

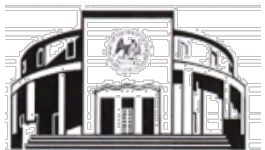


2019 Legislation: House Bill 534
Public-Private Partnership Act



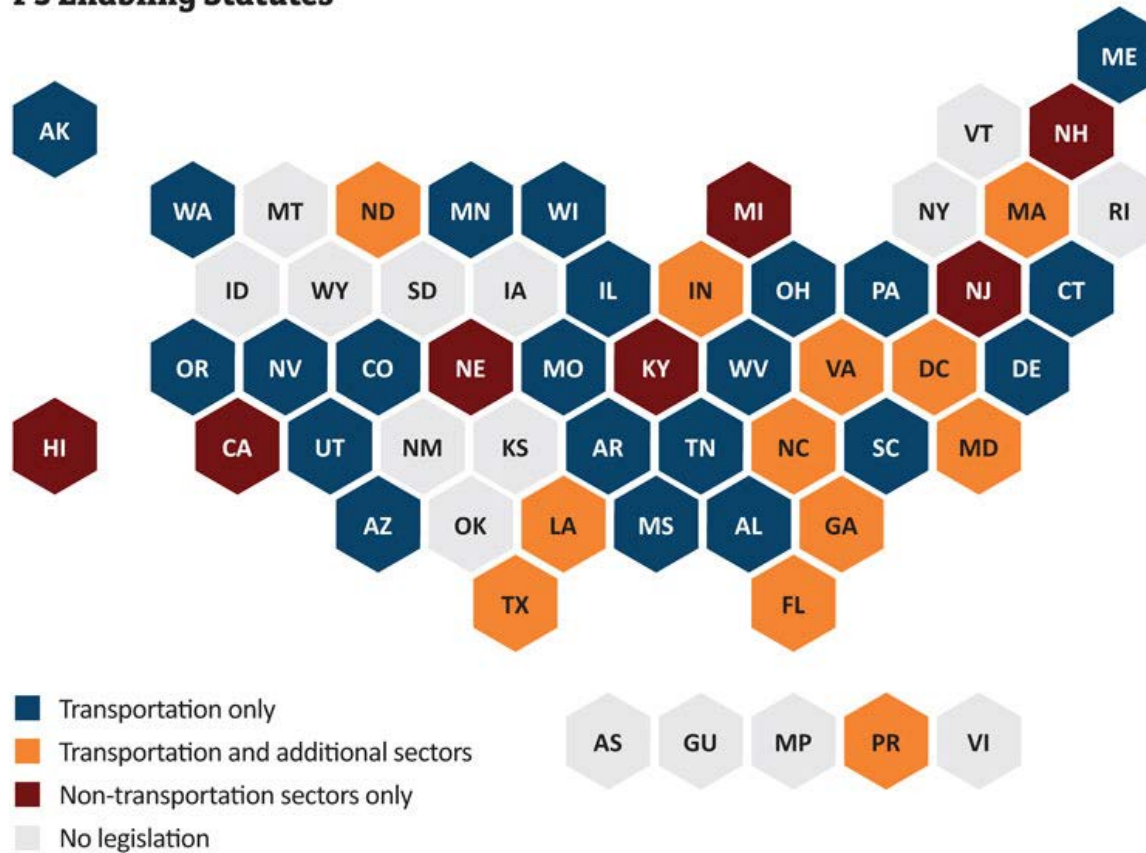
What is a P3 & how does it relate to infrastructure development & investment?

- Public-private partnerships – (P3 or PPP) – contractual agreement to allow the private sector more authority to deliver public goods than a traditional procurement.
 - Aim to leverage the respective expertise between the public and the private sectors to deliver public goods to taxpayers
 - Seek to shift responsibility to the partner most adept at managing the role and the risk of a project through its value chain: design or construction or finance or operation and maintenance (O&M)
 - Implemented through legal agreements, defining the partnership roles and responsibilities. Some states have enacted framework statutes to outline the constraints and establish a level playing field
 - New Mexico does not have explicit statutory framework for P3
- P3 can offload cost of infrastructure projects from the public- to private-sector, but that doesn't mean it is free
- The proposition should add value: better cost or quality, improved timing

