study Committee*, 84.

132. The Council of Project Finance Advisors Working Group, *Whitepaper Draft 1,* 14; NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (July 2009)*, 7–8.

133. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009)*, 43.

134. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (July 2009)*, 24.

135. According to Greg Ostrander, Michigan Legislature (e-mail to author, Nov. 25, 2009), although Michigan has toll bridges, it has chosen not to toll its highways or roads. Tolling roads has "not been considered economically feasible as Michigan is off the nation's heavily used east/west corridors" and "a system of toll-free highways has been viewed as important to commerce, industry, tourism, and general economic development," according to the Michigan DOT Web site at http://www.michigan.gov/mdot/0,1607,7-151-14013-28071--F,00.html. Nevertheless, simultaneous with legislative deliberations described in the text, the Michigan PPP Office in the executive branch has been working with state agencies and departments to determine how PPPs could be applied to a variety of sectors in the state.

136. The Pew Center on the States, *Driven by Dollars*, 16.

137. Buxbaum and Ortiz, *Protecting the Public Interest*, 46.

138. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009)*, 30; Buxbaum and Ortiz, *Protecting the Public Interest*, 37; Frank J. Busalacchi, *Testimony on Protecting the Public Interest in Public Private Partnerships to the Subcommittee on Highways and Transit of the House Committee on Transportation and Infrastructure* (Madison, Wis.: Frank J. Busalacchi, 2007), http://transportation.house.gov/hearings/Testimony.aspx?TID=11942&NewsID=51.

139. Regional Plan Association, *Proceed with Caution*, 1–2.

140. See Baxandall et al., *Private Roads*; Buxbaum and Ortiz, *Public Sector Decision Making*; Buxbaum and Ortiz, *Protecting the Public Interest*; Jones and Epperson, *Report of the Legislative Study Committee*; Regional Plan Association, *Proceed with Caution;* The Pew Center on the States, *Driven by Dollars*; U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships.*

141. Germa Bel and John Foote, *Comparison of Recent Toll Road Concession Transactions in the United States and France* (n.p.: Germa Bel and John Foote, 2007), 17, http://www.ub.edu/graap/Bel&Foote.pdf.

142. The Pew Center on the States, *Driven by Dollars*, 19.

143. Bel and Foote, *Comparison of Recent Toll Road Concession Transactions*, 23; NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (July 2009)*, 17–18.

144. U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*, 8.

145. Buxbaum and Ortiz, *Protecting the Public Interest*, 37.

146. See note 116.

147. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009)*, 43.

148. Ibid., 43; Farber, "Note: Avoiding the Pitfalls," 41.

149. Tyler Duvall, former U.S. Assistant Secretary for Transportation Policy, e-mail to author, March 12, 2010.

150. This quote comes from the Principles for PPPs that were assembled in 2008 by a coalition of national environmental and public health groups, including the Environmental Defense Fund, Sierra Club California, the Trust for Public Land, Food and Water Watch, Planning and Conservation League and others. This is available as an attachment to: Michael Replogle, Transportation Director for the Environmental Defense Fund, *Testimony of Michael Replogle* (Albany, N.Y.: Michael Replogle, November 2008), 4, http://esd.ny.gov/Subsidiaries_Projects/SAM/Data/Testimony/Replogle110608.pdf.

151. Ibid., 4; Buxbaum and Ortiz, *Public Sector Decision Making*, 24–26*;* Baxandall et al., *Private Roads*, 37; Regional Planning Association, *Proceed with Caution*, 4–5; "What Role Should Public-Private Partnerships Play?" National Journal Expert Blogs.

152. Buxbaum and Ortiz, *Public Sector Decision Making*, 24.

153. Va. Code §56-573.1:1; Buxbaum and Ortiz, *Public Sector Decision Making*, 25–26.

154. Federal Highway Administration (FHWA), *Case Studies of Transportation Public-Private Partnerships in the United States* (Washington, D.C.: FHWA, July 2007), cited inThe Pew Center on the States, *Driven by Dollars*, 21.

155. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (July 2009)*, 22, 24.

156. See also Fishman, *Major Legal Issues*, 16.

157. The Council of Project Finance Advisors Working Group, *Whitepaper Draft 1*, 11.

158. Ibid.

159. Fishman, *Major Legal Issues*, 3.

160. Regional Plan Association, *Proceed with Caution*, 4–6.

161. Buxbaum and Ortiz, *Public Sector Decision Making*, 26.

162. The Pew Center on the States, *Driven by Dollars*, 4.

163. Eggers and Startup, *Closing the Infrastructure Gap,* 11.

164. See Regional Plan Association, *Proceed with Caution,* 7–9; see also Baxandall et al., *Private Roads.*

165. U.S. Department of Transportation, *Report to Congress*, 2, also cited in U.S. Department of Transportation, *Innovation Wave*, 8.

166. Baxandall et al., *Private Roads*, 12; see also NW Financial Group LLC, *Then There Were Two: Indiana Toll Road vs. Chicago Skyway* (n.p.: NW Financial Group LLC, November 2006), http://www.corridorwatch.org/ttc/pdf/indiana_toll_road.pdf. It is difficult to estimate the potential long-term revenues to the state had the road remained publicly operated, especially given the uncertainty of what toll rates the state might have imposed over that 75-year period. Note, however, that the Indiana Toll Road—like the Chicago Skyway—was operating at a loss when leased, so at that time there were no revenues to lose (Geoffrey Segal, Macquarie Capital, note to author, July 28, 2010).

167. The Pew Center on the States, *Driven by Dollars*, 3.

168. New York Citizens Budget Commission (CBC), *How Public-Private Partnerships Can Help (Summary)*, 10.

169. NCSL Fiscal Affairs Program, *State Budget Update: July 2010 (Preliminary Report)* (Denver, Colo.: NCSL, 2010), 10; NCSL Fiscal Affairs Program, *State Budget Update: November 2009* (Denver, Colo.: NCSL, 2009), 3.

170. James B. Reed, "Transportation Funding Outlook 2009," *LegisBrief* (National Conference of State Legislatures) 17, no. 10 (February 2009).

171. See note 31.

172. Eggers and Startup, *Closing the Infrastructure Gap,* 10.

173. Jones and Epperson, *Report of the Legislative Study Committee*, 28, 39; Partnerships British Columbia (Partnerships BC), *Understanding Public Private Partnerships.*

174. U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*.

175. The Pew Center on the States, *Driven by Dollars*, 16.

176. Del. Code Ann. tit. 2, §2003(b)(iii); Fla. Stat. Ann. §334.30(1); La. Rev. Stat. Ann. §48:2084(D)(1)(b) and §48:2084.3; Me. Rev. Stat. Ann. tit. 23, §4251(4)(a); Va. Code §56-558(A)(1) and §56-563(B); W. Va. Code §17-27-5(e)(2). See also Buxbaum and Ortiz, *Public Sector Decision Making*, 14.

177. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009)*, 39.

178. Buxbaum and Ortiz, *Public Sector Decision Making*, 14; Leonard Gilroy, Reason Foundation, e-mail to author, Feb. 10, 2010.

179. Buxbaum and Ortiz, *Public Sector Decision Making*, 14–15.

180. Buxbaum and Ortiz, *Public Sector Decision Making*, 15; Iseki et al., *Task B-2: Status of Legislative Settings,* 8.

181. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009)*, 40.

182. Ibid., 18; Buxbaum and Ortiz, *Public Sector Decision Making*, 18.

183. U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*, 57.

184. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009)*, 27.

185. Henry Kerali, *Public Sector Comparator for Highway PPP Projects* (Washington, D.C.: World Bank, n.d.), http://siteresources.worldbank.org/INTTRANSPORT/Rerc36291-1122908670104/1504838-1151587673078/PSCforHighwayPPPProjects-v2.pdf.

186 Sources for Figure 9 include Darrin Grimsey and Mervyn K. Lewis, "Are Public-Private Partnerships Value for Money? Evaluating Alternative Approaches and Comparing Academic and Practitioner Views," *Accounting Forum* 29 (2005), 345–378, cited in Buxbaum and Ortiz, *Public Sector Decision Making*, 21; PriceWaterhouseCoopers LLP, *Public-Private Partnerships*, 9.

187. U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*, 54.

188. Sources for Table 5 include the listed Web sites and Buxbaum and Ortiz, *Public Sector Decision Making*, 20.

189. Ibid., 52–53; Baxandall et al., *Private Roads,* 32.

190. Edward Farquharson, Partnerships UK, e-mail to author, Dec. 12, 2009.

191. Buxbaum and Ortiz, *Public Sector Decision Making*, 19.

192. U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*, 52–55; Jones and Epperson, *Report of the Legislative Study Committee*, 76; Buxbaum and Ortiz, *Public Sector Decision Making*, 19.

193. U.S. Government Accountability Office (GAO), *Highway Public-Private Partnerships*, 56.

194. Leonard Gilroy, ed. *Reason Foundation 2009 Annual Privatization Report* (Los Angeles, Calif.: Reason Foundation, 2009), 59, http://reason.org/news/show/annual-privatization-report-20-28; Jones and Epperson, *Report of the Legislative Study Committee*, 38.

195. Fla. Stat. Ann. §334.30; Md. Transportation Code Ann. §4-205; P.R. 2009 Act No. 29; Wash. Rev. Code Ann. §47.29.030.

196. The author received personal communication that Florida conducted a PSC analysis for the proposed Alligator Alley project, but a lack of expertise with this tool and inadequate appropriations prevented the process from being adequately robust; this has not been independently verified.

197. Jones and Epperson, *Report of the Legislative Study Committee*, 54. For a critique of Partnership BC's PSC methodology, see Martin Shaffer, *Review of Partnerships BC's Methodology for Quantitative Procurement Options: Discussion Draft – August 2009* (Burnaby, British Columbia: Canadian Union of Public Employees, November 2009), http://www.cupe.bc.ca/sites/default/files/nov_19_shaffer_oct_09_pbc_evaluation_methodology.pdf.

198. Ibid., 55–56.

199. PriceWaterhouseCoopers LLP, *Public-Private Partnerships*, 9.

200. Richard B. Norment, National Council for Public-Private Partnerships, e-mail to author, March 5, 2010.

201. The Pew Center on the States, *Driven by Dollars*, 25.

202. Buxbaum and Ortiz, *Protecting the Public Interest*, 5.

203. Kerali, *Public Sector Comparator*; Buxbaum and Ortiz, *Public Sector Decision Making*, 33.

204. U.S. Government Accountability Office, *Highway Public-Private Partnerships*, 44; Jones and Epperson, *Report of the Legislative Study Committee*, 62.

205. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (July 2009)*, 23; Jones and Epperson, *Report of the Legislative Study Committee*, 43.

206. Kerali, *Public Sector Comparator*; Buxbaum and Ortiz, *Public Sector Decision Making*, 18.

207. See The Pew Center on the States, *Driven by Dollars,* 11, 29, for more on Pennsylvania's overvaluation of the turnpike deal. See also Buxbaum and Ortiz, *Protecting the Public Interest*, 10.

208. Buxbaum and Ortiz, *Public Sector Decision Making*, 32; Regional Plan Association, *Proceed with Caution*, 10–11.

209. Fishman, *Major Legal Issues*, 33.

210. The point of view that states may want flexibility to spend PPP proceeds on competing fiscal priorities was raised by Dennis Houlihan, American Federation of State, County and Municipal Employees (AFSCME), and Senator Dennis Nolan (Nev.) in a conversation with the author on April 9, 2010. However, the perspective is not necessarily one held by either Mr. Houlihan or Senator Nolan.

211. Buxbaum and Ortiz, *Public Sector Decision Making*, 32; Leonard Gilroy, Reason Foundation, conversation with author, April 9, 2010.

212. In addition, decisions may need to be made about how to use any public funds that are freed by the use of PPPs—i.e., state or local funds that would have been used to finance a transportation project if private financing had not become available. Source: Sarah Freeman, Indiana General Assembly, conversation with author, April 9, 2010.

213. The Pew Center on the States, *Driven by Dollars*, 19.

214. Karen J. Hedlund, *Statement of Karen J. Hedlund, Partner, Nossaman, Guthner, Knox and Elliott LLP before the Subcommittee on Highways, Transit, and Pipelines, Committee on Transportation and Infrastructure, U.S. House of Representatives, Hearing on "Understanding Contemporary Public Private Highway Transactions: The Future of Infrastructure Finance?"* (Washington, D.C.: Nossaman, Guthner, Knox and Elliott LLP, May 24, 2006), 2, http://www.ncppp.org/resources/papers/hedlundtestimony_506.pdf. This resource includes information about how states have tended to procure private partners, and the content of relevant state laws and regulations.

215. Fishman, *Major Legal Issues*, 28.

216. Ibid.; Nossaman, Guthner, Knox and Elliott LLP, *Overview of Key Elements*, 5.

217. Nossaman, Guthner, Knox and Elliott LLP, *Key Elements*, 2.

218. Fishman, *Major Legal Issues*, 30; Nossaman, Guthner, Knox and Elliott LLP, *Overview of Key Elements*, 8. In many cases, Texas law also formerly addressed these issues, but is not included in these lists because the relevant statute expired in 2009 and had not been reauthorized as of October 2010.

