

State Laws Authorizing Public-Private Partnerships for Transportation Projects

(Reflects legislative developments through May 2006)¹

State	Statute	Comments
1. AK	AS § 19.75.111 (PENDING)	HB 471 was approved by both houses of the Alaska State Legislature and is expected to be signed into law by the governor. It would authorize the Knik Arm Bridge and Toll Authority to utilize a PPP to finance, design, construct, operate and maintain the Knik Arm bridge.
2. AL	ALA. CODE §§ 23-1-80 to 23-1-95 { HYPERLINK "http://www.legislature.state.al.us/CodeofAlabama/1975/132328.htm" }	Authorizes the Alabama DOT and county commissions to establish toll roads, toll bridges, ferries or causeways or allow for their operation by private parties. No express provision regarding the solicitation or acceptance of unsolicited proposals.
3. AZ	ARIZ. REV. STAT. §§ 28-7701 to 28-7758 { HYPERLINK "http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=28" }	Two pilot programs each allow up to two solicited and unsolicited proposals.

¹ This survey should not be construed as legal advice regarding any particular project in any state. Please contact { HYPERLINK "mailto:bchase@nossaman.com" } with any additions or corrections.

State	Statute	Comments
4. CA	<p>CAL STS & HY CODE § 143(A)</p> <p>{ HYPERLINK "HTTP://WWW.LEGINFO.CA.GOV/CGI-BIN/DISPLAYCODE?SECTION=SHC&GROUP=00001-01000&FILE=90-155.6" }</p> <p>CAL GOV CODE § 5956</p> <p>{ HYPERLINK "HTTP://WWW.LEGINFO.CA.GOV/CGI-BIN/DISPLAYCODE?SECTION=GOV&GROUP=05001-06000&FILE=5956-5956.10" }</p>	<p>The legislation authorizing Caltrans to enter into PPPs (known as AB 680) was repealed in 2003; new legislation is pending pursuant to Governor Schwarzenegger's "GoCalifornia" transportation initiative (AB 1467).</p> <p>This legislation (also known as AB 2660) authorizes PPPs for a range of "fee-producing infrastructure projects," but explicitly excludes the use of toll roads on state highways.</p>
5. CO	<p>COLO. REV. STAT. §§ 43-1-1201 to 1209</p> <p>COLO. REV. STAT. §§ 43-4-801 to 812</p> <p>COLO. REV. STAT. §§ 43-3-201 to 43-3-416</p> <p>{ HYPERLINK "http://198.187.128.12/colorado/lpext.dll/Infobase4/63f18?fn=document-frame.htm&f=templates" }</p>	<p>Allows solicited and unsolicited proposals for PPPs.</p> <p>Created a statewide tolling enterprise to finance, build, operate and maintain toll highways. Operated as a government-owned business within the Colorado DOT.</p> <p>Provides PPP authority to Colorado DOT for specific projects including turnpikes and HOT lanes.</p>
6. DE	<p>DEL. CODE ANN. tit. 2, part II, ch. 20, §§ 2001 to 2012</p> <p>{ HYPERLINK "http://www.delcode.state.de.us/title2/c020/index.htm" \l "TopOfPage" }</p>	<p>Authorizes solicited and unsolicited proposals for PPP projects, including highways and bridges.</p>

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7. FL	<p>FLA. STAT. ANN. § 334.30</p> <p>{ HYPERLINK "http://www.flsenate.gov/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=&URL=CH0334/SEC30.HTM" }</p> <p>FLA. STAT. ANN. §§ 338.22 to 338.241</p> <p>{ HYPERLINK "http://www.flsenate.gov/statutes/index.cfm?App_mode=Display_Statute&URL=Ch0338/titl0338.htm&StatuteYear=2005&Title=%2D%3E2005%2D%3EChapter%20338" }</p>	<p>Allows Florida DOT to receive or solicit proposals for PPPs.</p> <p>1953 statute that established the Florida Turnpike Enterprise, which is on an enterprise basis within the Florida DOT.</p>
8. GA	<p>GA. CODE. ANN. §§ 32-2-78 to 32-2-80</p> <p>{ HYPERLINK "http://www.legis.state.ga.us/cgi-bin/gl_codes_detail.pl?code=32-2-1" }</p>	<p>In May of 2005, several significant amendments to this statute were enacted as S.B. 270. The statute now allows Georgia DOT to both receive and solicit proposals for PPPs. Potential competitors also have 135 days (instead of 90 days) to respond to an unsolicited proposal.</p>
9. IN	<p>IN CODE § 8-15.5</p>	<p>HB 1008 authorizes the Indiana Toll Road lease transaction. The legislation also establishes the process for entering into a public-private agreement on I-69 from Indianapolis to Evansville, and specifically prohibits the State from entering into such an agreement for any other road or project without further legislative approval. While similar in scope to the authorization for the Indiana Toll Road lease, there are a number of significant differences in the process for procuring an I-69 agreement. As an example, the I-69 PPA will be administered by INDOT, instead of the Indiana Finance Authority.</p>