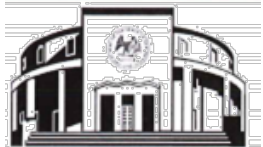
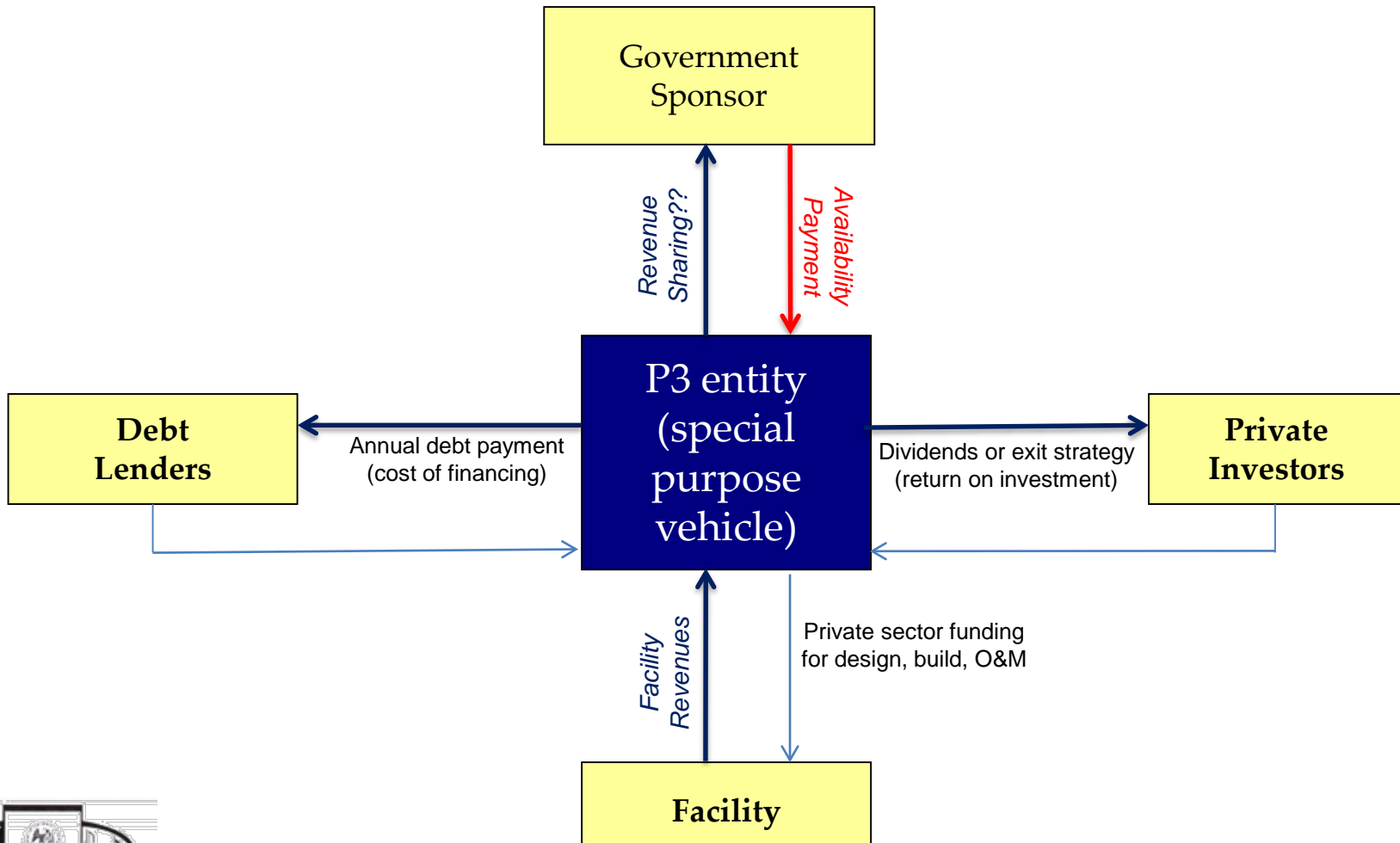


States with some form of P3 statute . . .

P3 Enabling Statutes



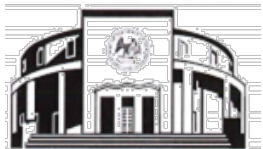
A look at a structure: DBFOM, availability payments



P3 Best Practices

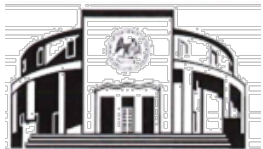
Rationale for P3 Statutory Framework

- Promote quality infrastructure projects that provide economic and social value
- Provide a well-defined mechanism to ensure a fair deal for public and private partners
- Bring innovative thinking to public projects
- Provide flexibility in contracting and delivering infrastructure projects
- Reduce total life-cycle cost of public infrastructure
- Allow for cost and revenue sharing, and risk allocation between public and private partners