219. Fishman, *Major Legal Issues,* 29; Nossaman, Guthner, Knox and Elliott LLP, *Key Elements*, 3; Nossaman, Guthner, Knox and Elliott LLP, *Overview of Key Elements*, 9.

220. Fishman, *Major Legal Issues,* 29; Nossaman, Guthner, Knox and Elliott LLP, *Key Elements*, 3; Nossaman, Guthner, Knox and Elliott LLP, *Overview of Key Elements*, 9.

221. Fishman, *Major Legal Issues,* 29; Nossaman, Guthner, Knox and Elliott LLP, *Key Elements*, 2–3; Nossaman, Guthner, Knox and Elliott LLP, *Overview of Key Elements*, 7.

222. Buxbaum and Ortiz, *Public Sector Decision Making*, 24–26; Fishman, *Major Legal Issues,* 30; Regional Plan Association, *Proceed with Caution;* The Pew Center on the States, *Driven by Dollars,* 21–23.

223. The Pew Center on the States, *Driven by Dollars*, 21.

224. Nossaman, Guthner, Knox and Elliott LLP, *Key Elements*.

225. Fishman, *Major Legal Issues*, 30.

226. Buxbaum and Ortiz, *Public Sector Decision Making*, 19; U.S. Department of Transportation, *Innovation Wave*, 55.

227. Sources for the glossary include: American Association of State Highway and Transportation Officials (AASHTO) Center for Excellence in Project Finance, *Financing*; American Association of State Highway and Transportation Officials (AASHTO) Center for Excellence in Project Finance, *Section 129 Loans* (Washington, D.C.: AASHTO, 2008), http://www.transportation-finance.org/funding_financing/financing/credit_assistance/section_129_loans.aspx; American Association of State Highway and Transportation Officials (AASHTO) Center for Excellence in Project Finance, *State Infrastructure Banks* (Washington, D.C.: AASHTO, 2008), http://www.transportation-finance.org/funding_financing/financing/credit_assistance/state_infrastructure_banks.aspx; American Association of State Highway and Transportation Officials (AASHTO) Center for Excellence in Project Finance, *Value Capture* (Washington, D.C.: AASHTO, 2010), http://www.transportation-finance.org/funding_financing/funding/local_funding/value_capture; Buxbaum and Ortiz, *Public Sector Decision Making;* Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Project Finance*; Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Project Finance: Tools and Programs: Private Activity Bonds (PABs)*; Farber, "Note: Avoiding the Pitfalls"; Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Revenue: Non-Road Pricing Revenue Defined: Value Capture* (Washington, D.C.: FHWA, 2010), https://www.fhwa.dot.gov/ipd/revenue/non_pricing/defined/value_capture.htm; Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Project Finance: Tools and Programs: Federal Credit Assistance Tools* (Washington, D.C.: FHWA, 2010), http://www.fhwa.dot.gov/ipd/finance/tools_programs/federal_credit_assistance/index.htm; Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *TIFIA Approved Projects,* (Washington, D.C.: FHWA, 2010), http://www.fhwa.dot.gov/ipd/tifia/projects_case_studies/index.htm; Fishman, *Major Legal Issues*; Michael Iacono et al., *Value Capture for Transportation Finance: Report to the Minnesota Legislature* (Minneapolis: The Center for Transportation Studies, University of Minnesota, June 2009), http://www.cts.umn.edu/Research/Featured/ValueCapture/index.html; NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009)*; New York Citizens Budget Commission (CBC), *How Public-Private Partnerships Can Help (Summary)*, 6; U.S. Department of Transportation, *Report to Congress*; Zhao, *Understanding Public-Private Partnerships*.

228. Sources for Appendix B are the same as for Figures 6 and 8; see note 101.

229. Melissa Maynard, "Slowdown on the Public-Private Express," *Stateline*, Sept. 16, 2010, http://stateline.org/live/printable/story?contentId=513479.

230. Sources for Appendix C include original research using Westlaw and StateNet; NCSL Transportation Program, *NCSL Transportation Funding Legislation Database*.

231. For the purposes of this report, both resolutions are counted among the 52 transportation PPP measures considered during 2010 state legislative sessions.

232. For the purposes of this report, both bills are counted among the 52 transportation PPP measures considered during 2010 state legislative sessions.

233. See also Illinois Senate Bill 305, an identical bill introduced in 2009 that carried over to 2010. For the purposes of this report, however, only the version introduced in 2010 (Senate Bill 2621) is counted as one of the 52 transportation PPP legislative measures considered during 2010 state legislative sessions.

234. Illinois Senate Resolutions 794 and 806 are nearly identical in their provisions, except for some differences in the composition of the proposed Illinois and Midwest High-Speed Rail Commission. For the purposes of this report, both resolutions are counted among the 52 transportation PPP measures considered during 2010 state legislative sessions.

235. For the purposes of this report, both bills are counted among the 52 transportation PPP measures considered during 2010 state legislative sessions.

236. For the purposes of this report, both bills are counted among the 52 transportation PPP measures considered during 2010 state legislative sessions.

237. For the purposes of this report, both bills are counted among the 52 transportation PPP measures considered during 2010 state legislative sessions.

238. Ohio Senate Bill 121 and House Bill 166 are nearly identical in their provisions relating to transportation innovation authorities. Some differences are apparent in sections 5539.11(B)(3) and 5539.11(B)(8), and section 5539.12 exists only in House Bill 166. For the purposes of this report, both bills are counted among the 52 transportation PPP measures considered during 2010 state legislative sessions.

239. See also Pennsylvania House Bill 1510, an identical bill introduced in 2009 that carried over to 2010. For the purposes of this report, however, only the version introduced in 2010 (House Bill 9a) is counted as one of the 52 transportation PPP legislative measures considered during 2010 state legislative sessions.

240. South Carolina House Bill 4033 and Senate Bill 521 are generally similar, but contain distinct differences throughout. For example, House Bill 4033 authorizes only specific project delivery models (design-build-operate-maintain or design-build-finance-operate-maintain), while Senate Bill 521 generally authorizes public-private initiatives. House Bill 4033 also prohibits collection of a toll for maintenance and op-

erations on a road subject to a partnership agreement after the expiration of the agreement, or after financial obligations related to the financing the road are satisfied, while Senate Bill 521 does not prohibit this. Sections pertaining to requests for proposals, interim agreements, default, surety bonds and other matters also differ. For the purposes of this report, these two bills are listed together due to their overall similarity, but are counted separately among the 52 transportation PPP measures considered during 2010 state legislative sessions.

241. For the purposes of this report, both bills are counted among the 52 transportation PPP measures considered during 2010 state legislative sessions.

242. For the purposes of this report, both bills are counted among the 52 transportation PPP measures considered during 2010 state legislative sessions.

