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Public-Private Partnerships for Transportation: A Toolkit for Legislators
March 2012 Updates and Corrections

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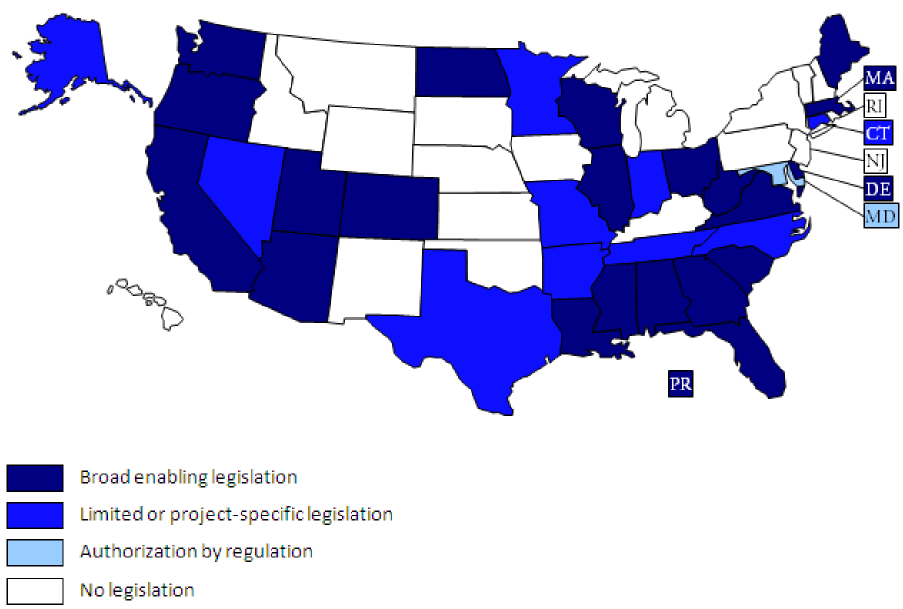
This document is an addition to the Dec. 2010 NCSL report titled *Public-Private Partnerships for Transportation: A Toolkit for Legislators.* The original report is available online at http://www.ncsl.org/default.aspx?TabId=20321.

32 States and Puerto Rico Now Have Transportation PPP Enabling Legislation

As of March 2012, 32 states and Puerto Rico had enacted laws authorizing public-private partnerships (PPPs) for highway and bridge projects. The NCSL toolkit publication released in December 2010 identified 29 states and Puerto Rico; the three additional states are Connecticut, North Dakota and Ohio.

States with PPP Enabling Legislation as of March 12, 2012
(Updated from page 15 of the Dec. 2010 NCSL PPP Toolkit)



Connecticut enacted new PPP enabling legislation in Oct. 2011 (HB 6801b / 2011 Conn. Acts, P.A. 11-01). The law authorizes PPPs for the design, development, operation or maintenance of revenue-generating facilities across diverse sectors, including transportation systems such as ports, transit-oriented development and related infrastructure. It limits this PPP authority, however, to up to five projects before Jan. 1, 2015; requires state support of a PPP to be 25 percent or less of the project's cost; limits agreement terms to no more than 50 year; and requires the legislature to approve tolls on highways in the state.

North Dakota's law (N.D. Cent. Code §§48-02.1-01 et seq.), enacted in 1993, allows private operators to construct, improve, rehabilitate, own, lease, manage and operate fee-based facilities. It also allows public authorities to solicit or accept proposals from—and enter into development agreements with—private operators. A "fee-based facility" is defined as "a facility that provides a service in which the charge is based on the level of service by users or a rental fee paid by a public authority." Transportation projects are not identified explicitly in the law, but information received since Dec. 2010 indicates that this statute was also meant to apply to fee-based transportation facilities and has been used for at least one transportation project, a toll bridge.[1]

Ohio's new enabling legislation (2011 Ohio Laws, House Bill 114), enacted in March 2011, broadly authorizes the state department of transportation (DOT) to enter into PPPs based on solicited or unsolicited proposals from private entities; it also makes permanent the DOT's authority to enter into design-build agreements. The bill does not include requirements for legislative approval, but it limits agreements to the two-year period for which the legislature has made appropriations to the DOT; any agreement may be renewed for succeeding two-year periods when the legislature enacts sufficient appropriations to the DOT for each successive biennium.

Bills Considered in State Legislatures Since Dec. 2010

At least 34 PPP-related bills were considered in 17 states in 2011 legislative sessions, concerning PPPs for transit, rail and ports as well as for highways and bridges. Significant enabling statutes were enacted in Connecticut and Ohio (see above) and Illinois (HB 1091 / 2011 Ill. Laws, P.A. 97-0502). As of March 12, 2012, at least 18 states had considered 37 PPP-related bills so far in 2012 sessions, including 13 carryover bills from 2011 sessions and 24 newly introduced bills; 35 of those bills were still pending. For more details and updates, please see NCSL's transportation funding legislation database at http://www.ncsl.org/default.aspx?tabid=13597.

Correction to Page 17

The map on page 17 incorrectly displays New Mexico as having PPP legislation with no formal legislative requirements. Arizona should be shown as having PPP enabling legislation with no formal legislative requirements; New Mexico has no PPP legislation. (This has been corrected in the online PDF; link below.)

Further Resources

For additional information about state policy concerning transportation PPPs, please see these online NCSL resources:

- *Public-Private Partnerships for Transportation: A Toolkit for Legislators* online: http://www.ncsl.org/default.aspx?TabId=20321
- NCSL Online Transportation Funding Legislation Database: http://www.ncsl.org/default.aspx?tabid=13597
- NCSL Foundation Partners Project on PPPs for Transportation: http://www.ncsl.org/default.aspx?TabId=17528
- March 2011 *LegisBrief* on transportation PPPs: http://www.ncsl.org/default.aspx?TabId=22325
- *Transportation Governance and Finance: A 50-State Review of State Legislatures and Departments of Transportation* (2011 report jointly produced by NCSL and the American Association of State Highway and Transportation Officials): http://www.ncsl.org/default.aspx?TabId=19117

[1] Jay Lindgren, Dorsey & Whitney LLP, e-mail to author, April 12, 2011.