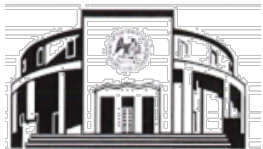
P3 Best Practices: P3 Framework

- A finding of public interest, compatibility with statewide or community plans
 - Definition of the public benefit: infrastructure, public facilities, economic and amenities
- Establish legislative role and identify agency responsible for P3 projects
 - Establish guardrails through administrative rules, policies and procedures to ensure sufficient independent evaluation and approval
 - Start up costs and operating funding
- A process to assess the merit of the projects
 - Cost/benefit analysis of the project and delivery method
 - Identify term of the partnership and exit strategies
 - Mitigate risk of early termination with clawback clauses or dissolution agreements
 - Add flexibility to agreements to offer off-ramps for partnership, valued appropriately
 - Approval of the project in a public hearing(s) and community meetings during evaluation
 - Accountability and performance benchmarks



P3 Best Practices: Public Projects

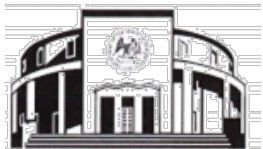
- Public infrastructure is generally the focus for P3 partnerships
 - Private sector expertise should add value to infrastructure development
 - P3 is not efficient for private sector projects and may be an inappropriate vehicle
- Scope and application of projects:
 - Application of the statutory framework to type of governmental entity
 - Local government & state government
 - School districts & charter schools
 - Colleges & universities
 - Type of projects eligible: review of hard versus soft projects
 - Soft assets: economic development for privately owned, IRB, JTIP, LEDA
 - Hard assets: Transportation Water/Sewer, broadband, general governmental purpose building, cultural/recreational facilities, housing/developments



P3 Best Practices

Legislative & Executive Role

- Approval of projects, outlining governing body authority to make determination:
 - Requires expertise to assess and evaluate the projects
 - Need subject matter experts to opine on the project: legal, financial, and technical expertise with recommendations
 - Need legislative approval to ensure political support statewide and locally
 - Maintain legislative appropriation authority and oversight
 - Requires efficiency in timing and approval of projects
 - Need an avenue for timely approval – the partnership may seek to move more quickly than the citizen legislature can accommodate
 - Need forum for the public to engage the project and for a governing body to establish clear record of approval
- Provides a financing mechanism if required
 - Legislature could provide one-time appropriation to start up the program
 - Recurring revenue streams may be available from successful projects (revenue-sharing agreements)



House Bill 534

- Sponsored by Rep. Patricia A. Lundstrom, Rep. Roberto "Bobby" J. Gonzales, Sen. Clemente Sanchez and Sen. Michael Padilla
- HB 534 passed the House 64-0, but failed to pass the Senate on a vote of 16-25
- HB 534 created the Public-Private Partnerships Act (the "Act"), which provides the state and local governments with a framework for entering into partnerships with private sector partners to finance, design and/or build certain public projects
- The Act creates a nine member public-private partnership board (the "Board") which shall be staffed by the NMFA
- HB 534 as amended defines public project as: (1) any public transportation facility or infrastructure or improvement to any public transportation facility other than a toll road; or (2) any construction or improvement that is related to broadband telecommunications network facilities

House Bill 534

- A nine-member "public-private partnership board" is created
 - (1) the secretary of economic development or the secretary's designee;
 - (2) the secretary of finance and administration or the secretary's designee;
 - (3) the secretary of general services or the secretary's designee;
 - (4) the secretary of transportation or the secretary's designee;
 - (5) the chief executive officer of the NMFA or the chief executive officer's designee; and
 - (6) four public members appointed by the New Mexico legislative council who shall have experience in architecture, development, engineering, public projects, project finance, public finance or bond and finance law.
- Public members shall be appointed to six year terms which will stagger every two years
- The members shall select a chair who shall be a public member and who shall serve a term of two years

House Bill 534

- The P3 Board will promulgate rules establishing the application process and criteria for approval of public-private partnership agreements and will approve all public project partnership agreements
 - that are for terms greater than five years and
 - cost greater than \$10 million
- The Act creates in NMFA the public-private partnership project fund (“Fund”) from which the NMFA may make grants and loans for public projects recommended by the Board. The Act also provides that NMFA may issue bonds to finance the costs of the public project upon the certification by the board
- Under separate legislation, \$45,000,000 was proposed to be transferred from the General Fund to the Public-Private Partnership Project Fund for feasibility study grants and low-cost loans for public projects recommended by the board