243. See Nossaman, Guthner, Knox and Elliott LLP, *Overview of Key Element*s. See also Nossaman, Guthner, Knox and Elliott LLP, *Key Elements*; this resource shows which state statutes contained each kind of provision as of 2007.

244. Sources for Appendix E are the same as for Figure 7; see note 102.

245. Although not in statute, also note that legislation enacted in 2010 (House Bill 500; Del. Laws, Chap. 329) authorizes the state DOT to continue utilization of the design-build contract mechanism for a total of 12 transportation construction projects; subjects design-build contracts to other provisions; and requires the co-chairs of the Joint Legislative Committee on the Capital Improvement Program and the Director of the Office of Management and Budget to approve all other projects subject to this section (see Appendix F).

246. Although not in statute, also note that legislation enacted in 2010 (House Bill 2650; 2010 Kan. Sess. Laws, Chap. 156) authorizes the state DOT to procure one design-build demonstration project in Johnson or Wyandotte county (see Appendix F).

247. Sources for Appendix F include original research using Westlaw and StateNet; Design-Build Institute of America (DBIA), *State Pending Legislation (7/13/10)* (Washington, D.C.: DBIA, 2010), http://www.dbia.org/NR/rdonlyres/A7C01741-6CB4-41C6-B96A-0508CF23FCD8/0/StatePendingLeg20100713.pdf; NCSL Transportation Program, *NCSL Transportation Funding Legislation Database*.

248. For the purposes of this report, both bills are counted among the 28 design-build bills considered during 2010 state legislative sessions.

249. Although the Hawaii DOT has engaged in design-build projects under the current state procurement code, the law is not specific in regards to authorizing design-build.

250. For the purposes of this report, both bills are counted among the 28 design-build bills considered during 2010 state legislative sessions.

251. For the purposes of this report, both bills are counted among the 28 design-build bills considered during 2010 state legislative sessions.

252. "U.S. & Canadian Transportation Projects Scorecard."

253. More information about Canadian projects is also available at Canadian Council for Public-Private Partnerships (CCPPP), *Canadian PPP Projects Database* (Toronto, Ontario: CCPPP, 2010), http://projects.pppcouncil.ca/ccppp/src/public/search-project?pageid=3d067bedfe2f4677470dd6ccf64d05ed.

254. Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Public-Private Partnerships: Case Studies* (Washington, D.C.: FHWA, 2010), http://www.fhwa.dot.gov/ipd/p3/case_studies/index.htm.

255. Information about this project is from Texas Department of Transportation, *I-635 Managed Lanes Project* (Austin, Texas: TxDOT, 2010); Texas Department of Transportation, *LBJ-635 CDA – Executed Version* (Austin, Texas: TxDOT, 2009), http://www.txdot.gov/project_information/projects/dallas/635_lbj_cda/cda.htm.

256. Information about this project is from "Balfour Beatty: DTP Reach Fincl Close Eagle P3 Commuter Rail Project," *Wall Street Journal* (Aug. 16, 2010), http://online.wsj.com/article/BT-CO-20100816-700702.html; Regional Transportation District (RTD) of Denver, *Eagle P3 Project* (Denver, Colo.: RTD of Denver, 2010), http://www.rtd-fastracks.com/main_126; "Denver Eagle Rail P3 Award Soon," *Public Works Financing 249* (May 2010): 8, http://www.publicinfrastructure.ca.gov/GSLibrary/Downloads/download.ashx?file=sites/1832/17450/442064/May%202010%20Issue%2C%20PUBLIC%20WORKS%20FINANCING.pdf.

257. NCSL Foundation for State Legislatures, *NCSL Foundation Partnership Meeting Summary (April 2009)*, 18.

258. Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Public-Private Partnerships: Case Studies*.

259. Ibid.

260. Ibid.

261. Information about the South Bay Expressway bankruptcy is from Rich Saskal, "California P3 Files Chapter 11: 3-Year-Old Tollway in Dire Straits," *Bond Buyer* (March 30, 2010), http://www.bondbuyer.com/issues/119_309/California_P3_Files_Chapter_11-1010232-1.html.

262. U.S. Department of Transportation*, Innovation Wave*, 13.

263. Ibid., 14.

264. Information about the Las Vegas Monorail bankruptcy is from Barney A. Allison, "Las Vegas Bankruptcy Monorail Decision Bodes Well for Project Owners," Nossaman LLP *Infra Insight Blog* (June 1, 2010), http://www.infrainsightblog.com/articles/ppps; Bill Rochelle, "Las Vegas Monorail, AbitibiBowater, Black Crow, Broadstripe: Bankruptcy," *Bloomberg* (Oct. 6, 2010), http://www.bloomberg.com/news/2010-10-06/vegas-monorail-abitibi-black-crow-broadstripe-bankruptcy.html.

265. The project type listing for the Las Vegas Monorail is drawn from Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Public-Private Partnerships: Case Studies*; the case study includes additional details about this unusual project.

266. Information about the Southern Connector bankruptcy is from Patrick Temple-West, "Trends in the Region." See also Patrick Temple-West, "South Carolina Toll Road Bondholders File Claim," *Bond Buyer* 373, no. 33385 (September 20, 2010).

267. Information about this project is from Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Public-Private Partnerships: Case Studies*.

268. The notice to proceed date for the Red Jacket Section of the King Coal Highway was not available; however, the West Virginia Department of Transportation reports that construction funds were first authorized by the Division of Highways in September 2004. Source: David Cramer, WVDOT, e-mail to author, Aug. 23, 2010.

269. Information about this project is from Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Public-Private Partnerships: Case Studies*.

270. Information about this project is from Federal Highway Administration (FHWA) Office of Innovative Program Delivery, *Public-Private Partnerships: Case Studies*; "Volkert Teams Up with Private Interests to Fulfill a Public Need," *Volkert Views* (Spring 2001): 1, 4, http://www.volkert.com/PDF%20Files/Volkert%20Views%20Spring%202001.pdf.

271. Michigan DOT, *Report to the Legislature of the State of Michigan Responding to Public Act 116 of 2009, Section 384* (Lansing, Mich.:

MDOT, 2010), http://www.partnershipborderstudy.com/pdf/4-29-10/2-2010-04-29.DRIC.Report.to.Legislature.with.Appendices.A.&.D.pdf.

272. Florida DOT, *FDOT First Coast Outer Beltway* (Tallahassee, Fla.: FDOT, 2010), http://www.fdotfirstcoastouterbeltway.com/index.asp; "Florida DOT Restarting Concession Procurement for Jacksonville Outer Belt," *Toll Roads News* (June 24, 2009), http://www.tollroadsnews.com/node/4226.

273. Virginia DOT, *A Virginia Department of Transportation Public-Private Partnership: Downtown Tunnel / Midtown Tunnel / MLK Extension* (Richmond, Va.: VDOT, 2010), http://midtowntunnel.org.