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10. LA	LA. REV. STAT. §§ 48:1251 to 1281 LA. REV. STAT. §§ 48:2020 to 2037 { HYPERLINK "HTTP://WWW.LEGIS.STATE.LA.US/" }	Louisiana HB 1294, a bill to "authorize the Louisiana Transportation Authority to pursue public-private partnerships for the construction for certain transportation facilities," was passed by the House currently before the Senate.
11. MD	MD. TRANSPORTATION CODE ANN. § 8-204 { HYPERLINK "http://198.187.128.12/maryland/lpext.dll/Infobase/572f8/5875a/58865/5887e?fn=document-" }	Maryland does not have a statute expressly authorizing highway PPPs. According to a 1996 Attorney General opinion referenced in the annotations to this statute, the Maryland Transportation Authority has authority to construct toll roads using certain forms of PPPs. ²
12. MN	MINN. STAT. ANN. §§ 160.84 – 160.93 { HYPERLINK "http://www.revisor.leg.state.mn.us/stats/160/" }	Authorizes solicited and unsolicited PPPs for toll facilities. Authorizes HOT lanes.
13. MO	MO. REV. STAT. §§ 238:300 to 238:367 { HYPERLINK "http://www.moga.state.mo.us/STATUTES/C238.HTM" }	Creates a special purpose non-profit corporation known as a Transportation Corporation as a vehicle for PPPs. No express provision regarding the solicitation or acceptance of unsolicited proposals.
14. NV	NEV. REV. STAT. §§ 338.161 to 168. { HYPERLINK "http://www.leg.state.nv.us/NRS/NRS-338.html" }	Authorizes public bodies to accept unsolicited proposals to develop, construct, improve, maintain or operate transportation facilities. Toll bridge and toll road projects, however, are prohibited under this statute.
15. NC	N.C. GEN. STATE. §§ 136-89.180 to 136-89.197 { HYPERLINK "http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_136/Article_6H.html" }	North Carolina Turnpike Authority now authorized to develop, construct, operate and maintain up to nine toll facilities, including a toll bridge. Solicited process only.

² See MD 81 Op. Att’y Gen. (issued 2/2/96).

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16. OR	<p>OR. REV. STAT. §§ 367.800 to 367.826.</p> <p>{ HYPERLINK "HTTP://WWW.LEG.STATE.OR.US/ORS/367.HTML" }</p> <p>OR. REV. STAT. §§ 383.001 to 383.019</p> <p>{ HYPERLINK "http://www.leg.state.or.us/ors/383.html" }.</p>	<p>Establishes the Oregon Innovative Partnerships Program with detailed guidelines at OAR 731-070-0005 to 731-070-0360.</p> <p>Allows Oregon DOT to solicit and accept unsolicited PPPs for tollway projects.</p>
17. PR	<p>9 LEYES P.R. AN. §§ 2001 to 2021</p>	<p>This statute establishes a toll transportation facility authority with broad powers to authorize private participation in public highway projects.</p>
18. SC	<p>S.C. CODE § 57-3-200</p> <p>{ HYPERLINK "http://www.scstatehouse.net/code/t57c003.htm" }</p> <p>S.C. CODE § 57-5-1310 et. al.</p> <p>{ HYPERLINK "http://www.scstatehouse.net/code/t57c005.htm" }</p>	<p>Allows South Carolina DOT to enter into PPPs.</p> <p>Allows DOT to construct and operate turnpike facilities; § 57-5-1330(1)4 appears to permit SC DOT to use PPPs to develop these facilities. No express provision regarding the solicitation or acceptance of unsolicited proposals.</p>
19. TX	<p>TEX. TRANSP. CODE ANN. ch. 227, 361 and 370</p> <p>{ HYPERLINK "http://www.capitol.state.tx.us/statutes/tn.toc.htm" }</p>	<p>Allows TxDOT, the Texas Turnpike Authority, and Regional Mobility Authorities to accept solicited and unsolicited proposals for PPPs.</p>
20. UT	<p>UT. CODE ANN. §§ 63-56-502.5 and 72-6-201</p>	<p>SB 80 authorizes the Utah DOT, with approval from the Transportation Commission, to accept solicited and unsolicited proposals for PPPs involving tollway facilities through the use of "tollway development agreements."</p>
21. VA	<p>VA. CODE ANN. §§ 56-556 to 56-575</p> <p>{ HYPERLINK "http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC5600000002200000000000" }</p>	<p>Virginia's Public-Private Transportation Act of 1995 authorizes PPPs and was modified during the 2005 legislative session. Allows solicited and unsolicited proposals. Contains detailed guidelines to assist VDOT and other public entities in implementing this program.</p>

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22. WA	WASH. REV. CODE §§ 47.46.010 to 47.46.900 { HYPERLINK "http://www.leg.wa.gov/rcw/index.cfm?fuseaction=chapter&chapter=47.46&RequestTimeout=500" " }	New PPP enabling legislation was passed in May of 2005 (as H.B. 1541) The exclusive source of financing for WashDOT projects is state treasurer-issued indebtedness; and no such indebtedness, or expenditures from it, may occur without prior legislative approval. Presently, solicited proposals only, but unsolicited proposals may be accepted after 1/1/07.