274. Virginia DOT, *A Virginia Department of Transportation Public-Private Partnership: U.S. Route 460 Corridor Improvements Project* (Richmond, Va.: VDOT, 2010), http://www.route460ppta.org.

275. Georgia DOT, *West by Northwest Project Overview* (Atlanta, Ga.: GDOT, 2010), http://www.dot.state.ga.us/informationcenter/p3/projects/WbyNW/Pages/default.aspx.

276. "NYC Goethals Bridge Challenges P3 Builders," *Public Works Financing 249* (May 2010): 1-4, http://www.publicinfrastructure.ca.gov/GSLibrary/Downloads/download.ashx?file=sites/1832/17450/442064/May%202010%20Issue%2C%20PUBLIC%20WORKS%20FINANCING.pdf; The Port Authority of New York And New Jersey, *Request for Information Related to the Future Issuance of a Request for Qualifications and Subsequent Request for Proposals to Design/Build/Finance & Maintain the Goethals Bridge Replacement Project (RFI #21273)* (New York: The Port Authority of New York and New Jersey, May 2010), http://www.panynj.gov/business-opportunities/pdf/RFIDOC_21273.pdf.

277. Virginia DOT, *I-95/395 Project Info* (Richmond, Va.: VDOT, 2010), http://www.virginiahotlanes.com/i95/project-info; "Virginia I-395 HOT Lanes Shelved," *Public Works Financing 241* (September 2009): 15, http://www.publicinfrastructure.ca.gov/GSLibrary/Downloads/download.ashx?file=sites/1832/17450/442064/September%202009%20Issue%2C%20PUBLIC%20WORKS%20FINANCING.pdf.

278. "Doyle Drive P3 Deadline Looms," *Public Works Financing 249* (May 2010): 5, http://www.publicinfrastructure.ca.gov/GSLibrary/Downloads/download.ashx?file=sites/1832/17450/442064/May%202010%20Issue%2C%20PUBLIC%20WORKS%20FINANCING.pdf.

279. Gwinnett County Government, *Ronald Reagan Parkway Extension: A Feasibility Study* (Lawrenceville, Ga.: Gwinnett County DOT, 2010), http://www.reaganextension.com/home.cfm.

280. Georgia DOT, *MMPT Project Overview* (Atlanta, Ga.: GDOT, 2010), http://www.dot.state.ga.us/informationcenter/p3/projects/mmpt/Pages/default.aspx.

281. Puerto Rico Public-Private Partnerships Authority, *Request for Qualifications to Acquire a Concession to Finance, Operate and Maintain Toll Roads in Puerto Rico* (San Juan, P.R.: Puerto Rico Public-Private Partnerships Authority, June 2010), http://www.app.gobierno.pr/wp-content/uploads/2010/06/RFQ%20Toll%20Roads%20Project%20Phase%20I%20-%20June-15-2010.pdf.

282. California Public Infrastructure Advisory Commission, *California's Emerging Pipeline of Transportation Public-Private Partnerships as of February 1, 2010* (Sacramento, Calif.: California Public Infrastructure Advisory Commission, 2010), http://www.publicinfrastructure.ca.gov/page.asp?o=cabth&s=PIAC&p=383078&i=305336; Geoffrey Segal, Macquarie Capital, e-mail to author, Aug.10, 2010.

283. See Larry Caudle, "Lease on Life: MoDOT Develops PPP to Add Years to Bridges," *Roads and Bridges* 47, no. 1 (January 2009), http://www.roadsbridges.com/Lease-on-life-article9957; "Mississippi DOT Stops Jackson Airport Parkway P3: Rating Agencies No to Investment Grade," *Toll Roads News* (Sept. 9, 2009), http://www.tollroadsnews.com/node/4346; "No Bids for 'Gator Alley Concession in Florida," *Toll Roads News* (May 18, 2009), http://www.tollroadsnews.com/node/4167; Talanworth Limited, *SH 121 Toll Project, Texas, USA* (Kenilworth, UK: Talanworth Limited, 2010), http://www.talanworth.com/index.html; "What Does Collapse Of Midway Airport Deal Mean For Privatization?" National Journal Expert Blogs, Transportation, May 11, 2009, http://transportation.nationaljournal.com/2009/05/what-does-collapse-of-midway-a.php.

284. The Pew Center on the States, *Key Questions for States*.

Selected Bibliography

General

Baxandall, Phineas, Kari Wohlschlegel and Tony Dutzik. *Private Roads, Public Costs: The Facts about Toll Road Privatization and How to Protect the Public.* Boston: USPIRG, 2009, http://cdn.publicinterestnetwork.org/assets/H5Ql0NcoPVeVJwymwlURRw/Private-Roads-Public-Costs.pdf.

Busalacchi, Frank J. *Testimony on Protecting the Public Interest in Public Private Partnerships to the Subcommittee on Highways and Transit of the House Committee on Transportation and Infrastructure.* Madison, Wis.: Frank J. Busalacchi, 2007, http://transportation.house.gov/hearings/Testimony.aspx?TID=11942&NewsID=51.

Buxbaum, Jeffrey N., and Iris N. Ortiz. *Protecting the Public Interest: The Role of Long-Term Concession Agreements for Providing Transportation Infrastructure,* Research Paper 07-02. Cambridge, Mass.: Cambridge Systematics, 2007, http://www.usc.edu/schools/sppd/keston/pdf/20070618-trans-concession-agreements.pdf.

———. *Public Sector Decision Making for Public-Private Partnerships: A Synthesis of Highway Practice,* NCHRP Synthesis 39. Washington, D.C.: Transportation Research Board, 2009, http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_391.pdf.

Congressional Budget Office (CBO). *CBO Memorandum: Toll Roads: A Review of Recent Experience.* Washington, D.C.: CBO, 1997, http://www.cbo.gov/ftpdocs/40xx/doc4014/1997doc03-Entire.pdf.

The Council of State Governments (CSG). *Public-Private Partnerships in Transportation*. N.P.: CSG, July 2010, http://knowledgecenter.csg.org/drupal/content/public-private-partnerships.

Dovey, Tiffany, et al. *Partnering for Value: Structuring Effective Public-Private Partnerships for Infrastructure.* N.P.: Deloitte Research, July 2010, http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Public%20Sector/dtt_ps_partneringforvalue_090710.pdf.

Eggers, William, and Tom Startup. *Closing the Infrastructure Gap: The Role of Public-Private Partnerships.* Washington, D.C.: Deloitte, 2006, http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_ps_ClosingInfrastructureGap2006%281%29.pdf.

Farber, Nicholas. "Note: Avoiding the Pitfalls of Public Private Partnerships: Issues to be Aware of When Transferring Transportation Assets." *Transportation Law Journal* 35, no. 1 (2008): 24–44, http://law.du.edu/pdfdocuments/v35/FARBER_Note.pdf.

Federal Highway Administration (FHWA). *User Guidebook on Implementing Public-Private Partnerships for Transportation Infrastructure Projects in the United States*, Final Report, Work Order 05-002. Washington, D.C.: FHWA, 2007, http://www.fhwa.dot.gov/ipd/pdfs/ppp_user_guidebook_final_7-7-07.pdf.

Federal Highway Administration (FHWA) Office of Innovative Program Delivery. *Public-Private Partnerships*. Washington, D.C.: FHWA, 2010, http://www.fhwa.dot.gov/ipd/p3/index.htm.

Gilroy, Leonard. *Modernizing and Expanding Pennsylvania's Transportation Infrastructure through Public-Private Partnerships* [Testimony before the Pennsylvania House Republican Policy Committee]. Los Angeles, Calif.: Reason Foundation, 2009, http://reason.org/files/testimony_pennsylvania_transportation_public_private_partnerships.pdf.

———, ed. *Reason Foundation 2009 Annual Privatization Report*. Los Angeles, Calif.: Reason Foundation, 2009, http://reason.org/news/show/annual-privatization-report-20-28.

Hedlund, Karen J. *Statement of Karen J. Hedlund, Partner, Nossaman, Guthner, Knox and Elliott LLP before the Subcommittee on Highways, Transit, and Pipelines, Committee on Transportation and Infrastructure, U.S. House of Representatives, Hearing on "Understanding Contemporary Public Private Highway Transactions: The Future of Infrastructure Finance?"* Washington, D.C.: Nossaman, Guthner, Knox and Elliott LLP, May 24, 2006, http://www.ncppp.org/resources/papers/hedlundtestimony_506.pdf.

———. *Statement of Karen J. Hedlund, Chief Counsel, Federal Highway Administration, U.S. Department of Transportation before the Joint Michigan House of Representatives and Senate Transportation Committees, Hearing on Public Private Partnerships.* Washington, D.C.: FHWA, Sept. 15, 2009, http://www.house.mi.gov/SessionDocs/2009-2010/Testimony/Committee23-9-16-2009.pdf.

Jones, Elizabeth F., and David M. Epperson. *Report of the Legislative Study Committee on Private Participation in Toll Projects*. Austin, Texas: Legislative Study Committee on Private Participation in Toll Projects, 2008, http://www.senate.state.tx.us/75r/Senate/commit/c820/SB792Report.pdf.

Lawther, Wendell C. "Privatization of Transportation Systems." In *Handbook of Transportation Policy and Administration,* edited by Jeremy F. Plant, Van R. Johnston and Cristina E. Ciocirlan, 369-391. Boca Raton, Fla.: CRC Press, 2007.

Mallett, William J. *CRS Report for Congress: Public-Private Partnerships in Highway and Transit Infrastructure Provision* Washington, D.C.: Congressional Research Service [CRS], 2010.

The National Council for Public-Private Partnerships (NCPPP). *The National Council for Public-Private Partnerships.* Washington, D.C.: NCPPP, 2010, http://www.ncppp.org.

National Surface Transportation Infrastructure Financing Commission. *Paying Our Way: A New Framework for Infrastructure Finance.* Washington, D.C.: National Surface Transportation Infrastructure Financing Commission, February 2009, http://financecommission.dot.gov.

National Surface Transportation Policy and Revenue Study Commission, *Transportation for Tomorrow: Report of the National Surface Transportation Policy and Revenue Study Commission* (Washington, D.C.: National Surface Transportation Policy and Revenue Study Commission, December 2007), http://ntl.bts.gov/lib/33000/33400/33441/final_report/pdf/front_cover.pdf.

New York Citizens Budget Commission (CBC). *How Public-Private Partnerships Can Help New York Address Its Infrastructure Needs: A Summary of a Report by the Citizens Budget Commission.* New York: CBC, December 2008, http://www.cbcny.org/CBC_PPP_v6.pdf.

The Pew Center on the States. *Driven by Dollars: What States Should Know When Considering Public-Private Partnerships to Fund Transportation.* Washington, D.C.: The Pew Center on the States, 2009, http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/State_policy/PA_Turnpike_FINAL_WEB.pdf.

———. *Key Questions for States*. Washington D.C.: The Pew Center on the States, 2009, http://www.pewcenteronthestates.org/uploadedFiles/Stakeholders%20questions.pdf.

PriceWaterhouseCoopers LLP. *Public-Private Partnerships: The U.S. Perspective*. N.P.: PriceWaterhouseCoopers LLP, 2010, http://www.pwc.com/us/infrastructure-ppp.

Rahn, Pete. *Government Perspective on Evaluating PPP Approach* [PowerPoint presentation]. Jefferson City, Mo.: Missouri DOT, 2009, http://www.modot.mo.gov/newsandinfo/documents/09-01-27PPPpresentation.pdf.

Regional Plan Association (RPA). *Proceed with Caution: Ground Rules for a Public Private Partnership in New Jersey.* (N.P.: 2007, RPA), http://www.rpa.org/pdf/rpappp01082007.pdf.

Understanding Contemporary Public Private Highway Transactions: The Future of Infrastructure Finance? (109-75), Hearing Before the Committee on Highways, Transit and Pipelines of the Committee on Transportation and Infrastructure, House of Representatives, One Hundred Ninth Congress, Second Session, May 24, 2006. Washington, D.C.: U.S. Government Printing Office, 2006, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:28290.pdf.

U.S. Department of Transportation. *Innovation Wave: An Update on the Burgeoning Private Sector Role in U.S. Highway and Transit Infrastructure.* Washington, D.C.: U.S. DOT, 2008, http://www.fhwa.dot.gov/reports/pppwave/index.htm.

———. *Report to Congress on Public-Private Partnerships.* Washington, D.C.: U.S. DOT, 2004, http://www.fhwa.dot.gov/reports/pppdec2004/#2a.

"What Role Should Public-Private Partnerships Play?" National Journal Expert Blogs, Transportation (April 6, 2009), http://transportation.nationaljournal.com/2009/04/what-role-should-publicprivate.php.

Zhao, Zhirong (Jerry). *Understanding Public-Private Partnerships in State Highway Development.* Minneapolis: University of Minnesota, May 2010.

Innovative Funding and Finance Mechanisms

American Association of State Highway and Transportation Officials (AASHTO) Center for Excellence in Project Finance. *Financing.* Washington, D.C.: AASHTO, 2008, http://www.transportation-finance.org/funding_financing/financing.

———. *Project Finance State by State.* Washington D.C.: AASHTO, 2010, http://www.transportation-finance.org/tools/state_by_state.

Federal Highway Administration (FHWA) Office of Innovative Program Delivery. *Project Finance: Tools and Programs.* Washington, D.C.: FHWA, 2010, http://www.fhwa.dot.gov/ipd/finance/tools_programs/index.htm.

———. *TIFIA Approved Projects.* Washington, D.C.: FHWA, July 29, 2010, http://www.fhwa.dot.gov/ipd/tifia/projects_case_studies/index.htm.

Iacono, Michael, et al. *Value Capture for Transportation Finance: Report to the Minnesota Legislature.* Minneapolis: The Center for Transportation Studies, University of Minnesota, June 2009, http://www.cts.umn.edu/Research/Featured/ValueCapture/index.html.

U.S. House of Representatives Committee on Transportation and Infrastructure. *Hearing on "Using Innovative Financing to Deliver Highway and Transit Projects."* Washington, D.C.: U.S. House of Representatives, April 13, 2010, http://transportation.house.gov/hearings/hearingDetail.aspx?NewsID=1148.

International (see also Public PPP Advisory Bodies)

Bel, Germa, and John Foote. *Comparison of Recent Toll Road Concession Transactions in the United States and France*. N.P: Germa Bel and John Foote, 2007, http://www.ub.edu/graap/Bel&Foote.pdf.

The Canadian Council for Public-Private Partnerships (CCPPP). *About PPP.* Toronto, Ontario: CCPPP, 2010, http://www.pppcouncil.ca/resources/about-ppp.html.

Czerwinski, David, and R. Richard Geddes. *Policy Issues in U.S. Transportation Public-Private Partnerships: Lessons from Australia.* San Jose, Calif.: Mineta Transportation Institute, San Jose State University, July 2010, http://transweb.sjsu.edu/mtiportal/research/publications/documents/2807_09-15.pdf.

Organisation for Economic Co-operation and Development (OECD). *OECD Principles for Private Sector Participation in Infrastructure.* Paris, France: OECD, March 2007, http://www.oecd.org/document/39/0,3343,en_2649_34887_38429374_1_1_1_1,00.html.

Partnerships British Columbia (Partnerships BC). *Understanding Public Private Partnerships.* Vancouver, B.C.: Partnerships BC, March 2006, http://www.partnershipsbc.ca/pdf/Understanding%20Public%20Private%20Partnerships%2023-mar-06.pdf.

Weingart Brown, Janice, et al. *Public-Private Partnerships for Highway Infrastructure: Capitalizing on International Experience,* Federal Highway Administration (FHWA) Report FHWA-PL-09-010. Washington, D.C.: FHWA, 2009, http://international.fhwa.dot.gov/pubs/pl09010/index.cfm.

NCSL Foundation Partners Project on PPPs

NCSL Foundation for State Legislatures. *NCSL Partners Project on Public-Private Partnerships (P3s/PPPs)*. Denver, Colo: NCSL, 2010, http://www.ncsl.org/default.aspx?tabid=17528.

———. *NCSL Foundation Partnership: Public-Private Partnerships (P3s or PPPs) for Transportation Meeting Summary, April 22–25, 2009.* Denver, Colo.: NCSL, 2009, http://www.ncsl.org/documents/transportation/PPPmeetingsum09.pdf.

———. *NCSL Foundation Partnership: Public-Private Partnerships (P3s or PPPs) for Transportation Meeting Summary, July 20, 2009*. Denver, Colo.: NCSL, 2009, http://www.ncsl.org/documents/transportation/Summit09P3mtgsum.pdf.

———. *NCSL Foundation Partnership: Public-Private Partnerships (P3s or PPPs) for Transportation Meeting Summary, December 11, 2009.* Denver, Colo.: NCSL, 2009, http://www.ncsl.org/documents/transportation/P3forumsum1209v2.pdf.

Other NCSL Resources

NCSL Fiscal Affairs Program. *State Budget Update: July 2010 (Preliminary Report).* Denver, Colo.: NCSL, 2010.

———. *State Budget Update: November 2009*. Denver, Colo.: NCSL, 2009.

NCSL Transportation Program. *NCSL Transportation Funding Legislation Database*. Denver, Colo.: NCSL, 2010, http://www.ncsl.org/default.aspx?tabid=13597.

Reed, James B. "Transportation Funding Outlook 2009." *LegisBrief* (National Conference of State Legislatures) 17, no. 10 (February 2009).

Sundeen, Matt, and James B. Reed. *Surface Transportation Funding: Options for States.* Denver, Colo.: NCSL, 2006, http://www.ncsl.org/documents/transportation/surfacetranfundrept.pdf.

PPP Projects

The Canadian Council for Public-Private Partnerships (CCPPP). *Canadian PPP Projects Database.* Toronto, Ontario: CCPPP, 2010, http://projects.pppcouncil.ca/ccppp/src/public/search-project?pageid=3d067bedfe2f4677470dd6ccf64d05ed.

Federal Highway Administration (FHWA) Office of Innovative Program Delivery. *Public-Private Partnerships: Case Studies*. Washington, D.C.: FHWA, 2010, http://www.fhwa.dot.gov/ipd/p3/case_studies/index.htm.

NW Financial Group LLC. *Then There Were Two: Indiana Toll Road vs. Chicago Skyway*. N.P.: NW Financial Group LLC, November 2006, http://www.corridorwatch.org/ttc/pdf/indiana_toll_road.pdf.

"U.S. & Canadian Transportation Projects Scorecard." *Public Works Financing 249* (May 2010): 24–25, http://www.publicinfrastructure.ca.gov/GSLibrary/Downloads/download.ashx?file=sites/1832/17450/442064/May%202010%20Issue%2C%20PUBLIC%20WORKS%20FINANCING.pdf.

Project Analysis

Kerali, Henry. *Public Sector Comparator for Highway PPP Projects*. Washington, D.C.: World Bank, n.d., http://siteresources.worldbank.org/INTTRANSPORT/Resources/336291-1122908670104/1504838-1151587673078/PSCforHighwayPPPProjects-v2.pdf.

Morallos, Dorothy, and Adjo Amekudzi. "The State of the Practice of Value for Money Analysis in Comparing Public Private Partnerships to Traditional Procurements." *Public Works Management & Policy* 13, no. 2 (2008), http://pwm.sagepub.com/content/13/2/114.full.pdf+html.

U.S. Government Accountability Office (GAO). *Highway Public-Private Partnerships: More Rigorous Up-front Analysis Could Better Secure Potential Benefits and Protect the Public Interest*, GAO-08-44. Washington, D.C.: U.S. GAO, 2008, http://www.gao.gov/new.items/d0844.pdf.

Public PPP Advisory Bodies

California Public Infrastructure Advisory Commission. *Public Infrastructure Advisory Commission*. Sacramento, Calif.: California Business, Transportation and Housing, 2010, http://www.publicinfrastructure.ca.gov.

Dutz, Mark, et al. *Public-Private Partnership Units: What Are They, and What Do They Do?* Public Policy for the Private Sector, no. 31. Washington, D.C.: World Bank, September 2006, http://rru.worldbank.org/PublicPolicyJournal/Summary.aspx?id=311.

Partnerships British Columbia (Partnerships BC). *Guidance Document.* Vancouver, B.C.: Partnerships BC, 2010, http://www.partnershipsbc.ca/files/guidance.html.

Partnerships Victoria. *Policy and Guidelines*. Melbourne, Victoria: Partnerships Victoria, 2010, http://www.partnerships.vic.gov.au/CA25708500035EB6/0/A987456B94096C71CA25755C0015F1C6?OpenDocument.

Partnerships UK. *Guidance.* London: Partnerships UK, 2010, http://www.partnershipsuk.org.uk/PUK-Guidance.aspx.

Puerto Rico Public-Private Partnerships Authority. *Puerto Rico Public-Private Partnerships Authority.* San Juan, P.R.: Puerto Rico Public-Private Partnerships Authority, 2010, http://www.app.gobierno.pr/?lang=en.

State-Federal Issues

National Conference of State Legislatures. *NCSL Policy on Surface Transportation Federalism*. Denver, Colo.: NCSL, 2008, http://ecom.ncsl.org/statefed/transportation.htm#surfacetrans.

State Legislation and Legal Issues

American Bar Association (ABA). *State and Local Model Procurement Code.* Washington, D.C.: ABA, 2010, http://www.abanet.org/dch/committee.cfm?com=PC500500.

Design-Build Institute of America (DBIA). *Legislation and Advocacy: State Legislation.* Washington, D.C.: DBIA, 2010, http://www.dbia.org/advocacy/state.

Federal Highway Administration (FHWA). *Working Draft* [FHWA Model Legislation for States Considering P3 Authorization]. Washington, D.C.: FHWA, 2010, http://www.fhwa.dot.gov/ipd/p3/state_legislation/index.htm, http://www.fhwa.dot.gov/ipd/pdfs/legis_model_0610.pdf.

Federal Highway Administration (FHWA) Office of Innovative Program Delivery. *State P3 Legislation*. Washington, D.C.: FHWA, 2007, http://www.fhwa.dot.gov/ipd/p3/state_legislation/state_legislation_overview.htm.

Fishman, Edward. *Major Legal Issues for Highway Public-Private Partnerships: Legal Research Digest 5.* Washington, D.C.: NCHRP, 2009, http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_lrd_51.pdf.

Iseki, Hiroyuki, et al. *Task B-2: Status of Legislative Settings to Facilitate Public Private Partnerships in the U.S.*, California PATH Research Report UCB-ITS-PRR-2009-32. Berkeley, Calif.: Institute of Transportation Studies, University of California, Berkeley, 2009, http://www.path.berkeley.edu/PATH/Publications/PDF/PRR/2009/PRR-2009-32.pdf.

NCSL Transportation Program. *NCSL Transportation Funding Legislation Database*. Denver, Colo.: NCSL, 2010, http://www.ncsl.org/default.aspx?tabid=13597.

Nossaman, Guthner, Knox and Elliott LLP. *Key Elements of State PPP Enabling Legislation for Highway Projects.* Washington, D.C.: Nossaman, Guthner, Knox and Elliott LLP, December 2007, http://www.fhwa.dot.gov/ipd/p3/state_legislation/state_legislation_key_elements.htm.

———. *Overview of States with Significant Transportation Public Private Partnership ("PPP") Authority*. Washington, D.C.: Nossaman, Guthner, Knox and Elliott LLP, 2005, http://www.ncppp.org/councilinstitutes/stlouis_2005/hedlund_3.pdf.

———. *Overview of Key Elements and Sample Provisions, State PPP Enabling Legislation for Highway Projects***.** Washington, D.C.: Nossaman, Guthner, Knox and Elliott LLP, October 2005, http://www.fhwa.dot.gov/ipd/pdfs/legis_key_elements.pdf.

Nossaman LLP. *A Bill for an Act Relating to Public-Private Partnerships for Public Infrastructure.* Los Angeles, Calif.: Nossaman LLP, 2009, http://64.106.216.3/Files/28546_Model%20PPP%20Legislation.pdf.

———. *State Legislation Authorizing Public-Private Partnerships (PPP) for Transit Projects.* Washington, D.C.: Nossaman LLP, 2009, http://www.ncppp.org/FTA/EnablingLegislation.pdf.

Pikiel Jr., Michael, and Lillian Plata. "A Survey of PPP Legislation across the United States." *Global Infrastructure* 1 (2008): 52–65, http://www.ncppp.org/resources/State%20PPP%20Legislation%20Survey_2008.pdf.

Public-Private Partnerships (PPPs) For Transportation: A Toolkit for Legislators

As state governments struggle to meet growing transportation infrastructure needs while revenues dwindle, leveraging existing resources through the use of public-private partnerships has become increasingly attractive. Twenty-nine states and Puerto Rico have legislated an authorization framework for transportation PPPs, and more than $46 billion has been invested in these projects over the last 20 years. The trend grew in 2010 as 21 states and the District of Columbia considered 52 legislative measures concerning transportation PPPs.

With the growing interest in PPPs, the debate over their use has become somewhat polarized and reasoned voices have been harder to discern. This toolkit, produced by the NCSL Partners Project on PPPs for Transportation, provides expert guidance, dependable counsel and a compilation of best practices to assist state legislatures as they consider whether and how to pursue PPPs in their states.

Solid, balanced and comprehensive state enabling legislation is the key to thorough consideration and success of PPP projects, while protecting the public interest. The centerpiece of the toolkit is nine principles that promote a sound public policy approach to the consideration of PPPs. As well, the appendices have a wealth of specific state legislative information and detailed instruction on PPP issues.

> "This toolkit is an excellent resource for states about to embark on a P3 program, as well as those states that already are building a P3 program. I consider it required reading for legislators and policymakers who want to do it right."
>
> *Representative Rick Geist, Pennsylvania*

> "This NCSL report will provide lawmakers with a solid foundation for vetting the potential benefits and drawbacks associated with public-private partnerships."
>
> *Governor Bill Graves*
> *President and CEO, American Trucking Associations Inc.*

> "[W]e've learned from international PPP experience… that they are complex arrangements that need to be implemented with proper due diligence and attention to best practices, making the NCSL toolkit a valuable and critical policy resource for state lawmakers as they continue to explore PPPs and seek ways to close the transportation funding gap."
>
> *Leonard Gilroy*
> *Director of Government Reform, Reason Foundation*

National Conference of State Legislatures
The Forum for America's Ideas

ISBN 978-1-58024-612-5